



Recognition of Donetsk and Luhansk as a country by Russia reviewing from state recognition theory

Anom Suryo Nindito¹, Joko Setiyono²

¹ Master of Law Student of Diponegoro University, Kota Semarang, Jawa Tengah, Indonesia

² Lecturer, Diponegoro University, Kota Semarang, Jawa Tengah, Indonesia

Abstract

Donetsk and Luhansk declared their independence from Ukraine in April and May 2014. The issue of the freedom of Donetsk and Luhansk is inseparable from existing political problems, even this independence has faced opposition from Ukraine itself, the existence of Donetsk and Luhansk that declared themselves as a country in April and May 2014 was not recognized by any government until Russia declared that Donetsk and Luhansk were sovereign states on February 21, 2022, but can Russia's recognition of the independence of Donetsk and Luhansk be justified? and how can the United Nations organization's refusal to recognize the birth of the Donetsk and Luhansk states be justified? This writing is expected to explain that the recognition of the birth of a new country, namely Donetsk and Luhansk, is an international political problem and is closely related to legal issues because the recognition of the establishment of a government certainly has legal consequences, especially the relationship between the government that gives recognition and the recognized country. Apart from the recognition of other countries towards the Donetsk and Luhansk countries, it does not affect the existence of the two countries, including Russia's recognition of the founding of the Donetsk and Luhansk countries that the United Nations rejected.

Keywords: independence of Donetsk and Luhansk; existence; state recognition

Introduction

The independence of Donetsk began when a group of activists declared their freedom at the town hall On April 7, 2014, calling the country the People's Republic of Donetsk (Washington Post, 2014) ^[17]. Then the government of Luhansk also declared independence on April 27, 2014, after President Viktor Yanukovich was ousted from his government on February 22, 2014. The establishment of the two countries was a victory over the Anti Maidan movement and the movement leaning towards Russia, which from the beginning had intended to secede from the Ukrainian State. The independence of Donetsk and Luhansk at that time was only considered a normal uprising by their mother country before secession, namely Ukraine. The region has been closed in armed conflict with the Kiev army since a pro-Russian armed uprising following Russia's annexation of Crimea in 2014. Attempts to resolve the battle in eastern Ukraine, set out in the 2015 Minsk agreement, have hit a stalemate. Kiev and pro-Moscow separatists have each accused the other of the abusers. A series of ceasefires have failed due to repeated violations by the belligerents (SINDONEWS, 2022) ^[12].

With the support of Russia recognizing the independence of Donetsk and Luhansk as sovereign states on February 21, 2022, unilaterally, Russia's Recognition effectively terminated the 2014-2015 Minsk peace treaty between Ukraine and the two countries, although this agreement has not yet been implemented, until now seen by all parties. , including Moscow, as the best opportunity for a solution. The deal calls for broad autonomy for the two regions, Donetsk and Luhansk, within Ukraine. In response to Russia's statement, the United Nations organization expressly neither agree nor rejects Russia's announcement that it recognizes that Donetsk and Luhansk are newly

independent and separate states in eastern Ukraine. Secretary General of the United Nations Antonio Guterres said that the United Nations continues to recognize Ukraine's sovereignty in full, saying "The United Nations in line with the resolutions of the General Assembly remains in full support of the sovereignty, independence and territorial integrity of Ukraine with its borders". The Secretary General of the United Nations appealed for peaceful handling of the status in eastern Ukraine under the Minsk Agreement which was supported by the Security Council contained in resolution 2202 (2015). the sovereignty of Ukraine and inconsistent with the principles of the United Nations Charter. The Secretary-General of the United Nations urges all parties concerned to focus on efforts to immediately withdraw from hostilities, including protecting civilians and infrastructure and refraining from any actions and statements that add to the tensions of the dangerous situation in and around Ukraine. The diplomatic process must take precedence (CNN, 2022) ^[2].

Two theories of recognition are known in the literature of international law and constitutional law, namely the constitutive theory and the declarative theory. Constitutional Theory According to constitutional theorists, a country is considered a new state when it has been recognized by another country, which means that the government is not considered a new state before being recognized by another state. Such recognition has a constitutive effect. (Shaw, 2008) ^[10]. Then declarative theory. Recognition of another state does not create a state, because the birth of a state is a fact, and in this case recognition is simply an acceptance of that fact. Recognition is only an affirmation of that birth, so recognition does not create a state. Recognition is not a condition for the birth of a country (Mauna, 2000) ^[6]. According to this declarative theory, recognition is simply a

statement or agreement by a state acknowledging that a new state has existed in the international community, provided that it objectively meets international qualifications, and may be accepted as an international person without the need for recognition from other countries. In this way, the new state, being like other states, can enjoy its rights and fulfill its obligations under international law. (Harris, 1983) ^[3]. Declarative theory neutralizes the existence of a state of recognition problems, which of course are very subjective. It can be stated that this declarative theory is more objective and neutral than constitutional theory, which has been abandoned in practice because the existence of a state is not determined by the presence or absence of recognition by other states. (Widagdo, 2008) ^[18].

New state recognition is more general and is based on the subjective political considerations of the state seeking recognition. This can be seen from the case of the birth of the Donetsk and Luhansk countries, behind the declaration of independence, only Russia not only gave recognition but also Russia's close allies, namely Cuba, Venezuela, Nicaragua, and Syria (Kompas, 2022) ^[4], and on the other hand, countries that did not have different foreign policy directions or who have different political affiliations refuse to recognize them. With the assumption that the birth of a nation is only a factual event and not a legal event, a country cannot reject the birth of a new state based on law. Another consequence is the birth of a state without recognition, namely that recognition does not prevent the formation of a state. In other words, the existence of a nascent state is not determined by the need for other countries to grant or deny recognition. The same is true for Donetsk and Luhansk, so it is clear that recognition is a political policy. (Widagdo, 2008) ^[18].

The problem is whether Donetsk and Luhansk can be recognized as new countries? Is recognition from other countries required for the founding of the Donetsk and Luhansk states?

Research Method

This research is a normative or doctrinal legal research conducted by literature study. Doctrinal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal problems faced by reviewing library materials that focus on reading and studying primary and secondary legal materials so that legal research will be able to generate theoretical arguments or new concepts as a recipe for solving problems as well as possible. The data consist of secondary data regarding the recognition of Donetsk and Luhansk as new countries.

Discussion

1. Recognition of Donetsk and Luhansk as New Countries

An International Law Expert Moore said state recognition is very helpful to ensure that other countries can have a proper place as autonomous and sovereign political individuals amid a group of countries so that they can carry out different relations with different countries safely and flawlessly, without emphasizing that the situation as a political unit will be disturbed by the existing countries (Widagdo, 2008) ^[18]. Recognition should also be a state political event to acknowledge what happened as a reality and acknowledge the legitimate results of the confession assembled. (Mauna, 2000) ^[6]. In this modern era, countries that provide

recognition are not only knowing or cognition that a country has the right to be independent but also fulfill the requirements in terms of documents, policies, state conditions, and existing legal consequences (Mauna, 2000) ^[6]. Recognition of a state is essential in the international politics of a country because it can be a guarantee that the new state occupies its appropriate place as a sovereign, independent and independent international political organism. Through this recognition, a new country will be able to establish various bilateral and international relations with both governments and organizations in the world (Widagdo, Wahyudi, Setyorini, & Basuki, 2008) ^[18].

In the literature in the international legal environment as well as in the constitutional law environment, there are two theories about the birth of a state, namely the Constitutive Theory and the Declarative Theory. The first is the constitutive theory, the constitutive theory states that a country is seen as being born into the world as a new country with the assumption that it has been recognized by other countries, implying that a country has not been considered to exist as a new country before getting recognition from other countries. In this way, such recognition has constitutive power (O'Brien, 2001). Another opinion also states the same thing, namely even though the state element has been fulfilled in a political society, it still does not automatically turn into a new state within the international community, it is necessary to have a statement of recognition from other countries to fulfill the requirements for the establishment of a state (Syahmin, 1992) ^[15] then the country can be called a recognized country. Brownlie said, "Constitutive doctrine creates a great many difficulties" based on Brownlie's words it is clear that proponents of constitutive theory may create more problems if it is implemented (Shearer, 1994) ^[11]. The constitutive theory became less well known when Article 3 of the 1933 Montevideo Declaration on the Rights and Duties of the State stated that the political presence of a State was exempt from recognition by a different State.

Professor Lauterpacht is a supporter of the constitutive theory having the view that "A state is, and becomes, an international person through recognition only and exclusively", then reiterated that "Statehood alone does not imply membership of the family of nations. Recognition is a quas judicial duty and not an act of arbitrary discretion or a political concession" (Linderfalk, 2007) ^[5].

The boundaries used by a country to recognize the existence of a new state are general support from the region or local population, belief in the stability of the country, and the capacity and desire to make global commitments (McDougal & Reisman, 1981) ^[7].

The second is a declarative theory, declarative theory holds that the state does not create a state. This is because the entry of a State is an undeniable fact that has fulfilled the order of becoming a nation according to world guidelines and for this condition, the acknowledgment is only an acknowledgment of that fact. Furthermore, recognition is only an affirmation or confirmation of the birth of the country (Sompotan, 2017) ^[13]. Another opinion also states the same thing, namely if all elements of the state (individuals, domains, and sovereign governments, have the will and capacity to establish relations with other countries) (Brierly, 1955) ^[1] have been filled with a group of political individuals, then, at that time, without the help of others has turned into a country and should also be treated like a

country by other countries. So Recognition is just an affirmation or approval from a country that acknowledges that a new State has existed in the international community. Therefore, the new State has been able to enjoy its rights and carry out its obligations under international law.

Declarative theory neutralizes the existence of a State from the problem of an acknowledgment which in reality is very subjective. Declarative theory can also be said to be very objective and neutral when compared to the constitutional theory which in its implementation has been abandoned or no longer used because the existence of a country is not determined by the presence or absence of recognition by other countries (Harris, 1983) ^[3].

Based on the theory that has been written above, there are several forms of new state recognition, including Recognition of Rebels (Insurgency and Belligerency), de facto and de jure recognition, Implied Recognition, Collective Recognition, Premature Recognition, Conditional Recognition and Recognition of Governance and Democracy; and Recognition of Governance and Democracy (Thontowi & Iskandar, 2006) ^[16].

International law experts agree that the recognition of other countries (recognition) is essential in international relations. In the current era of modernization and globalization, every country cannot live in isolation without bilateral and/or international relations with other countries (Sompotan, 2017) ^[13]. However, if there is a country that has just declared its independence and will enter into relations with other countries, it is necessary to have recognition with various requirements such as the ability to carry out communication and complete relations in all fields with other countries, whether political, social and cultural, economic, technological. and science (Thontowi & Iskandar, 2006) ^[16]. Recognition in international law is not a simple matter because political and legal relations are needed between two or more states, because the granting or refusal of recognition of a state is often influenced by politics, which has an impact on legal ties.

2. The Founding of the Donetsk and Luhansk States and the Recognition of Russia

At the beginning of this article, the author explained that the independence of Donetsk began when a group of activists declared their freedom at the town hall on April 7, 2014, calling their country the People's Republic of Donetsk (Washington Post, 2014). Then the Luhansk state also declared its independence on 27 April 2014, after President Viktor Yanukovich was ousted from his government on 22 February 2014. The establishment of the two countries was a victory over the Antimaidan movement and the movement leaning towards Russia, which from the beginning had intended to be able to separate itself from the State of Ukraine. The independence of Donetsk and Luhansk at that time was only considered a normal uprising by their mother country before secession, namely Ukraine. The region has been closed in armed conflict with the Kiev army since a pro-Russian armed uprising following Russia's annexation of Crimea in 2014. Attempts to resolve the conflict in eastern Ukraine, set out in the 2015 Minsk agreement, have hit a stalemate. Kiev and pro-Moscow separatists have each accused the other of the abusers. A series of ceasefires have failed due to repeated violations by the belligerents (SINDONEWS, 2022) ^[12].

Then came the support or recognition by Russia for the independence of Donetsk and Luhansk as a sovereign state on February 21, 2022, Russia's recognition effectively terminated the 2014-2015 Minsk peace agreement between Ukraine and the two countries, although this agreement has not yet been implemented, until now seen by all parties, including Moscow, as the best opportunity for a solution. The deal calls for broad autonomy for two regions, Donetsk and Luhansk, within Ukraine. In response to Russia's statement, the United Nations reiterated its rejection of Russia's announcement that it recognized the independence of the Donetsk and Luhansk regions in eastern Ukraine.

Based on the description given by the author, the birth of Donetsk and Luhansk as a new country can be said to be valid because it meets the qualifications and requirements contained in Donetsk and Luhansk as a new country. Namely, there is a population, there is a government, a territory, and the ability to build a relationship with other countries. The qualifications that Donetsk and Luhansk already possess following the opinion conveyed by Boer, namely the birth/emergence of a state is an event of the fact that is independent of the provisions of international law, however, we should still have to distinguish between the state as an international person on the one hand and the capabilities of the new state. as an international person in carrying out obligations in the international world on the other hand.

According to the declarative theory of Donetsk and Luhansk, to be said to have an international personality, it should not require recognition from other countries. But in this case, as an international person, you need relations with other countries or other subjects of international law, Donetsk and Luhansk still need recognition from other countries, this is because, with this recognition, Donetsk and Luhansk will be able to start a relationship with other countries which will present international rights and obligations to be implemented in international relations. This is a middle ground to bridge between declarative and constitutive theories (Widagdo, 2008) ^[18].

After the declaration of independence of Donetsk and Luhansk in 2022, where Russia's recognition supports Donetsk and Luhansk while acknowledging that their existence is very influential on the existence of the two new countries, finally, other countries that recognize the existence of Donetsk and Luhansk are countries close to Russia, namely Cuba, Venezuela, Nicaragua, and Syria, there may even be countries that do not overtly take actions that reflect the recognition of the existence of Donetsk and Luhansk, such as agreements with other countries with Donetsk and Luhansk, diplomatic relations, or the president/prime minister/king of these other countries. officially held a state visit to Donetsk and Luhansk. However, this is not a condition or necessity for the recognition of the existence of Donetsk and Luhansk as new countries, but only reinforces the fact that Donetsk and Luhansk have been born in the international community and other countries respect Donetsk and Luhansk as a whole country.

Then what about the absence of recognition from the United Nations? The United Nations even criticized Russia's statement on the recognition of Donetsk and Luhansk. The history of the 20th century and the beginning of the 21st century has proven that one of the hallmarks of post-1945 international relations is the emergence of many new

countries after breaking away from colonialism. To date, around 143 countries have only joined the international community during this time and all of them have become members of the United Nations. The new countries were immediately accepted as members of the United Nations, thus it clearly shows that the constitutive theory is no longer used because it has been eroded by the times. The requirements given by the general assembly of the United Nations are that the new country must be able to accept the obligations contained in the United Nations charter, love peace (peace-loving), and be willing to carry out obligations and be determined by the general assembly on the recommendation of the United Nations Security Council (Suwardi), (2004) [14]. given by the general assembly of the United Nations, are only general in nature and do not cause difficulties or create problems for new countries that will become members of the United Nations. For a new country, being accepted as a member of the United Nations is like the confirmation of its birth. This also applies to Donetsk and Luhansk for the future after the Ukraine and Russia conflicts, considering that Russia is currently 2022 the presidency of the United Nations so it can make it easier for Donetsk and Luhansk when they later apply to become members of the United Nations. If later Donetsk and Luhansk are accepted as members of the United Nations, it will also be a confirmation for Donetsk and Luhansk as new countries. However, if the United Nations refuses to recognize Donetsk and Luhansk, it will also have no effect on the existence of Donetsk and Luhansk as new countries.

Conclusion

Russia's recognition of the founding of the Donetsk and Luhansk states is an essential aspect in terms of legal issues, and most importantly international politics, it cannot be denied that the granting of an acknowledgment of Donetsk and Luhansk can lead to legal consequences, especially those involving relates to the relationship between the recognized state and the one that recognizes it. So it can be concluded that with the existence of a country that has been recognized internationally, there will be many impacts, especially when viewed and reviewed from the political and legal aspects. One of the most visible is the participation of Cuba, Venezuela, Nicaragua, and Syria in recognizing the existence of Donetsk and Luhansk as new countries.

References

1. Brierly JL. Law of Nations. Oxford: Clarendon Press, 1955.
2. CNN. Taken back, 2022. from CNN: <https://www.google.com/search?q=https%3A%2F%2Fwww.cnnindonesia.com+%2Finternasional%2F20220222065227-134-762180%2FPerserikatan+Bangsa-Bangsa-tolak-rusia-akui-kemerdekaan+donetsk-luhansk-di-ukraina&oq=https%3A%2F%2Fwww.cnnindonesia.com+%2Finternasional%2F20220222065227-134-762180%2FPerserikatan+Bangsa-Bangsa-tolak-rusia-akui-kemerdekaan+donetsk-luhansk-di-ukraina&aqs=chrome..69i57j69i59l3j69i58.1232j0j9&sourceid=chrome&ie=UTF-8>, accessed Thursday, 20-10-2022 at 15.22 p.m
3. Harris DJ. Cases and Materials on International Law. London: Sweet and Maxwell, 1983.
4. Kompas. Taken back, 2022. from Kompas: <https://www.kompas.com/global/read/2022/02/23/091400270/4-negara-yang-bergabung-dengan-rusia-akui-kemerdekaan-donetsk-dan-luhansk?page=all> accessed Tuesday 18-10-2022 at 15.21 p.m
5. Linderfalk U. On the interpretation of treaties: the modern international law as expressed in the 1969 Vienna Convention on the Law of Treaties. Bassel: Springer Science & Business Media, 2007.
6. Mauna B. Hukum Internasional, Pengertian Peranan dan Fungsi dalam Era Dinamika Global. Bandung: Alumni, 2000.
7. McDougal MS, Reisman WM. International Law in Contemporary Perspective: The Public Order of the World Community: Cases and Materials. Foundation Press, 1981.
8. O'Brien J. International law. London: Cavedish, 2001.
9. Oppenheim L. International Law A Treaties, 8th Edition. London: Longman, 1955.
10. Shaw MN. International Law. New York: Grotius Publication Limited, Cambridge, 2008.
11. Shearer I. Starke's International Law. London: Butterworth, 1994.
12. SINDONEWS. Taken back from SINDONEWS, 2022.: <https://international.sindonews.com/read/693085/41/mengenal-donetsk-dan-luhansk-yang-diakui-putin-sebagai-negara-merdeka-1645495351>, accessed on Thursday, 22-10-2022 at 14.38 p.m
13. Sompotan HB. Tanggung Jawab Negara Yang Belum Mendapat Pengakuan Internasional Menurut Hukum Internasional. *Lex Et Societatis*, 2017.
14. Suwardi SS. Pengantar Hukum Organisasi Internasional. Jakarta: Universitas Indonesia Press, 2004.
15. Syahmin AK. Hukum Internasional Publik: Dalam Kerangka Studi Analitis. Bandung: Bina Cipta, 1992.
16. Thontowi J, Iskandar P. *Hukum Internasional Konteporer*. Bandung: Refika Aditama, 2006.
17. Washington Post. Taken back from Washington Post, 2014. https://www.washingtonpost.com/world/europe/kiev-says-russia-provokes-trouble-in-eastern-ukraine-just-as-in-crimea/2014/04/07/8242ee71-465b-4113-91be-93f8bfa67ff1_story.html, accessed on Wednesday 19, October 2022 at 10.10 a.m
18. Widagdo S, Wahyudi S, Setyorini Y, Basuki I. *Masalah-Masalah Hukum Internasional Publik*. Malang: Bayu Media Publishing, 2008.