

The Role of International Law in Indonesia; Case Study on BPUPK/PPKI Session 1945

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Abstract

In the Third World State approach, international law was deemed used as a tool of legitimacy to colonize. This hypothesis can not be generalized to prevail in Indonesia context. To avoid generalization, author determines BPUPK/PPKI Session in 1945 as an object of the research because it's represent important moment for Indonesia. This research use interdisciplinary approach, which combine between legal and history studies. Base on study on BPUPK/PPKI Session in 1945, author show the result is controvert to the previous hypothesis. First, international law is a legal regime that supports Indonesia's independence. The role of international law in the BPUPK / PPKI session is used as a tool to legitimize Indonesian independence.

A. Introduction

"Historically, Indonesia is perceived as an international law that has an established legal order that favors the colonial powers. International law was considered unfriendly towards Indonesia, and a foreign element to the newly founded Indonesian legal framework. How this legal framework responds to international law and obligations in its domestic law is considered to be an academic subject. Until recently, scholars have not addressed this question in the academic sense and little has been written about this issue."⁸⁸

This article deliberately begins with a quote from a scholar and practitioner of international law in Indonesia regarding the position of international law from a historical point of view. His argument stated that at the beginning of the formation of the Indonesian state, Indonesia's position was at the pole which considered that international law was an unfriendly legal regime for newly independent countries.

⁸⁸ Damos Dumoli Agusman, The Dynamic Development on Indonesia's Attitude Towards International Law, *Indonesian Journal of International Law*, Vol. 13, No.1, 2015, p. 3

The perspective above is usually the perception that emerged from third world countries (ex-colonies), which usually see that international law is a discourse and regime of domination and subordination, accommodating and not liberating.⁸⁹ If we follow the genealogy of the development of international law based on the *Third World Approach To International Law* (TWAIL), this argument can be categorized as the first generation of TWAIL which considers that international law is a means of legitimizing occupation against their colonies.⁹⁰

The problem is that in historical point of view, it is difficult to make generalization of facts. Especially if the historical data is associated with a particular subject in this case is international law. Therefore, reviewing the history of international law in Indonesia is a rare subject to be observed by Indonesia scholars. G.J. Resink also complained that the writing of the history of international law in Indonesia is still very new and rare.⁹¹

Besides Resink, who consistently examines the history of international law in Indonesia, not many international law scholars are interested in the discourse. Based on author research, there are not many works of international law scholars who elaborate international law which is related to historical aspects⁹².

Therefore, author interested in to raise the issue of the history of international law in Indonesia. To avoid attempts at generalization, I will raise an Indonesian historical event which is then linked to international law. The historical events that will be investigated are the sessions at Badan Penyelidik Usaha Persiapan Kemerdekaan/BPUPK (Committee to Investigate Preparations for Independence Independence) between 29 May and 17 July 1945 and Panitia Persiapan Kemerdekaan Indonesia/PPKI (Committee for the Preparation of Indonesian Independence) from August 18-22, 1945.⁹³

The selection of the BPUPK / PPKI session as the object of writing was based on the consideration that the sessions were important moments for the birth of the Indonesia because in the BPUPK / PPK session was discussed the basic philosophy of the formation of the state and the formulation of the constitution.

Furthermore, this paper will look at the attitude of the founding fathers regarding international law when it is associated with the formation of the Indonesian state. When referring to the quote at the beginning of this paper it can be seen that there is a hypothesis

⁸⁹ James Thuo Gathii, *TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography*, Trade Law and Development, Vol. 3, No.1, 2011, p.29

⁹⁰ Antony Anghie and BS Chimni, *Third World Approaches to International Law and Individual Responsibility*, *Chinese Journal of International Law*, Issue 1, 2003, p. 79

⁹¹ GJ Resink, *Meaning History of International Law in Indonesia*, *Indonesian Historiography: An Introduction*, Soedjatmoko, et.all (ed), Gramedia, Jakarta, 1995, p. 319.

⁹² One of these works is from D. Sidik Suraputra, *Indonesian Revolution and International Law*, UI Press, 1991

⁹³ A.B. Kusuma, R. E. Elson, *A note on the sources for the 1945 constitutional debates in Indonesia*, *Bijdragen tot de Taal-, Land- en Volkenkunde (BKI)* 167-2/3 (2011):p. 196-197

that international law is considered unfriendly to Indonesia's independence⁹⁴. Of course, the hypothesis needs to be examined further whether the conclusion is appropriate if it compared to the BPUPK / PPK session record.

To explain the position of international law in the BPUPK / PPKI sessions, the author will make three variables to measure the views of the founding fathers regarding international law. *First*, the author will trace the use of the term "international law" during the sessions. This is important to measure whether the participants knew there was an international legal system that regulated relations between states at that time. *Second*, whether the use of term "international law" cited by participants is conveyed in positive or negative tones. *Third*, the content of the arguments presented by the founding fathers when using "international law" term. This is to know what point of view of subjects when they cited international law.

Based on the above mentioned background, the theme to be raised by the authors in this article is, "The Role of International Law in Indonesia; Case Study on BPUPK/PPKI Session 1945". Meanwhile, the problem issues that author would raise were:

- 1) Is international law unfriendly legal regime against Indonesian independence?
- 2) What is role of international law in Indonesia as reflected in the BPUPK / PPKI session ?

B. Discussion

1. History of BPUPK / PPKI

Towards the middle of the 20th Century, the decolonisation movement was symptomatic in the world, especially in Africa, Asia and Latin America. The aim of the movement is of course to want to let go of the colonialist regime from their land. At that time, a lot of new countries were born which succeeded in being free from colonialism, one of which was Indonesia. Indonesia declared its independence through a self-proclamation pronounced by Soekarno-Hatta on Jalan Pegangsaan Timur No. 56, Jakarta on August 17, 1945. After the proclamation, the reaction of various international communities including in this matter was Dutch, former colonialist, who did not recognize Indonesia's independence.⁹⁵

During the reading of the proclamation there was a legal vacuum after Japan surrendered unconditionally to the allies on August 14, 1945 after Indonesia had been under Japanese occupation from 1942-1945. The period of Japanese occupation can be considered a period in which formal efforts to achieve independence were held. During the Japanese occupation

⁹⁴Damos Dumoli Agusman, *ibid.*

⁹⁵Ali Sastroamidjojo and R. Delson, *The Status of Republic of Indonesia in International Law, Columbia Law Review*, Vol. 49, No. 3, 1949, p. 344-346

in Indonesia, then in the midst of Japan's urgency in the Greater East Asian war, Indonesia promised that it would be liberated by Japan someday.⁹⁶

The Japanese promise was then realized by forming a body namely *Dokuritu Zyunbi Tyosa Kai* or BPUPK on April 29, 1945⁹⁷ Discussion on Indonesian independence then continued by *Dookuritsu Junbi linkai* or PPKI on August 7, 1945⁹⁸

Initially, BPUPKI consist of 60 person with additional members as many as 6 person and is chaired by KRT Radjiman Wedyadiningrat. All BPUPKI members are divided into several *Bunkakai* and one committee which focus on basic legal issue. The basic legal committee has 19 members under the leadership of Soekrano. The name of the committee was later changed to the Constitution Committee. Some members of Constitution Committee are assigned to sit on the Small Committee of the Constitution under the leadership of Soepomo.⁹⁹

In carrying out its duties, BPUPK held two official sessions and one informal session which took place entirely in Jakarta before Japan's defeat to the allies. Official hearings were held to discuss state fundamental norms, territory, citizenship and the constitution draft and led directly by KRT Radjiman Wedyadiningrat. The first session took place between 28 May to 1 June 1945 discussing the basis of the state. The second session took place between 10-17 July 1945 discussing the form of state, territory of the state, citizenship, constitution draft, economy and finance, defense, education and teaching. Whereas the informal session, which was attended by 38 BPUPK members took place in the recess period between the first and second sessions, to discuss the preamble of the 1945 Constitution, led by Soekarno.¹⁰⁰

PPKI was formed on August 7, 1945 but only convened on August 18-22, 1945 with a trial period of four times. This body is chaired by Soekarno and 24 members. So, the total PPKI members are 25 people. The material discussed in the PPKI session was as follows:

Session	First (August 18, 1945)	Second (August 19, 1945)	Third (August 20, 1945)	Fourth (August 22, 1945)
Material	1) Approval of	1) Priority	the Family	National

⁹⁶ Aris Hardianto, Authenticity of the Historical Sources of Pancasila in the Period of the First Session of the Agency to Investigate Efforts to Prepare Independence on 29 May-1 June 1945, *Veritas Et Justitia*, Vol. 3, No.1, 2017, pp.44

⁹⁷ AB Kusuma, *Birth of the 1945 Constitution*, Publishing Body of the Faculty of Law, University of Indonesia, Jakarta, 2009, pp. 10.

⁹⁸ Saafaroedin Bahar, et al (editors), *Minutes of Business Investigation Board Preparatory Effort for Indonesian Independence (BPUPKI) and Preparatory Committee for Indonesian Independence (PPKI)*, Third Edition, State Secretariat, 1995, p. xvii

⁹⁹ *ibid.*

¹⁰⁰ *ibid*

	the Constitution 2) Government Structure and Approval of the Body of Constitution 3) Appointment of the President and Vice President and Establishment of Central Indonesian National Committee/Komite Nasional Indonesia Pusat (KNIP)	Program, regional arrangement and 2) formation of departments	Assistance Body of War Victims	Committee of Indonesia National Party
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2. International Law Issues in BPUPK / PPKI Session

As discussed in the introduction, to see the role of international law in Indonesia at the BPUPK / PPKI session, three variables will be used as follows:

a. Term of International Law

The term of international law in the BPUPK / PPKI session were used eight times which were delivered by M. Yamin, Soepomo, Soekarno, M. Hatta and AA. Maramis. When compared with the session period and the number of BPUPK / PPKI members can be analyzed that the use of international law term is less significant. If we look at the overall number of BPUPK / PPKI members, there are 13% of all BPUPK members and 12% of all PPKI members.¹⁰¹

Based on the above notes, Soepomo and M. Yamin state more than one use international law term. This is make sense because they have a background in legal study. Therefore it is very reasonable if they are aware of the existence of the international law. Besides Soepomo and M. Yamin, AA Maramis also has background of a legal study in the Netherlands so that knowledge of international law has been obtained. For Soekarno and M, Hatta, even though they did not have a background in legal study, but because they are bookaholicso that already awareof international law from their reading.

Although the number of citations of term international law is relatively small, this can be interpreted as a discourse in the discussion of the formation of the state, international law

¹⁰¹ Not all members of BPUPK are members of PPKI

issue have been introduced or used as references. In addition, this fact can also be read that the speakers who use the international law term see that the internal law (domestic) cannot be separated from other legal systems in this case international law.

The relationship between the formation of a new country and international law is emerge in the BPUPK / PPKI session when discussing the territory. During the agenda session, some members who spoke up, use to the term international law. For example, Soekarno stated as follows:

"Gentlemen! We now face one most important moment. Do we not know, as tens of speakers have said, that actually *internationalrecht* or internationallaw stands for our work? To organize, hold, acknowledge an independent country, there are no amiscellaneous conditions, which are complicated. No! The condition is just the land, people, and government! This is enough for *internationalrecht*. Enough! Gentlements, As long as there is a land, people, and a government, then it is recognized by one of the other independent countries that it has been call independent. No matter whether the people can read or not, no matter how great the economy of the people are or not, no matter the ignorant or smart people, as long as according to international law there are conditions for an independent state, namely there are people, there is land and there is a government, - she is free "¹⁰²

Thus, even though the use of the term international law is relatively small in the BPUPK / PPKI session, it can be concluded that the discourse on international law has emerged during the initial formation of Indonesia.

2. Intonation

When we do communication, intonation is one of the important elements to know the purpose of the subject. Therefore, the intonation in the use of the term international law in the BPUPK / PPKI session is important to observe. In this variable, I use three variables, namely positive, neutral and negative tone. Positive tone variable means that when the subject uses term of international law, it will be followed by positive or good values, while the negative variable is the opposite. The neutral variable is fulfilled if the subject only explains a certain term without relating it to something positive or negative.

Based on the author's research, majority speakers in BPUPK/PPKI session use term international law in positive tone. For example, Soekarno's speech, which the author quoted above. The speech had a positive tone because Soekarno saw the requirements for the formation of a new state based on international law very simple and all had been fulfilled by Indonesia.

¹⁰² , p. 68-69

While the example of intonation that is neutral to international law can be seen from AA Maramis speeches as follows:

"Mr. Honorable member Agus Salim has given a way that we should ask the Dai Nippon to give way to the people of Malacca, North Borneo, Timor and Papua that controlled by the British, to made self determination, whether the people like to joint with the people of Indonesia. I repeat again, we must look at this matter, it is the matter of determining regions to be included in our Indonesian region, from the point of international law. "¹⁰³

Based on the example of the speech delivered by AA. Maramis, the author considers that the subject does not associate the phrase international law with positive or negative tone but rather neutral in issue of regional determination to be included in to Indonesia must be viewed from international law.

Positive intonation of international law term in the BPUPK / PPKI session shows that a new born state is not always have a negative perception of international law. Even further, international law is perceived as something positive to be used as legal basis. So, the assumption that international law is often used as a legitimacy to carry out colonization is not proven in the discourse that emerged in the BPUPK/PPKI session.

Based on the above mentioned data, the hypothesis that international law is anunfriendlylaw for Indonesia, as quoted at the beginning of this paper, is not entirely correct. From the author's reading of the minutes of the BPUPK / PPKI session, instead perceived as unfreindly, international law was used as a means of legitimacy for Indonesia's independence.

3. Substance

The third variable that author use in this article is to look further when subject cited international law term in the BPUPK / PPKI session. Unlike intonasion, in this variable author will looking more deeply on whole substances that speakers deliver in session. Based on the two excerpts from the speakers in the BPUPK / PPKI session above, Soekarno and AA Maramis, the two speakers were deemed understood international law when they cite it.

In the case of Soekarno's speech, he considered that elements of an independent state based on international law must fulfill; territory, people, government and recognition. The material conveyed by Soekarno referred to the requirements of new state as the subject of international law as stated in Article 1 of the Montevideo Convention 1933. Whereas in the case of AA Maramis speec, he was very careful to include areas that had not been under Dutch control. From what Maramis stated, I really aware that he understood what he said in the context of state succession. Regarding territory in international law, new state

¹⁰³ en., P.157

(*successor*) inherits territory that previously controlled by colonial regime (*predecessor*)¹⁰⁴. He also understood the plebiscite regarding the right to self-determination for regions that not included in the Dutch colony if the area want to join with Indonesian.

M. Yamin also can deemed understood about international law if we look from substances that he delivered in his speech. The M. Yamin speech is as follows:

"In the 20th Century, the Movement of Indonesian Independence arranged in groups to move the people and oppose the rule of Western imperialism. For the above reasons, *terra occupationis belli*, namely area six becomes the center of the territory of the Indonesian People's State by having international status. This change in status is because Indonesians are directing their countries and the Dai Nippon Army allows *occupation* to become the power of an independent Indonesian state. "¹⁰⁵

M. Yamin clearly understands the succession of countries in the view of international law. Because at that time Indonesia was a Japanese colony, it means that former Japanese territory automatically became the territory of an independent Indonesia.

Based on the three examples of speeches mentioned above, the author considers that the figures really know well international law when considering the substance of their speech then connected between international law and Indonesian.

C. Conclusions

Based on the above discussion, the author takes the following conclusions:

- 1) International law is a legal regime that supports Indonesia's independence
- 2) The role of international law in the BPUPK / PPKI session is used as a tool to legitimize Indonesian independence

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¹⁰⁴ Malcolm N. Shaw, *International Law*, Fifth Edition, Cambridge University Press, 2003, p. 861

¹⁰⁵ Saafaroedin Bahar, et al (editor), op.cit., P. 49

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