

THE LEGAL STATUS OF JERUSALEM IN ISRAEL-PALESTINE CONFLICT AFTER DONALD TRUMP'S STATEMENT: IN TERMS OF INTERNATIONAL LAW

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Abstract

Jerusalem is a holy city for three celestial religions involved in Arab-Israeli conflict, which has lasted for approximately 70 years. Due to its strategic geographical conditions, Jerusalem is taken into account in politic, economy, and security affairs. Since 1967, the status of Jerusalem has been de facto occupied and controlled by Israel, not clearly de jure. The UN established the UN General Assembly Resolution 181 on the division of Palestinian territory. However, Israel did not comply with that. Such tension became further heated after the US President, Donald Trump, in his statement on December 2017, formally recognized Jerusalem as the capital city of Israel. This decision evoked discontent from leaders across the world as it threatened the stability across region and destroyed the prospect of achieving peacefulness between Israel and Palestine. Although this statement is a form of recognition of sovereignty, it is considered against the principle of estoppel.

Keywords

Status of Jerusalem, The Statement of US President Donald Trump, Israel-Palestine Conflict

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Introduction

A prolonged conflict between Israel and Palestine is one quite long dispute in terms of its period of time and the effort to solve the conflict. The more heated situation recently on that conflict brings a concern on us. Some agreements to solve the conflict between them have been held. In those agreements, both parties have recognized themselves as independent countries that have authority over the region they are conflicting to (Ismayanti, 2018).

The status of Jerusalem is a core of prolonged conflict between Israel and Palestine, after Israel arrogated the East Jerusalem, which is considered as the future capital city of Jerusalem by the Palestine, and defined Jerusalem as their lasting capital city. In 1948, the US government recognized that the status of Jerusalem was defined through negotiation and that they might not commit particular action assumed as an attempt that led to the result of that negotiation (Ashtiyeh, 2018).

Israel-Palestine conflict emerged as the result of the UN decision to divide the area of Palestine under the Resolution No. 181 on 29th November 1947. The Resolution divides Palestine into three regions. The first region belongs to Arab-Palestine, the second region is granted to Jews, and the third region comprises Al-Quds or Jerusalem and Baet Lahem under International governance.

The adoption of this planning revives the conflict between both parties who try to protect their own interests. In 1948, Zionist was successful protecting their authority over their territorial area as mentioned in UN Partition Plan, and this led the Zionist leader to declare Israel as an independent country on 14th May 1948. Israel had held many wars against several Arabian countries in prior to the declaration of its independence in 1948, as follow.

In 1947, British government announced to revoke their mandate toward Palestine by stating that it would not reach the expected solution for both parties; Arab and Jews. Therefore, a plan was proposed to replace the mandate through an "Arab-Jew Independent Country" and "Specific International Regime for Jerusalem" under the UN management. The history of Israel noted that, on 29th November 1947, the UN General Assembly adopted a resolution that recommended an adoption and implementation of Development Plan from Palestine. Jews Community accepted this plan. On the other hand, Arab Senate and League from Palestine objected the plan. Therefore, on 1st December 1947, the Committee decided to commit a strike for three days, and Arabian communities started to attack Jew's targets. Jews, which was initially on defensive position in civil war, gradually became offensive and took over the area. Palestine's economy fell out and 250 thousand people of Arab-Palestine escaped or got expelled. The peak of Jew's victory in the history of Israel was on 14th May 1948, when the Jews declared their independence, with an official name; Israel. That moment, as previously discussed, was a day before the British's mandate toward Palestine ended. At the next day, five countries (Lebanon, Iraq, Egypt, Jordan, and Syria) attacked Israel. It marked Arab-Israel War in 1948. Under the order of Egypt, Arab sent a military contingent. Yemen declared a war without having a military

action. After a year of war, a declaration of armistice and a temporary border called Green Line were all conducted. Jordan annexed an area called East and West Jerusalem. Egypt then took over the Gaza Lane. At the end of Israel Independence War, February 1949, Israel's territory was much broader than the Jews based on UN Partition Plan. As the result, a chance of making Palestine fully independent was gone (Candra, 2018).

The war ended in 1949, Israel took over the west part, while Jordan took over the east part, including the old city; Jerusalem. During the six-day war on 5 – 10 June 1967, Israel took over several areas, including Sinai Peninsula, Gaza lane, Golan Highland, and West periphery (including East Jerusalem), which were previously ruled by Egypt, Syria, and Jordan. Since then, all the cities were under Israeli's control. However, the Palestinians along with international community kept endeavoring to make East Jerusalem become the future capital city of Palestine (Yasinta, 2018).

In 1980, Israel merged West and East Jerusalem and claimed it as the capital city of that Jewish country. On the other hand, Palestine also claimed Jerusalem as their capital city. Those claims on Jerusalem might inhibit the process of reconciliation in the Middle East up to recent days. Another obstacle during the process of reconciliation between Israel and Palestine was Israeli's policy to build Jewish residence in their territory (Hardoko, 2017).

A wish for reconciliation between those two countries seems still far to be achieved, since no way out for solution is apparent after 60 years conflict. Even, on 19th May 2018, news reported a military quarrel between Israel and Palestine in Gaza lane, causing hundreds Palestinians died and injured.

Since 1948, this heated tension was getting tense after the President of United States Donald Trump, in his speech on Wednesday, 6th December 2017, officially recognized Jerusalem as the capital city of Israel. The decision of the US president, Donald Trump, to recognize Jerusalem as the capital city of Israel resulted in wrath from many leaders across the globe. They felt that the US government's action might threaten mutual stability and destroy the prospect of reconciliation between Israel and Palestine. International people never recognize Israeli's claim over Jerusalem (Yasinta, 2017).

Jerusalem became a very crucial factor to be considered in every negotiation of reconciliation between Israel and Palestine, since both parties want that old city to be their capital city. Every action each country did as an attempt to claim the city might trigger violence between both countries (Mazrieva, 2018).

The Legal Status of Jerusalem During Israel-Palestine Conflict Between 1948 and The Time Before The Statement of The US President Donald Trump

After World War II ended on 14th May 1948, Israeli and Jews who felt that they had power and qualification to build a country finally declared Israel which territorial area had been defined by the UN in Partition Plan. This made Arab get angry, and thus, a war happened in 15th May 1948 up to 10th March 1949, won by Israel. Israel territory expanded from what previously defined by the UN.

Arab-Israel war, again, happened in three periods of time; in 1956 in Suez Canal, in 1967 called the six-day War, and in 1973. In 1956, the war happened in Suez Canal and it involved Egypt, Israel, France, and Britain. The subsequent war between Arab and Israel happened in 1967. This war was called The Six-Day War as it took six day war in Sinai Peninsula. Seeing this war, the UN Security Council established a resolution No. 242 in order to end the war. However, Israel objected the resolution and kept colonizing the area they took over.

An increasing concern on the existence of Israeli residence and a willing to take revenge for the defeat of the previous war triggered the subsequent war in 1973 between Israel vs. Egypt and Syria. Egypt and Syria attacked Israeli's residence in Jews' holy day called Yom Kippur on 6th October 1973. This war was often called Yom Kippur War. As UN Security Council finally established Resolution No. 338 on 22nd October 1973, containing the implementation of negotiation among the parties engaged in war based on the Resolution No. 242, Yom Kippur War was settled.

In 1978, a treaty of reconciliation between Egypt president, Anwar Sadat, and the former Prime Minister of Israel, Menachem Begin was held after 12-day negotiation in presidential vacation residence *Camp David* in Maryland, near to the capital city of United States (Washington DC.). The negotiation and agreement was under the supervision of the former President of United States, Jimmy Carter. In 1979, an agreement of reconciliation was finally reached between both conflicting parties; Israel and Egypt (<http://e-journal.uajy.ac.id/>).

Israel-Palestine Conflict re-exploded on September 2000. Violence between Palestine National Authority troops and Israel Defense Force occurred up to 2005, killing 6.000 people. The conflict ended on 8th February 2005, when the President of Palestine, Mahmoud Abbas, and the Prime Minister of Israel, Ariel Sharon, dealt to end the war. One year later, Hamas won the national election of Palestine, and thus, Israel decided to no longer continue the negotiation of reconciliation as long as Hamas still took part in Palestine government.

The conflict between Israel and Hamas in 2006 resulted in a sea blockade in Gaza lane and land blockade in Egyptian border. After a political conflict between Fatah and Hamas turned to be Gaza war in 2007, Hamas ruled the entire territory of Gaza. The tension between Hamas and Israel, with financial and political support from Iran, reached the crest by the end of 2008, on which Israel had a military operation called Cast Lead Operation, or known as Gaza Massacre. This three-week war had killed 1.417 Palestinians and 13 Israelis. On February 2009, the agreement of reconciliation between both parties was finally signed with an intervention from international community.

The attempt of Palestine National Authority to get the membership of UN as an independent country was objected in 2011. Israel accepted and agreed the proposal of armistice on 15th July 2014, while Hamas only recognized a diplomatic move and formally objecting the proposal of armistice.

War followed by armistices over and over again is a conflict pattern of Israel and Palestine. This conflict seems to be endlessly eternal. As long as no good faith reveals between them, this conflict will last forever (<http://internasional.metrotvnews.com>, 2014).

This far, international community has assumed Jerusalem as an international territory with separated political and legal status. The UN made this decision in UN General Assembly Resolution No. 181 year 1947. This resolution mandated to build Arab (i.e., Palestine) and Jewish countries (i.e., Israel) with independent status for each. Given that international community never recognized Israeli's sovereignty over all cities and that Jerusalem should be settled through negotiations, the recognition on Jerusalem as the capital city of Israel might become further stage on Israel-Palestine conflict. Therefore, Trump's attitude was on the contrary to the international consensus for Jerusalem, since the Resolution of UN Security Council had a binding power that needs to be followed, not only by the members of UN but also all countries around the world (i.e., *ultra vires*).

Basically, two-state solution implies that both Israel and Palestine may exist as an independent country and live in peace. The further crucial issue is the different perception on security. For Palestine, being an independent country means that Israel should go away from their territory. For Israel, however, security is assuring that Palestinian radical organization, Hamas, should be settled down. Note that Israel defines Hamas as a terrorist organization, as it does not let Jewish country exist. Therefore, when Trump, as the representative of the United States, recognized Jerusalem as the capital city of Israel, it made Israel more powerful, given that the United States is the key party in the process of negotiation between Israel and Palestine, and Jerusalem is considered as the core of two-state solution (<https://www.idntimes.com>, 2018).

In an attempt of reconciliation for Israel-Palestine conflict, UN acts as the mediator that bridges the interests of both countries. Based on the Resolution of UN Security Council No. 242 and 338, UN always gets engaged indirectly in every negotiation between Israel and Palestine. However, this effort is somehow often conducted by the UN General Assembly. Its higher authority rather than UN Security Council makes the assembly more active to handle this conflict. Unfortunately, the General Assembly still remains unable to reach a reconciliation between those two countries, since the resolution is only moral and symbolic with no binding power as International law. This far, the role of UN in the Middle East countries is handled by Department of Political Affairs (DPA). It has responsibility to the policy of Middle East reconciliation and provides supports and guidance to *United Nations Special Coordinator for the Middle East Peace Process* (UNSCO). UNSCO was held in 1994, after *Oslo Accords*, and functions as UN political focus that support the process of reconciliation for Israel-Palestine conflict. UNSCO has a mission to promote an effective coordination between Israel and Palestine, as well as the UN.

The Statement of US President, Donald Trump, About The Legal Status of Jerusalem as The Capital City of Israel is a Form of Recognition to The Sovereignty of a Territory and Against *Estoppel* Principle

The consent and agreement of land and maritime territorial borders among the neighbor countries has implicitly indicated the evidence of recognizing the sovereignty of a country over its territory. However, it should be mentioned in the form of agreement. The agreed treaty should be ratified in the form of legislation in order to facilitate the engaged parties whenever they find different interpretation on the implementation of the agreement and treaty(<https://media.neliti.com>, 2018).

In international law, we know that the concept of recognition refers to a state's action that accepts or justifies things in international context, or state's independent action to justify the formation of a reign organization and accept it as the member of international community or, in other word, that this recognition is granted to an entity qualified as a country based on international law. Looking back into the concept of recognition as set in international law, it is tightly related to the qualification for a country to make an international relationship as mentioned in Montevideo Convention 1933.

Toward the general nature of a recognition, which refers to an action to accept or justify things in international context, the recognition by Trump is considered as an international-based recognition.

The principle of common law is the source of international law in the form of common law recognized by civilized countries. This principle of common law underlies the system of modern law. Following Article 38 subsection (1) of International Court Statute, the principle of common law is a formally independent legal source. With this legal source, the Court may not refuse hearing particular cases on the grounds that there is no law set for the proposed case(Kusumaatmadja, 2003:148-150).

In the system of common law, there is a legal doctrine or concept that bridges the interpretations of contractual relationship among parties. This legal doctrine is called *promissory estoppel*. Basically, the concept of *estoppel* is a form of prohibition against broken agreement by preventing any kinds of argumentations against individual's statement or action. Although the promise is not clearly set based on the action, another party may make an assumption or believes that there is an agreement in it. Simply saying, a claim of broken promise may only be filed when it has an agreement in prior. However, given the likelihood that one of the engaged parties may get injured before the agreement is established, this doctrine of *promissory estoppel* may turn into supporting argument for the injured party (<http://robertsidauruk.com>, 2018).

In fact, the president of US, Donald Trump made a statement that recognized Jerusalem as the capital city of Israel. Looking into the sample case of Kuil Preah Vihear between Cambodia and Thailand, therefore, Trump's statement is considered as one against the principle of *estoppel*, since it disavows a promise that the legal status of Jerusalem will be defined through negotiations, and that it is against the UN General

Assembly Resolution No. 181 Year 1947, which defined Jerusalem as a territorial area under international supervision.

The decision of the US president, Donald Trump, to recognize Jerusalem as the capital city of Israel reveals criticism from Arabian countries, European countries, and the others across the globe. As expected, Palestine and its supporters across the world get angry at the decision of the US president that recognizes Jerusalem as the capital city of Israel. There is a concern that Trump's action may destroy the likelihood of reaching solution for both Middle East countries.

One very immediate impact of Trump's unilateral statement is that the initiative of having negotiation between Israel and Palestine, with US as the mediator, becomes obstructed. The legal status of Jerusalem is one crucial point to be discussed in that negotiation. Thus, Trump's unilateral statement is like "stabbing from behind" which may decelerate the attempt of the negotiation and destroy the trust of Palestinians.

The recognition of legal status of Jerusalem may symbolically bring benefit for Israel, yet may harm the US and Israel on their operational level. Trump's maneuver may trigger unification on Moslem community who sees Israel, and even US, as Moslem existential threat. Although the former presidents of United States were all criticized due to the *double-standard*, they were still trusted as a facilitator for peace due to the level of rationality they showed in sensitive issues such as the legal status of Jerusalem, illegal residence, and the consensus of borders before War 1967. It indicates that United States may find itself difficult to be a focal point of world security and peacefulness due to an amateur and isolationist president. It may be true, as the analysis by one of high officials of Hamas, that Trump's unilateral statement may open the gate of hell for US interest (<http://permatam.com>, 2018).

Conclusion

1. The legal status of Jerusalem is the core of prolonged conflict between Israel and Palestine, given that Israel took over East Jerusalem; assumed as the future capital city for Palestine. On the other hand, Israel defines Jerusalem as their eternal capital city. Furthermore, the statement of US president, Donald Trump, that recognizes Jerusalem as the capital city of Israel is considered against the UN Resolution No. 181 Year 1948 that the legal status of Jerusalem is under the authority of International law. Much effort has been committed by UN, from two-state solution up to establishing various resolutions. As long as no good faith reveals between them, this conflict will last forever.
2. The statement of US president, Donald Trump, on the legal status of Jerusalem as the capital city of Israel is a kind of recognition of a sovereignty, although revealing many criticism across the globe. The statement is considered against the principle of *estoppel*. In this case, the US president broke the promise, as mentioned in UN Resolution No. 181 Year 1948 that the legal status of Jerusalem would be defined through negotiation. Such presidential statement may carry on both direct

and indirect impacts, including various negative responses from many countries around the world, especially the members of UN.

Suggestion

Referring to the conclusion above, it is expected for UN to seek for the best solution to settle down the conflict between Israel and Palestine. It may be through two-state solution or another resolution by giving sanctions to the US government due to their president's statement that recognizes Jerusalem as the capital city of Israel, given that such statement is considered against the UN General Assembly Resolution No. 181 Year 1948, as well as the principle of *estoppel*.

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