Indonesian Law Journal
P-ISSN: 1907 – 8463**;** O-ISSN: 2772 – 8568
https://ejournal.bphn.go.id/index.php/ILJ
Volume 13; No. 1; July 2020

CONFORMING PEACEFUL STRATEGY TO SETTLE NATUNA ISLANDS TERRITORIAL DISPUTES: INSTITUTIONAL AND INTERNATIONAL LAW PERSPECTIVES

Aninditya Putri Prameswari
Undergraduate Student of International Relations Department,
Universitas Airlangga
Jl. Airlangga No.4 - 6, Airlangga, Gubeng, Surabaya, Jawa Timur 60115
E-mail: anindityaprameswari@yahoo.com

ABSTRACT

The Natuna Island's boundaries have been listed according to UNCLOS 1982. However, some countries use their own justification to violate another state's territories which lead to potential territorial disputes. This study elaborates on pursuing a peaceful strategy in accordance with Indonesia's fundamental values to defend Natuna Island's sovereign territory. Indonesia's government said not to turn over the Natuna Island within the conflict on nine dash line in the South China Sea according to China's claim. This study uses literature methods to elaborate the background of Natuna Islands territorial disputes by Indonesia's responses and China's claims, and the conclusion will discuss the peaceful strategy by concerning on international laws approaches and pursuing the roles of institutions for the settlement.

Keywords: Natuna, Peaceful Strategy, Territorial Disputes.

A. Introduction

Indonesia has experienced many territorial disputes that have led to conflicts with several countries. For instance, the dispute over the Sulawesi Sea, Sipadan and Ligitan that involved Indonesia and Malaysia in early 1990s. The conflict of Sipadan and Ligitan became a fairly long conflict and impacted on Indonesia's diplomatic relations with Malaysia. By the end of the conflict, there were many questions on how the conflict had been resolved. The conflict ended in 2002 with the result of Malaysia's defiance in the provisions of the International Court of Justice (ICJ). For Indonesia, the loss of Sipadan and Ligitan in the era of President Soeharto was a big price to pay and also a lesson to pay more attention to its territory. The International Court of Justice (ICJ) had considered on asserting the conflict to political aspects, Suharto's governing type, Indonesia's bargaining position, and its capacity to commit, responsibility in treating its territories. Regarding how the political aspects could be the reasons, we looked on how Soek-

arno and Susilo Bambang Yudhoyono fought for any territorial dispute. As President Susilo Bambang Yudhoyono stated in his speech "Sovereignty is sovereignty, and it is about the state's existence no matter whether we are close neighbors or brothers".[1]

Contrary to Suharto's regime, in Joko Widodo's era, Indonesia has started to confront China and Viet Nam on the territorial disputes since the previous years in the vicinity of Natuna Islands. The disputes over the South China Sea between China and some Southeast Asian countries particularly have included China's claims on Natuna Islands. The tensions toward Natuna Islands disputes has increased since 2014, when China included part of the Natuna waters under their Nine-dash line territorial in the South China Sea. This line has been claimed as the demarcation line used by the government of China to claim most of the South China Sea area and provokes territorial disputes with Southeast Asian countries[2]. Joko Widodo has been trying to focus on the foreign policy on the South China Sea concerning several programs of maritime strategy and how to control it. There were several differences between the governing type in Suharto's period and Joko Widodo's Dave Mc Rae, 2019).[3] As democratic and authoritarian type has been established within Indonesia's foreign policy, this article will discuss the peaceful strategy implemented in this era based on the democratic period in Indonesia.

The overlapping of territorial maritime claims on the South China Sea becomes the longest-standing and strategic challenge for Indonesia. Indonesia should involve directly in the South China Sea disputes attempting to preserve the control over the South China Sea waters adjacent to the Natuna islands, including the exploitation of Natuna Islands' natural resources . The claims over Natuna islands were staked by Vietnam and Malaysia, and also China by its Nine-dash line encircling most of the South China Sea area[4].

In regard to this conflict, Retno Marsudi as the Minister of Foreign Affairs of Indonesia stated that there is no overlapping jurisdiction in Natuna's Islands and Indonesia would always commit to stand on UNCLOS 1982 convention, while China claimed for Nine-dash lines in this case[5]. Indonesia tried to maintain the sovereignty

1 Butcher, G John. "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea". Contemporary Southeast Asia Vol. 35, No. 2 (2013), pp. 235–57.

2 CNN Indonesia, "Kisruh Natuna, Indonesia Dinilai Bisa Gunakan Klaim Sejarah," https://www.cnnindonesia.com/nasional/20200117211923-20-466449/kisruh-natuna-indonesia-dinilai-bisa-gunakan-klaim-sejarah, (accessed 21 June, 2020).

3 McRae, Dave. "Indonesia's South China Sea Diplomacy: A Foreign Policy Illiberal Turn?" Journal of Contemporary. (2019).

4 McRae, Dave. "Indonesia's South China Sea Diplomacy: A Foreign Policy Illiberal Turn?" Journal of Contemporary. (2019).

5 Tobing Sorta. 2020 Dasar Hukum Klaim Indonesia vs Tiongkok https://katadata.co.id/berita/2020/01/04/dasar-hukum-klaim-laut-natuna-versi-indonesia-vs-tiongkok.

of Natuna Islands by persisting in various ways. The statement concerning territorial dispute settlement has been written in the Indonesia's constitution. As stated under the second paragraph of the United Nations Charter, there are several courts such as International Courts, where countries are obliged to approve: International Courts (ICJ), International Tribunal on the Law of the Sea (ITLOS), and General Arbitration or Special Arbitration. The 1982 court was established by the International Tribunal on the Law of the Sea (ITLOS), the General Arbitration, and Special Arbitration as an ad hoc tribunal.

This article consequently suggests that in settling any dispute over claims and the interpretation on Convention should consign to the disputes institutions mentioned above. For any exceptional dispute on interpretation and application of Chapter XI of the Convention on International Seabed Areas and attachments to the Convention relating to the issue of International Basic Sea Areas, the settlement may refer to the jurisdiction of the Seabed Dispute Chamber. In relation to the preparation of International Seabed Authority establishment, the International Tribunal on the Law of the Sea (ITLOS) and the chambers will be prepared by the Preparatory Commission based on the terms and conditions of the Resolution adopted by the third United Nations Conference on the Law of the Sea (UNCLOS III) for immediate application[6].

The fact that many countries are unable and unwilling to resolve their disputes with other countries has prolonged conflicts and brought insecurity in the region. This conflict has taken place in the South China Sea for such a long time. The presence of China and several members of Southeast Asian countries involved in this dispute have eventually put Southeast Asia countries under threat. Subsequently, the questions remain unanswered, particularly on how these disputes will be resolved. This research focuses on the claims toward Natuna Islands and how to draw up strategies on Natuna's Islands disputes by considering international law and institutional contribution.

B. Research Method

This study was conducted based on literature studies from relevant books, journals, government and non-government documents. Thus, it consists of a theoretical investigation based on published literature. Moreover, intensive sources on some related studies about the history and progress of territorial disputes will also be reviewed. The data has been analyzed to associate the main focus on the peaceful strategies with the institutional and international law bases.

[6] Undang-Undang Republik Indonesia Nomor 17 Tahun 1985 Tentang Pengesahan United Nations Convention On The Law Of The Sea (Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut).

C. Discussion

1. Territorial Disputes

The territorial disputes arise when a state occupies the national territory of other's and refuses to relinquish the control and sovereignty over the territory although being demanded or confronted to. Furthermore, wider definition of territorial disputes involves either a disagreement between states over their common homeland or colonial borders. Specifically, the dispute entails one state competing for the right of territory or even to sovereignly dominate partial area, or as a whole, whether it is homeland or colonial borders legacy.[7]

Particularly, the cause of a territorial dispute that exists between two states is commonly related to a situation in which at least one state does not accept the sovereignty of other state's boundary line. Whilst, the neighboring government takes the position of the existing boundary line as the legal border between the two countries based on a previously signed treaty or document. The scope of disagreement over the boundary line may range from a small section of territory to the entire length of the border. In all of these disputes the rival does not question the border existence within the states, but the legitimacy of the existing line boundaries that has been drawn[8].

Each state usually has several elements to justify their claims to dispute. Firstly, treaty laws had been used to demonstrate the consent of other states. Second, the geography or natural borders such as mountain ranges, rivers, oceans, and other physical formations create a clear dividing line between two states. These aspects, historically, have been more difficult to dispute because they are easily identified by a physical landmark. Third, transportation and economic development of instruments such as roads, railways, and foreign investment access are involving countries that have close economic relations and are related to the colony that focuses on domestic needs. Fourth, cultural based claims of self-determination. Fifth, Effective Control, that one of the competitors claims certain lands because they have uncontested administration of the land and its resident population over the territory. Sixth, the historical claims tend to be the most common and related to claims based on first-in-time claims to lands. Seventh, some countries use this claim by the doctrine of *Uti Possidetis,* a principal which has been used in Latin America, Asia, and African countries[9].

In many cases of territorial disputes, states approach the settlement to be the winner of the disputes. They usually adopt all-or-nothing position and not willing to

7 Hunt, Paul K. "*Standing Your Gound : Terittorial Disputes and International Conflict*". (2001).
8 Hunt, Paul K. "*Standing Your Gound : Terittorial Disputes and International Conflict*". (2001).
9 Brian Taylor Sumner, Territorial Disputes at the International Court of Justice, 53 Duke Law Journal 1779-1812 (2004) Available at: https://scholarship.law.duke.edu/dlj/vol53/iss6/.

settle by any compromise.[10] The justification of their claims should be compatible to the recognition from other country and stated in the official international documents. Nonetheless, some disputes overlap their claims to justifications that tend to rise up the territorial disputes.

2. *Strategy on Settling Territorial Disputes*

a. Institutional Approaches

Although territorial disputes continue to occur in several areas, the role of international organizations in helping those countries to resolve their disputes cannot be denied. Shannon explained the role of international organizations in negotiation is related to an attempt of having a positive relation in which international organizations will encourage the parties of the conflict to solve the problem through a peaceful way. Second, the existence of international organizations is expected to resolve the dispute through conflict management. Not only will the International organizations encourage their members to negotiate bilaterally, but they may also promote and even provide third parties to facilitate talks. Investigating the relationship between International Organizations and peaceful settlement attempts helps understand whether organizations do more than merely prevent conflict between members and also explore the types of conflict management that IO members seek to reveal the mechanisms by which organizations encourage dispute resolution[11].

On the other hand, the roles of institution in settling disputes are clearly undeniable. The roles of diplomacy within the institution could reach a settlement without any general military conflict[12]. The institution also provides kinds of results of disputes settlement by mediation. The theory of Myerson mediation minimizes the equilibrium militarization among all budget-balanced mechanisms. Hence, it can be concluded that mediation has been designed to prevent a strong player who pretending to be weak to gain unfair settlement from the disputes. Myerson mediation then constitute as the settlement strategy, thus, optimize the welfare of any player among all budget balanced mechanism.[13]

Regarding the South China Conflict, ASEAN has been in a difficult situation, whether to show the power for solving problem or to prevent any intervention. While China and Indonesia have different claims on Natuna Islands, the tension between these countries remains in a ”cold” dispute. Fortunately, the tension between these two countries has not escalated

10 Fang, Songyin and Li, Xiaojun, *”Historical Ownership and Territorial Disputes,*” (2019).

11 Shannon Megan, *”Preventing War and Providing the Peace? International Organizations and the Management of Territorial Disputes,”*, Conflict Management and Peace Science.26 (2009), 144-163.

12 Carr Fergus and Callan Theresa, ”Managing Conflict in the New Europe The Role of International Institutions,” (2002).

13 Meirowitz Adam et al, *”Dispute Resolution Institutions and Strategic Militarization,*” (2019).

into a full bilateral conflict. On the other hand, through ASEAN countries diplomacy, Cambodia finally released an ASEAN statement which contains a call for self-restraint and non-use of force, speeding up the adoption of the code of conduct in the South China Sea, and conflict resolution based on international law, particularly on the regulations in UNCLOS[14]. The role of institution in any dispute will depend on the institutions context, but will be highlighted on the non-use of military force to prevent escalations and domination by the most powerful competitor and unfair settlement.

b. International Law Approaches

In a condition of territorial disputes, any countries often do lie within that region in an unfavorable position. The power capacity of a country can be determined or can determine the country in maintaining its territory. The existence of international law has the possibility to resolve the existing problems of territorial disputes, but some problems have the complexity so that they cannot be resolved by international law. It has the ability to provide a focal point for countries during the conflict. Among the international law capacities to settle the territorial disputes, the fact shows that it is most capable in resolving the territorial dispute peacefully. The first argument, in the bargaining solution the international law has powerful effect to shape the leader's behavior by solving the coordination and distribution problem inherent to disputes territory. Second, the international law serves manner in the realm of security in case there are only few settlements using negotiation to solve territorial disputes. And it cannot be argued that international law to some extent would not be able to be used in certain conditions[15].

Nevertheless, in many cases the countries involved in international disputes are unable to resolve or settle their disputes; during ongoing preparations which sometimes escalate into a conflict. In several occasions, it showed that the conflicting countries have the options at least to try and to resolve their disputes with other countries, by doing such actions as bilateral negotiations, mediation, and adjudication. While some countries try to resolve their disputes by using only bilateral negotiations; other countries agree to take their cases to the International Court of Justice (ICJ). The options to resolve any territorial conflict must aspire for peaceful resolutions as the result of the conflict. It requires international law in the process of settling the conflict.[16]

---

14 Wicaksana, I Gede Wahyu. "*Indonesia in the South China Sea: Foreign Policy and Regional Order,*" Global Strategies 13 no. 2 (2019).

15 Huth, Paul K et al. "*Bringing Law to the Table: Legal Claims, Focal Points, and the Settlement of Territorial Disputes Since 1945*". American Journal of Political Science (Midwest Political Science Association (2013). , Vol. 57, No. 1 (January 2013).

16 Wiegand, et al. "*Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes*". Journal of Conflict Resolution (2011). 55(1) 33-59.

However, international law can offset this incentive to renegotiate or facilitate the consolidation of new territorial arrangements. Changes to the territorial status quo supported by international law are more likely to uphold the territorial sovereignty than not according to law change, if the losing country has a strong incentive to avoid establishing a precedent for non-compliance with the international legal principles in the settlement of territorial disputes. Such incentives exist when potential challengers have other ongoing territorial disputes in which they relish legal benefit; that is being able to choose a legal settlement in the dispute. These conditions apply to many countries.[17]

D. Closing

The analysis presented in this article offers several important contributions to territorial disputes strategy. First and foremost, the empirical results suggest that combination of institutional and international law has a powerful role to play in shaping leaders' behavior in negotiations by helping leaders solve the coordination and distribution problem inherent to disputes over territory. During the negotiations and asking for the support and recognitions from others, the government should maintain their claims towards any international law documents to justify and reassure other countries.

On the other hand, regarding the statement above, there are certain problems that cannot be solved, and it is suggested that the management of structured international organizations strongly support under those certain conditions, including the management conflict when the member of institutions has involved in any disputes among each other. The legal and relevant principles established in international law and the international institutions capacity to manage the settlement become the instruments to settle the conflict since there were several countries that do not have any regional institutions to settle unjustified claims and disputes. Second, by the China's claim over the Natuna Island, Indonesia that strongly stands by UNCLOS 1982 should report the problem to ASEAN and gain supports from other countries. Lastly, to settle any unsolved disputes the countries should report the disputes to the International Courts (ICJ), International Tribunal on the Law of the Sea (ITLOS), General Arbitration or Special Arbitration to prevent any escalation.

Bibliography

1. Carr, Fergus and Callan, Theresa, Managing Conflict in the New Europe: The role of International Institutions (New York: Palgrave Macmillan, 2002).
2. Hunt, Paul K, *Standing Your Ground: Territorial Disputes and International*

[17] Prorok and Huth, *"International Law and the Consolidation of Peace Following Territorial Changes,"* The Journal of Politics , Vol. 77, No. 1 ,pp. 161-174, The University of Chicago Press on behalf of the Southern Political Science Association, (January 2015).

Conflict (Michigan: The University of Michigan Press, 2001).
3. Brian Taylor Sumner, Territorial Disputes at the International Court of Justice, 53 Duke Law Journal 1779-1812 (2004), https://scholarship.law.duke.edu/dlj/vol53/iss6/, (accessed 20 April, 2020).
4. Butcher, G John, "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea," Contemporary Southeast Asia 35, no.2 (2013), https://www.jstor.org/stable/43281252, (accessed 16 April, 2020).
5. Fang, Songyin and Li, Xiaojun, "Historical Ownership and Territorial Disputes," 82 no. 1, https://www.journals.uchicago.edu/doi/full/10.1086/706047 (2019).
6. Huth, Paul K et al, "Bringing Law to the Table: Legal Claims, Focal Points, and the Settlement of Territorial Disputes Since 1945," American Journal of Political Science (Midwest Political Science Association) 57 no. 1 (2013), https://www.jstor.org/stable/23496545 (accessed 15 April, 2020).
7. I Gede Wahyu Wicaksana, "Indonesia in the South China Sea: Foreign Policy and Regional Order," Global Strategies 13 no. 2 (2019), https://e-journal.unair.ac.id/JGS/article/view/15679/8676 (accessed 22 June, 2020).
8. McRae, Dave, "Indonesia's South China Sea Diplomacy: A Foreign Policy Illiberal Turn," Journal of Contemporary (2019), https://sci-hub.tw/https://doi.org/10.1080/00472336.2019.1601240 (accessed 16 April, 2020).
9. Meirowitz, Adam et al., "Dispute Resolution Institutions and Strategic Militarization," Journal of Political Economy 127 no. 1 (2019), https://doi.org/10.1086/700761 (accessed 20 June, 2020).
10. Prorok and Huth, "International Law and the Consolidation of Peace Following Territorial Changes," The Journal of Politics 77 no. 1 (2015), https://www.jstor.org/stable/10.1086/678529 (accessed 23 April, 2020).
11. Shannon, Megan, "Preventing War and Providing the Peace? International Organizations and the Management of Territorial Disputes," Conflict Management and Peace Science 26, no. 2, (2009), https://sci-hub.tw/https://doi.org/10.1177%2F0738894208101127 (accessed 15 April, 2020).
12. Wiegand and Powell, "Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes," Journal of Conflict Resolution 55 no.1 (2011), https://doi.org/10.1177/0022002710377168 (accessed 18 April ,2020).
13. CNN Indonesia, "*Kisruh Natuna, Indonesia Dinilai Bisa Gunakan KlaimSejarah*," https://www.cnnindonesia.com/nasional/20200117211923-20-466449/kisruh-natuna-indonesia-dinilai-bisa-gunakan-klaim-sejarah, (accessed 21 June, 2020).
14. Tobing Sorta, "*Dasar Hukum Klaim Indonesia vs Tiongkok*," https://katadata.co.id/berita/2020/01/04/dasar-hukum-klaim-laut-natuna-versi-indonesia-vs-tiongkok, (accessed 22 June, 2020).
15. Law of Republic of Indonesia Number 17 of 1985 on Ratification to the United Nations Convention On The Law Of The Sea

Curriculum Vitae of Author

Aninditya Putri Prameswari was born in Lamongan March 5, 1999. After graduating from Tunjungmekar Elementary School, SMPN 1 Lamongan, and Al Uswah Integrated Islamic Senior High School in Surabaya, she is currently studying in department of International Relations at Airlangga University. She has been involved in researches and authorships for several times. She won 1st place Scientific Writing Competition at Al Uswah Integrated Islamic Senior High School Surabaya. In 2019, the author became a delegation of Airlangga University in the 7th Asian Academic Society International Paper Competition in Hat Yai, Thailand. She is also an active writer in some communities and has published several publications. She is also taking part in Research Scientific Division of International Relations Students Association (*Himpunan Mahasiswa Hubungan International*) of Universtiy of Airlangga.