

Territorial Disputes and the Palestine – Israel War seen from an International Law Perspective

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Abstract. *Theologically, the Zionists consider Palestine as their land in the Old Testament which stated that the area was 'God's promised land' for the Israeli people, whereas historically, the Palestinian people stated that we, the Palestinian people, have been in this country since the time of Umar bin Khatab. However, after the occupation implemented by Israel in 1948 by expelling the Arabs from Palestine. Any Arab village or settlement that did not surrender to Jewish power was destroyed and its people expelled. In this way 400 Palestinian villages were wiped off the map during 1948-1949. The property rights left by the Palestinians were controlled by the Jews on the basis of the law of unoccupied property rights. The Zionist organization used pressure and force to expel the Palestinian people from the land they had occupied for centuries, so that now the Palestinians are only given a place in the Gaza Strip. This was made worse by the war which claimed many victims, especially the Palestinian people, even children and the elderly. This research aims to provide an overview and input on how to resolve the Palestinian-Israeli conflict from an international legal perspective. The research method used is normative research. The results of this research prove that the logic of international law that might not make right, but right made might, is difficult to refute. Many countries have offered to resolve this dispute.*

Apart from pushing for recognition of Palestine as a state, Indonesia also supports the UN initiative to revive Palestinian-Israeli peace negotiations based on a "two state solution".

Keywords: Colonialism; Independent; Victim; War; Zionist.

1. INTRODUCTION

The Palestinian-Israeli conflict has been mostly discussed from an international relations perspective. However, as a dispute between countries, this conflict also has a strong international legal dimension. Some relevant legal facts in international law are:

- a. During the decolonization process after World War II, the disputed territory (Palestine) as a whole was under Britain (British Mandate for Palestine 1920-1948). This means that the Palestinian people have the right to self-determination to become independent from Britain.
- b. Britain as the mandate holder failed to mediate the conflict between the Arab and Jewish communities in Palestine regarding the future of this new state, then handed this issue over to the United Nations ("UN"), and since 1948 ceased to be the mandate holder.
- c. The UN General Assembly took over this dispute and issued UN General Assembly Resolution Number A/RES/181(II) and Partition Plan (29 November 1947) ("UN General Assembly Resolution 181"). This plan was rejected by the Arab community and Arab countries.

- d. In 1948, the Jewish community proclaimed the establishment of the state of Israel and began to slowly occupy Palestinian territory.
- e. The failure of the UN initiative gave rise to a power vacuum in Palestine and the establishment of the state of Israel triggered Israel's war with neighboring countries in 1948. After this war, Israel succeeded in de facto control of the territory originally assigned to Israel in UN MU Resolution 181, and almost 60% of the territory designated for Palestine.

2. RESEARCH METHODS

This research uses normative research which looks at the conflict and territorial dispute between Palestine and Israel from the perspective of international law. The data used is secondary data originating from literature studies. Then it is analyzed to draw broad conclusions.

3. RESULTS AND DISCUSSION

3.1. Violations of International Law by Israel

The international legal norms in force since World War II that are relevant to this dispute are:

- a. The norm of self-determination, which gives territories still under colonial control the right to be liberated.
- b. The norm of *uti possidetis juris*, namely that the boundaries of the liberated territory must be identical to the boundaries of the colonial territory. This principle is reinforced by the opinion of the International Court of Justice (ICJ)

in Advisory Opinion on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (2019). According to the ICJ, the norm of self-determination also requires that colonies be liberated in their entirety and must not be divided (p. 43, paragraph 160).

- c. The norm of non-use of force, namely the use of force is prohibited to gain territory. This prohibition has come into effect since UN Charter 1945[1] and confirmed through *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* ("Declaration on Friendly Relations").

Furthermore, these norms are implemented through various UN Resolutions and international agreements such as *Oslo Accords 1993*, in which Israel recognized Palestinian rule over the Gaza and West Bank territories.

Based on these norms, Israel's control over the Palestinian territory from the beginning until now is a violation of international law and a denial of the right of self-determination of the Palestinian people over the Occupied Palestinian Territory. Israel in this context is the occupying power. The status of this legal violation is reflected, among other things, in:

- a. ICJ ruling in *Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004)* ("Advisory Opinion on Wall") which states that Israel has violated Palestine's right to self-determination and has carried out de facto annexation through the construction of a wall in the Occupied Palestinian Territory (p. 52, paragraphs 121-122).

- b. UN General Assembly Resolution Number A/RES/67/19 (2012) affirming the right to self-determination in relation to the Palestinian territories occupied since 1967.
- c. *Pre Trial Chamber I* International Criminal Court (ICC) in *Situation In The State Of Palestine (2021)* refers to the Gaza, West Bank and East Jerusalem areas as Palestinian territories occupied by Israel since 1967 (p. 60).

3.2. Legal Position of Palestine and Israel

This conflict has evolved and Israel has been recognized as a country and became a member of the UN in 1949 through UN General Assembly Resolution Number A/RES/273 (III) (1949). Meanwhile, Palestine, via UN General Assembly Resolution Number A/RES/43/177 (1988), its declaration of independence on 15 November 1988 has been recognized by the UN.

Currently Palestine is recognized as a state by 138 of the total 193 UN member states, including Indonesia and since 2012 through UN General Assembly Resolution Number A/RES/67/19 given status as a non-member observer state. Palestine is not yet officially a member of the UN because to become a member of the UN it must receive a recommendation from the UN Security Council ("UNSC"), which currently cannot be done because a recommendation from the UNSC will definitely be vetoed by the United States.

For your information, the veto right is a right possessed by every permanent member of the UNSC, where if one of the permanent members of the UNSC rejects a proposal when voting, then a decision or resolution of the UNSC will not be approved.

Thus, currently there are two countries recognized by the international community but with territorial boundaries that are still in dispute, and most of the disputed areas are under Israeli occupation. In this case, Israel is in a position as a violator of international law.

3.3. International Law Enforcement

International law does not have law enforcement institutions like national law. Therefore, enforcement of these legal violations is left to countries in the form of reactions/responses either individually or collectively (through the UN or regional organizations). The state's response will be characterized by persistent objection or, alternatively, recognition. These two responses will determine the validity of Israel's claims.

The current reaction of the majority of countries shows persistent objection to Israel's actions. In the international legal system, this kind of rejection would prevent Israel's unilateral claims from being valid. This means that Israel's de facto occupation of the occupied territories, including its policy of moving the capital to Jerusalem, is considered illegal according to international law. This is the root of the Palestinian-Israeli conflict.

On the other hand, countries are also prohibited from recognizing situations that arise from serious violations of the *ius cogens* norm (peremptory norm of general international law). This prohibition is an international custom codified in Article 40 paragraph (2) UN ILC Draft Article on Responsibility of States for Internationally Wrongful Acts (2001). The ICJ, in its Advisory opinion on Wall, for example, prohibits countries from recognizing illegal situations arising from Israel's actions in building

walls in occupied areas (p. 70). The United States' recognition of Israel's unilateral policy of moving its capital to Jerusalem in 2017 also received rejection from 128 countries at the UN General Assembly when the vote was held on UN General Assembly Resolution Number A/ES-10/L.22 (2017). The reaction of the majority of these countries emphasized that the determination of Jerusalem's status as the capital of Israel was not legal.

In this case, Israel's violation of international law creates certain restrictions on the reactions of states. For this reason, it is very wrong if some of the public have recently urged Indonesia not to support one party or be neutral. Apart from reasons of consistency in Indonesia's foreign policy, international law actually requires Indonesia to take sides in respecting international law, there is no other choice. Supporting Israel with its current status as a violator of international law actually places Indonesia as a country 'participating' (complicated) in this violation.

4. CONCLUSION

The resolution of this conflict can only occur if international law approves it, in this case the countries give recognition to whatever solution is agreed upon by the two countries in conflict. Unfortunately, this agreement has not been reached so that conflict continues to escalate. The recent escalation of conflict is not the root of the conflict but rather the result of the root of the conflict which has been and will continue to occur through various triggers, and will only stop if the root of the conflict is resolved. Israel's strength over the weak Palestine does not by itself resolve this conflict. This proves that the logic of international law that might not make right, but right made might, is difficult to refute. Many countries have offered to resolve this dispute. Apart from pushing for recognition of Palestine as a state, Indonesia also

supports the UN initiative to revive Palestinian-Israeli peace negotiations based on a "two state solution".

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