



## Senkaku/Diaoyu Islands dispute between Japan and China reviewed based on the United Nations convention on the law of the sea in 1982

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### Abstract

The dispute over the Senkaku/Diaoyu Islands occurred between 2 (two) countries, namely between Japan and China. Based on a study conducted by the United Nations Committee for Asia and the Far East (UNCAFE), it was stated that there is some potential for the Senkaku/Diaoyu Islands. The greatest potential includes Natural Resources (SDA), including oil and gas resources. This potential is why Japan and China are still fighting over the Senkaku/Diaoyu Islands. Territorially, the Senkaku/Diaoyu Islands are 170km closer to Taiwan than Japan and China. This has increasingly led to disputes between regions/countries that are still ongoing today. So that in writing, this journal discusses the Senkaku Island dispute between Japan and China, reviewed based on the 1982 UN Convention on the International Law of the Sea

**Keywords:** Senkaku/Diaoyu Island, united nation committee for Asia and far east (UNCAFE), international law of the sea (UNCLOS) 1982

### Introduction

In the international world, it regulates relations between one country and another. Relations that not only regulate social, technological, military, health, and even the main thing is about the economy and the struggle for state territory. In these various aspects, it cannot be denied that international relations have caused several upheavals for the countries within them. The turmoil over territorial recognition of islands and archipelagos is an international dispute that often occurs between several countries (Mochtar Kusumaatmadja dan Ety R. Agoes, 2003).

Territorial disputes often occur between one country and another, where when viewed from a geographical location, these countries are close to each other. Geographically, what is being contested is the ocean, islands, and land areas, where a dispute arises due to recognition by another country of part or all of the bordering territory of another country (K.J. Holsti, 1988)<sup>[5]</sup>.

In the study of public international law, there are two types of international disputes, namely legal or judicial disputes and political or non-justiciable disputes. Specifically, there are no definite regulations regarding international disputes, but it can be seen based on whether or not the dispute can be resolved by the International Court (Adolf, 2004: 3)<sup>[1]</sup>. One of the disputes that occurred was between Japan and China in the dispute over the Senkaku / Daioyu Islands which occurred since 1969, and may even still be ongoing today. This dispute between Japan and China occurred due to a territorial dispute regarding ownership of the island, which is geographically located 175 km north of Ishigaki Island (Okinawa, Japan), ±190 km from the northeast of Taiwan, and ±420 km east of mainland China and located to the southeast East China Sea waters (Furqan, 2013:1).

Senkaku / Daioyu Island is an uninhabited archipelago with five small islands, including three coral islands. (Seokwoo Lee, 2002)<sup>[11]</sup>. Even though the islands are uninhabited, Senkaku/Daioyu Island is located in a strategic location. Also, it contains more than 50% of the large resource

potential, namely natural gas and petroleum resources. This fact emerged based on the results of a study stating the great potential of the Senkaku/Daioyu Islands conducted by the Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) which is under the auspices of the United Nations Committee for Asia and Far East (UNCAFE). This committee was formed to assist in the economic reconstruction of post-war countries. The results of geological studies carried out from October to November 1968, which UNCAFE later presented, triggered the emergence of a dispute between Japan and China, which became increasingly heated.

Apart from the resource potential stated by UNCAFE, the Senkaku/Daioyu islands also have various kinds of plants and animals that are endemic species. The sea that surrounds this island is also a fishing location that has a variety of marine resources. After Senkaku/Daioyu Island was designated as Japanese territory in 1985, Japanese citizens then settled on the island to run various businesses, namely the dried bonito business and bird feather business, with a total of 200 Japanese citizens who are residents of the Senkaku Islands (Ministry of Foreign Affairs of Japan, 2016). The Senkaku / Daioyu Islands are often referred to as islands because they consist of several islands located in Ishigaki City, Okinawa, including the Uotsuri Islands, Kitakojima, Minami Kojima, Cuba, Taisho, Okinawakitaiwa, Okinominamiwa, and Tobise (Ministry of Foreign Affairs of Japan, 2016).

With the disclosure of the facts from the study and the location of this strategic area, the dispute between Japan and China has become increasingly heated in the fight over the Senkaku/Daioyu Islands, so there is a need for a study to analyze the dispute between the two countries, especially if it is related to International Law of the Sea/ UNCLOS 1982. So, in writing this scientific journal in the form of conceptual ideas, we will discuss the correlation between the regulation of island regimes based on UNCLOS 1982 and the process of resolving the Senkaku / Daioyu Islands

dispute based on UNCLOS 1982. The analysis of this writing aims to find out the correlation between the regulations governing International Law of the Sea and the Senkaku / Diaoyu Islands dispute that continues to this day.

## Discussion

### 1. Island Regime Arrangements based on UNCLOS 1982

#### a. History of Senkaku Islands Ownership

Based on what has been stated in the introduction above, the dispute between Japan and China is over the Senkaku/Daiyou Island area, which is strategically located between the territories of Japan and China. Senkaku/Daiyou Islands is an archipelago which, in Japanese, is called the Senkaku Islands. Meanwhile, in Chinese, it is called Daiyou Island. It is still the reason disputes between Japan and China occur to this day (Tamisari, 2017:2) <sup>[12]</sup>. Until the 17th and 18th centuries, Senkaku Island was still an uninhabited archipelago and did not have any important influence on Japan and China (Tamisari, 2017:3) <sup>[12]</sup>.

The next difference between Japan and China concerns the history of ownership of the Senkaku/Diaoyu Islands. China believes ownership of the Senkaku Islands began in the Ming Dynasty of 1368-1644. Meanwhile, according to Japan, the Senkaku Islands are Japanese territory ceded by the United States in 1971 after the San Francisco agreement (Awani Irewati, 2012) <sup>[2]</sup>.

Based on differences regarding the history of ownership of the Senkaku / Daiyou Islands, the two countries finally agreed to sign the Peace and Friendship Agreement between Japan and China, which was carried out in 1978. The signing of the agreement is proof of each country's efforts to demonstrate the sovereignty of the country concerned. Senkaku / Daiyou Islands ownership dispute, which the next generation will resolve (Rahmanto, 2014).

#### b. The emergence of disputes between Japan and China

For each country, there are differences in perception in stating the maritime border line in the East China Sea between Japan and China, which has still not found a mutual agreement until now. Japan proposed dividing areas based on the center line in the Exclusive Economic Zone (200 miles from the baseline). In contrast, according to China, it refers to the natural continuation of its continental shelf beyond 200 miles. The differences in perception regarding the maritime border line between Japan and China have yet to reach a mutual agreement, even though the two countries have ratified the UN Convention on the Law of the Sea (UNCLOS 1982). Japan signed the Law of the Sea Convention on February 7, 1983, and ratified it on June 20, 1996. China signed the Law of the Sea Convention on December 10, 1982, and ratified it on June 2, 1996. However, differences in perception are still evident in their respective beliefs. countries namely (1982 Law of the Sea Convention):

#### 1. For Japan

According to Japan's perception, in 1996, it proposed a division of territory based on the center line in the Exclusive Economic Zone (EEZ), which is 200 miles from the baseline. This Japanese understanding is deemed not to be in accordance with the contents of the Convention contained in UNCLOS 1982. Maritime law experts from China they emphasize that the determination of the EEZ center line and continental shelf must be based on an agreement between

the two countries so that a fair solution can be reached (Roza, 2012: 6).

#### 2. For China

For China's perception, it has a reference based on the natural continuation of the continental shelf beyond 200 miles. Based on International Maritime Law, the Continental Shelf includes the seabed and land beneath it from areas below the sea surface located outside the territorial sea, from along the natural continuation of the land area to the edge of the continental sea or up to a distance of 200 miles from the baseline of the measured sea width. In the event that the sea edge of the continental edge does not reach this distance, up to a maximum of 350 millimeters – 100 millimeters sea and the depth line is up to 2,500 meters (Roza, 2012: 6).

Apart from being based on the continental shelf as regulated in International Maritime Law, the geographical location of Senkaku / Daiyou Island is within the island group of Taiwan (Formosa). Which has long been widely used by Chinese fishermen because it is considered part of Taiwan (PRC). However, in 1895, China argued that the surrender of the Senkaku / Daiyou Islands to Japan was carried out because of a sense of compulsion after the Chinese War with Japan.

Then, apart from the reasons mentioned above, this dispute was triggered after both parties realized that there were sources of oil and natural gas reserves in the Senkaku Islands in the mid-1990s. The existence of national interests is triggered by prospective business interests in the form of finding oil and gas resources, and all strengthening power and justification evidence will be collected for the sake of a legal basis for domination of these energy sources (Jakarta Greater, 2015) <sup>[3]</sup>. From the results of a study conducted by UNCAFE, the ownership of the Senkaku/Daiyou Islands is increasingly being debated between Japan and China due to the national interests of each country in the islands.

#### c. Senkaku Islands Ownership Dispute based on the Law of the Sea (UNCLOS 1982)

Referring to the differences in perception above, if we look at the 1982 Law of the Sea Convention, as stated in Article 2 Paragraph (3) of the UN Charter, Japan, and China should be able to immediately resolve the dispute peacefully (Article 279 of the 1982 Law of the Sea Convention). Article 280 of the Law of the Sea Convention stated that "Nothing in this matter shall prejudice the right of Japan and China to agree at any time to resolve disputes between them concerning the interpretation or application of this Convention by any peaceful means of their own choosing." The Law further triggered the dispute on the Territorial Sea and Contiguous Zone implemented by China in 1992. From this Law, explicit recognition emerged of the ownership of the islands mentioned above as belonging to China. Not only that, China's steps in recognizing ownership of the Senkaku / Daiyou Islands were demonstrated by sending Chinese military ships to enter the Senkaku / Daiyou Island area, which carried out massive aggressive attacks on Japanese territorial territory (Ministry of Foreign Affairs of Japan, 2016). This is not only limited to China's action towards Japan regarding efforts to recognize ownership of the Senkaku Islands / Daiyou but vice versa, Japan towards China with the construction of a lighthouse tower on Kitakojima on one of the islands in the Senkaku Islands by

Japan in 1996. This action taken by Japan caused turmoil. China is considered to have violated the agreement of the peace and friendship agreement between Japan and China (Rahmanto, 2014).

## 2. Settlement of the Senkaku/Daiyou Island dispute is reviewed based on UNCLOS 1982

Based on what was stated in the previous point, this point will discuss the resolution of the Senkaku/Daiyou Island dispute between Japan and China based on International Maritime Law (UNCLOS 1982). International Maritime Law (UNCLOS 1982) is used as the main legal basis in efforts to resolve the dispute over ownership of the Senkaku / Daiyou Islands because Japan and China have never found a clear solution to the dispute that occurred between them. In this case, Japan and China have not yet agreed on the Senkaku / Daiyou Island dispute, which the International Court should process as a forum for resolving. However, due to the absence of an agreement between the two countries, the International Court cannot play its proper role because to resolve a dispute between two countries, an agreement is needed between them to submit a request for dispute resolution to the International Court.

Referring to the dispute between the two countries, which has not yet found a solution and a peace agreement between them, the dispute can be analyzed based on the provisions contained in Article 33 paragraph (1) of the UN Charter, namely:

*“any dispute that is likely to endanger the maintenance of international peace and security should first be addressed through negotiation, mediation or other peaceful means, and states that the Council can call on the parties to use such means to settle their dispute.”*

Furthermore, apart from what is stated in Article 33 paragraph (1) of the UN Charter mentioned above, in Article 34 of the UN Charter it is stated that:

*“The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security”.*

Furthermore, Article 35 paragraph (1) of the UN Charter confirms that:

*“Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly”.*

Based on what is stated in Article 34, which is further reaffirmed by Article 35 paragraph (1) above, it is explained that efforts to resolve disputes between countries can be resolved by the Security Council or the General Assembly if based on submissions in any dispute or situation that gives rise to conflict and disputes that could endanger the maintenance of international peace and security. Meanwhile, until now, there has been no agreement between Japan and China regarding submitting a request for resolving the dispute over ownership of Senkaku / Daiyou Island to the International Court of Justice through the Security Council or General Assembly. This is demonstrated by the efforts made by the Japanese Government in pursuing ownership of the Senkaku / Daiyou islands, namely the purchase of three of the five Senkaku islands from the Kurihara Family for 2.05 billion yuan (26.1 million USD) in 2012. This is the action of the Japanese

Government causing new turmoil for China over the dispute over ownership of the Senkaku Islands, which is still ongoing to this day.

Judging from the dispute, which continues to this day, this is due to the lack of agreement between Japan and China in resolving the dispute between the two, especially with the provisions contained in the UN Charter mentioned above, which were not immediately implemented by Japan and China. So next, in analyzing efforts to resolve the Senkaku / Daiyou Island dispute between Japan and China, it is referred to based on the International Law of the Sea (UNCLOS 1982).

### a. Settlement regarding the island regime based on International Law of the Sea

Regarding the differences in the perspective of the width of the exclusive economic zone between Japan and China, when referred to under the provisions of Article 57 of the International Law of the Sea (UNCLOS 1982), it is stated that:

*“The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured”.*

From article 57, it confirms that the Japanese perspective states that the EEZ line is measured at a distance of 200 miles from the baseline. Meanwhile, China stated that the continental shelf beyond 200 miles is not in accordance with what is regulated in UNCLOS 1982.

Furthermore, based on Article 121 paragraph (3) concerning the Island Regime as regulated in UNCLOS 1982, it is stated that:

*“Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”*

According to Article 121 paragraph (3) above, it can be the basis that the Senkaku / Daiyou Islands territorially do not have an EEZ or continental shelf that Japan or China can own. It can be said that the Senkaku / Daiyou Islands have a status quo (power vacuum) that is not shared by the two countries, namely Japan and China. Based on the results of direct geological surveys and research carried out by the Scientific Expedition Team, University of the Ryukyus in 1971, it was stated that geologically, Senkaku Island consists of conglomerate sandstone (alternating layers of sandstone and conglomerate in several parts), tuff, andesite, andesite lava, coral outcrops that rose above sea level in the Holocene era and other rock materials. Apart from being formed based on the arrangement of these rocks, part of the Senkaku Islands area was formed due to volcanic conditions and shows the presence of volcanic faults that have occurred over time and have influenced the formation of the island's land. (Nishihara, 1971).

From the results of the geological survey, we can see that the land surface of Senkaku Island cannot be said to support the use of land for human habitation or economic life. So, based on the provisions contained in Article 121 and confirmed by the results of research on the geological data of the Senkaku / Daiyou Islands, claims between Japan and China for ownership of the Senkaku / Daiyou Islands cannot be made as has been disputed by the two countries.

### b. Senkaku / Daiyou Island dispute resolution process based on International Law of the Sea (UNCLOS 1982).

In accordance with what has been stated above, regarding the resolution of the dispute that occurred between Japan



and China regarding the ownership of the Senkaku / Daiyou Islands, based on what is regulated in International Maritime Law (UNCLOS 1982), namely in Chapter XV Part 1 Article 279, it is stated that:

“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”. Namely, the efforts that Japan and China should make in resolving disputes are using negotiations, namely mediation, conciliation, and arbitration to settlement according to the law through regional bodies or arrangements or by other peaceful means chosen by Japan and China as countries involved in a dispute. Until now, these actions have not been effectively carried out by the two countries, so the disputes have not been resolved properly.

The agreement between the two parties in submitting a request for dispute resolution to the Security Council / General Assembly of the International Court has not yet been made by both parties, so in this case, the International Court cannot play a full role as stated in Article 35 of the UN Charter above.

### Conclusions

Based on what has been conveyed in the discussion above, in writing a scientific journal regarding conceptual ideas in studying the dispute that occurred between Japan and China, the following conclusions can be drawn:

#### a. Settlement regarding the island regime based on International Law of the Sea

Based on Article 121 paragraph (3) of International Maritime Law (UNCLOS 1982), it can be said that the Senkaku / Daiyou Islands have a status quo (power vacuum) position that neither Japan nor China can have. Based on the provisions governing island regimes, geologically, Senkaku/ Daiyou Island consists of rocks and fault formations resulting from volcanic formations that occurred until Senkaku / Daiyou Island was formed. From this it shows that the Senkaku / Daiyou Islands cannot support human habitation or economic life in their own right, which then confirms that the Senkaku / Daiyou Islands do not have an exclusive economic zone or continental shelf for any country, including Japan and China.

#### b. Senkaku / Daiyou Island dispute resolution process based on International Law of the Sea (UNCLOS 1982)

As regulated in Article 279 of International Maritime Law, if a dispute occurs between disputing countries, the resolution must refer to peace efforts as regulated in Article 33 paragraph (1) of the UN Charter. These efforts include negotiation and dispute resolution efforts, which include mediation, conciliation, arbitration, and settlement according to law through regional bodies or arrangements or by other peaceful means chosen by Japan and China. In terms of efforts to resolve disputes, further in accordance with Article 283 paragraph (1) in the 1982 Law of the Sea Convention, which states that Japan and China are obliged to make efforts to resolve them by exchanging opinions and a peace agreement between the two. However, in fact, until now, Japan and China have not agreed to resolve the dispute. Japan and China are still making mutual claims

over ownership of the Senkaku / Daiyou Islands to this day, so the dispute between the two countries is still ongoing, in which case Japan and China should agree to submit the dispute to conciliation as regulated in Article 284 paragraph (1) 1982 Law of the Sea Convention (Article 284 UNCLOS 1982). However, suppose the conciliation process does not reach an agreement between the two. In that case, the conciliation process can be said to have been deemed to have been terminated (Article 284 paragraph 3 of the 1982 Law of the Sea Convention).

Furthermore, referring to the provisions contained in Article 286 of UNCLOS 1982, it is stated that if the conciliation action does not reach an agreement and the process is terminated, then the two disputing countries can then submit the dispute over the ownership of the Senkaku / Daiyou Islands to the international court/tribunal that has relevant jurisdiction. These disputes are the International Maritime Law Court, the International Court of Justice, the Arbitration Court, and the Special Arbitration Court (Article 287 paragraph 1 UNCLOS 1982). As also regulated in Article 36 paragraph (1) of the Statute of the International Court regarding the jurisdictional authority of the International Court.

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