



The Significance of State Practises in Enforcing the Principle of Effectiveness in Claims of Territorial Ownership

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Abstract

The state can obtain rights to a territory through various means of ownership, including prescription, accretion, cession, conquest, and occupation, as long as it can effectively control (occupation) the territory with long-lasting control (practical work). The Sipadan and Ligitan Islands dispute is Indonesia's first experience with the concept of effectivity. Effective control over an area dramatically influences the claim to ownership. Several countries claim land ownership based on ratio decidendi analysis of international court decisions. The Research method in this writing uses normative juridical analysis also known as the library research method. The author chose this approach because the analysis results will be discussed and explained concerning international law case studies. This research aims to analyze and describe the Role of State Practices in Implementing the Principle of Effectiveness towards Claims of Territorial Ownership.

Keywords: Court Decision, Territory Claim, Effectiveness Occupation.

Introduction

The territory of a country usually consists of land, sea, and air. A region is a geographical unit that is a place to carry out various activities for the population and government of a country. Having a territory is an essential thing for a country. For this reason, areas are most often disputed and contested (Legge et al., 2023). The manifestation of regional sovereignty can be seen from its territorial borders. Determining territorial boundaries plays a significant role in the integrity and security of a region and the utilization of natural resources in the border area.

Determination of regional boundaries that are less than optimal can have an impact on the nationalist attitudes of the people of that region, resulting in people feeling that they are not being cared for in terms of the economy and infrastructure (Cerny, 2010). in the study of the acquisition of new territories in a country's internati-

onal law, there is a doctrine or principle known as the principle of *possidetis*. the principles of *possidetis*. In considering the methods of territory ownership, the approach used is based on traditional methods. However, this method does not provide an answer to the development of new states, especially in the post-World War II era. The traditional methods are occupation, prescription, cession, annexation, and accretion among others.

It should be emphasized that every dispute is a conflict but unlike conflicts, not all of them can be categorized as disputes. categorized as disputes. International disputes are not only exclusively an internal affair within a country and also not only concerning relations between a state and also does not only concern state relations states relations only because the subjects of international law today have expanded in such a way that involves several non-state factors. of non-state factors. In accordance with Article 36 paragraph (2) of the Statute of the International Court of Justice. The statute of the International Court of Justice confirms that legal disputes that can be brought to the International Court of Justice concern the following matters as follows: Interpretation of treaties, and questions of international law. The existence of any fact that if established would constitute a breach of international obligations, The nature or extent of the remedy to be made for breach of international obligations (Sánchez de Tagle, 2015).

Four criteria for international disputes can be brought to the International Court of Justice (ICJ): First, based on objective provisions and facts in the field. Second, it is not only based on arguments from one party. Third, a party denying a dispute does not prove the conflict exists. Fourth, the conflicting attitudes of the two countries involved in the debate. Territorial disputes are still the main agenda, especially in border areas, as in the case of the Sipadan–Ligitan Island dispute between Malaysia and Indonesia. In the case of this dispute, Malaysia was declared the winner and had rights to the two islands based on the principle of effectiveness.

The principle of effectiveness or effective control is a teaching in international law originating from ancient Roman law. The word occupation comes from ancient Roman Latin, which means administrative activity, not physical occupation. The determination of effective occupation relies on the existence or absence of concrete evidence in the form of legal regulations, such as legislation. Consequently, applying the doctrine of effective occupation is not feasible in areas established through judicial rulings, agreements, arbitration decrees, or precise ownership registrations under the law. Apart from that, there was a case on Sipadan-Ligatan Island in the Dutch colonial period. In 1928, there was a territorial dispute between the Dutch East Indies and the United States. The debate was ultimately agreed by each party to be resolved at the Permanent Court of Arbitration (PCA), known as the International Arbitration Court – dispute regarding Palmas Island.

At that time, the International Court of Arbitration decided that the Netherlands was the party that had the right to ownership of the island. The basis

used in the International Court's considerations is the principle of effectiveness. The main point in the teachings regarding effective occupation is the existence or absence of administrative activities in the form of legal regulations (laws) and other regulations related to the status of the contested territory. This point is in line with the meaning of effective control, which means administrative action and not physical occupation/control. Effective control can be classified as a source of material law, which refers to rules or norms that have binding legal force and serve as a guide for the occurrence of a legal action. This scientific work describes how a country can obtain rights to an area and the influence of effective control in disputes over territorial claims.

Methods

The writing method used in this scientific work is juridical normative analysis, also known as the library research method. The author chose this approach because the analysis results will be discussed and explained concerning international law case studies. Regarding approach, the author uses an analytical approach to legal concepts and principles in studying and examining the principles of effective occupation. The author uses this strategy to provide accurate article analysis based on legal information that matches the facts in the field. The research approach in this paper is a case approach carried out by examining several cases for reference to legal issues and examining the legal reasons used by judges to arrive at their decisions. This case reviews the ratio decidendi or reasoning of the decision on ownership of Liberia Island, Cliperton and the islands of Sipadan and Ligitan by considering the principle of occupation as the basis for territorial ownership. and this research uses a conceptual approach by examining the concept of effective occupation.

Discussion and Result

Effective occupation as a claim for territorial ownership

Sovereignty is defined as the supreme power possessed by a state. The implementation of sovereignty itself. exercised within the territory of the country which causes all people, objects located, or legal events that occur in an area to be subject to the sovereignty of the state. in an area must basically be subject to the sovereignty of the state that owns the territory and the sovereignty of the state that owns the territory. the sovereignty of the country that owns the territory and the sovereignty is single, original, eternal, and undivided power.

Occupation, derived from the Latin word "occupation," is used in Roman law to refer to administrative action. Only areas of terra nullius or what is known as "no man's land" and areas considered "no man's land" contested by nations can be subject

to occupation. 'Effective control' is an act of administrative control over an area. Occupation cannot be used in the regions that have been regulated and clearly defined by agreements, decisions made by judges, decisions made in arbitration, or registration of ownership (Cerny, 2010).

Occupation is a way to obtain territory, but the part in question is *terra nullius* or a domain that has never been owned, and it is possible that the settlement was abandoned by a previous country (left) or that no government has ever owned it. Only a small amount of territory remains empty (*terra nullius*) today, but many territorial disputes date back to previous centuries. A part can be occupied if the occupation is based on the principle of effectiveness (effective control). In international law, focusing on a point is essential for territorial claims.

Like occupation, acquiring territory by prescription is also based on the 'effectiveness of control' over a domain. The main difference between these two things is whether the area is occupied. In occupation, that is getting territory not yet owned by any country, while in prescription, territory held by another country. Prescription is an acquisition of territory utilizing prescription is an acquisition of territory by occupying it for an extended period and with the knowledge and without objection of the owner (International Committee of the Red Cross, 2012).

Countries that prescribe based on the effectiveness of control need to prove and establish their rights based on the efficacy of the old regime. The control period needs to be clearly explained in international law, but the international community has determined that effective management requires more than 12 years. Even though occupation and prescription can be distinguished, many still equate disputes over ownership of occupied territories with medication. Therefore, international courts often give decisions favoring countries that can provide strong evidence of the "effective control" they exercise over the disputed area.

Various Cases related to Effective Occupation

a. Effective Occupation on Liberia Island

The Republic of Liberia is a country on the West African coast. It is bordered by Sierra Leone to its northwest, Guinea to its north, Ivory Coast to its east, and the Atlantic Ocean to its south and southwest. Liberia began in the early 19th century as a project of the American Colonization Society (ACS), which believed black people would face better chances for freedom and prosperity in Africa than in the United States (Johnston, 1905).

In 1822, the State of Liberia was founded; Liberia was an empty territory discovered by enslaved Negroes liberated by America. Liberia was founded by the American Colonization Society (ACS), a group that wanted to make Liberia a country for enslaved people freed from the American Union. Many people in the United States thought that formerly enslaved people were a problem that had to be solved because

they lowered the wages of white workers and caused other social issues. From the start, reactions to the establishment of the Liberian State by the ACS were mixed.

Despite the existing controversies, Liberia, a newly founded country, continues to develop in a social order comparable to that of the United States. The residents speak fluent English and actively trade with their neighbors. In 1847, Liberia experienced bankruptcy and began to lose support. Then, ACS told Liberia to immediately declare independence and start learning to take care of itself. Liberia finally declared independence that same year and was immediately recognized by other nations. Liberia was the first African republic to proclaim its independence and is Africa's first and oldest modern republic. Along with Ethiopia, it was one of the two African countries to maintain its sovereignty during the Scramble for Africa. During World War II, Liberia supported the United States' war effort against Germany, and in turn received considerable American investment in infrastructure, which aided the country's wealth and development (Sale, 1997). President William Tubman encouraged economic and political changes that heightened the country's prosperity and international profile; Liberia was a founding member of the League of Nations, the United Nations, and the Organisation of African Unity.

Although only about 5% of the total population, the descendants of formerly enslaved people, known as Americo Liberians, ran Liberia with a single party for the next hundred years. In this case, it can be seen that the formation of Liberia occurred because of the occupation of the empty area, followed up by declaring its sovereignty by managing the territory, making laws and regulations, and the government to demonstrate power over the region. It is following the principle of effectiveness recognized by international law.

b. Clipperton Island Dispute between Mexico - France

This isolated atoll was named for John Clipperton, an English pirate who was rumored to have made it his hideout early in the 18th century. and previously referred to as Clipperton's Rock is an 8.9 km² (3.4 sq mi) uninhabited French coral atoll in the eastern Pacific Ocean. The Clipperton Island case between France and Mexico was resolved in the International Arbitration Court, resulting from an agreement between the two countries. Mexico claims that the rights to ownership of Clipperton Island, which is close to the Socorro Islands, belong to Mexico, arguing that Spain first discovered the island. However, the arbitrator thought that although Mexico had the right based on its history as a successor state to Spain, more was needed because implementing effective control over Clipperton Island did not accompany it.

France claimed that Clipperton Island was terra nullius when French naval officers discovered Clipperton Island. In 1858, France declared sovereignty over the island. So, has France implemented effective control on the island? The effectiveness of control is the actual act of power, which is an action and series of actions to control

an area physically and administratively, such as making legal regulations where these regulations are obeyed and enforced. Actions like this are just one way to carry out practical control actions.

The dispute between Mexico and France over Clipperton was taken to binding international arbitration in 1909 with the Italian king, Victor Emmanuel III, deciding in 1931 that the island was French territory. In 1931, Victor Emmanuel III issued his arbitral decision in the 'Clipperton Island Case', declaring Clipperton a French possession (Emmanuel, 1932).

Mexican President Pascual Ortiz Rubio, in response to public opinion that considered the Italian king biased towards France, consulted international experts on the validity of the decision, but ultimately Mexico accepted Victor Emmanuel's findings.[160] France formally took possession of Clipperton on January 26, 1935. Despite the ruling, Clipperton remained largely uninhabited until 1944 when the U.S. Navy established a weather station on the island to support its war efforts in the Pacific. France protested and as concerns about Japanese activity in the eastern Pacific waned the U.S. abandoned the site in late 1945 (Arnaud, 2015). According to the arbitrator, making rules is only sometimes used to make claims for control. If a country discovers and controls an unoccupied and uninhabited territory by proclaiming sovereignty over that territory, then the founding country has the right to that territory from that proclamation. Therefore, the arbitrator believed that France obtained sovereignty over Clipperton Island through the discovery by a naval officer who then proclaimed independence over Clipperton Island on November 17, 1858, as a symbolic form of power, which factually gave rise to legal consequences (Kunz & Mondragón, 2019).

c. Palmas Island Dispute Between the Dutch East Indies - United States (US)

Palmas (Miangas) is an island of little economic value or strategic location. It is 2.6 km in north-south length and 1.0 km in east-west width.^[1] It had a population of about 750 in 1932, when the case was decided. The island is located approximately 100 miles ESE of General Santos, Philippines, and 70 miles north of the Talaud Islands, the next-northernmost part of Indonesia.

In 1898, Spain ceded the Philippines to the United States in the Treaty of Paris (1898) and Palmas is located within the boundaries of that cession. In 1906, the United States discovered that the Netherlands also claimed sovereignty over the island, and the two parties agreed to submit to binding arbitration by the Permanent Court of Arbitration. On 23 January 1925, the two governments signed an agreement to that effect. Ratifications were exchanged in Washington, D.C., on 1 April 1925. The agreement was registered in the League of Nations Treaty Series on 19 May 1925. The arbitrator in the case was Max Huber, a Swiss lawyer.

In the Palmas Island dispute, Max Huber, the Arbitrator, said that if territorial sovereignty is exercised continuously for a long time without rejection by other countries or their owners, this creates rights or sovereignty. Territorial sovereignty implies the implementation of state functions (Shawn, 2021). The ownership rights of the United States (US) over Palmas Island are based on discoveries made by Spain. The 1898 Treaty of Paris stipulated the transfer of all rights owned by France to the United States. Palmas Island, which is close to the Philippine Islands, is also considered Spanish territory, but this cannot prove that Spain is exercising effective control over Palmas Island. On January 23, 1925, the United States of America and the Netherlands referred their dispute concerning sovereignty over the Island of Palmas to arbitration by a sole arbitrator. The sole arbitrator was asked to determine whether the Island of Palmas (or Miangas) in its entirety formed a part of the territory belonging to the United States of America or of the territory of the Netherlands. In his award, the sole arbitrator attached limited significance to discovery as a basis of title and elaborated on the legal effect of the peaceful and continuous display of state authority over territory. The arbitrator further considered the role of acquiescence and recognition in circumstances of competing acts of possession, and the principle *nemo dat quod non habet* in relation to treaties of cession (Phillip C, 1928).

To determine the question of title it was necessary for the arbitrator to consider arguments about the presentation of evidence in legal proceedings and the specific issue of maps. The arbitrator adopted a liberal approach towards the production of evidence, but indicated that caution was required when assessing the value of maps. The arbitrator concluded that even if it had been possible for Spain to have ceded to the United States of America its inchoate title derived from discovery or contiguity the inchoate title of the Netherlands could not have been modified by a treaty concluded by third Powers; and such a treaty could not have impressed the character of illegality on any act undertaken by the Netherlands with a view to completing their inchoate title... at least as long as no dispute on the matter had arisen. By the time a dispute had arisen, in 1906, the arbitrator found that the establishment of Dutch authority had already reached such a degree of development, that the importance of maintaining this state of things ought to be considered as prevailing over a claim, possibly based either on discovery in very distant times and unsupported by occupation or mere geographical position. Then, Max Huber tested the arguments from the Dutch East Indies regarding the effectiveness of state control or sovereignty over the island of Palmas. Max Huber believes that the people of Palmas Island have had relations since 1677 with one of the British companies in India, The East India Company, after which a contract was made between the two parties, namely the Dutch East Indies and the King on Palmas Island. It resulted in the island, which was previously small and isolated, developing into an open area and able to establish relations with other parties such as the Dutch East Indies.

It is proof that the Dutch East Indies have implemented the principle of effectiveness on the island, which is carried out peacefully, and there are no objections from any country, proving the existence of sovereign control (point of control) over the island of Palmas. For these reasons, the arbitrator held that the Island of Palmas (or Miangas) formed in its entirety a part of Netherlands territory.

d. Dispute over Sipadan and Ligitan Islands between Indonesia and Malaysia

The dispute between Indonesia and Malaysia over the islands of Sipadan-Ligitan arose in 1967 because Indonesia and Malaysia both registered the territory of the two islands as part of their respective territories in a technical meeting on maritime law. This problem started because both countries claimed sovereignty over Sipadan-Ligitan Island. Due to each country's claims regarding ownership of Sipadan-Ligitan Island, in the end, with the consent of both countries, they agreed that Sipadan-Ligitan Island was declared to be in the status quo, which each country had a different understanding.

In Indonesia, status quo means that the islands of Sipadan-Ligitan cannot be occupied/controlled until a resolution is found for the dispute. However, Malaysia has a different view, with the understanding that Sipadan-Ligitan Island will remain under the auspices of Malaysia in this status quo until the dispute is resolved so that Malaysia can carry out construction in the form of entertainment facilities run by Malaysian private parties. Due to differences in understanding, the Sipadan-Ligitan dispute between Indonesia and Malaysia continued to rage and was finally resolved at the International Court of Justice (ICJ).

In 1992, both parties agreed to resolve the Sipadan - Ligitan island ownership dispute by holding various bilateral meetings to determine the Sipadan - Ligitan argument. However, this dispute has yet to be resolved until the parties agree to resolve this territorial dispute with the International Court of Justice. In the International Court of Justice trials, both Indonesia and Malaysia raised various kinds of arguments/opinions with the legal evidence they had.

On December 17, 2002, in ICJ decision no. 102 of 2002 concerning the dispute over the islands of Sipadan and Ligitan, the International Court of Justice decided that Malaysia won the ownership rights to Pulau Sipadan and Ligitan. This decision is based on three main points used as the basis for determining dispute resolution between the two countries. First, Indonesia's argument regarding the agreement between the Netherlands and England in 1891 gave Indonesia rights to the two islands. Second, Malaysia's opinion regarding the inheritance of rights (chain of title) is that Malaysia has the right to the Sipadan-Ligitan islands. Lastly, Indonesia and Malaysia argue that their colonizers have demonstrated the existence of what is known as effectivity in French.

Meanwhile, Malaysia argues that it has effectively controlled ownership by establishing several infrastructures on Sipadan-Ligitan Island. The decision from the International Court of Justice is that the UK has fulfilled the criteria, such as implementing various regulations that have been made and implemented, namely regulations regarding the collection of turtle eggs and bird reserves.

The International Court of Justice finally made considerations based on the principle of effective control and occupation and decided that Malaysia has the right to win this case and is the legal owner of Sipadan-Ligitan Island. Based on the final court decision results, the International Court of Justice finally decided that Malaysia was the legal owner of the island of Sipadan-Ligitan; this was based on evidence of effective occupation. It turns out that the presence or absence of effectiveness is the most critical factor in decision-making by the International Court regarding Malaysia's sovereignty over Sipadan-Ligitan Island.

Due to the weakness of Indonesia's legal arguments, the results were that the islands of Apadan and Ligitan were decided to become Malaysian Territory by the International Court. In the end, the decision of the International Court of Justice confirmed that ownership rights to Sipadan-Ligitan Island are Malaysia's rights based on the principle of occupation, which explains that Malaysia and England are the countries that have previously carried out more effective work of Sipadan - Ligitan Island.

Analysis of the Influence of the Principle of Effectiveness in Claiming Territory Ownership

Territory is essential to the existence of a state. According to Article 1 of the 1933 Montevideo Convention, one of the qualifications that a state must have is permanent territory. According to Article 38 paragraph 1 letter c of the Statute of the International Court of Justice, one of the sources of international law is the principles of common law recognised by civilized Nations. In modern customary international law, a territory is controlled by a state that can demonstrate the ability to exercise its effective control over the territory. This is called the principle of effectiveness or the principle of effective possession. This principle has also been used in deciding territorial disputes between states, such as in the Sipadan-Ligitan case and the Palmas Island case.

In a dispute over territory, to claim a part, there is the principle of Effective Control or what is usually called the principle of Effective Occupation, which is one of the principles in general international law for creating rights or gaining sovereignty over a territory. Effective occupation as an administrative act of control over a territory can only be applied to terra nullius or territory that is considered not owned by another country and is not disputed by countries. Effective occupation cannot be

applied to territories that have been regulated and determined in treaties, judicial decisions, arbitration decisions, or ownership registrations with clear laws.

The will element is a matter of inference from all the facts, although sometimes the will may be formally asserted in an official announcement to other interested states. The second condition states that the exercise and demonstration of sovereignty can be fulfilled by concrete evidence of ownership and control, or according to the nature of the case, a physical assumption of sovereignty can be demonstrated by a clear or symbolic act (Brack et al., 2020). The physical assumption of sovereignty may be demonstrated by a clear or symbolic act. The measures in force in the claimed territory, or through treaties with other states that recognize the sovereignty of the claiming state or through treaties with other states that recognize the sovereignty of that. The international court explained that the principle of Effective Occupation can determine who has the right to hold sovereignty over a territory in a dispute between countries (Vinata & Masitha Tismananda Kumala, 2021).

There are several elements contained in the principle of Effective Occupation, based on the case examples discussed above, which can be described as follows: *First*, Regarding the disputed area, the state intends to control the size. *Second*, The state exercises sovereignty over the territory it wishes to control. *Third*, Controls that have been carried out must be carried out peacefully or without encountering opposition from other countries and carried out continuously (continuously). *Fourth*, In its efforts to acquire territory, the state exercises actual control (a substantial taking of possession), which can be done by erecting government buildings or carrying out administrative and legislative functions over the territory it wishes to control. *Fifth*, Various factors can influence a situation, including specific pertinent or significant circumstances. These factors encompass geological and geomorphological aspects, historical considerations, socio-economic elements, security considerations, and characteristics associated with other countries. The application of the Occupation theory in island disputes that have occurred must show an act of providence and not just claims.

It is clear that in implementing the principle of Effective Control or what is usually called the principle of Effective Occupation in the struggle for territory, to claim that territory for one's country, it is essential to adapt it to existing International Law. So following the provisions of Article 38, paragraph 1 letter d, the statute of the international court, aspects or indicators in measuring the control that judges use in deciding territorial disputes between countries have become a source of international law.

Conclusion

Problems regarding the boundaries of a country and the unclear status of a territory are potential sources of disputes between neighboring countries. Differences in the application of principles regarding continental shelf boundaries between neighboring countries are the cause of this dispute. These different principles arise from many motivations: economic, political, legal, security, and sovereignty interests. Not only that, the situation of the country, which is constantly experiencing development, both regionally and internationally, also influences the country's behavior in dispute. Based on examples of state disputes fighting over territorial ownership of a region, such as the Sipadan - Ligitan Island dispute, Clipperton Island, Palmas Island, and Liberia, it can be understood that the presence or absence of effectiveness is an essential point in determining the granting of territorial sovereignty to a country. Countries that have territorial disputes and have succeeded in winning the argument can prove that they have clear intentions for the contested territory and can prove actions that show that the country has implemented and fulfilled the principle of effective occupation of the part of that region.

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