

ANALYSIS OF THE MARITIME CONFLICT BETWEEN CHILE AND PERU

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Abstract

This study aims to analyze the results of the Peruvian and Chilean international disputes that have been submitted to the International Court of Justice (ICJ). The method used in this study is a descriptive method with a qualitative approach that is descriptive analysis. The method of approach used is qualitative. Qualitative methods are used to obtain in-depth data, data that contains meaning. The subjects in the dispute of this case are the States of Chile and Peru, where the object in question relates to the ownership of the maritime territorial boundaries of the two countries. The dispute that occurred between Chile and Peru regarding the border area resulted in a unilateral ownership claim of the territory and resulted in the signing of various agreements relating to the provisions in the form of norms in the international maritime direction. The settlement of cases covering relations with countries is through the ICJ. It is stated that Peru and Chile will abide by any outcome of the provisions of the ICJ. This study deals with international relations as well as how to resolve border disputes according to applicable international law. This study is also a lesson for learners who are studying international relations.

Keywords: *Chile; International Court of Justice; Maritime Disputes*

Introduction

The theory that exists in International law contains rules about the terms of a state that can be said to be part of the parties to the law in the Montevideo Convention of 1933. The conditions contained in the convention must be met by the state as one of the subjects in international law conditions, among others, having a permanent resident, owning a region or territory, having a government, and having the ability to be able to conduct good relations with other countries.

In international law, the instruments dealing with the settlement of disputes concerning sea areas are regulated in the Geneva conventions of 1958 and UNCLOS 1982. One of the international treaties, namely the Convention on the Law of the Sea in 1982, contains an annex that regulates issues concerning marine activities and also regulates maritime zones with different legal statuses. Since every country has the right to prosper its people, therefore by defending territory using territorial boundaries is one of the efforts,

disputes between the countries of Chile and Peru are cases disputes regarding territorial areas that occur in the seas of the Pacific Ocean.

When viewed from a legal point of view, the enactment of national law in a country is influenced by the territory within a country, and from a political perspective, the territory and boundaries within a country are areas that must be protected and maintained. The problems that occurred related to the dispute between the countries of Chile and Peru began with the territory located adjacent to Bolivia, then Bolivia handed over its sea coastal area to the State of Chile because of the defeat suffered during the Pacific War. Continued in 1947 the country of Chile and the country of Peru claimed unilaterally sovereignty over the sea at a distance of 200 miles along the coast of each of these countries. The statement made by the president of Peru contains the denial of the maritime zone where there is no agreement in it.

Method

The method used in this study is a descriptive method with a qualitative approach that is descriptive analysis. The way the descriptive method of analysis works is by explaining or describing further what will be discussed in this plan and after describing the results will be analyzed by the authors who will then be reviewed using a supporting library.

The method of approach used is qualitative. Qualitative methods are used to obtain in-depth data, data that contains meaning. The author of this study will explore the meaning of information obtained from books, the results of scientific research reports, official national and international media, as well as from other literature. This method aims to be able to fully disclose this information and its problems.

The object of this problem is the maritime conflict between Chile and Peru. Here we discuss what causes the maritime conflict that occurred between Chile and Peru. And we will discuss further the ICJ's ruling on the maritime conflict between Chile and Peru.

The data source that will be used in this project is a secondary data source or data obtained from a second party that has been summarized by the previous author. Secondary data was obtained from several existing sources such as law journals, legal articles, and data from research institutes. The data collection technique you use is through literature studies. A literature study is an activity to collect or collect various information related to writing. The literature studies used in this writing are journals that contain elements that can be used to review the phenomena discussed in writing. Literature studies are carried out by collecting data

from various sources which discuss topics or problems relevant to this project.

The process of analyzing data is carried out by collecting all the data that has been obtained and compiled systematically. Our data analysis is carried out by conducting literacy which is continued by comparing the results we have obtained with various other library sources so that the results of our analysis can answer all problems and provide good results

Result and Discussion

A. Chronology of Conflicts

The subject matter in the dispute of this case is the State of Chile and Peru, where the disputed matter is about the ownership of the maritime territorial boundaries of this country of Chile and Peru. The territorial sea that is next to or facing the determining countries is carried out, one of which is by means of an agreement that has been agreed through a meeting between the countries involved. And conflicts regarding maritime boundaries in a country can be resolved by an agreement made by both sides.¹

The dispute between Chile and Peru dates back to 1947, beginning with a claim to maritime rights 200 miles from the coastlines of the two countries. The occurrence of this dispute was triggered by a statement made by the President of the US state on September 28, 1945. The statement of opinion made contains a unilateral statement regarding the maritime boundary in the country stating that the country has the right to control the natural resources on the land and the contents contained therein and objects contained on the sea surface to the seabed. But there are some exceptions to existing fish and waters that must remain based on the applicable jurisdiction. Then the president of Chile carried out the act of issuing a declaration on June 23, 1947, related to the boundary of the Chilean sea area, then on August 1, 1947, the State of Peru issued Supreme Decree No. 781.

It began with the handover of territory by Bolivia to Chile already listed in the Ancon Treaty of 1883, and Peru was obliged to give status to one of the territories owned by Peru in the coastal area of Tarapaca which was then ceded to Chile after 10 years. And it is complemented by a vote conducted to determine the Province of Tarapaca a territory that is forever in the country of Chile or remains part of the territory of Peru.

¹ Anis, A. A. (t.t.). *Eksistensi Mahkamah Pengadilan Internasional Dalam Penyelesaian Sengketa Antar Negara Menurut Hukum Internasional*. 6, Hal. 12.

In March 1966 there was an event of violation that occurred on the Chilean-Peruvian sea boundary carried out by Chilean vessels fishing. After the incident, a meeting was held with Chilean foreign officials to conduct negotiations related to the fishing boat incident. Afterward, on February 6, 1968, Peru told Chile that each country should have a post used to signify a border.

Finally, on March 8, 1968, Chile received an agreement from the parties to resolve the conflict related to shipping operations carried out by Peruvian and Chilean fishermen. But on July 23, 1968, the Chilean fishing boat (Martin Pescador) received an attack from a Peruvian patrol boat in the area north of the border. This action was carried out because of the 20 Chilean fishing boats that had been warned about activities in the border area, only the ship (Martin Pescador) ignored the warning, so the attack was carried out. On the Chilean side itself, rules related to maritime boundaries are also imposed where illegal fishing vessels will be sanctioned if they fish in border areas. The Chilean state regulates permits related to foreign vessels fishing in its territorial waters which if carried out without permission will be prosecuted. This is enforced if fishing activities are carried out in the territorial sea and exclusive economic zones (EEZs). With this provision around 1984 to 2009 based on data entered many ships violated this rule and these ships were mostly from Peru.

However, on July 28, 2007, the Peruvian state party, the President of Peru, stated that the maritime zone or territory between Peru and Chile has never been limited by agreements or agreements in the governing legal instruments.² Therefore, Peru states that conflicts related to boundaries are determined by courts in accordance with customary international law. However, the Chilean side stated that there has been an agreement from both sides regarding the boundary of the maritime zone calculated from the coast and continuing to the parallel latitude. And the Chilean side also denied the recognition of the sovereign rights of the Peruvian state in the maritime zone with a boundary of 200 nautical miles from the coast.

The Chilean state hereby considers the State of Peru to have committed a violation of the principle of Pacta Sunt Servanda because in 2007 Peru did not recognize it in relation to the sea-related agreement already agreed between Chile and Peru in 1968. The denial by the Peruvian side stated that no agreement had been made, and it never reached an agreement on

² Kahumbu, A. P. (2022). *Settlement Of Sea Border Disputes Between Peru And Chili In International Law Perspective*. 1(1), Hal. 14.

the maritime zone between the two countries. On January 16, 2008, the Government of Peru took the case formally to the International Court of Justice or ICJ, arguing that no agreement had been reached in the negotiations conducted between Chile and Peru since 1980, and the closing of the door to negotiations by the Chilean Foreign Minister on September 10, 2004.³

B. Consequences of Conflict

The problems that occurred between Chile and Peru regarding the border area resulted in a unilateral claim of ownership of the territory and resulted in the signing of various treaties relating to norm-shaped provisions in the International maritime direction. However, claims of ownership and recognition of various treaties do not make disputes over territorial boundaries between Chile and Peru not produce good results and there are often disputes even between the two countries that often occur in the detention of various ships because they are considered to have violated the territorial boundaries that have been determined by both.⁴ Due to the various agreements made by the two countries often in dispute, Peru several times submitted negotiations and negotiations to Chile but never gave birth to an agreement between the two.

After deep thought and in order to maintain sovereignty and sovereignty rights, on January 16, 2008, the Government of Peru submitted the dispute resolution to the ICJ or the International Court of Justice in order to determine the direction of the maritime boundary between Chile and Peru in accordance with International law and the decision of the International Court of Justice has a binding and final nature.⁵

C. Conflict Resolution

Settlement of cases that include relations with countries can be pursued through the International Court of Justice (ICJ) route. The state filing the case will agree to have the case brought before the International Court of Justice.⁶ On January 16, 2008, the Peruvian state explained to the ICJ to determine the boundaries of the maritime zone bordering Chile in accordance with international law. And expect Peru to have sovereign rights to the maritime zone, which is 200 nautical miles from the coast, but outside of Chile's exclusive zone. After

³ Alfarysy, R. (2020). *Upaya Penyelesaian Sengketa Perairan Silala Antara Bolivia-Chile Tahun 2004-2016*. 8(4), hal. 10.

⁴ Diansyah, A. P., Mandana, D. P., & Citra, Y. (2021). *Penyelesaian Sengketa Internasional Dengan Kekerasan*. 1(1), 6.

⁵ Mangku, D. G. S. (2012). Suatu Kajian Umum Tentang Penyelesaian Sengketa Internasional Termasuk Di Dalam Tubuh Asean.

⁶ Rosita, F. I. (t.t.). *The Territorial Limitation Dispute and Its Settlement Between Peru and Chile*. Hal. 30.

filing a case at the ICJ, each of the disputing states must prepare a defense argument.

1. Peruvian defense

In Santiago's declaration article IV on the maritime boundary between the parties is not less than 200 miles. Based on this article, the method used is preferentially from a geographical parallel point where the land boundary of each country reaches the sea. Article IV is considered irrelevant to the Peruvian and Chilean cases. Finally, the Santiago Declaration was not included in the agreement on the boundaries of the maritime zone.

2. Chile's Defense

According to Chile, the Santiago declaration is already binding between the countries that signed it. This is based on Article II i.e. "The governments of Chile, Ecuador and Peru state as their international maritime policy norm that each has exclusionary sovereignty and jurisdiction over the seas along the coast in order to each issue a distance of 200 miles." This determination relates to the implementation of the international maritime policy of the obligatory state not reduced. Then article III says about exclusive sovereignty and jurisdiction must include sovereignty and jurisdiction over the seabed and the land within it. This includes rights related to maritime territory.

In the Santiago Declaration, matters concerning the principles are contained and will be considered in the resolution of cases.

D. ICJ Ruling

Article 55 of the International statute of 1945 explains that in a conflict it will be decided from a majority of votes that come from judges present at the time of the hearing. The judgment resulting from the majority vote is final which results in no appeal and also the award is binding on the litigants. Here are the decisions rendered by the judges:

"First: Decides, by fifteen votes to one, that the starting point of the single maritime boundary delimiting the respective maritime areas between the Republic of Peru and the Republic of Chile is the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line"
(International Decision of the Court of Justice, January 27, 2014)⁷

In the judgment presented above, the judges considered that the maritime border between the litigants started from the intersection of latitudes that crossed the No.1 boundary point by looking at the low sea waterline. Furthermore, in the second point of the judgment,

⁷ Case concerning maritime dispute (Peru v. Chile): Judgment of 27 January 2014. (2014).
International Court of Justice.

the ICJ explained that:

"Second: Decides, by fifteen votes to one, that the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward" (International Decision of the Court of Justice, 27 January 2014)

At this point describes the drawing of the boundary line drawn from boundary point No.1 towards the west. In the next point, it is explained that:⁸

"Third: Decides, by ten votes to six, that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting point of the single maritime boundary" (International Decision of the Court of Justice, 27 January 2014)

At this point, it is explained that the draw of the line from boundary point No.1 will continue to be carried out until it reaches Point A which is 80 Nm away from the boundary point No.1. Then explained again the next limitation:

"Fourth: Decides, by ten votes to six, that from Point A, the single maritime boundary shall continue south-westward along the line equidistant from the coasts of the Republic of Peru and the Republic of Chile, as measured from that point, until its intersection (at Point B) with the 200-nautical-mile limit measured from the baselines from which the territorial sea of the Republic of Chile is measured. From Point B, the single maritime boundary shall continue southward along that limit until it reaches the point of intersection (Point C) of the 200-nautical-mile limits measured from the baselines from which the territorial seas of the Republic of Peru and the Republic of Chile, respectively, are measured" (International Decree of the Court of Justice, 27 January 2014)

In the point above, it is explained that after making a withdrawal to point A, the draw of the boundary line will be continued up to point B which has a distance of about 200 Nm from the

⁸ Anis, H., & Sinaga, T. B. (t.t.). *Tinjauan Tentang Penyelesaian Sengketa Batas Wilayah Antar Negara Menurut Perspektif Hukum Internasional* Oleh: *Injil Vigili Milinia Kapahese* 2. 3, hal. 11.

baseline of each country in dispute. Then the line is drawn back to a point C of 200 Nm long which is measured through the baseline of the two countries in dispute. Next is the last point decided by the ICJ:

"Fifth: Decides, by fifteen votes to one, that, for the reasons given in paragraph 189 [of the present Judgment], it does not need to rule on the second final submission of the Republic of Peru" (International Decision of the Court of Justice, 27 January 2014)

On that point, it is explained that in paragraph 189, there is no need for a final submission to both parties, namely Chile and Peru.

E. Analysis of the Verdict from the ICJ

The decision on the part of Peru to resolve the maritime boundary case between the countries of Peru and Chile was through the International Court of Justice filed on January 16, 2008. After resolving this dispute, previously this dispute carried out various kinds of settlements that ended in a stalemate or there was no good settlement⁹, were finally submitted to the stage of the International Court of Justice. In resolving this dispute through the International Court of Justice, there is an advantage obtained by the countries of Chile and Peru, namely a dispute that will be examined and decided by judges where this dispute has been recognized as an agreement in international law, it will get a fair way and not harm both parties, but get a good and appropriate settlement. The court has an obligation to ascertain whether any sea boundaries have been asserted. In this analysis, there are several agreements agreed upon, namely, the existence of the 1947 Proclamation. Where the judiciary begins by examining the 1947 Proclamation to ascertain whether there are maritime boundaries that have been asserted in the 1947 Proclamation. The deal contains maritime rights stretching for 200 nautical miles from each of the coasts controlled by the country in question. Then, the court noted that each of the parties to the countries of Chile and Peru had agreed that the existence of the 1947 Proclamation itself did not establish international maritime boundaries, the Court considered it only for the purpose of ascertaining whether the texts represented evidence of the Parties' understanding of the extent of the future determination of the maritime boundary. The Court held that the nature of the language in this agreement was provisional, whereby this

⁹ Harahap, A. A., Rahmaddillah, A., Permata, D. D., & Sitorus, N. (2021). *Penyelesaian Sengketa Internasional Secara Damai Dalam Hukum Internasional*. 1(1), Hal. 7.

consideration would close the existence of an explanation of the two sides of the state which illustrates that there is a mutually understandable perception by the parties as to the maritime boundary provisions.

Then the Court also analyzed and considered the content of the 1952 Santiago Declaration, the court considered that the Santiago Declaration did not make an express reference to the delimitation of any sea boundaries of the zones established by the parties of the country but rather contained only the boundaries of the maritime zones contained in some islands. Later, the Court reconsidered that the object and purpose of the Santiago Declaration of 1952, focused only on the conservation and protection of natural resources, for which the parties had the objective of economic development through the maritime zone. So the court considered that this treaty could not prove the existence of a maritime boundary between Peru and Chilli, where the boundary was drawn along the parallel latitude and also continued towards the Pacific Ocean which had been calculated from the very end and then close to the sea from the determination of the land area of their country. This treaty is different in nature from the proclamation, because the 1952 Santiago declaration agreement is special, already certifying a 12-mile-long tolerance zone measured from the end of the coast used to avoid possible conflicts between the two countries concerned.

Research on maritime boundaries handled is an agreement that is only agreed upon by one party, what is meant is an agreement made secretly without the knowledge of anyone from the two parties who should have understood in the region at the time of the 1947 proclamation speech and the 1952 Santiago proclamation. From the treaty, these two countries cannot overshadow and cannot equalize the perception of the differences between the territories where the treaty contains the position of title to the two agreements under the bottom of the sea surface and the waters on the seabed to the surface of the sea and the resources contained therein. Thus, the court concluded that this second assessment it was centered on the entire perspective of the waters from the surface to the seabed.

In the next weighing i.e. In 1950, it was made clear that there were various kinds of fish that had been caught and all of them had been delivered at a distance of about 60 nautical miles measured from the shoreline. Likewise, there are silent fishing activities by various small boats. However, this is not the basis for determining the level of limitation. Thus, the court concluded that the maritime boundaries agreed upon by the two parties had been measured and the length increased to 80 miles which had been measured from the shoreline.

On April 27, 2010, each country had already proved in writing and presented, and Peru proceeded with the submission of replies and replies from Chile in court ratification. The endorsement was established on November 9, 2010, and July 11, 2011. Thus, international treaties must be able to apply the stipulated provisions in concrete actions, so a good interpretation is needed in order to fulfill the achievements of the agreement. In fact, it is necessary to have common ground in interpreting perceptions in an international treaty. Especially in the case of Chile and Peru which have differences in perception regarding the Santiago Declaration. Because the design of this Sangeeta was carried out in a good way without any conflict between the two sides and they still prioritized the peaceful path of going to the International Court of Justice.

The reading of the judgment by the Chief Justice, Justice Peter Tomka, held on January 27, 2014, and on public sittings will be performed live on national television. It is stated that Peru and Chile will abide by any outcome of the International Court of Justice ruling.¹⁰

Conclusion

Based on this description, it can be seen that Peru's argument submitted a resolution of the issue regarding the maritime border with Chile to the International Court of Justice. The argument is that the decision of the International Court of Justice has a binding, final, and inviolable nature. In addition, the International Court of Justice has manifested rulings on various kinds of conflicts which will then be appealed to the Court that has been adjusted to various existing provisions in international law and the International Court of Justice can give responsibility for the fair resolution of international disputes.

Then on January 27, 2014, according to the official court proceedings, the Court published a decree regarding the maritime dispute between Chile and Peru. And both countries have also promised to abide by the decision of the International Court of Justice. As a result of the provisions that have been issued by the International Court of Justice, parties from the countries of Chile and Peru can determine the title to success to the limits that have been set.

¹⁰ Sholikah, D. I. (2020). Analisis Penyelesaian Perbatasan Laut Antara Peru dengan Chili yang Diselesaikan Oleh Mahkamah Internasional (ICJ). *Jurnal Hukum Lex Generalis*, 1(1), 25–34

References

- Alfarisy, R. (2020). *Upaya Penyelesaian Sengketa Perairan Silala Antara Bolivia-Chile Tahun 2004-2016*. 8(4), 10.
- Anis, A. A. (t.t.). *Eksistensi Mahkamah Pengadilan Internasional Dalam Penyelesaian Sengketa Antar Negara Menurut Hukum Internasional*. 6, 12.
- Anis, H., & Sinaga, T. B. (t.t.). *Tinjauan Tentang Penyelesaian Sengketa Batas Wilayah Antar Negara Menurut Perspektif Hukum Internasional* Oleh: Injil Vigili Milinia Kapahese. 3, 11.
- Case concerning maritime dispute (Peru v. Chile): Judgment of 27 January 2014*. (2014). International Court of Justice.
- Diansyah, A. P., Mandana, D. P., & Citra, Y. (2021). *Penyelesaian Sengketa Internasional Dengan Kekerasan*. 1(1), 6.
- Harahap, A. A., Rahmaddillah, A., Permata, D. D., & Sitorus, N. (2021). *Penyelesaian Sengketa Internasional Secara Damai Dalam Hukum Internasional*. 1(1), 7.
- Kahumbu, A. P. (2022). *Settlement Of Sea Border Disputes Between Peru And Chili In International Law Perspective*. 1(1), 14.
- Kunci, K. (t.t.). *PENDAHULUAN A. Latar Belakang Masalah*. 2, 6.
- Mangku, D. G. S. (2012). Suatu Kajian Umum Tentang Penyelesaian Sengketa Internasional Termasuk Di Dalam Tubuh Asean. *Perspektif*, 17(3), 150. <https://doi.org/10.30742/perspektif.v17i3.104>
- Masfiani, I. Y. (2016). *Penyelesaian Sengketa Batas Maritim Antara Costa Rica Dan Nicaragua Di Laut Karibia Dan Samudera Pasifik Dalam Perspektif Unclos 1982*. 5, 19.
- Muluk, A. (2018). *Sebuah Tinjauan Pustaka Penelitian Logistik Maritim*. 11.
- Ratnaningrum, author. (t.t.). *Penyelesaian sengketa wilayah antara indonesia dan Malaysia terhadap pulau Sipadan dan pulau Ligitan melalui International court of justice*. 1.
- Rosita, F. I. (t.t.). *The Territorial Limitation Dispute and Its Settlement Between Peru and Chile*. 30.
- Sholikah, D. I. (2020). Analisis Penyelesaian Perbatasan Laut Antara Peru dengan Chili yang Diselesaikan Oleh Mahkamah Internasional (ICJ). *Jurnal Hukum Lex Generalis*, 1(1), 25–34. <https://doi.org/10.56370/jhlg.v1i1.195>
- Zuhdi, S. (2017). The Character of Maritime Nation In Facing The Global Challenge: A Historical Perspective. *Historia: Jurnal Pendidik Dan Peneliti Sejarah*, 13(2), 217. <https://doi.org/10.17509/historia.v13i2.6213>