



LEGAL IMPLICATIONS AND DECISIONS IN SOUTH CHINA SEA DISPUTES WITH SURROUNDING COUNTRIES

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Abstract

The 1982 Law of the Sea Convention is very important because in addition to reflecting the results of the international community's efforts to codify existing international law provisions, it also describes a progressive development in international law. This 1982 Law of the Sea Convention has an effect on economic life, especially for countries that get additional sea areas. This can happen because the potential sources of marine wealth that exist can be utilized from an economic point of view by the countries that are around them. To be able to secure and control its sea, and prevent other countries from exploiting or destroying it, that country can use sea power. The concept of sea power was introduced by Mahan, where Mahan stated the need for six basic elements to build a great sea power, namely a government area that has a population, population characteristics, area, physical form and geographical area. A country conducts security and control of the sea because whoever controls the sea will rule the world

Keywords: South China Sea Dispute Decisions, and Its Legal Implications for Countries Around the Region

1. Introduction.

Given the importance of the role of the sea from a security, economic, and political point of view, a strong foundation is needed for determining maritime boundaries between countries. The legal basis used in this maritime boundary is the 1982 United Nations Convention on the Law of the Sea (Law of the Sea Convention 1982). The 1982 Law of the Sea Convention is an international agreement that contains 320 articles and 9 attachments that regulate almost all activities and issues concerning the sea, including the regulation of maritime zones with different legal statuses, the establishment of an archipelagic state regime, the use of the seabed, regulation regarding the right of passage for ships, protection of the marine environment, implementation of marine scientific research, fishery management, and dispute resolution.

The 1982 Law of the Sea Convention is very important as an instrument of the law of the sea because in addition to describing the results of international community cooperation, it is also to codify existing international law provisions, as well as describe the development of international



law. The 1982 Law of the Sea Convention has an effect on economic life, especially for countries that get additional sea areas. This can happen because the potential sources of existing marine wealth can be utilized from an economic perspective by the country concerned.

In an increasingly globalized life, there are always increasingly interesting political developments, not only related to security in one region but also the development of Aukus and Quad in the Asia Pacific region.. The Asia Pacific region cannot be separated from developments concerning international security and political issues that exist among the regional countries themselves that originate from history, border and territorial disputes. Currently, the South China Sea (LCS) is a flash point in the Asia Pacific region. The South China Sea area in recent years has become a new problem point in the Asia Pacific region. Because it not only causes new problems, but also involves six countries, namely China, Taiwan, Vietnam, the Philippines, Brunei, and Malaysia only, but also concerns the interests of other major powers such as the United States.

2. Literature review

2.1. the South China Sea region

The escalation of tensions in the South China Sea dramatically increased in early May 2014 when the Chinese oil refinery His Yang Shi You 981 (HYSY 981) started drilling operations for oil that was still included in the Exclusive Economic Zone and Vietnam's continental shelf. Previously, in May 2009 China issued a statement regarding the nine dash line meaning that it control an indisputable sea area consisting of islands in the South China Sea, where the waters are adjacent to each other and control sovereign rights and legal jurisdiction over the South China Sea including marine products and the land under it. Then in 2012, after a dispute with the Philippines, China finally built a permanent building on the Scarborough Shallow Reef where the position of the reef has great potential to threaten the security of the Philippines because it is located only 220km from the Philippine coast. The nine dash line can also function as maritime boundaries between China and countries around the South China Sea region.

2.2. Natural resources in SCS

The SCS is contested because it is not only a strategic route connecting the Indian Ocean with the Pacific Ocean, but also a vital entry point for trade in East Asia. 85% of China's energy imports and oil supplies to Japan and Korea pass through these waters. 55% of Indian products traded with Asia Pacific pass through the SCS to China, Japan, Korea and the United States. In addition, SCS is also a vast marine ecosystem with the highest biodiversity ecosystem in the world and produces the world's largest consumption fish for export and household purposes. According



to them, the SCS area is called the Second Persian Gulf because if their calculations are correct, the SCS contains 130 billion barrels of oil, so this SCS contains more oil than any region in the world except for Saudi Arabia, besides that the SCS is said to contain more than 20 trillion. cubic natural gas in the bowels of the earth.

3. Research Methodology

The research method used in this paper is descriptive qualitative. This is in accordance with the opinion of Sugiyono (2016: 9) which says that the descriptive qualitative method is a research method based on the philosophy of Postpositivism theory is often used to research natural conditions (experiments) where researchers provide key instruments on data collection techniques that will be carried out manually. Triangulation is a research approach that is used for normative juridical. Normative juridical is a research activity carried out by examining library materials or secondary data as input for basic materials to be investigated by using a search for legislation and literature related to the problem under study. This research has a descriptive analytical nature. Analytical descriptive has the meaning of describing as it is and then analyzing the data based on the relevant rules. In the context of conducting descriptive research, analysis is always intended to show a clear and comprehensive picture related to the provisions of international law related to a country's compliance with international law which will be linked to its analysis with China's non-compliance with the PCA decision in the SCS dispute involving China and the Philippines conducted an analysis of the legal implications of the policy on countries around the LCS

4. Result and Discussion

a. Amicable Settlement of Disputes Through Arbitration

A dispute is a natural thing in every good relationship from the scope between individuals to between countries. However, what is important to note is that when a dispute occurs, the parties must be committed to resolving the dispute peacefully. International relations that are held between countries, countries with individuals, or countries with international organizations are not always well established, conflicts of interest, differences in understanding about a matter and various other factors are common. Disputes that arise more often at the level of international relations are territorial disputes. This can be understood because the territorial issue is related to the form of the incarnation of the highest sovereignty possessed by every sovereign state. As stated by Masako Ikegami that "Territorial disputes as a normative issue derive from the basic understanding that



territory is a basic source of identity both for state and for the people who live there". If a dispute has occurred, international law plays no small role in its resolution.

The role played by international law in the resolution of international disputes is to provide a way for the disputing parties to resolve their disputes according to international law. In its initial development, international law recognized two ways of settlement, namely peaceful settlement and war. What is meant by Discussing international disputes is an activity that discusses a situation where two countries have different understandings and views that are contrary to what is implemented or at least the obligations contained in international agreements. Therefore, a dispute is not only part of a general dispute but is part of international law through its resolution has no effect on the relationship between the two parties.

This research will focus through the process of peaceful settlement of international disputes. So every country is obliged to settle international disputes peacefully in accordance with article 2 paragraph (3) of the United Nations Charter which reads: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. ". The obligations contained in this article are not seen as passive obligations. This obligation is fulfilled if the country concerned refrains from using violence or threats of violence. This article requires states to actively and in good faith resolve their disputes peacefully commensurate with international peace and security and justice does not threatened. Further regulation regarding the obligation to settle international disputes peacefully is seen in Article 33 paragraph (1) of the United Nations Charter which reads:

“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”.

In international law there are universally applicable principles regarding the peaceful settlement of disputes. This through these principles can be seen the Declaration of Principles of International Law relating to Friendly Relations and Cooperation with States in accordance with the Charter of the United Nations. These principles are:

1. Based on the principle of international relations that every State in carrying out its international cooperation must be able to anticipate the threat or use of its military force against the territorial integrity of other countries or the political independence of any State, or in other ways in accordance with the objectives of the United Nations.



2. *Based on the principle of international relations that every country must be able to settle their international disputes with other countries in a peaceful manner so that international peace and security as well as justice are not threatened.*

3. *Based on the principle of international relations, each state is obliged not to interfere in matters of the domestic jurisdiction of other countries in accordance with the United Nations Charter.*

4. *Based on the principle of international relations, every State is obliged to cooperate with other countries in accordance with the United Nations Charter*

5. *Based on the principle of international relations, each State has the principle of equal rights and self-determination of the international community.*

6. *Based on the principle of international relations, every State has the same sovereignty of its State with other countries*

7. *Based on the principle of international relations, each State must fulfill good faith in accordance with international obligations carried out by each country in accordance with the United Nations Charter..*

From the provisions of Based on Article 33 paragraph (1) of the United Nations Charter, it appears that arbitration is a method of resolving international disputes that has been recognized by the United Nations. international community. Even if history is drawn, arbitration is the first mechanism and is the forerunner of the emergence of a permanent court mechanism.

The term arbitration comes from the words arbitrare (Latin), arbitrage (Dutch/French), arbitration (English), and schiedspruch (Germany), which means the power to settle something according to wisdom or peace through an arbitrator or referee.

The role of arbitration in resolving national and international disputes is currently increasing. The role of arbitration here is no longer solely limited by the parties, namely traders, but also resolves disputes between countries, individuals, and companies. Arbitration is a legal action in which a party submits a dispute or difference of opinion between two people (or more) or two groups (or more) to one or several experts mutually agreed upon with the aim of obtaining a final and binding decision.

Arbitration has a definition as an alternative dispute resolution mechanism which is a form of legal action recognized by law where one or more parties submit their dispute with one or more other parties to one arbitrator or more professional experts, who will act as judges. a private court that will apply the applicable state legal procedures or apply the peace law procedures that have been mutually agreed upon by the parties previously to arrive at a final and binding decision. One of the advantages of arbitration lies in the nature of the award where the arbitration award is final



and binding. Thus, the dispute resolution process through arbitration can be resolved more quickly than the general court process which lasts longer because legal remedies can be carried out on judicial decisions and are multi-level.

Based on the above understanding, it can basically be concluded that the elements of arbitration are as follows::

- a. How to resolve disputes privately or out of court
- b. On the basis of a written agreement from the parties
- c. To anticipate disputes that may occur or have already occurred
- d. By involving a third party (arbitrator or referee) who has the authority to make decisions
- e. The nature of the decision is final and binding.

According to Gary B. Born, there are four characteristics possessed by arbitration. Those characteristics are:

“First, the arbitration policy is always consensual, meaning that the parties to the dispute must agree to mediate between them. Second, the arbitration policy is resolved by taking a non-government decision, the arbitrator's policy may not act as a government agent, but must be carried out by an individual who is best chosen by the parties. Third, arbitration policies related to definitive and binding decisions, can be implemented through national court agreements. Finally, arbitration agreements are relatively more flexible, in contrast to most court procedures”.

international policy related to Arbitration, the mechanism or method of international dispute resolution is decided by a third party called an arbitrator. In deciding disputes, the arbitrator plays an important role in seeking a win-win solution. In an effort to seek a win-win solution, this is reflected in the noble purpose of arbitration, namely seeking peace between the parties. With the creation of peace, it will avoid feelings of hostility towards the parties. This emphasis on peace resulted in the theory of the law of peace. If the arbitration used is international arbitration, then this legal theory can be called the legal theory of world peace. The theory of peace is reflected in the will of the creator contained in every holy book of religions, namely the creation of peace in the world.

International arbitration has a narrow definition and a broad definition. International arbitration in a narrow sense is arbitration as a dispute resolution institution that specifically handles and resolves disputes in the trade sector. Arbitration in this sense is arbitration whose arrangements are subject to arrangements under the United Nations Commission International Trade Law (UNCITRAL). Meanwhile, international arbitration in a broad sense is arbitration as a dispute resolution institution to resolve all disputes as stated in in accordance with article 33 paragraph (1) of the United Nations Security Council Charter.²⁷ That discussion in this paper



focuses on the category of international arbitration in a broad sense. This public international arbitration body is an alternative dispute resolution through a third party (arbitration body) appointed and agreed upon by the parties (state) voluntarily to decide disputes that are not civil in nature and the decision is final and binding. Settlement through arbitration can be reached in several ways, namely settlement by an arbitrator in an institutionalized manner or to an ad hoc arbitration body (temporary). An institutionalized arbitration body is an arbitration body that has been established previously and has its procedural law. Meanwhile, What is meant by an ad hoc arbitration body is a body formed to deal with world issues and is trusted by the parties temporarily.. This temporary arbitration body ends its duties after a decision on a certain dispute is issued.

One form of this What is meant by a public international arbitration body is the Permanent Court of Arbitration (PCA), where the PCA was established on the basis of The Hague I Peace Conference in 1899 and the Hague II Conference in 1907. The two Conferences resulted in two conventions, namely: the through the 1899 Convention in the context of Pacific International Dispute Settlement and 1907 Convention for the Pacific Settlement of International Disputes. The purpose of the conference is to ensure that everyone benefits from real and lasting peace and to limit the development of the use of weapons. The establishment of the PCA has the objectives as stated through article 41 concerning the 1907 Convention is intended to resolve the Pacific International Dispute, namely:

“With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention”.

PCA is domiciled in the Peace Palace Building, The Hague, Netherlands. The establishment of this arbitral tribunal is an outstanding achievement of the international community. This permanent arbitration body, at that time was the first arbitral tribunal to settle disputes between countries.³¹ The basis of the authority possessed by the PCA is contained in article 42 of the 1907 Convention in order to resolve the Pacific International Dispute which reads: “the Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal”. The article states that disputes resolved by the PCA are all disputes. The phrase for all arbitration cases indicates that PCA is included in the category of arbitration in a broad sense.

Since the issue of this research is maritime disputes, the provisions regarding arbitration in 1982 international treaties or Conventions relating to the Law of the Sea will also be considered.



Arbitration has long been known to resolve disputes in the international maritime sector. The practice of the state in resolving disputes concerning or related to the sea shows that arbitration has long been known and used by countries to resolve disputes in this field. The possibility of resolving maritime disputes through an arbitration mechanism can be seen in article 279 from the agreement on the 1982 Law of the Sea Convention, among others, reads:

“States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter”.

The article clearly refers to Article 33 paragraph (1) explains that the United Nations Charter is capable of resolving disputes resolution between states parties to the 1982 Law of the Sea Convention where arbitration is one of the options. The next provision that allows the involvement of arbitration mechanisms in handling maritime disputes is article 287 paragraph (1) based on the 1982 Law of the Sea Convention which states that:

“When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- a. the International Tribunal for the Law of the Sea established in accordance with Annex VI;*
- b. the International Court of Justice;*
- c. an arbitral tribunal constituted in accordance with Annex VII;*
- d. a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein”.*

The article above can be used as an entry point for states parties to the 1982 Law of the Sea Convention to utilize the arbitration mechanism, in this case the PCA, as a dispute resolution regarding the interpretation or application of the 1982 Law of the Sea Convention.

b. Jurisdiction in International Arbitration

According to Robert Cryer jurisdiction is *“the power of the state to regulate affairs pursuant to its laws. Exercising jurisdiction involves asserting a form of sovereignty”*. Furthermore, Oppenheim defines jurisdiction as: *“Jurisdiction is the term that describes the limits of legal competence of a State or other regulatory authority (such as the European Community) to make, apply and enforce rules of conduct upon persons. It concerns essentially the extent of each State’s right to regulate conduct or the consequences of event*. Meanwhile, according to Malcolm N. Shaw, jurisdiction means:



“Jurisdiction concerns the power of the state to affect people, property and circumstances and reflects the basic principles of state sovereignty, equality of states and non-interference in domestic affairs. Jurisdiction is a vital and indeed central feature of state sovereignty, for it is an exercise of authority which may alter or create or terminate legal relationships and obligations”.

Jurisdiction is an important issue in arbitration. With the existence of jurisdiction, an arbitration body cannot carry out its duties beyond the jurisdiction it has. If an arbitral tribunal does not have jurisdiction and continues to examine the dispute and make its decision, one of the parties may submit an application to challenge the arbitral award. Disputing the arbitral award may result in null and void. The legal consequences of the decision were deemed to have been non-existent from the start. For international arbitral awards, the absence of jurisdiction may result in the award being unenforceable. Or a country may refuse or override an international arbitral award.

The jurisdiction of an arbitration body arises from the legal instrument that underlies the birth of the arbitration body or a legal instrument that provides a legal basis regarding any matters which are its legal authority to decide disputes; or agreement of the parties. International or national legal instruments are the main prerequisite for the birth of legal authority or arbitration jurisdiction. Meanwhile, the agreement of the parties is also the root that determines the jurisdiction of the arbitration body. The objectives and issues to be resolved by the arbitral tribunal are also determined by the parties. Voluntary factors and mutual awareness are the basis for the validity of the arbitration agreement.

In this SCS dispute case, the PCA has jurisdiction to decide on the application submitted by the Philippines. This is emphasized in the decision on the SCS dispute case in paragraph 4 that:

“Based on the arbitration law, the United Nations Convention concerning the Law of the Sea in 1982 (“the Convention” or “UNCLOS”), the Philippines and China issues must be in accordance with international treaty conventions. Where the Philippines has ratified it on May 8, 1984, and China on June 7, 1996. The convention is used as the basis as a guide to the “constitution for the oceans,” for resolving all problems related to the law of the sea,” and has been ratified by 168 parties. The Convention addresses a wide range of issues and is included as an integral part of the system for the peaceful settlement of international disputes. This system regulates Part XV of the Convention, with various international dispute resolution procedures, including arbitration required in accordance with the procedures listed in Annex VII of international Conventions. In accordance with Part XV of the international treaty, and Annex VII, which states the international Convention supports the Philippines to initiate this arbitration against China's policy on January 22, 2013.”



C. Overview of the South China Sea Dispute between the Philippines and China at PCA

Geographically, the South China Sea is surrounded by based on ten countries that have beaches (China and Taiwan, Vietnam, Cambodia, Thailand, Malaysia, Singapore, Indonesia, Brunei Darussalam, Philippines), as well as a coastal country, namely Laos, and a dependent territory, namely Macau. The area of SCS waters includes the Gulf of Siam which is bordered by Vietnam, Cambodia, Thailand and Malaysia and the Gulf of Tonkin which is bordered by Vietnam and China. The SCS area is water that extends from southwest to northeast. Next, starting from the south, it is bordered by 3 degrees south latitude between Sumatra Island and Kalimantan Island, to be precise the Karimata Strait, and in the north it is bordered by the Taiwan Strait. This uncertain geographical location has caused several countries to feel that they have the right to these waters and islands. And coupled with the 200-mile EEZ rule guidelines, where all is a country directly adjacent to the South China Sea have boundaries based on overlapping EEZs, causing problems in determining boundaries and territorial claims.

LCS belongs to the category of semi-enclosed sea. According to article 122 of the 1982 Law of the Sea Convention, what is meant by a semi-enclosed sea are:

“enclosed or semi-enclosed sea means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States”.

Regarding the dynamics that occur part of the South China Sea, where there are two things that must be understood together. Namely, the first issue is related to disputes over ownership of islands located in the South China Sea there are many corals and small islands, those with an interest in the issue of ownership of this island are China, Taiwan, Malaysia, Vietnam and Brunei Darussalam. While the second issue is relating to the problem of determining the boundaries of the sea, where in this issue the issue is not the islands, but the boundaries. Among the disputing countries, only the Philippines has brought SCS disputes to court. On 22 January 2013, the Philippines brought the SCS dispute to the PCA. There are three basic materials for the lawsuit filed by the Philippines, namely:

(1) Pursuant to the decision stating that the respective rights and obligations of the disputing countries are based on rules appropriate to the waters, seabed, and maritime features of the South China Sea as regulated by UNCLOS, and that China's claims are based on the "nine-dash line" - decision” is completely inconsistent with International Conventions and is therefore not legal or legal

(2) Then in determining whether the disputed issue is based on Article 121 of UNCLOS, then according to certain maritime features claimed by China and the Philippines are islands, the



elevation from low tide or submerged banks, and whether these features are capable of generating rights over maritime zones that are larger according to international regulations as far as 12 M;

(3) enables the Philippines to exercise and enjoy the rights within and beyond its exclusive economic zone and continental shelf that are established in the Convention.

From the three bases for the lawsuit above, on July 12, 2016 the PCA issued a decision regarding the based on a dispute between the Philippines and China in the South China Sea, including:

a. China does not have historical rights in SCS waters and based on the 1982 Law of the Sea Convention, the nine dash line concept is declared to have no legal basis.

“the Tribunal concludes that, as between the Philippines and China, China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention. The Tribunal concludes that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein”.

b. There is nothing in the Spratlys that gives China exclusive economic zone rights *“The Tribunal also concludes that none of the high-tide features in the Spratly Islands are capable of sustaining human habitation or an economic life of their own within the meaning of those terms in Article 121(3) of the Convention. All of the high-tide features in the Spratly Islands are therefore legally rocks for purposes of Article 121(3) and do not generate entitlements to an exclusive economic zone or continental shelf. There is, accordingly, no possible entitlement by China to any maritime zone in the area of either Mischief Reef or Second Thomas Shoal”.*

c. China has interfered with the traditional right of Filipinos to fish, especially at Scarborough Shoal *“the Tribunal finds that China has, through the operation of its official vessels at Scarborough Shoal from May 2012 onwards, unlawfully prevented Filipino fishermen from engaging in traditional fishing at Scarborough Shoal. The Tribunal records that this decision is entirely without prejudice to the question of sovereignty over Scarborough Shoal”.*

d. Chinese oil exploration near Reed Bank violates Philippine sovereignty *“the Tribunal finds that China has, through the operation of its marine surveillance vessels with respect to M/V Veritas Voyager on 1 to 2 March 2011 breached Article 77 of the Convention with respect to the Philippines’ sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank”.*



e. China is destroying ecosystems in the Spratly Islands with activities such as overfishing and creating artificial islands *“the Tribunal finds that China has, through its toleration and protection of, and failure to prevent Chinese fishing vessels engaging in harmful harvesting activities of endangered species at Scarborough Shoal, Second Thomas Shoal and other features in the Spratly Islands, breached Articles 192 and 194(5) of the Convention”*.

f. China's actions have exacerbated the conflict with the Philippines *“the Tribunal finds that China has in the course of these proceedings aggravated and extended the disputes between the Parties through its dredging, artificial island-building, and construction activities. In particular, while these proceedings were ongoing:*

- *China has aggravated the Parties' dispute concerning their respective rights and entitlements in the area of Mischief Reef by building a large artificial island on a low-tide elevation located in the exclusive economic zone of the Philippines.*

- *China has aggravated the Parties' dispute concerning the protection and preservation of the marine environment at Mischief Reef by inflicting permanent, irreparable harm to the coral reef habitat of that feature.*

- *China has extended the Parties' dispute concerning the protection and preservation of the marine environment by commencing large-scale island-building and construction works at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef.*

- *China has aggravated the Parties' dispute concerning the status of maritime features in the Spratly Islands and their capacity to generate entitlements to maritime zones by permanently destroying evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef”*.

D. Legal Implications of PCA's Decision in SCS Disputes for Parties and Countries with Interests in the SCS Area

In international law, there are several sources of law that can be referred to, namely those in accordance with Article 38 paragraph (1) of the Statute of the International Court of Justice, international law as a global guide in regulating the behavior and actions of states, international organizations and the like, explicitly relies on himself to the sources according to the basis of international law. Then the sources of international law can be: defined as actual materials used by international legal experts to establish a law that applies to certain events or events.

a. Based on the sources of international law as referred to in article 38 paragraph (1), the Statute of the International Court of Justice is as follows:



b. “International courts function to decide in accordance with international law regarding disputes submitted by each country, this has strengthened a. International conventions, both general and specific, by establishing rules that are expressly recognized by the participating countries;

c. The international policy, is evidence of general practice accepted as international law;

d. Based on general principles of international law recognized by civilized nations;

e. Therefore, every country must comply with the provisions of Article 59, which has become a court decision and the teachings of the most qualified public relations officers from various countries, as an additional means for determining the rule of international law.

One source of law that is closely related to this article is the decision of the judiciary. The decision of the judiciary can be put forward to prove the existence of international legal rules regarding an issue based on international agreements, customary law, and general legal principles. Decisions of judicial bodies include all decisions of judicial bodies. So it is not only limited to based on the decision of the international judiciary as has been the decision of the International Court of Justice, decisions of international arbitration bodies and decisions of the Human Rights Court and decisions of other international judicial bodies, but also includes decisions of the national judicial bodies of countries. , national arbitration bodies and other national judicial bodies that may exist in a country.

Regarding the decisions of international judicial bodies, it is emphasized in article 59 of the Statute of the International Court of Justice that: "The decision of the Court has no binding force except between the parties and in respect of that particular case". Although the decisions of the judicial bodies are only valid and binding on the litigants, often the legal values contained in them can apply to become generally accepted laws. There are also decisions of international judicial bodies which are the confirmation of new international legal norms. The contents, spirit, and spirit contained in the decision are then followed by countries in practice and some are promulgated in their national legislation. So that the decisions of the international judiciary which initially only apply to the parties to the case, along with the times, have become generally accepted international legal norms.

Because the decisions of international arbitration bodies are included in this group of legal sources, the decisions of the PCA are also a source of law that the international community must obey, especially for litigants. Specifically in this SCS dispute, the PCA uses the 1982 Law of the Sea Convention in dealing with this dispute. Regarding the legal implications, see Article 11 of Attachment VII starting from international regulations in the form of the 1982 Law of the Sea Convention which reads: “The award shall be final and without appeal, unless the parties to the



dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute”. The article contains the phrase final and without appeal, which means that the arbitral award cannot be appealed, appealed, or reviewed. This means that there is no other legal remedy against the arbitral award that has been decided by the arbitration institution. Furthermore, from the article it can also be said that both the Philippines and China to always have an obligation to resolve disputes between countries peacefully by complying with the 1982 Law of the Sea Convention, the PCA's decision in SCS disputes is in good faith from the two disputing countries. In addition, both the Philippines and China are parties to the 1982 Law of the Sea Convention in it. To have the principle of good faith which implies that the parties to the dispute must carry out the provisions of the international agreement in accordance with the content, spirit, intent and purpose of the agreement itself, respecting the rights and obligations of each party and third parties who may be given rights and or obligations and not take actions that can hinder efforts to achieve the aims and objectives of the agreement itself, either before it takes effect or when the parties are in the process of waiting for the multi-enactment of the agreement or also after the agreement comes into effect.

Especially for China which consistently refuses to recognize the PCA's decision, this can be rebutted by article 9 of Annex VII of the 1982 Law of the Sea Convention that:

“If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law”.

From the article above, it is clear that the absence of one of the parties does not prevent the process of the arbitration as long as the arbitration concerned has jurisdiction to examine the dispute. In this case, the PCA has jurisdiction to examine SCS disputes.

A country, whether in dispute or not, has an obligation to comply with international law. To foster state compliance with international law, there are two alternatives given by Chayes. First, through an enforcement mechanism that applies many sanctions, such as economic sanctions, membership sanctions to unilateral sanctions. Against this first mechanism, Chayes has concluded that the implementation of this mechanism is ineffective, requires high costs, can lead to legitimacy problems and has many failures. The second alternative that Chayes offers is the management model, in which obedience is not driven by various violence or sanctions but through a model of cooperation in obedience, namely through the interaction process in justification, discourse and persuasion. Sovereignty can no longer be interpreted as free from external intervention, but



becomes a freedom to conduct international relations as an international community. Thus the new sovereignty does not only consist of territorial control or government autonomy but also recognition of status as members of the nation's community. Obedience to international law is no longer merely a fear of sanctions but rather a concern about reducing status through loss of reputation as a good member of the community of nations.

Violation of a country against international law is a very serious negligence of a country. This act reduces the trust of countries in the country, especially in terms of entering into agreements with it at a later date. Violations like this can also be categorized as a violation of the principle of *pacta sunt servanda* in international law.

Therefore, regarding the PCA decision in the SCS dispute, China must need to respect the decision that has been determined because it has become a source of strength for international law. If a country obeys international law, the international community will feel order, order, justice and peace. On the other hand, if China remains consistent in refusing to comply with the PCA's decision and continues to be aggressive in the SCS region, regional instability will occur which could lead to open conflict.

Compliance with regard to dispute resolution was also one of the points of the decision put forward by the PCA, that:

“The international court considers that without disputes between the disputing countries, both Parties must be obliged to comply with international Conventions, including other provisions concerning the settlement of disputes between countries, and to respect the rights and freedoms of other States under the Convention. So there is no other choice for the parties to the dispute and against this, and for that the International Court of Justice is not sure if it is necessary or appropriate to make further statements regarding border disputes.” The PCA's decision is final and binding, but in Attachment VII of the 1982 Law of the Sea Convention there are no provisions regarding the implementation of the decision, in other words the PCA does not have the power to enforce coercion so that it ultimately returns to the good intentions of the parties to implement the decision. Therefore, with regard to law enforcement, much depends on the Philippines, what is now ready to be firm against China based on China's response to rejecting the PCA's decision.

Regarding the implications for countries with interests around the SCS area, the PCA's decision regarding SCS disputes is a clarification or PCA interpretation of the 1982 Law of the Sea Convention so that it can become a source of law that is generally accepted or binding on all countries. This interpretation can actually make it easier for the disputing parties in the SCS to negotiate their respective claims. The PCA interpretation of the nine dash line which has no basis and is contrary to based on international regulations concerning the 1982 Law of the Sea



Convention can be used by countries around the SCS area if China again violates the sovereignty of other countries. The PCA ruling can be used as a means to weaken China's argument.

The PCA also found that none of the sea features claimed by China are capable of producing the so-called EEZ that gives the country sovereign rights to resources, such as fisheries, oil, and gas within 200 nautical miles. As a result, countries in the SCS region can find out how big their territorial claims are in the region. This ruling will also be useful and referenced by countries in practice as well as by future adjudicatory decisions.

Countries around the SCS region must be able to consistently support the importance of law enforcement and the use of peaceful means, not violence, in seeking resolution of maritime disputes. Due to the final and binding nature of the decision, the international community can encourage the Philippines and China to comply with the PCA ruling.

Conclusions

An international court decision is one of the sources of international law which of course must be obeyed and respected by the international community, especially the state as a subject of international law. Respect for and compliance with international law will lead to international order, order, justice and peace. This is no exception facing the South China Sea (SCS) dispute between the Philippines and China. Then the Permanent policy of the Arbitral Tribunal (PCA) as an institution that handles disputes has issued a decision. The nature of the decision which is final and binding must of course be respected and obeyed by the disputing parties. The decision related to the SCS dispute also has an impact on countries around the region because the PCA interprets the provisions of the 1982 Law of the Sea Convention proposed by the Philippines. The perceived impact is that it can weaken China's argument regarding the nine dash line and can be used by countries around the SCS region to reorganize their maritime claims.

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