Reconstructing Westphalian Sovereignty as an Effort to Enforce Human Rights
Case Study: Humanitarian Intervention in the Libyan Conflict

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Abstract

State sovereignty and humanitarian intervention are two sides of a coin, presenting a threat to human rights enforcement, especially when human rights violation is done by the state. Failure from a state to provide human rights protection for its citizen will lead to intervention from the international community to enforce human rights in the name of humanitarian norms. The humanitarian intervention will indirectly weaken the principles of Westphalian state sovereignty as the main premise in the politics of international relations. This article is a case study of the Libyan conflict in 2011. This study uses the constructivism approach to analyze the contrasting relation between the principles of traditional Westphalian sovereignty and humanitarian intervention concept, and how this relationship may shift the human rights norms in the international community. In the constructivism approach, it is not enough to offer a causal explanation in order to understand international politics. Instead, it needs a more interpretative understanding. Hence, this study is conducted with a qualitative method, a critical approach to human rights in contemporary international politics.

Keywords: State, Sovereignty, Humanitarian, Intervention, Constructivism.

Abstrak

Kedaulatan negara dan intervensi kemanusiaan adalah dua sisi mata uang yang menghadirkan ancaman bagi penegakan hak asasi manusia, terutama ketika pelanggaran hak asasi manusia dilakukan oleh negara. Kegagalan suatu negara untuk memberikan perlindungan hak asasi manusia bagi warganya akan menyebabkan intervensi dari komunitas internasional dalam nama kemanusiaan. Intervensi kemanusiaan secara tidak langsung akan melemahkan prinsip-prinsip kedaulatan negara Wesphalian sebagai premis utama dalam politik hubungan internasional. Artikel ini merupakan studi kasus tentang konflik Libya pada 2011 dengan menggunakan pendekatan konstruktivisme untuk menganalisis kontradiksi antara prinsip-prinsip kedaulatan, konsep intervensi kemanusiaan, dan hubungan dengan norma-norma hak asasi manusia di komunitas internasional. Dalam pendekatan konstruktivisme, tidaklah cukup untuk menawarkan penjelasan sebab akibat untuk memahami politik internasional, melainkan perlu pemahaman yang lebih interpretatif. Oleh karena itu, penelitian ini dilakukan dengan menggunakan metode kualitatif dengan mengadopsi pendekatan kritis terhadap hak asasi manusia dalam politik internasional kontemporer.

Kata Kunci: Kedaulatan, Negara, Intervensi, Kemanusiaan, Konstruktivisme.

INTRODUCTION

A recent development in international relation studies faces a conflict with its own main premise when addressing the issue of human

rights enforcement, in particular, a conflict between state sovereignty and humanitarian norms. There is a contradiction between Westphalian state sovereignty norms, which have been adopted in the international laws by all state actors in international politics, and the humanitarian intervention norms as measures to enforce human rights enforcement, which have been growing more attention from international societies, both state and non-state actors. It is such an irony that the fundamental concepts of human rights and state sovereignty norms are being contradicted, their definitions being debated, as well as which is the more important norms (Brooke, 2017).

Rooted from liberal ideas, human rights are the fundamental rights and freedoms that all human should be guaranteed, by virtue of them being a human. These rights are characterized as universal, basic, and absolute. Universal means that human rights are the same everywhere, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. The essence of human rights is the principles of equality, justice, and freedom, to protect human dignity from any form of unlawful imprisonment, torture, and execution (Soetjipto, 2015, pp. 15-16).

The development of human rights by political philosophers, such as Hugo Grotius, Thomas Hobbes, and John Locke, have consistently used the conception of rights and natural laws, which evolved into the term "liberal positions on rights" (Soetjipto, 2015, p. 17), consisting of two main aspects. First, each individual has the right to life, liberty, property, as well as the freedom of opinion and expression, which cannot be traded, transacted, and is unconditional. The only reason that can be accepted to limit these rights is in order to protect other individual's right. Second, the government must protect and guarantee these fundamental rights, and their performance shall be measured as such.

The liberal positions on rights promoted a growing sense in-state actors' responsibility to protect and guarantee human rights. As stated in the international law on human rights, state actors are responsible for acting or not acting in such a way to promote and protect human rights and fundamental freedoms of individuals and groups (Dewi, 2015).

On the other hand, from an international relations perspective, the Westphalian international law and political system, adopted since 1648, stated that any sovereign state possesses full sovereign rights (Hall, 2010). Sovereignty refers to the concept of highest independent

authority in a territory. It can be seen as a norm where each state cannot interfere with each other's problems, and each state has the highest independent authority over its own territory (Delbruck, 1982).

The problem arises when action by the state, as a consequence of the possessed sovereignty, results in violations in human rights. It is often caused by a broad and limitless interpretation of state sovereignty, that a state is free to use the however authority it possesses and no other states may interfere (Ramdhany, 2015, p. 51). This problem creates a paradox between international law and political system, which is based on the principles of state sovereignty, and the international human rights policies, which prioritize state's moral on humanitarian, thus protecting human rights. These antagonistic roles result in the difficulty to process human rights violations occurring in a sovereign state's territory, particularly for domestic conflict cases.

The paradox between international law and political system and international human rights policies creates various debates among international law communities. Among them, state authority should be restricted, such as through the "doctrine of restrictive interpretation". In this doctrine, the state should be restricted to its sovereign rights when

dealing with human rights (Lauterpacht, 1958).

The interrelation between state sovereignty and human rights protection has also shifted the paradigm of state sovereignty from Westphalian school to Hobbessian school, where international community shall not be isolated, and there should be freedom in interstate relations (Snyman, 2009, p. 18). Hobbesian school, developed by Thomas Hobbes, Immanuel Kant, and Hans Kelsen perceived state sovereignty as a relative-control from a sovereign state to its people and justified the role of external forces in creating and maintaining social stability for individuals or groups in a sovereign state (May 2005; Reuter, 1983). The hobbesian school has promoted the shift from traditional politics of state-centered to mixed actors, where non-state actors such as non-government organization, international media, and inter-government organization are increasingly acknowledged for their roles in creating order and values in modern international communities.

Furthermore, the shift from Westphalian state sovereignty system in the international politics is also due to the rise in the concept of "responsibility to protect" (R2P) which is rooted from humanitarian intervention norms in enforcing severe

human rights violations (Ramdhany, 2015, p. 36). This concept was first given by Francis Deng to justify the obligation of other states to intervene to a state's problem when that state cannot resolve its own problem according to the international standards (Deng, 1996). This concept is then comprehensively reformulated by the International Commission on Intervention and State Sovereignty (ICISS) as a response to the Millennium Report from UN Secretary-General (ICISS, 2001).

The humanitarian intervention started to evolve after the cold war. It is a manifestation of the disappointment that states could not exercise its moral obligation to its people properly. Humanitarian crisis rises from internal factors, thus external intervention is perceived as a better way to save humanity from the discrepancies of the Westphalian sovereignty (Heywood, 20017, pp 577-578). Hence, this study aims to reconstruct the Westphalian state sovereignty by analyzing the contrasting relation between the principles of traditional Westphalian sovereignty and humanitarian intervention concept, and how this relationship may shift the human rights norms in the international community, using the case study from the Libyan conflict in 2011.

CASE STUDY

For more than forty years after the military coup in 1969, Libyan people lived under the authoritarian regime of Moammar Gadhafi. United Nations Commission on Human Rights (UNHCR) received many reports on human rights violations during this regime period. (Vandewalle, 2006, pp. 77-96). The most recent and major conflict started in January 2011, when Libyan people started to hold demonstrations to protest the regime, which was responded by the regime with heavy military aggression, using machine guns, snipers, tanks, and other military weapons. As demonstrations became widespread across the country, violent aggression became worse, even using bomb attack targeted to the people. In regards to the situation, international media and NGO started to actively report the regime's violent reactions to the demonstrators and civilians.

By March 2011, the opposition party, National Transition Council, was formed, comprising of civilians, former government officials, as well as military deserters. Even then, some Libyan government officials and ambassadors, as well as military personnel, declared their resignation as a sign of protest against the regime's violent aggression to their own people. Soon after, on March 10th, 2011, France recognized the council as the

legitimate government of Libya, and in the following day, the European Council issued a declaration condemning the violence against civilians in Libya and recognizing the National Transition Council as the political interlocutor. Meanwhile, inside Libya, opposition party started to claim the Benghazi region. Gadhafi's regime reacted by launching massive airstrike in the region.

Since the beginning of the conflict, international societies have been very vocal in criticizing and condemning the regime's violent measures. UN Secretary-General Ban Ki-Moon expressed his anger and the UN issued a statement expressing deep condolence as well as condemning in response to press reports on unarmed civilians being shot from aircrafts and helicopters, as well as other facts on civil massacre, unauthorized arrests, detentions, tortures, and the usage of foreign mercenaries (Security Council UN, 2011). UNHCR expressed their highest concerns on those facts, urged the regime to stop the severe human rights violations, and demanded an independent international investigation be held immediately. Various regional organizations also raised their concerns. European Council condemned the violence. Council of the Arab League conducted an emergency meeting and seized the membership of Libya. Peace and Security Council of the African Union also condemned the use of excessive military forces to the unarmed civilians which violates human rights and international humanitarian law. Gulf Cooperation Council called the violent reaction of the regime as a genocide.

The Libyan conflict generated intense debates in the UN Security Council, which eventually led to the adoption of Resolution 1970 in February 26th, 2011, condemning the use of lethal force by the government of Moammar Ghadafi against protesters and imposed a series of international sanctions in response. UN concluded that based on the Charter of the United Nations, given the existence of a threat to the peace and act of aggression as stated in Article 39, UN Security Council has the mandate to act according to Chapter VII and take measures according to Article 41. UN demanded the regime to stop the act of violence and honor their obligation to human rights in international humanitarian law. Furthermore, UN demanded the severe human rights violations in Libya to be brought to International Criminal Court and called for international sanctions on Ghadhafi's regime, including weapons embargo, travel ban, and assets freezing.

Following the adoption of Resolution 1970, international

communities started to conduct a humanitarian intervention in the region to protect the civilians. The parliament of the European Union, for instance, regarded the adoption of the resolution as an obligation to protect the civilians against the ruling regime. The humanitarian intervention involved, among others, the joint international peacekeeping forces from NATO and the UN. The military intervention from NATO effectively neutralized Libyan air force, and significantly reduced the heavy weapons, thus changing the force strength's balance to benefit the opposition party. In early October 2011, the National Transition Council of Libya has effectively gained the whole country, thus ending the humanitarian intervention in October 31st, 2011, after a period of 222 days (Daalder and Savrides, 2012).

ANALYSIS AND DISCUSSION

In international relations, constructivism acts as a critique of traditional views such as realism. Constructivism departs from the failure of mainstream traditional views in explaining global politics after the cold war. Referring to the Libyan case, there is a contradiction between the traditional view on sovereignty and the humanitarian intervention concept. Hence, in constructivism, it is not enough to offer a causal explanation in

order to understand international politics. Instead, it needs a more interpretative understanding (Soetjipto, 2015, p.102).

Constructivism uses basic assumptions as follows (Viotti and Kauppi, 2010, p. 277): (i) it views identity and actors interest in international relations as a constructive process, not as given, and actors comprise of both state and non-state actors; (ii) As in other social structures, international structures are influenced by ideational factors, including norms, rules, and laws; (iii) As a consequence of viewing the world in a constructive process, all process is dynamic, nothing is given; (iv) it emphasizes the importance of subjectivity, there is no pure objectivity, and it believes that inter-subjectivity enriches the understanding of factors affecting the constructive process.

Constructivism believes that idea and matter are of the same importance. Changes, in reality, are possible due to the reality being constructed socially. It means that everything is influenced by values, norms, and social assumptions so that understanding cannot come solely from an individual understanding (Fierke, 2010). Social and cultural dimension and context play a big role in social construction. Different context causes different understanding, hence there is no single objectivity.

The importance of social norms in affecting action in international politics is a product of differentiating between "logic of consequences" and "logic of appropriateness". Action follows a logic of consequences when it is driven by subjective assessments of outcomes of alternative courses of action; whereas action follows a logic of appropriateness when it is shaped by rules relevant to the current situation (Schulz, 2014). In the context of international relations, the logic of appropriateness comes into play, when international norms including rules on human rights were made in the hope that actors will act according to set of rules and norms that have been constructed (Amanda and Trina, 2015).

The same framework is used in changing or constructing new international norms. Certain actors may have the ability to form alternative norms or reference, but these actors have to act beyond what is considered appropriate to change the normative limit (Viotti and Kauppi, 2010, p. 287). Therefore, transnational communities play a significant role in shifting the norms, as a major tool to transform the system under certain conditions (Finnemore and Sikkink, 1998, p. 894). In the Libyan case, UN, NATO, international media, NGO, and other international communities contributed to the shifting of norms.

Several aspects need to be considered when investigating the shifting process of traditional sovereignty norms, such as the humanitarian intervention in the Libyan conflict. First, it is important to understand how the humanitarian intervention norm emerges in international relations and how the new norm follows the logic of appropriateness. Second, how international communities respond to the humanitarian intervention norm. Lastly, how the norm can eventually be internalized globally so that a consensus is reached on the norm as an alternative to view the interaction between state sovereignty values in the modern state system and the human rights enforcement.

Traditionally, the state system in international politics rejects intervention. In fact, international laws were constructed based on state sovereignty. However, the state's inability to protect human rights, or even the state's action that violates human rights, caused intervention to be done by virtue of humanitarian norms, which is then named humanitarian intervention (Heywood, 2017, p. 577).

Humanitarian intervention goes beyond the just war idea that self-defense is the key justification for the use of force. Instead, in the case of humanitarian intervention, the use of

force is justified by the desire to protect people from different societies or to save strangers. Humanitarian intervention is based on the idea that the doctrine of human rights provides standards of conduct that can be applied to all governments and all peoples. Furthermore, human intervention may allow the last resort principle to be downgraded. For example, when faced with the imminent danger of genocide, it may be a waste of time to try non-violent options, thus military force may become the first resort response (Heywood, 2017, p. 586).

Reports from international media and NGO on the crimes against humanity done by the Gadhafi regime have shocked the international communities and have shown the inability of the state to guarantee human rights. International communities responded by legitimizing a humanitarian intervention through the adoption of UN Resolution 1970, based on the threats to the peace as in Chapter VII. NATO also joined the humanitarian intervention and sent its peacekeeping force to protect civilians in Libya as well as to stop the military aggression of the Ghadafi's regime.

The role of international organizations in modern politics is indisputable. Having been able to produce conventions that bind its members, the international organization serves as an important agent in the process of changing international norms. The role of international organizations can be seen in the adoption of Resolution 1970 and the actions following the adoption. The humanitarian intervention in the EU is viewed according to the doctrine "responsibility to protect" (R2P). EU, as an intergovernmental organization in Europe, has the instrument to constitute laws, and hence has the ability to create a new law according to the R2P doctrine in its region. Furthermore, considering the power and position of EU in global international relations, it is possible for the EU to spread and internalize the doctrine globally.

Humanitarian intervention norm according to the R2P doctrine is related to the responsibility values inherent in sovereignty. When a state cannot resolve its own problem according to the international standards, it became the obligation for other states to intervene in that state's problem (Deng, 1996). Humanitarian intervention concept then evolves beyond international communities' obligation to serve as a positive image in international political diplomacy that helped the internalization of humanitarian intervention in the modern state concept.

The human rights doctrine is a moral framework for human intervention and its internalization to a higher level. It is reflected in the comprehensive reformulation of humanitarian intervention by the International Commission on Intervention and State Sovereignty (ICISS) as a response to the Millennium Report from UN Secretary-General (Ramdhany, 2015, p. 36).

The internalization of human intervention norm creates a new norm in the dynamics of international relations and human rights, giving a fresh view on state sovereignty doctrine in the modern state system when coinciding with the universal human rights principle. In particular, when a state cannot guarantee and protect the human rights of its people according to the international standards, it became the obligation for other states to intervene in that state's problem.

CONCLUSION

Humanitarian intervention is based on equal human rights for all humanity, which entails a moral obligation beyond any state. The obligation to act to the certain case of human rights violations the consequence of international communities' awareness on the importance of human rights values. A

humanitarian emergency such as Libyan conflict tends to give a radical indication on the balance of regional forces and creates instability as well as contagious unrest. The anxiety caused by this situation will eventually lead other states to support humanitarian intervention. Thus, humanitarian intervention is a reflection of the international communities' commitment to protecting peace and human rights values. Furthermore, the humanitarian intervention also contributes to the construction of global order bound to international law. Intervention norm may strengthen human rights enforcement by reconstructing the "absolute" and "independent" state sovereignty doctrine into limited sovereignty under the occurrence of severe human rights violations by the state to its people, using the R2P doctrine. Hence, the reconstruction of the traditional sovereignty paradigm in the modern state system provides a solution for human right enforcement.

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