

Reviewing of National Law on Regulation of the Continental Shelf Territory of Indonesia

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ABSTRACT: Indonesia is the largest archipelagic state and internationally recognized. However, the development of national law must also be in line with changes in international relations in international forums. This research is a normative-juridical research. To support this research process, the approaches used is conceptual and case. The results shows that The 1982 Sea Law Convention states that the archipelagic state may draw archipelagic straight baselines and this rule has been transformed or implemented into the legislation. Hence, the government of Indonesia has an important role to keep Indonesia as an archipelagic state that has a vast sea territory and manage the wealth of natural resources properly and correctly. The arrangement of continental shelf in other countries may be taken into consideration. The comparison of these arrangements shows the differences that are tailored to the national interests of each country. In other words, there is no rule based on the actual situation of the continental shelf that can actually be claimed by Indonesia. Until now, there is no legislation in Indonesia which details the continental shelf of Indonesia. Hence, Indonesia has no strong legal basis for governing the continental shelf which can legally managed.

Keywords: Continental Shelf, International Law, National Law, UNCLOS

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I. INTRODUCTION

The Unitary State of the Republic of Indonesia is the largest archipelagic state and internationally recognized. As the largest Archipelago state in the world, Indonesia has an area of approximately two thirds of its territory. The total area of Indonesian waters is 5.8 million km².¹ In international context, the principle of an archipelago state has been accepted by the international community as governed in Chapter IV of *the United Nations Convention on the Law of the Sea* (UNCLOS, 1982). Therefore, open the widest possible opportunity to be utilized for the improvement of the welfare of all Indonesian people.² The logical consequence of ratification is the adjustment to the national law, which must be re-established in national legislation concerning the implementation of the ratification of marine law conventions.

If examined from the legal aspect, there are 2 (two) principles of marine arrangements: *First*, the nature of the sea is a water that is connected in an integral whole, the marine arrangements cannot be regulated in the laws of each country only, but must be done as the agreement of the countries and subsequently evolving into the international maritime law. *Second*, the marine area contains three dimensions that also constitute a unity; the unity of waters, seabed, subsoil and the airspace above it. This resulted in each legal regime regulating both matters need to be integrated with each other so that the established regulatory form is not overlapping and contradictory to each other, in the sense can be enforceable harmoniously.

Sovereignty is a basic principle for the creation of peaceful international relations. The sovereignty of the country over the territory consists of the sovereignty of land, air and sea. The meaning of sea sovereignty is the authority that a country has in the sea to exercise its authority. The unilateral actions of country related to the sea in the medieval can be classified in marine actions as actions taken to protect the sea as a source of wealth, as well as actions that consider the sea as a path of protection, whether it aims to protect security and defense interests, customs, health, research and others as well as aimed at protecting the sea as a means of communication both between islands or between countries.

Land and air territories are owned by all countries, because it is an absolute part for the life of the State and its population, on the contrary the sea territory is only owned by coastal States which there is a sea territory.

¹ Boer Mauna, *Hukum Internasional Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global*, 2nd edition, (Bandung: PT. Alumni, 2005, page. 304)

² See Ch. IV Article 46 - 54 the United Nations Convention on the Law of The Sea (UNCLOS 1982)

Sea territory is legally defined as the entire seawater that is freely connected throughout the earth's surface. The sea territory includes water levels, water pool, seabed and subsoil the seabed.

Legal action in the form of ratification of the United Nations' Convention on Marine Law, 1982 has not been supported by significant efforts in other fields to protect the national marine territory and its enormous natural wealth potential. In this case, it still required the development of national law in order to support the existence of the Republic of Indonesia in the sea territory. In this case, the development of national law includes legal material, legal structure, legal culture and facilities and infrastructure of compliance and law enforcement.

The development of legal materials is an ongoing process in line with the development of science and technology. The development of national law must also be in line with changes in international relations in international forums. Changes in the relationship between countries are marked by the emergence of new agreements through various forms of regulatory changes in bilateral, regional and international scopes. By juridical, utilization of all natural wealth contained in the seabed and the subsoil has the legal basis on 2 (two) laws at once, namely: the Law of Continental Shelf and Exclusive Economic Zone (ZEE).

Meanwhile, the 1982 Sea Law Convention sets various criteria as an alternative to establishing the outer periphery of the continental shelf that can be claimed by the coastal state. As the provisions of Article 76, each coastal state may choose the most favorable alternative, whether to use horizontal or distance criteria from the baseline. The criteria of vertical or ocean depth as well the thickness of seabed sediment as evidence of a natural prolongation with the land.³ Therefore, the amendment to Act No. 1 of 1973 on the Continental Shelf can only be done if supported by scientific evidence. In this regard, Indonesia has undertaken scientific research on seabed conditions undertaken by various relevant agencies to support Indonesia's claim to the continental shelf beyond 200 miles from the archipelagic base, particularly in the Indian and Pacific Oceans.

Hence, Act No. 1 of 1973 which is still based on the Geneva Convention 1958 needs to be immediately amended and adapted to the new developments in the 1982 Sea Law Convention, especially with respect to the determination of the outer periphery of the continental shelf to require the amendment of national legislation immediately, so needed a scientific justification in the form of scientific research to amend the provisions concerning the continental shelf of Indonesia.

II. METHOD OF RESEARCH

This research is a normative-juridical research with a type of library research.⁴ To support this research process, the approaches used is conceptual and case. It is expected that these approaches can answer the problems faced. The analysis of materials used in the research is done by qualitative and comprehensive analysis.⁵ Analysis of legal materials is done through prescriptive techniques, describes materials by constructs the law and argumentation, and then conducted the assessment based on reasons that are legal reasoning related to the problem.

III. THE ARRANGEMENT OF SEA TERRITORY BOUNDARIES OF A COUNTRY BY INTERNATIONAL LAW

The concept of the supreme authority of the country has its own type as the character that animates a country. But there are also important things in the concept of power according to Jack H. Nagel; *the scope of power* and *the domain of power*. *The scope of power* concerns the activities covered in the function of power or sovereignty, while *the domain of power* or sovereignty relates to who is the subject or sovereign.⁶ Power or sovereignty is a central feature of the state, which means that no party, either inside or outside a country, should be asked for permission to establish or do something. Sovereignty is the right of absolute, supreme, unlimited, independent and without exception.⁷

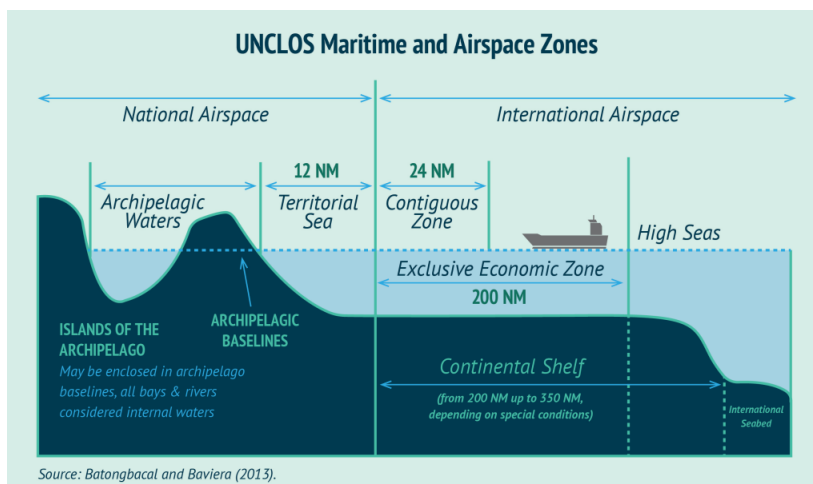
³ Vladimir Jares, 2008, *"The Continental Shelf beyond 200 M from the Baselines: The Work of the Commission on the Limits of the Continental Shelf"*, Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, United Nations, New York

⁴ Peter Mahmud Marzuki, 2006, *Metode Penelitian*, Prenada Media Group, Jakarta, page.35

⁵ *Ibid*

⁶ Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*, PT. Ihtiar Baru van Hoeve, Jakarta, 1994, page. 9.

⁷ Franz Magnis Suseno, *Etika Politik (Prinsip-Prinsip Moral Dasar Kenegaraan Modern*, PT Gramedia Pustaka Utama, Jakarta, 2001, page. 175.



The sovereignty of the state includes its territorial sea, including the airspace above it and the seabed and the subsoil. Under the sea law today, the sovereignty of the state remains limited by the right of peaceful passage for foreign ships. In addition, to the provisions of the baseline to measure the width of the territorial sea (low water line, straight base line and closing line). Concern the waters boundaries of a country has been agreed by the countries joined in the United Nations (UN). In accordance with the agreed results of the International Sea Law conference, Indonesia has 3 (three) sea boundaries namely the Territorial Sea, the Continental Shelf and the Exclusive Economic Zone (ZEE). This division of this areas can be seen in Figure 1.

Territorial sea is a sea located on the outer side of the base line that does not exceed the width of 12 sea miles measured from the base line. The coastal state has full sovereignty in deep waters. This sovereignty covers the airspace over the territorial sea and the seabed and subsoil. The coastal state, although it has sovereignty in this territorial sea, still allows other countries to enjoy the right of peace passage, namely: the right of every country to pass through the Territorial Sea. The establishment of these maritime zones depends on different considerations, however, the justification for the expansion of state sovereignty beyond its land boundaries is always same, namely:

- a) State security requires executive ownership of its coastal (shores), so protection measures may be taken.
- b) For streamlining trade, fiscal, and political interests, each country shall be able to supervise all ships entering, leaving, or stopping in its territorial waters.
- c) The use and acquisition exclusively of the sea products and territorial waters is necessary for the existence and well-being of the nation concerned.⁸

Thus, it can be seen that the coastal state has full sovereignty over its territorial sea territory, full sovereignty is exercised in coastline as far as 12 miles and is carried out in accordance with the provisions set forth in the United Nations Convention on the Law of the Sea 1982 (UNCLOS III).

Indonesia as an archipelagic state has an area of land in the form of island clusters as many as 17.508 islands. It stretches from Sabang to Merauke and is separated by the seas among the islands. As an archipelagic state, Indonesia benefits from having three types of land, sea, and air areas that may not all countries have. Such geographical conditions have both potential and weakness. The greatest potential is resources in it.

During this, there are efforts made by the Indonesian government to restore the marine life in marine development in Indonesia. This can be seen from the enactment of Act No. 4 of 1960. With the publication of UNCLOS 1982, it brings logical consequences for the Indonesian people, namely the mandate that must be implemented in the form of rights and obligations in the management of Indonesian maritime territory based on international law.⁹

Behind the success of Indonesia which has been fighting for the width of the territorial sea as far as 12 miles and the most important struggle acceptance of the concept of insight into the archipelago by the international world is big responsibility in utilizing the Indonesian waters and the wealth of natural resources in it. The Government of Indonesia has a very important role to keep Indonesia as an archipelagic state that has a vast sea territory and manage its natural resources well and correctly.

⁸ Nur Yanto, 2014, *Memahami Hukum Laut Indonesia*, Mitra WacanaMedia, Jakarta, pages. 21-22.

⁹ Policy Evaluation in order to Implements the International Sea Law Convention (UNCLOS 1982). Available online at: <https://rovicky.files.wordpress.com/2010/09/la20unclos20pdf2>.

Such roles may be in the form of adequate budgets for development in the field of maritime and law enforcement and the welfare of the Unitary State of the Republic of Indonesia, additional zones, Exclusive Economic Zones (ZEE), Continental Shelf and high sea as governed by the 1982 Sea Law Convention and other international law. Formally, Indonesia has been very strong on its sea territory, but the consequence is that Indonesia must maintain natural resource wealth in the sea and utilize it optimally for the national interest and all people of Indonesia. Indonesia should not only be proud to be an archipelagic state, but unwilling and unable to maintain the wealth of sea. If Indonesia does not want to maintain properly, what happens during this such as *illegal fishing* by foreign fishermen, illegal transactions or trade, piracy, pollution/destruction of the marine environment continues to be depleted of Indonesia's marine wealth.

The obligations of Indonesia as an archipelagic State are governed by articles 47 to 53 of the 1982 Sea Law Convention. Article 47 in the 1982 Sea Law Convention that the archipelagic state can draw archipelagic baselines. In fact, the obligations of Indonesia as an archipelago state bound by the 1982 Sea Law Convention have been well implemented, such as the measurement of territorial sea width, additional zones, exclusive economic zones and continental shelf as required by Article 48 of the 1982 Sea Law Convention, although not yet all established. The determination of the boundaries of the maritime zones should be in agreement with neighboring countries with both opposite and neighboring countries. Other obligation of Indonesia are respecting existing agreements, traditional fishing rights, and submarine cabling by neighboring countries, respect for the right of innocent passage, and the right of archipelagic sea lanes passage.

The position of Indonesia as a coastal state, in particular as an archipelagic state is obliged to establish the outermost boundary of the marine territory within its national jurisdiction and set forth in an adequate map as defined in international conventions in the field of the law of the sea, and depositing it in its depositary at the depositary institution in accordance with the provisions of International conventions. With the establishment of the UN' Sea Law Convention, the waters within Indonesia's national jurisdiction becomes ± 5.8 million km^2 from ± 3 million km^2 before. Of the total area, 0.4 million km^2 is the territorial sea of Indonesia and 2.8 million km^2 is archipelagic waters: the exclusive economic zone (including the additional zone) is 2.6 million km^2 .

State boundary is a boundary line which is a separation of a country's sovereignty based on the international law. The arrangement of territorial boundaries of States is intended to provide legal certainty concerning the scope of state territory, the authority of the management of the state territory, and sovereign rights.¹⁰ The State has an interest in participating in the management and utilization in high sea and international seabed in accordance with international law.

With the establishment of the UN' Convention on the International Sea Law in 1982, the marine area of Indonesia that can be utilized reaching 7.9 million km^2 consisting of 1.8 million km^2 of land, 3.2 million km^2 of territorial sea and 2.9 million km^2 of ZEE waters. The territorial waters of 6.1 million km^2 are 77% of the total area of Indonesia. Indonesia as a country that manages the marine and archipelago ocean waters that connects inter-sea globally, needs to seriously not only consider the aspect of environmental balance in the Indonesian sea territory, but also has an interest to monitor the quality of marine economy globally. Although still managed in sector, the sea (including the coast) of Indonesia has been utilized for fisheries, recreation, waste disposal, energy sources, water sources, coal, oil, building materials, forestry, livestock/ponds, industrial settlements.

In the development of international law, the boundary of authority or power which is the boundary of a country territory is strongly held. Violation of the territory of a country can be serious it may even lead to a relationship rift, and if it is protracted will result in war. With the boundaries of the region demanded a better relationship for each country and the treaties created need to be obeyed so as not to harm the interests of other countries. Coastal states have full sovereignty in their territorial sea (including seabed and airspace above it) with the obligation to guarantee the right of peaceful passage for foreign vessels.¹¹

IV. LEGAL REVISION OF THE CONTINENTAL SHELF OF INDONESIA

The continental shelf is a natural phenomenon of the seabed and subsoil and its existence is the result of natural processes for millions of years and is subject to the laws of nature. Before arriving at the discussion of the continental shelf regime set forth in the 1982 Sea Law Convention, it is necessary to know first about the history of the birth of the concept of the continental shelf. The first attention to the seabed and subsoil began to emerge in 1918, when the United States success to exploit the oil about 40 miles from the coast of Mexico bay. But the important legal developments occurred only with the signing of the Treaty between Britain and Venezuela in 1942 to determine the boundary line of each seabed in Paria bay to enable the exploration and exploitation of oil resources in the bay.

¹⁰ J.G Strake, 2001. *Pengantar Hukum Internasional*, Edisi Kesepuluh, Jakarta: Sinar Grafika

¹¹ Albert W. Koers, *Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut*, Gajah Mada University Press, Yogyakarta, 1991, Translated by: Rudi M. Rizki, Wahyuni Bahar, page. 3

An important development of the concept of the continental shelf in the sea law is the release of the Proclamation of President Truman on 28 September 1945, which is the first proclamation of the continental shelf. In the Truman's Proclamation it is stated that "*the United States of America regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.*" At that time, President Truman had not yet determined the criteria for what he called "*the continental shelf*", but explain that the United States' demands did not affect the status of water on the continental shelf as the high sea.¹² In subsequent developments, the rule was then confirmed in the Sea Convention of Geneva IV, 1958 on the Continental Shelf. Article 1 of the Geneva IV Convention of 1958 on the Continental Shelf states that:

- "For the purpose of these articles, the term "continental shelf" is used as referring to:
- (a) *The seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters, or beyond that limit, to where the superjacent waters admits of the exploitation of the natural resources of the said areas;*
 - (b) *To the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.*

As the provision of Article 1 of Geneva IV Convention 1958 above, the right of the coastal state to the continental shelf is valid to a depth of 200 meters below sea level or to an exploitable distance. This definition, of course, does not provide a definitive measure of the seabed zones that belong to a coastal state. In other words, the right to the continental shelf depends on the ability of a country to exploit the natural resources (oil, gas and living things) contained therein. The more advanced a country's technology, the wider the seabed that can be managed.¹³

The interest of the continental shelf for human life is because the seabed and subsoil are known to contain minerals that are very beneficial to human life. The utilization of natural resources in the continental shelf requires the advanced science and technology generally owned by the developed countries. Such conditions can in turn lead to injustice between developed countries on the one hand and developing countries on the other.

Meanwhile, the International Sea Law provides that coastal states may have sovereign rights to explore and exploit the Continental Shelf to 200 miles measured from the baseline which the width of its territory is measured. The seabed beyond 200 miles is called the deep ocean floor that is subject to the regime of the high sea. To prevent injustice in its use, the General Assembly of the United Nations establishes the status of the deep ocean floor as a common heritage of mankind. Therefore, a part of the use of the Continental Shelf beyond 200 miles must be submitted to the International Sea-Bed Authority (ISBA) as an international institution established specifically for that purpose and to protect the interests of all human beings.

If seen from the aspect of legal theory, sovereign rights to the natural resources of the seabed and the subsoil are entitled *sui generis*, meaning that it is not a derivative of the regime of the high sea and is not a derivative of the legal regime governing the sea territory.¹⁴ Within these sovereign rights is contained the authority of the coastal state only to utilize its contents only (i.e its natural resource, both biological and non-biological). While the space, in the form of water column and sea level, beyond 12 miles of territory remain subject to the law regime of the high sea, where all countries are entitled to enjoy freedom of the high sea (freedom of the high seas). Freedom on the high seas includes: freedom of sailing, fishing, plumbing and submarine cables, and flights above sea level.

The sovereign rights of the coastal state of the seabed natural wealth up to 200 miles measured from the baselines of the territory are obtained automatically at the time of entry into force of the International Sea Law Convention. Whereas, the sovereign rights of the coastal state over the continental shelf beyond 200 miles may be granted by International Law, only and solely if the coastal state concerned can show the scientific evidence as required by Article 76 of UNCLOS 1982. Therefore, Indonesia's ability to show scientific evidence of a continental shelf in offshore the Indian and Pacific Ocean as an absolute requirement to extend Indonesia's sovereign rights over the continental shelf more than 200 miles, especially offshore the western of Sumatra Island, southern of Java and Nusa Tenggara, as well as to northern of Papua Island. As described, it may be understood that the development of the International Sea Law, especially regarding the legal regime of the continental shelf rests heavily on the existence of the underlying scientific evidence. Therefore, the prospect of

¹² Hasyim Djalal, 1979, *Perjuangan Indonesia di bidang Hukum Laut (BPHN)*, Binacipta, Bandung, page. 40

¹³ I Made Andi Arsana, "Menuju Penyelesaian Sengketa Ambalat: Sebuah Kajian Teknis dan Yuridis," Proceeding Olimpiade Karya Tuns Inovatif (OKTI) 2009, Jurusan Tehnik Geodesi, Fakultas Tehnik Universitas Gajah Mada, Yogyakarta, page.6.

¹⁴ Jack Barkenbus, 1979. *Deep Sea-bed Resources (Politics and Technology)*, A Division of Macmillan Publishing Co.Inc, New York and Macmillan Publishers

extension of continental shelf of more than 200 miles which will be the subject of revision of Act No. 1 of 1973 depends greatly on the recognition of *The Committee on the Limits of Continental Shelf* (CLCS). In this regard, Indonesia should be able to convince CLCS that the Continental Shelf of Indonesia in certain parts of sea around its archipelago does indeed factually meet the requirements set forth in Article 76 of UNCLOS 1982. On the basis of scientific evidence that sovereign rights over the Continental Shelf can be given to Indonesia beyond 200 miles. However, the outer limits of the continental shelf are not permitted to exceed the prescribed maximum limit of 350 miles measured from the baseline of the archipelago.

V. LEGAL POLITICS OF THE CONTINENTAL SHELF IN INDONESIAN'S LEGISLATION

As a participating member of the 1982 Sea Law Convention, Indonesia still enacts Act No.1 of 1973 on the Continental Shelf of Indonesia (hereinafter referred to as UU LKI). The status of natural resources on the continental shelf of Indonesia is governed by Articles 2 and 3. Article 2 ensures full control and exclusive rights of the state and ownership of natural resources on the continental shelf of Indonesia. Further, Article 3 provides that the limit determination of the continental shelf of Indonesia, including depressions contained on the continental shelf of Indonesia that bordering to other countries is carried out with the consent. Article 4 guarantees the right of Indonesia to undertake the exploration and exploitation of natural resources on its continental shelf in accordance with applicable legislation.

The above description shows that the provisions of UU LKI, in particular regarding the meaning of the continental shelf are not in accordance with the provisions of Chapter VI of the 1982 Sea Law Convention. Therefore, UU LKI needs to be revised and conformed to the provisions of Article 76 of the Convention. First, the definition of the continental shelf as set forth in Article 1 (a) needs to be revised with reference to Article 76 which uses a width criterion that reaches a distance of 200 miles or exceeds 200 miles with a maximum width of the continental shelf 350 miles from the base line used for measure the width of the territorial sea. The reason is that in accordance with the provisions of Article 76 paragraphs 8 and 9 of the 1982 Sea Law Convention, Indonesia has claimed the extension of the Continental Shelf exceeding 200 miles approved by the UN' *Committee on the Limits of Continental Shelf*.

Determination of continental shelf boundary with neighboring countries is needed to provide legal certainty about the sovereign rights of the Republic of Indonesia, and activities of utilization of natural resources on the continental shelf. The first borderline agreement was successfully held with Malaysia in 1969.¹⁵ In the development of negotiation about maritime boundary with Malaysia, the fundamental issue was the unilateral claim of Malaysia that the continental shelf boundaries agreed by both countries for the Strait of Malacca and the South China Sea in 1969 were expressed as ZEE boundaries. Based on map 1979, Malaysia has unilaterally claimed a vast area in the Sulawesi Sea territory by ignoring the ways of drawing boundaries under international law and without regard to the interests of Indonesia and the Philippines. This map is at the source of the problem of the emergence of the Ambalat block incident, as it is part of an area unilaterally included in the claim of the Malaysian map.¹⁶

The first thing to understand about Ambalat case is the geographical location of Ambalat itself. During this, there is wrong news that Ambalat is an island. Ambalat is seabed that lies in ZEE regime and the continental shelf which means it is not subject to the sovereign regime, but rather sovereign rights. From the perspective of Article 83 paragraph 1 of the 1982 Sea Law Convention above, the status of Indonesia's sovereign rights over Ambalat continental shelf is not yet fully clear. There is no maritime boundary that determines the authority of Indonesia and Malaysia. Nevertheless, on the continental shelf (seabed) of Sulawesi Sea there has already been exploration of marine natural resources in the form of granting concessions by the Indonesian Government since 1960s to foreign companies that have never been protested directly by Malaysia until 2002. In line with that, Malaysia has also declared its claim to certain continental shelf in the Sulawesi Sea based on map 1979 which was then protested by Indonesia and other countries. The claims of both countries will certainly be a consideration in the delimitation of maritime boundaries, particularly the continental shelf in Sulawesi Sea with reference to the 1982 Sea Law Convention.

As described above, the dispute over the continental shelf boundary in Sulawesi Sea between Indonesia and Malaysia is due to differences in the claims of both countries. Indeed, Indonesia has a stronger claim than Malaysia on the continental shelf of Sulawesi Sea. However, if the dispute over the continental shelf boundary between the two countries cannot be resolved, this should not be seen because of the vacuum of solutions.

¹⁵ Sudjatmiko and Rusdi Ridwan, "Batas-Batas Maritim Antara Republik Indonesia Dengan Negara Tetangga", *Jurnal Hukum Internasional*, 2004, 94.

¹⁶ Torbjorn Pedersen and Tore Henriksen, 2009, "*Svalbard's Maritime Zones: The End of Legal Uncertainty*," *International Journal of Marine and Coastal Law*, 8.

Article 83 provides a means of settling the boundaries of the continental shelf between Indonesia and Malaysia, the two countries through a temporary arrangement is practical.

The potency of abundant marine natural resources has encouraged coastal states to expand their jurisdictional borders in accordance with applicable international agreements. One of them is a claim on the continental shelf which is known to contain oil and other valuable mineral materials.

The claim on the continental shelf was first declared by the United States unilaterally through the Truman's Proclamation of 28 September 1945 on "*Continental Shelf*".¹⁷ Claim is immediately followed by other countries and is the beginning of the birth of continental shelf. The continental shelf can be regarded as a natural prolongation of the land area. The continental shelf in several places holds oil and gas deposits as well as various biological and non-biological natural resources. In accordance with technological capabilities when the continental shelf claims begin to be initiated, the continental shelf is usually not very deep only about 50 to 550 meters.

The claim of continental shelf was first proclaimed by US' President Harry S. Truman on September 28, 1945. This United States action aims to reserve the natural wealth of the seabed and subsoil that borders to the coast of the United States. The absence of clear boundary on the continental shelf has led many countries to demand the continent shelf as widely as they can without regard to the interests of their neighbors. In order to avoid a dispute, a UN's Sea Law Convention was established which resulted in an agreement known as the United Nations Convention on the Law of the Sea (UNCLOS).

The continental shelf of Indonesia is governed by Act No. 1 of 1973 which states that the continental shelf is the seabed and subsoil beyond the territorial waters of the Republic of Indonesia to a depth of 200 meters or more, where it is still possible to explore and exploit natural resources. Because there is no clear limitation on the extent to which exploration and exploitation activities may be carried out given the capabilities and technologies used by each country is not the same. Such an interpretation is unacceptable because it will only benefit the country with a certain geographical position, especially a country with technological developments that have reached a high level.

Uncertainty about the continental shelf ended with the formulation of UNCLOS 1982 which was then established as the only International Sea Law. Indonesia as a member country shall be subject to UNCLOS 1982 and subsequently ratify the regulation into Act No. 17 of 1985. Whereas Act No. 17 of 1985 is the ratification of UNCLOS 1982 as a whole, the Act is only contains the continental shelf in general. Until now, there is no legislation in Indonesia that details the continental shelf of Indonesia, so that Indonesia has no strong legal basis to regulate the continental shelf in its territory. Given that the current law on the continental shelf of Indonesia (Act No. 1 of 1973) is irrelevant because it uses a completely different reference, it is necessary to revise or enact a new law to replace the Act.

VI. CONCLUSION

The 1982 Sea Law Convention states that the archipelagic state may draw archipelagic straight baselines and this rule has been transformed or implemented into the legislation. Hence, the government of Indonesia has an important role to keep Indonesia as an archipelagic state that has a vast sea territory and manage the wealth of natural resources properly and correctly. The arrangement of continental shelf in other countries may be taken into consideration. The comparison of these arrangements shows the differences that are tailored to the national interests of each country.

The arrangement of the Indonesian continental shelf by referring to Act No. 17 of 1985 on 1982 UNCLOS' Ratification has not been a legal basis for the exploration and exploitation of the continental shelf of Indonesia. Such thinking is based on the fact that the legislation contains only the provisions on the continental shelf still in general, meaning that it is still based on the compromise between the delegates when formulating the 1982 UNCLOS. In other words, there is no rule based on the actual situation of the continental shelf that can actually be claimed by Indonesia. Until now, there is no legislation in Indonesia which details the continental shelf of Indonesia. Hence, Indonesia has no strong legal basis for governing the continental shelf which can legally managed.

¹⁷ The continental shelf of a state comprises seabed and subsoil under sea level beyond its territorial sea along the natural prolongation of its land territory to the outer boundary of the continental shelf, or up to a distance of 200 miles from the baseline from which the width of the territorial sea is measured, in the outer boundary of the continental shelf is not reaching that distance.

REFERENCES

- [1]. Albert W. Koers, *Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut*, Gajah Mada University Press, Yogyakarta, 1991, Translated by: Rudi M. Rizki, Wahyuni Bahar.
- [2]. Boer Mauna, *Hukum Internasional Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global*, 2nd edition, (Bandung: PT. Alumni, 2005, page. 304)
- [3]. Ch. IV Article 46 - 54 the United Nations Convention on the Law of The Sea (UNCLOS 1982)
- [4]. Franz Magnis Suseno, *Etika Politik (Prinsip-Prinsip Moral Dasar Kenegaraan Modern*, PT Gramedia Pustaka Utama, Jakarta, 2001.
- [5]. Hasyim Djalal, 1979, *Perjuangan Indonesia di bidang Hukum Laut (BPHN)*, Binacipta, Bandung.
- [6]. I Made Andi Arsana, "Menuju Penyelesaian Sengketa Ambalat: Sebuah Kajian Teknis dan Yuridis," Proceeding Olimpiade Karya Tuns Inovatif (OKTI) 2009, Jurusan Tehnik Geodesi, Fakultas Tehnik Universitas Gajah Mada, Yogyakarta.
- [7]. J.G Strake, 2001. *Pengantar Hukum Internasional*, Edisi Kesepuluh, Jakarta: Sinar Grafika
- [8]. Jack Barkenbus, 1979. *Deep Sea-bed Resources (Politics and Technology*, A Division of Macmillan Publishing Co.Inc, New York and Macmillan Publishers
- [9]. Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*, PT. Ichtiar Baru van Hoeve, Jakarta, 1994.
- [10]. Nur Yanto, 2014, *Memahami Hukum Laut Indonesia*, Mitra WacanaMedia, Jakarta.
- [11]. Peter Mahmud Marzuki, 2006, *Metode Penelitian*, Prenada Media Group, Jakarta.
- [12]. Policy Evaluation in order to Implements the International Sea Law Convention (UNCLOS 1982). Available online at: <https://rovicky.files.wordpress.com/2010/09/1a20unclos20pdf2>.
- [13]. Sudjatmiko and Rusdi Ridwan, "Batas-Batas Maritim Antara Republik Indonesia Dengan Negara Tetangga", *Jurnal Hukum Internasional*, 2004, 94.
- [14]. Torbjorn Pedersen and Tore Henriksen, 2009, "*Svalbard's Maritime Zones: The End of Legal Uncertainty*," *International Journal of Marine and Coastal Law*, 8.
- [15]. Vladimir Jares, 2008, "*The Continental Shelf beyond 200 M from the Baselines: The Work of the Commission on the Limits of the Continental Shelf*", Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, United Nations, New York

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