

**LEGAL CRITERIA OF THE RIGHT TO SELF-
DETERMINATION IN RELATION TO TERRORISM UNDER
INTERNATIONAL LAW**

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ABSTRAK

Penentuan sendiri telah lama diiktiraf sebagai salah satu hak asasi manusia. Walau bagaimanapun, dengan kekurangan peruntukan terperinci tentang apa yang mentakrifkannya dan bagaimana ia boleh digunakan, perjuangan dan konflik yang timbul dalam memohon hak penentuan sendiri tidak pernah berhenti atau berkurangan. Dengan peningkatan ancaman keganasan, banyak dari perjuangan ini telah dilabel sebagai satu bentuk keganasan oleh negara-negara tertentu. Ini juga disebabkan oleh ketiadaan definisi yang diterima secara universal bagi istilah keganasan. Tujuan kajian ini adalah untuk menangani kriteria undang-undang penentuan sendiri berhubung dengan keganasan di bawah undang-undang antarabangsa dan untuk mengkaji corak undang-undang dalam menafsir penentuan sendiri dalam situasi sedia ada dan masa lalu. Kajian ini menggunakan kaedah penyelidikan berdoktrin berdasarkan Perihal 38 Statut Mahkamah Keadilan Antarabangsa. Ia akan menganalisis peruntukan undang-undang sedia ada dan pandangan perundangan mengenai perkara yang berkaitan dengan hak penentuan sendiri dan keganasan. Hasil kajian ini mendedahkan bahawa terdapat pola dan kriteria undang-undang yang dapat dikesan dalam semua perjuangan penentuan sendiri, sama ada berjaya atau tidak. Ini boleh digunakan sebagai faktor penanda kawasan kelabu antara penentuan sendiri dan keganasan.

ABSTRACT

Self-determination has long been recognised as an inherent right of people. However, with the lack of a detailed provision on what defines the right and how it may be invoked, the struggles and conflicts in invoking the right to self-determination had never ceased nor diminished. With the raising threats of terror, many of the struggles had been labelled as a form of terrorism by certain states. This is also due to an absence of a universally accepted definition of the term terrorism. The purpose of this study is to address the legal criteria of self-determination in relation to terrorism under international law and to examine legal patterns that construed self-determination in existing and past situations. The study employs a doctrinal method of research based on Article 38 of the Statute of the International Court of Justice. It will analyse the existing legal provisions and juristic opinions on matters concerning the right to self-determination and terrorism. The result of this study reveals that there are legal patterns and criteria that can be traced in all struggles of self-determination, either successful or not. This can be used as a demarcating factor of the grey area between self-determination and terrorism.

المخلص

لطالما تم الاعتراف بتقرير المصير كحق أصيل للناس ومع ذلك مع عدم وجود حكم تفصيلي حول ما هو تعريف الحق وكيف يمكن الاحتجاج به فإن النضالات والصراعات في التذرع بالحق في تقرير المصير لم تتوقف أو تتضاءل مع تصاعد تهديدات الإرهاب تم تصنيف العديد من النضالات على أنها شكل من أشكال الإرهاب من قبل دول معينة ويرجع ذلك أيضاً إلى عدم وجود تعريف مقبول عالمي المصطلح الإرهاب الغرض من هذه الدراسة هو معالجة المعايير القانونية لتقرير المصير فيما يتعلق بالإرهاب بموجب القانون الدولي ودراسة الأنماط القانونية التي تفسر تقرير المصير في المواقف الحالية والماضية تستخدم الدراسة المنهجية الفقهية للبحث بناء على المادة 38 من النظام الأساسي لمحكمة العدل الدولية وسيحلل الأحكام القانونية القائمة والآراء الفقهية بشأن المسائل المتعلقة بالحق في تقرير المصير والإرهاب تكشف نتيجة هذه الدراسة أن هناك أنماطاً ومعايير قانونية يمكن تتبعها في كل من يكافح من أجل تقرير المصير سواء كان ناجحاً أم لا يمكن استخدام هذا كعوامل فاصلة للمنطقة الرمادية بين تقرير المصير والإرهاب.

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ADOPETI	Timorese Popular Democratic Association (<i>Associação Popular Democrática Timorense</i>)
BBC	British Broadcasting Corporation
EU	European Union
FRETILIN	Revolutionary Front for an Independent East Timor (<i>Frente Revolucionária do Timor Leste Independente</i>)
GPW	Third Geneva Convention, Convention Relative to the Treatment of the Prisoners of War
HAMAS	Islamic Resistance Movement (<i>Harakat al-Muqāwamah al-Islāmiyyah</i>)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHL	International Humanitarian Law
ISIS	Islamic State of Iraq and Levant Syria
KLA	Kosovo Liberation Army
NATO	North Atlantic Treaty Organization
NLM	National Liberation Movement
OSCE	Organization for the Security and Cooperation in Europe
PLO	Palestine Liberation Organization
POW	Prisoner of War

PRC	People's Republic of China
ROC	Republic of China
SFRY	Socialist Federal Republic Yugoslavia
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNAMET	United Nations Mission for East Timor
UNC	Unilateral Non-Colonial
UNGA	United Nations General Assembly
UNMISSET	United Nations Mission of Support in East Timor
UNOTIL	United Nations Office in Timor Leste
UNSC	United Nations Security Council
US	United States