

INDONESIA AND TIMOR LESTE CLASH OVER SEA BORDER TREATY

Ida Kurnia¹, Imelda Martinelli², Alexander Sutomo³ & Cliff Geraldio⁴

¹Faculty of Law, University Tarumanagara Jakarta

Email: idah@fh.untar.ac.id

²Faculty of Law, University Tarumanagara Jakarta

³Faculty of Law, University Tarumanagara Jakarta

⁴Faculty of Law, University Tarumanagara Jakarta

Submitted: July 2022, Revision: December 2022, Accepted: May 2023

ABSTRACT

East Timor is an independent and sovereign country in the 21st century (twenty-one) with its official name Democratic de Timor-Leste (RDTL) is a country with a category of small countries, located on the continent of Australia and eastern Indonesia. East Timor has a long history of standing alone as an independent country. Before the independence, Timor-Leste was previously called East Timor which was a Portuguese goose colony that later joined the Unitary State of the Republic of Indonesia. It is noted that East Timor officially joined Indonesia on July 17, 1976. Then East Timor officially became the 27th province of the Republic of Indonesia and became the youngest province at that time. Historically, Timor-Leste was colonized by Portuguese geese for 450 years, the Netherlands for 3 years, and Indonesia for 24 years. Under the leadership of the United Nations through the agency. United Nations Transitional Administration in East Timor. The establishment of East Timor into a new state requires territorial boundaries, especially with Indonesia. The boundary between Indonesia and East Timor has not yet been reached. The methods used are normative. Based on UNCLOS 1982 if maritime boundaries enter the sovereign territory of the country, then the principle used is the principle of equidistance. Second, there is no clear authority in the management of Indonesia's borders so the current state of Indonesia's borders, especially in terms of security stability, is not yet conducive. Third, under Article 3 UNCLOS both countries have the right to the width of their territorial sea up to a limit of 12 miles measured from the baseline, if not overlapping with the territorial sea area.

Keywords: Maritime borders, territorial sea, baseline

1. PREFACE

On December 7, 1975, Indonesia conducted an operation known as Operation Seroja, which aimed to invade East Timor to integrate it into the Unitary State of the Republic of Indonesia (NKRI). Operation Seroja was carried out by Indonesia under Suharto's leadership after the Balibo Declaration. After Operation Seroja many East Timorese filled the grounds of the Crown Inn, where European Association diplomats lived. Massa pushed for a mandate for East Timor in the commission of the European Union Meeting. Massa rejected regional autonomy during the process of change and criticized the Government of the Republic of Indonesia for not paying attention to the demands of the people of East Timor. [1]

In the book Little History 'Petite Histoire' Indonesia (2004) by Roshan Anwar, it is mentioned that Ali Moertopo led the troops in Operation Komodo which aims for the integration of East Timor into Indonesia. Operation Komodo is an intelligence mission carried out by TNI officers. After Operation Komodo, Indonesia again launched Operation Seroja in December 1975 The United States also took a role because the United States did not want East Timor to fall into Communist influence. The process of integration of East Timor into Indonesian territory was officially passed through Law No. 7 of 1976 on unification into the Unitary State of the Republic of Indonesia and the Establishment of a Level I Regional Province in East Timor.

The events and problems that occurred continuously in East Timor after integrating with Indonesia triggered the people of East Timor to demand a referendum. East Timorese student groups organize

open forums in Dili and in other east Timorese regions to discuss and debate east Timor's political status. Since June 1998, there have been large pro-independence demonstrations, including one attended by thousands at Santa Cruz cemetery on November 12, 1998, to commemorate the seventh anniversary of the Santa Cruz incident.

The events and problems that occurred continuously in East Timor after integrating with Indonesia triggered the people of East Timor to demand a referendum. East Timorese student groups organize open forums in Dili and in other east Timorese regions to discuss and debate east Timor's political status. Since June 1998, there have been large pro-independence demonstrations, including one attended by thousands at Santa Cruz cemetery on November 12, 1998, to commemorate the seventh anniversary of the Santa Cruz incident. It shows that many East Timorese rejected Indonesia's offer of autonomy and demanded a referendum so they could determine their political future or determine their destiny.

During the reign of President BJ Habibie, exactly 21 years ago, history records the eastern region of Indonesia, which is currently changing its name to Timor Leste which is separate from Indonesia. [2]

Since East Timor is no longer part of the State of Indonesia, the Government of the Republic of Indonesia (RI) together with the Government of Timor Leste have agreed to determine the land boundary of the two parts where there is no clear boundary, especially in Noel Besi, Citrana and Bidjael Sunan Oben. Coordinating Minister for Political, Legal and Security Affairs accompanied by Foreign Minister Retno Marsudi said, with the fulfilment of the two fragments, it will be passed on to the public that all land boundary arrangements between the two countries are at a fundamental level and will continue for maritime boundaries. In addition, this understanding will be discussed in the Senior Authority Meeting which will be outlined in Addendum No. 2 of the 2005 Boundary Arrangements. [3]

There is no clear maritime boundary between Indonesia and Timor Leste, as there is no clear territorial sea boundary, which will then become a guideline and regulation within the next maritime boundary. Second, administratively Indonesia's boundaries have not been established, so the current condition of Indonesia's lines has an impact on security. Article 3 of UNCLOS states that Indonesia and Timor Leste have the right to determine the width of their territorial sea as far as possible not to exceed 12 nautical miles, by the rules regarding measurements specified in UNCLOS 1982.

The Timor Gap is a continental shelf so its maritime delimitation designation must use the principle of the centerline by UNCLOS 1982. Because there are differences of views and given that if there is no agreement on maritime boundaries that will have an impact on the exploration of oil and gas resources in the Timor Gap, the two countries decided to establish a Cooperation Zone in the Timor Gap in 1989 known as the Timor Gap Agreement as a solution to the problem of differences of views. This agreement divides the Timor Gap into three zones with a percentage share by those agreed by the two countries. Furthermore, in 1997, Indonesia and Australia signed the 1997 Perth agreement governing the ZEE delimitation of both countries in the Timor Sea and the Arafura Sea.

After the liberation of East Timor from Indonesia, Indonesia, Timor Leste, and Australia conducted diplomacy to determine maritime boundaries in the Timor Gap which remains unclear. However, there are differences in determining the sea boundary between the two countries (Indonesia and Timor Leste) where Australia believes the East hole is in the East Sea so the

assurance system should be based on sea depth guidelines. Meanwhile, according to Indonesia, Timor's hole is a landform so guaranteed sea restrictions must take advantage of the median line rules by UNCLOS 1982.

There is a counter perspective and considering that if there are no concessions to the sea boundary that will affect the unexplored oil and gas assets in Lubang Timor, the two countries chose to establish a Participation Zone in The Timor Hole in 1989 referred to as the Timor Hole Arrangement as a solution to the counter perspective problem. This arrangement divides the Timor Hole into three zones with a level division as agreed by the two countries. In addition, in 1997, Indonesia and Australia agreed to the 1997 Perth Arrangement that oversaw the two countries' EEZ restrictions on the Timor Sea and the Arafura Sea.

Based on this examination, there are two basic investigations on maritime boundaries after Timor Leste (Republic of Timor Leste / RDTL) seceded from Indonesia, among others: (a) First, there are no guarantees and guidelines regarding territorial boundaries, especially in Oecusse, an East Timor (territory) located on Indonesian territory in East Timor; (b) Second, no expert can explain the boundaries of Indonesia's maritime territory at this time. Especially in the field of security has not been resolved.

Problem Formulation

- (a) What are the obstacles in determining the maritime boundaries of Indonesia and Timor Leste that have not been realized?
- (b) What efforts should Indonesia make to overcome to realize the maritime border agreement?

2. RESEARCH METHOD

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 a dictionary, mass media, and sources from the internet are also used. To complete the paper, the authors conduct interviews with competent parties and the interviews are limited to supporting secondary data.

The main thing in this paper is the statutory 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 content of the law by studying the ontological basis of the birth of law, the philosophical basis of the law, and the legislative ratio of the provisions of the law. [4]

According to Soerjono Soekanto and Sri Mamudji, in normative legal research, research on legal principles is carried out on the rule of law, which is the standard for According to Soerjono Soekanto and Sri Mamudji, in normative legal research, research on legal principles is carried out on the rule of law, which is a standard of behavior or inappropriate 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. [5]

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 order 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. [6]

In addition to using the legal approach, in the writing of this paper, the legal history approach is also used (historical approach). The legal history approach is carried out 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. [7]

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. [8]

3. RESULT AND DISCUSSION

Borders are a very important concept in international relations. From the point of view of peace, without mutually acceptable cross-border relations, good relations between neighboring countries are almost impossible. In its development, both before the merger and after East Timor was separated from Indonesia, the Timor Sea and the Arafura Sea have not progressed in determining maritime boundaries or problems between the two regions.

The territory of East Timor as an autonomous and sovereign state in the 21st century under its authority Republica Democratica de Timor Leste (RDTL) is a small country located north of mainland Australia and located in eastern Indonesia. East Timor was separated from Indonesian rule on May 20, 2002. East Timor has a long history of being an independent country.

The province of East Timor is colonized by 3 (three) countries, in particular:[9] The Portuguese colonized East Timor in 350 years, Japan was colonized for 3 years, and Indonesia for 24 years. After the end of the occupation, East Timor formed a provisional organization called the United Nations Transitional Administration in East Timor (UNTAET) for about 2 years, from 24 October 1999 to 20 May 2002.

East Timor is an area adjacent to the island of Timor in East Nusa Tenggara. This area was once a Portuguese province. Furthermore, after the decision to independence from Indonesia, Timor Leste is not included in the territory of the Republic of Indonesia. This means that it has become an independent country.

On August 30, 1999, that began by heating the political climate in Indonesia until the rejection phase of President Suharto, who was later replaced by BJ Habibie. Furthermore, the State of Timor Leste, which was the 27th region, at that time, experienced interference. An agreement was held in East Timor and the support of the assembled countries. Thus, East Timor was separated from the Unitary State of the Republic of Indonesia.

National borders have an important role because national boundaries in addition to being a connecting line between countries also show clarity of a country's sovereignty, so a clear line indication is needed. If the sovereignty of the country is unclear it will cause problems with neighboring countries.

Clarity on boundaries both on land and at sea is important for the two bordering countries. According to Article 1 paragraph (4) of Law No. 43 of 2008 concerning National Borders. National boundaries are the boundaries that separate a country's sovereignty under international law. This means that the boundaries of the country must be clear because it is the pride of a nation.

By international legal arrangements for situations like this, UNCLOS 1982 has defined state lines. In its implementation, the arrangement of maritime boundaries regarding maritime territorial boundaries and the scope of sovereignty shall be conveyed to all states making treaties.

Clarity on borderlines both on land and at sea is important for both bordering countries. According to article 1 paragraph, 4 of Law No. 43 of 2008, the Border of the State is a boundary line that is a separator of the sovereignty of a state based on international law. This means that the territory of the country must be clear because that's where the state upholds its sovereignty.

By the provisions of international law, UNCLOS 1982 has regulated the maritime borders of countries both facing and adjoining related to the boundaries of sovereign territory and jurisdiction. In its implementation, maritime boundary-setting agreements related to both maritime boundaries of sovereign territory and jurisdiction are fully left to the relevant states to make the treaty. However, it must be remembered that UNCLOS 1982 became the umbrella rule. This agreement contains the determination of the coordinate points of the maritime borders of the two countries and the right of each country to exercise its sovereignty and explore natural wealth located on the seabed that is the territory of the country.

Article 59 of the 1982 Convention on the Law of the Sea, on dispute resolution in the EEZ, requires states to make agreements fairly with relevant considerations. Indonesia and Timor Leste should establish the equidistance line as the boundary of each country's sea area, or use alternatives to the settlement of the sea border dispute between the two countries directed at the application of the principle of *possidetis Juris* in the ownership of territory between the Republic of Indonesia and the RDTL (Oecusse Pocket area).

One of the impacts of the unclear maritime boundary, such as the maritime boundary between Indonesia and Timor Leste, causes fishing both by Indonesian anglers and by RDTL anglers still often enter the sea areas of bordering countries. The lack of Cross-Border Command Posts between the Republic of Indonesia (RI) and the RDTL has resulted in cross-training through the sea of RDTL citizens from Oecusse to Timor Leste or otherwise naturally through Indonesian waters and will be difficult to identify. Such conditions also occur in the trade sector, so illegal trade often occurs, such as illicit trade between Indonesians and RDTL residents.

There are 7 cross-border posts by land, namely: Oipoli Immigration Post, Napan Immigration Post, Metamauk Immigration Post, Wini Immigration Post, Turrican Immigration Post, Builalo/Laksamaras immigration post and Custom Post, Immigration, Quarantine, and Security (CIQS) integrated into Mountain. Of the 7 existing immigration posts, Motaain Cross-border Post located in the Northernmost Belu Regency is the most qualified and most crowded CIQS integrated post with border crossers above 100 people per day.

The strategic value of the border area is determined among others by the activities that take place within the region, namely: (a) It has the potential of resource which has an impact on the economy and the utilization of regional space significantly; (b) It has a strong connection with activities in other bordering regions, both in the national and regional spheres (between countries); (c) Have a political impact and function of national security defense.

The border area development policy covers two Aspects of development, namely prosperity and Security, which has three objectives: (a) Supporting efforts to improve the living conditions of the socio-Economic community, in order to improve the living Standard and welfare of the

community; (b) Supporting efforts to improve the capacity of Managing the potential of existing areas; (c) Supporting the strengthening of security in the framework of coaching and enhancing the resilience of the region and the creation of national resilience.[10]

The handling of state borders has not been able to run optimally because there are still conflicts between various parties (both horizontally, sectorally, or vertically). With the passing of the era of regional autonomy, the border region is a national strategic area. The strategic value of the border area is determined, among other things, by the activities taking place within the area. Diplomacy between Indonesia and Timor Leste needs to be done regarding clarity on maritime boundaries. The Government of Indonesia is based on the constitution and various applicable laws and the government also prepares various policies that are a reference for the implementation of border management. Indonesia conducts various diplomacy in overcoming the border threat between East Nusa Tenggara and Timor Leste. [11]

Furthermore, the requirements for the Establishment of a basic Guard Tact (GTE), Joint Ministerial Commission (JMC), Joint Line Council (JBC), and Specialized Sub-Panel on Line Outline and Guidelines (TSCBDR) are enforced by ten other Special Sub Advisory groups in monitoring boundaries during border confirmation arrangements between the two countries. [12]

The establishment of a Joint Boundary Supervisory Board in a major meeting presented by JBC Indonesia – Timor Leste included: (a) Agreement on the establishment of a border committee and the composition of its membership of each national border committee as well as 5 technical sub-committees, technical sub-committees on border management, people and goods across borders, cross-border police cooperation along with operational procedures and coordination mechanisms; (b) The border intermediary officer for the border committee for Indonesia is chaired by the Deputy Governor of NTT Province consisting of representatives from the central and regional governments, while Timor Leste is represented by a committee of Foreign Ministers and diplomats formed; (c) The joint border committee will meet twice a year and possibly in additional meetings as needed; (d) Agreement on the merger of technical subcommittees of people and goods across borders and technical committees of border crossers into one technical subcommittee. [13]

In addition, Diplomacy is the right policy in addressing this line of issues. Border diplomacy is a vital element for a state to delaminate its sovereignty. The border is the primary aspect for every state enforcing its territory and exclusion. Also, the border is the central feature of a state's architecture in global politics, orienting the convergence of people with a given territory and notions of a common history, nationality, identity, language, and culture.[14] Diplomacy conducted by the two countries considers the timeframe for the size of the boundary guarantee through meetings and arrangements at each meeting. One of the strategies directed by the Indonesian government is to negotiate with Timor Leste. Negotiations are directed by the Indonesian government in determining regional boundaries with Timor Leste through policies led by several relevant agencies to gain clarity on territorial boundaries. The government negotiates based on the constitution and other related laws, then the government develops various policies that are a reference for the application of maritime boundaries. Indonesia adopted different tactics in overcoming the dangerous line between East Nusa Tenggara and East Timor. [15]

Figure 1

Map of Indonesia's Boundary with Timor Leste [13]



4. CONCLUSIONS AND RECOMMENDATIONS

The lack of clarity about each country's maritime boundaries has resulted in fishing carried out by Indonesian fishermen and RDTL fishermen still entering the sea areas of the bordering countries. This has an impact on the management of biological resources, especially fish resources, there is no clarity, whereas in the management of fish resources a balance is needed between utilization and conservation, so that fish resources can be sustainable. Furthermore, the absence of an Integrated Sea Border Post between RI-RDTL that causes the sea crossing of RDTL citizens from Oucusse to Timor Leste or vice versa through Indonesian waters will be difficult and cannot be detected. Handling national borders so far has not been able to run optimally and is less integrated and there are still conflicts between various parties (both sectoral and vertical) that cannot be avoided. The perception is that there is still an assumption that the handling of the border area only belongs to the government (central), it needs to be reviewed, related to the era of regional autonomy, even though the border area is a national strategic area.

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

Acknowledgment

Researchers thanked participants who had provided the necessary data in the study.

REFERENCES

- Dewi, R. K. (2020). Indonesian diplomacy in setting territorial boundaries with the Timor Leste. *JOM FISIP*, 7(1).
- Hafidh (2020, September 3). *Seolah membiarkan lepasnya Timor Timur dari NKRI, ternyata ini alasan cerdas BJ Habibie yang tak banyak orang tahu, demi harga diri bangsa!* Wiken. <https://wiken.grid.id/read/392319251/seolah-membiarkan-lepasnya-timor-timur-dari-nkri-ternyata-ini-alasan-cerdas-bj-habibie-yang-tak-banyak-orang-tahu-demi-harga-diri-bangsa?page=all>
- Henrikson, A. K. (2000). Facing across borders: The diplomacy of Bon Voisinage. *International Political Science Review*, 21(2), 121–147. <https://doi.org/10.1177/0192512100212002>
- Humas SETKAB (2019, July 23). *Segera rundingkan batas maritim, RI–Timor Leste selesaikan kesepakatan batas darat*. Sekretariat Kabinet Republik Indonesia. <https://setkab.go.id/segera-rundingkan-batas-maritim-ri-timor-leste-selesaikan-kesepakatan-batas-darat/>
- Kennedy, P. S. J., Tobing, S. J. L., Heatubun, A. B., & Lumbantoruan, R. (2021). The maritime border management of Indonesia and Timor Leste: By military approach or welfare approach? *Proceedings of Airlangga Conference on International Relations*, 1, 348-354
- Kompas (1998, June 29). Ribuan massa Timor Timur menuntut referendum. *Kompas*.

- Kusumaatmadja, M., & Agoes, E. R. (2003). *Pengantar hukum internasional*. Sinar Grafika.
- Mangku, D. G. S. (2018). Implementasi Joint Border Committee (JBC) untuk penyelesaian sengketa perbatasan darat antara Indonesia-Timor Leste. *Jurnal Yuridis*, 5(1). <https://doi.org/10.35586/v5i1.316>
- Marzuki, P. M. (2007). *Penelitian Hukum*. Kencana.
- Mertokusumo, S. (2001). *Penemuan hukum: Sebuah pengantar*. Liberty.
- Qinvi, R. D., Sutisna, S., & Widodo, P. (2018). Diplomasi pertahanan dalam penyelesaian unresolved segment di perbatasan darat Indonesia – Republik Demokratik Timor Leste (RDTL) (Studi kasus unresolved segment dilumil – memo). *Jurnal Diplomasi Pertahanan*, 4(1). <https://doi.org/10.33172/jdp.v4i1.202>
- Saldanha, T. X. (2017) *Status tanah dan bangunan milik perorangan warga negara indonesia setelah kemerdekaan República Democrática de Timor-Leste* (Thesis). Universitas Atma Jaya Yogyakarta.
- Soekanto, S., & Mamudji, S. (2003). *Penelitian hukum normatif: Suatu tinjauan singkat*. Rajawali.
- Sunyowati, D. (2019, August 21). *Alternatif penetapan batas wilayah laut NKRI dan Republik Democratic Timor Leste*. UNAIR News. <https://news.unair.ac.id/2019/08/21/alternatif-penetapan-batas-wilayah-laut-nkri-dan-republik-democratic-timor-leste/>
- Vaughan-Williams, N. (2012). *Border politics: The limits of sovereign power*. Edinburgh University Press.
- Wila, M. R. C. (2006). *Konsepsi hukum dalam pengaturan dan pengelolaan wilayah perbatasan antar negara*. PT Alumni.

MARITIME BORDER BETWEEN INDONESIA AND THE PHILIPPINES

Ida Kurnia^{1*}, Tundjung Herning Sitabuana², Alexander Sutomo³ & Cliff Geraldio⁴

¹Faculty of Law, Universitas Tarumanagara Jakarta
Email: idah@fh.untar.ac.id

²Faculty of Law, Universitas Tarumanagara Jakarta
Email: tundjung@fh.untar.ac.id

³Faculty of Law, Universitas Tarumanagara Jakarta
Email: alexander.205190033@stu.untar.ac.id

⁴Faculty of Law, Universitas Tarumanagara Jakarta
Email: cliff.205180164@stu.untar.ac.id

*Corresponding author

Enter : July 2022, revision: December 2022, accepted for publication : February 2023

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.

Acknowledgment

In connection with the implementation of research activities regarding the "Maritime Borders of Indonesia and the Philippines", the Authors would like to thank the all the parties who involved and allowed to conduct this research.

REFERENCES

- Adji Samekto. 2009. States in the Dimensions of International Law. Bandung: Aditya Bhakti Image
- Fauzan, Kamarulnizam, AbdullahMohammad Zaki, Ahmad. (2019). "Maritime border security and challenges for Indonesia". Malaysian Journal of Society and Space 15 issue 2 (155-165)
- <http://ajis.fisip.unand.ac.id/index.php/ajis/article/viewFile/81/105>
- <https://artsandculture.google.com/entity/m0py2yks?hl=i d>
- <http://ejournal.uajy.ac.id/11853/4/MIH017113.pdf>
- <https://subregional.ekon.go.id/bimp-eaga-1/>
- http://www.ppk-kp3k.kkp.go.id/direktori-pulau/index.php/public_c/pulau_info/306

<https://www.kelaspintar.id>

Indonesia, Philippines agree to maritime borders - BBC News Indonesia

Indonesia-Philippines dispute over Miangas Island | Rischa Putri (wordpress.com)

Mochtar Kusumaatmadja and Etty R. Agoes, *Introduction to International Law*, Alumni of P.T., Bandung, 2003, p. 161.

Naval Command Staff School (Seskoal), published in Kasal article *Remains Determined to Sink Ship, Commander Seskoal: Five Maritime Security Issues in The Asian Region*, <http://www.pelita.or.id/read.php?id=25807>, retrieved August 26, 2014

Perwita, A. & Meilisa, I. (2018). "Co-operative maritime diplomacy: The resolution of the Philippines–Indonesia maritime border dispute (1994–2014)". *Andalas Journal of International Studies*, 7(2), 126-144.

Peter Mahmud Marzuki, *Legal Research*, Jakarta: Kencana, 2007, pp. 93-94.

Soerjono Soekanto ET.al, *Normative Legal Research: Brief Overview*, Jakarta: Rajawali Pers, 2003, p. 62.

Starke, J.G., *Introduction to International Law*, Jakarta: Sinar Graphic, 1999

Sudikno Mertokusumo, *Discovery of the Law of An Introductions*. Yogyakarta: Liberty, 2001, p.18.

The Maritime Security Coordination Agency of the Republic of Indonesia, the South China Sea Conflict and its Implications for the Region, presented at a discussion on Maritime Security in the Border Area, organized by the Center for data and information processing studies, Secretariat General of the Indonesian House of Representatives, in the Persipar Room, Gedung Nusantara 2

Tni Admiral Djoko Sumaryono, Commander

UNCLOS 1982

www.kemhan.go.id