

MARITIME BOUNDARY DELIMITATION

THE INDONESIAN CASE *)

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ABSTRACT

Indonesia is an archipelagic country with two thirds of its territory represented by water. The concept of an archipelagic state is an important one to Indonesia, and the marine sector has never been more important to the nation. This importance is reflected in the priority which marine issues have received from the government, including the instalment of the National Marine Council in September 1996.

Maritime boundary issues often concern claims for marine resources. Maritime boundary delimitation is a fundamental strategy to enforce national sovereignty over marine and coastal areas.

For Indonesia, accurate marine boundary delimitation is of primary importance to defining the nature and extent of the country's marine resources. Maritime boundaries will be drawn on charts and given due publicity. The limit of the territorial sea, contiguous zone, EEZ, and continental shelf are measured from straight baselines connecting the outermost points of the outermost islands of Indonesia.

This paper will detail the current status of Indonesia's maritime boundary delimitation efforts and its future prospects.

I. INTRODUCTION

The study of the seas of the world is becoming increasingly exciting and it is taxing mankind's imagination in terms of the sea's potential benefits and wealth. Equally as taxing is the study of

the inherent dangers of the world's seas posed by mismanagement and regional and international maritime conflict. The waters of Southeast Asia are no exception to the above possibilities and dangers, perhaps even more so than most comparable areas (Polomka P, 1978).

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Southeast Asian states and states elsewhere are now scrambling for parcels of the seas which will provide the resources of the future. The claims to wider territorial seas and many other items of the seas have engaged the energies of many states today (Lee Y.L., 1980).

Being a nation of over 1,7000 islands and 81,000 kilometers of coastline, Indonesia has always relied heavily on its marine resources. New technology now allows for the accurate digital mapping of marine resources. Indonesia is currently in the process of applying this technology to fulfil both national and international commitments as defined in the second Twentyfive Year Development Plan and the United Nations Convention on the Law of the Sea (UNCLOS 82). The Twentyfive Year Development Plans are made up of five year plans or "Repelita". The Sixth Five Year Development Plan or Repelita VI, which spans from 1994/1995 until 1998/1999 specifically details the mapping plans for Indonesia's marine resources and other marine development strategies. The government's commitment to further incorporate the marine industry into its National Development Strategy has been evidenced by the creation in September 1996 of the National Marine Council. This council is chaired by the President and is responsible for Indonesia's marine policy and boundary delimitation.

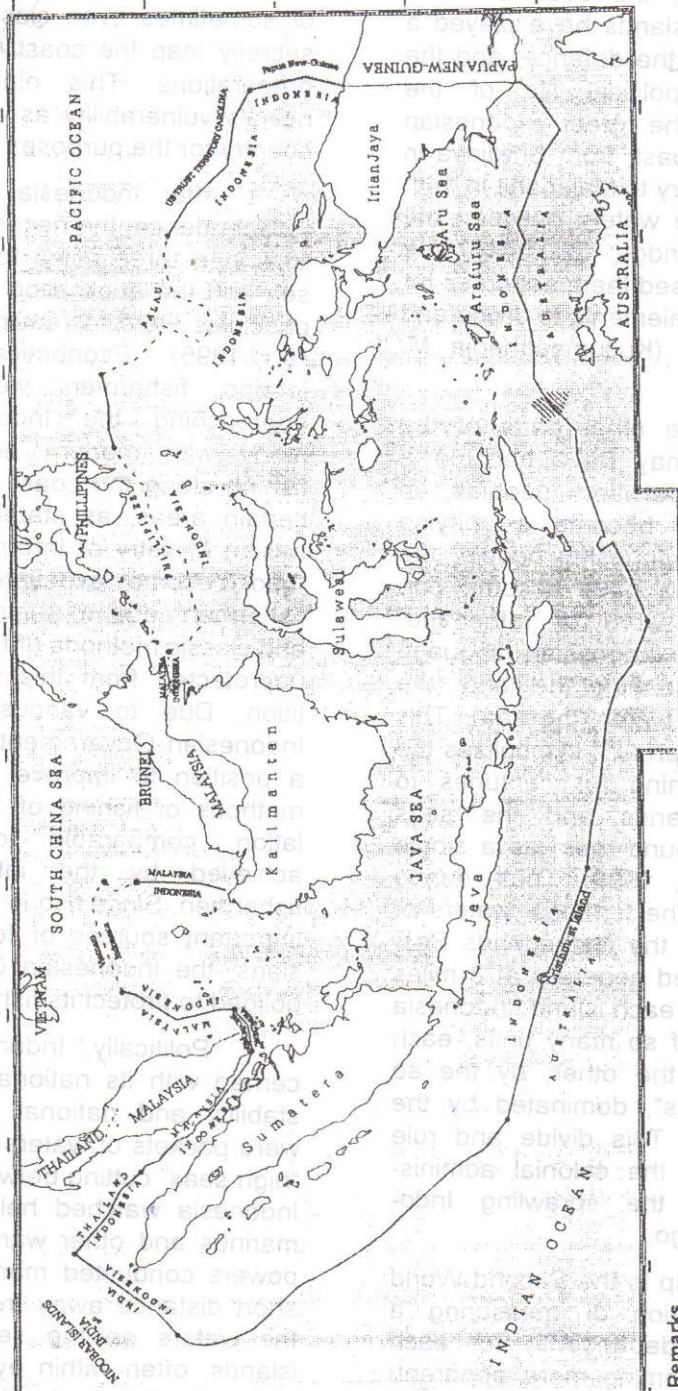
UNCLOS 82 came into force on November 16, 1994. The Republic of Indonesia ratified the convention in 1985 and in accordance with Article 47, Indonesia is defined as a major archipelagic state. The convention empowers archipelagic states to draw, under certain specified conditions, straight

baselines joining all the outermost points of the outermost islands and drying reefs of the archipelago. It is from these baselines that the extent of the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone (EEZ) and the Continental Shelf are measured. UNCLOS 82 also stipulates the right to explore, exploit, conserve and manage natural resources within this zone. When Indonesia is to exercise these rights and meet her obligations under the UNCLOS 82 regulations, an obvious prerequisite is the need to define precisely the extent and nature of the resources which the state possesses. Accurate maritime boundary delimitation is therefore of primary importance to defining the nature and extent of the resources contained in Indonesia's 5.8 million square kilometers of marine area.

II. INDONESIA AND THE CONCEPT OF THE ARCHIPELAGIC STATE

Perhaps as far as the implementation of archipelagic principles is concerned, one of the most significant developments can be found in the practices of Indonesia. The archipelagic concept has a very special meaning for Indonesia, not only because Indonesia is located between two land masses of the world, Asia and Australia, and between the two great waters of the Indian and the Pacific Oceans, but also because Indonesia geographically consists of thousand of islands, big and small, forming a closely related geographic entity. Approximately two thirds of Indonesia is covered by water.

THE INDONESIAN ARCHIPELAGO AND ITS BOUNDARIES



Remarks

Zone of Cooperation

Historically, the seas between and around the islands have played a significant role in the defence, and the economic and political life of the country. While the great Indonesian kingdoms in the past, from Sriwijaya in the seventh century to Majapahit in 14th century, used the waters between the islands as a bridge for unity, the colonial powers used them as routes for conquest and as elements to divide and rule the country (Kusumaatmadja M, 1978).

If in some other parts of the world the sea may have become a dividing factor between peoples, in Indonesia it has become a unifying factor. For the Indonesian people, the land and the sea have become one single word. The word for "fatherland" or "country in the Indonesian language is "tanah air", meaning the land (the islands) and the water (the sea). This simple word, "tanah air", symbolizes the Indonesian yearning for centuries to regard their islands and the seas between and around them as a single entity (Djalal, H., 1995). Thus, during the colonial are the territorial waters of Indonesia - then the Netherlands East Indies - were fixed generally at 3 miles from the coast of each island. Indonesia then consisted of so many units, each separated from the other, by the so called "high seas", dominated by the colonial powers. This divide and rule policy facilitated the colonial administration through the sprawling Indonesian archipelago.

Leading up to the Second World War, the limitation of measuring a territorial sea independently for each island were becoming more apparent. Foreign fishing boats could approach Indonesian islands under the pretext of high sea fishing. However, once the

boats were three miles from the coast, or sometimes even closer, they would secretly map the coastline in their war preparations. This highlighted Indonesia's vulnerability as an archipelagic country for the purposes of defence.

After Indonesia proclaimed its independence, the necessity for a wider limit than three miles for the territorial sea and the application of "archipelaic" principles were increasingly felt (Djalal, H., 1995). Economically, countless foreign fishermen were constantly approaching the Indonesian coast, many with modern equipment, and fishing along the coast until the fish in certain areas, as stated by the Indonesian Ministry of Information in 1958, "had become exhausted". The local fisherman, due to their old fashioned and classic methods of fishing, were left unprotected from this foreign competition. Due to various reasons, the Indonesian Government was not yet in a position to improve adequately the methods of fishing of the local population, comparable to the degree achieved by the intruding foreign fishermen. Since fish is one of the most important sources of food for Indonesians, the Indonesian Government felt obliged to protect its fishermen.

Politically, Indonesia was concerned with its national unity, political stability and national security. There were pockets of waters or the so called "high seas" cutting between her islands. Indonesia watched helplessly as submarines and other warships of foreign powers conducted manoeuvres only a short distance away from her coast in the waters on the sea between the islands, often within eyesight from the coast. The fabric of Indonesian national unity was at that time being challenged by various separatist and provincial

movements largely based on an "islands" sentimentality as the result of the colonial policy in the past. Indonesia's experiences have indicated that whenever there was domestic dissension, the dissenter group was likely to receive clandestine support from the outside either by air drops or from foreign submarines and ships along the coast (Kusumaatmadja, M., 1978). The struggle to liberate West Irian or Irian Jaya was also a prominent national issue. The notion of the "high seas" for waters between Indonesian islands clearly served foreign interests at that time and was to the detriment of the unity of Indonesia.

From the administrative point of view, Indonesian waters should also be regarded as a communication line between the central government and the various outlying provinces. The efforts to unite the island countries like Indonesia under a single administrative unit would be almost impossible if the fabric of unity under the archipelagic concept was not established. Moreover, on the financial side, the Indonesian economy at that time was being destroyed by extensive smuggling, without effective control of the sea around and between its islands, Indonesia could not possibly have stamped out the smuggling.

The above reasons represent why the Indonesian Government considered that wider territorial seas and the application of archipelagic principles to Indonesia were considered to be reasonable measures to meet the requirements of the specific character of Indonesia (Djalal D.P., 1996). Thus, on December 13, 1957, the Indonesian Government made a two point announcement known as the Djuanda Declaration. First, that "all waters around,

between and connecting the islands or parts of islands belong to the Indonesian archipelago, irrespective of their width or dimensions, are natural appurtenances of its land territory and therefore an integral part of inland and national's waters subject to the absolute sovereignty of Indonesia." Second, the limit of the territorial seas was extended to 12 nautical miles "measured from straight baselines connecting the outermost points of the outermost islands of Indonesia." The points contained in this announcement were later incorporated into the Law No.4, 1960 and further implemented through the Government Regulation No.8, 1962 which then was replaced by Law No.6, 1996. This brings us to present day Indonesia and the concept of the archipelagic state. Paragraph (a) Article 46 of the UNCLOS 82 reads as follows: "Archipelagic State" means a state constituted wholly by one or more archipelagos and may include other islands. The definition of Archipelago is stated in paragraph (b) Article 46 as follows: "Archipelago" is defined as a group of islands, including parts of islands, inter-connecting waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

The impact of the UNCLOS 82 convention on those states which can claim status as archipelagic states due to the fact that they consist of a group of islands forming an intrinsic geographical, economic, and political entity is considerable. This is because all of the water area between the islands (the archipelagic waters) is under the sovereignty of the states, regardless of the depth of the water or the distance from the coast.

One consequence of sovereignty over archipelagic waters is that the passage of vessels through these waters is to be regarded as innocent passage. Sea lanes and air routes are governed by specific regulations, including certain provisions for the regime of passage through straits. An archipelagic state may designate sea lanes through its archipelagic waters and through the adjacent territorial sea as well and establish air routes thereabove.

An archipelagic state may draw straight archipelagic baselines of a maximum of 125 nautical miles in length to join the outermost points of the outermost islands, drying reefs, provided that the ratio of land to water is not more than 1:1 and not less than 1:9. These baselines are to be shown on charts and given due publicity (Bernaerts A., 1988). The waters enclosed by the archipelagic baselines are the archipelagic waters and are under the sovereignty of the state. The territorial sea, contiguous zone, EEZ, and continental shelf are measured from the archipelagic baselines. The charts will be produced by the Digital Marine Resource Mapping Project which is a joint undertaking between Indonesia and Norway. Charts will be produced using International Hydrographic Organization guidelines which will show the limits of Indonesia's territorial sea, contiguous zone, EEZ and continental shelf. These charts will then be presented to the Secretary General of the United Nations in fulfilment of Indonesia's obligations under UNCLOS 82 (BAPPENAS, 1994).

III. INDONESIA AND MARITIME BOUNDARY DELIMITATION

Delimitation issues between opposite and adjacent states may arise in connection with the territorial sea, the contiguous zone, the EEZ or the continental shelf. Maritime boundaries differ from boundaries on land in that they do not separate people's homelands or fields from one another, they do not divide ethnic groups or industrial areas, and there are no mountain crests or drainage divides on which to base a delimitation (Alexander L.M., 1989). When delimitation issues between neighbouring states arise, they are to be solved according to the procedures laid out in UNCLOS 82. Border issues often concern claims for resources, however according to UNCLOS 82, boundaries are to be drawn using the equidistance principle. This principle is aimed at clarity in boundary delimitation (IHB, 1994) rather than an equitable division of resources.

In September 1996 the National Marine Council was established. The National Marine Council is chaired by the President and there are 16 ministers among its members as well as the nation's top two experts on the Law of the Sea. The National Marine Council has recently taken over responsibility for all boundary issues and Indonesia's marine policy.

As far as Indonesia is concerned, UNCLOS 82 has recognised:

- Archipelagic Waters, over which Indonesia exercises sovereignty over the water column, air space,

seabed and subsoil, and all resources contained therein. The Archipelagic Waters, cover the seas between the Indonesian islands, drawn in accordance with the provisions of the Convention. This is the most important achievement of Indonesia's struggle in the Law of the Sea since 1957 (Djalal H., 1995). The total area of the Archipelagic Waters is about 2.8 million square kilometers.

- Territorial Seas of twelve miles drawn around the archipelago or archipelagic waters, over which Indonesia also exercises territorial sovereignty over its space as well as its resources, with a total area of approximately 0.3 million square kilometers. Agreements have been reached regarding the territorial sea boundaries between Indonesia and Malaysia, and between Indonesia and Singapore.
- Contiguous Zone of twelve miles drawn around the territorial seas of twelve miles over which Indonesia could exercise control over customs, finance, immigration, and sanitary matters. The contiguous zone could also be drawn twenty four miles from the baseline from which the territorial sea is measured.
- EEZ, extending 200 miles from the baselines from which the territorial seas are measured, and over which Indonesia exercises sovereign rights over all the natural resources contained therein, and jurisdiction over installations, artificial islands and structures, regulation of marine scientific research and protection and conservation of the marine environment in accordance with the provisions of UNCLOS 82, with the

total area of approximately 2.7 million square kilometers. The length of the EEZ boundary is approximately 14,000 kilometers, from which 9500 kilometers is opposite neighbouring countries. The length of the EEZ boundary which is not opposite or adjacent foreign coastlines is 4500 kilometers, and these boundaries are in the Pacific and the Indian Oceans. EEZ boundary agreements have been reached with Australia and Papua New Guinea. The length of land baoundary in Kalimantan between Indonesia and Malaysia is approximately 1400 kilometers and between Indonesia and Papua New Guinea in Irian is 800 kilometers. This represent only 15% of Indonesia's EEZ boundary of 14000 kilometers, therefore maritime boundaries dominate Indonesia's borders.

- Continental Shelves extending 200 miles from the baselines or to the outer edge of its continental margin. The continental margin could extend either to 350 miles from the baselines or to 100 miles beyond the 2500 meters isobath. The continental margin is considered to be the limit of the natural prolongation of the land territory of the coastal states. This prolongation is determined by a concept based on the thickness of sedimentation in relation to a certain distance from the coastline. Within the continental shelf, Indonesia exercises sovereign rights over natural resources. The exploitation of these natural resources beyond 200 miles from the baselines are subject to certain obligations of revenue sharing. Indonesia has 10 neighbouring countries regarding the continental

shelf boundaries, namely India, Thailand, Malaysia, Vietnam, the Owner of Spratly, the Philippines, Palau, Papua New Guinea, Australia and the US Trust Territory of Caroline. The boundaries which are not agreed upon yet are with Malaysia in the Sulawesi Sea, Vietnam and the Owner of Spratly in the South China Sea, the Philippines in the Sulawesi Sea and the Pacific Ocean, Palau and the US Trust Territory of Caroline in the Pacific Ocean (PUSSURTA ABRI, 1986).

Indonesia has taken the lead in South East Asia in negotiating agreements with its neighbours over their common maritime limits, having concluded continental shelf agreements with the following countries; Malaysia (October 1969, concerning boundaries in the Strait of Malacca and the South China Sea, and March 1970 concerning the Strait of Malacca), Australia (May 1971 and October 1972), Australia and Papua New Guinea (June 1973), Thailand (December 1971), Singapore (May 1973) and India (August 1974). Other agreements have been concluded between Thailand and Malaysia in the Strait of Malacca and between Indonesia, Malaysia and Thailand (Polomka, P., 1978). Further negotiations are in progress with Vietnam, the last meeting was in 1995. The last meeting with the Philippines was in 1994 (DISHIDROS TNI AL, 1995).

Other treaties to date include ;
The Zone of Cooperation Treaty between Indonesia and Australia in the Timor Gap which was signed on 11 December 1989. Treaty between the Government of the Republic of Indonesia and the Government of Australia establishing an Exclusive Economic

Zone boundary and certain Seabed boundaries, done at Perth on 14 March 1997. Further negotiations are currently taking place with Malaysia regarding the sovereignty of Sipadan and Ligitan and both sides have agreed to proceed to the International Court of Justice (Suara Pembaharuan, Mei 1997).

IV. CONCLUSIONS

It was previously stated that the Indonesian "tanah air" meaning country is made up of two thirds water. The "tanah" or "land" comprises 1/3 of the nation's territory and "air" or "water" comprises the majority of the nation's territory. This deep belief in the land and the sea as one entity has meant that Indonesia has pursued the maritime boundary delimitation process with great heart. Maritime boundary delimitation is a fundamental strategy to enforce national sovereignty over marine and coastal territory, and to expand the use of marine, coastal and seabed resources.

Other factors for example matters of national security, protecting resources, administrative concerns and Indonesia's location as a center of maritime activity have ensured that every effort is being undertaken to honour UNCLOS 82.

The maritime boundaries regarding the continental shelf which are not agreed upon yet are with Malaysia in the Sulawesi Sea, Vietnam and the Owner of Spratly in the South China Sea, the Philippines in the Sulawesi Sea and the Pacific Ocean, Palau and the US Trust Territory of Caroline in the Pacific Ocean.

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