

ASPECTS OF INTERNATIONAL LAW AND HUMAN RIGHTS ON THE RETURN OF THE TALIBAN IN AFGHANISTAN

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Abstract: From 1996 to 2001, the Taliban group ruled over Afghanistan before the 2001 World Trade Center bombing in the USA. Then, this group was overthrown by a military invasion that actually served the interests of the North Atlantic Treaty Organization or NATO members. After the absence of strong evidence of the involvement of the Taliban in the 2001 WTC bombing, the United States and its allies began to receive internal and international pressure to immediately withdraw from Afghanistan. This invasion led to the death of many American soldiers. Many survivors suffered from mental disorders. Apart from that, the Afghanistan invasion that went on for 20 years greatly burdened the budget, as its financing reached 31 thousand trillion rupiahs. This study used the normative research method. Results showed that the Taliban's return to power does not violate international law. But in terms of human rights, its return will decrease the human rights index of Afghan citizens. This condition is commonplace in authoritarian countries. This is due to the Taliban's political attitudes that lack respect for women's rights in the modern era. It also lacks concern for civil rights in a modern democratic state.

Keywords: International law; human rights; Taliban; Afghanistan.

I. INTRODUCTION

War and the struggle for power are commonplace in the dynamics of state law and politics. Groups with stronger support and that are able to manifest that support can gain legitimate power. According to constitutional law, this group is legitimate. Thus, it can be called a sovereign government that has legitimacy.

Afghanistan has always been a region that is rampant with issues of political instability. This place was part of the silk road that connected the eastern and western civilizations. Political power is crucial in obtaining sovereignty and legitimacy. Sovereignty and legitimacy are inseparable in a conquest of a country, nation, or region. This is because it is possible for a certain group to conquer an area, but the people in that region may not be willing to submit to them. Instead, they may routinely ignite resistance in the form of armed rebellions (Suhrke & Borchgrevink, 2009).

The Islamic State of Iraq and Syria or better known as ISIS, which later changed its name to the Islamic State or IS, conquered large parts of Iraq and Syria in its golden era. This group was

labeled by the United States and the international community as the most embattled terror group of this decade. This group was allegedly supported by funds from the United States center for intelligence. This was acknowledged by the then United States Secretary of State Hillary Clinton. It is the custom of that country, which is also the country that gave birth to the Taliban in Afghanistan, to assist the anti-communist foreign policy of the United States. It was to stem the influence of Soviet Communism which had controlled Afghanistan (Weigand, 2017).

Great conquests, huge financial support, and propaganda succeeded in attracting global citizens who were influenced by the idea of a caliphate bent by ISIS for their political interest. Such reasons motivated many people to travel to ISIS territories to join *jihād* of their own versions. They were influenced by ISIS media propaganda which can be considered quite successful in its time. But these extraordinarily fast and indiscriminate conquests were not accompanied by other political forces, namely the legitimacy of the people/nations they conquered. They had no recognition of sovereignty from any country. So, practically, this ISIS movement can quickly be extinguished, even though it was considered more dangerous than any other movement. But in fact, this movement is the same as other separatist movements which are fully interfered with by the political interests of the superpowers in order to win their political and economic agendas abroad.

Even though ISIS moved quickly and managed to control many areas of Iraq and Syria in a relatively short time, their tenure in these places was also short. This was because the immediate intervention of Russia and Iran pushed them backwards. Therefore, it became a kind of proxy war between superpower states, namely the United States against Russia and China, which supported the official government of Syria under President Assad.

This was different from the Taliban. After it was overthrown by the USA in 2001, they quickly stepped aside to carry out guerrilla resistance. They knew of the imbalance of power that they had. Moreover, they were attacked by mentors who had been supplying and training them when they entered Afghanistan from Pakistan. These mentors were fully armed just as ISIS was armed. But in the case of Afghanistan, the Taliban can rule Afghanistan with anti-communist sentiments that are understood by most Afghans as enemies of Islam as is the case with the Muslim Uyghurs who are cruelly suppressed by China's communist government (Swenson, 2017).

The anti-communist sentiment made the Taliban gain sovereignty as well as legitimacy from the Afghan people at that time. But in the case of ISIS, they emphasized the Sunni-Shia issue as their ideological campaign to eradicate political opponents (Hawley, 2018). Meanwhile, in Iraq and Syria, this issue has been irrelevant since the formation of the government. This was even more irrelevant in the very plural republic of Lebanon where Sunnis, Shiites, and even non-Muslim politicians can unite to form a government.

In addition to issues of violence and atrocities committed by ISIS rebels against anyone they suspected as Shia and/or Shia supporters, this has weakened people's support for ISIS. Thus, the people who lived in the places that they control do not support them. Instead, they continued to turn against ISIS and fight. This condition is detrimental to ISIS' political position. So, legally, they are only labeled as a terror group.

II. RESEARCH METHOD

This study used a normative juridical research method, where the law is a set of rules and doctrines adopted in a group or society that has the legitimacy to ensure order, security, and the fulfillment of a sense of justice in that society. This type of research is descriptive-analytical research to describe the existing phenomena (Firdaus et al., 2020). This type of research is carried out by analyzing legal materials from library materials which are part of secondary legal materials (Al-Fatih & Siboy, 2021).

III. RESULTS AND DISCUSSION

A country can only run when there are people who support it. Apart from that, it must have a sovereign territory and its government must internationally be recognized (KRISTOF, 1959). Without these three things (residents, a territory, and a government), a country can be said as legally flawed. Even with some residents and territory, if the government is not internationally recognized according to international law, then the country will not be able to run or operate like a normal country (Ledwidge, 2009).

Today's international politics has reached a very advanced stage. This gives birth to a dynamic society that changes very quickly from time to time. The birth of new countries or new sovereign nations over an area with certain ideologies and understandings that form the basis of the state is a common thing that has happened in every human civilization in history (Mallat & Revkin, 2013).

Rebels who try to seize power over a country can also be recognized as a legitimate government if they succeed in winning the power struggle. This recognition can be brought about either by a unilateral declaration of the recognizing state, or by a bilateral transaction, namely, by an exchange of notes between the government of the recognizing state (Kelsen, 1941). They must also be able to meet the requirements and elements agreed upon by international law.

Even, that country can exist and have more political power than the previous rulers who may choose to create a rival government elsewhere. Take the example of communist China which controls mainland China as the legitimate Chinese government. The current Chinese government was born from communist political rebels who fought against the Kuo nationalist government of the Min Tang party which had been weakened by the war with Japan (Tsou & Halperin, 1965).

The communist rebels at that time saw an opportunity during the chaos of the Chinese government which fought against the Japanese invasion. These rebels chose to join the attack against the government in order to seize it. Then, the communists won the war and succeeded in occupying China as the new legitimate government. They even succeeded in urging the United Nations and the United States to shift their recognition of the legitimate Chinese government. Previously, the United Nations and the United States only recognized the nationalist government that has moved to the island of Taiwan.

Political developments forced the United Nations and the United States to transfer their recognition to the Chinese Communist Government that is based on the dictatorship of one party, the Chinese Communist Party. The communist Chinese government, which was originally just a group of rebels who were hostile to the United States because of their communism, was later

recognized as a legitimate government. It even replaced the position of the original state as a permanent member state of the United Nations.

Political power in international law can be said to be the most important thing in the existence of a government or the legitimacy of a new state or government. This was the same case as the Taliban's re-control of Afghanistan after the fall of the communist regime supported by the Soviet Union. The Soviet Union lost the 10-year war against the Taliban, which was supported by the United States, Pakistan, and Saudi Arabia in their anti-communist campaign.

The political power of the Taliban supported by the United States has proven to be able to rule in Afghanistan from 1996 to 2001 (Saikal, 2002). The United States which changed political policies after the collapse of the Soviet Union finally turned against Islamic groups such as the Taliban, which they used to support. The collapse of the Taliban did not necessarily make them give up hope. Instead, they continued to fight relentlessly through guerrilla warfare and sporadic attacks. Their military and battlefield control capabilities during their 5-year reign from 1996 to 2001 were well-utilized to fight against the allied occupation forces led by the United States.

After the attack on the WTC in 2001, the US began to echo its foreign policy under the pretext of fighting terrorism (Tilly, 2004; Vegh, 2002). They finally succeeded in destroying their strategic targets, starting from Iraq and Libya, to Afghanistan. But in the case of Afghanistan, the US was never able to completely eliminate the group due to the enthusiastic struggle and support of the people who lived in Afghanistan's outskirts against the resistance carried out by the Taliban.

The birth of ISIS, which was allegedly also part of the United States foreign policy to maintain political instability in the Middle East, did not go as expected. ISIS was destroyed before it could control all of Iraq and Syria. In reality, ISIS, which the US hoped to become as strong as the Taliban, was far behind. This is understandable because ISIS was born as a mercenary who did not have the fighting spirit, like the spirit of *jihad*, which inspires the Taliban in fighting against the United States in Afghanistan.

Another factor is the local people's support for the Taliban who are mostly from the outskirts and borders of the country. They tend to support the Taliban rather than the US, which they consider invaders and infidels in their religious doctrine.

ISIS has nothing like the Taliban's rather strong local community support because ISIS relies on support from foreign people. They attract foreigners who are interested in the doctrine of *jihad* and caliphate bent by ISIS in such a way as to deceive the global community into supporting them. These people do not understand how to fight on the battlefield. They only have a strong passion and spirit, making ISIS fragile. Now, they are just a knocked-out armed gang.

From an international legal point of view, the reinstatement of the Taliban in the country that they have ruled for 5 years is legal. It is not something extraordinary that needs to be questioned. It is legal as long as they can maintain their existence in the country.

The commitment of Russia and China to keep their embassies open in Kabul and not order the evacuation of their citizens in Afghanistan is a signal that these two superpowers will give diplomatic recognition to the Taliban government. It is said that they need the support of at least five countries. The author believes that the Taliban will obtain such support. This is because Pakistan is a country that has protected Taliban officials in the past and has supported the Taliban to overthrow the communist government in Afghanistan along with the United States. Pakistan

also has legal and political interests to maintain regional stability from Pakistan's enemies, namely India and China. China's heated relationship with India will be a serious consideration for China to become a supporter of the Taliban in Afghanistan. Even though Russia was defeated by the Taliban in the 10-year war to protect the communist regime of Afghanistan, facts show that they now need the Taliban to maintain regional stability. They also need to add support to the Russian block as Russia did to Turkey. Turkey was a close friend of Russia in fighting ISIS in Syria and Iraq. Thus, it will follow the same route. As will the country of Saudi Arabia.

Saudi Arabia, like Pakistan, is a place where high-ranking Taliban leaders study and protect themselves. So, it is natural if Saudi supports the Taliban (Gaston & Dang, 2015).

The human rights view of the Taliban's reinstatement in Afghanistan will directly or indirectly lower the index of protection of human rights, especially concerning the civil rights and democratic rights of citizens.

The Taliban is an Islamic group that implements their version of Islamic Sharia, the Taliban argues that women are only allowed to stay at home and serve their husbands, women are allowed to leave the house provided they must be accompanied by a mahram or a male member of their family (Lestari, 2021). This will clearly bring Afghanistan to a setback in the field of law enforcement and human rights, as law and human rights are two inseparable things (Aswandi & Roisah, 2019).

The Afghan people, on one hand, are faced with the corrupt government of President Ashraf Ghani as a cultural heritage from the previous governments. But on the other hand, the people also do not want their human rights and democratic rights to be restrained under the Taliban government (Singh, 2015).

The Taliban needs to follow the rules of international law in terms of implementing and upholding human rights. This is to ensure that democracy continues to run in Afghanistan. This is because the stability of a government in the modern world can only be ensured by a stable political and democratic climate.

International pressure is one way to control a country that has a tendency to lead and oppress its people under a dictatorial government (Buyse, 2018). So, in this case, international sanctions and pressure can be considered further if a government, as in this case the Taliban, does not carry out its duties properly (Heupel, 2013).

IV. CONCLUSION

From the aspect of international law, the reinstatement of the Taliban in Afghanistan is not a violation of law or legal norms. This is because, in the law of war, it is possible for the strongest to succeed in winning the succession. The problem is whether or not the government can be maintained and whether or not the new ruler has legitimacy from all the people. Of course, this aspect of legitimacy needs to be fulfilled so that a country can run normally. It is not enough to only have a legitimate *de facto* state, there are other elements that must be met, such as a *de jure* legality.

From the perspective of human rights, the reinstatement of the Taliban will bring a setback in the enforcement of human rights in Afghanistan. Besides that, the democracy in Afghanistan will not work well if the Taliban does not abandon their old ways of governing the state. Because

the times have changed and life is dynamic, the Taliban must also change their way of governing a modern state.

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