

Settlement of disputes peacefully regarding the territorial boundaries between the two countries (analysis of cases of shootings of Indonesian citizens in Timor Leste)

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ABSTRACT

In this research the author uses the Normative Juridical method which uses secondary data as the main material in the preparation of this thesis with Content Analysis techniques, namely secondary data that is interpreted and connected with legal expert opinions to obtain conclusions so as to obtain thorough and comprehensive research results. Based on the results of the research, it is obtained that to resolve the border dispute between the two countries by using conciliation between the two countries by forming a conciliation commission for a span of three months to obtain results about the causes of border disputes caused by the shooting of Indonesian citizens. This conciliation is intended to provide a mandate or order to the conciliation commission about who is responsible for the shooting and then provide a way to determine the territorial boundary between the two countries. The second way is to use an Inquiry involving an independent team, the results of which will be made public for further action. The next step is to use Arbitration which is public if the two methods above are unable to overcome the problem. The arbitration in question is a semi-court to try the perpetrators of the shooting as well as establish a clear boundary between the two countries so that in the future the same dispute does not occur. The effort that can be taken by Indonesia to realize justice for the victims of the shooting is to submit a strong protest note against this shooting case and clarify the incident to Timor Leste if it does not get a good response is to terminate diplomatic relations because of the dangerous nature of the shooting action for peace in the border area. The next step would be a local court for the shooter in the jurisdiction of Timor Leste. This is an effective way to resolve border disputes without resorting to violence.

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1. INTRODUCTION

In general, every country and people in this world yearn for peace on this earth and this is a noble ideal and worth fighting for, but with the passage of time and human activities, the things that are aspired to are far from expectations. There are only disputes and disputes between humans and humans as well as countries with other countries, this is an act that is not commendable but cannot be avoided because each individual has their own interests. In this situation, humans and the state

must face situations of content with a patient attitude and must not rely on violence and must prioritize peaceful resolution of the problems they face.

It is a provision in positive law that the use of force in interstate relations is prohibited and therefore international disputes must be resolved peacefully. The obligation to resolve this peacefully was originally stated in article 1 of the Convention on the Peaceful Settlement of Disputes signed at The Hague on October 18, 1907, which was later confirmed by article 2, paragraph 3, of the United Nations Charter. It is a provision in positive law that the use of force in interstate relations is prohibited and therefore international disputes must be resolved peacefully. The necessity to resolve this peacefully,

Thus violations of the use of force and peaceful settlement of disputes have become imperative norms in relations between nations. Therefore, International Law has compiled various ways of peacefully resolving disputes and contributing them to the world community for the sake of maintaining peace and security and creating harmonious relations between nations to create lasting peace. However, this noble goal was not realized until now. In every association between nations, there is bound to be a dispute or conflict involving two or more countries which allows them to take action either peacefully or through violence to resolve the problem.

International law does not contain a requirement for a country to choose a certain settlement procedure. This is confirmed by article 33 of the United Nations Charter which asks countries to resolve disputes by peaceful means while mentioning various procedures that can be chosen by the disputing countries. Because of this freedom, countries generally give priority to dispute resolution procedures through political channels rather than settlement through arbitration or judicially, because political settlement will better protect state sovereignty. If there is international tension stemming from a dispute, countries think it would be better if the dispute can be resolved first through political channels considering that the system used is more flexible, non-binding and prioritizes the sovereignty of each party. If it is not successful, then a legal dispute resolution procedure will be taken, if the dispute can be used successively and also in parallel.

The term International Disputes⁴ includes not only disputes between countries, but also other cases that are within the scope of international regulation, namely certain categories of disputes between countries on the one hand and individuals, corporate bodies and non-governmental bodies. country on the other. Disputes between countries will cause small differences and almost do not cause waves on the surface of the International to extreme situations of prolonged friction and tension between countries which culminate in threats to international peace and security. International disputes involving two warring countries are very vulnerable to the life and peace of citizens in the region. This is very possible because of the use of violence in resolving the dispute. It cannot be denied that international disputes have had a lot of impact on the foreign policy of a country, in this case the Unitary State of the Republic of Indonesia which is free and active. In Law No. 37 of 1999, what is meant by free and active is foreign policy which in essence is not neutral politics, but politics that is free to determine attitudes and policies towards international issues and does not bind itself a priori to one world power and actively contributes both in the form of thoughts and active participation in resolving conflicts, disputes and other world problems in order to realize world order based on freedom,

Meanwhile, for the category of national interest⁵, foreign policy is carried out to support the realization of national goals as stated in the Preamble to the 1945 Constitution, which include protecting the spill and blood of Indonesia, advancing public welfare, educating the nation's life and participating in carrying out world order in the implementation of foreign policy. Indonesia must be a reflection of the nation's ideology. Pancasila as the ideology of the Indonesian nation is an ideal foundation that influences and animates Indonesian foreign policy. The implementation of foreign policy that is free and active and based on the basic law, namely the 1945 Constitution as a constitutional basis that cannot be separated from the national goals of the Indonesian nation.

Public safety in question is whether it is true that the shooting of three Indonesian citizens in the border area carried out by the Timor Leste authorities can disturb the stability and security of the surrounding population in the area. In fact, the shooting that occurred has become a new dispute in this area regarding the boundaries of two countries, is it in accordance with what is expected from the respective governments of the two countries concerned about a peaceful settlement which is expected because from a historical point of view, Timor Leste was once a the 27th province of Indonesia. Broadly speaking, the shooting occurred due to a misunderstanding of the real boundaries

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of the two countries so that the security forces on the ground were confused about whether the area they were guarding was correct according to the map and jurisdiction of the country concerned or not. So however the settlement of this case is still in big question, whether it is resolved through political or legal channels.

So for disputes that are political in nature, the resolution is through political procedures, while for disputes that are legal in nature, the settlement is also according to law. The difference between these two ways of dispute resolution lies in the level of binding force of the decisions taken. Decisions taken in political dispute resolution are only in the form of proposals that are not binding on the disputing countries.

2. METHOD

The writing of this work uses the Normative Juridical method by using secondary data sources as the main sources which are international legal products used and comparing the mastery of book and literature materials with the cases at hand because by way of comparing theories and cases is the most effective way to obtain a result or the right advice in solving this case, the data used is secondary data, namely data obtained from library materials which are used as primary, secondary and tertiary legal materials contained in the field of law, legal materials used as data sources, primary legal materials, is legal material that is binding and can be directly used against the source of existing problems, Secondary Legal Material, is legal material that functions to analyze primary legal material, Tertiary legal material, is legal material that provides instructions or explanations of primary legal materials and secondary legal materials er. data collected by way of literature study, namely by collecting various provisions of papers, books, information from the internet related to the topic of the problem raised so that the author gets a theoretical basis in the form of views and opinions of experts on the problem to be solved. The analysis used is qualitative analysis with using analytical descriptive techniques. Qualitative data analysis is an analysis that does not use statistical data, while analytical descriptive techniques are by providing descriptions and elaboration of existing problems based on primary, secondary and tertiary legal materials.

3. RESULTS AND DISCUSSION

3.1 Dispute resolution through conciliation

As is well known, conciliation was used by France and Thailand to resolve their border disputes during the Japanese occupation. It has become a basic role model for countries in the world to solve their border problems. Conciliation in question is the presence of a neutral third party to investigate the actual incident, both the place and time of the shooting, whether it falls under the jurisdiction of Indonesia and Timor Leste. A new problem arises if the designated country sided with one of the countries, as Australia⁶⁴ has known in several media offered to be an intermediary country in this case.

3.1.1 Conciliation Practices Between Indonesia and Timor Leste.

All conciliation commissions have the same function of investigating a dispute and suggesting possible resolution limits. But as in many cases involving a conciliation commission, this commission has undertaken a variety of different tasks. The conciliation process is a type of institutionalized negotiation⁶⁵. Meanwhile, the task of the commission is to support and structure the dialogue of the parties, while they provide any assistance that may be useful to reach a successful conclusion. This approach stems from the premise that dispute resolution depends on securing the agreement of the parties. A further function is to provide information and advice on the subject matter of the parties and to suggest a solution that relates to what they receive, not what they demand.

The conciliation that will be formed between Indonesia and Timor Leste to handle the shooting of Indonesian citizens will certainly be different from the work of the Icelandic and Norwegian conciliation commissions, but in general the method used is as described above. The location of the shooting must be measured correctly according to the facts so that it does not create mutual suspicion between the two countries.

3.1.2 Object of Conciliation

Regarding the object of conciliation relating to the jurisdiction of the country concerned, it is known that the shooting occurred at the Malibaka River on January 6 2006. Regarding the jurisdiction of the

country in charge of this matter, it can be seen that the borders between the two countries through which the river passes are as follows:

- 1) The river that is crossed is a river that is free (right of innocent passage) for navigation, whether in peacetime or not.
- 2) The right of this transit passage depends on the country through which the river passes because basically the state has jurisdiction to make rules.
- 3) Compromise from the two countries to regulate the management and jurisdiction of each border country.

Of the three options above, there is no management and jurisdiction over the management and jurisdiction of the countries of Indonesia and Timor Leste over the Malibaka River, so that there was a misunderstanding from the authorities there about the real boundaries between the two countries, resulting in the shooting of the 3 Indonesian citizens.

3.1.3 Conciliation Influence

The conciliation formed by the two countries had several influences on state relations and the foreign policies of each of the two countries, whether significant or not. There are advantages and disadvantages to choosing conciliation as a form of international dispute resolution regarding borders, the advantages are as follows:

- 1) The easy procedure for creating a commission is only in the form of appointments from each country and from neutral country parties which can be police officers and diplomats under the Department of Foreign Affairs of the countries in dispute.
- 2) The time is not too long to be able to produce results from the work of the conciliation commission no later than 3 months.

Disadvantages of conciliation commission work:

- 1) Inaccurate work results due to the fast time spent on investigations so that one party does not accept the results of the commission.
- 2) There is no clear legal force regarding the work and safety of the conciliation team, so it is very vulnerable to foreign intervention or third parties.
- 3) The process is less transparent about the results of the commission's work due to the closed nature of the work and will only be announced after the results of the commission occur.

3.2 Settlement of border area disputes through the investigation channel.

Borders are one of the most important manifestations of territorial sovereignty. As long as the border is expressly recognized by treaty or generally recognized without a clear statement, then the border is part of a state's right to territory. A border is often defined as an imaginary line on the surface of the earth, which separates the territory of one country from another. This has perhaps been fabricated, 'A frontier is not simply a line on a frontier. The frontier land may or may not be an obstacle. The surveyor may be very interested in such a line. For the strategist what matters is the presence or absence of obstacles.

If the frontier land is characterized such that, notwithstanding the demarcation lines delimiting it, the territory itself and its inhabitants are combined for all practical purposes, the two or more States concerned may allow (whether by treaty or act) the existence of administrative or other practices such as the free movement of officials along the border, which would otherwise be an insult to their respective sovereignty. The exception of de facto relations between states and their citizens, arising from such special conditions in a border region, is sometimes said to be "voisinage" relations.

In the terminology of the boundary question, there is a clearly defined difference between "natural" and "artificial" boundaries. Natural borders consist of mountains, rivers, coasts, forests, lakes and deserts, which divide the territory of two or more countries. But used in a political sense, the term natural frontier has a much more important meaning: 'Natural Boundary' denotes the line determined by nature, along which one country must be considered extended or limited from, or as a protection against, another country. Artificial borders consist of either signs shown to indicate imaginary boundaries, or parallel to longitude or latitude.

3.2.1 River border territorial jurisdiction

Most of the difficulties with regard to boundaries have arisen in the case of water boundaries. And among such water boundaries is undeniably the most difficult is the river boundary, and how to determine it. In the case of a non-navigable river, the boundary line in the absence of a treaty concerned in this case is drawn mid-river or along the main fork if the river has more than one fork, following all the bends in its banks. This line is known as the "median line" (median line) and was

used for the impassable rivers in the 1919-1920 Peace Treaty. If the river is navigable, the boundary lines are set along the diameter of the deepest navigable channel, or what is technically called the Thalweg.

3.2.2 Characteristics of the Malibaka River

As is well known, the Malibaka River as the location where the shooting took place is an impassable river and is a characteristic of an arid tropical river where there is a lot of water in the rainy season and little water in the dry season. Thus the border line between Indonesia and Timor Leste is the middle line of the river or Thalweg which is the jurisdictional boundary between the two countries.

3.2.3 Where the Shootings Occurred with Territorial Jurisdiction

The shootings carried out by the UPF (Border Guard Police) of Timor Leste against three Indonesian citizens occurred at the Malibaka River on the border between Belu Regency, East Nusa Tenggara Province and Bobonaro District, Timor Leste. Actually there were five Indonesian citizens who were fishing but those who were shot and died at the crime scene (TKP) were Andido Mariano (26), Jose Mauhorté (38), Stanis Maubere (48) while Egidio and Ellias Tavares were able to save themselves. They were a resident of Tohe Village, Raihat District, Belu Regency.

- 1) According to the Indonesian Ambassador in Timor Leste, "Ahmed Bey Sofwan", the Timor Leste security forces explained that the incident began when five Indonesian citizens were fishing in the Malibaka River, then one of them went ashore and took corn. "According to the security forces Timor Leste, the patrol officers wanted to arrest and there was resistance and the incident occurred.
- 2) According to Danrem 161 Wirasakti Kupang, Col.inf.APJ Noch Bola and Kapolres Belu, AKBP Ekotrio Budhinar that there were five Indonesian citizens who were shot at by the Timor Leste border police who three died at the scene and two were able to escape and the shooting was carried out across Malibaka River.

From the two statements provided there was a striking difference, the Indonesian Ambassador stated that the incident was triggered by resistance by Indonesian citizens while from the Danrem Wirasakti and the Belu Police Chief that the incident was an intentional shooting by the Timor Leste border police at an Indonesian citizen who was carried out across the Malibaka River. From these two premises, a provisional hypothesis can be drawn that the shooting took place on the Malibaka River, but whether the shooting took place across the river or on other land is yet to be ascertained.

3.3 State responsibility for non-contractual international violations.

In practice, most cases of state responsibility, at least before international courts, arise from mistakes that have been alleged to have been committed by the state concerned. The error referred to in this connection means a violation of several obligations imposed on a country based on international law and is not a mere violation of contractual obligations. Against such mistakes are often applied "international violations" (international delinquency). It is too early to gauge the effect on the topic of the increasing tendency under international law to hold individuals accountable for current violations.

It will be internationally responsible for violations only if the violations can be linked. State responsibility arises when the linkage is proven. As emphasized by the International Law Commission⁸⁵ "Regulation of an act of negligence to the state as an international person is an implementation whose needs are within the scope of international law. This is different from parallel implementation which can but is not required to take place according to internal law."

The report of the Sub-Committee of the League of Nations said that "The harm suffered by foreigners in cases of riots, revolutions or civil wars does not fall within the scope of the international responsibility of that country. However, in cases of riots, the country will be held responsible if the riots are directed against foreigners by itself and the country has neglected to carry out its oversight and prosecution obligations." Thus a state is responsible if it supports or finances groups to involve themselves in mass riots that endanger or encourage or incite their activities⁸⁷. Draft article 8 of the International Law Commission at its 32nd session in 1980, provides provisions for attribution to the state regarding the actions of people who in reality act on behalf of the state with the following words: "The actions of a person or group of people must also be considered as an act of the state according to international law if:

- 1) It is determined that the person or group of persons is in fact acting on behalf of the state; or
- 2) The person or group of people actually carries out the elements of government authority, in this case in the absence of official authority and in circumstances that justify the implementation of the elements of authority.

In practice shootings carried out by the Timor Leste border police can be categorized as those shootings carried out by government organs, in this case the country's defense equipment, so there is nothing wrong in disclosing this case, the Timor Leste government must give accountability to Indonesia because the shootings that were committed were acts of the state of Timor Leste as represented by their border police.

3.4 Settlement through International Arbitration

As is well known, in order to bring a matter to the table of the International Court of Justice, a case must obtain approval from both parties (article 38 of the Statute of the International Court of Justice) and more importantly, what instrument was violated. Meanwhile, Indonesia and Timor Leste have not signed international treaties or agreements regarding border matters, so it is unlikely that this shooting case will be brought to the International Court of Justice and tends to go through International Arbitration, such as between the United States and England with the Alaska Boundary Arbitration (1903) has provided little knowledge about the dispute. borders which do not have to be brought to the International Court of Justice but enough to arbitrate.

Cases of shootings committed by the Timor Leste border police cannot be resolved locally, this is because the courts in that area cannot provide compensation to the victims of the shootings, both material and immaterial. In addition to this, the executive organ is more dominating than the judicial power so that the highest decision remains in the hands of the government, the courts only carry out decisions from the government. Therefore the case must be brought to arbitration to obtain clear legal certainty and a sense of justice for the victim and the perpetrator to receive an appropriate sentence.

3.4.1 State Responsibility and Theory of Error.

It is often said that a country is not responsible to other countries for unlawful acts that are carried out intentionally and with bad intentions or with reprehensible negligence. Some of the rules in the treaties that impose obligations on countries contain everything explicitly in terms of conditions relating to bad conditions or reprehensible negligence and violations of these treaties cannot but involve directly from the participating countries. Only in specific cases where certain circumstances demand that willful or malicious intent or negligence may hold a State liable.

The shooting case that was carried out can be categorized as negligence which may be intentional because government officials, in this case the border police, in bad faith committed acts against the law by shooting Indonesian citizens who were on the border, to be precise, on the Malibaka River. Behind all this there must be political interests that exist, as it is known since the incident occurred the situation in the border area was not conducive and needed the attention of the world and the international community to monitor it and in the end the United Nations had to intervene. The UN peacekeeping mission which will end on May 19 2006 in the conflict area of Timor Leste will be very detrimental to the Government of Timor Leste both in terms of economy and security, from an economic perspective all the needs and expenditures of the state are in the hands of the UN for the last 7 years starting in 1999 so that if the UN leaves none of these areas are used as a source of funds for the continuity of the country.

From a security standpoint, the peacekeeping mission brought peacekeepers which of course brought a sense of security to the residents there and if the troops were withdrawn, the situation would automatically be very vulnerable, besides the security forces there were not necessarily well organized. And the last condition that sticks out is the riots that occurred there due to the dismissal of a third of the security forces there by the central government of Timor Leste so that the UN reconsidered⁹² being there for at least one more month after 19 May so that public opinion that might form is that the shootings that were carried out were a hidden agenda. to maintain a UN presence in the area.

3.4.2 Arbitration Practices between Indonesia and Timor Leste.

Actual decisions of international arbitral tribunals fail to justify general or absolute conditions or reprehensible omissions. An instructive precedent was set by the Jessie case brought before the British-American Claims Arbitral Tribunal in 1921. The court established the principle that "Every government is accountable to another government for wrongdoing in the decisions of its officials who claim to have acted within the scope of their duties." -their duties and are given the power to enforce their wishes."

Arbitration can be more effective if the two countries can place their positions properly and correctly and do not cause a new dispute between them regarding the results of the announcement

of Arbitration. . It is highly unlikely that a settlement of a dispute does not involve the participation of its own citizens, as it is known that about half of the people of Timor Leste are in refuge in the border area⁹⁵ with Indonesia. It is very important that the resolution of this border dispute also involves reconciliation between the citizens of the two divided countries so that the outcome of this dispute settlement satisfies all parties.

3.4.3 Settlement of the shooting case as a whole.

Seeing the number of settlements offered by each component, it is presumably to choose and sort out the advantages and disadvantages when applying one of the settlement methods. From the three methods used to resolve the case, both Conciliation, Investigation and Arbitration, there is a common thread connected from the three methods. that is:

- 1) Simplify the way of settlement in order to create justice for both parties to the conflict.
- 2) Providing an effective way to make it easy for the parties to reconcile.
- 3) Provide deliberation first to resolve this case before being brought to the existing court.

By looking at the similarities in the methods used to resolve the shooting cases that led to this border dispute, the Investigation route is prioritized because it has many advantages and is accompanied by fewer losses.

The efforts made by the Government of Indonesia in resolving border disputes are many choices depending on the nature of cooperative or cooperation from the Government of Indonesia either peaceful or violent, legal or diplomatic. submitting a protest note is commonplace in international relations as a result of events in other countries that cause harm to the interests of that country and are accompanied by an official request in the form of clarification of the incident. The submission of this protest note will be responded to by submitting it back to the country concerned 2x24 hours after an event occurs. Withdrawing the ambassador is usually followed by a decline in relations between the two countries, when previously they were diplomatic, they changed only to trade.

Legal settlements meet many winding roads in settlements but in terms of certainty, these solutions are very reliable. In this case, the shooter has been identified, so there must be a court that can prosecute the perpetrators. So that the Government of Indonesia asked the Government of Timor Leste explicitly.

4. CONCLUSION

Based on the results of the discussion above, several conclusions can be drawn as follows: That the settlement of the border between Indonesia and Timor Leste can be carried out in various ways, including through diplomatic channels, namely: 1. The path of conciliation involving the two countries by carrying out several stages predetermined by each country concerned 2. Line of inquiry which makes a joint investigation to conduct a study of the incident and find the perpetrators. The law used to try the perpetrators is the law of Timor Leste because it is included in the jurisdiction of that country. 3. International Arbitration, namely by finding the perpetrators of the shooting to be tried immediately according to applicable law. The law that applies is the law of the perpetrator, giving rise to a sense of justice from the victim's family. The legal remedies taken by the Government of Indonesia in resolving the border dispute with Timor Leste are as follows: 1. Submitting a Protest Note against the incident and clarifications and information from the Timor Leste government if there is no answer then repatriate the Indonesian Ambassador from the country. 101 2. Termination of diplomatic relations if there is no settlement and action from the apparatus who carried out the shooting. This settlement is related to the actions of the Timor Leste government in giving sanctions to the soldiers.

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