

ANALYSIS OF PRINCIPLES OF INTERNATIONAL DEVELOPMENT ASSISTANCE IN INTERNATIONAL ASSISTANCE AGREEMENT FOR INDONESIA

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ABSTRAK

Konsep bantuan pembangunan internasional yang dikenal sebagai *official development assistance* serta prinsip-prinsip mengenai efektivitas bantuan yang terdapat dalam *Paris Declaration on Assistance Effectiveness* tahun 2005. Analisis penerapan prinsip-prinsip tersebut lalu akan dilakukan terhadap perjanjian pemberian bantuan internasional dari Amerika Serikat dan Jepang terhadap Indonesia. Penelitian dilakukan secara yuridis normatif, dengan mengacu pada norma-norma hukum yang ada dalam hukum internasional maupun hukum nasional.

Kata kunci: hukum internasional, bantuan, pembangunan, *development*

ABSTRACT

Concept of official development assistance (ODA) and the principles on assistance effectiveness as laid out in Paris Declaration on Assistance Effectiveness 2005. It will then analyze the implementation of such principles within assistance agreements concluded between governments of United States and Japan with Indonesia. Research was done with normative juridical approach, by referring to rules of law existing in international law and national law.

Keywords: international law, assistance, development

INTRODUCTION

1.1 Background

Jeremy Bentham was the person who first introduced the term "international law" in 1780. Through the quote above, he has described how a bigger thing, namely the common interest, originates from a smaller thing called the individual interest. Even though in the end the common interest becomes more important, in reality it is difficult to fulfill these interests without understanding what each individual's interests are.

Every human being is an individual who has his or her own interests.¹ The interests that have existed since birth are demands that must be fulfilled and grow more complex as we get older. Fulfilling the interests of each individual will certainly continue to be threatened by various kinds of obstacles or dangers, including the interests of other individuals or groups. Therefore, every human being needs to cooperate with each other in order to overcome existing obstacles in order to fulfill their own interests and common interests.

In living together, namely social life, humans as individuals will continue to interact with each other. This situation can cause conflict or conflict between one individual and another. Conflicts that occur generally stem from conflicting interests.² Therefore, it is necessary to protect the interests of each individual in society in the form of a code of conduct that regulates life together in every society, *ubi societas ibi ius*.³ These guidelines are called norms or legal rules.

In the traditional context, namely before the First World War and the Second World War, international law can easily be defined as the law that regulates relations between one country and another.⁴ However, after the First World War, the first non-state actor to be regulated through international law began to emerge which, although debated, had had legal personality since before the second World War, namely the Holy See. In

¹ Sudikno Mertokusumo, *Mengenal Hukum* (Yogyakarta: Cahaya Atma Pustaka, 2010), p. 1.

² M. Afzalur Rahim, *Managing Conflict in Organizations*, 4th ed. (New Jersey: Transactions Publisher, 2011), p. 16.

³ Mertokusumo, *op. cit.*, p. 35.

⁴ Peter Malanczuk, *Akerhurst's Modern Introduction to International Law*, 7th ed. (New York: Routledge, 1997), p. 1

1929, the Holy See entered into the Lateran Treaty, following Italy's annexation of the Papal States in 870.⁵

International organization law then emerged as a branch of international law that specifically discusses the position of international organizations in international law. International organizations are generally defined as entities formed by States through an international agreement. This entity then has autonomy or independent will from its members so that it needs to separate its rights and obligations from the countries that form it.⁶ This then gives rise to the consequence that international organizations and states are "individuals" in the order of international society whose existence now supports each other in achieving their respective interests.

Based on OECD data in the 2000-2014 period, among the countries that provided the largest international development assistance to Indonesia were Japan and the United States.⁷ The United States, as explained previously, is one of the main actors in international development assistance which is the main cause of the establishment of the OEEC and OECD; while Japan itself is also a member of the DAC. For this reason, the application of the principles of international development assistance in agreements providing international assistance from the two countries to Indonesia has become an important issue to be discussed.

1.2 Problem Formulation

Based on the background described previously, several main problems were formulated which will be the focus of this research, namely:

1. How has the concept of international development developed in international law?
2. What is the concept of the principles of international development assistance contained in the Paris Declaration on Assistance Effectiveness in providing international assistance?

⁵ Lihat Pasal 2 Perjanjian Lateran antara Kerajaan Italia dan Takhta Suci, 11 Februari 1929

⁶ Jan Klabbbers, *An Introduction to International Institutional Law* (Cambridge: Cambridge University Press, 2002), p. 12, <http://catdir.loc.gov/catdir/samples/cam033/2002067359.pdf> (diakses 4 Maret 2013).

⁷ Diolah dari *Query Wizard for International Development Statistics* (OECD), <http://stats.oecd.org/qwids>.

3. How are these principles applied in the agreement providing international assistance between the United States and Japan to Indonesia?

RESEARCH METHODS

This type of research is normative juridical, namely research that refers to legal norms, especially international legal norms such as international agreements, international customary law, general legal principles, international judicial decisions, opinions of international law scholars as well as other sources of international law.

RESEARCH RESULTS AND DISCUSSION

1. Development of the Concept of International Development Assistance

Social and economic development is one of the most important issues in the scope of international cooperation, and is almost always the main goal of international cooperation itself, as stated in the preamble to the United Nations Charter and the preamble to the League of Nations Covenant. .

The concept of international development assistance, which is a real form of cooperation in the field of international development, was actually first introduced not by the UN or the League of Nations, but by another international organization called the OECD (Organization for Economic Co-operation and Development).⁸ However, in subsequent developments, the concepts of international development assistance and the OECD are two things that are stranger and rarely found in international legal literature. Based on this, in the following section we will first briefly explain the history of the development of the concept of international development assistance.

a. a. Concept Before the Second World War

The concept of international assistance has actually been known since humans began to recognize the concept of civilization. When wars began to occur between each other, some civilizations channeled military assistance to others

⁸ OECD, "Aid statistics" (Paris: OECD), <http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm>, (diakses 11 Februari 2014).

through alliances in war.⁹ Although this form of assistance cannot yet be called international development assistance, it can be said that the development of the concept of international assistance stems from something like that. Forms of assistance continued to develop until finally in the 19th century one of the first forms of international development assistance emerged. In that century, the United States created the Act for the Relief of the Citizens of Venezuela, precisely in 1812, and made a policy of utilizing surplus food production in the context of developing foreign markets which began in 1896. These events can also be said to be the starting point. The first starting point for the development of the concept of international development assistance in a modern understanding.

b. Concept After the Second World War

The post-Second World War period has become the next chapter in the development of the concept of international development assistance towards the modern concept known today. The first starting point for developments at that time appeared in a program called the Marshall Plan. The general scheme of development of international assistance during that period and thereafter can be seen in the table.

Period	Trigger	Ideology	Objective	Types of Assistance
1940s	<i>Marshall Plan, OECD, and the UN system, including the World Bank.</i>	Planning.	Post-war reconstruction.	Most of the programs Assistance.
1950s	United States, with the rise to power of the Soviet Union in 1956.	The Cold War and its increasing role of	Community Development Movement.	Food and projects Assistance

⁹ Peter Hjertholm dan Howard White, "Foreign aid in historical perspective: backgrounds and trends," dalam *Foreign Assistance and Development: Lessons Learnt and Directions For The Future*, ed. Finn Tarp (London: Routledge, 2000), p. 60.

		recipient countries.		
1960s	Bilateral programs.	The Cold War and support for the production sector in recipient countries.	Production and infrastructure sectors.	Technical assistance and budget support as well as multilateral projects.
1970s	Multilateral programs, especially the World Bank, IMF (International Monetary Fund) and bodies established by Arab countries.	Continued assistance for the production sector and meeting basic needs.	Poverty alleviation and other social sectors.	Food assistance and import support.

1980s	The emergence of NGOs (Non-Governmental Organizations/NGOs), since the mid-1980s.	Market adjustments (market-based adjustments).	Macroeconomic policy reform .	Financial assistance and debt settlement programs.
1990s	Eastern Europe and the former Soviet Union countries became recipients of assistance rather than donors; the emergence of other international bodies.	Return to the state.	Poverty alleviation and government reform.	Sectoral supports.

Table 2.1 - Historical Scheme of International Assistance Development¹⁰

The Marshall Plan was a post-war program initiated by the United States Secretary of State, George Catlett Marshall, in 1947, through his speech at Harvard University, United States. This program is basically an international assistance program from the United States which aims to support reconstruct or rebuild European countries that have suffered destruction due to the Second World War.

¹¹ An organization called the Organization for European Economic Cooperation (OEEC) was formed on April 16 1948 to accommodate and supervise the achievement of the program's objectives.

c. International Development Assistance and International Organizations

As explained in the previous section, the importance of the concept of international development assistance in development issues has been recognized by the international community since the end of the Second World War. International organizations that existed at that time not only recognized and discussed the concept of international development assistance, but also played a role in distributing this assistance, for example the OEEC which acted as coordinator of the Marshall Plan. This shows that international organizations can play an important role in the development of the concept of international development assistance, so it is also necessary to discuss the role of these international organizations at this time.

d. The OECD's Role in International Development Assistance

As explained in the previous section, the existence of the OECD as an international organization in the field of economic cooperation was preceded by the formation of the OEEC. OEEC is an international organization founded through the

¹⁰ Diolah dari Hjertholm, Peter dan Howard White, *op. cit.*, p. 59

¹¹ OECD, "The "Marshall Plan" speech at Harvard University, 5 June 1947" (Paris: OECD), <http://www.oecd.org/general/themarshallplanspeechatharvarduniversity5june1947.htm>, (diakses 14 Februari 2014).

Convention on European Economic Co-operation (hereinafter referred to as the OEEC Convention) on April 16 1948 which operates in the field of international economic cooperation.

OEEC membership is regional, that is, limited to Western European countries with the exception of the United States and Canada. The main objective of establishing the OEEC, as stated in its Convention, is limited to coordinating the implementation of the Marshall Plan, in the form of a series of post-Second World War reconstruction assistance provided by the United States and Canada to Western European countries.

In 1961, after being considered quite successful in achieving its main objectives, the OEEC was finally replaced by the OECD through the Convention on the Organization for Economic Co-operation and Development (hereinafter referred to as the OECD Convention) which was made in Paris on December 14 1960. Through a legal basis that Recently, the OECD formulated a broader goal than the OEEC, namely helping governments around the world achieve sustainable economic growth and improving social living standards in its member countries while maintaining financial stability, so that it can contribute to world economic development. At that time twenty countries, including the United States and Canada, became original members by becoming the first adopters of the OECD Convention.¹²

2. RINICIPLES OF INTERNATIONAL DEVELOPMENT AID

Previously we explained that the concept of international development assistance known today is based on the ODA (Official Development Assistance) concept which was first adopted by the DAC (Development Assistance Committee), one of the subsidiary bodies of the OECD (Organization for Economic Co-operation and Development), with the aim of increasing the effectiveness of international development assistance.

¹² OECD, “List of OECD Member Countries – Ratification of the Convention on the OECD” (Paris: OECD), <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> (diakses 22 Desember 2014).

However, basically the ODA concept is just a standard that cannot be used to achieve these goals without other steps that reform the pattern of providing assistance itself. Based on this, in this section we will discuss steps to reform international development assistance and the principles that have emerged regarding this within the scope of international law.

3. Principles of International Development Assistance within the Scope of Indonesian National Law

An understanding of the position of the principles of international development assistance will only be fully understood by reviewing the existence of these principles in Indonesia's national legal system. As previously mentioned, Indonesia itself is one of the 138 countries that have signed the Paris Declaration and has also made the Jakarta Commitment which adopted the Paris Declaration. Based on this, the following section will discuss several Indonesian national legal instruments related to international development assistance.

a. Government Regulation Number 2 of 2006

In 2006, the Indonesian Government established Government Regulation No. 2 of 2006 concerning Procedures for Procuring Loans and/or Receiving Grants and Forwarding Foreign Loans and/or Grants (hereinafter referred to as Government Regulation No. 2/2006). As written in the title of the regulation, Government Regulation No. 2/2006 regulates foreign loans and grants.

PP Invitation No. 2/2006 in 2006 was one year apart from the adoption of the Paris Declaration, so it can be assumed that Government Regulation No. 2/2006 has adopted the principles contained in the Paris Declaration. General Provisions of Government Regulation 2/No. 2006 also included the ODA concept regarding conventional loans, although with different grant component criteria.

However, according to the Joint Evaluation of the Paris Declaration, Phase 2 report made by the Indonesian Government in 2006, Government Regulation No. 2/2006 is not a follow-up to the state's commitment in the Paris Declaration, but rather a follow-up to the state's commitment in the 2004 RPJMN (National Medium Term Development Plan). Indonesia's first form of

commitment in adopting the Paris Declaration was the Jakarta Commitment which was mentioned in the previous section.

b. Government Regulation Number 10 of 2011

In 2011, the Indonesian Government replaced Government Regulation No. 2/2006 with Government Regulation No. 10 of 2011 concerning Procedures for Procuring Foreign Loans and Receiving Grants (hereinafter referred to as Government Regulation No. 10/2011). As a replacement for Government Regulation No. 2/2006, Government Regulation No. 10/2011 also regulates foreign loans and grants.

Enactment of Government Regulation No. 10/2011 on 12 February 2011 did occur before the adoption of the Busan Partnership, but after the adoption of the Paris Declaration and the Accra Agenda for Action. Even though Government Regulation No. 2/2006 and Government Regulation No. 10/2011 were both promulgated after the Paris Declaration, but in article 2 Government Regulation No. 10/2011 states the principles of procuring foreign loans and receiving grants as follows;

- transparent;
- accountable;
- efficient and effective;
- caution;
- not accompanied by political ties; And
- does not have contents that could disrupt the stability of state security.

The first thing that needs to be noted is the use of the words "principle" itself in the article, which is in line with the essence of the Paris Declaration.

Next, even though the six letters in the article do not directly adopt the principles contained in the Paris Declaration, these six letters can at least be found as part of the commitments which include the principles of the Paris Declaration, for example the principle of accountability which is included in the commitment the principle of mutual accountability and the principle of transparency which are included in the commitment to the principles of

alignment and harmonization. Based on this, it can be said that Government Regulation No. 10/2011 has also adopted the principles in the Paris Declaration.

2. International Development Assistance and International Treaty Law

As mentioned in the previous chapter, ODA can be in the form of grants or loans from donor countries to assistance recipient countries. These grants and loans are provided through international agreements, as also stated in Article 1 points 1, 6 and 7 Government Regulation No. 10/2011. Based on this, it is necessary to first discuss the international agreement itself.

International treaties are one of the sources of law mentioned in Article 38 (1) of the Statute of the International Court of Justice. This article determines four types of sources of international law that can be used by the International Court in adjudicating international law cases. Even though there is absolutely no editorial mention of "sources of international law," international law scholars generally agree that the contents of the article are indeed an elaboration of existing sources of international law.

¹³ These sources are as follows:

- international agreements, both general and particular, which determine regulations that are clearly recognized by the litigious States;
- international custom, as evidence of the acceptance of a general practice as law;
- general legal principles recognized by civilized nations; And
- court decisions and opinions of the most prominent scholars from various countries, as a subsidiary way to determine the rule of law (referring to the provisions of Article 59 that decisions of the International Court of Justice have no binding force except for the parties in the case and regarding related cases just).

CONCLUSIONS AND SUGGESTIONS

¹³ Maurice Mendelson, "The International Court of Justice and sources of international law," dalam *Fifty Years of International Court of Justice: Essays in honour of Sir Robert Jennings*, ed. Vaughan Love dan Malgosia Fitzmaurice, (Melbourne: Cambridge University Press, 1996), p.104.

Conclusion

1. International assistance is a concept that has been known since the beginning of human civilization and continues to develop today. This is because the concept of assistance itself is a fundamental concept and a necessity in human life as social creatures. In fact, as stated by Mochtar Kusumaatmadja, international law emerged from the need for the international community to interact with each other. This analogy shows that international assistance and international law originate from similar sociological bases.

The concept of ODA (Official Development Assistance) then emerged as a result of the development of the concept of international assistance due to the interaction of the international community. The large number of interactions in the form of international assistance prompted a committee called the DAC (Development Assistance Committee) consisting of assistance-giving countries to create a standard regarding assistance itself. This standard, ODA, later developed into a concept that is synonymous with international assistance in the field of development with the adoption of the MDGs (Millennium Development Goals) by the UN.

3. The problems that later emerged when ODA itself needed more standards in its function as a development tool were answered by the international community, including Indonesia, by implementing an agenda to increase the effectiveness of ODA in order to increase the effectiveness of development globally. One of the successes of this agenda can be found in the formulation of the principles of assistance effectiveness in the Paris Declaration on Assistance Effectiveness (hereinafter referred to as the Paris Declaration). The principles contained in the Paris Declaration have succeeded in providing a form of assistance effectiveness agenda with practical commitments and considerable participation from the international community.

This participation can be seen not only through international legal instruments created by Indonesia but also in Indonesian national legal instruments.

Suggestion

Based on the legal research that has been carried out, the author would like to convey several suggestions;

A. As a country with an economy that continues to grow and is less dependent on assistance, Indonesia will also have a higher bargaining position in the future in negotiations with more developed countries. The OECD has also proven to be an organization that plays an important role in the development of the concept of international development assistance and international development issues themselves. Based on this, it is important for Indonesia to participate in OECD membership so that it can play a bigger role in the formation of international law in the field of development.

B. Further research needs to be conducted regarding the impacts of applying the principles of increasing assistance effectiveness, using economic and legal discipline approaches, so that international development assistance, whether in the form of grants or loans, can be negotiated and utilized more optimally.

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BIBLIOGRAPHY

Atwood, J. Brian. "ODA and Beyond: Setting the Framework." Pidato yang disampaikan dalam diskusi *Society for International Development* tanggal 25 September 2012 di Amsterdam, Belanda.

Sudikno Mertokusumo, *Mengenal Hukum* (Yogyakarta: Cahaya Atma Pustaka, 2010), p. 1.

M. Afzalur Rahim, *Managing Conflict in Organizations*, 4th ed. (New Jersey: Transactions Publisher, 2011), p. 16.

Mertokusumo, *op. cit.*, p. 35.

Peter Malanczuk, *Akerhurst's Modern Introduction to International Law*, 7th ed. (New York: Routledge, 1997), p. 1

Lihat Pasal 2 Perjanjian Lateran antara Kerajaan Italia dan Takhta Suci, 11 Februari 1929.

Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge: Cambridge University Press, 2002), p. 12,

<http://catdir.loc.gov/catdir/samples/cam033/2002067359.pdf>

(diakses 4 Maret 2013).

Diolah dari *Query Wizard for International Development Statistics* (OECD), <http://stats.oecd.org/qwids>.

OECD, “Aid statistics” (Paris: OECD),

<http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm>, (diakses 11 Februari 2014).

Peter Hjertholm dan Howard White, “*Foreign assistance in historical perspective: backgrounds and trends*,” dalam *Foreign Assistance and Development: Lessons Learnt and Directions For The Future*, ed. Finn Tarp (London: Routledge, 2000), p. 60.

Diolah dari Hjertholm, Peter dan Howard White, *op. cit.*, p. 59

OECD, “The “Marshall Plan” speech at Harvard University, 5 June 1947” (Paris: OECD), <http://www.oecd.org/general/themarshallplanspeechatharvarduniversity5june1947.htm>, (diakses 14 Februari 2014).

OECD, “List of OECD Member Countries – Ratification of the Convention on the OECD” (Paris: OECD),

<http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> (diakses 22 Desember 2014).

OECD, “DAC List of ODA Recipients,” *op. cit.*, (diakses 30 Desember 2015).

“*This Seventh Amendment hereby amends the Agreement as follows: 1. Article 4 (a) of the Agreement is hereby amended by deleting the Completion Date of which is "September 30, 2014" and substituting in lieu thereof "September 30 , 2015"*”, lihat Indonesia dan Amerika Serikat, *Seventh Amendment to Assistance Agreement between The Government of the Republic of Indonesia and The United States of America for Health Programs in Indonesia*, 30 Mei 2014, Section A.

REGULATION

Indonesia, *Keputusan Presiden Republik Indonesia Nomor 100 Tahun 2001 tentang Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi, dan Tata Kerja Menteri Negara Koordinator.*

Indonesia, *Peraturan Pemerintah Nomor 2 Tahun 2006 tentang Tata Cara Pengadaan Pinjaman Dan/Atau Penerimaan Hibah Serta Penerusan Pinjaman Dan/Atau Hibah Luar Negeri*, Lembaran Negara No. 3 Tahun 2006, TLN 4597.

Indonesia, *Peraturan Pemerintah Nomor 10 Tahun 2011 tentang Tata Cara Pengadaan Pinjaman Dan Penerimaan Hibah*, Lembaran Negara No. 23 Tahun 2011.

Indonesia, *Peraturan Presiden Nomor 5 Tahun 2010 tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2010-2014.*

Indonesia, *Peraturan Presiden Nomor 7 Tahun 2005 tentang Pembangunan Jangka Menengah Nasional Tahun 2004-2009*, Lembaran Negara Nomor 11 Tahun 2005.

Indonesia, *Peraturan Presiden Nomor 24 Tahun 2010 Tentang Kedudukan, Tugas, dan Fungsi Kementerian Negara serta Susunan Organisasi, Tugas, dan Fungsi Eselon I Kementerian Negara.*

INTERNATIONAL AGREEMENTS

Indonesia dan Amerika Serikat. *Assistance Agreement between The Government of the Republic of Indonesia and The United States of America for Health Programs in Indonesia.* 15 September 2009. http://treaty.kemlu.go.id/uploads-pub/5642_USA-2009-0338.pdf. Diakses 20 Desember 2015.

Indonesia dan Amerika Serikat. *Seventh Amendment to Assistance Agreement between The Government of the Republic of Indonesia and The United States of America for Health Programs in Indonesia.* 30 Mei 2014. http://treaty.kemlu.go.id/uploads-pub/5641_USA-2014-0339.pdf. Diakses 22 Desember 2015.

Indonesia dan Jepang. *Exchange of Notes between the Government of the Republic of Indonesia and the Government of Japan concerning a Japanese loan to be extended with a view to promoting the economic stabilization and*

development efforts of the Republic of Indonesia. 18 Februari 2014.
http://treaty.kemlu.go.id/uploads-pub/5048_JPN-2014-0504%20ed.pdf. Diakses
20 Desember 2015.