

INTERNATIONAL LEGAL STUDY OF THE INDONESIA-MALAYSIA REGIONAL DISPUTE ABOUT SIPADAN AND LIGITAN ISLANDS IN THE SULAWESI SEA

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Abstract

The goal of this paper is to look into the background of the island disputes between Indonesia and Malaysia over Sipadan and Ligitan from the perspective of international law. In addition to the reasons, the purpose of this study is to determine the settlement process between the two countries to resolve the dispute between Sipadan and Ligitan and its implications for international law. It also aims to find out the reasons for the International Court of Justice in determining the winner of the dispute between the islands of Sipadan and Ligitan. This study uses descriptive methods, normative methods based on international law, and data collection techniques to analyze the data obtained through online search techniques and comparative research approaches. The results of this study show that the cause of the dispute between the islands of Sipadan and Ligitan originated from the absence of the two islands on the national maps of Malaysia and Indonesia, which then the two countries took steps to negotiate in international forums in resolving the dispute. It is also known that the main factor considered in determining the winner by the International Court of Justice is the comparison of the effectiveness of the management of the disputed area.

Keywords: *Dispute, International Law, Islands, Territory Dispute*

1. INTRODUCTION

Since long ago, Indonesia and Malaysia have had an ups and downs relationship as neighboring countries. Starting from mutual accusations regarding cultural struggles to disputes over national boundaries, namely regarding the status of the Sipadan-Ligitan region (Zukri et al., 2019). The seizure of the two islands originated from the actions of Malaysia. Malaysia claimed that the territory of the two islands (Sipadan and Ligitan) should be part of its territory, which was divided due to the convention agreement between the Dutch and British colonial governments in 1891 which became the forerunner of the territory of Indonesia and Malaysia. Nevertheless, the British colonial government (at that time North Borneo) was ultimately responsible for the management and development of the islands of Sipadan and Ligitan which were then passed on by Malaysia after North Borneo resonated with Malaysia. On this basis, Malaysia stated that the two islands should be within Malaysian territory, while Indonesia, which protested this, was indifferent to the two islands (Mauna, 2005).

Indonesia initially raised this dispute case to the ASEAN High Council, but through a special agreement in 1997 in Kuala Lumpur, the case was brought to the International Court of Justice, because it requires a political system that can manage relations between these neighboring countries so that they remain conducive. The dispute over the ownership of these two islands is also related to geopolitical competition between countries. In Indonesia, based on the conception of nationality based on Pancasila and the 1945 Constitution, the Indonesian nation's geopolitical view of itself and its environment

is to achieve Indonesia's national ideals of maintaining independence, sovereignty, dignity and social order in order to achieve the goals of the nation and state (Armawi, 2020).

In this study, the first thing to examine is the law that will be discussed, what title is attached by the parties in the disputed area, and how the International Court of Justice evaluates that title. In international law there are several territorial gains that can be used by parties, namely: discovery, prescription, submission and adjudication (Kurnia & Darumurti, 2015). Second, how the International Court of Justice concluded that Malaysia has exercised its sovereign rights over the islands. This study is different from previous studies because it describes facts including case procedures, then legal arguments from the point of view of international law, decisions and legal considerations of the legal entities involved and finally conclusions.

Based on the background above, this study aims to reveal important points in the case of disputes over the ownership status of the islands of Sipadan and Ligitan and also to analyze how these cases are resolved from an international legal perspective.

2. RESEARCH METHODS

In this study the authors use the normative method. According to Benuf & Azhar (2020) normative method is research examining document studies, namely using various secondary data such as laws and regulations, court decisions and legal theory. The several approaches used in this research are the case approach, the historical approach and the comparative approach which in this study includes an in-depth study of the cases discussed, examines the background and development of the regulation of the legal issues being faced and compares legal arrangements or court decisions against parties – disputing parties.

3. RESULTS AND DISCUSSION

3.1. Settlement of the Sipadan and Ligitan Cases According to International Law

From various negotiations over the past few years, the two countries have concluded that this dispute is difficult to agree on diplomatically (Arifin, 2022). Therefore, the two countries have agreed to submit this resolution to the International Court of Justice to sign “Special Negotiations to be submitted to the International Court of Justice in disputes between the two countries. regarding the status of the islands of Sipadan and Ligitan,” on May 31, 1997 in Malaysia. By mutual agreement, the dispute case was submitted to the International Court of Justice on November 2, 1998 in The Hague, Netherlands. Both countries believe that the outcome of the International Court of Justice is a fair decision regarding the status of the two islands. In the course of the debate, Indonesia based on an 1891 agreement between the Dutch and British colonial administrations that defined the border between the Dutch East Indies and North Borneo (Sumardiman, 2003).

Meanwhile, Malaysia in this case holds its foundation over the islands with the fact that Britain has been continuously managing the two islands since 1878. To the International Court of Justice, the parties must fulfill the procedure until entering the stage of submitting verbal submissions to prove the claim for the dispute. The verbal submission in the court process was divided into two sessions, namely the first session

which was held on 3 to 4 June 2002, where the Indonesian side presented the defense of its claim to sovereignty, then followed by the Malaysian side which was held on 6 to 7 June which presented the claim for ownership of the second island. While the second session was held the next few days, namely June 10 for Indonesia and Malaysia on June 12 (Valencia, 1991). The International Court of Justice ruled on 17 December 2002 that, based on the fact that Britain and Malaysia were deemed to be managing the two islands more effectively. Indonesia respects its decision, especially because of the 1997 special agreement which stated that both parties to the dispute agree to accept the final decision of the international court regardless of the outcome.

Table 1. Detail Chronology of the Sipadan and Ligitan Cases from Year to Year

Year	Case Incident
1969	On September 9, 1969, the Sipadan and Ligitan territorial dispute case was first mentioned during negotiations on the contingent boundaries between Indonesia and Malaysia which were held in Kuala Lumpur. The agreed outcome of the negotiations was that the two countries decided to refrain from occupying the two islands until the dispute could be resolved.
1970	Malaysia made a map that included the two disputed islands in its territory, this led to protests from Indonesia, which considered it an act of provocation. Later in the same year, the Malaysian government began to accelerate projects for the construction and management of facilities on the two islands without Indonesian approval.
1989	Prime Minister of Malaysia, Mahathir Mohamad visited Indonesia and then had a meeting with President Soeharto in Yogyakarta. In this meeting, both parties concluded that the dispute between the two islands is difficult to resolve bilaterally.
1997	Indonesia and Malaysia submitted the dispute case to the International Court of Justice, and signed the "Special Agreement Concerning Submission of Disputes Concerning the Sovereignty of the Sipadan and Ligitan Islands to the International Court of Justice" On 31 May in Kuala Lumpur, Malaysia.
1998	On November 2, Indonesia and Malaysia signed a special agreement formally submitting the dispute case to the International Court of Justice through a joint letter or notification.
2000	The written debate procedure ("written complaint") between the parties is believed to have been completed at the International Court of Justice at the end of March 2000. The written debate includes the submission of "complaints", "counterclaims" and "reply" in the course of proceedings of the International Court of Justice
2002	In the final determination, the dispute case was won by Malaysia so that the International Court of Justice established the islands of Sipadan and Ligitan as official territory from Malaysia on December 17, on the basis of Malaysia's effectiveness in developing and managing the two islands better than Indonesia.

3.2. Causes of Indonesia Losing in International Law Disputes

The International Court of Justice began voting to make a decision on the dispute over the status of the Sipadan Ligitan Islands. Through voting held by international courts, out of 17 judges, Malaysia won with 16 judges while only one judge sided with Indonesia. There were 17 judges involved in the court process, 15 of whom were permanent judges at the International Court of Justice, while the other 2 judges were the choice of each country. Malaysia's victory was based on evidence of administrative effectiveness and development by Malaysia on the islands of Sipadan and Ligitan. Meanwhile, from the

Indonesian side, the lack of presence and attention from the government was a hard slap for Indonesia.

- a. Rejecting Indonesia's argument that according to the interpretation of Article 4 of the 1891 Dutch-British agreement, the disputed islands were Dutch-controlled territory. Indonesia interprets the 4°10'N boundary with the island of Sebatik as a distribution line and touches the second disputed island to the east, which is unacceptable to the courts.
- b. The ownership status of these islands is also not clearly stated in Memory van Toelichting. Memory Map van Toelichting gave Indonesia's explanation regarding Article IV which was considered unenforceable because it was not part of the 1891 agreement.
- c. The court rejected alternative suggestions from Indonesia because the contract agreements submitted by the Dutch colonial government to the Bulungan Sultanate in 1850 and 1878 did not mention the two islands (Djalal, 2017).

The peaceful means used in resolving these disputes have had a significant impact on Southeast Asian countries. Settlement of these disputes through the International Court of Justice can be a role model in resolving disputes in the Southeast Asia Region. This is because other ASEAN countries also have many disputes, such as the conflict between Thailand and Cambodia. Regarding the conflict resolution mechanism in Sipadan and Ligitan, one thing that is regrettable is that the ASEAN regional mechanism was not adopted. The Association of Southeast Asian Nations (ASEAN), which serves as a forum for regional cooperation, has a very limited role in the resolution of border disputes. This is because border disputes are regarded as a local issue, and ASEAN countries do not wish to become involved.

Taking into account subsequent negotiations, the government needs to evaluate in depth the negotiating position in a dispute. The government must have a strong legal basis but must also be equipped with good negotiating skills to convince the international community. An important thing to note is that the option of war should not be used for any reason because it is an ancient method in modern times.

3.3. The Attitude that Indonesia Must Take in the Future in Similar Cases

As it is the obligation of the government to safeguard the country's territorial integrity, the release of Sipadan and Ligitan from Indonesian territory is a valuable lesson for the future. In this case, we must admit that the government has not utilized the assistance of international lawyers or legal experts from abroad, instead relying on legal experts from Indonesia itself. Yet in the opinion of some legal observers, out of the thousands of lawyers in Indonesia, not one of them has the necessary skills to compete in the International Court of Justice. So, in this case, in the future the government is expected to improve the quality of education in order to produce qualified legal experts who are able to compete in the international arena. So that if a similar case occurs in the future, Indonesia will be more established in competing in international courts.

The Malaysian government takes advantage of the absence of the Indonesian government on the two islands by intensifying the development and management of tourism, while the Indonesian side chooses to ignore the two islands until the issue of ownership of these two islands is resolved. The Indonesian government should take a more serious attitude in paying attention to underdeveloped and border areas so that similar cases do not occur. In this case, it is hoped that the Indonesian government will

intensify development in its territory and pay more attention to underdeveloped areas so that if a similar case occurs, Indonesia will have more legitimacy to defend its territory.

4. CONCLUSION

The dispute between Indonesia and Malaysia in determining the sovereign status of the islands of Sipadan and Ligitan can be resolved peacefully. In 1997, through a special agreement in Kuala Lumpur, Indonesia and Malaysia decided to bring the case to the International Court of Justice in The Hague, Netherlands to resolve the dispute. This dispute originated from the border between the Dutch East Indies and North Borneo (England) on the east coast of Kalimantan which was not clear, the dispute resulted in a polemic between Indonesia and Malaysia which inherited the boundaries of the region. The two sides also fought over the ownership status of the islands of Sipadan and Ligitan. Indonesia and Malaysia then exchanged arguments and legal evidence to defend the claims of the two countries at the International Court of Justice. The dispute case was ultimately won by Malaysia. This is based on evidence that Malaysia is more active in managing its territory than Indonesia, which is indifferent. As such in 2002, the International Court of Justice established the status of the islands of Sipadan and Ligitan as the territory of Malaysian sovereignty.

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