

Rethinking the Sovereignty Principle: Is it a Legal Provision or a Political Domain Nowadays?

Dewi Nurvianti^{1*}, Aris Irawan², Fathurrahman,³ Sri Fridayanti⁴

^{1*,2,3} Fakultas Hukum, Universitas Borneo Tarakan, Kota Tarakan

⁴ Sekolah Tinggi Ilmu Administrasi Pembangunan, Kota Palu

*Corresponding: dewi.intjenuru.dn@gmail.com

Abstract

The relation of international community currently emphasize that sovereignty principle could not more decide as the main principle in managing a territory of state, even though sovereignty is the main requirement for a state to enforce its law and to do cooperation among entities in international relations. In order to find out the exact interpretation of sovereignty principle, this article used qualitative method. This study find out that sovereignty is recognized as one of the principles in recognizing a state. This term has a political nuance, because the aspect of recognition itself is not a legal aspect but a political one. Moreover, in several cases, even though a country had proclaimed its sovereignty, there are still opportunities for a part of the territory to become independent or even to be acquired by other countries. Thus, it seems that the principle of sovereignty has a tendency as part of politics. However, the principle of sovereignty remains a legal principle based on the provisions of international law, where each country has exclusive rights in every part of its territory, namely in land, air and sea. Currently, the concept of international law has expanded to the politic of international law study, which numerous aspects of law enforcement mingle with a country's policies that are synonymous with political aspects. Additionally, that the current principle of sovereignty should be completed with another legal principle in international law.

Keywords: *Sovereignty Principle; Legal Provisions; International Law; Territory.*

Abstrak

Hubungan masyarakat internasional saat ini menekankan bahwa prinsip kedaulatan tidak dapat lagi diputuskan sebagai prinsip utama dalam pengelolaan suatu wilayah negara, padahal kedaulatan merupakan syarat utama bagi suatu negara untuk menegakkan hukumnya dan untuk melakukan kerjasama antar entitas dalam hubungan internasional. Untuk mengetahui interpretasi yang tepat dari prinsip kedaulatan, artikel ini menggunakan metode kualitatif. Studi ini menemukan bahwa kedaulatan diakui sebagai salah satu prinsip dalam pengakuan suatu negara. Istilah ini bernuansa politis, karena aspek pengakuan itu sendiri bukanlah aspek hukum melainkan aspek politik. Apalagi, dalam beberapa kasus, meski suatu negara telah memproklamasikan kedaulatannya, masih ada peluang bagi sebagian wilayahnya untuk merdeka atau bahkan diakuisisi oleh negara lain. Dengan demikian, nampaknya prinsip kedaulatan memiliki kecenderungan sebagai bagian dari politik. Namun asas kedaulatan tetap merupakan asas hukum berdasarkan ketentuan hukum internasional, dimana setiap negara memiliki hak eksklusif di setiap bagian

wilayahnya, yaitu di darat, udara dan laut. Saat ini, konsep hukum internasional telah merambah ke politik kajian hukum internasional, dimana berbagai aspek penegakan hukum berbaur dengan kebijakan suatu negara yang identik dengan aspek politik. Oleh karena itu, disimpulkan bahwa asas kedaulatan yang berlaku saat ini harus dilengkapi dengan asas hukum lain dalam hukum internasional.

Keywords: Prinsip Kedaulatan; Ketentuan Hukum; Hukum Internasional; Wilayah.



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A. INTRODUCTION

The territory of the country is divided into 3 parts, namely land, sea and airspace territories. In a sense, each country has exclusive sovereignty over these areas. Literally, a country in managing the territory is bordering with other countries, then the proper management is not only prioritizes the national interests aspect but also respects and seeks to generate satisfactory relations between countries. Oftentimes, the administration of a state lead to tension situations between neighboring countries, which certainly affect the stability the crowd aspects both internally for the disputing countries, as well as for another parties which have relations with these countries. In several cases, assertion of territorial ownership in a country's border areas failed to be resolved through peaceful means or diplomatic channels, others ended up through the judicial route, and some even had to resort to violent means such as war, for example Palestine vs Israel which have been going on for a long time, until what just happened between Russia vs Ukraine. Meanwhile since the 19th century, especially when World War II ended, then international community managed to produce a consensus through the formation of the United Nations, where the main purpose of forming this organization was for reasons of security and peace in the world.

Furthermore, the UN charter recognizes the principle of non-interference as the main principle in relations between countries. This principle is manifestation of the sovereignty for each state in its entire territory. However, along with the development of international law, which is marked by the increasing relationship between the main subject in international law, namely state¹ even extends to the relationship between the state and other international law subjects.² This raises issues where the principle of sovereignty as part of law is increasingly being questioned.³

¹ Arie Afriansyah Erni Eriza Siburian, "Sport Diplomacy And State Sovereignty : Case St U Dy On Indonesia ' S Effort To Guard The Sovereignty Of Papua Erni Eriza Siburian , Arie Afriansyah Faculty of Law , Universitas Indonesia" 7, no. 1 (2018), <https://doi.org/10.20961/yustisia.v7i1.19696>.

² Thomas Verellen, "European Sovereignty Now? A Reflection on What It Means to Speak of 'European Sovereignty,'" *European Papers - A Journal on Law and Integration* 5, no. 1 (2020): 307–18, <https://doi.org/10.15166/2499-8249/383>.

³ Full Length Article, "Can Direct Democracy Deliver an Alternative to Extractivism ? An Essay on Popular Consultations" 98, no. July (2022), <https://doi.org/10.1016/j.polgeo.2022.102715>.

According to contemporary international relations experts, the accurate separation between politic and law seems increasingly anachronistic, as an example of the winding road taken by Timor Leste towards sovereign independence,⁴ or cancellation of the Catalonia's independence declaration was countervailed by an international organization⁵ which basically has an equal position with the state. Furthermore, the presence of private sector such as Multinational Corporation greatly influences the country's political dynamics, where cooperation between companies and state has an impact on changes in rules which often prioritize the interests of companies over its citizens, and unsatisfactory, they are not target developed countries, but developing countries, even more than that the company particularly in the economic field targets new countries which their political dynamic is poor.⁶

Ultimately, the concept of state sovereignty is no longer static but enhance an open and dynamic concept.⁷ This means that the concept of sovereignty does not only cover territory in the context of imaginary lines or territorial boundaries in numbers, but also territorial integrity in economic, socio-cultural, and even political aspects.⁸ The concept also causes the political sovereignty issue as an integral part of a country's territorial sovereignty. The relationship between law and politics in discussions about sovereignty set off challenging to distinguish, even the empirical condition was that state's existence was not entity when it established, it will be perpetually, some countries survive a long time, others persist for a short time.⁹ Therefore, There are two interesting things to be discussed for the sovereignty principle nowadays. First, sovereignty in the context of territorial boundaries that must be clear and recognized. Second, the development of international law leads to thinking that sovereignty is also associated with strength and power¹⁰, in this case the position of the state in cooperation.¹¹ These two studies place recognition as the main factor in the interpretation of the sovereignty. Hence, there is a debate about whether the principle of sovereignty is a legal provision or exists in the political domain which is much inspired by the relationship among international law subjects.

⁴ Christian Reus-Smit, *Politik Hukum Internasional*, ed. Derta Sri Widowatie; Irfan M Zaki, Terjemahan (Bandung: Nusamedia, 2015).

⁵ Ramir Rabaza Jiménez, "The Unilateral Declaration of Independence in Catalonia , 2017 : Strategies of Legitimation in Political Discourses .," 2020, 1–40.

⁶ Assaf Razin, "Understanding National-Government Policies Regarding Globalization : A Trade-Finance Analysis," *Journal of Government and Economics* 8, no. December 2022 (2023): 100060, <https://doi.org/10.1016/j.jge.2023.100060>.

⁷ Sigit Riyanto, "Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer," *Yustisia Jurnal Hukum* 1, no. 3 (2012): 5–14, <https://doi.org/10.20961/yustisia.v1i3.10074>.

⁸ Riyanto.

⁹ Rucianawati Mita Noveria, Ganewati Wuryandari, John Haba, Firman Noor, Chitra Indah Yuliana, *Kedaulatan Indonesia Di Wilayah Perbatasan (Perspektif Multidimensi)*, ed. Mita Noveria (Jakarta: Yayasan Obor Indonesia, 2017).

¹⁰ Noura Alkhalili, Muna Dajani, and Yahia Mahmoud, "The Enduring Coloniality of Ecological Modernization: Wind Energy Development in Occupied Western Sahara and the Occupied Syrian Golan Heights," *Political Geography* 103, no. September 2022 (2023): 102871, <https://doi.org/10.1016/j.polgeo.2023.102871>.

¹¹ Anssi Paasi et al., "Locating the Territoriality of Territory in Border Studies," *Political Geography* 95, no. January (2022): 102584, <https://doi.org/10.1016/j.polgeo.2021.102584>.

B. METHOD

The method used in this study is a qualitative method¹² in the realm of legal science as has been done by similar research¹³. The method conducts a literature search with an approach to the provisions of international law. The resulting data is described as doctrinal data.

C. RESULT AND DISCUSSION

Exclusivity Rights of State Within the Territory

The exclusive right of each state regarding to its territory constitutes the spirit of the principle of sovereignty. Territorial clarity is also one of determining elements of rights and obligations of the state¹⁴ as stipulated in the 1933 Montevideo Convention, which stated that the elements of the state include 4 things namely territory, population, sovereign government, and the ability of the state to establish cooperation. The theory of state existence is developing, especially in order to legitimize state actions to regulate everything in its territory, both public and private, and in order to legitimize the conduct to establish cooperation with parties outside its territory,¹⁵ the international law bring forth the principle of sovereignty.

This concept was later institutionalized in law through the distinction between public and private legal regimes, both of them conceivable as objects of state power simultaneously. Based on the understanding, related to mastery,¹⁶ In relation to the context of sovereignty which is linked to relations or relationships between countries, Article 2 (4) of the United Nation Charter also emphasizes that “*all members shall refrain...*” in the sense of “restraint” from actions that could injure the sovereignty of other countries. Sovereignty is an exclusive right to exercise primary authority over a region/geography and society which is usually owned by the state. There are 4 (four) types of sovereignty, are:¹⁷ the authority to organize the country, supervision of cross-border

¹² Theresia Anita Christiani, “Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object,” *Procedia - Social and Behavioral Sciences* 219 (May 31, 2016): 201–7, <https://doi.org/10.1016/J.SBSPRO.2016.05.006>.

¹³ Sofyan Wimbo et al., “Aspects of International Law and Human Rights on The Return of The Taliban in Afghanistan,” *Audito Comparative Law Journal (ACLJ)* 3, no. 3 (November 16, 2022): 132–38, <https://doi.org/10.22219/ACLJ.V3I3.23237>; Arsyi Manggali et al., “Legal Protection of Remote Working Workers in Particular Time Employment Agreements,” *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (January 31, 2023): 22–30, <https://doi.org/10.22219/ACLJ.V4I1.24033>; Nur Putri Hidayah, Quincy R Cloet, and David Pradhan, “The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights,” *Bestuur* 9, no. 1 (2021): 68–76, <https://doi.org/https://dx.doi.org/10.20961/bestuur.v9i1.49252>.

¹⁴ A. V. Bleshchik, E. G. Kalinina, and S. E. Nesmeyanova, “Transformation of Constitutional Identity Due to Contemporary Challenges,” *Law Enforcement Review* 5, no. 3 (2021): 87–100, [https://doi.org/10.52468/2542-1514.2021.5\(3\).87-100](https://doi.org/10.52468/2542-1514.2021.5(3).87-100).

¹⁵ Paasi et al., “Locating the Territoriality of Territory in Border Studies.”

¹⁶ Endalew Lijalem Enyew, “Application of the Right to Permanent Sovereignty over Natural Resources for Indigenous Peoples: Assessment of Current Legal Developments,” *Arctic Review on Law and Politics* 8, no. 0 (2017): 222–45, <https://doi.org/10.23865/arctic.v8.947>.

¹⁷ Vega Falcon Dr. Vladimir, “Wilayah Perbatasan Negara Dalam Perspektif Hukum Internasional,” *Jurnal Proyuris* 2, no. 1 (2020): 169–84.

matters, the recognition of other countries' sovereignty, the authority to organize the country is not fully owned.

The state also seen as belonging to one and all, it has the character of a legal community institution, so that it permits the authority or power to regulate, manage and maintain all matters within its territory.¹⁸ A sovereign state means that the state does not recognize any power other than the existence of the state itself. In other words, the state monopolizes a power,¹⁹ as a concrete example of this monopoly of power is when a legal event occurs between individuals, so that it is not justified for individuals to take action on their own if they are harmed. However, bearing in mind the concept of a rule of law state, the power of the state regarding the implementation of its sovereignty also has limitations. That is, the supreme power is limited by the boundaries of the country's territory. Outside its territory, the state no longer has such power.²⁰

a. Cases Related to Sovereignty as a Part of Court Judgments.

The development of international law is always accompanied by the emergence of case by case regarding sovereignty or relating to territorial boundaries, both in the context of boundaries in numbers or in the context of which country has the right to manage them,²¹ the second of that occurs in the airspace of a country. Some of the cases highlighted in this paper illustrate that the principle of sovereignty remains a general principle in law, especially international law, because the territorial boundary disputes that occurred were decided by the International Court of Justice, which means that these cases are not political legal cases, due to international courts, especially the International Court of Justice asserts its jurisdiction in the statute, namely that it only decides disputes in the legal field, not in the political field.

The East Timor case relates to the agreement made between Indonesia and Australia regarding the management of natural resources (the Timor gap) which became null and void due to the independence of Timor Leste which at the same time caused the loss of the object agreed upon. Furthermore, the Government of Timor Leste entrusted the management of the newly born country to the Government of Portugal at that time. So, based on its authority, the Government of Portugal submitted this case to the International Court of Justice, surely accompanied by the Australian Government's agreement to resolve the case under the jurisdiction of the International Court of Justice.

In summary, the judge's decision contained an affirmation of the principle of self-determination in the East Timor case between Portugal and Australia, which can be seen in the results of the ICJ's decision: *"In its Judgment, the Court recalls that on 22 February 1991, Portugal instituted proceedings against Australia concerning "certain activities of*

¹⁸ Leonid Tymchenko, "The Legitimacy of Acquisition of State Territory," n.d.

¹⁹ Christina Eckes, "EU Autonomy: Jurisdictional Sovereignty by a Different Name?," *European Papers - A Journal on Law and Integration* 5, no. 1 (2020): 319–29, <https://doi.org/10.15166/2499-8249/381>.

²⁰ Tymchenko, "The Legitimacy of Acquisition of State Territory."

²¹ Narcisa Galeş and Dumitrița Florea, "The Creation of International Law during the Feudalism," *Procedia - Social and Behavioral Sciences* 149 (2014): 365–70, <https://doi.org/10.1016/j.sbspro.2014.08.274>.

Australia with respect to East Timor". According to the Application Australia had, by its conduct, "failed to observe . . . the obligation to respect the duties and powers of (Portugal as) the administering Power (of East Timor) . . . and . . . the right of the people of East Timor to self-determination and the related rights". Based on the ICJ's decision, Australia was asked to respect the authority of the Portuguese Government as the party that had authority-after the birth of Timor-Leste's sovereignty-as well as Australia was asked to respect the people of Timor-Leste for their desire to determine their own destiny (self-determination) and their rights present simultaneously with the birth of sovereignty in the territory of Timor Leste.

Next is the case of Burkina Faso x Mali. This case began in October 1983 where Burkina Faso and Mali agreed to bring a territorial boundary dispute in the land border area between these countries. The trial process was first carried out on April 3, 1985, which was also the year when armed conflict occurred between them. The Decision delivered on December 22, 1986, the Assembly began by ascertaining the source of the rights claimed by the Parties. It is stated that in this case the principles must be applied are the principle of intangibility of boundaries inherited from colonialism and the principle of *Uti Possidetis Juris*, which prioritizes legal property rights over effective control as the basis of sovereignty, whose main objective is to guarantee respect for boundaries that existed at the time independence was achieved. The Assembly determined that, when the boundaries were distinct administrative divisions or colonies which were all subject to the same sovereignty. Furthermore, in the case of Burkina Faso x Mali, it was determined that the main purpose of implementing this principle was to guarantee respect for the territorial boundaries that existed when an African region gained independence.

Also in the case of Clipperton Island between France v Mexico (1932). In that case the Tribunal Judge noted that based on history in 1858, Lieutenant Victor Le Coat de Kwergeun, a representative of the French Government, handed over ownership of the Clipperton area under Napoleon III through a letter of agreement (commercial vessel) *L'Amiral*. Up to 1887 the area had not been inhabited by any residents. It was only at the end of 1897 that the French Government stated that there were 3 people-on a United States flag ship-who came to the area with the aim of collecting Guano. France sent a letter to the United States, which then received a response from the United States Government that the presence of the 3 people was not in order to seize ownership rights over the sovereignty of Clipperton Island. In short, two of the three people left Clipperton Island, while the remaining 1 person remained on the island and were known to be Mexican citizens and intended to control Clipperton Island.

On January 8, the French, had learned about the Mexican expedition, reminded them that the power of their rights over Clipperton. By Mexico, Clipperton Island had named after the famous English adventurer who in the early 18th century used it as a place of refuge, then called Passion Island. Mexico considered that the island had discovered and designated

by the Spanish navy-Alexander VII, then by law in 1836 had belonged to Spain, at the end Mexico as the successor state to the Spanish state.

However, according to history, it is not proven that this island was discovered by Spanish navigators. Despite acknowledging that the discovery was made by the Spaniards, the Court accepted the opinion of the Mexican side, and asked Mexico to prove that Spain did not have right-as a nation-to include the island in its possession, but had also exercised that right effectively, but that has not been proven at all-Mexico has been unable to provide evidence of its claim. Otherwise, France's proof of recognition of territorial ownership is followed by an effective occupation-fulfilling the requirements required by international law for the legitimacy of such territorial acquisitions. At the end, the judge decided that the ownership of Clipperton Island belonged to France, since November 17, 1858.

Clipperton Island is not the only dispute between countries regarding territorial ownership which is decided by a court taking into account the principle of effective occupation. There are several other disputes, such as the Eastern Greenland case between Denmark and Mexico and the Sipadan and Ligitan Island case between Indonesia and Malaysia which decided by international courts using the same principles.

The Court's confirmation regarding the ownership of an uninhabited area or inhabited by a few people has been officially declared, does not necessarily decide that area the property of the declaring state. Especially if an area with declared *Res Nullius* status has other parties objecting or purposing claim to the ownership rights of the area. In the case of Sipadan and Ligitan, either Indonesia or Malaysia recognize Sipadan and Ligitan as part of their sovereignty. This is evidenced by the maps issued by each country. In the arguments presented by Indonesia or Malaysia, they also put forward the principle of *uti Possidetis Juris* in the ownership of these islands. Indonesia argued that based on the Agreement between the British and the Dutch in 1891, where the island belonged to the Netherlands, so that after Indonesia's independence, the island was inherited by Indonesia. On the other hand, Malaysia also argued about the ownership of the two islands based on a series of transactions from the Sultanate of Sulu to England, and was inherited by Malaysia.

A long series of trial processes with proof of each country's claims, ended with the decision of the International Court of Justice on December 17, 2002 by granting sovereignty over Sipadan and Ligitan Islands to Malaysia, not due to claims of ownership of the territory because it was on the map by the two countries, not also based on the surrender of territory from the colonial period, but Malaysia was able to prove that since the British colonial era it had been active in managing the Sipadan and Ligitan areas. Malaysia's recognition of sovereignty on these islands is also followed by effective management. Based on the two Clipperton Island case, as well as the Sipadan and Ligitan case which were decided by the Court using the *Uti Possidetis Juris* principle, it can be concluded that this principle was the beginning of the birth of territorial boundaries for a country, or became the legal basis for establishing borders between neighboring countries.

In contrast to the status of ownership or state rights in the management of land and sea areas. Airspace has more complex provisions relating to the exclusive rights of a country.²² The airspace of a country is the air space that exists over the land area, inland sea area, territorial sea and also the sea area of an archipelagic country. Sovereignty of the state in its airspace based on the Roman adage is up to unlimited heights (*cujus est solum eust ad coelom*).²³ Regulations in airspace are basically widely adopted by western countries originating from Roman settings, especially during the period before the World War I.²⁴

Prior to the World War I (1914-1918) the only right was universally contained in treaties was that the air space over the high seas, where there is no territory was completely free and open. In connection with the air space over the territory controlled and over the waters which are subject to state sovereignty, there are a number of various theories. However, due to the outbreak of World War 1 (1914),²⁵ furthermore due to practical emergency reasons, it was considered that the only theory accepted by all countries was the theory that the sovereignty of the subjacent state over air space was unlimited, namely *usque ad coelom*.²⁶ This theory used and confirmed not only by warring parties, but also by neutral countries. This theory is also stated in Article 1 of the 1919 Paris Convention for the regulation of air navigation.

After World War I where planes could be used by a country to destroy its enemies by dropping bombs, in addition to that a country's airspace must be protected so that it is not used by other countries for its interests, the international community realized that there must be arrangements governing the sovereignty of a country in its air territory.²⁷ With this aim, the international community formulates conventions governing flights in a country's airspace, namely the 1944 Chicago Convention on International Civil Aviation, then known as the 1944 Chicago Convention.

In the Article 1 of the convention stated that "*The contracting states recognize that every state has complete and exclusive sovereignty over the air space above territory*".... at the same time it confirms that the existence of full sovereignty (exclusive sovereignty) of a country in the airspace above its territory. Some experts argue that Article 1 of the Convention narrows the interpretation of the principles of equality and participation as be contained in the preamble to the Convention.

The reason for the enforcement of exclusive sovereignty in the air space of a country above its sovereign territory, as well as the invalidity of the right of innocent passage in airspace is because the many cases that have happened to civilian planes that may have

²² Yaya Kareng, "International Aviation/Airspace Law an Overview," *International Journal of Law Reconstruction* 4, no. 1 (2020): 56, <https://doi.org/10.26532/ijlr.v4i1.10941>.

²³ Małgorzata Polkowska, "Limitations in the Airspace Sovereignty of States in Connection with Space Activity," *Security and Defence Quarterly* 20, no. 3 (2018): 42–56, <https://doi.org/10.5604/01.3001.0012.5151>.

²⁴ J Joseph Cummings, "Ownership and Control of Airspace" 37, no. 2 (1953).

²⁵ Cummings.

²⁶ Polkowska, "Limitations in the Airspace Sovereignty of States in Connection with Space Activity."

²⁷ Suzanne K. Kearns, "International Air Law," *Fundamentals of International Aviation*, no. c (2018): 1–30, <https://doi.org/10.4324/9781315200996-1>.

strayed or accidentally entered the air space of other countries have very fatal consequences, namely being shot. the crash of the plane will definitely result in a large number of fatalities and other losses. For example, on September 1, 1983, the Korean commercial aircraft-Korean Airlines Boeing 747-was shot down on its way from New York to Seoul, the plane was shot down by a Soviet fighter jet. In this incident, 269 passengers died, consisting of Korean, Japanese and United States citizens. It is known that the commercial plane got lost in Soviet airspace over the Kamchatta peninsula, the Sea of Okhotsk and Sakhalin Island.

Article 1 of the 1994 Chicago Convention reflects provisions in customary international law.²⁸ The principles contained in the 1944 Chicago Convention are: all countries will participate in air transportation based on equality; all countries have full or exclusive sovereignty over the airspace above their territory; The principle that the territory of the state in this convention includes the area above the land area and adjacent territorial sea and is under its sovereignty; The principle that the convention applies only to flights carried out by civil aircraft; The principle that civil aircraft will not be used for purposes inconsistent with the objectives of the convention.

However, full and exclusive sovereignty as stipulated in Article 1 of the convention, is subject to restrictions, as stipulated in Article 9a of the 1944 Chicago Convention which reads: *“Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.”*

Article 9 of the Chicago Convention stipulates that each country party to the convention has the right to regulate flight routes in its airspace, as well as the right to impose restrictions or even prohibit flights in its airspace.²⁹ The alike condition was carried out by the European Commission in 2007 where several airlines from Indonesia and approximately 119 airlines have included in the European Union's safety list, but in 2018 along with improvements to the security system for aircraft from Indonesia, the European Commission removed flights from Indonesia from the list. It means that Indonesia allowed to return.

Despite the matter of determining permissible and/or prohibited routes that become the rights of a country over its airspace, moreover the authority to determine and supervise aircraft routes determined in the Flight Information Region (FIR). The determination of FIR

²⁸ Kearns.

²⁹ Notre Dame, Law Review, and Adolph C Hugin, “Airspace Rights and Liabilities As Affected by Aircraft Operation” 26, no. 4 (1951).

in the airspace is quite unique, because there are several airspaces where flight information is not regulated by the country under it. For example, in Indonesian Airspace, especially in the Riau Region and the Natuna Islands, the determination of flight routes from 0-37,000 feet in Indonesian airspace is regulated by Singapore. Not only is Indonesia's airspace under the supervision of other countries regarding FIR, but on the contrary, there are also airspaces of other countries under Indonesia's supervision, namely Christmas Island, Australia and Timor Leste.³⁰

Meanwhile, related to outer space. International law stipulates that its legal status is the same as the legal status of the high seas, namely *Res Communis*, so that no part of outer space is the right of a country, in other words no country has sovereignty in the space area. Outer Space is considered a common heritage of mankind. The absence of space territory ownership by any one country was also confirmed by the United Nations through the 1962 UN General Assembly Resolution adopted in 1963. This resolution was issued after the development of space technology, where the first launch of an earth satellite was in 1957 by the Soviet Union. There are 2 (two) important points in the Resolution, are: The use and exploration of outer space and celestial bodies can be carried out by any country fairly and in accordance with international law; Space and celestial bodies cannot be made part of the territory or subject to the laws of any country.

b. Sovereignty in Politic Perspective.

State sovereignty implies multitudinous are ultimately laden with political aspects, namely, first, the existence of state is formed by a political aspect that precedes it. Consolidation and awareness to form a state entity required a political maneuver, which often in several countries meant a fight against colonial government. In general, political maneuvers carried out either through dialogue, diplomacy or war. Second, efforts to recognize a state also require strategic political steps. So that the state sovereignty recognition can run effectively, acquire broadly, and consistent support both from within and outside the country. Third, post-colonialism conditions requisite a management and maintenance of a state, which in turn involves elements such as power, ideology, and defense and security.³¹

The dichotomy of sovereignty as part of politics is increasingly clear when it be discussed in the context of how states utilise international law in practice relating to the coercion in international relations.³² This view has long been debated, a statement that

³⁰ <https://www.republika.co.id/berita/r6krit409/kemenhub-respons-analisis-hikmahanto-soal-perjanjian-fir-indonesiasingapura>, diakses pada 29 Agustus 2022

³¹ Mita Noveria, Ganewati Wuryandari, John Haba, Firman Noor, Chitra Indah Yuliana, *Kedaulatan Indonesia Di Wilayah Perbatasan (Perspektif Multidimensi)*.

³² Rony Emmenegger, "Unsettling Sovereignty : Violence , Myths and the Politics of History in the Ethiopian Somali Metropolis," *Political Geography* 90 (2021): 102476, <https://doi.org/10.1016/j.polgeo.2021.102476>.

international law is not a law but merely a moral³³ including sovereignty aspect. It means, sovereignty possessed by each country derive from other entities recognition in international law, then put together to continuity in the relationship between these entities.³⁴ Furthermore, the international community possible to ascribe a sovereign state as failed states due to chaotic political aspects in those countries, for example Angola, Burundi and Sudan by international community considered as failed states, even though from they fulfil three elements of validity in the montivideo convention. On occasion, the label of a failed state in a country definitely have an impact on international relations within the scope of the international community.³⁵

Some Political experts assume that although in the 1931 Montivideo Convention says recognition is not given clearly, but the terminology used terms "the ability to cooperate with other entities", logically the cooperation carried out between subjects of international law especially states, is none other than because they are mutually recognize each other's sovereignty.³⁶ This is further confirmed by the theory of implicit recognition or also known as premature recognition by one country to another. In fact, many collaborations have been established in this way, this aspect seems like confer the exception to the 3 main elements in the montivideo convention, as an example-cooperation between Indonesia and Palestine, even though from a territorial aspect, Palestine is currently at war with Israel in struggle for sovereignty in the Gaza region. Not only Indonesia, another countries such as the United States have established cooperation with Israel, which in fact has been criticized by many countries in the world regarding the occupation to the Palestinian territories. Another example is the collaboration between Indonesia and Taiwan, which gives indirect recognition due to political interests between them. Hence, these facts provide latest notion that sovereignty is full of political aspects.³⁷

c. General Principles of Law Related to the Principle of Sovereignty

1) Self Determination Principle

The judge's decision in the East Timor case strengthens the principle of self-determination as a source of international law relating to sovereignty in the territory, especially after the declaration of independence of a country in the context of breaking away from a colonial country. This principle has basically been practiced for a long time, even

³³ Boermauna, *Hukum Internasional (Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global)* (Bandung: PT Alumni, 2001).

³⁴ Jonathan Ian White, "A Critical Reflection on Sovereignty in International Relations Today," *E-International Relations*, 2019, 1–6.

³⁵ Robert I. Rotberg, "Failed States, Collapsed States, Weak States: Causes and Indicators," *State Failure and State Weakness In a Time of Terror*, 2003, 1–26.

³⁶ Tymchenko, "The Legitimacy of Acquisition of State Territory."

³⁷ Andrea Paulus, *Routledge Handbook of International Law*, ed. David Armstrong (USA and Canada: Routledge, 2009).

from ancient times,³⁸ where naturally every group or nation wants to break away from colonialism³⁹ and wants to live freely in an independent context with their group or nation because they realize that they have the same interests.⁴⁰ Based on natural considerations for the independence of a nation, this principle is recognized in the International Convention on Civil and Political Rights (ICCPR) as part of Basic Human Rights. However, normatively this principle has only been established as one of the most important principles in contemporary international law by the International Court of Justice (ICJ) in the case of East Timor (Portugal v Australia).

In several cases, which were then based on this principle, most of it was related to the birth of a sovereign who succeeded in escaping colonialism or the gross human rights violations experienced by the people (residents) in the region.⁴¹ Even the pros and cons regarding Timor Leste's independence from Indonesia which bulid the discussion on human rights issues. So that some experts, even during the time of the United Nations Organization (LBB), this principle was rejected as a rule of international law.

In line with the refusal, D.J. Harris in his book *Cases and Materials on International Law* says that this principle has controversy in international law as a legal principle. This is because the principle of self-determination was only recognized after the birth of the UN Charter. It is proven that this principle gave birth to new provisions in International Law originating from a colonial action or a territory that wanted independence, which had to be determined based on the wishes of its inhabitants, which this principle deviates from the principle of *Uti Possidetis Juris*. Basically the birth of this principle is based on the internal and external aspects of a country, where this principle is only born when a government based on a democratic system and minorities⁴² in its territory are allowed to participate politically independent (political autonomy).⁴³ Even though there are objections related to the existence of this principle as part of international law or this principle is considered as a controversial matter, on the other hand it emphasize this principle as a principle from which the

³⁸ Lachlan Beggs and Cameo Dalley, "Wildfire Bureaucracy: The Affective Dimensions of State Engagement with Indigenous Peoples in Southeast Australia," *Geoforum* 138, no. January (2023): 103675, <https://doi.org/10.1016/j.geoforum.2023.103675>.

³⁹ Magali Houde et al., "Contributions and Perspectives of Indigenous Peoples to the Study of Mercury in the Arctic," *Science of the Total Environment* 841, no. December 2021 (2022), <https://doi.org/10.1016/j.scitotenv.2022.156566>.

⁴⁰ Shumet Amare Zeleke, "Self-Determination, Secession, and Indigeneity in Ethiopia's Federation," *Social Sciences & Humanities Open* 7, no. 1 (2023): 100415, <https://doi.org/10.1016/j.ssaho.2023.100415>.

⁴¹ Paasi et al., "Locating the Territoriality of Territory in Border Studies."

⁴² Nicolás Acosta García and Niels Fold, "The Coloniality of Power on the Green Frontier: Commodities and Violent Territorialisation in Colombia's Amazon," *Geoforum* 128 (2022): 192–201, <https://doi.org/10.1016/j.geoforum.2021.11.025>.

⁴³ Eleanor Benson et al., "Mapping the Spatial Politics of Australian Settler Colonialism," *Political Geography* 102, no. March 2022 (2023), <https://doi.org/10.1016/j.polgeo.2023.102855>.

sovereignty of a new territory and its boundaries after independence from the previous sovereignty with whatever background the birth of the new sovereign.⁴⁴

2) Principle of *Uti Possidetis Juris*

The principle of *Uti Possidetis Juris* is one of the principles in international law which originates from international customs. This principle substantially confirms that the boundaries of the former colony automatically become the boundaries of a country that has become independent from the colony. *Uti Possidetis Juris* in terminology is Latin which means "as yours" (as you possess). The Roman judge used the famous *Uti Possidetis with Ita Possidetis* which in English means "as you possess, so you may possess-as your property, you may have it. This provision is not applied in questions of ownership before the court which emphasizes more on formal evidence. Although this principle also recognized in International Law as a way of establishing border areas in order to obtain the territorial sovereignty of an independent country, in the case of the African continent this principle is interpreted more broadly. By Starke this interpretation is known as "exceptional interests".

Refer to several cases that were decided by international courts, both *ad hoc* and permanent, in several cases, the objective of the principle of *Uti Possidetis Juris* is to provide legal rights to ownership of territories bounded by borders as a basis for the application of sovereignty in an area (territorial sovereignty). The purpose of the *Uti Possidetis Juris* principle to reinforce territorial sovereignty is also seen in the advice (Advisory Opinion) of the International Court of Justice (ICJ) in the 1975 Western Sahara case, stating that the legal relationship of territorial sovereignty to land or people must be distinguished from the relationship of loyalty between humans and customs -their habits of land ownership. In a sense, state activity on an appropriate scale, conclusively shows the exercise of authority is a sign of the existence of territorial sovereignty. The Court's advice apart from emphasizing sovereignty based on the principle of *Uti Possidetis Juris*, at the same time implies limitations in this principle, where this principle can be set aside when the control of a country due to the existence of sovereignty over the territory is not accompanied by an act of exercising authority by the state. In addition, the weakness of determining territorial boundaries based on this principle also lies in the international law not justifying the expansion of territories beyond the territories controlled by colonies in the past, even though there are similarities both in culture or adjacent area. For example, where the countries of the former Soviet Union, Yugoslavia, Czechoslovakia, still "sanctify" the former internal administrative lines as the borders between states (Interstate Frontier).

⁴⁴ Djaka Marwasta, "Pendampingan Pengelolaan Wilayah Perbatasan Di Indonesia: Lesson Learned Dari KKN-PPM UGM Di Kawasan Perbatasan," *Jurnal Pengabdian Kepada Masyarakat (Indonesian Journal of Community Engagement)* 1, no. 2 (2016): 204, <https://doi.org/10.22146/jpkm.10607>.

3) Principle of effective Occupation

Effective Occupation also known as effective control is one of the general legal principles in international law, where in broad outline this principle creates rights or sovereignty over an area of Res Nullius or Terrorium Nullius. This principle was first recognized and established by the tribunal as a source of law in resolving cases of territories resulting from the occupation of other countries. The basis for the right of surrender of territorial sovereignty in international law is also based on effective Occupation, assuming that the receiving country has the ability to effectively regulate the surrendered territory. In the same way, the addition of natural territory can be considered as an addition to the part of the territory where there is real sovereignty.⁴⁵ Therefore, it is only natural that in order to realize sovereignty, continuous action is needed and it is also carried out peacefully.

D. CONCLUSION

At the present time, in international relations, political and legal aspects are almost inseparable. especially when discussing the issue of sovereignty. However, the principle of sovereignty remains a legal principle in international law that contained in plenty of international agreements. In addition, several judges' decisions also indicate that the aspect of sovereignty is an inseparable part of the law. thus, new thinking related to the principle of sovereignty is a general principle of international law that continues to exist which hold up by other principles in international law.

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