

FREEDOM OF SPEECH UNDER INTERNATIONAL LAW: MYANMAR'S ANTI-COUP DEMONSTRATION VIOLENCE CASE

KEBEBASAN BERPENDAPAT BERDASARKAN HUKUM INTERNASIONAL: KASUS KEKERASAN DEMONSTRASI ANTI KUDETA DI MYANMAR*

**Yordan Gunawan¹, Muhammad Nur Rifqi Amirullah²,
Vensky Ghaniyyu Putri Permana³, Mohammad Hazyar Arumbinang⁴**

¹Faculty of Law, Universitas Muhammadiyah Yogyakarta
*e-mail: yordangunawan@umy.ac.id

²Faculty of Law, Universitas Muhammadiyah Yogyakarta
e-mail: m.nur.law19@mail.umy.ac.id

³Faculty of Law, Universitas Muhammadiyah Yogyakarta
e-mail: vensky.g.law19@mail.umy.ac.id

⁴The University of Melbourne, Australia

e-mail: marumbinang@student.unimelb.edu.au

Abstract

The paper aims to examine the position of international law against violence committed by the Myanmar military known as Tatmadaw, against Myanmar which held anti-coup demonstrations in Myanmar. The research used the normative legal research method, with the main source of data collection of legal material containing normative law. The results showed that Myanmar is one of the countries in Southeast Asia whose government has been dominated by the military. In early 2021, the Tatmadaw staged a coup against Myanmar's President Aung San Suu Kyi. The tragedy began in the 2020 elections, in which the National Democratic League (NLD) was elected as the majority to sit in Myanmar's parliament. However, Tatmadaw could have no election results and no coup. Burmese, who did not support a coup by Myanmar's military, made a massive dip in the streets. Tatmadaw performs violent acts for action until 2019. However, from the direction of the protesters, some protesters became victims of violence by the Tatmadaw. It reflects the restrictions on the freedom of speech of the People of Myanmar. Free speech is an important right of the People of Myanmar to be part of the good Human Rights face-to-face by international law through arbitrary ministers by the Tatmadaw. The Tatmadaw's acts of violence against Myanmar violate human rights set forth in the Universal Declaration of Human Rights (UDHR) in articles 19 and 29. In addition, freedom of speech is also governed by the International Covenant on Civil and Political Rights in article 19.

Keywords: *Coup; Demonstration; Tatmadaw; Freedom of Speech.*

Abstrak

Paper ini bertujuan untuk mengkaji posisi hukum internasional terhadap kekerasan yang dilakukan oleh militer Myanmar yang dikenal dengan Tatmadaw, terhadap Myanmar yang melakukan demonstrasi anti-kudeta di Myanmar. Penelitian ini menggunakan metode penelitian hukum normatif, dengan sumber utama pengumpulan data bahan hukum yang mengandung hukum normatif. Hasil penelitian menunjukkan bahwa Myanmar merupakan salah satu negara di Asia Tenggara yang pemerintahannya didominasi oleh militer. Pada awal tahun 2021, Tatmadaw melakukan kudeta terhadap Presiden Myanmar Aung San Suu Kyi. Tragedi dimulai pada pemilu 2020, di mana Liga Demokratik Nasional (NLD) terpilih sebagai mayoritas untuk duduk di parlemen Myanmar. Namun, Tatmadaw bisa saja tidak memiliki hasil pemilu dan tidak ada kudeta.

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Burma, yang tidak mendukung kudeta oleh militer Myanmar, membuat penurunan besar-besaran di jalan-jalan. Tatmadaw melakukan aksi kekerasan hingga tahun 2019. Namun, dari arahan pengunjung rasa, sebagian pengunjung rasa menjadi korban kekerasan oleh pihak Tatmadaw. Hal ini mencerminkan pembatasan kebebasan berbicara Rakyat Myanmar. Kebebasan berbicara adalah hak penting Rakyat Myanmar untuk menjadi bagian dari Hak Asasi Manusia yang baik secara tatap muka oleh hukum internasional melalui menteri yang sewenang-wenang oleh Tatmadaw. Tindakan kekerasan Tatmadaw terhadap Myanmar melanggar hak asasi manusia yang tertuang dalam Deklarasi Universal Hak Asasi Manusia (UDHR) dalam pasal 19 dan 29. Selain itu, kebebasan berbicara juga diatur oleh Kovenan Internasional tentang Hak Sipil dan Politik dalam pasal 19.

Kata Kunci: Kudeta; Demonstrasi; Tatmadaw; Kebebasan Berbicara.

INTRODUCTION

In early February 2021, Myanmar had a political tragedy, a coup by the Myanmar military or the Tatmadaw, against the legitimate government under Aung San Suu Kyi, the president of the Republic of Myanmar. Myanmar is one of the Southeast Asian countries whose government has been dominated by the military.

Myanmar is a country with a weak democratic rating (Min, 2010). The Opposition parties are not permitted to exist, and the only party that may exist is the Lenzin Party, a military ally. Aside from that, freedom of press and speech is guaranteed, even with restrictions. So, in terms of the existence or lack of political parties, press freedom, freedom of speech and expression, degree of economic growth, and a fair judiciary, Myanmar may be described as a fairly closed country.

The beginning of democracy in Myanmar was present during the proclamation of Myanmar's independence on January 4, 1948. Sentiment towards the British is one of the reasons Myanmar proclaimed itself independent and did not join the British commonwealth. U Nu was

the figure behind Myanmar's independence process at the time. Who later became the first president of Myanmar. But democracy in Myanmar became unfettered during the military rule. General Ne Win was the leader of the military government. Starting from the frozen constitutional process, the activities of Myanmar student unions and opposition parties were banned, press freedom was closed, and Myanmar was shut down from the international community. In this time, dissent is very unacceptable. In addition, there are many violations of human rights (Herawati and Nugroho, 2021).

The sign of the emergence of a democratic process in Myanmar began when Aung San Suu Kyi and her group supporting a re-enactment of the democratic process in Myanmar were released from prison in 2010 due to international pressure on Myanmar's military government. The democratic process continues when elections are held in Myanmar and makes Thein Sein the president of Myanmar from civilian circles. Previously, the government was led by the military, General Than Shwe, who took office in 1992. Efforts to transform politics were carried out by

Thein Sein from the culture of the military government to civilian government. It is evident that Aung San Suu Kyi's democratic party National League Democracy or NLD, won the election (Alunaza and Toy, 2019).

The coup took place after the general election on November 8, 2020. The result of the election was that the national league for democracy won 396 seats out of a total of 476 seats in parliament. Meanwhile, the national solidarity and development party and the military party only managed to win 33 seats in parliament. The result of this election is certainly unacceptable to the Myanmar military, as the Tatmadaw itself seeks to maintain existence and influence in Myanmar (Iqbal, 2021).

In the form of the Myanmar military's unacceptable election results, on February 1, 2021, the Myanmar military or Tatmadaw detained Myanmar's newly elected leader Aung San Suu Kyi. As a result of this coup, the People of Myanmar, who did not accept the Behavior of the Tatmadaw, carried out massive demonstrations on the streets. At the beginning of the demonstration, this activity went well, but at the end of this demonstration took a lot of casualties. This is because Myanmar's ruling military has responded to the demonstrations with a form of violence (Putri *et al.*, 2021).

As a result of Myanmar's military crackdown on protesters, one example is the Myanmar police shooting dead a protester named Mya Thwe Thwe Khaing. A 20-year-old woman. Police shot the woman in the head to death. In addition,

on February 28, 2021, the Tatmadaw shot 18 protesters to death. It was a terrifying day for protesters in Myanmar (Cuddy, 2021).

Not only the Myanmar coup that resulted in many fatalities, many coups in the world carried out by the military took many victims, one of which was the coup carried out by the Egyptian military against president Mohamed Morsi. This coup alone resulted in 3,000 fatalities, most of them demonstrators who rejected the Egyptian military coup led by Abdul Fattah As Sisi, who was the commander-in-chief of the Egyptian armed forces (Setiawan, 2015).

The way the Myanmar military or Tatmadaw performs against protesters does not reflect the disrespectful behavior of the Freedom of Speech of the Myanmar people. Keep in mind that freedom of speech is an essential part of human rights and is governed by international law.

In this background description, this paper will discuss the international law perspective on freedom of speech protection by protesters who are Myanmar people in order to oppose the coup by the Myanmar military or Tatmadaw. This paper was created due to the large number of casualties resulting from acts of violence committed by the Myanmar military or Tatmadaw that reflect the democratic process again does not run in Myanmar.

RESEARCH METHODS

Legal research is a scientific activity based on certain techniques, systematics,

and ideas with the goal of examining one or more specific legal occurrences (Saputra, Fahmi and Triana, 2021). Research is fundamentally an activity that seeks the truth of science, with research originating from doubts or a desire to learn more about a subject (Aidi, 2021).

This research was a normative study because this study was written using qualitative analysis based on existing data and explained with words or statements rather than numbers. Normative legal research is legal research that places law as a norm system building (Firdausi, 2021). In this study, the authors used data collection techniques with a literature study. The authors conducted logical and systematic analyses by searching for material in books, journals, and articles from the internet, followed by reading and then analyzing the important points.

From the materials and data that have been collected from the research mentioned above, the authors will analyze descriptively, namely comparing theory with practice related to the issue in order to obtain an inductive conclusion, namely a conclusion from the specific to the general.

RESULTS AND DISCUSSION

1. The Concept of the Rights of Protection of Freedom of Speech

Human rights are basic rights that have been possessed since birth. Every human being on the planet must have access to this basic right. Human rights have two dimensions (Widyawati, 2008). The first is that human rights are rights that cannot be divided and rejected since

they are human. These are moral rights that stem from each person's humanity, and they help to ensure that each person's dignity is protected. Every person in the world has human rights. However, we may not be able to fully exercise all of our rights. There have been a number of anomalies, with diverse reasons producing and resultant consequences. With the presence of these human rights, it is anticipated that all humans would experience the same rights and get the same treatment, regardless of their differences.

The term of freedom of expression is frequently interchanged with freedom of speech. In reality, these two ideas are the same. Freedom of speech is linked to other ideas, such as press freedom. The right to freedom of speech is a complicated matter. This is due to the fact that freedom of speech is not unlimited and comes with specific obligations and responsibilities, and as a result, it is obliged to comply with a number of limits, to the degree that such restrictions are established by law and necessary (UNESCO, 2013).

Having an opinion is part of the communication activities that take place between various components of the country in an effort to address all of the country's and state's problems in order to achieve progress and social welfare. When it comes to expressing ideas, it's possible that everyone has a different aim in mind, whether it's sharing wishes, providing feedback and suggestions, encouraging, communicating new ideas or discoveries, suggesting solutions to a

problem, or simply getting to know others.

Freedom of speech and expression is fundamental in the realization of rights because it ensures the safety of the people, allowing them to voice their ideas or point out flaws in the government process without fear of retaliation. It is evident that freedom of speech is a fundamental human right that is also one of the most infringed. Demonstrations are one type of public concern expressed through freedom of expression. Myanmar has not given the people's full rights and freedoms to ensure freedom of expression in line with human rights because of the onerous and restricted licensing conditions for protests.

The demonstration is one of the paths taken to voice opinions, support, or criticism in an action to convey rejection, criticism, suggestions, impartiality, and disagreement through various means and media with established rules both written and unwritten as accumulation. Common voice without being influenced by personal interests or misleading groups in the context of realizing a democracy can lead to people's sovereignty and justice.

Individuals and groups can use freedom of speech to share their thoughts and ideas. Freedom of speech is one of the rights that every person deserves in all countries in the world. Myanmar is a democratic country that recognizes the rights of citizens and is guaranteed by law (Wells, 2018). Myanmar's government and civil society actors have gone above and beyond to promote democratic change, institutional reform, economic

growth, and a peaceful transition (Dolan and Gray, 2014).

One of the characteristics of a democratic country is the recognition of human rights (Rosana, 2016). When a country allows its citizens to freely express their ideas in public, both vocally and in writing, it is considered to conform to the notion of democracy (Susanto, 2019). This is a crucial component of freedom of expression.

The right to freedom of thought and expression is one of the most fundamental rights norms among all sets of human rights norms in terms of political rights. The right to freedom of speech and expression is one of the rights that is regarded as important to the functioning of democracy, and it is required for the realization of a responsible government. Every citizen has the legal freedom to voice and speech what he or she thinks, whether through public policies enacted by the government or other state bodies (Nasution, 2020).

Every public policy opinion or critique becomes a control on the path of a government, ensuring that every policy does not interfere with human rights and is clearly targeted at the people. The goals of democracy must be the baseline for all legal policies (Rado and Badilla, 2021). The right to freedom of speech and expression is guaranteed to provide control and supervision by the general public to the running of the government (Gunawan, 2021).

In general, freedom of speech and expression is vital since it is a means of ensuring self-fulfilment as well as

reaching one's full potential. Then, there is freedom of speech for the pursuit of truth and enlightenment. To put it another way, a person seeking knowledge and truth must hear both sides of the argument, examine all options, and put the decision to the test by confronting it with opposing viewpoints and make the best use of many ideas. Furthermore, freedom of speech and expression is critical for individuals to be able to participate in decision-making processes, particularly in the political process, and for society and the state to attain stability.

2. Protection of Speech in The Perspective of International Law

The illegal control of the Tatmadaw, the arbitrary suspension of social media and the internet, and the restriction of peaceful protests are all violations by the Myanmar military (Tatmadaw) of the Universal Declaration of Human Rights (UDHR) and other international human rights norms. Furthermore, the illegal coup carried out by the Myanmar military (Tatmadaw) is a violation of Myanmar's international legal obligations to uphold the purpose of the United Nations Charter to promote and encourage respect for human rights and fundamental freedoms for all, regardless of race, sex, language or religion.

Individual's right to freedom of speech is one of their most prized possessions. It is recognized as a human right by international and state legal instruments (Annappa, 2021). Freedom of speech itself is also regulated and protected in articles 19, paragraphs 1 and

2 of the International Covenant on Civil and Political Rights, which contains everyone shall have the right to hold opinions without interference. Verse 2 states that everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. There are many more products of international law that protect this freedom of speech.

The Universal Declaration of Human Rights, adopted in 1948, affirmed the right to freedom of expression. The Universal Declaration of Human Rights (UDHR) is the basis and reflection of the guarantee for free speech. Article 19 states that everyone has the right to freedom of opinion and expression regardless of frontiers (Shecter, 2007). Then, the freedom of expression was strengthened in the United Nations General Assembly Resolution dated December 16, 1966, through article 19 following (Mudjiyanto, 2019):

- 1) Everyone has the right to have an opinion without interference from the other party.
- 2) Everyone has the right to freedom of expression, including the freedom to seek, receive and give any information and ideas, regardless of restrictions, whether orally, in writing, in print, in the form of works of art or through other media of his choice.

- 3) The exercise of the rights set forth in paragraph 2 also carries with it special obligations and responsibilities. By may therefore be subject to certain restrictions, but this (restriction) can only be done in accordance with the law and to the extent necessary to:
- a. Respect the rights or reputation (good name) of others
 - b. Protect national security, public order, health, or general/public morals.

Regarding the limitation of the rights mentioned above that there is a guarantee of freedom of opinion and expression, but there are limitations to its implementation. This is stated in the Universal Declaration of Human Rights article 29 paragraph 2 that Everyone shall be subject solely to the restrictions imposed by law in exercising their rights and freedoms for the express aim of guaranteeing the recognition and respect for human rights. In a democratic society, it is necessary to respect the rights and liberties of others, as well as to meet the standards of morality, order, and public welfare.

As a guideline for the exercise of the right to boundaries, in general, there are 10 Principles of Freedom of Expression is everyone should be free and able to express themselves and to seek, receive and impart information, ideas and ideas, without boundaries, Everyone defends the internet and all other forms of communication against unauthorized intrusions by both public and private powers. Everyone needs and makes open media diverse so that we can make well-

informed decisions and participate fully in political life

The next is everyone can talk openly and politely about all kinds of human differences, everyone allows for no taboos in the discussion and dissemination of knowledge. Everyone cannot make threats of violence and does not accept intimidation and violence. Everyone respects people who believe in something but not the content of their beliefs. Everyone has the right to private life but must accept scrutiny if it is in the public interest.

Everyone must be able to fight insults to our reputation without disturbing or limiting legitimate debate. The last principles is everyone should be free to challenge restrictions on freedom of expression and information which have been based on reasons for national security, public order, morality, and intellectual property protection.

CONCLUSION

Freedom of speech is part of human rights and is an essential right that everyone in the world has. International law itself strongly protects the rights of each of these people. Evident freedom of speech is regulated and protected in articles 19, paragraphs 1 and 2 of the International Covenant on Civil and Political Rights. In addition, in international law, freedom of speech is affirmed in The Universal Declaration of Human Rights, adopted in 1948, which is the legal basis of the implementation of human rights. The form of implementation of freedom of speech

itself is widely done by the public in various ways. One of them is with a form of demonstration as the Myanmar people have done in opposing a coup by the Myanmar military or Tatmadaw against civilian rule under Aung San Suu Kyi.

Demonstrations by the People of Myanmar in defiance of the coup by the Myanmar military or Tatmadaw are a tangible form of the Myanmar people exercising their right to freedom of speech. However, the Tatmadaw itself retaliated against the demonstrations by committing acts of violence against demonstrators who are Myanmar people. This proves that the Tatmadaw does not reflect the Act of respect for the freedom of speech right of the People of Myanmar, which is part of human rights. Myanmar's democratic process has been in retreat with the coup. Myanmar's military has restricted and even banned freedom of speech, not only in this case but also under the leadership of General Ne Win.

There needs to be an international contribution so that the violence committed by the *Tatmadaw* against anti-coup protesters in Myanmar can be stopped. If the violence is not stopped, it can lead to an increase in the number of victims. The protection of freedom of speech in Myanmar must be further enhanced so that democracy in Myanmar can return to running well.

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