INTRODUCTION

State recognition is an important institution in international relations between countries, as well as a fundamental problem in international law. It is said that recognition is an important and fundamental institution in international relations between states, because before a new states can establish complete and perfect relations in various fields with other states, it must first go through the door of "recognition". Recognition of a new State is a statement or attitude of a State to recognize the existence of a new political entity as a new State. A country that has not been recognized can give an impression to other countries that the country is "incapable" or does not have the capacity to carry out its international relations. Recognition is a necessity, because no country will be able to live in isolation and distance itself from other countries as members of the international community by relying solely on its capabilities.

De Visher said that international recognition institutions fulfill two social needs in life between countries. First; not to alienate a human group from international relations by preventing the existence of an adverse legal vacuum, both for individual interests and for relations between countries. On the other hand, if it is said that the institution of recognition is a fundamental problem in international law, because there is no obligation to demand recognition based on the provisions of international law. Giving or holding back recognition of a country or a new government is a matter of policy from the country that will give such recognition.

Recognition will further guarantee the position of a (new) country as the subject of international law, because the function of recognition is: "To ensure a new country can occupy a reasonable place for independent and sovereign political organisms in the midst of the families of nations so that it...

2Article 1 letter D Montevideo Convention 1933, affirms "a capacity to enter into relations with other State". In this case, the ability to conduct international relations is a strategic determinant of the existence of a new country to be accepted as a member of the international community.
3The existence of different needs and interests in the international community, requires countries to interact with each other.
4See S. Tasrif, Supra, note 1, at 4.
5Ibid, at 3.
that perfect can establish relations with other countries, without worrying that his position as a political entity will be disrupted by existing countries ". Thus the role of recognition institutions is very important for the existence of a country as a new member of the international community. Without obtaining recognition, the new country will experience difficulties in establishing relationships with other countries. The widely accepted view that there is no obligation for the state to give recognition to a new country. Judging from the form and substance, recognition is still a unilateral diplomatic act from one or more countries. There is no single organic collective procedure for granting recognition that is based on the principles of law that guide the international community.

The absence of these rules raises practices between countries differing from one another depending on their respective interests. Therefore it needs to be questioned whether this recognition is part of international law or international politics? By many international law scholars, recognition is classified as part of international politics; however, the acknowledgment given turns out to have consequences both politically and juridically. The intended political consequences for example are the two countries can freely hold diplomatic relations. Whereas the juridical consequences can be: (a) Recognition is evidence of the factual situation; (b) Recognition results in certain legal consequences in returning the level of diplomatic relations between a recognized and recognized state; and (c) Recognition affirms the legal status (Judicial standing) of the state that is recognized before a state court that gives recognition. Therefore recognition is one of the difficult problems of international law. At the current level of institutional international law, the issue of recognition cannot yet be displayed as a set of principles or principles that have clear boundaries, but right when it is said to be part of an irregular, inconsistent and unsystematic state practice.

The reality in the relationships between members of the international community today, there are countries that are independent and do not get recognition from certain countries, but are right to carry out obligations under international law. Therefore it can be said that recognition from a country is not a condition for creating a new country. Without acknowledgment, the new state already exists and can take various actions if the state elements are complete, namely the existence of a sovereign people, region and government, and the ability to make relations with other countries.

B.R Agrawala in his article "International Law and the Status of Unrecognized States"10, shows how a state that has not been acknowledged is a legal entity. It is not recognition through the state government, but what is important is the undoubted existence of a country as an independent unit and making it a country. As an example; when the Israeli Combat Aircraft shot down British Civil aircraft over the territory of Egypt in January 1949; The British government immediately demanded compensation from the Israeli government, even though at that time the British Government had not recognized the state of Israel11. The existence of a new country in the international community that does not / has not received recognition from a particular country or several countries, but continues to exercise its rights and obligations under international law.

State as an International Law Subject

International law is an art, its shape is very dependent on who formed it, it is not rigid, but flexible in keeping with the times, especially the development of the behavior of the legal subjects12. International law is a whole legal principle or principle that regulates relations or legal issues that cross national boundaries, between (a) State and State; (b) Countries with other legal subjects not the State; and other legal subjects not one another13. This understanding is in line with the opinion of Rebecca Wallace, in her book International Law, which defines international law as14:

" rules and norms which regulate the conduct of states and other entities which at any time are recognized as being endowed with international personality, for example international organizations, in their relations with each other". The state is the subject of major international law and has traditionally been recognized in international law15. J.L. Brierly16, provide state boundaries as an institution; as a place where humans reach their goals and can carry out their activities. According to Moore, the existence of a country according to international law if a number of people are permanently residing in a certain area, while they are caused by the same customary and customary laws, are mutually bound together into a political entity so that through a structured government conducts free and oversight for people and objects in their territory, and being able to wage war and peace, to establish international relations with other communities in the world17. A shorter definition with the same

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7. D.W. Greig; International Law; London, Butterworths, 1976, page. 120.
8. J.G. Starke, Supra, note 6, at 113
11. Huala Adolf; States Aspects in International Law; Rajawali Pers, Jakarta 1991; at 62.
12. D. Sidik Surapatra; International law and its various problems (a group) ; Diadit Media, Jakarta 2006; page 13
13. Mochtar Kusumaatmadja and Eitty R. Agoes; Introduction to International Law (Introduction To International Law); Alumni, Bandung 2003, at 3. This understanding is different from the understanding of other international law scholars, which only emphasizes the relationship between the State and the State. Look for this, Oppenheim-Lauterpacht; International Law; Vol 1; Peace Longmans, eight edition, 1967; and Ian Brownlie; Principles of Public International Law; Oxford University Press, 1983
15. After World War II there were also new entities in the international community, thus making the International Organization, the International Red Cross; Rebels and Individuals become Subjects to International Law
17. S. Tasrif, Supra, note 1, at 10.
meaning is given by Fenwick that what International Law means about the State is a political society that is regularly organized, occupies a certain area and lives within the boundaries of the area, free from the supervision of other countries so that it can act as a free on the earth. Based on the above understanding, the elements that a political society must possess in order to be considered a state, according to Oppenheim–Lauterpacht are: (a) there must be people; (b) there must be an area; (c) there must be a government; and (d) the government must be sovereign.

Throughout observation, international law scholars try to avoid the effort to define the country. International law experts only state the elements that must be fulfilled so that a community group can be called a state. Likewise, international conventions can be said to be nonexistent in one of the articles concerning the so-called state. The formulation of a country's qualifications was carried out at the Pan American Conference in 1933 which produced the "Convention on the Rights and Obligations of the State" (Rights and Duties of States) known as the "Montevideo Convention 1933." Article 1 of the 1933 Montevideo Convention explicitly states the following:

"The state as a person of international law should possess the following qualifications:

a. A permanent population;
b. A defined territory;
c. A government; and

d. A capacity to enter into relations with other States."

Qualifications or elements of the country if observed, will find two main elements. The first is a factual or real element and the second is a non-real element. Real or tangible elements can be seen in elements (a), elements (b) and elements (c); while the non-real elements that can only be felt are elements (d), namely the ability to establish relations with other countries.

The discussion of the state elements above will facilitate the understanding of the existence of a state according to international law.

A permanent population

The population or people of a country is a group of people who permanently or permanently inhabit or settle in an area which is also certainly wide. An important requirement for this element is that this community must be well organized. Because it is hard to imagine, a country with a well-organized government can live side by side with a disorganized society. There is no obligation to have the language of unity or similarity in cultural, ethnic or religious backgrounds. There is also no requirement for the population; therefore in the world today there are countries with very large populations such as China, India, the United States and others. Conversely there are also thousands of people. Such countries are called "micro states" or "mini states" such as Nauru, Fiji or Tuvalu and others.

A defined territory

There must be an area where the population or the people are settled. In order for the region to be said to be permanent or certain, of course, the boundaries must be clear, covering 3 (three) dimensions (land, sea and air). As with the number of residents about the territory of the country, there are no restrictions in international law. In addition, the territory of a country can be separated from one another, such as the territory of Malaysia, Turkey, the United States and others. So it does not need the territory of the country to be a single entity, because in certain circumstances, a country is still recognized as the subject of international law, even though the country does not have a territory that is fixed or "not" has a certain area; example of the PLO.

A Government

The people or residents who occupy the area live by organizing themselves. Of course there are those who are led and some are leading; namely someone or several people who represent the people, and govern according to the law of his country. This leading group has the authority to regulate, manage and act both inside and outside. In an organization called the state, this leading group is called the Government.

According to Lauterpacht, that the existence of government elements is the main requirement for the existence of a State. If the government turns out then legally or in fact to be a puppet state or satellite state from another country, then that country cannot be classified as a state.

A capacity to enter into relations with other States

This element is a non-physical element, is the last determinant of the existence of a country. This means that whether the...
fulfillment of elements (a), (b), and (c), can be called a country or not depends on the existence of this element. By international law experts it is often interpreted as the realization of independence (independence) and is the element that most determines whether a country has an international identity or not. On the other hand, it is an element that distinguishes between the conception of the State according to International Law and the conception of the state according to Political Science, or State Science and State Law28.

According to J.G. Starke, the requirement for the ability to establish relations with other countries, is the most important in terms of international law. The ability to establish relations with other countries distinguishes the country from smaller units such as members of a federation or pro-directorate who do not handle their own foreign affairs themselves and are not recognized as fully independent members of the international community. The ability to interact with other countries independently, is related to independence and sovereignty. With independence means a free country to conduct international relations with any country, without having to consult with other countries. The existence of sovereignty means that the state is free in carrying out its internal and external activities. In essence the ability to establish relations with other countries is a manifestation of sovereignty.29

The 1933 Montevideo Convention did not explicitly formulate this element with the term "sovereignty", intended to emphasize the external side of that sovereignty. This is important because international law views and emphasizes the existence of a state only in terms of its external nature, without interfering with problems in the country (internal side of sovereignty). International law does not regulate the internal affairs of countries, but acknowledges the right of every country to regulate it.30

The implementation of the principle of state sovereignty in conducting relations with other countries is realized by the existence of an "effective and independent government". Hans Kelsen gave an explanation of the "effective and independent government" as follows:

"A government is independent if it is not legally under the influence of the other state, and it is affect if it is able to obtain permanent obedience to the coercive order issued by it."

Thus the formula put forward by Hans Kelsen does not conflict with the formulation of the 1933 Montevideo Convention relating to the element of the ability to establish relations with other countries. According to Hans Kelsen, the government that is capable of establishing relations with other countries must " . . . in not legally under the influence of the government of another state ". Because if the government is legally under the supervision or influence of another country, then the government does not have freedom of freedom to make relations with other countries.

One important problem that arises in practice relating to the requirements for the ability to relate to other countries is the parameter to be able to say, and who has the right to give an assessment of whether an entity is capable or not. This problem in its development is often interpreted as "confession". The state needs recognition to be said to be capable of international relations. Therefore, recognition is often referred to as the fifth condition for the existence of a State. This requirement raises problems both in international law and in national law. "Recognition" is not a determining factor that the country exists and fulfills the requirements demanded by international law, but is an important issue in international law.35 Thus recognition is not a factor that helps establish the state, but only explained the existence of a country in the international community.

**State Rights and Obligations According to International Law**

The state as a subject of full international law has special features which are not subject to other international law; namely: (a) The state has sovereignty which is the highest authority within the boundaries of its territory; and (b) the State determines the existence of other international legal subjects both directly and indirectly, because the state is the basic unit for the formation of the international community.36 The state as the subject of international law has an increasingly dominant role, because the largest part of international relations can give birth to the principles and principles of international law carried out by countries. The state as the subject of international law according to Martin Dixon is a body or capable of possessing and exercising rights.

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28 Supra, No. 21.
29 J.G. Starke, Supra note. 6, at 92. According to R.C. Hingorani, this element is not only important, but also a necessity for a country to obtain membership in the international community and subject to international law (Supra, note. 23, at 35).
30 State sovereignty is the original and highest power where there is no other higher power which can limit the power of the State. According to Jean Bodin, "Sovereignty is not limited either in power, charge, or strength ". See Sefriani, Role of International Law in Temporary International Relations; Raja Grafindo Persada, Jakarta 2016, at 28.
31 Wayan Parthiana, Supra, note 20, at 67.
32 This is the application of the Principles of Non Intervention in International Law, which requires States not to interfere in internal affairs of other countries.
33 Hans Kelsen; Principles of International Law; Rinehart & Co. Inc., London 1959, at 258.
34 Sefriani; An Introduction to International Law; Raja Grafindo Persada, Jakarta 2010, p. 97.
35 Recognition is not a determining factor for the existence of a country in International Law, but it is evidence of the realization of the ability of the state to carry out international relations when becoming a member of the international community, as desired by Article 1 of the Montevideo Convention 1933.
36 Mochtar Kusumaatmadja and Etty R. Agoes; Supra, note 13, at 17.
37 F.A. Whisnu Situni; Identification and Reformulation of Sources of International Law; Mandar Maju, Bandung 1989, at 7.
and duties under international law. Furthermore according to Martin Dixon, the state must have international legal skills, as follows: (a) be able to claim their rights before international and national courts; (b) being the subject of some or all of the obligations given by international law; (c) able to make legal and binding international agreements in international law; and (d) enjoy immunity from the jurisdiction of the domestic court.

In the practice of international relations, the state as a subject of international law is a member of the sovereign and equal international community, because it can carry rights and obligations in international law. In the situation of international law, the discussion of the rights and obligations of the State has been going on for a long time. Because the state is the main actor of international relations, the main concern of international law is the rights and obligations and interests of the state. The portion of international legal affairs for the subject of international law other than the state is not as much as allocated to the state.

The position of the state as the main subject of international law requires the formulation or regulation of basic and fundamental rights and obligations of countries. The formulation or regulation regarding the basic rights and obligations of the state has become the material of thought which always arises at international conferences conducted by international organizations. Some of them were the formulations of the 1916 American Institute of International Law which succeeded in deciding the Declaration of Rights and Duties of Nations, which later became the material content of the 1933 Montevideo Convention on State Rights and Obligations and the Draft Declaration on State Rights and Obligations compiled by the United Nations International Law Commission in 1949. The draft final declaration is still a design that the governments of the countries are still studying and have not been generally accepted.

The rights established by the International Law Commission are the Draft Declaration on the Rights and Obligations of States including: (a) the right to independence (Article 1); (b) the right to exercise jurisdiction over the territory, people and objects within its territory (Article 2); (c) the right to obtain the same legal status as other countries (Article 5); (d) the right to carry out self-defense or collectively (Article 12). Whereas state obligations include: (a) the obligation not to intervene in matters that occur in other countries (Article 3); (b) the obligation not to mobilize civil unrest in other countries (Article 4); (c) the obligation to treat all people in their territory with regard to human rights (Article 6); (d) the obligation to safeguard its territory so as not to endanger international peace and security (Article 7); (e) the obligation to resolve disputes peacefully (Article 8); (f) the obligation not to use force or threat of weapons (Article 9); (g) the obligation not to assist the implementation of Article 9 above; (h) the obligation not to recognize territories obtained through violent means (Article 12); (i) obligation to carry out international obligations with good ties (Article 13); and (j) the obligation to carry out relations with other countries in accordance with international law (Article 14).

The doctrine of the basic rights and obligations of this country has received support from various international law scholars. Universal basic rights according to international law scholars consist of: (a) right to existence; (b) right to independence; (c) right to equality; (d) right to respect; and (e) right to territory. State rights and obligations in international law are rights and obligations that bind countries in relation to each other. The basic rights and obligations of this country are the correlative tasks of the state and become the substance of independence referring to the rights and obligations of the state as follows: (a) The right of the state to exercise jurisdiction over the territory and its people; (b) The right to give permission to enter and issue foreigner; (c) The right to obtain immunity and privileges for diplomatic representatives in other countries; (d) The right to take self-defense actions in certain situations; and (e) The obligation not to intervene, including maintaining the stability of other countries by not supporting or providing assistance that contains subversive elements with the intention of overthrowing the legitimate government of a country.

While the correlative duties and obligations that bind countries are: (a) The obligation not to carry out sovereignty actions over the territory of another country; (b) The obligation to detain or prevent agents and citizens from taking actions which constitute a violation of independence or territorial supremacy other countries; and (c) The obligation not to interfere in the internal affairs of other countries.

Although until now there has not been a valid "Universal Declaration of the Right and Duties of States" and must be obeyed by countries, in general in carrying out international relations, the basic rights of the state as stated in the Draft Declaration concerning State Rights and Obligations The State of 1949 was accepted. In this case the state adheres to and implements relations with one another in the international community.

The Advantage of Giving New State Recognition

Recognition is a complex process in which countries can carry out their policies in various ways. Generally it is recognized that recognition is one of the most confusing problems in international law. According to B.R. Agrawala: "Recognition of the intention to enter into diplomatic and commercial relations".

[38] Martin Dixon; Textbook on International Law; Blackstone Press Limited; Four Edition, 2000; at 105
[40] D.P. O’Connell; International Law, two edition 2, Vol. 1; London, Stevens and Sons, 1970, at 315. In the 17th century, discussions of the rights and obligations of the State were based on the flow of social contracts.

[42] J.G. Starke, Supra, note 6, at 94.
[45] S. Tasrif, Supra, note 1, at 16
[46] Agrawala, Supra, note 10, at 44
According to J.B. Moore; the meaning of recognition is a guarantee given to a new country that the country is accepted as a member of the international community. Recognition is a political act in which the state that acknowledges shows its willingness to recognize a situation of fact and accept the legal consequences of that recognition. J.G. Starke, citing the "Institute of International Law" defines recognition as:

"free action by one or more countries to recognize the existence of a certain region inhabited by a human society that is politically organized, not bound to a state that already exists and is able to carry out obligations under international law, and with this action (countries which acknowledging) expressing the desire to view the region as a member of the international community ".

From the above definitions, a number of main points can be stated as follows: (a) the act of giving or refusing to recognize is essentially a political action and each country determines according to its assessment of the existence of the state to be recognized; (b) the element which gives an important role in giving or refusing to give recognition is the conditions for the establishment of a country in accordance with the Montevideo Convention 1933; (c) with the recognition of countries is a sign of the entry of a country as a member of the international community; (d) with the recognition of a new chapter in trade diplomatic relations and others between the new state and the state that acknowledged it began. Recognition is important, because it relates to the status of the new State related to the ability to conduct international relations.

Judging from the path or method, recognition can be divided into 2 (two), namely express recognition (express recognition) and covert recognition (implied recognition). Confirmation can be made with a statement of acknowledgment through a public statement, diplomatic note, or also a bilateral agreement which states the acknowledgment from one party to another. While the covert recognition (implied recognition) is precisely what is often done. The actions of the State to open diplomatic relations with the new State, the granting of executor to the consular of a new State, the presence of State leaders at the ceremony of independence of a new State are examples of this. According to Alina Kaczorowska, there are several actions which constitute tacit recognition, namely: (1) being a party to a multilateral agreement where the unrecognized state has already become a party; (2) remains a party when an unrecognized state enters into a state party to a multilateral agreement; (3) exchange of trade missions with unrecognized countries; (4) make international demands or pay compensation to unrecognized countries; (5) sitting one table in a negotiation with an unrecognized state; (6) present at an international conference where unrecognized States are also involved as participants; and (7) State revenues that are not recognized in an international organization relating to States that oppose such acceptance.

The nature and function of adoption in international law is to ensure a new country can occupy a reasonable place as an independent and sovereign political organism in the midst of the nation's family. The recognition of new countries will be able to safely and perfectly establish relations with other countries, without worrying that their position as a political entity will be disrupted by existing countries. Recognition of a new state is an acknowledgment that a unit born, is recognized after fulfilling the requirements set by international law as a state, so that it is recognized as a legal person in the international community with all rights and obligations determined by international law. Regarding the problem of recognizing this new country, there are 2 (two) main theories about the nature, function and consequences of recognition, namely: (a) constitutive theory, and (b) declaratory theory.

Constitutive theory

According to this theory, only recognition can create state status or that can give authority to new state governments in an international association environment. There are 2 (two) reasons behind this constitutive theory. First; if the agreement becomes the basis for the enactment of international law, no country / government is treated as the subject of international law without an agreement from an existing state first. Second; a country or government that is not recognized does not have legal status as long as the state or government is associated with countries that do not recognize it.

This constitutive theory was criticized by J. B. Briery, who showed that the greater difficulty with this theory lay in the necessity for its adherents to say that an unrecognized country does not have rights and obligations under international law. If this conclusion is accepted, the consequences will be shocking. For example, it must be said that an intervention (into the territory of a country) under international law which is generally considered an illegal act, is not so if it is carried out against an unrecognized country. Conversely, if the unrecognized country is involved in a war, the country is not obliged to respect the rights of the state as required by international law.

Theoretically, the truth of the views of constitutive theory can be refuted, arguing that the problem of recognition is a matter of wisdom, it is possible that the birth of a new country is accepted and recognized by a group of countries, but not by another group. Thus the self of the new country will be viewed differently by the two groups; (2) there is a need to respect international rights and obligations between the new state and the state that recognizes them, but vice versa for
countries that have not yet recognized it; and (3) There are no provisions regarding the minimum number of countries that give recognition so that they can be accepted as individuals (subjects) of international law. Thus this constitutive theory does not guarantee the existence of the state on the basis of recognition in international law.

**Declaratory theory**

According to this theory the state status or authority of a new state government has existed before recognition or apart from recognition. Recognition is only a formal expression of an established situation. This theory was born as a reaction to constitutive theory. Declaratory theory is motivated by the idea that a country has capability in international law as soon as the country is based on facts. In this case the determination of a country as an international person is determined based on the qualifications inherent in the country concerned so that it is more objective.

The tendency of countries to deal with recognition is closer to declaratory theory. The political existence of a country apart from recognition by other countries; even before recognition, the country has the right to maintain its integrity and independence.

A large number of international customs support declaratory theory, because there is no state in practice, seeing recognition as convincing evidence that the conditions for becoming a state do not have. By emphasizing to the state or government that does not have not received recognition in order to comply with the rules of international law, in fact there has been an acknowledgment that the country has status under international law. Regarding the tendency of countries in practice to use declaratory theory, because this theory has the support of the principles that apply in the issue of recognition, namely (1) If problems arise in the court regarding the birth of the new country, it is not important to pay attention to when the entry into force agreement with the state that gives recognition. If all the elements of state have actually been fulfilled, that is what determines the birth of the country; (2) Recognition of a country has the effect of subsiding until the actual birth of the state as an independent state. This principle also applies to cases in court that are started before being given recognition so that a case with a lack of legal basis before the date of recognition will get the legal backing to be fought for.

Although the tendency of countries’ practices is towards declaratory theory, there are practical weaknesses, because they place recognition at the lowest point or empty formality. If the birth of a State is only a factual event, then the consequences it must cause are as follows, (a) it is impossible to reject the birth of a State by using legal reasons; and (b) the birth of a State free from recognition, in this case recognition does not interfere in the formation of the State.

After seeing the weaknesses of the two theories above arise a middle way view or what is called the "middle road theory" as an alternative solution. According to J.G. Starke, it is said that the middle ground theory is between the two theories. One theory and another can be applied to different sets of facts. According to the "middle way theory", the position of the state should be distinguished as an international person on the one hand, and the country's capacity as an international person in carrying out its international rights and obligations on the other. A new country, to be said to have an international person or as a country under international law, does not need to need recognition from other countries in accordance with the views of declaratory theory. On the other hand, as an international person who requires the existence of relations with other countries, the new country requires recognition from countries as subjects of international law. Because with the recognition, the new country can begin to establish relationships that will give birth to international rights and obligations. So to use rights as an international person, the country needs recognition according to constitutive theory.

The view of the middle ground theory becomes strategic to address the legal consequences of the absence of recognition for a new State in international law. The legal consequences for the State if the country does not receive recognition are, (a) the State cannot open diplomatic representation in a State that refuses to recognize; (b) diplomatic relations are difficult to do; (c) citizens from countries that are not recognized are difficult to enter into the territory of the State that does not want to admit; and (d) citizens from unrecognized countries cannot submit claims before the national courts of the State that do not want to admit.

**State Responsibilities That Has Not Received recognition**

Modern international law as a legal system that regulates relations between countries born with the birth of an international community based on national countries. The birth of a country because it fulfills the provisions of international law, the birth cannot be said as a legal process, but has legal consequences. International law comes into force after the fact that the country exists and meets the criteria of a country according to international law. This is as stated by B.R. Agrawala that:

"International Law does not create States, just as State law does not create individuals. But it is International Law, and International Law alone, which provides the legal evaluation..."

59 Ibid, p. 350
60 D.P. O’Connell, Supra, note 40, at 129.
61 J.G. Starke, Supra, note 6, at 85-66.
62 Alina Kaczorowska, Supra, note 51, at 74.
63 Sefriani, Supra, note 34, at 159
64 The middle ground theory, proposed by J.G. Starke (Supra note 6), to overcome the weaknesses of constitutive theory and declaratory theory, so as not to cause problems in the implementation of international legal provisions, especially the rights and obligations of the State.
65 Ibid, at 98
66 I. Wayan Parthiana, Supra, note 20, at 351.
67 Sefriani, Supra, note 34, at 164.
68 Mochtar Kusumaatmadja and Etty R. Agoes; Supra, note 13, at 11.
69 Supra, No. 2.
70 Agrawala, Supra, note 10, at 45.
of the process, ethics which is in fact a state, delimits its competence and decides when it ceases to exist.

International law emphasizes the fulfillment of conditions to be able to set the term "country" to a political society so that it can be accepted as a subject of international law. The terms or elements referred to as contained in Article 1 of the Montevideo Convention in 1933. According to D. J Harris, a country is a state even though it has not been or has not been recognized at all. Even if a country has formally or not received recognition, it is still treated as a state71. In this case the existence of a country as a unit of law is determined by the rules of international law and not by the fact of recognition. Not giving recognition by a country only means that he does not want to have any relationship (diplomatic or commercial) with the new unit. if a political community has fulfilled the elements of the state in accordance with international law, the state automatically carries the rights and obligations and responsibilities under international law, not dependent on recognition from other countries72. Refusing to recognize a country will not affect the situation if a large number of other countries have given recognition to the new country73.

International practice shows that a state that refuses to recognize a (new) country, actually establishes a certain relationship (trade relations) with an unrecognized country. For example, relations between West Germany and East Germany (before being united). West Germany not only does not recognize East Germany as a country; but also threatened to cut off diplomatic relations with any country that recognized East Germany. But what is striking is that between West Germany and East Germany, various trade agreements have been signed74. Another example is; officially the United States does not recognize the PRC, but since 1955 has held Ambassador-level negotiations in Geneva, Warsaw and Paris; and finally with the opening of diplomatic offices in both countries at the end of May 197375.

Without acknowledgment, a new country continues to assume responsibility in international law. The background of the emergence of state responsibility in international law is that no country can enjoy its rights without respecting the rights of other countries. Any violation of the rights of other countries causes the state to be obliged to correct violations of the rights of other countries, causing the state to be obliged to correct violations of these rights. In other words, the country must account for it.76 Therefore according to M. N. Shaw; an important characteristic of state responsibility under international law depends on the following basic facts: (a) the existence of an international legal obligation that applies between two specific countries; (b) there is an act or negligence that violates the international legal obligations; (c) there is damage or loss as a result of an act that violates the law or negligence77. Problems that arise related to countries that have not received recognition. Can a country be responsible for losses caused by its actions or because of its negligence, against a country that has not yet recognized it?

If you hold a view that is based on constitutive theory, then all legal actions or actions from an unrecognized country have no responsibility for the country that has not been acknowledged. Thus a country that has not recognized a new country cannot claim a legal act carried out by a state that has not been acknowledged. If this happens, international order and security will not materialize in accordance with the nature of international law78. If you hold a view that is based on declaratory theory, a country that has not / has not been recognized is as responsible as the state that has been recognized for actions or failure to act according to international law. It is not true to make state responsibility in terms of international law dependent on the recognition of the state by other countries79. In this connection according to D.J. Harris; all countries are legally responsible for the illegal actions they commit80. The determination of all countries in this case is all countries that have been recognized by international law; or all units that have met the requirements in accordance with Article 1 of the Montevideo Convention 1933.

Due to the tight relationship between causality between a country's recognition and international responsibility can lead to misunderstanding. Undoubtedly, the political units that are accepted into the international community must adapt to the measures of behavior affirmed by the community. If an argument is accepted, membership of a national society is a juridical basis for international responsibility, then a new country must be bound to adhere to the principles of international law in its relations with the entire society, including those that have not recognized it as a country81. The reality in the practice of countries, shows the international responsibility of a country for its actions or circumstances that do not do it, does not depend on recognition by other countries, but on the principles of applicable international law. The absence of recognition cannot result in the disappearance of responsibility from a country that has not received such

71. D.J Harris; Supra, note 27, at 125.
72. Agrawala, op cit, at 45.
73. J.G. Starke, Supra, note, at 101.
74. S. Tasrif, Supra, note 1, at 95.
75. Boer Mauna, Supra, note 48, at 73.
76. Hingorani, Supra, note 23, at 173.
78. See for this the Manchukuo case, which was recognized by Elsavador, Germany, Hungary, Italy and Japan, on the contrary was rejected by the United States and the League of Nations which considered Manchukuo a puppet state formed by Japan which was taken from China. This creates confusion, because one entity carries two states at once. On the one hand it is a State that is the subject of international law and on the other hand is not a State for those who do not recognize it. See Supra, No. 34, p. 160.
79. The case of China, when the Chinese communist regime came to power, China still exists even if it is not recognized by the United States. But China cannot make relations with the United States, until the United States gives its claimants. See Hingorani, Supra, note 23, at 221.
80. Lauterbach, Supra, note 27, at 375.
81. Agrawala, Supra, note 10, at 45.
recognition. The case of shooting British civil aircraft by Israel fighter aircraft in the territory of Egypt in 1949, is proof of this. The British government immediately demanded compensation from the Government of Israel even though at that time the British had not given recognition to the State of Israel\(^82\).

Therefore internationally, recognition does not affect the rights and obligations and legal responsibilities of a new country according to international law. In this case, without acknowledgment, even though a unit that has fulfilled the state requirements as stated in Article 1 of the 1933 Montevideo Convention has assumed legal responsibility under international law if the country violates the obligations of the state under international law.

CONCLUSION

The position of countries as the key to the existence of the international community, requires the recognition of a new country that will become its member in the context of relationships based on the principle of peaceful coexistence. However, state recognition is not an element of state formation, but the conditions for establishing the state as stated in Article 1 of the Montevideo convention in 1933. Recognition of a new country is merely a statement of acceptance in the international community (declaration of theory). Thus practices based on constitutive theory cannot be maintained in international relations and international law, in accordance with the principle of equality and equality in peaceful coexistence in the international community.

Recognition in international law is not an element determining the birth of a country; likewise international law does not form a state but provides minimum requirements as stated in Article 1 of the Montevideo Convention 1933. Therefore the rights and obligations and responsibilities of the state come into force after fulfilling these requirements and the announcement of the establishment (proclamation) as a state. There is no reason for a country (new) to avoid state responsibility in terms of certain actions on the grounds that they have not received recognition from the claimant country. On the other hand, the state party that has not received such recognition can claim its right to a detrimental action from a country that has not / has not given recognition for it.

Reference

2. Article 1 letter D Montevideo Convention 1933, affirms "a capacity to enter into relations with other State". In this case, the ability to conduct international relations is a strategic determinant of the existence of a new country to be accepted as a member of the international community.

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\(^{82}\)Huala Adolf, Supra, note 11, at 62 - 63