

MARITIME BORDER BETWEEN INDONESIA AND THE PHILIPPINES

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ABSTRACT

Indonesia is the largest archipelago in Asia and even in the world which has 17,508 islands. The scattered islands can be used as tourist attractions and can be used as natural resources, helping the country's economy. Speaking of international law, the enforcement of national boundaries has been regulated in UNCLOS 1982 signed by 182 participating countries including Indonesia. Indonesia has ratified the agreement with Law No.17 of 1985. Regarding the Philippines, relations between Indonesia and the Philippines with the provisions in UNCLOS 1982, related to the agreement on the exclusive economic zone of the two countries agreed in 2014 in its implementation have run into trouble. The problem is that Miangas Island is closer to the Philippines than Indonesia. The thing that is contested between Indonesia and the Philippines is Miangas Island. Miangas Island is one of the islands located in the outermost region of Indonesia and to reach Miangas Island itself takes a long time. The distance to reach Miangas Island is closer than the Philippines. There is a fact that on Miangas Island there is often illegal trade. Illegal goods that are often traded on Miangas Island with the Philippines are coca-cola, Pepsi, laundry soap, and others. In addition, fishing and other criminal acts such as oil theft often occur in the Indonesian Sea around Miangas Island. As a result of the theft, it caused significant state losses. Based on this experience, Indonesia must be more vigilant in dealing with the problem of Miangas Island. Considering the island of Miangas is outside the territory of Indonesia. In this case, Indonesia can establish a sea border post, which can then be followed by the development and provision of infrastructure, which in turn can prosper the population on Miangas Island. Thus Indonesia's sovereignty can be maintained and from the economic aspect will bring benefits and can improve the economy of the Indonesian people. Research methods in this case use normative research methods. The approaches used are legal approaches and historical approaches.

Keywords: Indonesia, Philippines, maritime boundaries

1. PREFACE

Indonesia is the largest archipelago in the world with more than 17,508 islands belonging to Indonesia. The sea means a lot to the people of Indonesia. Because the sea can be used as a tourist attraction, transportation, and natural resources can be utilized so that it can help the country's economy. When we look at the natural wealth of the Indonesian sea, we can see that there are different types of wealth contained in the Indonesian sea. [1]

Speaking of laws, there are laws governing sea areas in a country. According to the Geneva Conventions of 1958 (the first Convention on the Law of the Sea) have been produced 4 conventions. Then the Law of the Sea Conference in 1960 and the 1982 Convention on the Law of the Sea (UNCLOS 1982). The maritime boundary itself was declared in UNCLOS 1982 which governs exclusive economic zones, territorial seas, and continental shelf. Indonesia's sovereign territory and jurisdiction are directly adjacent to several countries, including India,

Thailand, Malaysia, Singapore, Vietnam, the Philippines, Papua New Guinea, Palau, Timor Leste, and Australia. [2]

Based on its layout, Indonesia is located between 2 (two) oceans, namely the Pacific Ocean and the Indian Ocean. However, as stated above, Indonesia has borders with 10 countries. Under UNCLOS 1982, if a country has maritime borders with another country, it must be resolved by agreement and still refers to UNCLOS 1982. This means that if the maritime boundary is located in the sovereign territory, the principle used is equal distance. Under UNCLOS 1982 Article 47 paragraph 1, an island nation has the right to draw the baseline of an archipelago as a basis for measuring its territorial waters from the outermost point of its outermost island. [3]

On one hand, Indonesia as an archipelago has the advantage of drawing a baseline, on the other hand, Indonesia, with its position on the outer islands, must be aware of threats.

In 1980, Miangas Island became a hot topic due to numerous reports of border crossers and rampant smuggling in the waters of Miangas, Sangihe, and the Philippines. Miangas Island is an island located outermost and adjacent to the Philippines. The maritime boundary between Indonesia and the Philippines. The existence of this oil and gas island causes many problems that arise. Furthermore, because in terms of borders very close to the Philippines (precisely the northern tip of Indonesia and very close to the Philippines), it is called the *Border Crossing Agreement* which is a border island that connects directly between Indonesia and the Philippines.

Philippine relations with Indonesia is a bilateral diplomatic relationship between Indonesia and the Philippines. Since diplomatic relations officially began in 1949, Indonesia and the Philippines have enjoyed warm bilateral relations in a family spirit. Both countries have established embassies in each of the capitals, Indonesia has its embassies in Jakarta and consulates in Davao City, while the Philippines has its embassies in Jakarta and consulates in Manado and Surabaya. High-level diplomatic visits have been made for years.

Both countries are the founders of ASEAN and members of the Non-Aligned Movement and APEC. Both countries are members of the ASEAN East Growth Triangle along with Brunei Darussalam and Malaysia in BIMP-EAGA. [4]

BIMP-EAGA (Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area) is one of the subregional economic cooperation established in 1994 with the main aim of enhancing economic cooperation and integration among the region. members. [5]

Geographically Miangas Island is located at 5° 33' 15"LU/126° 35' 18" BT. The area of Miangas Island is 3.2 Km². Looking in terms of territory and administrative provisions of Miangas Island is part of Miangas Subdistrict, Talaud Islands Regency, North Sulawesi Province. The distance that can be reached to Miangas Island through the capital of Manado Province is about 274 nautical miles. [6]

Looking at the history of Miangas Island has been known since the middle of the 16th century. It can be traced in shipping records and maps and colonial documents. The island is listed on a map of Southeast Asia taken by Gerard Mercator in 1569. Listed on the map is a small island named *y (slas) de Cocos* located at the southeastern tip of Mindanao and northeast of *talao alijs*

Tarrao fuel island. The name *y (slas) de Cocos* with the same location and coordinates is also found in Abraham Ortelius' Asian map, 1570.

In 1906 Miangas Island was claimed as a Dutch colony, after successfully conquering Spain which had colonized the Philippines for more than hundreds of years. The Netherlands did not agree to this by not formally preserving the 1898 Paris Agreement, which contained a demarcation line that was restricted after the United States came to power over the Philippines including Miangas Island or La Palmas. The Netherlands bases its sovereignty claims against Miangas Island which is based on the right of occupation, namely through the peaceful and sustainable exercise of state power over Palmas Island (Miangas).

The case was then filed by both sides to the *Permanent Court of Arbitration* in The Hague, Netherlands. In the early 1970s several central government officials accompanying the visit of Vice President Sri Sultan Hamengku Buwono IX to the border region, a portrait of Philippine President Ferdinand Marcos adorned people's homes.

Since then, the lives of border communities in the Sangihe-Talaud district have gained more attention from the government, among other things by opening pioneering shipping networks to remote islands. No matter how remote the location of Miangas Island, they realize that they still feel part of Indonesia and are an Indonesian nation, even though they do not get attention and live enough suffering. This phenomenon certainly has a positive impact on the integrity of the nation and the State of Indonesia.

According to records, on April 4, 1928, onboard the white ship *Green Vial* negotiations between the American government and the Dutch East Indies had decided the island of Miangas belonged to the Indonesian archipelago because its cultural characteristics were the same as the people of Talaud. After the proclamation of the Unitary State of the Republic of Indonesia on August 17, 1945, it was expressly stated that NKRI came from Sabang Island to Merauke and from Miangas Island to East-Kupang. This was further reinforced by the inauguration of the border monument between Indonesia and the Philippines in 1955 on Miangas Island, where Miangas remained on Indonesian territory.

DR. Max Huber, a Swiss jurist, was appointed a sole arbitrator. In a decree he signed dated April 4, 1928, aboard the *Greenphil*, Huber concluded: Furthermore, a map published by Antonio de Hera y Tordesillas (1601), *Descripcion de las Indias del Poniente*, depicted an island in the southeastern part of Mindanao Island and the northern part of el Maluco (Halmahera), named *Isla de Palmas* (Isla de las Palmas). A similar designation that can be found in Dutch documents is the island of Palmas which is used simultaneously as Miangas Island. However, long before Indonesia and the Philippines became independent, Miangas Island was a disputed island. This island in its history was disputed between two major countries namely the United States (which at that time still colonized the Philippines) with the Kingdom of the Netherlands (which also colonized the archipelago or the Dutch East Indies). [7]

Threats to Indonesia's maritime territory can be classified into four forms of threat, namely:[8]

- a. Threats of violence, i.e. threats to use organized armed forces, such as piracy, robbery, and acts of terror;
- b. Threats to marine resources (natural resources), namely threats in the form of pollution and destruction of marine ecosystems and politicized conflicts over the management of marine resources followed by the deployment of military force;

- c. Threat of lawlessness, i.e. non-compliance with national and international laws applicable in the waters, such as illegal fishing, illegal logging, and smuggling;
- d. Navigation hazards, which are threats arising from maritime geographical conditions and hydrographic means due to inadequate navigational aids that may endanger the safety of shipping.

This is not much different from the five maritime security issues in the Southeast Asian sub-region delivered by Djoko Sumaryono as Commander of Seskoal, namely the issue of maritime terrorism, armed piracy at sea, the rise of weapons of mass destruction and systems, as well as the smuggling of small arms, narcotics, people smuggling. (human trafficking), as well as traditional smuggling. [9]

Indonesia and the Philippines have maritime boundaries in their jurisdictions, namely on the continental shelf. According to UNCLOS 1982 Article 76 states that the coastal state's continental shelf includes the seabed and land layers of sub-sea areas that extend beyond its territorial sea across the natural expansion of its land area to the outer edge of the continental margin, or a distance of 200 nautical miles. From the baseline from which the vastness of the territorial sea is measured if the outer edge of the continental margin does not reach that distance. In other words, these small islands also determine the boundaries of NKRI sovereignty. [8] Miangas Island is an island located in the outermost position, if Miangas Island is separated from Indonesian territory, Indonesia will not only lose Miangas Island but Indonesia will lose the natural resources contained in the waters around Miangas Island and the subsequent impact on Indonesian waters will be reduced. In addition, Miangas Island is also an important record in the history of the Struggle of the Indonesian nation.

In its development, around 2014 the issue of Miangas Island began to find the light with the signing by the Foreign Ministers of Indonesia and the Philippines and witnessed by the President of the Republic of Indonesia Susilo Bambang Yudhoyono and The President of the Philippines Benigno Aquino in Manila. The agreement resolves the overlapping issues of exclusive economic zones in the Mindanao Sea, Celebes Sea, and the Philippine Sea. Aquino said the agreement between the two countries showed a strong commitment to upholding the rule of law and creating a peaceful and just resolution of the maritime boundary issue. According to international law, each country has an exclusive economic zone of 200 nautical miles of coastline, if these countries do not overlap each other. In an exclusive economic zone, a country has the right to live with natural resources. [10]

In 2019, the Philippines and Indonesia's Maritime Border Agreement delineating the boundary between the overlapping EEZs officially entered into force following the exchange by the two countries' foreign ministers of the instruments of ratification in a special ceremony held on August 1, 2019, in Bangkok, Thailand. It was ratified by President Rodrigo Duterte on February 15, 2017, and by the Indonesian Parliament on April 27, 2017. To complete domestic procedures, the Philippine Senate concurred with the President's ratification on June 3, 2019. The Agreement is expected to benefit both countries, economically and politically, by promoting more bilateral cooperation in the EEZ to advance the common interest of managing and preserving the resources in the EEZ and further strengthening maritime security cooperation between the two countries [11]. Based from the introduction above, we can conclude that: (a) how to determine the maritime boundary line between Indonesia and the Philippines?; and (b) how are Indonesia's efforts to defend Miangas Island, which is Indonesia's territorial sovereignty?

2. RESEARCH METHODS

This study uses normative research. The type of data used is secondary data, in the form of regulations, both nationally and internationally. In addition, books and articles, as well as dictionaries, mass media, and the internet are also used. To complete this paper, the authors used primary data, but the use of primary data was limited to supporting secondary data.

The main thing in this paper is the legal approach, which is done by reviewing all laws and regulations related to legal issues. This legal approach is to examine the consistency and conformity of the substance of the legal content by studying the ontological basis of the birth of law, the philosophical basis of law, and the legislative ratio of legal provisions. [12]

According to Soerjono Soekanto and Sri Mamudji, in normative legal research, research on legal principles is conducted on the rule of law, which is a standard of inappropriate behavior or behavior. This research can be conducted (primarily) on primary legal materials and secondary legal materials, as long as the material contains the rule of law. [13]

In normative legal research, the study of the rule of law is not sufficient, so further study is needed on aspects of the legal system. A system is a complete sequence or unity consisting of parts or elements that are closely related to each other, i.e. rules or statements about what should be so that the legal system is normative. [14]

In addition to using the legal approach, in the writing of this paper, the legal history approach is also used (historical approach). A legal history approach is taken to track the history of legal institutions over time. This approach greatly helps the author to understand the philosophy of the rule of law over time. Furthermore, through this approach, it can also be seen changes and developments in the philosophy underlying the rule of law in question. [15]

The conceptual approach using the state territory approach, which is meant by the conceptual approach according to Mochtar Kusumaatmadja is the basic concept of space for the application of sovereignty as the highest power of the state limited by that state so that the state has the highest power within its territorial boundaries. [16]

3. RESULT AND DISCUSSIONS

Related to the determination of maritime boundaries that enter the sovereign territory of a country. As a result, both countries became very careful in determining these boundaries, because once the boundary was set, it could no longer be contested or changed unilaterally (the 1969 Vienna Convention on International Treaties).

Since the birth of UNCLOS in 1982, there has been an order in the law of the sea, namely the division of sea areas into 8 (eight) regimes of sea law. This condition was anticipated by Indonesia, namely by issuing the Djuanda Declaration in 1957. In this case, Indonesia made efforts, as stated above, namely by issuing the Djuanda Declaration, followed up by following international developments and making Indonesia an archipelago.

Political, juridical, economic factors, a combination of the three, including technical negotiating factors. Political factors such as the East Timor issue (related to Australia).

Historically, the determination of the boundary between the Philippines and Indonesia has been through difficult negotiations. Initially, Miangas Island which is included in nausea subdistrict, Talaud regency, North Sulawesi was claimed by the Philippine government as their property

based on the provisions of the Philippine constitution which at the time referred to as the 1898 Paris Agreement. Meanwhile, Indonesia also claims equal rights based on island principles by the 1982 UN Convention on the Law of the Sea UNCLOS.

In some negotiations conducted by Indonesia and the Philippines, there are often discussions about Miangas Island. The Philippines assumes that based on Philippine history, they found a statue of the Margehaens landing site in Pulu in 1952 but Indonesia rejects arguments from the Philippines that recognition of the boundaries of the Talaud Kingdom has occurred since the Talaud islands and the southern Philippines were under the influence of the Kingdom of Tidore. [17]

Economic factors affecting negotiations between Indonesia and Vietnam in the Natuna Sea can only be concluded after 30 years (1973-2003). Technical factors of negotiations took place in negotiations between Indonesia and Palau. The distance from the flight path and the absence of diplomatic relations made it difficult for the negotiating team to meet. The issue would be even more complicated if the two negotiators had different understandings of the basic concepts of maritime borders. As a result, negotiations will be more tinged with the principle of 'cow trade' without being guarded by the rule of law. Indonesia cannot avoid this dilemma and often struggles to first convince negotiators from neighboring countries about the island nation's principles. Neighboring countries often pretend not to understand (certainly in the context of negotiating tactics) that Indonesia has the right to draw the bottom line of the archipelago as a basis for drawing boundaries. Negotiations can drag on as neighboring countries also ask for equal rights even though they are not islanded nations.

One of the problems related to maritime border security is the number of institutions involved. In handling maritime security, those of which are not well integrated. In terms of the Management, maritime border security still leaves a lot of problems, in terms of institutional And coordination aspects, legal aspects, and aspects of human resources. To improve coordination among the government institutions in the field of maritime Security, in 2003, through the Decree of the Coordinating Minister for Politics and Security (Menkopolkam), No. Kep. 05 / Menko / Polkam / 2/2003, a Planning Working Group on the Development of Security and Law Enforcement in the Sea has been established, [18]

As a democracy, Indonesia faces other factors. Indonesia must pay attention to public accountability and democratic legitimacy. This domestic factor may not exist in neighboring countries. Indonesian negotiators are becoming increasingly cautious, as every inch of the negotiating line must be accountable to the people. To produce a good deal, strong maritime boundary negotiators are needed and keep up with the times. Therefore, the team of negotiators must not only consist of experts in the law of the sea but can also come from a variety of other disciplines. The need for various disciplines, because in discussing maritime boundary restrictions with neighboring countries, it is not uncommon to have differences in principles when opening diplomatic relations between the two countries.

Provide support and facilitation for the development of border areas by central institutions and domestic and foreign investors. Meanwhile, common strategies for developing border areas are:[19]

- a. Establish boundaries between countries;
- b. Improvement of border facilities and infrastructure through the construction of cross-border posts along with customs, immigration, quarantine, and security facilities, as well as other physical facilities and infrastructure;

- c. Poverty alleviation and improved welfare of border communities and outer islands;
- d. Development of growth centers that have received responses from neighboring countries;
- e. Quality improvement and development of human resource empowerment;
- f. Improvement of government agencies and communities in the area;
- g. Protection and conservation of forest and marine resources;
- h. Increase security and defense forces along the border and outer islands;
- i. Increase socialization and counseling about national and state life for border communities;
- j. Enhance bilateral cooperation in the economic, social, and cultural fields;

In addition, in its development, the Government of Indonesia is also obliged to develop the Miangas Island area as a tourist attraction area to provide additional resources for the surrounding community and at the same time inform directly that Miangas Island is part of the Sovereign Territory of the Republic of Indonesia.

4. CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The issue of maritime borders between Indonesia and the Philippines is subject to UNCLOS 1982 and the 1969 Vienna Convention on International Treaty Law.

Referring to UNCLOS 1982, the principles that can be used are related to Indonesia's maritime border with the Philippines and the existence of Miangas Island which is an island owned by Indonesia and Indonesia as an archipelago, the basic basis used is the archipelago's baseline. Regarding maritime borders that fall within Indonesia's sovereign territory, the same distance line can be used.

However, its implementation is constrained by political, juridical, and economic factors. In realizing the agreement, it is inseparable from the agreement of the two countries, namely Indonesia and the Philippines (Vienna Convention 1969).

Suggestions

For the Indonesian government to sign a maritime boundary treaty with Timor Leste, it is necessary to review the steps it has taken and pay close attention to the obstacles that hinder the achievement of the maritime boundary agreement.

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Tni Admiral Djoko Sumaryono, Commander

UNCLOS 1982

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