



IMPLEMENTATION OF THE PROVINCIAL GOVERNMENT'S AUTHORITY TO CARRY OUT SISTER PROVINCE COOPERATION IN THE PERSPECTIVE OF INTERNATIONAL AND NATIONAL LAW CASE STUDY: SISTER PROVINCE COOPERATION BETWEEN PROVINCE OF NTB AND NORTHERN PROVINCE OF AUSTRALIA

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Abstract

The purpose of this study is to examine and analyze the position and strength of the LoI between the West Nusa Tenggara Provincial Government and the Northern Territory Government regarding sister province cooperation from the perspective of international law and national law. Furthermore, this research also examines the implementation of government authority and dispute resolution mechanisms stipulated in the Letter of Interest in the context of Sister Province agreements according to international law. The research method used is normative empirical. The Letter of Intent (LoI) between the West Nusa Tenggara Provincial Government and the Northern Territory Government regarding sister province cooperation has limited power and does not have binding legal force in the perspective of international law and national law. However, in the implementation of the authority exercised, the West Nusa Tenggara Provincial Government and the Northern Territory Government have gone through the stages of exploration, formulation of texts, and negotiations. The mechanism for resolving differences as stipulated in Article 10 requires an amicable settlement of any differences arising from the interpretation or implementation of the contents of the agreement.

Keywords: *Sister Province, International Agreement, Letter of Intent.*

A. INTRODUCTION

One of the results of interactions between nations and states is the formation of an international treaty, an international treaty is a term of 'treaty' that is commonly used in Indonesia. In the *Black Law Dictionary*, a treaty is an agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of the state¹ which means an agreement between two or more independent states. So it can be interpreted that a treaty is an official agreement, binding on two or more countries in

1 Brayn A Garner, *Black Law's Dictionary 11th Ed*, West Group, 2019

the fields of state at the international level with ratification carried out by authorized and sovereign parties.

Prior to 1969, international treaties were governed by customary international law, with the establishment of the 1969 Vienna Convention establishing the definition of an international agreement (*treaty*) as an agreement used by two or more countries to establish relations according to the provisions of international law. In this case, the term *treaty* is used as a “*nomen generalissimum*”, because in that sense the term includes any agreement between states regardless of its form, such as written or oral, and regardless of the executing officer, such as the head of state or the Minister of Foreign Affairs.

The 1969 Vienna Convention on the Law of International Treaties defines an international treaty as “any written agreement between states and other subjects of international law governed by international law, whether consisting of a single instrument or a series of related instruments, characterized as a binding agreement made by sovereign parties”.

Sister city agreements have met the international character and are not included in civil agreements, such as agreements between countries and multinational companies. *Sister city* agreements are held by provincial or district or city governments in Indonesia with provincial or district or city governments in other countries.

Most of the *sister city* cooperation agreements of West Nusa Tenggara Province are in the form of *Memorandum of Understanding* (MoU). From the perspective of *sister city* cooperation agreements in Indonesia, the use of MoU is a description of an agreement that is not formal and does not require convoluted procedures and is “less binding”. MoUs are the most common title for Indonesia’s bilateral agreements.²

States as subjects of international law have the authority to cooperate with other states. The authority of each country is given to the head of state and the country’s foreign minister. This authority can be mandated to other parties, be it ministries, governments, agencies, the private sector, or individuals.³

The state also gives the right to the region to make an international agreement, the right is regulated in Law Number 23 of 2014 concerning Regional Government. The mechanism for making international agreements by the regions, the regional government in this case the Governor, Regent, or Mayor must first ask the DPRD for opinions and considerations on the plan to make international agreements.⁴

NTB Province has a vast area and potential as well as very rich natural resources, West Nusa Tenggara Province is certainly very attractive to other countries to cooperate because of its potential. One of the countries interested in *sister city cooperation* is the Government of Zhejiang Province of China together with the Government of West Nusa Tenggara to carry out *Sister City cooperation* which aims to improve friendly relations between provincial governments and build increased cooperation in various sectors. In addition to the *sister city cooperation* between West Nusa Tenggara and Zhejiang Province of China, the West Nusa Tenggara Provincial Government also conducts *Sister City cooperation* with other countries, namely with the *Northern Territory of Australia*,

2 Damos Dumoli Agusman, *International Treaty Law*, Refika Aditama, Bandung, 2010, p. 33.

3 Manullang Renata Edzgar Yosephine, Urgency of Supervision on the Implementation of *Sister City Cooperation* in Indonesia. Brawijaya University, 2014, p. 13.

4 Susanty Ade Pratiwi, *Regional Authority in Making International Agreements in Indonesia*, Journal of Straits, Volume. 5 No 4 (2017), p 9.

where the two provinces will help each other in the areas of tourism, education, industry, trade and investment.

B. METHODS

The research method used in this research is Normative-Empirical, Normative legal research or library research is research that examines laws and regulations that have to do with the problem under study. For normative research only recognizes secondary data, which consists of primary, secondary and tertiary legal materials, so in processing data and analyzing legal materials it does not break away from various interpretations known in legal science.⁵ Meanwhile, empirical legal research is research to obtain field data as the main data source, such as the results of interviews and observations. Empirical research is used to analyze laws that are seen as patterned community behavior in the lives of people who always interact and relate in social aspects.⁶

This research uses three approaches, namely, the statutory approach. The statutory approach is carried out by examining all laws and regulations that are related to the legal issues being addressed. The statutory approach in normative legal research has both practical and economic uses.⁷

Conceptual Approach, departing from the views and doctrines that develop in legal science. Understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issue at hand.⁸

Sociological approach is an approach that examines and sees directly how the implementation and enforcement of a legal regulation or legislation in society.⁹

The types and sources of legal materials used by the author here are using primary, secondary, and tertiary legal materials. The whole legal material

C. ANALYSIS AND DISCUSSION

1. LoI between the Provincial Government of West Nusa Tenggara and Northern Territory Australia on Twin Province Cooperation from an International Law Perspective

One form of twin province cooperation that exists in Indonesia is the twin province cooperation between the West Nusa Tenggara Provincial Government and the Northern Territory Government in Australia which has been outlined in a *Letter of Intent* (LoI). According to Achmad Nurmandi, a *Letter of Intent* (LoI) in the context of twin province cooperation is a document that contains the intention of both parties to cooperate in various fields such as social, economic, cultural, and others. This LoI is not legally binding, but is a form of initial agreement to direct and clarify the intentions of both parties in establishing closer cooperation. LoI is more like a good intention to cooperate with each other in various fields, such as culture, tourism, education, and economy.

⁵ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*, Revised Edition, Rajawali Pers, Depok, 2018, p. 171. 171.

⁶ Bambang Sunggono, *Legal Research Methods*, PT Raja Grafindo Persada, Jakarta, 2003, p. 43. 43.

⁷ *Ibid*, p. 164.

⁸ *Ibid*, pp. 166-167.

⁹ H. Ishaq, *Legal Research Methods and Writing Thesis, Thesis, and Dissertation*, Alfabeta CV, Bandung, 2016, p. 98. 98.

However, although the LoI does not have binding legal force, the twin provinces' cooperation still has an important position in international law.

According to the 1969 Vienna Convention on the Law of Treaties, the agreement stipulated in the LoI is an incomplete form of agreement and has not fulfilled the conditions set out in the convention, so it does not have binding legal force. And also LoI (*Letter of Intent*) is not specifically regulated in the *Vienna Convention on the Law of Treaties of 1969*. The Vienna Convention regulates international treaties that are legally binding and have the same legal force as national laws, while LoIs do not always have the same binding nature as international treaties. However, the Vienna Convention recognizes that in the context of treaty negotiations, parties may sign and refer to LoIs as a basis for mutual agreement and intention in taking further action. Article 2 of the Vienna Convention states that an "international agreement" may be in writing, signed, or represented by another binding instrument. Thus, the LoI can be said to be evidence of goodwill between the two parties to cooperate with each other, and become the basis for the parties concerned to establish a more intensive cooperative relationship in the future.

The Letter of Intent (LoI) between the West Nusa Tenggara Provincial Government and the Northern Territory Government on sister province cooperation has limited force under international law. The LoI is only a statement of intent or mutual agreement between the two parties to increase cooperation in various fields, but it does not have a legally binding nature.

In international law, for an agreement to be considered valid and legally binding, it must meet the requirements set out in the *Vienna Convention on the Law of Treaties of 1969*. Some of these requirements include a clear and unequivocal agreement between the parties, the agreement is made voluntarily, and the agreement is represented by an authorized person.

As an LoI, the document does not fulfill the above requirements and therefore does not have the same legal force as a legally binding international agreement. The LoI only serves as a basis for mutual agreement and intention between the two parties to enhance cooperation in various fields, and can be considered as a guide or hint for concrete efforts to develop cooperation in the future.

As the first step in the process of creating a sister province cooperation agreement, the LoI between the West Nusa Tenggara Provincial Government and the Northern Territory Government contains the desire of the parties to form a good relationship and support cooperation that is beneficial to both regions. Therefore, it is important to uphold the principles of equality and mutual benefit. The establishment of this cooperation must be based on the laws, regulations, and administrative procedures that apply in their respective countries, namely the Republic of Indonesia and Australia.

In the context of twin province cooperation between West Nusa Tenggara and the Northern Territory, the LoI is the basis for both parties to develop cooperation in various fields that are considered mutually beneficial. This LoI can be a legal basis for both parties to develop more concrete and structured cooperation programs in the future. For example, in the field of tourism, the two provinces can develop student and teacher exchange programs to promote each other's tourist destinations. Similarly, in the field

of education, the two provinces can develop student and teacher exchange programs to improve the quality of education in both provinces.

However, although LoI has an important position in international law as evidence of goodwill to cooperate with each other, LoI does not have binding legal force, so it cannot be used as a basis for resolving disputes between the two parties. Therefore, if there is a dispute between the two parties related to the implementation of the twin provinces cooperation, the two parties must resolve the dispute through the dispute resolution mechanism stipulated in international law.

Sister Province cooperation agreements have also been regulated by national law in Indonesia. Regulations regarding *Sister Province* have been contained in the 1945 Constitution of the Republic of Indonesia, Law Number 22 of 1999 concerning Regional Government, Law Number 37 of 1999 concerning Foreign Relations, Law Number 24 of 2000 concerning International Agreements, Minister of Home Affairs Regulation Number 25 of 2020 concerning Procedures for Regional Cooperation with Regional Governments Abroad and Regional Cooperation with Institutions Abroad, and Minister of Foreign Affairs Regulation Number 09/A/KP/XII/2006/01 concerning General Guidelines for Procedures for Relations and Foreign Cooperation by Regional Governments.

2. LoI between the Provincial Government of West Nusa Tenggara and Northern Territory Australia on Twin Province Cooperation from an International Law Perspective

In the process of making a *sister province* cooperation agreement between the Government of West Nusa Tenggara Province and the Government of the Northern Province of Australia specifically based on the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 09/A/KP/XII/2006/01 concerning General Guidelines for Procedures for Relations and Foreign Cooperation by Regional Governments and Regulation of the Minister of Home Affairs Number 25 of 2020 concerning Procedures for Regional Cooperation with Regional Governments Abroad and Regional Cooperation with Institutions Abroad. There are several stages of authority implementation that have been passed by the West Nusa Tenggara Provincial Government and the Northern Territory Government in the process of making this twin province cooperation agreement as follows:

a. Exploratory Phase

At this stage, there has also been an exchange of profiles of each region between the Government of West Nusa Tenggara Province and the Government of the Northern Province of Australia through the Diplomatic Representative of the Republic of Indonesia in Australia. After the exchange, the two local governments, namely the Government of West Nusa Tenggara Province and the Government of the Northern Province of Australia, responded positively to each other. Thus a letter of intent was made containing the intention of both parties to cooperate in various fields called the *Letter of Intent*. This *Letter of Intent* or commonly abbreviated as LoI must be signed by the Regional Head of each party. In this case, the LoI was signed by the Regional Head of West Nusa Tenggara Province and the Regional Head of the Government of the Northern Province of Australia, namely Dr. H. Zulkieflimansyah, S.E, M.Sc as Governor and

Michael Gunner as Chief Minister. This signing was carried out in duplicate on March 28, 2022 in the Northern Territory and in West Nusa Tenggara.

b. Script Formulation Stage

Based on the results of the author's interview with Mr. Idham, the initial formulation of the cooperation script or draft cooperation was then submitted to the Regional Directorate of the Ministry of Foreign Affairs, where the region was adjusted to Australia. The Regional Directorate of the Ministry of Foreign Affairs then sends the draft twin province cooperation to Australia through the Embassy of the Republic of Indonesia in Australia. Furthermore, the Embassy of the Republic of Indonesia in Australia submits the draft twinning province cooperation to the Northern Territory Government.¹⁰

c. Negotiation or Negotiation Stage

This stage is also used as a forum to clarify each party's understanding of the provisions contained in the draft twinning province cooperation. After the agreement between the parties, the West Nusa Tenggara Provincial Government and the Northern Territory Government can exchange the draft of the twinning province cooperation. However, in this case, based on the results of the interview on May 5, 2023, it is said that the draft of the twinning province cooperation between the West Nusa Tenggara Provincial Government and the Northern Territory Government has been agreed.¹¹

The stages described above are stages that have been carried out by the West Nusa Tenggara Provincial Government and the Northern Territory Government in the framework of making a twin province cooperation agreement. However, there are several stages that have not been passed by the parties so that the twin provinces cooperation agreement as outlined in the MoU cannot be implemented. These stages are as follows:

a. Signing Stage

b. Implementation Stage

3. Dispute Settlement Mechanism Set in *Letter of Intent (LoI)* in the Context of *Sister Province Cooperation Agreement* According to International Law.

Dispute settlement mechanisms in terms of international treaties have been regulated in the 1969 Vienna Convention. Article 65 of the 1969 Vienna Convention deals with the settlement of disputes between states involved in international treaties. This article states that in the event of a dispute between the states, they should try to resolve it through negotiations or other peaceful means before seeking the assistance of an arbitral body or court. However, if negotiations or other peaceful means are unsuccessful, the disputants may seek assistance from an arbitral body or court.

Furthermore, this article also stipulates that states involved in an international treaty must abide by the award of an arbitral body or court to which they apply to settle a dispute.

Thus, article 65 of the 1969 Vienna Convention aims to encourage states involved in international agreements to settle their disputes through negotiation or other peaceful means first, before recourse to arbitration bodies or courts. This is expected to reduce the likelihood of conflict or war between these states.

¹⁰ Interview with Mr. Idham, Junior Expert Legal Analyst of Cooperation Administration Bureau, Regional Secretariat of West Nusa Tenggara Province, June 9, 2023.

¹¹ *Ibid*, dated May 5, 2023.

Then it is further explained in Article 66 of the 1969 Vienna Convention which regulates the dispute settlement mechanism between states related to international treaties. This article states that in the event of a dispute between states involved in an international agreement, they may choose one of several dispute resolution mechanisms provided for in this article.

D. CONCLUSION

1. *The Letter of Intent* (LoI) between the Government of West Nusa Tenggara Province and the Government of the Northern Territory regarding twin province cooperation in the perspective of international law has limited power, and in the perspective of national law does not have binding legal force because the LoI only contains a statement of intention to establish cooperation between the two parties and has not fulfilled the elements of a valid agreement. In international law, for an agreement to be considered valid and legally binding, it must fulfill the requirements stipulated in the *Vienna Convention on the Law of Treaties* of 1969. However, in national law, the mechanism for implementing twin province cooperation between the West Nusa Tenggara Provincial Government and the Northern Territory Government must specifically be based on the Minister of Home Affairs Regulation Number 25 of 2020 concerning Procedures for Regional Cooperation with Regional Governments Abroad and Regional Cooperation with Institutions Abroad and Minister of Foreign Affairs Regulation Number 09/A/KP/XII/2006/01 concerning General Guidelines for Procedures for Relations and Foreign Cooperation by Local Governments.
2. The implementation of authority that has been carried out by the West Nusa Tenggara Provincial Government and the Northern Territory Government in the process of making a twin province cooperation agreement is the stages of exploration, formulation of texts, and negotiations. Although some stages have not been passed, an agreement has been reached in the negotiation stage. The signing and implementation stages of the agreement still need to be done to carry out the cooperation. Therefore, the sister province cooperation between the West Nusa Tenggara Provincial Government and the Northern Territory Government has not yet been implemented.
3. In the *Sister Province* cooperation agreement, dispute resolution is not mentioned in the MoU (*Memorandum of Understanding*) which is a cooperation agreement as a follow-up to the LoI. However, the MoU between the West Nusa Tenggara Provincial Government and the Northern Territory Government has regulated the mechanism for resolving differences listed in Article 10 which requires an amicable settlement of any differences arising from the interpretation or implementation of the contents of the agreement. This is done through a process of consultation or negotiation between the parties involved. In the event of a dispute, the parties are required to find a solution together without any action that is detrimental to the other party. Similarly, Article 65 of the 1969 Vienna Convention aims to encourage states involved in international agreements to resolve their disputes through negotiations or other peaceful means first, before seeking assistance from arbitration bodies or courts.

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