



Legality of United Nations Resolutions on the Restriction of the Use of Nuclear Weapons by States of Legality

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Abstract

Introduction: Countries' non-compliance with UN resolutions regarding the prohibition of testing and use of nuclear weapons is due to the position of the resolution which is still classified as Soft Law due to the presence of elements that violate it and are less binding. The use of nuclear weapons can also threaten human life, thereby giving rise to international state responsibility as regulated in the Draft Articles on Responsibility of States for Internationally Wrongful Act.

Purposes of the Research: The aim of this research is to examine the legality of the UN resolution on spreading the use of nuclear weapons and the relationship between the Draft Articles on Responsibility of States for Internationally Wrongful Act and the UN resolution.

Methods of the Research: The method used is normative juridical with a problem approach, namely a regulatory, case and context approach. Sources of legal materials are primary, secondary and tertiary legal materials. Legal material collection techniques use library research and qualitative analysis.

Results of the Research: The legality or binding power of UN General Assembly resolutions is found in three approaches, namely the Customary Law Approach, New Source Approach, Grey Zone or Soft Law and the legality or binding force of UN Security Council resolutions and the existence of moral force. The relationship between UN resolutions and the Draft Articles on Responsibility of States for Internationally Wrongful Act was established to prevent actions that are not in accordance with international law, so that UN Security Council resolutions can be the basis for state accountability if there are indications of non-compliance with sanctions issued by the Security Council.

Keywords: Legality; UN Resolutions; Restrictions; Nuclear Weapons.

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INTRODUCTION

The development of science and technology has caused various changes and advances in various significant fields, both progressive and innovative. One of the tangible forms of the influence of technological progress is the creation of nuclear technology as a form of science and technology development. Nuclear energy has also provided many benefits to humans. The use of nuclear energy can be used as a substitute energy supply for electricity or what is called Nuclear Power Plant (NPP).¹ The use of nuclear energy can also be used in the field of medicine, which includes radio-diagnostic measures, radio therapy, and nuclear medicine.² In agriculture, nuclear radiation can be used in plant breeding to obtain

¹ Mukhlis Akhadi, *Pengantar Teknologi Nuklir*, (Jakarta: Rineka Cipta, 1997), p. 76.

² *Ibid*, p. 77.

mutations in plants with better plant properties so as to bring benefits to farmers.³ The impact of the use of nuclear energy is what can be used for human welfare.

The use of nuclear weapons is also used for the development of military needs to maintain the territorial sovereignty of a country from threats from other countries. Nuclear weapons are weapons of mass destruction and explosive devices that have the ability to release nuclear energy in an uncontrollable way. Explosions caused by the use of nuclear weapons can be in the form of bombs or missiles so that they can emit four types of energy such as explosion waves, high-intensity light, heat effects, and radiation.⁴

The main effects that can be caused by the use of nuclear weapons are mass destruction and death resulting in long-term losses to humans, human health and welfare, as well as the destruction of the environment, infrastructure, socio-economic development and also the social order.⁵ Seeing the various destructive and dangerous effects of nuclear weapons, the use of nuclear weapons is considered a weapon that has the greatest destructive capacity which can certainly result in the disruption of peace and security of a country and even the life of the international community.

The use of nuclear weapons for military purposes whose purpose is not for peace but as weapons of mass destruction will threaten the defense and peace of a country. Therefore, international organizations and various international legal instruments have made efforts to restrict the use of nuclear weapons. Article 3 of the *Universal Declaration of Human Rights*, hereinafter referred to as DUHAM: "Everyone has the right to life, liberty and safety as an individual". This article explains that everyone has the right to live with his freedom and safety. If a country conducts a nuclear test, it indirectly has an impact on the threat to the life of a person around the test site because the impact is very dangerous on the safety of others.⁶ Human Rights are rights inherent in the essence of life which is interpreted as a gift from God Almighty, given to human existence since it is still a fetus in the womb and in a universal concept not limited by space, time and owned by everyone, these principles of Human Rights also have a moral content that applies to all aspects of human life.⁷ Including the threat of using nuclear as a weapon of mass destruction that has the potential to threaten human life.

The use of nuclear weapons as weapons of mass destruction also violates the *Treaty on the Non-Proliferation of Nuclear Weapons*, abbreviated as the NPT. The NPT has two membership categories consisting of Nuclear Weapons States (NWS) and *Non Nuclear Weapons States* (NNWS). The NWS is a country that has developed nuclear and has nuclear capabilities before the formation of the NPT, its members include the United States, Russia, France, the United Kingdom, and China, these five countries can maintain their nuclear weapons, but are prohibited from transferring and sending their nuclear technology to other countries. However, based on the reality that has occurred, the development of nuclear weapons continues to be carried out by countries whose membership is the NNWS. This

³ *Ibid*, p. 152.

⁴ Nelda Zahra Amany, "Perkembangan Senjata Nuklir Sebagai Suatu Isu Keamanan, Sarana Diplomasi Dan Senjata Pemusnah Masal", *Jurnal JOM Fisip* 10, no. 1 (2023), p. 230-231.

⁵ Komite Internasional Palang Merah, (29 Agustus 2020), Dampak kemanusiaan dan risiko penggunaan senjata nuklir, <https://www.icrc.org/en/document/humanitarian-impacts-and-risks-use-nuclear-weapons>.

⁶ Marissa Hafiani Garnida, Husni Syam, "Uji Coba Nuklir Dalam Perspektif Hak Asasi Manusia Dikaitkan dengan Non-Proliferasi Treaty (NPT) dan Comprehensive Test Ban (CTBT)", *Prosiding Ilmu Hukum* 4, no. 2 (2018), p. 267

⁷ Josina Augustina Yvonne Wattimena et. al, "Ketahanan Pangan Masyarakat Adat Sebagai Wujud Pemenuhan HAM Dalam Masa Pandemi Covid", *Jurnal Sasi* 27, no. 2 (2021): 247-266.

can be seen in the existence of nuclear possessions by countries such as India, North Korea, Iraq and Iran. The use of nuclear weapons is also contrary to Article 1 paragraph 1 of the UN Charter which is basically to maintain world peace and security. Referring to this Article, the use of nuclear weapons is seen as one of the objects that can pose a threat to the international peace and security system. The role of the international organization of the United Nations is very large in its responsibility to create peace and security in the international community from the threat of the use of nuclear weapons. One of the main organs of the United Nations to determine whether or not there is an act that threatens world peace and security is the UN Security Council. One form of decision issued by the UN Security Council is a UN resolution.

Resolution is the result of a decision issued due to the occurrence of an issue that has been approved through consensus or voter voting based on the rules and procedures that have been set by the international organization or body concerned.⁸ UN resolutions consist of General Assembly resolutions and UN Security Council resolutions. The resolution is expected to be a solution in providing justice to various problems in restricting the use of nuclear weapons. However, non-compliance with the UN resolution on the restriction of nuclear weapons is still carried out, such as North Korea, Iran, Iraq, India, and other countries that are still active in conducting nuclear weapons tests.

The non-compliance is caused because in the perspective of international agreements, the position of resolutions is still categorized as soft *law*, in contrast to treaties or conventions that are categorized as hard law or *hard law*, in the context of soft law or *soft law* according to the view of legal experts, soft law is said to be still ambiguous, because basically from a classical point of view, a rule of law is usually is considered "hard" (*hard law*) which is defined as something "binding",⁹ with criticism of *soft laws*, it will have an impact on the enforceability of UN resolutions.

The use of nuclear weapons poses a threat to the defense and security of the international community and also losses to the international community so that it can give birth to a form of state responsibility based on international law. One of the international legal instruments that regulates state responsibility is *the Draft Articles on Responsibility of States for Internationally Wrongful Act 2001* which was formed by *the International Law Commission* which is a commission within the United Nations agency. Article 1 of the Draft Article affirms that "an internationally wrongful act committed by a state that is an act or omission that is legally attributable to the state and constitutes a violation of international obligations". The use and testing of nuclear weapons by countries that are not included in the membership of *the Non-Nuclear Weapons States* (NNWS) is a violation of an international obligation because it has violated the provisions of the UN Charter, UN resolutions, international legal instruments on nuclear, and can result in the threat of the life of the international community.

METHODS OF THE RESEARCH

This paper uses normative juridical research methods, with the problem approaches used are the statute *approach*, the conceptual approach, and the *case approach*. The sources of legal

⁸ Sumaryo Suryokusumo, *Hukum Diplomati: Teori dan Kasus*, (Bandung: Alumni, 1995), p. 173

⁹ Pierre-Marie Dupuy, "Soft Law and the International Law of the Environment", *Michigan Journal of International Law* 12, no. 420 (1991), p. 420-422.

materials in this writing are primary, secondary, and tertiary legal materials. The technique of collecting legal materials uses a literature study which is then analyzed qualitatively to answer the problems studied. Articles sourced from research results, research methods are written as separate chapters after the introductory chapter of articles sourced from research results, research methods are written as separate chapters after the Introduction chapter. The research method contains the type of research, approach method, source of legal material and data source, technique of collecting legal materials, data collection technique, as well as method of analysis of legal materials and data analysis, for conceptual idea articles, it is enough to only discuss the method of the study approach placed in the abstract section.

RESULTS AND DISCUSSION

A. UN Resolution as the Basis for the Legality of Restrictions on the Use of Nuclear Weapons by States

The UN General Assembly has three types of decisions, namely *declarations*, *decisions*, and *recommendations*.¹⁰ Article 18 paragraph 2 of the UN Charter states that one of the recommendations that can be issued by the UN General Assembly is a recommendation on international maintenance and security, but the decision of the UN General Assembly is a non-binding recommendation, against its members. A General Assembly resolution can have the force of binding law like a source of international law, if the resolution issued is a declaration and has been fully accepted by the states. However, this does not mean that General Assembly resolutions do not have binding legal force for every country that receives them. General Assembly resolutions are one of the results of UN decision-making, and therefore must be accepted by all parties because they are a source of international law that must be agreed upon and obeyed. General Assembly resolutions contain moral strength because they contain elements of obedience and obedience by all countries and also to the international community. A General Assembly resolution may be used if the Security Council fails to realize its duties in order to maintain international peace and security, in accordance with the provisions of Article 14 of the UN Charter, the General Assembly may recommend measures to achieve a state of peace or as a result of various violations of the provisions and objectives of the UN Charter.

There are three approaches that can affect the binding power of the General Assembly resolution, namely: *Customary Law Approach*, *New Source Approach*, *Grey Zone (Soft Law) Approach*.¹¹ These three approaches are interrelated approaches and cannot be separated from each other and cannot be applied using only one approach but must be applied and used as a whole so that the elements in these three approaches can be fulfilled in the UN General Assembly resolution. The Customary Law Approach emphasizes that every member state or non-member of the United Nations must submit and be appropriate to every resolution issued by the General Assembly because this is a legal obligation and also a necessity (*Opinio Juris*). There is an obligation and necessity under international law to comply with the UN resolution on the restriction of the use of nuclear weapons because the UN resolution on moral force contains principles and values that have been universally applicable in the international community. The moral force that exists in the General Assembly resolution is also accompanied by the moral obligation contained in the *Grey Zone*

¹⁰ Brierly J. L. *Hukum Bangsa-Bangsa*, Translated by Moh. Radjab, (Jakarta: Bhratara, 1996), p. 249

¹¹ F. A. Whisnu Situni, *Identifikasi Dan Reformasi Sumber-Sumber Hukum Internasional*, (Bandung: Mandar Maju, 2002), p. 88

(*Soft Law*) approach so that it can have binding legal force and each country has a sense of full responsibility to implement the UN General Assembly resolution. The last approach is *the New Source Approach*. General Assembly decisions such as the resolution on the prohibition of the use of nuclear weapons are inseparable from the existence of consensus which means that a mutual agreement reached by several parties, in this case States, Article 18 of the UN Charter has stated that decisions on important matters are taken by a majority vote of two-thirds of each member present and voting in favor.

In addition to the UN General Assembly resolution on the UN Security Council, there is also a UN Security Council Resolution. The UN Security Council is the main organ of the United Nations that has *primary responsibility* in terms of maintaining international peace and security.¹² Responsibility for the maintenance of international security and peace has been mandated and affirmed in Article 24 paragraph (1) of the UN Charter.

The binding power of Security Council resolutions is contained in Article 25 of the Charter which affirms: "The members of the United Nations agree to accept and implement the decisions of the Security Council in accordance with this Charter", from the affirmation in Article 25 is an order that carries a consequence of all decisions issued by the Council with respect to its function of maintaining international security and peace and even the settlement of Disputes have binding legal force and the parties have the obligation to implement all resolutions regarding the restriction of the use of nuclear weapons. Article paragraph 2 paragraph (6) of the UN Charter which states that countries that are not members of the United Nations have an obligation to comply with UN Security Council resolutions, Based on this article, a country that is not a member of the UN Security Council may also be subject to an obligation to implement and be bound by UN Security Council resolutions, if the country commits acts that threaten the security of a country. The binding power of subsequent Security Council resolutions is contained in Article 27 paragraph (3) of the UN Charter which states "Decisions of the Security Council on other matters shall be determined by a concurring vote of the Nine members including the votes of the permanent members; provided that, in the decisions under which are taken in the framework of Chapter VI, and paragraph 3 of Article 52, the disputing party shall not vote".

The binding power of Security Council resolutions is also found in the moral power contained in them. Moral strength contains that every country must comply with and implement the UN resolution on the restriction of the use of nuclear weapons as a form of Security Council resolution. The moral strength possessed by UN resolutions as part of the instruments and products of international law in the form of Soft Law contains the principles of international law such as the principle of respect for Human Rights, the Prohibition of the Use of Violence Against Other Countries, State Responsibility, and so on. These principles in international law are then legally recognized and used as the basis for regulating every action in the life of the international community, especially the restriction of the use of nuclear weapons.

B. Legal Relationship Between *the Draft Articles on States Responsibility of States for International Wrongful Act* and UN Security Council Resolutions

The impact of the use of nuclear weapons, whether in the form of nuclear weapons tests, use in armed conflict, military purposes, and other uses that are not for peace purposes, are

¹² Sri Setianingsih, *Pengantar Hukum Organisasi Internasional*, (Jakarta: UI-Press, 2004), p. 123.

a threat to human survival. Not only can it threaten international peace and security, but it can also result in losses such as damage to the environment, damage to various infrastructures, climate disruption with devastating consequences, and various other adverse impacts. State responsibility for nuclear activities is an absolute or absolute form of obligation, subject to the nature of the situations arising and subject to appropriate general restrictions. The safety of the international community cannot be guaranteed by a system in which a state will only be held liable if it is proven to have been negligent in managing nuclear fuel and nuclear installations, or the act of using nuclear in any form because the danger of the activity is unavoidable.

Based on this reality, the Security Council Resolution and *the Draft Articles on States Responsibility of States for International Wrongful Act* or the draft articles of state responsibility have the same relationship and essence, namely both are formed and issued based on an act or or violations that are actions that are not in accordance with the rules, objectives, and principles of international law so as to cause a threat to international peace and security. Respect for the rights and sovereignty of other countries is the main essence of the enactment of draft articles and Security Council resolutions.

The relationship between the draft article on state responsibility and the Security Council resolution on the restriction of the use of nuclear weapons can also be seen from the attitude of nuclear states in order to have a moral obligation and also to comply with and respect every decision issued by the Security Council. Because it is with the awareness of the obligations and compliance of these countries that stop the entire series of nuclear activities for purposes that threaten peace.

UN Security Council Resolutions are one of the elements that are referred to as international obligations, as stated in Article 2 of the Draft article on state responsibility that can arise in the event of a violation or negligence of international obligations. If there is any indication of non-compliance with Security Council resolutions on sanctions on the restriction of the use of nuclear weapons, then states have violated international obligations and may be held liable if there are also losses or threats felt by other countries as a result of the impact of the activities of the use of nuclear weapons and from such resolutions it will be the basis of a country's responsibility.

CONCLUSION

The binding power of UN resolutions to limit the use of nuclear weapons is divided into two, namely the binding power of UN General Assembly resolutions and the binding power of the UN Security Council. The binding power of UN General Assembly resolutions can have binding force based on three approaches, namely *the Customary Law Approach*, *New Souce Approach*, *Grey Zone* or *Soft Law* which are interrelated, while the binding power of UN Security Council resolutions has legal *binding* related to the limitation of nuclear weapons and the existence of moral force that gives rise to obligations and compliance to all international communities. The relationship between *the Draft Articles on Responsibility of States for Internationally Wrongful Act* and the UN Security Council resolution on the exercise of state responsibility for the use of nuclear weapons is that both were established and issued on the basis of acts or violations not in accordance with the rules and objectives of international law and violations of the rights of the sovereignty of other countries thereby posing a threat to peace and security so that UN Security Council resolutions can be the

basis for state responsibility in the event of indications of non-compliance with Security Council resolutions on sanctions on the use of nuclear weapons.

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