

When It Start? Tracking Back History of International Law in Indonesia

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Abstract—History of international law always depends on international law definition that used by subject either set of rules of inter-state or inter-nation relation. Once said that history of international law in Indonesia occurred since sixteenth century considering facts that several kingdoms in Indonesia has been made agreement with foreigner, while Indonesia possess capacity as an international legal person on August, 18th, 1945. This article uses interdisciplinary methodology which are legal normative and history method. It means author not only to gather definition of international law but also to analyze historical facts of Indonesia to find out when international law occurred in Indonesia. The objective of this article is to answer when international law occurred in Indonesia. This article concludes that international law arises in Indonesia since August, 18 1945 if use perspective international law as rules of inter-states relationship. Claimed history of international law in Indonesia take place since sixteenth century can be justified if use perspective international law as body of rules to regulate inter-nation relationship.

Keywords: *history, international law, Indonesia*

I. INTRODUCTION

When precisely international law occurred in Indonesia? To answer that question is certainly difficult because it will involve tracking back of Indonesia history. In general, discussing the history of international law in Indonesia has an old as the history of Indonesia itself [1]. However, Onuma reminded us that the discussion on the history of international law must begin with definition of international law and perspective how it's born and developed [2]. The problem is notion of international law has a lot of definition. For instance, in late nineteenth and first half twentieth century, only state can be posed as international legal person. However, this fact is not entirely correct because the holy state and the individual are then also considered as subjects of international law [3].

Resink studies found history of international law in Indonesia has begun since A.D. 132 between Indonesia and China through diplomatic missions [1]. Other facts also discovered through agreements made by several kingdoms in Indonesia with the colonial power which reached their peak in the sixteenth century. In sum, the practice of international law stopped in Indonesia since 1910 when the Nederland-Indies as

colonial government did not mention in agreement with its counterparts in the archipelago as an independent power.

Resink's definition and perspective on international law has influenced his conclusion about history of international law in Indonesia, which had begun since the sixteenth century even before Indonesia established as nation-state in 1945. However, this hypothesis is not entirely correct.

The objective of this article is to propose different approach related to history of international law in Indonesia. First, the author will determine in advance the definition of international law. After that, facts related to Indonesia's history will be analyzed to determine when precisely practices of international law in Indonesia occurred.

II. METHOD

This research uses interdisciplinary methodology. Author use legal normative and history methods. It means that authors not only to gather definition and scope of international law but also to analyze historical facts of Indonesia to find out when international law occurred in Indonesia.

III. RESULTS AND DISCUSSION

A. *History of International Law*

Broadly speaking, the evolution of international law can be traced through early mankind civilization before century. This idea stems from Montesquieu's opinion that every nation has inter-national law. Furthermore, his opinion became an initial idea regarding international law although it is difficult to be aligned with contemporary international law [4].

Majority international law scholars always associated international law with "ius gentium" from Roman law. In fact, notion "ius gentium" in Roman law means to regulate relations between Roman citizens with foreigners. According to this practice, some international law scholars say that "ius gentium" is identical to international law. However, the position of "ius gentium" is only Roman's domestic law not made by among state [4].

Contemporary international law can be traced through war agreements history made by the state. It's true those agreement made by a state but not in a sense as fully sovereign power

because practice in Europe at that time the power still remain under the authority of the Pope in Rome. Treaty of Westphalia in 1648 finally succeed segregate power between state and Holy City which mean each state could made an agreement independently without interference of the Holy City. This event was later considered as a corner stone in the development of modern international law [4].

B. Scope of International Law

Based on the evolution of international law, it can be seen initially international law was ascribed from law of nations, which is a set of laws that govern individual relations across territorial boundaries. Such as "ius gentium" in the Roman legal system.

The scope of international law then evolved to a set of rules governing relations between states. Through this evolution, the most important subject at this stage is shifting from individual to state. However, international law not only regulate state and individual but also other international legal person.

The rule of inter-states relation is influenced by Jean Bodin's notion on sovereignty which stipulates that only state holds the highest authority. In this context, the state is considered to be independent and have power over itself without any influence from other powers [4]. Thus, the element of independence is becoming an important essence in seeing the state position as an international law subject.

Nevertheless, contemporary international law is broadening which do not depend entirely on the state. Currently, development of international law is more extensive to materialize the international community interests, although not in the context of realizing a world state.

C. State as International Legal Person

Although international law is evolving, state as primary international law subject cannot be eliminated. State is remain considers as a principal subject. Some international law scholars even argue that international law covers relations between states in all the myriad forms [5].

In principle, state can possess as a subject of international law after fulfill some elements. Article 1 of the Montevideo Convention on Rights and Duties of States, 1933, stipulate four requirements, namely:

- A Permanent Population
- Defined Territory
- Government
- Capacity to enter into relations with the other states.

These requirements must be met by the state to be subject of international law. According to Starke capacity to enter into relations with the other states element is the most important because this feature distinguishes between the state and the smallest unit of the state, such as province or region in federal system [6].

The essence of such capacity is independence [5]. This means that ability to form relation within international

community arises from the position as an independent state. If the state is dependence or not sovereign, it is impossible to carry out relations between states.

D. Indonesia as Subject of International Law

Writing a periodization of Indonesia's history is very challenging. According to Ali, Indonesia history can be divided into two parts, first, history of the Indonesian people and history of Indonesia [7].

The history of the Indonesian people means the history of the Indonesian people from prehistory-protoculture to the present who inhabited the archipelago since the fourth century. The period can be divided into four segments:

- The history of the Indonesian people in regions and kingdoms which managed to maintain their sovereignty until approximately 1910
- The history of the Indonesian people in regions and kingdoms which recognized the suzerainty of the British, until 1824, or the Portuguese or the Dutch, until approximately 1910
- The history of the Indonesia people as a whole in the period of the Netherlands Indies
- The history of the Indonesian people after 1945 [7].

Meanwhile, history of Indonesia means observing the birth and development of Indonesia as an independent political entity. Term "Indonesia" itself was originally introduced by G. W. Earl in 1850 by introducing the term "Indunesians" or "Malayunesians" to refer to the inhabitants who inhabited the Indian and Malayan regions. Then in 1884, Adolf Bastian, from Germany used the word "Indonesia" in the title of his book. The use of the Indonesia term became popular after 1900 and was used not only in academic circles but in public sphere such as the change in name from Partai Serikat Islam (PSI) to Partai Serikat Islam Indonesia (PSII) [8].

As a political realm, Indonesia was born as an independent state since self-Proclamation on August 17, 1945. After that, Indonesia has declared itself free from Dutch occupation. The interesting question then arises, what existed before proclamation? According to a commentary on article 2 of the provisional constitution, 1950, "what is defined as the territory of Indonesia comprises the former Netherlands-Indies." Next question then who is Netherlands-Indies? Netherlands-Indies is part of Netherland [7].

Therefore, does international law ever exist in that period? According to Resink, in the Netherlands-Indies period, international law was practiced between Netherlands-Indies and several sovereign kingdoms in Indonesia through the form of trade agreements and diplomatic missions exchange until 1910 [1]. Afterward, all the kingdoms in the archipelago were controlled by Netherlands-Indies. In other word, international law stop practice and replace by domestic law.

As a legal fact, independent of Indonesia start since August 17, 1945 through Self-Proclamation. Then, the process continued with stipulation of Indonesia constitution on August 18, 1945. After that Indonesia had the capacity as a subject of

international law. Although there are some opinions that Indonesia as a new legal entity fulfilled after the transfer of sovereignty by the Netherland to Indonesia in the Round Table Conference in 1949 [8].

Intriguing question is since when Indonesia has fulfilled the elements as subjects of international law, August 17 or 18? As elimination test, it can be used Article 1 of the Montevideo Convention on Rights and Duties of States, 1933. If we look up text of the Proclamation that read by Soekarno and Hatta on August 17, 1945 carefully, it stipulate a basic norm of newly an independent state which states declaration of Indonesia independence and transfer of power from colonial power will be executed with careful means and in immediately. However, the text does not provide other information regarding elements of Indonesia as subjects of international law.

On August 18, 1945 Committee for the Preparation of Indonesian Independence (PPKI) authorized the Indonesian constitution which contained state elements as stipulated in the Montevideo Convention. The Indonesian Constitution regulates territories, government structure, nationality and citizenship, foreign relations and many others. The interesting facts can be found on formulation Indonesia constitution debate since May, 27 to July, 17, 1945. Indonesia founding parents are aware of international law norms and use it as argument basis to form constitution [9].

Author argues, since August, 18, 1945 Indonesia has fulfilled the elements as subjects of international law. Afterwards, Indonesia gained recognition as an independence state from other states. The acceptance practices by international community can also be seen either explicit or implied. For example, the Government of Indonesia entered into a Linggadjati agreement with Allied Power on March 25, 1947 during Netherland aggression. It means, even has unstable condition, as an effective government who control the area, Indonesia was recognize as subject to take part in agreement to restore safe situation.

From abovementioned facts, in light of international law perspective Indonesia has the capacity as a subject of international law since August 18, 1945. The consequence of this hypothesis is the practice of international law in Indonesia can be count from the above date. In contrast, Resink argument became unjustified when he claimed practice of international law in Indonesia began in the Sixteenth Century because Indonesia as subject of international law just begins on August 18, 1945. Resink argument can be considered justified if the assumption of international law also counts as inter-nation relationship which is history of Indonesian people demonstrate

they have made connection with Netherland even before Indonesia as independent state born.

IV. CONCLUSION

Based on earlier discussions, author concluded that history of international law occurred in Indonesia since August, 18 1945 and afterward. This conclusion came from perspectives that international law is a set of rules governing relations between independent states. History of Indonesia facts indicate that Indonesia fulfill as international legal personality starts from that date. However, in broadened sense, history of international law can be justified has begun since sixteenth century if international law deemed to cover rules between individual across territory as shown by history of Indonesian people.

ACKNOWLEDGMENT

This article is fully funded by Faculty of Law, Universitas Islam Bandung (UNISBA), Bandung, Indonesia. Therefore, author would like to express deepest gratitude to faculty for supportive attitude.

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