



Asean's Attitude to the Coup in Myanmar *Ne Regrette Rein*

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ABSTRACT

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ASEAN has been confronted with this reality and this reality rests with its members, that the change of power in Myanmar is carried out deviating from universal norms or in other languages in ways that are not adab. How inconsistent ASEAN leaders are concerned, but what emerges is a contradictory polemic between the purpose of the meeting agenda and the press statement. If we want to avoid political lip service, the best thing is that at least ASEAN leaders should not forget the meaning of a word spoken " Coup ". A coup is one of the ways of succession that is not adab (deviating from universal norms) According to Edward Luttwat the author of the book "COIR", the essence of a coup is to seize power at the main decision-making center of the state and, through this, seize control of the entire nation.

The concept of succession that is shown to the public and accepted by ASEAN pervasively has replaced the meaning of democracy controlled by legality, transformed into community-controlled, that is, through authoritarianism pacta The Organization of Southeast Asian Nations, which has democratic value in the form of democratization of coups, as a true cultural or social achievement.

This reality must certainly be welcomed by those who have the views and ability to seize state power through the democratization of coups, becoming the new norm of succession of state leadership . Political affiliation and patterns of power behavior by carrying its components are the greatest asset to show the results of geographical political support (Regional Organizations). And furthermore the junta leader together with all ASEAN members took a *ne regrette rein* ' stance (Don't regret anything/ don't regret anything).

METHODOLOGY

This research is included in the study of normative juridical law. The focus on United Nations (UN) legislation and conventions is. one of the important parts, especially with regard to Non Intervention . Therefore, the main literature review in is doctrinal approach, through *conceptual approach* and *case approach*. The results of the study are: first, the act of military intervention is something that is prohibited under Article 2 paragraph (4) of the UN Charter, but if it is in a state of threat to international peace, the act of military intervention can be carried out within the limits given by the UN Security Council in accordance with Article 39 of the UN Charter. Second, in the circumstances of the threat of

a coup d'état that affects the sovereignty of the state, the act of military intervention is a violation according to the principle of *Jus Cogens* as a norm of international law by which each state must respect each other's sovereignty. The data is then analyzed through a structural approach to be able to sort, reduce to formulate conclusions.

A. INTRODUCTION

On Monday morning, February 1, 2021, Myanmar military million Senior General Min Aung Hlaing officially staged a coup and arrested detained Chancellor Aung San Suu Kyi and President Myint on Monday morning. Two months later, with great confidence (PD), Myanmar's elected leader Aung San Suu Kyi's coupling general flew on a Myanmar Airways International plane from Yangon at around 11:00 a.m. local time, just before the ASEAN summit began at 1:30 p.m. Arrived in Jakarta on Saturday, April 24, 2021 to attend the ASEAN Summit,

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In addition to Gen. Min Aung Hlaing, leaders from six other ASEAN member states were in Jakarta to attend the summit. Thai Prime Minister Prayuth Chan-ocha, Philippine President Rodrigo Duterte and Lao Prime Minister Phankham Viphavanh are absent from this meeting and will be represented by their foreign ministers. ASEAN leaders did not reject the general's presence, because it was deliberately invited, even though the ASEAN leaders were aware and knew, the succession of power exercised by the general was not in accordance with the universal norms (adab) of democracy and human rights.

Anti-coup protesters denounced ASEAN leaders, calling them immoral for inviting the general. According to one representative who is an activist of Asia Justice and Rights (AJAR) Putri Kanesia, with the junta present, ASEAN leaders gave recognition to the military government that carried out the coup.¹

In contrast to the opinion of the Minister of Foreign Affairs of the Republic of Indonesia Retno Marsudi the presence of the Myanmar coup leader at the ASEAN Leaders Meeting (ALM) summit is a fact "reflecting ASEAN's concern over the situation in Myanmar and ASEAN's determination to help Myanmar out of the crisis. The ASEAN Leaders Meeting (ALM) is an Indonesian initiative and is a follow-up to the talks between the President and the Sultan of Brunei Darussalam. According to President Jokowi, the ASEAN leaders' meeting is only for the benefit of the people of Myanmar.

The Indonesian government's attitude sees a reality of power succession in Myanmar with the path of "Coup d'état", showing political pleasantries, implicit recognition with a style of language (diction) "condemnation", as the content of President Jokowi's speech to leaders to representatives of countries attending the Leaders' Meeting (ALM) at the ASEAN Secretariat building, more or less as follows:

- 1) The development of the situation in the country of Myanmar is something unacceptable and should not continue. Violence must stop and democracy, stability and peace in Myanmar must be restored immediately and the interests of the people of Myanmar must always be a priority.
- 2) The importance of Myanmar's Military Leader to commit to. The first request for commitment is to stop the use of force from the Myanmar military and all parties must exercise restraint so that tensions can be eased

The ALM Summit did not make an ASEAN declaration, regarding ASEAN's stance on the succession of state leaders by means of a coup. Power gained by violating universal norms (adab of humanity), at least in the designation as a human being is not adab. Ideals and realities from the point

of view of ASEAN leaders, towards the principles of universal norms namely Democracy, Human Rights, and Globalization, have been actualized in the practice of statehood in their respective countries.

ASEAN has been confronted with this reality and this reality rests with its members, that the change of power in Myanmar is carried out deviating from universal norms or in other languages in ways that are not adab. How inconsistent ASEAN leaders are concerned, but what emerges is a contradictory polemic between the purpose of the meeting agenda and the press statement.

If we want to avoid political lip service, the best thing is that at least ASEAN leaders should not forget the meaning of a word spoken "Coup". A coup is one of the ways of succession that is not adab (deviating from universal norms) According to Edward Luttwat the author of the book "COIR", the essence of a coup is to seize power at the main decision-making center of the state and, through this, seize control of the entire nation.²

Illegal power struggles take place in various forms from a long series of illegal power struggles bringing about the destruction of the legal and political structures necessary to produce a new government. And the consequences of power struggles driven by military force beyond the confines of the established constitution (eventually pre-coup governments) in various ways and not infrequently by using armed violence prohibited their people from launching protests/demonstrations.

The infiltration and intimacy that the coup leader then used to take over the government from the control of other elements, by ensuring that other countries recognize it, the first thing he did was to affirm the existence of a pacta member state (ASEAN), as the key to gaining recognition. Attendance at the summit was to listen to the suggestions of ASEAN leaders, on how the regime's policies were viewed favorably.

The notion that by providing good policy insights of the regime, is an efficient guide for the perpetrators of the coup (General Min Aung Hlaing) with regard to the seizure of state power, which brought upheaval and unrest, has gained publicity about the future of his country, there is no need for any more emotional reasons why he carried out the coup, because the political community of South East Asia Nation has implicitly recognized as a leader Country.

It is only from this community that effective norms can be produced, norms felt in the self-awareness of each ASEAN member state that can be used to protect themselves for coup leaders from illegal power struggles, and what is certain is the widespread acceptance of encouraging predictions by all ASEAN members about the future of their countries under their control.

¹ Republic of Indonesia taggal 25 april 2021.

² Edward Luttwat – *Coup d'Etat : A Practical Handbook*, Harvard University Press, 1977, translated in Indonesian by

Hartono Hadikusumo, under the title "*Coup Theory and Practice of Overthrowing Power*" 199 First print, Publisher of Yayasan Bentang Budaya Yogyakarta, p. 57

The concept of succession that is shown to the public and accepted by ASEAN pervasively has replaced the meaning of democracy controlled by legality, transformed into community-controlled, that is, through authoritarianism pacta The Organization of Southeast Asian Nations, which has democratic value in the form of democratization of coups, as a true cultural or social achievement.

This reality must certainly be welcomed by those who have the views and ability to seize state power through the democratization of coups, becoming the new norm of succession of state leadership . Political affiliation and patterns of power behavior by carrying its components are the greatest asset to show the results of geographical political support (Regional Organizations). And next the junta leader sang the song 'ne regrette rein ' (no one regrets anything).

B. COUP MODELS AND TECHNIQUES

Definition of Coup

Kudeta (French: coup d'État French pronunciation: [\kü- ()dā-'tä], or French pronunciation **coup** for short : [\'kōp], means to tear down legitimacy or blow to the state) ³

A coup can also be said to be an act of reversal of power against someone in authority by illegal means and often brutal, unconstitutional in the form of a "takeover of power", "overthrow of power" of a state government by attacking (strategically, tactically, politically) the legitimacy of the government then intending to accept the handover of power from the overthrown government.

The Success of the Coup

A coup d'état will be successful if it can first consolidate in establishing legitimacy as an acquiescence of the people and has received support or participation from non-military and military parties (army).

- 1) **It is important for the actor to keep the agenda secret**, not only vis-à-vis (face-to-face) against outsiders, but also vis-à-vis (face-to-face) against other conspirators is the junta's first weapon, without the best preparation then the coup is certain to fail.
- 2) **The perpetrators of the coup d'état must control the basic technicalities of a coup**, an operation to occupy the central organs of a country, including neutralizing power by occupying symbolic places of power of state leaders.
- 3) **After controlling the center of power the perpetrators must immediately hold a transfer of power**, in addition to occupying the central organs by the perpetrators of the coup, also accompanied by the dismissal of the acting government or the holders of state power, because if this is not done, there will be resistance to the coup movement and the coup is likely to fail.

- 4) **After the takeover of power, the perpetrators of the coup must immediately carry out the act of Removal of Officials** - in addition to occupying the central organs by the perpetrators of the coup, also accompanied by the dismissal of the acting government or the holders of state power, because if this is not done, there will be resistance to the coup movement and the coup is likely to fail. (Jonathan Powell and Clayton Thyne - *Jonathan Powell and Clayton Thyne* , there were 457 coup attempts that took place from 1950 to 2010. Where 227 coup attempts were successful while another 230 failed. They found that coup attempts were frequent on the African and American continents (36.5% and 31%, respectively).

Choice of Coup Model

According to Huntington (⁴*Huntington, Samuel P. (1968)*) A person who will carry out a Coup can choose the model to be carried out because basically the Coup can be divided based on the way it is carried out having its own distinctive ciri among others :

1. **Splinter coup d'état** , carried out by and from the military or army dissatisfied with the policies of the traditional government of the time, then carried out a movement aimed at overthrowing the traditional government and then creating a new bureaucratic elite.
2. **The guardian coup**, carried out by a group of coup d'état who will declare themselves as *guardians* in order to improve public order, efficiency, and end corruption, the coup leaders will describe their actions as merely temporary measures and will adjust to the needs. In general, *guardian coups* are often carried out by changing the civilian form of government to a military form of government.
3. **The veto coup**, carried out through the participation and social mobilization of a mass group of people in carrying out a large-scale, broad-based emphasis on the civilian opposition.

Coup Records

- 1) The coup d'état at the Kapp Putsch in Berlin in 1920 due to a lack of policy from General von Luttwitz, the commander of the operation, who on March 10 gave an ultimatum to the socialist leaders to flee within 48 hours before the occurrence of the military coup announced on the night of March 12-13, 1920.
- 2) While preparing for the November 8, 1942 uprising in Algeria (which allowed the success of Operation Torch), the young leader of the Algerian Action Group, José Aboulker, refused to give the names of

³ <http://Wikipedia.com>

⁴ *Huntington, Samuel P. (1968). Political order in changing societies. Yale University Press. p. 488.*

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the group's leaders two days before the coup to Henri d'Astier de la Vigerie, the head of the conspiracy for North Africa, although he belonged to the group of coup planners and when the Patriots came into action instead there was a surprise with the emergence of no less than 400 armed civilians and

their reserve force officers who later managed to neutralize the Algerian Vichy Army Corps, and the French Vichy government could freely be liberated after a few hours and return to the city, then it can regain control and catch the perpetrators of the coup on the eve of the beach landing.

Some leaders who were overthrown through coups⁵

Position	Name	Date	Country
<u>Sultan</u>	<u>Qaboos of Oman*</u>	July 23, 1970	 <u>Oman</u>
<u>President</u>	<u>Teodoro Obiang Nguema Mbasogo</u>	August 3, 1979	 <u>Equatorial Guinea</u>
<u>President</u>	<u>Yoweri Museveni</u>	January 29, 1986	 <u>Uganda</u>
<u>President</u>	<u>Blaise Compaoré</u>	October 15, 1987	 <u>Burkina Faso</u>
<u>President</u>	<u>Omar Hasan Ahmad al-Bashir</u>	June 30, 1989	 <u>Sudan</u>
<u>President</u>	<u>Idriss Déby</u>	December 2, 1990	 <u>Chad</u>
<u>President</u>	<u>Yahya Jammeh†</u>	July 22, 1994	 <u>Gambia</u>
<u>Emir</u>	<u>Hamad bin Khalifa Al Thani*</u>	June 27, 1995	 <u>Qatar</u>
<u>President</u>	<u>Denis Sassou-Nguesso</u>	October 25, 1997	 <u>Republic of the Congo</u>
<u>Premier</u>	<u>Frank Bainimarama</u>	December 5, 2006	 <u>Fiji</u>
<u>President</u>	<u>Mohamed Ould Abdel Aziz‡</u>	August 6th, 2008	 <u>Mauritania</u>
<u>President of High Transitional Authority</u>	<u>Andry Rajoelina</u>	March 17th, 2009	 <u>Madagascar</u>
<u>Interim president</u>	<u>Dioncounda Traoré§</u>	April 11th, 2012	 <u>Mali</u>
<u>President</u>	<u>Manuel Serifo Nhamadjol</u>	May 11th, 2012	 <u>Guinea-Bissau</u>
<u>President</u>	<u>Michel Djotodia</u>	March 24, 2013	 <u>Central African Republic</u>

* Monarchies that overthrew their own fathers.

Jammeh was then elected in fair and free elections. ^{[5][6]}

Mohamed Ould Abdel Aziz obtained a majority of votes in the 2009 Mauritanian Presidential Election.

The 2012 Malian coup led by Amadou Sanogo forced the previous president to resign.

Took office after the passage of the transition agreement following the 2012 Guinea-Bissau Coup.

C. CONCLUSION

Government Status of Coup Results

International law does not clearly provide for military coups. The UN Charter only provides for the principle of equality and nonintervention where all states are in the same position and must not interfere in the affairs of other states. But, the international community can intervene for humanitarian action in Myanmar.

The Myanmar military's coup against the Aung San Suu Kyi-led civilian government has come under fire from 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 Myanmar's military restore civilian rule and release the country's leader, Aung San Suu Kyi.

⁵ Wikipedia

Citing a number of sources, as of March 25, 2021, according to data from activists of the Aid Association for Political Prisoners (AAPP) and local media, this coup action claimed the death toll of 300 people. Under the pretext of fraudulent elections, the military group led by General Min Aung Hlaing seized the government of Aun San Suu Kyi by force.

In fact, the results of the Myanmar elections in November 2020 won the party led by Aung San Suu Kyi, the National League (NLD) party, by winning a majority seat in Parliament. The electoral commission confirmed the victory had been replaced by a military junta. Since February 1, 2021, Myanmar's military declared a state of emergency, detaining a number of pro-democracy political figures including Aung San Suu Kyi and Myanmar President Win Myint.

The question is what is the status of a military coup in the perspective of international law? Is it against the law or not? The Director General of Asia Pacific and Africa of the Ministry of Foreign Affairs of the Republic of Indonesia, HE Abdul Kadir Jailani explained that since the cold war (1947-1991) international law has not taken a firm stance against coups because at that time coups often occurred in various countries with the support of each bloc, both western and eastern bloc. Both blocs consider themselves democratic forces.

But after the cold war ended there was a shift in international law, there was a view that assessed the legitimacy of a government, among other things it must meet democratic principles (through elections, etc). But, in practice the UN Security Council (UNSC) is unclear as to whether the coup is a violation of international law or not. The UN Security Council does not look at the legality of the coup, but assesses whether or not the coup had an impact on international security and peace.

Ne Regrette Rein's attitude (Don't regret anything)

On many occasions of coups, the UN Security Council did nothing. Even more likely to be *Ne Regrette Rein* has no ability to do law enforcement. This is how international law is constructed which in the opinion of the uncertainty of international law in seeing (legal status, etc) coup action⁶

The UN Charter regulates various principles related to international relations, including equality and non-intervention. That principle emphasizes all states as subjects of international law that have an equal position. Therefore, no country can unilaterally determine whether or not democratic life is good in a country. Nor should any country judge whether the political system of another country is good or not.

The aforementioned principles became delimiting for the UN, while the issue of coups in Myanmar used the parameters

of the UN charter, one of which was the principle of equality and non-intervention. So that whatever happens in the ethos of democracy in a country is not the business of another country, therefore the conjunction of government overthrown by a non-democratic power, where the country is part of the membership of regional and multilateral organizations, for other member states view the change of power through a "coup" they will behave *Ne Regrette Rein* .

Pasva declaration of high-level meetings of the UN General Assembly regarding the *rule of law* at the national and international levels. explained the discussion that came to the fore in the discussion of the declaration, including developed countries wanting the principle of *rule of law* to be applied by all countries. That way, the issue of coups will become an issue related to the *rule of law*. But the desire of developed countries made developing countries dislike it and the declaration led to compromise, so there is no prohibition on unconstitutional changes of government. "This is a matter of applying democratic principles in the international sphere," ⁷

In the UN declaration the essence is advice not law enforcement , since the regulation of the norms of the change of power through coups at the multilateral level is not clear, moreover at the regional level, for example in Africa (African Union) . The African Union stipulates that unconstitutional governments should not participate in the activities of the African Union. For example "At the time of Egypt's coup, the African Union suspended Egypt's membership for 1 year," . Unlike the Southeast Asian regional organization (ASEAN), such tendencies are not available, coup leader Myanmar can attend ASEAN activities. Both regional organizations have the same attitude whether it is the African Union or ASEAN they do not firmly say the coup is illegal or not, ⁸

Consequences of the ASEAN Charter which affirms ASEAN member states must abide by the *rule of law*, democratic principles, good governance, and constitutional. But the ASEAN Charter does not provide for sanctions for its members who violate the principle. In the event of a thorny issue afflicting its members, the ASEAN Charter provides that if there are serious violations or non-compliance, these issues are resolved at the ASEAN Summit level. But the problem is that there is no clear provision for "serious violations."

Given that there is no official mechanism governing how to establish that there has been a "serious violation", according to Abdul, this is a dispute that can be resolved through a dispute resolution mechanism in ASEAN. The resolution of the dispute can be done through an arbitration mechanism. "An arbitration can be established if Myanmar agrees to

⁶ Abdul in an online discussion entitled "Myanmar Coup d'etat from the Aspect of Law and International Relations" held by the Indonesian Society of International Law Lecturers (ISILL), Tuesday (30/3/2021)

⁷ Abdul of.cit

⁸ Abdul said in an online discussion entitled "Myanmar Coup d'etat from the Aspect of Law and International Relations" held by the Indonesian Society of International Law Lecturers (ISILL), Tuesday (30/3/2021).

arbitration." currently the Indonesian government plays an active role in pushing for the resolution of the military coup in Myanmar. This settlement was carried out through the ASEAN forum involving Myanmar. "The Myanmar coup d'état could go against the principles of the ASEAN Charter. But to solve this is not easy, it is more possible through political settlement mechanisms than legal because politics is more flexible and acceptable to all parties,

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