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IMPLEMENTATION OF INTERNATIONAL NORMS AND PRACTICES IN INDONESIAN DIPLOMACY 1962-1969 IN MAINTAINING WEST IRIAN AS AN INSEPARABLE PART OF THE UNITARY STATE OF THE REPUBLIC OF INDONESIA

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Abstract

It can be said that issues about Papua that often come to the surface are always associated with the legal aspect of the entry of Papua into an inseparable part of the Unitary State of the Republic of Indonesia (NKRI). Groups that want Papua to be separated from the Unitary State of the Republic of Indonesia not only seek support from countries such as Solomon Island or Vanuatu but also voice it to the United Nations forum. In this regard, a historical reflection is needed to provide an overview with an academic approach regarding the validity of Indonesia's claim to the territory of Papua as an inseparable part of the Unitary State of the Republic of Indonesia. This study aims to determine international legal practices that are relevant to the legitimacy of West Irian being part of the territory of the Republic of Indonesia and Indonesia's diplomacy in international forums in defending Papua. This study uses a historical approach in the form of a systematic literature review through source collection and is interpreted to answer the focus of this research. The results showed that Indonesia's success in defending Papua after independence was influenced by mastery of the rules of international law, the spirit of struggle of Indonesian diplomats at that time, and international legal practices related to the right to be independent and free from colonialism.

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INTRODUCTION

Security dynamics in Papua continue to fluctuate from time to time. It can be said that after the era of President Suharto's leadership, which was followed by the

leadership of Presidents Habibie, Megawati, Susilo Bambang Yudhoyono, until now in the era of President Joko Widodo's leadership, there is still turmoil that leads to security disturbances carried

out by a group of people calling themselves the Papuan Independence Organization. (OPM) (Nainggolan, 2014). This group from time to time always raises the issue of the legitimacy of Papua being part of the Unitary State of the Republic of Indonesia (NKRI). They questioned the legality of the People's Opinion Determination process (Pepera) which was carried out by the United Nations (UN) in 1969 (Korwa, 2013).

The actions carried out by the OPM group were not only through demonstrations taking to the streets, or asking for support from countries in the South Pacific but also through armed attacks against members of the Indonesian National Armed Forces (*Tentara Nasional Indonesia* or TNI), which at that time was known as the Republic of Indonesia Armed Forces or ABRI (*Angkatan Bersenjata Republik Indonesia*), the former of TNI. To maintain the integrity of the sovereign territory, the Government of Indonesia carried out very intensive international diplomacy, which simultaneously carried out the Trikora operation to overcome security disturbances.

History records that the West Irian (now Papua) region cannot be separated from the Indonesian territorial borders, has been the subject of discussion since 1945, especially at the first session of the Investigative Agency for the Preparation of Indonesian Independence (BPUPKI) which took place from May 29, 1945, to June 1, 1945. Several Indonesian figures such as Muhammad Yamin and Soepomo session in addition to discussing the form of the state whether it will be in the form of a monarchy or a republic also discussed the boundaries of the sovereignty of the unitary state of the Republic of Indonesia. Soepomo in his speech on May 31, 1945, as recorded in the minutes of the BPUPKI meeting said "...I agree with the opinion which states: Indonesia, which must cover the boundaries of the Dutch East Indies. However, if other parts of Indonesia, for example, the country of Malacca, North Borneo, want to also to

be included in the Indonesian environment, we have no objections...". Soepomo's speech was strengthened by Muhammad Yamin who said, "... the bloodshed of the archipelago (Indonesia) or eight regions, namely all of Java, all of Sumatra, all of Kalimantan, the entire Malay Peninsula (Malacca), all of Nusa Tenggara, all of Sulawesi, all of Maluku, and all of Papua..." (Chryshna, 2020). Indonesia's claim to the territory of West Irian is something that is practiced by other countries in the history of world civilization.

Using the legal basis of the declaration of human rights that everyone should be free from fear and have the right to have a desire (freedom from fear and want) (United Nations, 2015), the founding fathers of the nation at that time conducted tireless discussions and carried out diplomacy with both the Dutch and through international forums. This study aims to determine international legal practices that are relevant to the legitimacy of West Irian being part of the territory of the Republic of Indonesia and Indonesia's diplomacy in international forums in defending Papua.

METHODS

This study will combine two types of research designs, namely descriptive research designs and historical research designs. The two types of research designs are part of fourteen types of research designs (Nurdin & Hartati, 2019). The descriptive research design will be used to answer questions about who, what, when, where and how it relates to particular research. In addition, the descriptive research design is used to obtain information about the status of the variable phenomenon or the condition of the situation. As found in the work of Wakefield et al, a descriptive study is presented in a sequence such as conceptual construction, the theory used, objectives, methodology, and findings, which are used to explain a phenomenon (Wakefield, Talbert, & Pense, 2006). This method is

important and used in this paper, but it is not sufficient to explain a specific phenomenon such as history that occurred in the past, because the descriptive method only explains general things. This paper needs more than just a sequence of thinking but a comprehensive analysis to include findings in past and present times.

The use of historical research design aims to collect, verify and synthesize evidence from the past to build facts to accept or reject a hypothesis. In other words, secondary sources and various authentic primary documentary evidence such as diaries, official records, reports, archives, and non-textual information in the form of maps, pictures, audio, and visual recordings can also be used (Nurdin & Hartati, 2019). Analysis with a historical approach is basically to get social phenomena that occurred in the past either referring to certain events or several events (Wyche, Sengers, & Grinter, 2006). History is an account of some past events or combinations of events. Historical analysis is, therefore, a method of discovering, from records and accounts, what happened in the past (Lynch, 1990).

The descriptive and historical research designs in this study are in the area of qualitative research, where researchers have a very wide opportunity to deepen the information obtained (Black & Ubbes, 2009). Because this research is concerned with history and is related to diplomatic issues carried out by the Indonesian government at that time, the theory of international relations which is the scientific basis of diplomacy carried out by the state is also part of this research method. Diplomacy is a management pattern related to international relations which are carried out through negotiations. Negotiations themselves take many forms; some are in the form of negotiations about a treaty, or bargaining agreements made between countries on an agreed proposal (Tamene, 2004). Phenomena related to the legitimacy of Papua's entry into the Unitary Republic of Indonesia will be described both from the

perspective of international relations, and the foundations of international law as a fundamental instrument of Indonesia's diplomacy in the international world. The application of international law in the process of entering the territory of West Irian as a legacy of Dutch colonialism is important to be understood by all parties with an interest in the issue of Papua, who by a small group of domestic, regional, and global communities always try to create a space for conflict, intending to release the Papuan territory from the Unitary State of the Republic of Indonesia. Overall, the methodology used in this research applied the so-called systematic literature review (SLR). SLR is a research method that summarizes primary research to show evidence more comprehensive and balanced (Siswanto, 2010).

RESULTS AND DISCUSSION

If traced back to that time, the polemic regarding Papua being part of the Unitary State of the Republic of Indonesia can be explained by using a historical approach, diplomacy, and international law principles which are not only used as references by the Indonesian government but also used by other countries. member of the United Nations in declaring itself as a country that has the right to independence, or making claims over its sovereign territory. This paper uses an introduction by quoting a little from the content of the conversation among the elite at that time that the world needed to know, that since declaring Indonesia's independence, it has built a sense of unity and oneness. Two big capitals in building the civilization of a nation that the ideas in this paper have attempted to position a justice issue while still being supported by strong arguments. The results of this study are as follows

Historical Aspect

Round Table Conference (KMB), 23 August 1949–2 November 1949 in The Hague. The main agenda of the conference was to discuss the transfer of sovereignty

from the Government of the Kingdom of the Netherlands to the Government of Indonesia, which at that time was still in the form of the United States of Indonesia (RIS). In addition, the conference agenda also discussed the regulation of the West Irian region. The debate that continues to be raised by groups that have up until now opposed the results of the KMB is that they considered that at that time the conference did not explicitly discuss the political rights of the Papuan people. According to (Korwa, 2013) that one of the results of the KMB stated that the West Irian issue would be discussed in Jakarta in March 1950 at the Dutch-Indonesia Union Conference. If we look closely, the group's arguments against the results of the KMB can be answered with the historical fact that West Irian is a *de facto* part of Indonesia as stated in the release of the United Nations General Assembly Ninth Session official record dated November 23, 1954, AGENDA ITEM 61 The question of the West Irian (West New Guinea) (A/2694, A/C1/L.109) page 389 which mentions "Indonesia" was the national name substituted for the unpopular colonial term Netherlands East Indies", and had been recognized legally and constitutionally by the Netherlands. In the constitution of the Kingdom of the Netherlands, as mentioned in 1948, the term 'the Netherlands Indies' had been replaced by the term 'Indonesia'. From that time on 'Indonesia' had become the official name used by the Netherlands for what had formerly been the Netherlands Indies, including, of course, West Irian, which had then been a sub-residency of the Moluccas residency. United Nations (2006) It is very clear in the statement that legally and constitutionally, the Government of the Kingdom of the Netherlands uses the name Indonesia to refer to the Netherland East Indies and includes West Irian. Although the conferences in March 1950 and December 1950 between the Government of Indonesia and the Kingdom of the Netherlands had not yet reached an agreement on West Irian, Indonesia's

diplomacy in the international world continued until the birth of The New York Agreement, an agreement between the Government of Indonesia and the Dutch Government which was signed on 12 August 1962 in New York. Implementation of the agreement, that the United Nations as mentioned in article IV will appoint an administrator. The administrator, who in this case is Ambassador Fernando Ortiz-Sanz, carries the main mandate of carrying out voting and carrying out administrative transfers to the Indonesian government as stated in Article XII of the New York agreement.

Diplomatic Aspect

Determination of People's Opinion (Pepera)

The Act of Free Choice is a follow-up to The New York Agreement 1962. The Pepera which was implemented in 1969, was technically attended by all men and women in West Irian as many as 800,000 people who were then represented by 1,025 men and women. The results of the determination of opinions which were carried out simply by raising their hands and expressing their opinions orally, 1025 people stated that they supported the Indonesian government (Adryamarthanino, 2021). These results cannot be separated from pressure from parties who do not want West Irian to become part of the Republic of Indonesia.

However, the legitimacy of the opinion determination process which was carried out openly was confirmed by the Bolivian Ambassador, Fernando Ortiz-Sanz as the UN special envoy who directly monitors the Act. The Pepera was implemented by the Papuan people in three stages: The first stage was consultation with the district council in Jayapura regarding technical implementation. The second stage was the election of the Papuan Deliberative Council, and the third stage was the implementation of the Act of Free Choice on August 4, 1969. The results of the Act were later determined by the UN General

Assembly through UN Resolution 2504. (Pepera 1969 and Controversy Page All, nd). UN Resolution Number 2504 entitled Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian) has determined the status of West Irian as part of the Republic of Indonesia. One of the clauses in UN Resolution 2504 mentions Bearing in mind that, by article XXI, paragraph 2, both parties to the Agreement have recognized these results and abide by them. This clause clearly states that both parties, namely the Government of Indonesia and the Kingdom of the Netherland have acknowledged and will comply with the decision, which means that the debate or controversy regarding the status of West Irian must be ended and has permanent legal force (“UN General Assembly Resolution 44/225,” 1991).

Tri Komando Rakyat (Three People's Order)

Tri Komando Rakyat or Three People's Order is a policy and effort by the Indonesian government to counterbalance the pressure of the Dutch, who also placed their military power in West Irian. The Trikora, which was delivered directly by President Soekarno on December 19, 1969, contained three orders, namely: (1) Fail to establish the Papuan Puppet State made by the Dutch colonialists. (2) Raise the Red and White in West Irian, the homeland of Indonesia, and (3) Prepare for general mobilization to maintain the independence and unity of the homeland and the nation. The follow-up of Trikora was that the Indonesian government established a Military Command named *Komando Mandala* for the Liberation of West Irian on January 2, 1962. General Suharto, who at that time had the rank of Brigadier General, was appointed by President Soekarno as Commander of the Mandala, with the task of returning West Irian to the Republic of Indonesia. The military operation was divided into three stages, namely sending special forces to carry out infiltration,

followed by an open attack stage (open battles), and consolidating control of the battlefield (Direktorat Pengolahan Arsip Nasional Republik Indonesia, 2016).

The New York Agreement

Indeed, the implementation of the Act of Free Choice is not solely the will of the Government of Indonesia but refers to The New York Agreement number 6311 which was signed in 1962. The New York Agreement is a treaty between the Government of Indonesia and the Kingdom of the Netherlands regarding West New Guinea (West Irian) signed at United Nations headquarters in New York on August 15, 1962 (United Nations Peacemaker, 1962). On August 15, 1962, United Nations Resolution No. 6311 was signed in New York concerning an agreement between the Kingdom of the Netherlands and the Government of the Republic of Indonesia regarding Papua, which at that time was called West New Guinea (West Irian). In the agreement, article 2 concerning the transfer of administration was mentioned. After the adoption of the resolution referred to in article I, the Netherlands will transfer the administration of the territory to a United Nations Temporary Executive Authority (UNTEA). This clause can legally be translated that at that time the Kingdom of the Netherlands no longer had a legal basis for the territory of West Irian and handed it over to the United Nations through UNTEA. UNTEA, which has worked since October 1, 1962, ended its duties on May 1, 1963, and handed over the authority of West Irian to the Government of Indonesia as contained in Article XII of the agreement which stated that by article XII of the agreement, the UNTEA Administrator transferred full administrative control to the representative of the Indonesian Government, Mr. Tjondronegoro, on 1 May 1963 (United Nations, 2003). The basis of international law regarding the legitimacy of the entry into the territory of West Irian can also be found in international norms

which are still valid to be used as references such as the Atlantic Charter, self-determination rights, *uti possidetis juris*, etc.

Aspects of International Customary

The Atlantic Charter

The validity of West Irian entering the territory of Indonesia's sovereignty was not only legal in terms of positive law but also legal according to the perspective of international legal norms that were used as references by many countries in strengthening and defending their sovereignty. On August 14, 1941, America and Britain signed a Joint Declaration known as The Atlantic Charter, because the agreement was signed by the President of the United States Franklin D Roosevelt aboard the cruiser Augusta, and the British Government represented by British Prime Minister Winston Churchill who signed the Charter aboard the warship Prince of Wales, both ships docked at Placenta Bay, Atlantic Ocean. The contents of the agreement were an agreement between the two parties to have the right to form their government, facilitate trade, and post-war disarmament. In general, the contents of the charter indicated that there will be no more colonialism in the world ("Milestones: 1937–1945 - Office of the Historian," 2021). Therefore, in the context of West Irian, where the Dutch Government (The Kingdom of the Netherland) was also one of the signatories to The Atlantic Charter, then the Dutch government colonization in West Irian automatically ended. Although the debate was about whether the Charter can be used as a legal basis regarding the independence status of a country and the sovereign territory, Article 3 of the Charter expressly states the freedom of everyone to have a government and also have sovereignty as the following statement Third, they respect the right of all peoples to choose the form of government under which they will live, and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them. After the signing of the

Charter, many countries at that time rushed to declare their independence from any form of colonialism. The Atlantic Charter was not only an important factor in the decolonization movement but also a catalyst that ensured the speed and achievement of independence in Africa (Inyang & Edet, 2019). Although The Atlantic Charter appears to only accommodate the interests of Europeans and Americans, in fact, countries in Asia such as India, Burma, Indonesia, and Malaysia also use the contents of the Charter to gain rights as independent nations, as Mark Reeves stated in his thesis that "...indicates that anticolonial nationalists from Asia, Africa, and the Americas all appealed to the Charter" (Reeves, 2014). It can be said, although The Atlantic Charter was not a legal product that was universally applicable, because it accommodates the essential human interest to be free from 'want' and 'fear' as stated in the sixth point of the Charter, the Charter represents all human beings. who live on earth to freely regulate themselves and regardless of any form of pressure from certain parties (colonialism).

Self Determination

Indeed, every person has the inherent right to him as a natural nature to determine his destiny. Likewise with a nation, as the contents of the proclamation of independence of the Republic of Indonesia proclaimed on August 17, 1945, stated that "independence is the right of all nations, and therefore colonialism in the world must be abolished because it is not by the principles of humanity and justice". The declaration of Indonesia's independence was conveyed by President Soekarno and Vice President Mohammad Hatta after Japan declared unconditional surrender to allied forces led by the United States. Indonesia's declaration of independence was in line with Article 4 of the Declaration of Human Rights (UN General Assembly, 1948). The practice of self-determination was not only carried out by Indonesia, few

examples can be taken to explain the practice. First, The former Congo-Belgium nation became independent on June 30, 1960, amidst widespread tribal fighting that had spread to the capital. Within weeks, the Force Publique had launched an uprising, Belgian forces had intervened and the province of Katanga announced its separation. Despite the virtual damage, the government of Congo was recognized by most countries after independence and was accepted at the United Nations as a member state without a fight. Indeed, at the time of the relevant General Assembly resolution in September 1960, two different factions of the Government of the Congo sought to be accepted by the United Nations as the legitimate representatives of the state (Shaw, 2017). Second, in addition to the Congo experience, a similar thing happened to the country of Guinea-Bissau. In 1972, a United Nations Special Mission was sent to the liberated areas of the territory and concluded that the colonial powers had lost effective administrative control over large areas of the territory. On September 24, 1973, PAIGC (The African Party for the Independence of Guinea and Cape Verde) proclaimed the independence of the Republic of Guinea-Bissau. Regarding the issue of illegal occupation by Portuguese military forces in certain parts of the Republic of Guinea-Bissau, they have appeared before the General Assembly, but some countries have affirmed the legitimacy of the independence of the new country in the international world (Shaw, 2017).

The independence of Indonesia, Congo, and Guinea Bissau are a few examples of the practice of having the right to independence. Living independently is an undeniable characteristic, which is related to sovereignty. Shaw (2017) also emphatically stated that the western countries (western powers) for years maintain a stand on any discussion or action by the United Nations. That related to colonial ownership is contrary to international law (Shaw, 2017). Self-

determination is also indicated in The Atlantic Charter which states "the right of all peoples to choose the form of government under which they will live" including the restoration of sovereign rights and self-government.

Utī Possidetis Juris

The determination of Indonesia's sovereign territory, which includes Papua refers to the legal principle of *Utī Possidetis Juris* (UPJ). *uti possidetis juris* is a legal doctrine adopted in the Roman era governing colonization, self-determination, territorial integrity, sovereignty, statehood, state formation, and territorial boundaries. (Utī Possidetis Juris - International Law - Oxford Bibliographies, nd). The legal doctrine of the Romans era was used to stabilize borders not only in the Spanish Empire in South America after the Spanish withdrawal but also during the decolonization process in Africa and Asia. In the Indonesian context, the practice of *uti possidetis juris* has been indicated in the text of the proclamation of Indonesian independence which states firmly "we, the Indonesian people, hereby declare the independence of Indonesia, matters relating to the transfer of power and others are carried out in a careful manner and in the shortest possible time in short". The declaration of Indonesia's independence was then strengthened by a statement in the Preamble to the 1945 Constitution. In the first paragraph, it is written "that in fact, independence is the right of all nations and because of that, colonialism in the world must be abolished, because it is not by humanity and the statement contained in the text of the proclamation of Indonesian independence, and the first paragraph of the Preamble to the 1945 Constitution is the Indonesian nation's interpretation of the *uti possidetis juris* norms.

The purpose of this principle is to maintain the territorial stability of the newly formed states at the time of decolonization and also to resolve issues related to property rights, demarcation boundaries, and

maritime boundaries in situations where treaties do not exist or there is no agreement. The practice of *uti possidetis juris* was widespread in the era of colonization and has been known in international law as customary international law as published on the Cornell Law Institute website which states "*uti possidetis juris* (UPJ) is a principle of customary international law that serves to preserve the boundaries of colonies emerging as States. Originally applied to establish the boundaries of decolonized territories in Latin America, UPJ has become a rule of wider application notably in Africa". According to Malcolm Shaw, *uti possidetis juris* is a principle of international law that recognizes and limits self-determination as an international legal right. This limits the international recognition of sovereignty to these communities because they are defined by their territorial administrative boundaries existing at the time of independence. Shaw added that the norm first emerged from the Latin context of America's struggle for independence from the Spanish empire. The debate about whether the *uti possidetis juris* can be used as a legal basis for claiming a sovereign territory does not always result in an agreement among academics, but because this principle has been proven to be used since the Roman era and continues to be used as a legal basis, Indonesia was also in the same position as the other countries that used the legal approach as stated in the following statement, *uti possidetis juris* as "you will have sovereignty over those territories you possess as of law." (DeDominicis, 2016). From the description above, it can be seen that this study is unique in the sense that the facts used have authentic historical power. The analysis of diplomacy carried out by the Indonesian government in the context of this study uses a diplomacy foundation that is universally applicable and has become a practice that is also universally recognized by the world.

CONCLUSION

The Government of Indonesia's efforts to maintain West Irian as an inseparable part of the Unitary State of the Republic of Indonesia was legal according to applicable law and historical facts. Several things that support this statement include that Indonesia has been recognized by the world as an independent country since the proclamation of independence of the Republic of Indonesia on August 17, 1945. Indonesia's independence under international law has been strong enough to claim Indonesia's sovereign territory from Sabang to Merauke. Indonesia's claim was not without strong legal reasons, because as described above, international rules such as the Round Table Conference, The New York Agreement, The Atlantic Charter, self-determination principles, and the *uti possidetis juris* principles, are all legally fundamental emphasis on independence and the rights to self-regulate as an independent country, as well as the legal aspects in determining the sovereignty of the territory. Indonesian diplomacy also took a long time starting from 1949 to 1969. It took 20 years to get international recognition for West Irian. The existence of legal provisions by the United Nations as described above has also become a sufficient legal basis for the Government of Indonesia to incorporate the territory of West Irian into one unit within the unitary state of the Republic of Indonesia (NKRI). The existence of some parties who are still trying to weaken Indonesia's position regarding the West Irian region is something that should be addressed as a discourse in a democracy, but it does not mean much if the goal is to release West Irian from the Unitary States of the Republic of Indonesia, for the reasons as described above, it gives formal legal force to the Government of Indonesia to have West Irian (Papua) in its sovereign territory in the frame of the Unitary State of the Republic of Indonesia. It is realized that this

study is still very limited by time, including not fully describing the national atmosphere at that time and the response of the international community to Indonesia. Therefore, this is an opportunity for further research to describe it

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