

The Settlement of International Disputes over Indonesia's Sovereign Rights Related to the Maritime Board in the South China Sea to Improve the National Economy (Case Study Between Indonesia and Vietnam)

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Abstract

The sea border between Indonesia and Vietnam is the sea border located in the South China Sea. So far, there have been several problems that occur especially in the exclusive economic zone between Indonesia and Vietnam which is not yet fully resolved. The exclusive economic zone is the area outside and around it to the territorial sea which is subject to a special legal regime for international maritime law. Based on international principles peace and security, there are some efforts shown to create good relations between countries in resolving disputes that occur. That The principle referred to in resolving international disputes is to provide a way for the disputing parties to resolve their dispute based on international law. There are two methods of solving known in international law, namely in peace and in war (military). Dispute settlement procedures for countries that are interconnected with sea areas between countries can be seen in Article 287 UNCLOS 1982 which regulates alternatives and dispute resolution Procedure. This research is a normative research that examines the sources of related to the problem under discussion. The results of this study concluded that in resolve disputes between Indonesia and Vietnam on maritime the territorial waters of the Exclusive Economic Zone, can be in the form of: resolved with various alternative dispute resolution as described in the 1982 UNCLOS framework, namely a) peaceful disputes settlement, b) dispute resolution with mandatory procedures. Each country is given the freedom to choose the alternative that will be used in resolving the dispute that is being faced what both parties want both through litigation (court route) and non-litigation channel (out of court) as provided for in Article 280 of UNCLOS 1982.

Keywords

dispute resolution; maritime borders; EEZ



I. Introduction

Indonesia is the biggest country second in Asia and first in Southeast Asia, which has a sea area more big compared with large land, which is one third from the area of Indonesia is land and two thirds his territory. waters Indonesia 's sea area reaches 95,181 km², with large The waters of 5.8 million km² consist of from sea territorial 0.3 million km², waters Island with area of 2.8 million km², and the Exclusive Economic Zone (EEZ) with area of 2.7 million km².

Indonesia is one of the countries that has position strategically in Southeast Asia. There are regional characteristics in the form of islands and locations that have border direct with ocean Pacific and Ocean Indies making Indonesia one of the most influential

countries in Southeast Asia. language Indonesia also plays a role important in realize stability security in the area with promote plan establishment community ASEAN security aims for build a solution forum conflict for whole ASEAN member with method peace .

Connection good between neighboring countries no always walk seamless. The attitude of the state that will always chase interest national, causing conflict interest between countries in the world. Interest this could create connection good cooperation _ between countries and can also cause conflict. Conflict could threaten connection existing diplomatic even impact the worst is for trigger war between countries. Conflict between countries can occur among other things because problem border, source source power nature, damage environment, trade, and others.

Conflict between Indonesia and Vietnam has been in progress since 1963 with start tensions in the North Kalimantan region which currently that not yet becomes part from from Vietnam. Solution conflict between Indonesia and Vietnam is difficult achieved because each country has claims in different countries. Meeting Exclusive Economic Zone claims between Indonesia and Vietnam need reviewed back under UNCLOS 1982.

Referring to Article 74 of UNCLOS on Exclusive Economic Zones which is opposite or coincide , namely : (1) Determination of economic zone boundary exclusive between countries whose beaches opposite or side by side certain held based on deal on base law law international , as set in Article 38 Statute Court International , for reach solution fair . (2) Otherwise there is agreement reached in the right time, the countries concerned must use specified procedure in Chapter XV. (3) While wait agreement as specified in paragraph (1) of the country concerned , with spirit each other understanding and cooperation must conducted all effort for make Settings temporary practical and during transition _ this no endanger principle , hinder achievement determination end border . (4) In Thing this there is valid agreement between the countries concerned, then related problems with Determination of Exclusive Economic Zone Boundaries must set in accordance with provision agreement.

Function determination limit sea is as following: shape affirmation or boundaries ownership islands outside the country like Republic of Indonesia. island outside is island front in determine maritime boundaries or as determinant limit sea especially in the Unitary State Republic of Indonesia, such as sea territory , runway Continental and Exclusive Economic Zones . Determination limit the sea is very necessary for provide certainty clear law quiet boundaries, rights sovereign and limit sovereignty. Problem this is important thing for discussed because territorial status issues and obscurity country borders often Becomes source dispute between neighboring countries or next door. Discord that arose because difference application principle for determination boundaries take off Continent between neighboring countries give rise to overlapping areas overlap that can be cause dispute between Indonesia and Vietnam.

II. Research Method

The method to be used in study this is study law juridical normative, that is research conducted with use primary data material in the form of regulation legislation in force in Indonesia, and materials References or secondary data in the form of literature law, dictionary law, and related journals with object study as base study with To do search to regulation legislation and related literature with problem study

III. Results and Discussion

3.1 The 1982 UNCLOS provisions as base solution Dispute Maritime Border Between Indonesia and Vietnam in the Waters of the Indonesian Exclusive Economic Zone

Solution disputes in the field of law sea before UNCLOS like dispute solved through mechanisms and institutions Justice international already available. According to UNCLOS 1982, every country in dispute related maritime issues for quick complete dispute intertwined connection international between countries often because dispute among second split parties, as well as interest from each country is good in field law, economics, and field politics. Dispute could occur from various source potency disputes, such as border, source power nature, damage environment, trade, and others.

Based on principle peace and security international, there a number of demonstrated effort _ for create connection good between countries in the settlement dispute has happen. The principle in question complete dispute international is with provide method for the disputing parties _ for complete dispute according to law international. There are two method known solution _ in law international that is by peace and with war (military). Method war (military) is method solution disputes that have been recognized for long time. War is also used as an instrument and policy abroad, such as Napoleon Bonaparte who also used war for control every region of Europe in the nineteenth century. War is also used in some countries to enforce rights and understanding about existing rules in Constitution international.

Mature this Public international the more realize that big danger in complete dispute with war. Solution with war or military no again used in solve problem dispute after World War II ended. International Court of Law is the main organ as replacement Court Permanent Justice International or PCI. In accordance with Article 14 of the Covenant of the League of Nations in 1922, the Court Permanent International or PCIJ is predecessor from ICJ (Court International).

The maritime boundaries and sovereignty of the EEZ Coastal States are very difficult problem for solved resolved. On December 10, 1982, the United Nations had succeed realize Convention union Nations about the Law of the Sea or the so- called UNCLOS 1982, which was signed by Indonesia and 117 participating countries. Draft State sovereignty is not could separated from draft sovereignty maritime. There are two very basic difference about right sovereignty over land and water areas, namely: _ substantive and procedural. UNCLOS 1982 has a number of regime approval complex _ room the sea and its ownership compared to convention before. Agreement about boundaries sea and jurisdiction all coastal areas covers sea territory , runway continental , sea additional , EEZ , additional zone , sea interior and boundaries the sea within and the space above ocean . Solution disputes in the sea area, implemented based on Chapter V of UNCLOS 1982 on disputes and existing provisions in UNCLOS 1982. Countries in dispute with other countries must complete problem with peace.

Law of the Sea Convention is a first multilateral treaty containing provision about resolution conflict. On April 30, 1982, the Convention law sea 1982 (Convention union Nations regarding the Law of the Sea) accepted with both at the UN conference on the Law of the Sea III in New York. The discord that happened between Indonesia and Vietnam in a number of time last, can solved based on the 1982 UNCLOS provisions contained therein. Indonesia and Vietnam are member union Nations who have also ratify Law of the Sea Convention International. On June 24, 1994, Vietnam had ratified UNCLOS 1982, while Indonesia with issued Law Number 17 of 1985 concerning Endorsement of UNCLOS 1982 by the Government Republic of Indonesia. There is ratification Law of the

Sea Convention International signed by Indonesia and Vietnam, is factor because UNCLOS is used as reference base for solution dispute about Border Sea between Indonesia and Vietnam.

Indonesia and Vietnam are independent and sovereign countries, which have the right to on doing jurisdiction exclusive to the region. Speak about national boundaries, no will free from the territory of another country in the form of a land area or maritime boundaries. Land boundary could be marked with signs certain like fence or other. Next, regarding the border of the sea area is very difficult once, so that still prone and frequent occur dispute. Based on The United Nations Convention on the Law of the Sea , which was attended by 160 countries, said : that sea divided Becomes a number of part : the first is sea territory , the second is the EEZ, the third sea off , four take off continental , five additional zones , six strait used _ for cruise international .

Based on Article 86 of UNCLOS 1982 explains that sea free covers all part sea except a country, or in waters Island an island nation. Indonesia is one of the participating countries ratified UNCLOS 1982 in 1995 with Constitution Number 5 of 1983. As a participating country ratified UNCLOS 1982, Indonesia has the right for retreat economic zone line the exclusive is 200 miles, where Withdrawal reach Province sea North Natuna, Riau Islands, Regency Natuna bordering _ direct with Vietnam and Cambodia. This show that the EEZ is not including in regime sea off. Additional zone is the wide zone no more than 24 nautical miles be measured from the baseline where is the width from the territorial sea is measured. As set in Article 3 UNCLOS 1982 Concerning sea territory , each country has the right to determine wide sea the territory until the limit that has been determined 12 nautical miles , which is measured from the baseline .

Procedure _ solution disputes (dispute settlement) for mutually relate with area affairs maritime between countries can seen in Article 287 of UNCLOS 1982 which regulates about alternatives and procedures solution dispute (dispute settlement). take off continental give limit claim for coastal countries with the limits minimum 200 nautical miles and claim 350 miles maximum . Based on formula new relationship _ Among factors geomorphology and geophysics with large mainland a coastal country only care with claim maximum free take off continental.

3.2 Mechanism Solution Dispute Border sea between Indonesia and Vietnam in the Indonesian Exclusive Economic Water Zone

Based on mechanism UNCLOS 1982 Dispute settlement shared into 3 parts. First set about solution dispute resolved by agreement _ peace Among second split party. Second, set about the procedure solution dispute by force for interest produce binding decision. Third, set about a number of limitations and exceptions in jurisdiction for the procedure defined in section second.

Sea boundary between Indonesia and Vietnam if from corner look connection international is mandate or obligation government for give certainty law and affirmation limit Indonesian sea, as well as ensure security, sovereignty, enforcement law, and protection of Indonesian territory by the relevant officials. Through Statement of 12 November 1982 by the Government Republic Vietnamese Socialist on the Seabed Line Territorial Vietnam, Vietnam set the lines base official is the baseline straight, then kept at the United Nations.

Based on Article 7 of UNCLOS 1982, Vietnam claims the baseline straight line shown on the map red above. Referring to Article 7 of UNCLOS 1982 explains that , if form physique beach truly stand out or cut or jagged (in intended and truncated), or if there is island fringe (island fringing) along beaches scattered around (around) the

coastline . _ Baseline _ straight vietnamese no in accordance with principle Article 7 UNCLOS 1982.

Not like Vietnam, Indonesia is not deposit limit outside maritime . On March 25 , 2009, Indonesia kept a list of dots coordinate geographic baseline _ Island based on Regulation Government Number 37 of 2008 concerning Secretary General union Nations , according with provision Article 47 paragraph (9) UNCLOS 1982. The border between Indonesia and Vietnam is border maritime located in the Sea South China next door north Island Natuna , Indonesia. The two countries have sign an agreement that stipulates border take off continent on June 26 , 2003 in Ha Noi , Vietnamese.

Takeoff limit continent signed on 26 June 2003 Indonesia onwards validated through Law no. 18 of 2007, Indonesia and Vietnam have deal about coordinate limit take off contained continent _ in Agreement Agreement Among Government Republic of Indonesia and the Government Republic Vietnamese Socialist . Deal then produce deal coordinate six point with border length _ take off continental is approximately 251.03 nautical miles or about 464.9 km. There are several island outer border _ direct with Vietnamese, like Natuna , Anambas and Riau Islands which are the center of activity Development priority National Strategic and Location.

There is an alternative form solution disputes in the 1982 UNCLOS framework , namely , a) Settlement Dispute peace , b) Settlement dispute with procedure mandatory . Procedure solution dispute for countries that are mutually connected by business area maritime between countries can seen in Article 287 of UNCLOS 1982 which regulates about alternatives and procedures solution dispute (dispute settlement). Every Country is given freedom for choose alternative that will used in complete moderate disagreement _ in progress faced .

Referring to Article 279 of UNCLOS 1982 explains that each country in dispute like Indonesia and Vietnam are mandatory complete every dispute with method peaceful , as also explained Article 2 paragraph (3) that every member must look for Street solution like that appearance so that security and peace and justice no threatened . With Article 280 of UNCLOS 1982, Indonesia and Vietnam chose solution dispute by peace for solved limit sea that occurs in EEZ waters . Article 280 of UNCLOS 1982 also confirms that method peace no will there is reduce the rights of participating countries everywhere for agree when just for complete dispute . See conflict The old Suez Canal happened , solution dispute by peace is wrong wrong one the most appropriate step in solution dispute .

Referring to Article 287 of UNCLOS 1982 Chapter XV, there are other procedures if certain deal in complete dispute by peace , then the parties could use procedure mandatory that produces binding decisions , namely a) Court Court International for Law of the Sea -ITLOS), b) Court International (International Courts – ICJ) c) Courts Arbitration , d) Court Arbitration Special .

a) Court International Law of the Sea

Formation Court International Law of the Sea was also attended by members of the United Nations on August 1, 1996 and domiciled in Hamburg, Germany . The purpose of the formation of the tribunal to : finish related disputes _ with interpretation and implementation convention . Remember existence character special property owned by law sea , court this could reflect dispute law placed sea _ in separate system . _ There are 21 judges independent in each selected for the past 9 periods shared into 5 rooms namely : (Chambers): the Procedure Chamber Summary , Fishing Chamber Dispute , Room for Dispute Environment The Sea , the Seabed Dispute Room and one room special discuss

Conservation and Sustainable Exploitation of Swordfish Stocks in the Southeast Pacific Ocean .

b) Court International

Solution dispute through Justice court international court (world court) is one alternative solution law (judicial settlement). With condition Court International also plays a role active in court in complete dispute through track binding laws and judges' decisions . This thing It is intended that each of the disputing countries no lead to use strength armed . Based on principle sovereignty a country, every country must agree every lawsuit that will submitted to Court International . agency authorized for complete all dispute happened law.

Court International for the Law of the Sea (next called as ITLOS) is Court sea International founded by the United Nations on August 1 , 1966 and domiciled in Hamburg, Germany . ITLO aims for complete related disputes _ with interpretation and implementation 1982 law convention sea . Disputing parties _ new submit dispute with ITLOS, when second split the parties to the dispute agree for hand it over to ITLOS. regarding with ITLOS authority in complete dispute maritime happening _ between countries, ITLOS has jurisdiction no limited on every dispute about application convention as well as all related problems _ with implementation 1982 UNCLOS provisions . About competence Court , decide that Court open for member countries conventions and other non -State bodies .

Jurisdiction Court covers all disputes and applications submitted _ to him in accordance with conditions conventions and everything related things _ with determined in other agreements that provide jurisdiction to Court . Agreement of the parties related with dispute about interpretation or application agreement law international about problem law sea could submitted to Court . Court decision ITLOS is bind the countries involved in dispute this . thing shown with voice the most from member Courts present.¹⁸ However Thus , between the parties there is difference interpretation on decision or implementation about error in agreement otherwise , then possible for the parties for submit to Court in accordance with Article 82 of the Convention for To do act carry on To do interpretation , change (revise), correct and cancel .

V. Conclusion

Based on the analysis and discussion above , the journal This conclude that UNCLOS 1982 collectively general has adequate as base solution dispute international especially in the sea area based on Article 33 paragraph (1) of the Charter union Nations as *lex generalis* . Referring to the terms Article 279 UNCLOS 1982, Settlement dispute between Indonesia and Vietnam can solved with method make peace. if way peace no could done , then as set in Article 280 of UNLOS 1982, based on what do you want both countries, more good take track litigation outside court .

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