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SETTLEMENT OF INTERNATIONAL DISPUTES PEACEFULLY BASED ON INTERNATIONAL LAW PRINCIPLES

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Keywords

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Abstract. Prevention of the use of violence or the occurrence of war between countries is absolutely necessary to avoid violations of international law and security. In international relations between countries, harmony is needed in various activities, and this will not be achieved if the parties do not have good faith in resolving their disputes. International law regulates the dispute in the United Nations Charter. Therefore the purpose of this research is to analyze the peaceful settlement of international disputes based on the principles of international law. This research uses a qualitative approach with descriptive methods. The results of the study show that international disputes can occur due to poverty and injustice, racial and religious differences, extremism, controversy and discrimination. In the settlement of international disputes peacefully can be done in three ways, namely through diplomatic channels, legal channels, and through international organizations.

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1. INTRODUCTION

In the international world, establishing international relations is an absolute thing that cannot be avoided by every country, this has been stated in the 1933 Montevideo Convention which states the conditions for the formation of a state. One of the most important points is to be able to establish international relations with other countries. is the existence of mutual need from one country to another, because no country can meet the needs of its own country without help from other countries (Mangku, 2012). The agreement between countries is the first of its kind anywhere in the world; it ties a group of countries that are geographically close together to settle any and all disagreements that may arise between them. In addition to that, it has been used as an example for dealing with international problems all over the world (Situngkir, 2018).

There is not always a solid foundation for the international interactions that are maintained between countries, between countries and individuals, or between countries and international organizations. The nature of their connection frequently leads to arguments between them. There are many different potential sources of contention that might give rise to disputes. It's possible for countries to find themselves in conflict with one another over a variety of issues, including politics, military strategy, the economics, ideology, or some mix of these concerns (Wiratmaja et al, 2019).

According to Nurnaningsih Amriani's (2012) definition, a dispute is a disagreement that arises between the parties to an agreement as a result of a breach of the agreement that was committed by one of the parties to the agreement. According to Takdir Rahmadi (2011), events and contexts in which people experience factual disputes or disputes that exist only in their perceptions can be referred to as conflicts or disputes. Conflicts can arise between anyone at any time and in any setting. Conflicts can arise between individuals, between individuals and groups, between groups and groups, between firms and companies, between companies and countries, between countries, and so on. Disputes can therefore be of a public or private nature, and they can arise on any scale, including locally, nationally, and internationally.

According to the International Court of Justice, a situation is considered to be an international dispute when two nations' perspectives on the fulfillment of an obligation stipulated in an agreement are in direct opposition to one another (Adolf, 2020). When a dispute involves the government, a juristic person (legal entity), or individuals in different parts of the world as a result of a misunderstanding

regarding a matter, when one party intentionally violates the rights or interests of another country, when two countries disagree on a matter, or when there is a violation of law or an international agreement, then this is an example of an international dispute (Adi, 2021).

There are two types of international disputes known in international law, namely political disputes and legal disputes. A political dispute is a dispute if a country bases its claim not on jurisdictional considerations but on the basis of politics or other interests (Junef, 2018). Decisions taken in political settlements are only in the form of proposals that are not binding on the disputing countries. This proposal still prioritizes the sovereignty of the disputing countries and does not have to be based on the adopted legal provisions. Meanwhile, legal disputes are disputes if in a country the dispute or claim is based on the provisions contained in an agreement or which have been recognized by international law (Parthiana, 1990). Decisions taken in the settlement of legal disputes have a coercive nature against the sovereignty of the disputing countries. This is because the decisions taken are only based on the principles of international law (Romsan et al, 2003).

Arrangements for settlement of disputes in international law are contained in international customs, in the Hague Convention 1 of 1899 and 1907 concerning peaceful settlement of disputes and the United Nations Charter. Efforts to resolve international disputes as early as possible, in the fairest way possible for the parties involved, have been the goal of international law for a long time and the rules and procedures involved are partly customary practices and partly conventions that make very important laws (Supriyadi, 2013). Disputed issues in an international dispute can involve many things. International law solely advocates a peaceful way of settlement, the dispute is between countries or between countries and other international law subjects.

2. METHODS

In this study, the approach used is an approach with descriptive qualitative methods. Where this is a research method, which is usually used for "exploration," and qualitative research, generally used for "measuring", the latter is generally used to make conclusions (Darmalaksana, 2020). Qualitative research methods, based on philosophy, postpositivism, which, used to research, natural objects, develop, theory and research, historical development, with data collection techniques, combined, (Trianggulasi,) (Sugiyono, 2011). Qualitative research, is descriptive in nature, and tends to use an approach, inductive analysis, so that the process, and meaning based on, the subject's perspective is more, highlighted, in this qualitative research.

3. RESULTS AND DISCUSSION

A. International Disputes

According to Merrils (2017), disagreement arises when there is a gap in comprehension over a topic. While this is going on, John Collier and Vaughan Lowe (2000) make a distinction between disagreement and conflict. "A specific disagreement concerning a matter of fact, law, or policy in which a claim or assertion of one party is met with refusal, counter claim, or denial by another" a policy in which a claim or statement by one party ends in a rejection, dispute, or denial by the other party. "A specific disagreement concerning a matter of fact, law, or policy in which a claim or assertion of one party is met with refusal, counter claim, or denial by another"

In the matter of the Interpretation of Peace Treaties, the International Court of Justice issued a legal opinion, also known as an advisory opinion, stating that an objective analysis is required in order to assess whether or not there is a conflict on an international level. According to the Court, a situation qualifies as a dispute on the international level when two nations' points of view about the fulfillment of the commitments outlined in the agreement are in direct opposition to one another (Palasari et al, 2022).

Thus, every dispute is a conflict, but not all conflicts can be categorized as disputes. The dispute between Indonesia and Malaysia regarding the ownership of Sipadan Ligitan Island is a dispute, however, the conflict between America and Iran since the fall of Iran's law is a conflict considering the complexity of the problems between the two countries. Likewise the problem with Israeli-Arabs, according to Merrils, is more appropriately categorized as a "situation" or conflict according to John

Collier's term. This is due to the complexity of the problems of the parties involved, and in these situations there are generally many specific disputes.

There is not always a solid foundation for the international interactions that are maintained between nations, between nations and individuals, or between nations and international organizations. The nature of their connection frequently leads to arguments between them. There are many different potential sources of contention that might give rise to disputes. Borders, natural resources, environmental harm, commercial activity, and other factors can all be possible causes of conflict between nations. When something like this occurs, international law plays a significant role in the resolution of the dispute (Sianturi et al, 2014).

Since the beginning of the 20th century, the world community has placed a substantial amount of importance on the success of anti-settlement initiatives. These initiatives are being undertaken with the intention of fostering improved relations between nations on the basis of the tenets of global peace and safety. In its early stages of development, international law acknowledges two methods for settling disputes: those involving the use of peaceful means and those involving the use of violent means (military). The use of warfare as a means to settle disagreements is a strategy that has been around for a very long time and continues to be employed (Astiti et al, 2019). Even war has been utilized as a weapon or instrument in international relations and politics. There are several factors that can contribute to the outbreak of international conflicts, including the following:

a. A foreign policy that is too flexible or, conversely, too rigid, a nation's foreign policy is one of the possible causes of inter-state disputes. Being offended or misunderstanding is the main trigger for conflict. One example is the British attitude which is too flexible (flexible) in the issue of recognition of the Chinese Government. In the end, this resulted in the offense of the United States being rigid towards China.
b. Elements of morality and politeness between nations In establishing cooperation or relations with other nations, politeness between nations is important to pay attention to in social ethics. Because if we violate ethics, conflicts or tensions can arise. This happened once when Singapore withdrew from the treaty with Malaysia, despite their long-standing good relations.
c. The problem of claiming national boundaries or territorial jurisdiction of neighboring countries geographically has a high chance of conflict or dispute over national boundaries. This is experienced among others by Indonesia-Malaysia, India-Pakistan, and China-Taiwan.
d. National legal issues (juridical aspects) that conflict with each other The national laws of each country vary depending on the needs and conditions of the community. If a country cooperates with each other without considering other countries' national laws, it is not impossible that a confrontation could occur. This happened when Malaysia legally opposed the ways of transferring the Sabah and Serawaj areas from the sovereignty of the British Empire to under the sovereignty of Malaysia.
e. Economic problems Economic factors in the practice of relations between countries often trigger international conflicts. Rigid and one-sided economic policies led to conflict. This can be seen when the United States embargoed petroleum products from Iraq which then led to a tense conflict between the United States and Iraq

The factors that become the background of the occurrence of international disputes are:

a) Poverty and injustice. These two things can limit the opportunity for a nation to develop and become a developed country
b) Differences in race and religion in relation to social status. For example the caste system and racial politics
c) Extremism, namely attitudes and actions that always impose their will on other nations that can even harm the country
d) Controversy as a form of social process between competition and conflict which is an attitude of displeasure either secretly or frankly
e) Discrimination, namely restrictions on a group to enter a certain group.

B. Peaceful settlement of international disputes based on the principles of international law

The principle of peaceful settlement of international disputes is founded on the universally applicable principles of international law and is articulated in the Declaration on Friendly Relations and Cooperation Between Countries, dated October 24, 1970, and the Manila Declaration, dated November 15, 1982, regarding the Peaceful Settlement of International Disputes:

- The principle that the state will not use violence that threatens the territorial integrity or political freedom of a country, or uses other means that are inconsistent with the goals of the United Nations
- The principle of non-intervention in the domestic and foreign affairs of a country
- The principle of equal rights and self-determination for every nation
- The principle of sovereign equality of nations
- Principles of international law regarding the independence, sovereignty and territorial integrity of a country
- The principle of good faith in international relations
- Principles of justice and international law

International law does not contain a requirement for a country to choose a certain settlement procedure. This is also confirmed by Article 33 of the UN Charter which asks countries to resolve disputes peacefully while mentioning various procedures that can be chosen by disputing countries. Because of this freedom, countries generally give priority to political dispute resolution procedures, rather than arbitration or jurisdictional settlement because political dispute resolution will better protect their sovereignty.

Since the use of force in interstate relations is prohibited, international disputes must be settled peacefully as a positive law (binding regulations that must be enforced). When parties are able to reach an agreement on an amicable resolution, problems are resolved through peaceful ways. There are various nonviolent solutions to the problem, including the following;

1. Diplomatic Method

According to Article 33 of the UN Charter (Evans, 1999, p. 9), "... seek a solution by negotiation, inquiry, mediation, conviliation, arbitration, resort to regional agencies or arrangements, or other peaceful means of their own choosing," then dispute resolution can be pursued in the following ways: negotiation, inquiry, mediation, conviliation, arbitration, judicial settlement, resort to regional agencies or arrangement:

a. Negotiation (negotiation) Negotiation is an exchange of views and suggestions between two parties to resolve a dispute, or only focuses on discussions carried out by the parties concerned, so it does not involve third parties. If a way out is found by the parties, it will continue with the granting of concessions from each party to the opposing party.
b. Inquiry (investigation) The investigation is carried out by a third party or body that is international, impartial in nature intended to seek facts or evidence. On the basis of the evidence and problems that arise this body will be able to issue a fact accompanied by a solution. At this time, through international organizations, such as the UN Security Council, it often forms fact finding commissions and specialized agencies (Merrills, 2017).
c. Mediation (mediation) A third party intervenes to reconcile the claims of the disputing parties. In the event that a third party only acts as a mediation agent (mediator) of communication for the third party to seek negotiations, then the role of the third party is referred to as a good office. Mediation can only take place if the parties agree and the mediator accepts the conditions given by the disputing parties. Among the mediations that have been carried out include the Mediation of the Three Nations Commission (Australia, Belgium and the United States) which was formed by the United Nations in August 1947, resolved the Indonesian-Dutch dispute, and even helped formulate the Renville agreement.
d. Conciliation Conciliation according to the Institute of International Law through the Regulations on the Procedure of International Conciliation which was adopted in 1961 Article 1 states: "as a method of settlement of international disputes in a commission formed by the parties, whether

permanent in nature or temporarily with the dispute resolution process. Conciliation is a combination of dispute resolution by means of inquiry and mediation.

The difference between conciliation and mediation can be stated as follows. Mediation is an extension of negotiation while conciliation provides a role for third parties that is equivalent to inquiry or arbitration. In terms of finding facts in conciliation, it is not something that absolutely must exist. Meanwhile, the proposed settlement does not have coercive power which then shows its resemblance to mediation (Thontowi & Iskandar, 2006).

2. Legal Method

a. Arbitration (arbitration) Parties are the state, individuals, and legal entities. Arbitration is more flexible than dispute resolution through court. The hallmark of arbitration is the establishment of a tribunal by the parties to the dispute to resolve the issue of a dispute or series of disputes based on international law and the resulting decision is considered binding on the parties. One of the interesting things about arbitration is that it gives flexibility to the disputing parties to determine the process of the case. This is evidenced by the freedom of the parties to choose arbitrators (Thontowi & Iskandar, 2006). Another characteristic of arbitration is having the competence to determine which legal instrument is used to determine its jurisdiction. The decision made is binding and final on the parties.

b. The International Court of Justice (ICJ) has the authority to decide on a case through the agreement of all parties to the dispute. The function of the judiciary as stated in Article 38 (1) is 'to decide cases in accordance with international law'. In addition, the court in deciding must also pay attention to the evidence submitted by the parties to the dispute. It is even possible for the court to visit the object of the dispute (Thontowi & Iskandar, 2006, p. 234). According to Article 60 the decision is final and binding which is limited by Article 59 which states that the decision is only binding on the parties concerned. In the event that one party fails to carry out its obligations, the party that is disadvantaged can submit an application to the Security Council, Article 94.

3. Dispute Resolution through International Organizations

a. Regional Organizations In the Manila declaration of 1982, regarding peaceful dispute resolution, it was stated that there were settlements through regional organizations, including the Organization of African Unity (OAU), NATO, and the EEC. One of the main functions of the regional organization is to provide a structured forum for governments to conduct diplomatic relations. In general, regional organizations have functions as good offices and mediation.

b. The UN As the mandate stated in Article 1 of the UN Charter, one of its goals is to maintain international peace and security. The contents of the UN charter include giving an important role to the ICJ, and enforcing it is handed over to the Security Council.

4. CONCLUSION

International disputes include disputes between states, disagreements between states and individuals, disputes between states and foreign businesses, and disputes between states and non-state national entities. International disputes can range from those that have no impact on international life to those that threaten international peace and order. Disputed issues in an international conflict might involve a variety of factors. If the issue is between countries or between countries and other international law subjects, international law exclusively promotes a peaceful resolution. When parties are able to reach an agreement on an amicable resolution, problems are resolved through peaceful ways. International law is not intended to compel a peaceful resolution, but it does provide all governments considerable discretion to use or utilize dispute settlement methods found in the UN Charter, treaties, or international conventions to which the conflicting countries are obligated. This demonstrates and confirms the ultimate objective of international law for the peaceful resolution of disputes, which does not necessitate a violent (military) resolution.

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