

THE DYNAMIC OF CLAIM BETWEEN ISRAEL AND UNITED STATES ON JERUSSALEM

Achmad Zulfikar

Program Studi Hubungan Internasional Universitas Fajar
apa@kabarfikar.com

Muhammad Akbar Rahmadi

Program Studi Hubungan Internasional Universitas Darussalam Gontor
mehmedakbar@gmail.com

Irmawati

Fakultas Sosial Budaya Universitas Hasanuddin Makassar
irmawatiimaarah@gmail.com

Abstract

This study aims to analyze the dynamic of claim between Israel and United States on Jerussalem from the international law perspective. Al-Quds in Arabic means "The Holy One" which is another name of the city of Jerusalem. In its development Israel received strong support from the United States. This strong support was demonstrated by President Donald Trump in a statement on 6 December 2017 that Jerusalem (Al-Quds) is the capital of Israel. The statement gets the pros and cons of various parties in the world. This paper uses qualitative descriptive method and data collection through literature review. Finally, the study concludes that Israel and the United States based on consensus of UN member states can not make unilateral claims against Jerusalem (Al-Quds), because it is not in line with international law.

Keywords: *Israel; United States; Al-Quds; International Law*

Abstrak

Penelitian ini bertujuan untuk menganalisis dinamika klaim antara Israel dan Amerika Serikat tentang Jerussalem dari perspektif hukum internasional. Al-Quds dalam bahasa Arab berarti "Yang Kudus" yang merupakan nama lain dari kota Yerusalem. Dalam perkembangannya Israel mendapat dukungan kuat dari Amerika Serikat. Dukungan kuat ini ditunjukkan oleh Presiden Donald Trump dalam sebuah pernyataan pada 6 Desember 2017 bahwa Yerusalem (Al-Quds) adalah

ibu kota Israel. Pernyataan itu mendapat pro dan kontra dari berbagai pihak di dunia. Makalah ini menggunakan metode deskriptif kualitatif dan pengumpulan data melalui tinjauan pustaka. Akhirnya, penelitian ini menyimpulkan bahwa Israel dan Amerika Serikat berdasarkan konsensus negara-negara anggota PBB tidak dapat membuat klaim sepihak terhadap Yerusalem (Al-Quds), karena tidak sejalan dengan hukum internasional.

Kata kunci: *Israel; Amerika Serikat; Al-Quds; Hukum Internasional*

Introduction

Al-Quds comes from the Arabic meaning as “The Holy One” which is another name for the city of Jerusalem, a city in the Middle East and one of the oldest cities in the world and considered to the three major Abrahamic religions-Judaism, Christianity and Islam. Israelis and Palestinians are the two disputing sides in the city of Jerusalem, where Israel maintains its primary governmental institutions and the Palestine ultimately foresees it as its seat of power; however, neither claim is widely recognized internationally. The two countries dispute over the city has long gone and split the countries in the world into two blocs, between supporting the struggle of Palestinian supporting Israel to defend its colonies. Due to the weak Palestinian position in this claim, Israel and its allies are attempting through various means to claim Al-Quds territory as its territory. (Zulfikar, Maulidi dan Wibowo, 2018)

Mandour (2017) stated that the intractable conflicts in the Middle East and the cycle of violence among Israelis and Palestinians are deeply embedded in historical struggles over national sovereignty and the right to territory. Thontowi (2001:149) argue that the position of Jerusalem as a holy land for Abrahamic religions, not only contained functional evidence of Jerusalem as a spiritual meeting of the Prophets David, Ibrahim, Solomon, Moses, Isa and Muhammad, but also the historical significance of the value of peace that support by the agreement of neighboring countries to make Jerusalem a peaceful and neutral territory. While, Muchsin (2015:406) stressed that Palestinian issues should ideally be part of the problems of Muslims in general. The sense of Islamic brotherhood that grows and develops wherever Muslims are, becomes the main alternative in solving the problems of Muslims and the Palestinian State.

The Palestinian powerlessness to defend Al-Quds and the Israeli forces supported by its ally the United States has become the focus of the United Nations, even Post-World War II, the United Nations in 1947 devised a plan for Al-Quds (Jerusalem). UN General Assembly resolution 181 (II) of 29 November 1947 on partition envisaged a demilitarized Jerusalem as a separate entity under the aegis of the United Nations Trusteeship Council, which would draft a statute for Jerusalem and appoint a Governor. A legislature would be elected by universal adult suffrage. This statute would remain in force for 10 years and would then be duly examined by the Trusteeship Council, with citizens' participation through a referendum (United Nations Department of Public Information, 2003).

The ensuing hostilities prevented implementation of the resolution. Israel occupied the western sector of the Jerusalem area, and Jordan occupied the eastern sector, including the walled Old City. Thus, there came into existence a de facto division of Jerusalem. The UN General Assembly, however, by resolution 194 (III) of 11 December 1948, reaffirmed both the principle of internationalization and existing rights. The Arab States, refusing to recognize Israel, did not accept it. Israel also ignored the resolution and moved to extend its jurisdiction to that part of Jerusalem which it had occupied. On 23 January 1950, Israel declared Jerusalem its capital and established government agencies in the western part of the city. Jordan, for its part, moved to formalize its control of the Old City; however, Jordanian legislation indicated that this action did not prejudice the final settlement of the Palestinian issue (United Nations Department of Public Information, 2003).

The above explanation shows that Israeli claims against Al-Quds always get opposition from the international society, one of them is United Nations. Israel's disregard for UN Resolution 1948 shows that the country has no goodwill in settling the Al-Quds territory dispute. On the one hand the Palestinian helplessness caused Jordan to become a guardian of Al-Quds. The dynamics in claims against Al-Quds has increased since the statement of U.S. President, Donald Trump on December 6, 2017. He asserted that Jerusalem (Al-Quds) is the capital of Israel. Although President Trump has a basis for consideration in his remarks, this has shaken the world's reputation and belief in the United States, which is the mediator for two state solutions for both Israeli and the Palestinians.

In addition, President Trump's statement reaps the pros and cons of various parties. Certainly Israel as the center of the statement welcomes the support of the United States that

recognizes Jerusalem as Israel's capital, even the lobbies that Israel does to the EU and the countries deemed to be an ally of Israel. Countries incorporated in the Organization of Islamic Cooperation (OIC) led by several countries, one of which Indonesia strongly responds to the statement of President Trump and in a short time scheduled an emergency meeting in Turkey. The results of these OIC member states meetings resulted in a recommendation to bring the United States claim against Jerusalem (Al-Quds) to the United Nations. This has tamed the United States and Israel efforts against Al-Quds, the majority of United Nations member states in the General Assembly have objected to the claim and recommended efforts to ease the tensions caused by such unilateral claims.

Based on the above exposure, this study aims to analyze from the international law perspective that involves various countries in the dynamic of claim between Israel and United States on Jerusalem. This paper used qualitative research methods with data collection through literature review which sources from journal, book and internet that related toward the issue of Al-Quds, including how Israel and the United States claim towards Al-Quds (Jerusalem) in the perspective of international law.

The Brief of Jerusalem Status in United Nations

The position of Al-Quds as one of the oldest cities in the world and is considered holy to the three major Abrahamic religions-Judaism, Christianity and Islam is an irrefutable historical fact. Nevertheless, the claims of various parties, mainly from Israel with the support of the United States against Al-Quds are certainly unwarranted unilateral claims. It is therefore important to place Al-Quds in the perspective of international law. The status of Al-Quds in the international law perspective can provide legal certainty and can also provide an explanation that has a constitutional basis on the status of a region.

Al-Quds has long been the dispute of various parties. However, the foundation that is used does not yet have international law that has codification and written as it is today. The law of antiquity was more focused on the occupation of an area and the winner of the war got everything, including the region. Entering the era of the World War I, Ottoman Turks who controlled the Jerusalem area lost the war from the allied blocks, one of whose members was the British who got the rights to the territory of Jerusalem. Then after the

World War II, England handed over the mandate of the Jerusalem territory to the United Nations for a formal path.

The result of this formal submission is UN General Assembly resolution 181 (II) of 29 November 1947 on partition envisaged a demilitarized Jerusalem as a separate entity under the aegis of the United Nations Trusteeship Council, which would draft a statute for Jerusalem and appoint a Governor. A legislature would be elected by universal adult suffrage. This statute would remain in force for 10 years and would then be duly examined by the Trusteeship Council, with citizens' participation through a referendum. The ensuing hostilities prevented implementation of the resolution. Israel occupied the

western sector of the Jerusalem area, and Jordan occupied the eastern sector, including the walled Old City. Thus, there came into existence a de facto division of Jerusalem. (United Nations Department of Public Information, 2003)

The UN General Assembly, however, by resolution 194 (III) of 11 December 1948, reaffirmed both the principle of internationalization and existing rights. The Arab States, refusing to recognize the Israel, did not accept it. Israel also ignored the resolution and moved to extend its jurisdiction to that part of Jerusalem which it had occupied. On 23 January 1950, Israel declared Jerusalem its capital and established government agencies in the western part of the city. Jordan, for its part, moved to formalize its control of the Old City; however, Jordanian legislation indicated that this action did not prejudice the final settlement of the Palestinian issue. The war of June 1967 radically changed that situation. As a result of the war, Israel occupied East Jerusalem and the West Bank. (United Nations Department of Public Information, 2003)

Since then, a number of demographic and physical changes have been introduced, and both the General Assembly and the Security Council, in several resolutions, have declared invalid the measures taken by Israel to change the status of Jerusalem. Security Council resolution 252 (1968) in particular is explicit in this regard. In it, the Council considered "that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status". Israel was urgently called upon "to rescind all such measures already taken and to desist forthwith from taking any further action which tend to change the status of Jerusalem". The Security Council has

reaffirmed these two positions many times. (United Nations Department of Public Information, 2003)

When Israel took steps to make Jerusalem as its capital, the Security Council on 30 June 1980 adopted resolution 476 (1980) urgently calling on Israel, the occupying power, to abide by this previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy City of Jerusalem. After Israel's non-compliance with the resolution, the Council, on 20 August, adopted resolution 478 (1980), in which it reiterated its position that all actions altering the status of the city were null and void, and called upon States that had established diplomatic missions in Jerusalem to withdraw them. The General Assembly also considered Israel's action to be a violation of international law that did not affect the continued applicability of the Fourth Geneva Convention. This understanding, affirmed by the Assembly in December 1980, has been reaffirmed in subsequent years. (United Nations Department of Public Information, 2003)

During the 1980s, United Nations resolutions dealt with the Jerusalem issue in the wider context of the inadmissibility of the acquisition of territory by force and the applicability of the Fourth Geneva Convention to the Palestinian territory occupied by Israel since 1967. East Jerusalem has been considered, by both the General Assembly and the Security Council, as part of the occupied Palestinian territory. As the international community and in particular the Security Council continued to follow with concern developments affecting the question of Palestine, an important action was taken by the Council through resolution 672, adopted on 12 October 1990 following the violence that took place in Jerusalem at Haram Al-Sharif, where the Al-Aqsa mosque, the third holiest shrine in Islam, is situated. The Council, after condemning "especially the acts of violence committed by the Israeli security forces resulting in injuries and loss of human life", called upon Israel "to abide scrupulously by its legal obligations and responsibilities under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to all the territories occupied by Israel since 1967". (United Nations Department of Public Information, 2003)

The applicability of the Fourth Geneva Convention to Jerusalem was reaffirmed by the Security Council on 20 December 1990, when it expressed grave concern at the

deteriorating situation in “all the Palestinian territories occupied by Israel since 1967, including Jerusalem”, and called on Israel to abide by it. Since 1997, the tenth emergency special session of the UN General Assembly has been resumed several times. At the resumed emergency session held in February 1999, the Assembly affirmed its support for the Middle East peace process on the basis of the relevant Security Council resolutions and for the principle of land for peace. Recalling its relevant resolutions, including resolution 181 (II) (the Partition Plan) and those of the Security Council, the Assembly reaffirmed that the international society, through the United Nations, has a legitimate interest in the question of the city of Jerusalem and the protection of its unique spiritual and religious dimension. It further reaffirmed the continued invalidity of all actions taken by Israel, the occupying power that have altered or purported to alter the character, legal status and demographic composition of Jerusalem. (United Nations Department of Public Information, 2003)

In May 1999, the Israeli Government approved a plan to enlarge the area of the settlement of “Maaleh Adumim”, east of Jerusalem, by over 1.300 hectares (3,250 acres), forming a continuous strip of settlements. According to the 1999 report of the Palestinian Rights Committee submitted to the 54th session of the General Assembly, once completed, the number of settler households in the settlement would increase by an estimated 25 per cent. The UN General Assembly, in a resolution adopted on 9 February 1999, reiterated that all legislative and administrative measures and actions taken by Israel, the occupying Power, which had altered or purported to alter the character, legal status and demographic composition of Occupied East Jerusalem and the rest of the occupied Palestinian territory, were null and void and had no validity whatsoever. (United Nations Department of Public Information, 2003)

The Claim of Jerusalem between Parties

The UN General Assembly revisited the question of Jerusalem at its 55th session. In a resolution adopted on 1 December 2000, the Assembly determined that the decision of Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem was illegal and, therefore, null and void. The Assembly also deplored the transfer by some States of their diplomatic missions to Jerusalem in violation of Security Council resolution 478 (1980). These statements and resolutions, as well as many others adopted by United Nations bodies,

international organizations, non-governmental organizations and religious groups, demonstrate the continuing determination of the international community to remain involved in the future of Jerusalem. They also show the great concern over the delicate status of the peace process and the unanimous desire that no actions be taken that could jeopardize that process. (United Nations Department of Public Information, 2003)

The dynamics in Al-Quds status resumed when President Trump on December, 6 2017 declared Al-Quds (Jerusalem) as the capital city of Israel. The official website of the U.S. government www.whitehouse.gov in quotation of its statement as follows: "In 1995, Congress adopted the Jerusalem Embassy Act, urging the federal government to relocate the American embassy to Jerusalem and to recognize that that city — and so importantly — is Israel's capital. This act passed Congress by an overwhelming bipartisan majority and was reaffirmed by a unanimous vote of the Senate only six months ago; Yet, for over 20 years, every previous American president has exercised the law's waiver, refusing to move the U.S. embassy to Jerusalem or to recognize Jerusalem as Israel's capital city". (White House, 2017)

The above statement raises the pros and cons of various parties. Israel as a central figure welcomes the support of the United States that recognizes Jerusalem as Israel's capital, even the lobbies that Israel does to the European Union and the countries deemed to be an ally of Israel. Meanwhile, the countries joined in the Organization of Islamic Cooperation (OIC) led by several countries, one of which Indonesia strongly responds to the statement of President Trump and in a short time scheduled an emergency. Turkish President Recep Tayyip Erdogan called an extraordinary summit of the Organisation of Islamic Cooperation (OIC) in December, 13 2017, following Trump's decision on Jerusalem. During the meeting in Istanbul, the 57-member group denounced Trump's move as "null and void" and called on the United Nations to "end the Israeli occupation" of Palestine. Muslim leaders warned that Trump's administration will be liable for "all the consequences of not retracting from this illegal decision". (Al-Jazeera, 2017a)

Turkey's Hurriyet newspaper reported that Erdogan launch initiatives at the United Nations to have Washington's "disgraceful" decision annulled. He stated, "As a country, we are determined to do our bit on this issue. We will wash the dirty laundry of those who breach international law". He also stated, "We will work to annul this unlawful decision, first in the Security Council and then in the UN General Assembly if it is vetoed there". He

added that Ankara will encourage other countries to recognise the Palestinian state, "Right now, 137 countries in the world recognise the Palestinian state. God willing, this number will further increase with our efforts". (Al-Jazeera, 2017a)



Figure 5. UN Jerusalem resolution: How each country voted (Al-Jazeera, 2017b)

Pressure from OIC member states succeeded in bringing the issue of U. S. claim to the United Nations meeting so that an emergency session was held. The UN General Assembly has decisively backed a resolution effectively calling on the US to withdraw its recognition of Jerusalem as the capital of Israel. The text says that any decisions regarding the status of the city are "null and void" and must be cancelled. The non-binding resolution was approved by 128 states, with 35 abstaining and nine others voting against in 21 December 2017. The nine who voted against the resolution were the U.S., Israel, Guatemala, Honduras, the Marshall Islands, Micronesia, Nauru, Palau and Togo among the 35 abstaining were Canada and Mexico. Those voting in favour included the other four permanent members of the UN Security Council (China, France, Russia and the UK) as well as key US allies in the Muslim world. There were 21 countries who did not turn up for the vote. (BBC, 2017)

Based on the above explanation shows that the Israeli and U.S. claims to Jerusalem to get strict surveillance from the international society through various institutions of international cooperation. From the establishment of UN Resolution in 1947 to the resistance

to the U.S. claim on Jerusalem's as Israel capital by 2017. This shows that for 70 years Israel's efforts to seize control of the Palestinian territories in Jerusalem have been opposed by the international society and have implications for Al-Quds/Jerusalem from the unilateral recognition of Israel.

Indonesian Government Support to Palestine

Similar with international environment dynamics, Indonesia government has the same way with these countries towards Jerusalem issue. Since the President elect of United States, Donald Trump, recognize Jerusalem as the capital of Israel and planned to move the United States Embassy to these Holy City of three religions, international attention and Indonesia itself was changed sharply to sudden acrobatic President Trump policies. Indonesia government as a one country that supported by Palestine in its independence has also played an important role to liberate Palestine by its free and active foreign policy. What has been done by Trump administration to recognise Jerusalem as the capital of Israel is absolute diplomatic ill and short-term progress to establish a peace in Middle East. Several members of white house clarified that Donald Trump wanted to become a mediator in Palestine-Israel conflict, but at the same time, it is succeed increase total conflict situation between Palestinian and Israeli forces. (Telegraph, 2017)

In Indonesia, the support for Palestine liberation was established by people mass movement to support and encourage peace in the Middle East through *Aksi Bela Palestina*. By this movement, make Indonesia care to what Palestinian people by giving a message of peace to the world. Indonesia always care and struggle for Palestine liberation, with the based opinion and past experience that Palestine supported Indonesia's independence. In the other side, the empowerment of social media movements echoed on the internet network, which could be done by inform and publish the violation of Palestinian that hurted by Israeli soldier. From *Aksi Bela Palestina*, it's created a people awareness and unite lots of people against Trump decision, because in every breath Indonesian always (there is support for) Palestine. (Kompas, 2017)

The support for Palestine by the Indonesian government continues to be shown on public and the world. The arrival of the Palestinian Foreign Minister, Riyad al-Maliki to Indonesia in October 2018 was welcomed with the event as known as Solidarity Week for

Palestine by the Ministry of Foreign Affairs of Republic Indonesia on October, 13-17 2018. The Indonesian Minister of Foreign Affairs, Retno Marsudi stated that, "this is a form of continuity of Indonesia commitment for Palestine, and also the way to increase the understanding and concerning of Indonesian people to the struggle of Palestinian people". The Solidarity Week agenda includes: the inauguration of Palestine Walk: Road to Freedom in Bandung, Walk for Peace and Humanity at Car Free Day Jakarta, bilateral consultation between the Indonesian Foreign Minister and the Palestinian Foreign Minister, public lectures and honorary visits to the President of the Republic of Indonesia, Joko Widodo and the Indonesian Parliament (DPR RI). (Kementerian Luar Negeri Republik Indonesia, 2018)

Conclusion

Based on the above exposure it can be concluded the international law perspective indicates that the countries in the world shows the surveillance towards Al-Quds through international cooperation agencies from the establishment of UN Resolution in 1947 to the U.S. claim on Jerusalem's as the capital of Israel in 2017. The above sequence of events shows that Israel the United States based on international law perspective can not make unilateral claims against Al-Quds (Jerusalem).

After explanation, the author sees this issue as one of the ways, which the Israel divide and separate the unity and strength of Muslims around the world. However, God has his own way of unifying the hearts of Islamic community. From this global challenge to Jerusalem, the author wanted to conclude and make several recommendations in order to show the public what have to be done towards the conflict between Palestine and Israel:

First, the whole parties and social society must support for United Nations and other international organization that literally struggled for the future of Jerussalem status between Palestine and Israel. The United Nations must keep strong in order to produce a new peace resolution related to status of Jerussalem, based on international humanitarian law and the whole previous resolution of Jerussalem. We believed that the future of Jerussalem became one of the peace city model of the world.

Second, support and fully encourage the role of the Government of the Republic of Indonesia, in this case the Ministry of Foreign Affairs of Republic of Indonesia in carrying out all the peace and justice missions to Palestine. Indonesia with its foreign policy can make

a better place for Palestinian, whether in the form of global negotiations and *P to P* diplomacy.

Third, encourage constructive synergies and cooperation between aid agencies for the Palestinian people and the Indonesia government. In this case, both parties facilitate and provide regulation and legal aid to promote humanitarian assistance.

References

- Al-Jazeera. (2017a). Five key developments since Trump's Jerusalem move. Accessed from <http://www.aljazeera.com/news/2017/12/key-developments-trump-jerusalem-move-171214135132799.html> on October, 30 2018.
- Al-Jazeera. (2017b) UN Jerusalem resolution: How each country voted. Accessed from <http://www.aljazeera.com/news/2017/12/jerusalem-resolution-country-voted-171221180116873.html> on October, 30 2018.
- BBC. (2017). Jerusalem: UN resolution rejects Trump's declaration. Accessed from <http://www.bbc.com/news/world-middle-east-42446027> on October, 30 2018.
- Kementerian Luar Negeri Republik Indonesia. (2018). Solidarity Week for Palestine: Tidak Pernah Padam, Dukungan Indonesia Bagi Perjuangan Palestina. Accessed from <https://www.kemlu.go.id/id/berita/Pages/Solidarity-Week-for-Palestine.aspx> on October, 30 2018.
- Kompas. (2017) Aksi Bela Palestina yang Berbuah Petisi untuk Donald Trump. Accessed from <http://megapolitan.kompas.com/read/2017/12/18/08222541/aksi-bela-palestina-yang-berbuah-petisi-untuk-donald-trump> on October, 30 2018.
- Mandour, M. Alaa. (2017). Jerusalem: A Tale of A City. *Journal of Islamic Architecture* Vol. 4 No. 4. Accessed from <http://ejournal.uin-malang.ac.id/index.php/JIA/issue/view/439>.
- Muchsin, Misri A. (2015). Palestina dan Israel: Sejarah, Konflik dan Masa Depan. *Miqot: Jurnal Ilmu-ilmu Keislaman* Vol. 39 No. 2. Accessed from <http://jurnalmiqotjs.uinsu.ac.id/index.php/jurnalmiqot/article/view/32>.
- Telegraph. (2017) UK: Clashes over US recognition of Jerusalem as Israeli Capital Claim 13th victim. Accessed from <https://www.telegraph.co.uk/news/2017/12/30/clashes-us-recognition-jerusalem-israeli-capital-claim-13th/> on October, 30 2018.

Thontowi, Jawahir. (2001). Yerusalem Tanah Suci Agama Samawi dalam Perspektif Hukum dan Perdamaian. *Jurnal Hukum Ius Quia Iustum* Vol. 8 No. 18. Accessed from <http://journal.uii.ac.id/index.php/IUSTUM/article/view/4857>.

United Nations Department of Public Information. (2003). The Status of Jerusalem in The Question of Palestine and the United Nations. Accessed from <http://www.un.org/Depts/dpi/palestine/ch12.pdf> on October, 30 2018.

White House. (2017) Statement by President Trump on Jerusalem. Accessed from <https://www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/> on October, 30 2018.

Zulfikar, Achmad, Romi Maulidi dan Waskito Wibowo. (2018). Israel and United States Claim on Al-Quds: World History and International Law Perspective. Accessed from: <https://doi.org/10.31227/osf.io/932fd> on October, 30 2018.