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THE SETTLEMENT OF TERRITORIAL DISPUTES AMONG COUNTRIES IN THE PERSPECTIVE OF INTERNATIONAL LAW AND OTHER POSSIBLE ASPECTS

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POSSIBILITY TO UTILIZE JOINT ARRANGEMENT ON FISHERIES BETWEEN INDONESIA AND VIETNAM ON DISPUTED EXCLUSIVE ECONOMIC ZONE (EEZ) IN THE NORTH NATUNA SEA

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ABSTRACT

Indonesia has sea boundaries with Vietnam and they are still in dispute over the Exclusive Economic Zone (EEZ) in the North Natuna Sea. Incidents between both maritime agencies along with both fishers frequently occur in the disputed area. The two governments have already talked to reach delimitation agreement. However, such efforts are never been easy. To avoid future incidents, the two countries need to negotiate and achieve provisional arrangement to jointly manage, exploit and conserve the overlapping EEZ that are rich in fish resources. This article is written to urge government to propose provisional arrangement to Vietnam. Through juridical normative methods based on the international and national rules as well as comparative practices, provisional arrangement is possible to be made. The government is urged to set detailed arrangement that can have a positive impact on fishers and the country's economy together with the conservation of natural resources in the area concerned.

Keywords: Fisheries Joint Arrangement, The Disputed Exclusive Economic Zone, The North Natuna Sea.

A. Introduction

Indonesia is the world's largest archipelagic country with the number of islands reaches 16,056.[1] The republic has ten (10) bordering countries.[2] Vietnam is one amongst them. Although not as close as Malaysia, Singapore, Timor Leste and Papua New Guinea, this socialist country has sea boundaries over the North Natuna Sea with Indonesia.[3] The United Nations Convention on the Law of the Sea (UNCLOS) applies specifically with regard to the delimitation of maritime areas.

Until recently, Indonesia has not yet concluded all maritime delimitation agreement with all neighboring countries.[4] This archipelagic nation has homework to conclude including with Vietnam. Both Indonesia and Vietnam have not agreed yet on the overlapping EEZ around the North Natuna Sea which is rich in marine resources.[5] They have already signed the Continental Shelf delimitation agreement in 2003.[6] However, the agreement does not automatically cover EEZ as well. The EEZ delimitation arrangement shall be further discussed and arranged between the countries.

Indonesia and Vietnam have started negotiation on disputed EEZ since 2010.[7] In fact, the talks on delimitation agreement on the Continental Shelf took place for about 30 years until the finally reached agreement and it was signed in 2003.[8] Incidents over disputed water frequently occur including latest incident where Vietnam Coast Guard Ship crashed into Indonesia

1 Aditya Mardiastuti, "Indonesia reported 16,056 islands with name to UN," Detik News, 5 May 2018, https://news.detik.com/berita/d-4005694/indonesia-laporkan-16056-pulau-bernama-ke-pbb (accessed 5 March 2020).

2 Badan Pusat Statistik (1), Statistical Yearbook of Indonesia 2018 (Jakarta: Badan Pusat Statistik, 2018), p. 3 & 5. See also Ekarina, "Government pushes to conclude maritime delimitation agreement with 10 neighboring countries," Katadata, 10 August 2019, https://katadata.co.id/berita/2019/10/08/pemerintah-dorong-percepatan-perjanjian-batas-maritim-10-negara (accessed 20 February 2020).

3 Please see Badan Pusat Statistik, *loc.cit.,* p. 5.

4 Muhammad Faiz Aziz, "Developing Joint Development Zone in Disputed Maritime Boundaries," *Indonesian Journal of International Law,* 2018, 15(4): 432-448, p. 433, http://dx.doi.org/10.17304/ijil.vol15.4.735 (accessed 19 February 2020).

5 R. Kurniaty, Ikaningtyas, & P.A. Ruslijanto, 2018, "Analysis on Traditional Fishing Grounds in Indonesia's Natuna Waters Under International Law," *IOP Conference Series: Earth and Environmental Science,* 137(2018) 012039, p. 1. See also Dian Septiari, "Indonesia, Vietnam speed up EEZ delimitation," The Jakarta Post, 24 June 2019, https://www.thejakartapost.com/seasia/2019/06/24/indonesia-vietnam-speed-up-eez-delimitation.html (accessed on 25 February 2020).

6 Ministry of Foreign Affairs of Indonesia, Agreement Between the Government of the Republic of Indonesia and the Government of the Socialist Republic of Vietnam Concerning the Delimitation of the Continental Shelf Boundary 2003, *Treaty Room: List of Treaties Concluded by Indonesia,* https://treaty.kemlu.go.id/apisearch/pdf?filename=VNM-2003-0021.pdf (accessed 23 February 2020). See also Tran Truong Thuy and Le Thuy Trang, Power, Law, and Maritime Order in the South China Sea (London: Lexington Books, 2015), p. 273.

7 Damos Dumoli Agusman & Gulardi Nurbintoro, "Hard Work Continues to Settle Maritime Borders,"The Jakarta Post, 13 December 2018, Academia, Opinion, https://www.thejakartapost.com/academia/2018/12/13/hard-work-continues-to-settle-maritime-borders.html (accessed 28 February 2020).

8 Dian Septiari, *loc.cit.*

Naval ship to protect its national fisher's vessel.[9] It is noted that there were up to 294 Vietnam vessels illegally entering Indonesian jurisdiction within October 2014 to May 2019 or about 57 percent of foreign vessels. These vessels have been sunk down by Indonesian authorities.[10]

The process of talks and negotiations is still ongoing. Finalizing delimitation agreement has never been easy for all countries including for Indonesia and Vietnam. Maritime delimitation will only be achieved if each country removes excessive nationalistic egos. Nonetheless, domestic political situation has never been friendly to each party to support the negotiation.

There is an alternative way that can be utilized by the Indonesian government before reaching the deal with Vietnam. Provisional arrangement on joint management, exploitation and conservation can be provisional solution that can have positive impact on both countries. These two ASEAN members should have respected the ASEAN Charter and the 1976 Treaty of Amity and Cooperation which encouraged the resolution of regional problems through consensus principle.[11] The provisional arrangement is based on Article 74(3) of UNCLOS 1982.[12] Article 74(3) sets the rule as follows:

> *"Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."*[13]

Meanwhile, paragraph 1 of Article 74 provides the rule below:

> *"The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."*[14]

What is provisional arrangement? Provisional arrangement is not easily defined since there are no formal definition exists in explaining the term yet. The term provisional arrangement has similar meaning

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9 I Made Andi Arsana, "Causes of Disputes Between Indonesia and Vietnam on the South China Sea," Tempo, 21 May 2019, https://kolom.tempo.co/read/1207615/akar-perseteruan-indonesia-vs-vietnam-di-laut-cina-selatan/full&view=ok (accessed 18 February 2020).

10 CNN Indonesia, "RI-Vietnam Accelerates Exclusive Economic Zone Negotiations," CNN Indonesia, 1 August 2019, https://www.cnnindonesia.com/internasional/20190801092733-106-417294/ri-vietnam-percepat-perundingan-zona-ekonomi-eksklusif (accessed on 18 February 2020).

11 ASEAN, "Treaty of Amity and Cooperation in Southeast Asia," Denpasar, 24 February 1976, https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/ (accessed 22 February 2020).

12 I Wayan Partiana, Hukum Laut Internasional dan Hukum Laut Indonesia (International Law of the Sea and Indonesian Law of the Sea) (Bandung: Yrama Widya, 2014), p. 166.

13 Convention on the Law of the Sea, Dec. 10, 1982, 1833 UNTS 397. See also Stephan Fietta and Robin Cleverly, A Practitioner's Guide to Maritime Boundary Delimitation (Oxford: Oxford University Press, 2016), p. 25.

14 *Ibid.*

with the term joint development zone. According to Biang, joint development zone is a joint arrangement to establish joint jurisdiction over the maritime area based on Article 74(3) UNCLOS 1982.[15] This is a type of cooperation between one country and another to jointly manage and explore when the parties have dispute over maritime areas. The areas cover living and non-living resources including fish and hydrocarbon resources.[16]

Article 74(3) UNCLOS 1982 provides clear rule for state parties to reach temporary agreement with neighboring countries when they cannot reach any consensus for maritime delimitation purposes. The arrangement must be made in the spirit of good faith, mutual understanding, and cooperation. Disputing countries are prohibited from endangering or hindering one another by taking dangerous actions or blocking efforts to reach final consensus.[17] Article 74(3) sets convenient and flexible ways for coastal states when they are not able to resolve their disputes. The article does not provide any format or standard forms.[18] Nonetheless, form of treaty is common to use by several countries to achieve consensus including in fisheries sector.

The overlapping zone claimed by the two countries can be managed jointly for the interests of each country for the purposes of economy, welfare and environmental protection as well as science development. This provisional mechanism has been widely used in a number of bordering countries. South Korea-China, China-Japan, South Korea-Japan and Russia-Norway are amongst the countries that have used the mechanism on joint fisheries where they respectively adjacent each other.

Based on what is stated in the previous paragraphs, the problem questions arisen to study on possibility to utilize provisional or joint arrangement between Indonesia and Vietnam on the disputed EEZ consist as follows: (1) to what extent are the progress of the Indonesia and Vietnam talks over the disputed EEZ? (2) what are the experiences of other countries in resolving these disputes and utilizing provisional arrangements? (3) to what extent are Indonesian national laws or regulations regulate provisional arrangements? (4) What should be provided in the provisional arrangement between Indonesia and Vietnam? This paper is made to identify and analyze the potential of pro-

15 J. Tangia Biang, The Joint Development Zone Between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in The Gulf of Guinea International Law, State Practice and Prospects for Regional Integration, The United Nations – The Nippon Foundation of Japan Fellowship Programme 2009-2010, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, New York:United Nations, 2010, p. 54, <https://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/tanga_0910_cameroon.pdf>, accessed on 9 June 2020.

16 Muhammad Faiz Aziz, *loc.cit.*, p. 435-436.

17 *Ibid.*, p. 436.

18 *Ibid.*

visional arrangements based on UNCLOS 1982 and Indonesian law provision on joint cooperation of fisheries in EEZ specifically for Indonesia-Vietnam purposes.

B. Research Method

This article is written based on desktop study method with juridical normative approach. The study is analytical and qualitative descriptive. The desktop/literature study method is used considering that the study of provisional arrangement on disputed EEZ can be conducted through a search of concepts, regulations, international rules and implementation through as follows: (1) primary legal material in the form of conventions, treaties and national regulations; (2) secondary material in the form of books, journals, news and official reports; and (3) tertiary material in the form of legal and language dictionaries.

C. Discussion

1. Progress Between Indonesia and Vietnam on Disputed EEZ

Indonesia has only recently concluded delimitation agreements at several coordinates with neighboring countries. There are many coordinates with ten neighboring countries to be dealt with. Indonesia has not reached any delimitation agreement with Palau and Timor Leste.[19] With Indonesia's total land and sea areas reaching 1,916,962.20 km2,[20] government still struggles to strive for the remaining maritime delimitation agreement.[21] Indonesia, however, must respect the reluctance of neighboring countries despite its passion for talks and negotiations.[22] This is understandable considering that in many diplomatic negotiations, political interest in negotiation is more dominant rather than legal interest. However, legal arguments dominate in justifying that political interest.[23]

In 2019, Indonesian President Joko Widodo held a meeting with Vietnamese Prime Minister Nguyen Xuan Phuc during the 34th ASEAN Summit in Bangkok.[24] The meeting was followed up by a special meeting between both foreign ministers during the ASEAN Ministerial and Dialogue Partnership Meeting in the same city.[25] Interestingly, the idea of provisional arrangement emerged from the results of talks between the two ministers.[26] Until re-

19 Damos Dumoli Agusman & Gulardi Nurbintoro, *loc.cit.*
20 Badan Pusat Statistik (2), Statistical Yearbook of Indonesia2019 (Jakarta: Badan Pusat Statistik, 2019), p.3.
21 Vivian Louis Forbes, Indonesia's Delimited Maritime Boundaries (Berlin: Springer-Verlag, 2014), p. 62.
22 Damos Dumoli Agusman & Gulardi Nurbintoro, *loc.cit.*
23 Huala Adolf, *Hukum Penyelesaian Sengketa Internasional (Law of International Disputes)* (Bandung: Sinar Grafika, 2004), p. 27.
24 Dian Septiari, *loc.cit*.
25 Indonesian Ministry of Foreign Affairs, "Indonesia and Viet Nam Urge the EEZ Delimitation Settlement and Maritime Partnership Improvement,"Ministry of Foreign Affairs of the Republic of Indonesia, 31 July 2019, https://kemlu.go.id/portal/en/read/497/berita/indonesia-and-viet-nam-urge-the-eez-delimitation-settlement-and-maritime-partnership-improvement (accessed 20 February 2020).
26 *Ibid.*

cently, no further progress were published to follow up on such arrangement.

The provisional arrangement suggestion that emerged from the last meeting of the two ministers surely is good news and progress. After the Indonesia-Australia agreement on the Timor Gap in 1989, Indonesia has never entered into a joint management agreement again with neighboring countries over disputed maritime areas. The agreement was considered as the most prominent provisional agreement at that time.[27] Surely, there is good lesson learned which can be proposed and applied to Indonesia and Vietnam provisional arrangement.

Figure 1 – Overlapped EEZ between Indonesia and Vietnam

Source: IndoPacific News, 2019.

The overlapped EEZ in North Natuna Sea, as depicted in Figure 1, is actually rich in fishery stocks such as pelagic and demersal.[28] Considering the rich fisheries resources in the disputed EEZ, it is impossible to push a quick deal of delimitation agreement or maintaining the country's ego on the disputed areas just to show narrow nationalism. Compelling eagerness will harm Indonesia itself. Therefore, the international rules set out in UNCLOS 1982 must be obeyed. Provisional arrangement option based on Article 74(3) of UNCLOS 1982 is relevant and realistic ones to implement.

2. The Experiences from Other Countries

In fisheries sector, the joint arrangements of fisheries resources have already existed, for example South Korea-China, China-Japan, Korea-Japan, and Russia-Norway that are elaborated in the next section. The first three examples of joint fisheries arrangements are well-known for the dispute over the North China Sea and the Yellow Sea that has emerged for centuries.[29] Figure 2 displays the overlapping zone amongst South Korea, China and Japan. Meanwhile, the latter example is joint fisheries arrangement made on the Bar-

[27] Division of Ocean Affairs and the Law of the SEA Office of Legal Affairs, Handbook on the Delimitation of Maritime Boundaries (New York: United Nations, 2000), p. 17.

[28] Ahmad Naufal Dzulfaroh, "Become Favorite Place for IUU Fishing, what are the Potential of Natuna Waters?,"Kompas, 3 January 2020, https://www.kompas.com/tren/read/2020/01/03/200922665/jadi-tempat-favorit-kapal-asing-pencuri-ikan-apa-saja-potensi-perairan?page=all (accessed on 20 February 2020).

[29] Guifang (Julia) Xue, Bilateral Fisheries Agreements for the Cooperative Management of the Shared Resources of the China Seas: Note, *Ocean Development & International Law,* 36 (2005) pp. 389-381, p. 370.

ents Sea before the signing of UNCLOS 1982 that set provisional arrangement on overlapping EEZ.[30]

countries to claim a limit of up to 200 miles encourages each country to be able to put its maximum limit.[33] However, the over-

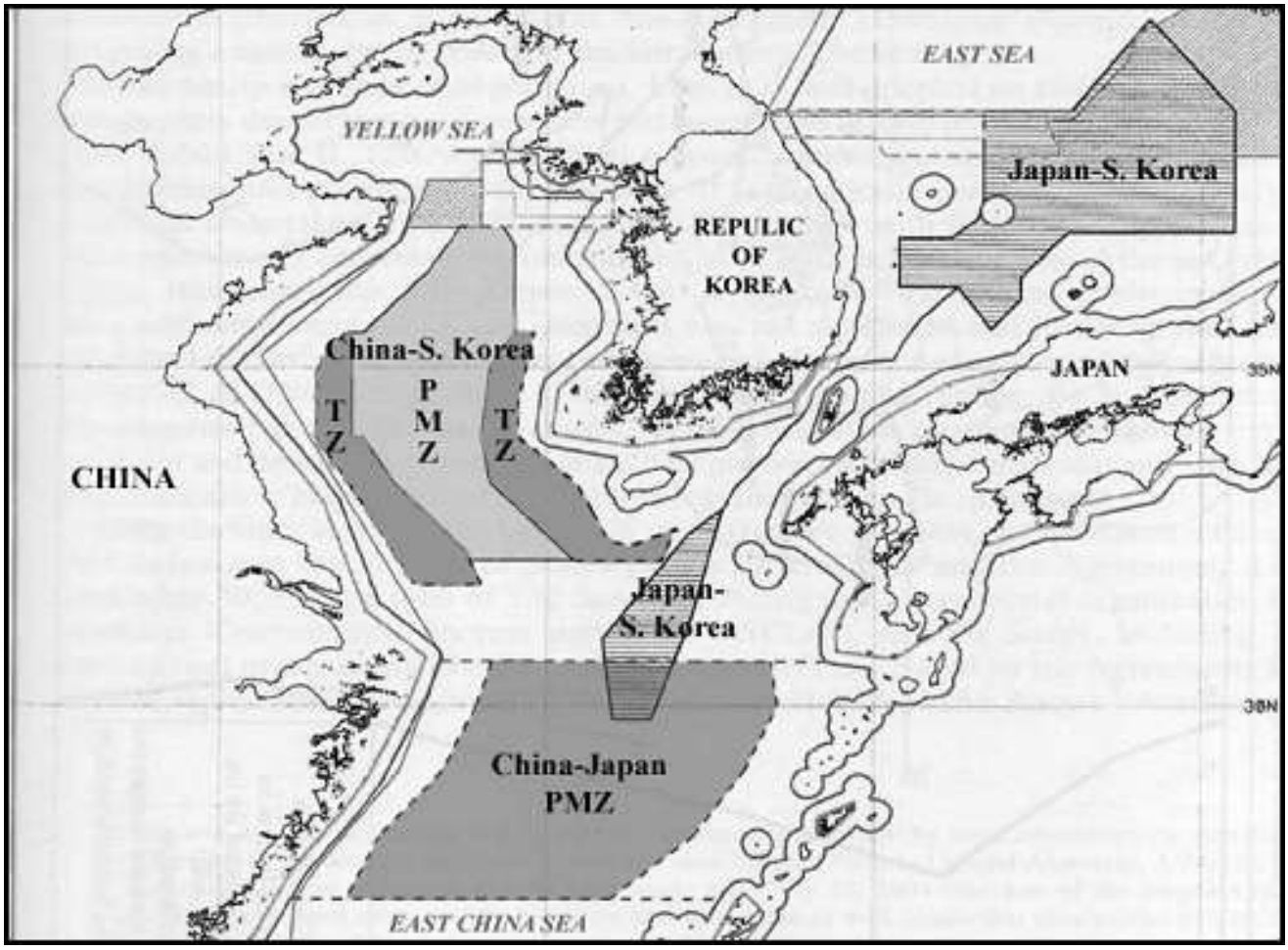

Figure 2 – Agreed Zones of South Korea, China-Japan and Japan-South Korea
Source: Xue, 2004, p. 26.[31]

a. South Korea – China

South Korea and China are two countries bordering in the Yellow Sea.[32] The enactment of UNCLOS 1982 which allows

lapping of maritime areas happens. Both countries recognize that talks and negotiations are important to avoid further incidents and disputes. Those two-sea areas

30 Geir Honneland, Compliance in the Barents Sea fisheries: How fishermen account for conformity with rules, *Marine Policy,* 24 (2000) pp. 11-19, p. 11.

31 Guifang Xue, *China's response to international fisheries law and policy: national action and regional cooperation,* PhD thesis, Centre for Maritime Policy, University of Wollongong, 2004, p. 260, https://ro.uow.edu.au/theses/369/ (accessed 3 March 2020).

32 Clive H. Schofield, Blurring the lines: maritime joint development and the cooperative management of ocean resources, *Issues in Legal Scholarship*, 2009, 8 (1), Article 3: 1-31, p. 22. See also Guifang (Julia) Xue, *loc.cit.,* p. 374.

33 Clive H. Schofield, *loc.cit.,* p. 2.

are amongst the major locations of fisheries resources. Fishers from both countries catch fishes in the region.

The two-governments do not yet conclude delimitation agreement on the overlapping zone, but they have already signed the provisional agreement in 2000 and came into effect in 2001.[34] The talks and negotiations between China and South Korea lasted around 7 (seven) years from 1993 to 2000.[35] In general, the agreement is about joint fishing zone.[36] The agreement contains establishment of Provisional Measure Zone (PMZ) of intermediate fishing zone in the West Sea, South Sea and the East China Sea, measures for resource protection and conservation, refuge procedural, and the setting up of joint committee on fisheries.[37] The agreement signed by the two countries is considered a temporary solution before reaching the final word on delimitation.

The signed agreement is believed to be the basis for preventing and overcoming illegal unreported and unregulated (IUU) fishing as well as strengthening conservation of fish stocks for food security for both countries. Before South Korea and China provisionally agreed on Provisional Measures Zone, IUU fishing was very often conducted.[38] Fishers from either South Korea or China often illegally entered into their respective waters. This situation led to overfishing and also incidents between fishers, sometimes backed up by home country coastal guard and the neighboring coastal guard.[39]

South Korea and China have enforced the agreement. Maritime agencies from the two countries jointly conduct patrol in the Provisional Measure Zone.[40] Fishers from both countries are permitted to catch fish with the maximum allowable quotas, fishing period and zones.[41] Fishers from other than the two-countries are not allowed to catch fish in that zone. In the event of a violation conducted by fisher from either China or South Korea, the neighboring country's maritime agency has the authority to capture and then coordinate with the maritime agency of the fisher's home country to repatriate them after the latter agency submit appropriate bond or other security.[42] The process of law enforcement

34 Ministry of Foreign Affairs Republic of Korea, "Korea-China Fisheries Agreement Comes into Effect," Press Releases, 29 June 2001, http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=296187&srchFr=&srchTo=&srchWord=OK&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=838&titleNm= (accessed on 1 March 2020).

35 Suk Kyoon Kim, Maritime Disputes in Northeast Asia: Regional Challenges and Cooperation (Leiden: Koninklijke Brill NV, 2017), p. 124.

36 Guifang (Julia) Xue, *loc.cit.,* p. 374.

37 Clive H. Schofield, Blurring the lines: maritime joint development and the cooperative management of ocean resources, *Issues in Legal Scholarship*, 2009, 8 (1), Article 3: 1-31, p. 22. See also Guifang (Julia) Xue, *loc.cit.,* p. 374.

38 Suk Kyoon Kim, Illegal Chinese Fishing in the Yellow Sea: A Korean Officer's Perspective, *Journal of East Asia and International Law*, 2012, 5(2): pp. 455-477, p. 476.

39 Guifang (Julia) Xue, *loc.cit.,* p. 371.

40 Guifang Xue, *loc.cit.,* p. 210.

41 Suk Kyoon Kim, *loc.cit.,* p. 461 & 462.

42 *Ibid.*, p. 461.

is subject to decision of China-Korea joint fishery committee and each country's enforcement agency can only exercise law enforcement in limited extent.[43]

b. China – Japan

China and Japan are two countries bordering in the East China Sea.[44] Dispute amongst them started in 1950s when Japan suspended "MacArthur Line" in 1952 to encourage more fishing beyond the line.[45] China was not happy to see many Japanese vessels when it also encouraged their citizen to fish along the Chinese waters.[46] They realized that the dispute would be overcome. However, both countries did not have any diplomatic ties at that time after the World War II. Non-governmental organizations from both parties were used to negotiate the boundaries.[47] Anyhow, the organizations did not have authority level as well as the states. Even they reached an agreement, the implementation could only be applied for themselves and would not bind the state as well its citizens. Hence, the two-government finally normalized their diplomatic ties and concluded the agreement on fisheries resources in 1975.[48]

The enactment of UNCLOS 1982 affected the implementation of the 1975's agreement. Similar to South Korea-China, Japan-China also cannot exercise its 200-milesEEZ to the outer limits because their borders overlap one another.[49] Both governments realized that delimitation agreements would never been easy and smooth to achieve again. This time is due to their different views on the method of maritime delimitation.[50] The existence of Article 74(3) of UNCLOS 1982 was used well by China and Japan so that they could claim the overlapping areas through joint management on fisheries. The historical background of relations between the two countries, especially related to World War II, often colors the process of negotiations and the implementation of the provisional agreement.[51]

Japan and China signed provisional agreement to jointly managed overlapping EEZ in the East China Sea on 1997 and replacing the agreement signed in 1975.[52] The agreement entered into force in 2000, known as Sino-Japanese Agreement, has

43 *Ibid.*, p. 462.
44 Clive H. Schofield, *loc.cit.,* p. 22.
45 Guenter Weissberg, Recent Developments in the Law of the Sea and the Japanese-Korean Fishery Dispute (Dordrecht: Springer Science+Business Media, 1996), p. 8. See also Zou Keyuan, Sino-Japanese joint fishery management in the East China Sea, *Marine Policy* 27 (2003): pp. 125-142, p. 126.
46 *Ibid.*
47 *Ibid.*
48 *Ibid.*, p. 127.
49 Please see Figure 2.
50 Clive H. Schofield, *loc.cit.,* p. 23-24.
51 Zou Keyuan, *loc.cit.,* p. 126. See also Mark J. Valencia, The East China Sea Disputes: History, Status and Ways Forward, *Asian Perspective* 38 (2014): pp 183-218, p. 184.
52 Clive H. Schofield, *loc.cit.*

five-year term with the condition that the agreement still applies after the expiry date of the first five-year term or afterwards. The party may terminate at any time after the expiry date by giving the other party six month's written notification.[53]

The main provisions in this Sino-Japanese agreement are conservation and utilization of marine living resources and governing normal operation order at sea.[54] They both agreed to utilize scientific method to conserve any marine living resources in the East China Sea. In addition to main focus of provisions, the agreement also set the rules of traditional fishery activity, fish catch permit, nationality, fishing vessels or boats, fees, allowable catch and the zone for fish capture.[55] Similar to South Korea-China provisional agreement, the Sino-Japanese agreement establishes Fisheries Joint Committee (FJC) consisting of four members (two from China and two from Japan).[56]

In terms of enforcing the agreement and relevant laws of each country, the agreement allows the maritime authority of each country to arrest other nationals' fishers.[57] Either China or Japan must promptly inform through appropriate channel about actions and punishment that will be taken on the fishers. Fishing boats or vessels and their crews shall be released and repatriated as soon as bond or other security guarantee has been posted.[58]

The Sino-Japanese agreement, anyhow, is not applicable to nationals other than the two-countries according to Vienna Convention on the Law of Treaties.[59] It means that other foreign vessels and nationalities may enter provisional measure zone or conduct fishing in that area. This includes South Korea fishers. Nonetheless, relevant laws in each Japan and China territory shall be obeyed by foreign vessels.

c. South Korea- Japan

Different to South Korea-China provisional agreement and Sino-Japanese agreement that each consisted of one overlapped EEZ, South Korea and Japan had overlapped maritime boundaries at least in the East Sea (Korea)/the Sea of Japan (Japan) and the East China Sea.[60] South Korea and Japan had already provisional arrangement establishing joint development zone since 1974.[61] The arrangement set the rules on joint managing

53 Guifang Xue, *loc.cit.,* p. 372. See also Sino-Japanese Agreement inside Zou Keyuan, *loc.cit.*, p. 140.
54 Zou Keyuan, *loc.cit.,* p. 133.
55 *Ibid.*, p. 133-134 & 138. See also David Rosenberg, Managing the Resources of the China Seas: China's Bilateral Fisheries Agreement with Japan, South Korea, and Vietnam, *The Asia-Pacific Journal,* 2005, 3 (6): 1-5, p. 3.
56 Article 3 and Article 11 Sino-Japanese Agreement. See Zou Keyuan, *loc.cit.*, p. 138-139. See also Guifang (Julia) Xue, *loc.cit.,* p. 373.
57 Zou Keyuan, *loc.cit.,* p. 139.
58 *Ibid.*
59 Guifang (Julia) Xue, *loc.cit.,* p. 376.
60 Please see Figure 1.
61 Clive H. Schofield, *loc.cit.,* p. 12.

on natural resources that was more focus on hydrocarbon in the continental shelf in the East China Sea.[62] The agreement also mentioned about fishing but not as a major rule.

In terms of fisheries cooperation, South Korea and Japan signed an agreement nine years before the 1974-agreement (in1965).[63] However, Japan abrogated unilaterally the agreement in 1998.[64] It is needed for the two countries to re-arrange fisheries cooperation based on the rule in UNCLOS and to focus more on the area around Tok-Do/Takeshima near the East Sea/Sea of Japan.[65] They realized that they still adhere to their respective methods in determining maritime delimitation.[66] It did not take long for the two countries to enter into a new provisional agreement.

In January 2000, South Korea and Japan concluded provisional arrangement on joint fisheries management. The South Korea-Japan agreement covers two disputed maritime areas on fishing consisting the East Sea/Sea of Japan and the South of Jeju Island.[67] The two countries set interim maritime zone on the two disputed areas. The agreement set the rules of controlling Illegal, Unreported and Unregulated (IUU) fishing, establishing Joint Fishing Committee, temporary outer limit of EEZ, fishing in restricted zone and relevant domestic applicable in the zone.[68]

d. Russia - Norway

Another fisheries cooperation that is important to be looked into and studied about is the fisheries cooperation in Europe. One very good collaboration is between Russian Federation and Norway.[69] The two countries entered into two different agreements concerning activities in the Barents Sea. The first bilateral agreement between the two countries was signed on 11 April 1975 regarding cooperation in the fisheries sector. The second one was signed on 15 October 1976. The latter concerns about mutual fisheries relations.[70] In contrast to fisheries cooperation in East Asia which was originally due

62 *Ibid.*

63 Korea Maritime Foundation, "Marine Territory: Korea-Japan Fisheries Agreement and Maritime Boundaries,"https://www.ilovesea.or.kr/eng/resour/territory4.do (accessed 2 March 2020).

64 *Ibid.* See also Sun Pyo Kim, Maritime Delimitation and Interim Arrangement (Leiden: Koninklijke Briil NV, 2004), p. 252.

65 Jon M. Van Dyke, The Republic of Korea's Maritime Boundaries, the International Journal of Marine and Coastal Law, 2003, 18 (4): 509-540.

66 Lee Chang-Wee, "Maritime Boundary Delimitation Around the Korean Peninsula and its Implication for Naming Issues," p. 80-81, http://www.eastsea1994.org/data/bbsData/14910990431.pdf (accessed 29 February 2020).

67 Kim Wonhee, *Time to End the Tragedy of the Commons: Establishing Regional Fisheries Management Mechanism in Northeast Asia,* 42nd Annual Conference of the COLP, 24-26 May 2018, Beijing China, https://colp.virginia.edu/sites/colp.virginia.edu/files/beijing-kim.pdf, accessed on 3 March 2020, p. 7.

68 Korea Maritime Foundation, *loc.cit.*

69 Geir Honneland (1), Enforcement Co-operation between Norway and Russia in the Barents Sea Fisheries, *Ocean Development & International Law,* 2000, 31 (3): 249-267, p. 250. See also Geir Honneland (2), Compliance in the Barents Sea fisheries: How fishermen account for conformity with rules, *Marine Policy,* 2000, 24: pp 11-19, p. 11.

70 Geir Honneland (1), *loc.cit.*, p. 252. Please see Andreas Ostaghen, Managing Conflict at Sea: the Case of Norway and Russia in the Svalbard Zone, *Artic Review on Law and Politics,* 2018, 9: pp 100-123, p. 106-107. See also Geir

to overlapping EEZ and Continental Shelf in their regional oceans, the cooperation between the Russian Federation and Norway is solely for fisheries matter and it is independent from the issue of maritime delimitation. Nevertheless, the EEZ dispute between the two countries does exist but was not brought into the agreement.[71]

Honneland states that the Barents Sea covers parts of the Nordic Ocean that is lying between North Cape on the Norwegian mainland, South Cape on the Spitzbergen Island of the Svalbard Archipelago, and the Russian archipelagos of Novaya Zemlya and Franz Josef Land.[72] The Barents Seamap is depicted in Figure 3. The Sea is rich with fisheries resources such as cod, haddock, capelin, redfish, blue whiting, Greenland halibut and other species.[73] These stocks are the target of fishers and surrounding countries for food and economic security. Norway and Russia are heavily dependent on these stocks. However, both countries also concern about the protection and conservation of living stock against overfishing.

A distribution quota of 50:50 for cod was agreed to be allocated each for Russia and Norway.[75] Total Allowable Catch (TAC)

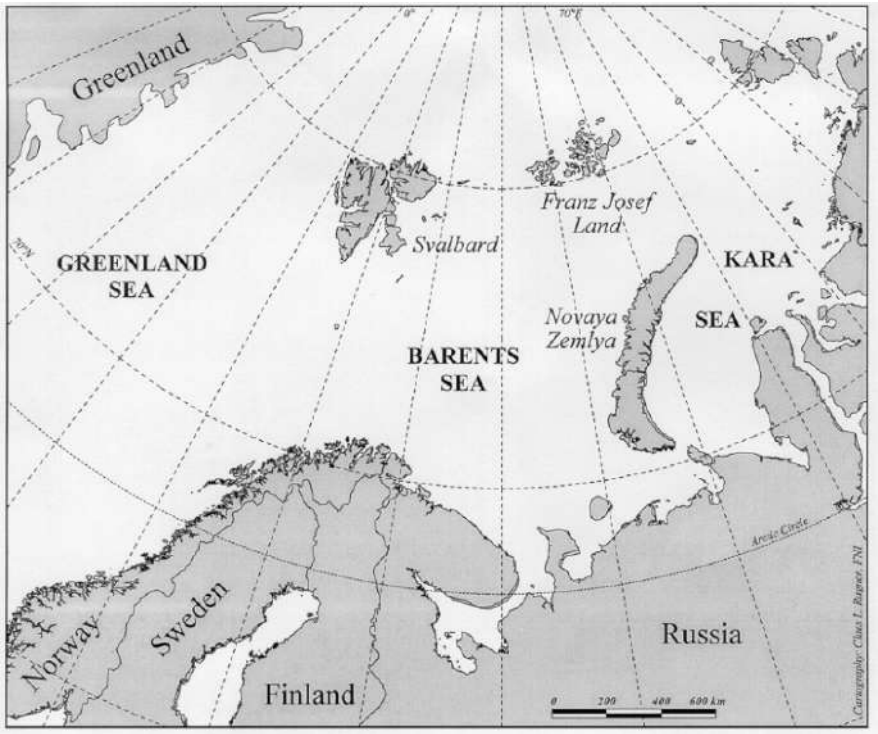

Figure 3 – Maps of Barents Sea
Source: Geir Honneland (2000).[74]

Ulfstein, the Legal Status of Rights to the Resources in the Barents Sea, Chapter, 147-154: inside Erling Berge Derek Ott and Nils Chr. Stenseth (Ed.), *Law and the Management of Divisible and Non-Excludadble Renewable Resources,* Oslo, Norway: the Norwegian Research Council, 1994, p. 148.

71 Division of Ocean Affairs and the Law of the SEA Office of Legal Affairs, *loc.cit.*, p. 84.

72 Geir Honneland (2), *loc.cit.*

73 Andreas Ostaghen, *loc.cit.,* p. 107. See Kathleen A. Miller and Gordon R. Munro, Climate and Cooperation: A New Perspective on the Management of Shared Fish Stocks, *Marine Resources Economics*, 2004, 19: pp. 367-393, p. 388. Please see also Geir Honneland (3), Artic Politic, the Law of the Sea and Russia Identity (Hampshire: Palgrave Macmillan, 2014), p. 10.

74 Geir Honneland, *loc.cit.,* p. 251.

75 Geir Honneland (4), Norway and Russia: Bargaining Precautionary Fisheries Management in the Barents Sea, *Artic Review on Law and Politics,* 2014, 5 (1): pp. 75-99, p. 76.See also Trond Bjorndal and Marko Lindroos, Co-

is also limited based on a precautionary approach.[76] Overfishing happened in the early 1990s, by Russian vessels, has encouraged Norway to ask Russia to jointly maintain and conserve the Barents Sea properly. The two-countries then formed the Permanent Russian-Norwegian Committee for Management and Enforcement Co-operations (Permanent Committee) on the Fisheries Sector in 1993.[77] The overfishing was still the issue between Russian and Norway in mid-2000s.[78]

Cooperation between Russia and Norway somehow is recognized as successful cooperation.[79] However, differences of opinion, tensions and conflicts mark the implementation of this collaboration.[80] Overfishing and arrestment of Russian vessels in 1998 are amongst the causes. Nonetheless, the formation of Permanent Committee to support marine living resources by suggesting Total Allowable Catch (TAC) has helped the stock conservation in the Barents Sea. It is no wonder that Norway and Russia are amongst the countries that have good fishery resource governance based on the survey on 28 countries conducted by Ocean Prosperity Roadmap project.[81] These 28-states surveyed represent governance of 80% of the world total catch.[82] Russia and Norway have prominent index on the aspect of research, management, enforcement and socioeconomics on fisheries sector as seen in Figure 4.[83]

The dynamics of relations and cooperation between the two countries which has lasted for almost four decades through provisional agreement finally reached its longtime goal. Russia and Norway signed maritime delimitation agreement and cooperation in the Barents Sea and Arctic Ocean in 2010.[84] This delimitation covers EEZ and also continental shelf. The

operative and Non-Cooperative Management of the Northeast Atlantic Cod Fishery, Working Paper No. 26/10, Institute for Research in Economics and Business Administration, Bergen, June 2010, p.1.

76 Geir Honneland (4), *loc.cit.* Precautionary approach is known as the precautionary principle. It was first appeared in 1980s through the Convention on the Conservation of Antarctic Marine Living Resources 1980 and the UNCLOS 1982. The principle encourages state parties to protect the environment irrespective of lack of scientific evidence. Please see Mary George, Legal Regime of the Straits of Malacca and Singapore (Singapore: Lexis Nexis, 2008), p. 173.

77 Geir Honneland (1), *loc.cit*, p. 259.

78 Geir Honneland (4), *loc.cit.*, p. 95.

79 Geir Honneland (2), *loc.cit.* p.2.

80 Indra Overland and Andrey Krivorotov, Norwegian-Russian political relations and Barents oil and gas developments, pp. 97-109, inside Anatoli Bourmistrov, et.al., International Arctic Petroleum Cooperation: Barents Sea Scenarios, (London and New York: Routledge, 2015), p. 97-99.

81 Ray Hilborn and Michael Melnychuk, Fisheries Governance Survey: Comparing across Countries and Stocks, chapter, pp. 11-14 inside *Ocean Prosperity Roadmap: Fisheries and Beyond,* A synthesis report on the economic and biological upside of fisheries reform to unlock the value of the oceans, https://www.oceanprosperityroadmap.org/wp-content/uploads/2015/05/Synthesis-Report-6.14.15.pdf, accessed on 3 March 2020, p. 12.

82 *Ibid.*, p. 11.

83 *Ibid.*, p. 13.

84 Thilo Neumann, "Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean, American Society of International Law (ASIL) Insights, 2010, 14 (34), https://www.asil.org/insights/volume/14/issue/34/norway-and-russia-agree-maritime-boundary-barents-sea-and-arctic-ocean

treaty does not only regulate cooperation in the fisheries sector but also cooperation in the hydrocarbon sector within the framework of maritime delimitation.[85] The 2010-agreement has implications on the certainty of outer limits of EEZ and Continental Shelf for Russia and Norway as well as just leaving last unresolved maritime boundary between Norway and Denmark near Norwegian Svalbard Archipelago and Greenland.[86]

The provisional arrangement on EEZ is based on Law No. 5/1983 on the Exclusive Economic Zone (EEZ Law 1983) which surprisingly was enacted a year after signatory of UNCLOS 1982 but before the convention was ratified. However, EEZ Law 1983 is in line with the EEZ provisions in UNCLOS 1982.

Article 3(2) of Law No. 5/1983 provide the basis for the government to negotiate provisional arrangement with the condition

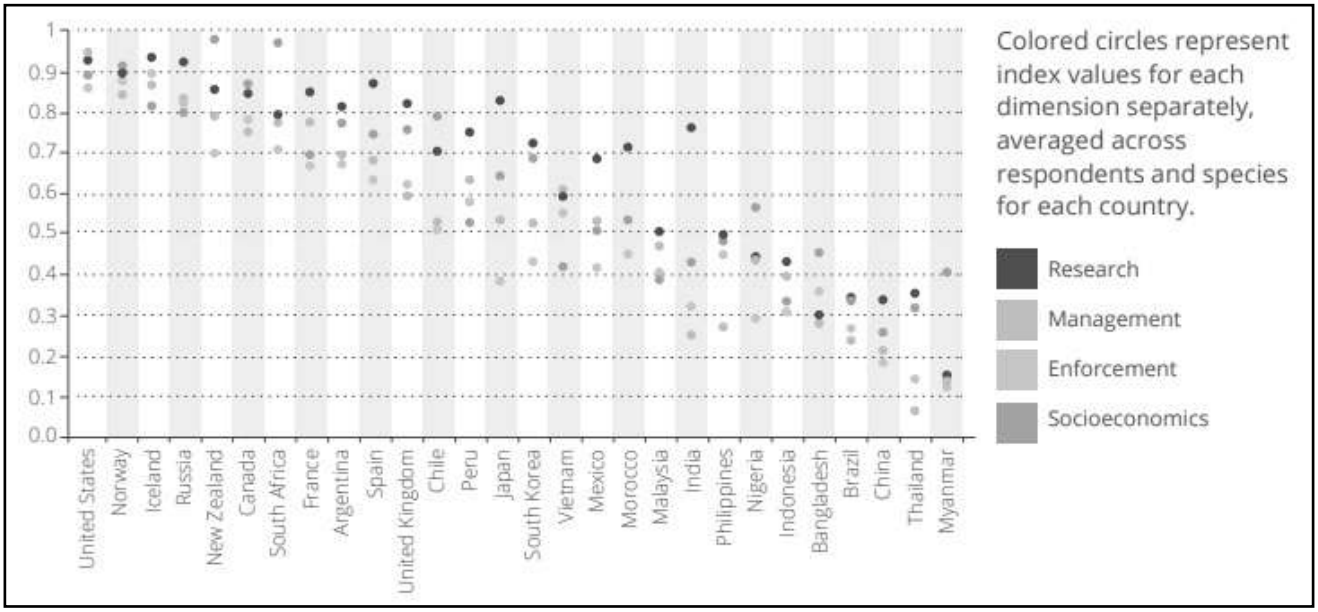

Figure 4 – Marine and Fisheries Governance Index
Source: Ocean Prosperity Roadmap Project (2015).

3. National Regulation relating to Provisional Arrangement

Indonesia has agreed, signed and ratified UNCLOS 1982. The convention was ratified in 1985 through Law No. 17/1985. that maritime delimitation agreement has not been reached. The Article sets whenever no maritime delimitation on EEZ has been made, the principle of equidistance through the median line will be applied,

(accessed 6 March 2020). See also Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean 2010, available at https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-RUS2010.PDF.

85 Thilo Neumann, *loc.cit.* See also Paul Arthur Berkman, Alexander N. Vylegzhanin, and Oran R. Young, Baseline of Russian Arctic Laws (Cham, Switzerland: Springer, 2019), p. 79-82.

86 *Ibid.*

except provisional agreement has been made with neighboring countries. The rule emphasizes in implementing equidistance principle without prejudice to government plan to arrange provisional measures on disputed areas.

One and only provisional agreement signed was between Indonesia and Australia. The two-countries bilaterally signed an agreement in 1989 (Timor Gap Treaty or TGT). The agreement established provisional zone, depicted in Figure 5, and joint cooperation for development of seabed resources in the Timor Gap including shares in managing the zone.[87] It also formed a Ministerial Council and a Joint Authority from both countries (bicameral system).[88] The agreement temporarily ended dispute of two countries for 17 (seventeen) years.[89] In fact, agreement framework on the Timor Gap was being a model for other states and considered as the most prominent of joint development zone of cooperation.[90] Since East Timor has been independent from Indonesia, the agreement was automatically ended. The Timor Gap is currently under the authority of the new nation Timor Leste. No provisional arrangement has been made by Indonesia and neighboring countries after the 1989-agreement.

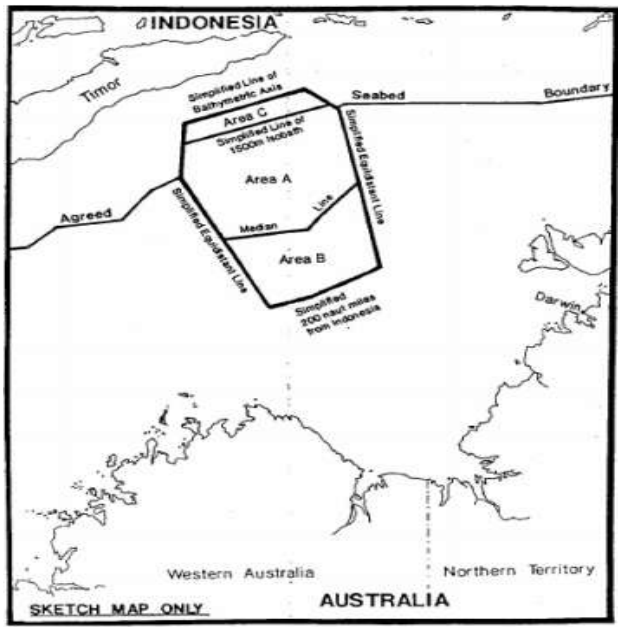

Figure 5 – Provisional Zone based on Timor Gap Treaty 1989

Source: Heiser (2003).[91]

Indonesia's experience in negotiating, establishing and exercising provisional arrangements provides lesson learned and opportunities for similar talks and negotiations with Vietnam. In addition to the EEZ Law 1983 and to support provisional arrangement, the government can also base on other main legal frameworks such as Law No. 31/2004 on Fisheries as amend-

87 Lian A. Milto, The Timor Gap Treaty as a Model for Joint Development in the Spratly Islands, American University International Law Review, 1998, 13 (3), Article 4: 727-764, p. 750. See also Anthony Heiser, East Timor and the Joint Petroleum Development Area, *The Maritime Law Association Australia and New Zealand Journal,* 2003, 54 (17): pp. 54-79, p. 59.

88 Muhammad Faiz Aziz, *loc.cit.*, p. 440. Please see Lian A. Milito, loc.cit., p. 755. See also 1989 Treaty Between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area Between the Indonesian Province of East Timor and Northern Australia, 1654 UNTS 105, [1991] ATS 9.

89 *Ibid.,* p. 750.

90 *Ibid.,* p. 759. See also Division of Ocean Affairs and the Law of the SEA Office of Legal Affairs, *loc.cit.*, p. 17.

91 Anthony Heiser, East Timor and the Joint Petroleum Development Area, *The Maritime Law Association Australia and New Zealand Journal,* 2003, 54 (17): pp. 54-79, p. 60.

ed by Law No. 45/2009 (Fisheries Law 2004) and Law No. 32/2014 on Maritime (Maritime Law 2014). The Fisheries Law 2004 allows arrangement of fisheries co-operation as well as agreement with foreign countries.[92] The Maritime Law 2014 set the rules of jurisdictional sovereignty based on applicable regulations and international law.[93]

4. Important Elements that should be Provided in Provisional Arrangement Between Indonesia and Vietnam

Reflecting on the experiences of other countries in the previous sections, there are lessons that can be applied by the Indonesian government if it desires to continue negotiating provisional arrangement with Vietnam concerning disputed EEZ at the North Natuna Sea. The legal framework for provisional arrangement is surely a treaty. In general, the treaty or agreement consists of: (1) the zone to be jointly managed; (2) joint authority and its tasks as well as its number of members; (3) co-operation in the respective sector (in this case fisheries) such as joint cooperation on marine conservation and governance, fishing quota, fish capture permit, fishing vessels, capture zone, total allowable catch, fishing gear, fees and levies, and rules for other foreign vessels entering the zone; (4) security and law enforcement; (5) applicable law at the zone; and (6) financing. At a minimum, government of both counties shall adopt these elements. The government can also modify them or add other necessary elements adjusting with the national interest.

In detail, the six elements of provisional agreement that can be suggested are as follows:

1. The zone. The government should identify and define the zone (or even name it) and its coordinate points to be managed. Option of zoning division (such as Timor Gap Treaty) or open access (such as Russia-Norway) can be discussed and talked by Indonesia and Vietnam. One option made has consequences to subsequent clauses such as applicable law as well as security and law enforcement;
2. Joint Authority. Most of provisional arrangement on joint cooperation establishes joint authority or committee. The structure and formation of joint authority are left to the wishes of the state parties, either in a bicameral form (such as Indonesia-Australia), single joint authority (most of provisional arrangement), or single state management. In the implementation, state parties can agree with each other to establish an additional committee if it is deemed necessary, for example Russia-Norway. For Indonesia itself, the government should identify which agency is appropriate as well as au-

[92] Article 29 (2) Fisheries Law 2004.
[93] Article 7(4) Maritime Law 2014.

thorized to lead the council or joint authority and identify other agencies that have tasks on fisheries, security, maritime and border matters to support the lead agency.

3. Cooperation in the respective sector (in this case fisheries). Cooperation mechanism in East China Sea and Yellow Sea region as well as in the Barents Sea focus on joint cooperation on marine conservation and governance, fishing quota, fish capture permit, fishing vessels, capture zone, total allowable catch,[94] fishing gear, fees and levies, and rules for other foreign vessels entering the zone (Sino-Japanese agreement is absence for this). Indonesian Fisheries Law 2004 along with its subsidiary regulations has also set the rules on those matters above.
4. Security and law enforcement. Both Indonesia and Vietnam must agree about their own jurisdiction in the zone. This is important not to confuse respective agency or coastal guard in enforcing the agreement and their national law at the zone. The authority or jurisdiction of respective maritime/coastal guard depends on the option the two governments choose, either zoning division or open access. Nevertheless, both countries can agree to initiate joint patrol in the whole zone.
5. Similar to the element of security and law enforcement, applicable law can also depend on the option state parties choose. If zoning division is chosen, Indonesian law can only be applied in, let say, Indonesia zone and vice versa for Vietnam. If open access is chosen, Indonesia and Vietnam can enforce respective applicable laws on the two countries national vessel and their crews. The implementation of applicable law depends on which marine or coastal guard enforce it first on the vessel and its crew.
6. Financing. Both countries must allocate budget and financing for implementing agreement and exercising their authority at the zone. Third-party funding or financing is possible to be raised as long as both countries have mutual consent on it.

Arrangement clauses that will be developed by Indonesia and Vietnam must focus on the protection and conservation of natural resources without compromising the economic interests of both countries. The UNCLOS 1982 sets quite a lot of rules on the marine environment and living resources. Every coastal state in utilizing EEZ must, among others: (1) protect and preserve the marine environment; (2) prevent, reduce and control sea pollution; and (3) control of marine pollution caused

[94] The term "total allowable catch" does not exist in UNCLOS 1982. However, the regulatory system in this convention allows the application of the TAC concept, which was first introduced through the UNCLOS session in 1975. See Charles Quince, The Exclusive Economic Zone (Delaware: Vernon Press, 2019), p. 39.

by technology or the entry of new foreign species into the marine environment.[95] Both Indonesia and Vietnam must set up a monitoring and evaluation system for environmental control and recovery.

D. Closing

The idea of provisional arrangement proposed by the government as a temporary solution to achieve maritime delimitation on EEZ with Vietnam should be appreciated and supported. Instead, provisional arrangements must also be proposed to other neighboring countries when maritime delimitation agreement is hard to achieve. It is never been easy to conclude such delimitation arrangement.

Experiences from South Korea, China and Japan show how difficult they are even in negotiating provisional arrangement. So is Russia and Norway. Nevertheless, their experiences shall be our lesson to learn. Except China, their successful implementation has made them as prominent countries in marine and fisheries governance.[96]

The examples of frameworks of agreements and institutions in the above-mentioned countries can be adopted for the government in talking and discussing with Vietnam in the context of fisheries. Last, important elements of a bilateral treaty or provisional arrangement as discussed earlier, surely, can be an input for the government for further study as well as making a plan and strategy for negotiating with Vietnam.

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[95] Muhammad Akib, *Hukum Lingkungan Perpspektif Global dan Nasional (Environmental Law: Global and National Perspectives)* (Jakarta: Rajawali Pers, 2014) p. 40.
[96] Ray Hilborn and Michael Melnychuk, *loc.cit.,* p. 11.

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THE INTERNATIONAL LAW OF THE SEA BORDER DISPUTE IN NATUNA WATERS CONCERNING SEA NATURAL RESOURCES IN WATER BORDER BASED

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ABSTRACT

Waters around the territorial boundaries of a country contain countless natural biological resources often become the object of disputes. Several countries bordering Natuna island had been in dispute especially under the UNCLOS 1982. This should be a concern of the Indonesian government, especially in regard to the government's obligations to protect the natural resources in Natuna Island. This research uses the normative legal research method or approach to examine the positive law in maritime regime and its enforcement compared to library materials or secondary data regarding the problems that showed in this research. Theoretically, the benefits of this research are to provide information and to understand every development of legal science in general and international sea law, as well as relating to the issues discussed in this study, in particular. Practically, it is expected to be useful for all parties in international maritime law enforcement.

Keywords: Protection, Natural Resources, Sea Border Disputes, International Law of Sea, Sovereignty.

A. Introduction

The total area of the sea is two-thirds of the earth's territory and provides 97% of all life on earth. Seawater is a place for living, and it develops a wide variety of living creatures both visible and invisible.[1] In addition, the sea also supports the life and existence of mankind by providing maximum benefits and uses for human life. It is right to say that the natural resources therein contain intrinsic values, namely assets or economic wealth for present and future generations. The higher the marine biodiversity is, the more economic potential the water has. This condition is very easily reflected because it is directly proportional.

Natural resources, which are located in the vicinity of boundary areas of the sea (trans boundary natural resources) or often referred to as cross-border natural resources, can be classified as a trans

boundary natural resource which is located under the seabed extending from the boundary of the two sides of the continental shelf. Hence, these natural resources can be exploited from the other party's continental shelf, either partially or completely. Specifically in Indonesia, such areas are spotted in many different locations.

These water border areas contain natural resources which are very potential to be developed and used as basic capital and opportunities to accelerate regional development, strengthening resilience, and so on. Therefore, it is not surprising if there are frequent disputes between countries related to the territorial waters that is promising as the potential of natural resources.

For Indonesia, many aspects of international law have not been able to reflect the rules of joint use of international sea areas, especially in border areas. This can be seen from various problems. These problems include: the unclear distribution of resource rights in marine areas, various unclear sea boundary issues with neighboring countries, problems of cooperation in the scope of maritime security, and agreements to exchange prisoners of fishermen between countries including the utilization of the biological resources in it.[2] Adding to these problems is the following issues: theft of marine life, illegal, unreported, and unregulated fishing, where many of the proceeds of crime are brought and fully utilized by foreign countries and other problems related to the sea area.[3] The problems mentioned above have not yet aroused much attention from researchers in Indonesia. This can also be proven from the lack of literature on the issue of the protection of living natural resources in border area in Indonesia. Therefore, this paper is intended to critically analyze the main problems surrounding the Natuna Island from the perspective of international law. The two main matters that will be discussed in this paper are:

a. How Indonesia's government can provide a protection to the natural resources through Natuna Island?
b. How Indonesia Government can establish its sovereignty through Natuna Island?

B. Research Method

Method used in this scientific writing is normative legal research method that is a legal research carried out by examining literature or secondary data.[4] Secondary materials used are book materials on international law, specifically international law, maritime law, and diplomatic and consular law. Based on existing history, the

1 Nyabakken, J.W., 1986, Marine Biology : An Ecological Approach, (Translators : M. Eidmen, Koebiono, Dietrich, Hutomo, and Sukardj0), Jakarta :PT Gramedia , p. 18.
2 J.A.Draper, 1977, The Indonesian Archipelagic State Doctrine and The Law of The Sea : Territorial Grab or Justifiable Necessity? International Lawyer, Vol.11, no.1, p.44.
3 Sihotang, Japanton, 2009, Indonesian Border Sea Border Problems in the Arafura Sea and Timor Sea. LIPI Press., Jakarta,p53-56.
4 Soerjono Soekanto, 2001 Introduction to Legal Research, Jakarta: Rajawali, p. 15.

actual division of the sea has occurred since the 15th century where there was an agreement between Spain and the Portuguese which had great power in the very influential maritime field.[5] Meanwhile, in 1945, the President of the United States, Harry S. Truman, proclaimed that the power of the United States also covers the seabed around the mainland of the United States so that the United States has the right to use all the natural resources contained therein. This was later known as the Truman Proclamation. In its journey, it turned out that many countries were inspired by the Truman Proclamation so that each country declared its authority over the surrounding seabed, including Indonesia, which claimed power over the sea around the Indonesian Islands known as the Djuanda Declaration.

As a result, there was a sporadic phenomenon of marine area claims that occurred at that time. The United Nations considers that there is a need for regulation of control over the sea. Therefore, the United Nations held the United Nations Conference on the Law of the Sea which produced the United Nations Convention on the Law of the Sea 1958. In its development, the convention was finalized through the 1982 United Nations Conference on the Law of the Sea convention (hereinafter referred to as the UNCLOS 1982) which has been ratified by more than 160 countries. Indonesia has ratified the convention through Law No. 17 of 1985.

The approach used is the statute approach that is addressing all legislation and regulations related to the legal issues being addressed and Conceptual Approach that moves from the views and doctrines that develop in law. In this paper, the researcher's focal point to approach the problem discussed is Law Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (hereinafter referred to as UNCLOS), Law Number 5 of 1990 concerning Nature Conservation, Law Number 37 of 1999 concerning Foreign Relations, and Law Number 17 of 2019 concerning Water Resources. All of the regulations referred to are used in this paper to examine the issues surrounding protecting the living natural resources in the Indonesian sea borders and the appropriate way to resolve the issue of territorial water disputes between countries bordering Indonesia directly. The data used are secondary data obtained from literature studies and primary data obtained by conducting interviews with respondents and litigation institutions.

[5] Butcher, JG. 2009. Becoming and archipelagic state: the Djuanda Declaration of 1957 and the "struggle to gain international recognition of the archipelagic principle, in Cribb, R. and Ford, M. 2009 Indonesia beyond the water's edge - Managing an archipelagic state, Indonesian Update Series, RSPAS Australian National University, ISEAS, Singapore, p.28-48.

C. Discussion

1. The Maritime Law in Indonesia to Provide Sovereignty in Its Water Borders

The sea, especially the ocean, has special characteristics for humans. As far as the law of the sea, the law means a series of regulations regarding the behavior of people as members of the community and aims to establish order among the members of the community. The sea is a vast expanse of water between various continents and Island in the world.[6] Because Indonesia's territory consists of 60% of the territorial waters or oceans, the condition of the Indonesian archipelago is also elaborated.

The identification of islands in Indonesia has successfully confirmed the number of islands in Indonesia as 17,508 islands. Among those islands, there are 7,353 have name, while 10,155 are unnamed islands. Out of all the named islands, 67 islands are directly adjacent to neighboring countries, and 11 of them are located on the outer islands, which requires special attention. The eleven outermost Island in Indonesia are Sekatung Island and Natuna Island in Riau Island Province, Marore Island and Miangas Island in North Sulawesi Province, Fani Island and Fanildo Island and Behala Island in Papua Province, Rondo Island in Nanggroe Aceh Darrusalam (NAD), Behala Island in Province North Sumatra, Nipa Island in Riau Province and Batek Island in East Nusa Tenggara Province (NTT).[7]

In fact, Indonesia has a territory directly adjacent to neighboring countries, or a territory that is not directly bordered as is the case with the People's Republic of China (PRC). There is a difference of views between the State of Indonesia and the countries mentioned above regarding water boundaries. These differences in views have led to disputes with the countries mentioned above. The cases in the waters of the Natuna Island in mid-January 2020 had proved to us.

Understanding Maritime Law in general can be interpreted as: law relating everything that is related. In the history of the Anglo-Saxon legal system, Maritime Law is translated by the term Admiralty Law. The term means matters concerning the handling of legal matters concerning maritime by a court of admirals.

Meanwhile in a narrower sense, maritime law is in terms of the terms Shipping Shipping, Scheepvaartrecht, sea-transport law. The equivalent term is not appropriate because the scope of understanding of Maritime Law is more diverse than the terminology of shipping or sea transportation law. Understanding Maritime Law according to Black's particularly relates to commerce and navigation, to ships and shipping, to seamen, to the transportation of persons and property by sea, and to ma-

6 Wirjono Prodjodikoro, 1984, Law of the Sea For Indonesia, Jakarta : Bandung Well, p.8.
7 O.C. Kaligis & Associates, 2003, Sipadan-Ligitan Dispute : Why We Lose, Jakarta , P.8.

rine affairs generally. The law relating to harbors, ships and seamen. And important branch of the commercial law of maritime nations is divided into a variety of departments, such as those about harbors, property of ships, duties and rights of masters and seamen, contracts of freight, average, salvage, etc.

Having understood the Maritime Law above, there are several focal points of maritime law to state. The focal point is in the interest of whom the maritime law was created. Thus, maritime law, which focuses on issues around trade, navigation at sea and everything that covers it, accommodates the mindset of the Utilitarianism.[8] Utilitarianism is the legal thought that prioritizes the actual interests of each individual, so that the state is ”only” an embodiment of the actual interests of each of its citizens. This is what causes a lot of distortions and problems within law enforcement. It can be understood that the result of law enforcement based on actual interests is the justification of actions that are international in nature are sensitive to claims that are empirical / require proof. Based on the above understanding, the scope of Maritime Law includes:

1. Matters relating to ships,
2. Matters concerning the seaport of these ships,
3. Matters about shipbuilding (shipping industry)
4. The aspects of civil law and public law from the things mentioned above.[9]

The main functions of maritime law are formulated in the issuance of the ESCAP (Economic and Social Commission for Asia and the Pacific), Bangkok, Guidelines for Maritime Legislation:

1. Maritime Law provides the legal framework for maritime transport, i.e. the carrying out of a state’s foreign trade,
2. Maritime Law implements the basic objectives of a state as a port state and coastal state,
3. Maritime Law may serve the achievement of certain economic purposes.[10]

While in other parts, the law of the sea can be interpreted as aspects regarding the use and sources of marine resources. In the ESCAP Guidelines for Maritime Legislation, it is formulated that: The law of the sea encompasses all aspects of the uses and resources of oceans, the Maritime Law constitutes that specialized branch of the law which governs maritime transport and sea-borne international trade. Since the birth of the United Nations International Convention on the Law of the Sea (United Nations Convention on the Law of

8 Fernando R. Teson,1998, A Philosophy of International Law, United States America: Westview Press, p.50-51.
9 Joko Susanto, 2015, In Compilation Book : *Kemaritiman Indonesia, Problem Dasar Strategi Maritim Indonesia*, Malang : CV. Cita Intrans Selaras, p 26-28.
10 M. Husseyn Umar, 2015, *Hukum Maritim dan Masalah-Masalah Pelayaran di Indonesia Buku I*, Jakarta : Fikahati Aneska, p. 5.

the Sea) in 1958 and 1982, the framework for regulating International Sea Law covers the following matters:

1. The spatial boundaries of all marine spaces and legal regimes concerning national sovereignty or jurisdiction over oceanic spatial areas which connect to the coast, access to the ocean,
2. Shipping, protection and preservation of the environment against pollution,
3. Exploitation of biological and vegetable resources and their preservation, scientific research on maritime,
4. Seabed mining,
5. Settlement of disputes.[11]

The Sea Law Convention also details various legal regimes regarding freedom of sailing in the open sea, including in the EEZ and for seagoing in territorial seas through international straits and archipelago waters. In this arrangement, the coastal state has the authority to make laws and regulations regarding sea traffic in the area for shipping safety and regulate shipping traffic, protect facilities and navigation aids, and preserve the environment and control pollution.

On February 25, 1992, the government of the People's Republic of China (PRC) announced the Law of the Territorial Sea and its Additional Zone, where the Natuna Island was included in its Territorial Jurisdiction. The Chinese interests in the South China Sea region extend to the fisheries area of the Natuna Island. From the capturing of KM. Kway Fey (a motor vessel) with the Chinese flag and eight crew members from China by the Indonesian Ministry of Maritime Affairs and Fisheries (KKP), it was evident of the interests. This polemic was exacerbated when the ships did not merely enter Indonesian sovereignty but also illegally caught fish with the protection of a coast guard.

Territorial sovereignty of a country is three dimensional including land, air and sea. Sovereignty over land covers land surface, land, and land under land to an unlimited depth. Sovereignty over airspace includes airspace which is located above the surface of the land area and which is located above the territorial waters of a country. Whereas in the sea area, a country's territorial sovereignty includes the zone of inland waters, territorial waters and territorial seas. The territorial sovereignty of a country is also regulated under Article 2 of UNCLOS 1982. The explanation of the convention explains that the basic concept of space for sovereignty as the highest authority of a state is limited by the territory of that State, so that the state has the highest power within its territory. Mochtar Kusumaatmadja stated that a consequence of understanding sovereignty in this limited sense, besides independence, also understood equality. That is, besides the sovereign states, each of them is independent; they are also of the same rank as the others. Mochtar Kusumaatmadja stated that independence and equality are

[11] M. Husseyn Umar, 2015, ibid, p. 6.

forms of the realization and implementation of the definition of sovereignty in a reasonable sense.[12]

The importance of sea areas in relations between nations also makes the importance of international sea law important. The purpose of this law is to regulate the dual use of the sea as a highway and as a source of wealth and energy. In addition, the law of the sea also regulates competition between countries in seeking and using the wealth provided by the sea, especially between developed and developing countries.

2. *The Enforcement on Maritime Regime, the Difficulties Inside*

Law was born from international customary sources. This international custom was born from the same actions and carried out continuously on the basis of the same needs at sea. International customs are also common habits that are accepted as law. Be aware that international customs as a source of law do not exist, since a source of law is closely related to international treaties. This relationship is a reciprocal relationship.

International agreements are agreements that are held between members of the community of nations and aim to have certain legal consequences. Legal sources of sea law were the result of the 1958 UN conference in Geneva. The conference, which was held from February 24 to April 27, 1958, was called the UN Conference I on the Law of the Sea, was successfully agreeing on four conventions, as follows:

a) Convention on the Territorial Sea and the Contiguous Zone entered into force on September 10, 1964;
b) Convention on the High Seas came into force on 30 September 1962;
c) Convention on Fishing and Conservation of the Living Resources of the High Seas (Convention on Fisheries and Protection of Open Sea Biological Resources), entered into force on March 20, 1966;
d) Convention on the Continental Shelf came into force on June 10, 1964.

In other regions, there are sea areas which must be regulated with different uses. These parts are the Exclusive Economic Zone, the territorial Sea, and other parts. The Exclusive Economic Zone is a new arrangement established by the UNCLOS 1982. Long before the birth of this regulation, the outer boundary of the territorial sea was considered as the boundary between the part of the sea towards the land where full sovereignty of the coastal state applies, and the part of the sea outward from that boundary where the freedom applies in the high seas. The arrangement of the Exclusive Economic Zone can be considered as the result of a revolution that has changed in such a way the arrangement of the sea.

[12] Mochtar Kusumaatmadja, 1978, Bunga Rampai Hukum Laut, Jakarta : Bina Cipta, p.151-153.

In general, it can be defined what is meant by the Exclusive Economic Zone, namely ”the part of the water (sea) located outside of and bordering a territorial sea as wide as 200 (two hundred) nautical miles measured from the baseline where the width of the territorial sea is measured”. The width of the Exclusive Economic Zone for each coastal country is 200 miles as affirmed in Article 57 of UNCLOS 1982 which reads ”the exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from the breadth of territorial sea is measured” may exceed 200 nautical miles from the base line of which the territorial sea width is measured ”.

Article 55 of UNCLOS 1982 confirms that the Exclusive Economic Zone as waters (sea) located outside and adjacent to the territorial sea, subject to the special legal regime (special legal regime) stipulated in this Chapter, is based on where the rights and jurisdiction of coastal states, as well as other national freedoms, are governed by the relevant provisions of this convention. This particular legal regime appears in the specific law applicable to the EEZ as an integration, which includes:

a. sovereign rights, jurisdiction and obligations of coastal states;
b. the rights and freedoms of other countries;
c. freedom of the high seas; and
d. the rules of international law as specified in the convention.[13]

Therefore, in connection with the case of claims against the Natuna region, both of the PRC and Vietnams has violated the rights, jurisdiction and obligations of a coastal state. their means that PRC should not neglect the property rights of Indonesia as a coastal state. These rights include:

a) Sovereign rights for the purposes of exploration and exploitation, conservation and management of natural resources, both biological and non-biological, from waters on the seabed and from the seabed and the land beneath, and in connection with other activities for the purpose of exploring the Exclusive Economic Zone, such as the production of energy from water, currents and wind.
b) Jurisdiction as provided in the relevant provisions of this convention with regard to: i. manufacture and use of artificial islands, installations and buildings; ii; marine scientific research; iii. Protection and preservation of the marine environment.
c) Other rights and obligations as specified in this convention.

In exercising rights and fulfilling obligations under this convention in the Exclusive Economic Zone, coastal States must pay due attention to the rights and obligations of other countries and must act in a manner consistent with the provisions of

[13] M. Yunus, 2015 in Compilation Book : *Kemaritiman Indonesia, Problem Dasar Strategi Maritim Indonesia; Nusantara : Negara Maritim, Petani, atau Sekadar Sebaran Pulau*?, Malang : CV. Cita Intrans Selaras, P. 70-71.

this convention. The rights listed in this article with regard to the seabed and the underlying land must be implemented in accordance with the provisions of Chapter VI UNCLOS 82.

The Southeast Asian region has increasingly become the target of ”ghost ships” that are rumored to be sailing with hundreds or even thousands of tons of cargo that suddenly disappear with cargo worth hundreds of millions of US dollars. The ”ghost ships” disappear or are declared sinking even though they had sold their cargo and diverted it to other ships in international waters or at other ports. These ships with certain methods, methods of cheating, or certain modes of operation change the ship’s identity to a new identity (generally to countries of flag of convenience, such as Panama, Liberia, Honduras, etc.). Crimes related to such shipping have increased in the past 10 years.

Several types of fraud that can occur / involve crime / fraud in the maritime world can be categorized into five (5) categories, namely:

1. Fraudulent use of documents. This is a crime / fraud manipulation of transport documents / arrangements, invoices, insurance polls, certificates of origin, quality certificates of goods, falsification of these letters, or original letters filled in with false data).[14]
2. Deviation from the proper shipping route (deviation) and theft of cargo.[15]
3. Fraud in ship charter, (including fraudulent use of the proper charter time. Where the ship user (charterer) manipulates the charter time intentionally and fraudulently, the ship owner still has to fulfill delivery obligations even though the charterer has not performed its obligations.[16]
4. Fraud related to ship or cargo insurance, including the intentional action of burning or sinking the ship.[17]
5. Other frauds, including fraud related to activities at the port.[18]

Based on the above classification, the number of cases that occurred in Natuna Sea in the past decade can be described as following crimes/frauds:

1. Natuna sea area is very rich in biological wealth in the form of various types of fish, the oil content is quite promising, and also the treasure of shipwrecks, but the monitoring system is still very weak.

   It requires a great deal of funds to oversee the Island and Archipelago in Indonesia. These funds include, among other things, used for patrol

[14] Nunung Mahmudah, 2015, Illegal Fishing, *Pertanggungjawaban Pidana Korporasi di Wilayah Perairan Indonesia*, Jakarta : Sinar Grafika, p. 94.
[15] Nunung Mahmudah, 2015, ibid, p. 95.
[16] Wiwoho Soedjono, 1982, Hukum Perkapalan dan Pengangkutan Laut, Jakarta : Bina Aksara, p.138-142.
[17] Wiwoho Soedjono, 1982, ibid, p. 87-88.
[18] Baharuddin Lopa,1982, Hukum Laut, Pelayaran, dan Perniagaan, Bandung: Penerbit Alumni, p.194-195.

costs, fuel costs, from patrol vehicles and other costs. However, during the last period there was a reduction in costs for the budgets referred to above. Furthermore, Executive Director of the Maritime Study Center for Humanity Abdul Halim gave a response to the re-emergence of the practice of fish theft by foreign fishing vessels (KIA) in the North Natuna Sea.[19] Halim said that a decrease budget allocated for supervision of marine and fishery resources in the Directorate General of PSDKP, Ministry of Maritime Affairs and Fisheries (KKP) in the 2018-2019 fiscal year has significantly influenced the protection of the North Natuna Sea region.

He stated that the decrease in budget allocation had an impact on the decreasing number of monitoring days at sea, from 145 days to 84 days in a year.[20] The decline in the surveillance budget at sea by the CTF, apparently also occurred at the provincial level through the Department of Maritime Affairs and Fisheries. One example is the PSDKP budget allocation in the North Maluku Province DKP which decreased during the period from 2017 to 2019. As a result of the reduction and budgeting, the number of days for supervision dropped dramatically from 60 days in 2017 to 24 days in 2019. The budget reduction for PSDKP is considered to be one of the main causes that weakened the overseeing of Indonesia's sea areas, especially those directly adjacent to neighboring countries such as North Sulawesi, North Maluku, Riau Islands, and others.

2. The position of Natuna Island is very strategic and because of its strategic position which directly faces the South China Sea, Natuna Island borders a number of countries. Thus, it is not surprising that the Ministry of Maritime Affairs and Fisheries (hereinafter referred to as KKP) often catches foreign fishing vessels (henceforth called MCH) that are operating in these waters. In fact, KIA since 2014 has no longer been able to fish in Indonesian waters, or in other words it has been declared illegal.
3. Supervision of the granting of permits for foreign fishing vessels which often falsifies the identity of letters for sailing and letters for fishing.

Acting Director (Acting) Director General of Maritime and Fisheries Resources Supervision (PSDKP) Nilanto Perbowo explained that KIA captured in the Natuna waters often used flags of the states in the Southeast Asia or Asia regions.[21] From the arrests made

[19] www.mongabay.co.id, Jay Fajar , May 18, 2018, *Laut Natuna Masih Disukai Kapal Asing Penangkap Ikan Ilegal,. Kenapa ?*, downloaded on June, 6, 2020, 15.00 Wib.

[20] https://wow.tribunnews.com , Mariah Gipty, December, 31, 2019, *Direktur CMSH Ungkap Faktor Kapal Asing leluasa Masuk Indonesia, Bandingkan Anggaran 2018 dan 2019*, downloaded on June, 6, 2020, 15.00 Wib.

[21] https://kkp.go.id, January,20,2020, *KKP Bebaskan Nelayan Indonesia yang tertangkap Aparat Malaysia*, downloaded on June 7, 2020, 13.00 WIB.

by the SHIP 04 Fishing Supervision Boat (KP) in the waters of the North Natuna Sea, 60% of KIA cases were found to have used fake permits, or incomplete shipping documents and ship permits. MCHs that were captured by these officers also did not have valid documents from the Government of Indonesia for fishing in the Fisheries Management Area of the Republic of Indonesia (WPP-RI).

Indonesian surveillance vessels continue to carry out routine surveillance operations on Illegal, Unreported, Unregulated Fishing (IUUF) vessels around the North Natuna Sea. But, weaknesses to the existing surveillance system still has been found until now.

4. Enforcement by the government of Indonesia to crack down MCH cases is deemed to be ineffective to entrap fish thieves.

Indonesia carried out enforcement actions by 3 (three) related institutions, namely the CTF for issues around Fisheries and fishermen, the Ministry of Foreign Affairs Department for issues concerning International Relations and the Boundaries of the State and territories of the Islands, as well as the Ministry of Maritime Coordinator and Investments in charge of the exploration and utilization of the sea and its wealth. From a number of cases that have been prosecuted, actions are often only carried out on actions against the captain of the ship. Such actions can be considered as ineffective actions. This is in line with the statement by the expert of Sea Law Expert at the Faculty of Engineering, Gadjah Mada University Yogyakarta, I Made Andi Arsana.[22] He stated that legal action which was limited to the captain of the ship was not enough to make a deterrent effect on the ship owner's company. In addition, law enforcement against illegal fishing must touch on fishing theft practices at the border, such as double flagging, shutting down the VMS (vessel monitoring system), and transshipment (transfer of ships) in the middle of the sea.

He explained that under the provisions of Law No. 7 of 2016 concerning the Protection and Empowerment of Fishers, Fish Farmers, and Salt Farmers, smaller vessels under 10 GT are categorized as small fishing vessels and the use of such vessels becomes the modus operation to steal fish using small MCHs. Having this status would make the owner of the ship with concerned size receive various facilities from the KKP. The CTF also gave permission to conduct fishing. Consequently, illegal fishing conducted by Small Fishing Vessels is not acted on or "released". In fact, small MCHs

[22] I made Andi Arsana, 2007, *Batas Maritim Antarnegara, Sebuah Tinjauan Teknis dan Yuridis*, Yogyakarta : UGM Press, p.144-145.

were axes for larger MCHs to wait in the middle of the sea.

5. Fishers from Vietnam, China deliberately involve their country's coast-guards to secure the fishing vessels of the two countries while sailing in the exclusive economic zone (EEZ) area of Indonesia. This condition has taken place in recent weeks and has provoked Indonesia to secure its sovereignty in the territorial waters.

The Natuna Island in the region of Riau has long been a busy area traversed by fishing vessels from around the world. The situation has not changed, despite political tensions in recent years in the region involving East Asian and Southeast Asian countries. Within this year, one of the Southeast Asian countries, Vietnam, even more aggressively catches fish in waters that fall into the exclusive International Economic Zone (EEZ). Not surprisingly, during 2019 the Ministry of Maritime Affairs and Fisheries (KKP) claimed to have found 13 patrol vessels in the country that were on guard or were always in those waters. For Indonesian Destructive Fishing Watch (DFW) National Coordinator Moh. Abdi Suhufan, the vigilance of the 13 Vietnamese patrol boats is aimed at keeping fishing activities carried out by their fishermen to continue to run well.[23] The ships consist of fishing patrol boats and coast guard vessels and focus on safeguards in the border areas between countries. That was done by Vietnam, because it was not yet clear of the exclusive economic zone boundaries of the two countries (Indonesia and Vietnam), so that it became a gap and justification Vietnam to expand fishing territory in the North Natuna Sea."

D. Closing

Approaches of the Government of Indonesia to provide protection to the natural resources in Natuna Island:

1. Upholding sovereignty in the Natuna Sea with the principles of International Sea Law without prejudice to the maritime status of the State Sovereignty of Indonesia in the Natuna Sea should be realized by upholding Indonesia's Internal Sovereignty as a political unit that is unanimously united in the territorial integrity of its people and ethnic groups. Thus, the territorial sovereignty between the Natuna Sea and the Riau Island and the Indonesian people cannot be separated as part of the sovereignty of the Indonesian state itself.
2. Bringing the strength of the marine fleet to support security in the Natuna Sea and other waters.
3. In supporting sovereignty as explained above, it requires supporting force to

[23] www.mongabay.co.id , Jay Fajar, September 6, 2019, *Ulah Vietnam Ini Mengintimidasi Indonesia di Laut Natuna Utara*, downloaded on June 9, 2020,10.30 WIB.

maintain the sovereignty. The strength of the sea fleet will be the most logical consequence for securing Indonesian territory, including the Natuna Sea.

4. Formulating a security and enforcement strategy against KIA that violates the Indonesian Sea.
5. With the existence of the recognition of Indonesia's sovereignty which is round and intact with all the consequences of supplying the strength of its naval fleet, then we need a security and enforcement strategy for the MCH who commit violations and crimes in the Indonesian sea. This security strategy needs to be outlined with a law that does not overlap and clearly stipulate the interests of citizens that are protected as national interests and the direction of development of an effective form of action for each MCH, wherever the territorial waters of Indonesia are located.
6. Establishing clear agreements / treaties regarding the boundaries of territorial waters with neighboring countries.
7. As explained above, one of the problems in the Natuna Sea is the unclear sea boundary which will create obstacles for the interests of the state (in this case the coastal state) and the people protected by claims of authority over the sea which includes the sea, coast, coast and all their wealth. With the establishment of bilateral agreements between countries bordering directly on their territorial waters, actions will be minimized in violation / crime against other countries' territories.

Approaches of the Government of Indonesia to establish its sovereignty in the Natuna Island

1. The full implementation of geostrategic of national resilience (*geostrategic-tanas)* that had been announced in the Post-Reformation Era

The concept of national resilience (*Tannas*) Indonesia is the conception of developing national power through the regulation and implementation of welfare and security that are balanced, harmonious in all aspects of life as a whole and in an integrated manner based on *Pancasila*, the 1945 Constitution, and the Archipelagic Insights. In other words, the conception of the National resilience of Pancasila is a guideline (means) to improve the (resilience) method and resilience of the nation incorporating the ability to develop national power with a welfare and security approach.

Welfare can be described as the nation's ability to grow and develop its national values for the sake of the prosperity of the people in a fair and equitable manner. While security is the ability of a nation to protect its national values against threats from outside and within the country.

Thus, in the Post-Reformation era, the nature of national development was directed towards the development of the Indonesian people as a whole and the development of Indonesian society as a whole. This principle will create an equal life to other advanced

nations. Development from the people, by the people, and for the people which includes political aspects, economy, socio-cultural, defense and security, requires harmonious relations with God the Almighty, amongst fellow humans, and the surrounding natural environment. Community is the main actor of development and the government must direct, guide, and create an atmosphere that supports and utilizes all national resources. The goal of national development is to realize an equitable and prosper community that is distributed evenly on material and spiritual basis based on *Pancasila* and the 1945 Constitution in the Republic of Indonesia which is independent, sovereign, shared, united, and sovereignty of the people in an atmosphere that is secure, peaceful, orderly and dynamic in the Republic of Indonesia. The reflection of a free, dignified, orderly and peaceful world.

2. Effective application of the Indonesian Maritime Axis Principle

Indonesia is the largest archipelagic country in the world that has the potential to become the World Maritime Axis. The World Maritime Axis aims to make Indonesia a large, strong and prosperous maritime country through the restoration of Indonesia's identity as a maritime nation, safeguarding maritime interests and security, empowering maritime potential to realize Indonesia's economic equality.

Becoming the World Maritime Axis country will include the development of maritime processes from infrastructure, political, socio-cultural, legal, security and economic aspects. Upholding the sovereignty of the sea territory of the Republic of Indonesia, revitalizing marine economic sectors, strengthening and developing maritime connectivity, rehabilitating environmental damage and conserving biodiversity, and increasing the quality and quantity of marine human resources, are the main programs endeavor to realize Indonesia as a global maritime axis. In achieving this goal, it takes 5 ways to build Indonesia's maritime affairs. The five ways are rebuilding Indonesia's maritime culture, commitment in maintaining and managing marine resources with a focus on building marine food sovereignty through the development of the fishing industry by placing fishermen as the main pillar, commitment to encourage infrastructure development and maritime connectivity by building sea tolls, sea ports, logistics, and shipping industry, as well as maritime tourism, maritime diplomacy which invites all Indonesian partners to work together in the maritime sector, and building maritime defense forces.

For the PRC, it is best to immediately stop the claim on the Natuna region, as long as the territory of the Indonesian state as a Coastal State. For the government of the Republic of Indonesia, in order to

maintain full preparedness in maintaining sovereignty in the Republic of Indonesia.

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THE SETTLEMENT OF TERRITORIAL DISPUTES AMONG COUNTRIES IN THE PERSPECTIVE OF INTERNATIONAL LAW AND OTHER ASPECTS

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ABSTRACT

International law is a set of international rules originated from agreements or conventions among countries that is justified as a legal norm to maintain secure relationships, friendships, and sovereignty respect among states. Adversely, acquisition of territory by disputes remains an unsolved matter in international relations until this recent era. Consequently, the theme of research required an international law`s perspective on settlement of territorial disputes which is the biggest matter that generates an international relationships convulsion among states in the past and even in this recent world as well. The authors hereby divided the discussion on this research into two big parts: first, different methods of disputes resolutions in the view of International law, which subdivided into two small parts a) legal binding resolution and b) Non-legal binding resolution, and second, the trends of international law and capability of international organization on settlement of disputes recently, divided into different parts a) Choice of methods, b) Partiality and favoritism in adjudication of decision-making and c) Deficiency of UN`s organs. At the end, the conclusion presented areform plan towards an effective solution on resolution of territorial disputes. Further, this paper compiled UN views through different cases and legal comparisons towards a new perspective on how to settle territorial disputes efficiently and challenges of international law. Thus, this research is intended to be published as an accurate perspective on settlement of territorial disputes across the world, especially to countries which need it.

Keywords: disputes settlement, territorial disputes among countries, International law and other aspects, legal binding resolution, and non-legal binding resolution.

A. Introduction

Recently, settlement of territorial disputes becomes a broad subject in the perspective of international law. Unfortunately, this predicament is faced by many countries around the world. . Such trend has a significant meaning in the international society, by the fact that it is related to fundamental rights of states, sovereignty, and also international peace. Territorial disputes are major cause of wars and terrorism as states often try to assert their sovereignty over a territory through invasion. Apparently, the international organization does not encourage the use of force by a state to annex the territory of another state, set forth by United Nations Charter[1] in Article 2 (4) mentions: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". International laws have been significantly affirmed by the rules related to inviolability of sovereignty over territory. Set forth in Montevideo convention of 1933 on rights and duty of state, that every State shall have its population, governance and delimited territory with entire sovereignty, namely other States are prohibited to penetrate without permission from the territory owner.

By simple determination, there are discrete reasons why bring about proliferation of territorial litigations such as a geographic situation, culture, economic resources, and the emergence of new State whether by self-determination or by the reasons determined by customary law. Between territorial dispute and boundary, the main causes of disputes are the disagreements over the acquisition of the territory. The acquisition of territory is referred internationally on several reasons such as, the occupation of Terra nullius; prescription; cession; accretion and by conquest over the land territory especially and which can inflict the possession of the sea territory. In further case, territorial disputes have often been the result of vague and unclear language in a treaty that set up the original boundaries, which justifies the reasons why charter of United Nations warns its member to respect the mutual understanding of situations that tend to generate military conflicts and does not support the use of force by one state to annex the territory of another state. Additionally, the UN Charter also states that all Members shall refrain their international relations from the threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the Purposes of the United Nations.

[1] The international organization that has perfect rules and organs in handling most disputes in international relations and its rules bind all member states, which recently consist of 192 states. It has set forth in article 38 all methods that can be used in resolving international disputes particularly the territorial disputes.

Historically, most of the wars and crisis across the world in the past[2] and so far, were concerned with the possession of the territories whether land or sea. Hence the question is posed; How to process the settlement of disputes on acquisition of territory internationally? What are the legal methods in settlements? And have the previous resolutions conformed with the perspective of international law? In the fact that there have been several countries disputed on acquisition of territory in the past which were peacefully resolved. However, the territorial disputes are surprisingly unstoppable until present days, and more countries continue to claim and fight down to be the legal owner of some territory[3]. For that reason, the most acquisition of territory issues that could be disputed among countries and will probably be resulted in risks towards military conflicts, are strongly emphasized by UN charter, shall be peacefully settled. Hence, the title of our study is "The settlement of Territorial Disputes among Countries in the perspective of international law and Other Aspects". It underlines the necessity to grasp respectively the reasons why interstate territorial disputes are ubiquitous, and the resolution methods could be used in accordance with purport of international law. However, other methods that have been effectively used to resolve the past cases, had represented equally the interest of the disputants, are important as well.[4] As a result, those reasons mentioned above lead us to develop this paper in compliance with the real meaning of our topic into sections as follows:

At the beginning, we start with the explanation of the different methods of disputes resolution with its appropriateness. Commonly, as the recourse of the U.N, the international court of justice and forum towards the arbitration are mostly used in the past as legal binding resolution. Nevertheless, there are other track-ways non-legal binding to peaceful settlement of territorial disputes which have been broadly neglected, but usually employed as recourses to process onto legal resolution of dispute nowadays, such as negotiation, mediation and consultation of experts.

On other hand, critics in settlement of disputes by judicial resolution[5] are showed up, by the fact that the proliferation of territorial disputes are not decreasingly well-managed by international organization and rules which are supposed to be an international norms, in terms of a lot

2 Victor Prescott "Contribution of United Nations to solving boundary and territorial disputes, since 1945" department of geography and Environmental studies, University of Melbourne, Parkville, Victoria 3052, Australia.

3 A lot of countries are disputed recently including these 5 borders which are reported as may cause a trouble" China and India, Venezuela and Colombia, Eritrea and Djibouti, Iraqi and Syria and Cyprus", marked that territorial conflict is a dead-end disputes.

4 Friendly settlement of territorial disputes set forth by UN Charter are deemed necessary to settle a dispute between countries despite its non-legal force (consultation, mediation, reconciliation, etc).

5 Settlement of disputes through ICJ or Arbitration is legally binding. When there is a legally binding dispute settlement, then each disputing state must acknowledge the decision taken whatever it is, which occasionally induce partiality.

of countries are currently and imminent to dispute. Knowingly, that situation might be the results of deficiency of international law more particularly international UN. It might also be a form of disappointments of a country that shall win the settlement of dispute, but on the contrary lost its right because of partiality and favoritism of the decision-maker. This critical approach is evoked in order to adjust the territorial disputes resolution.

B. Research Method

In order to evoke a significance perspective and analysis on this paper, it is necessary to manage various methods of researches by consulting the international law text books like U.N Charter on settlement of territorial disputes, the rules agreed on settlement of boundaries disputes and the law of the sea whether it concerns the territorial sea disputes. The formulation and analysis on the settlement of previous facts were also applied in this research in terms of comparing the enforcement of the international rules in compliance with international customary law. In addition, it also refers to the previous documents that were internationally accepted such settlement of international territorial disputes written by author cross-outstanding universities (Cambridge University in U.K, Harvard University in USA, and so on).

As a matter of fact, this paper does not only refer to a limited settlement of territorial disputes written in some international organizations affecting the settlement of disputes, but also to determine the possible ways of resolution by observing the efficiency and its applicability.

The use of these above-mentioned methods of research does not suffice to clarify the point of this topic. It broadly calls for a depth self-analysis and perspectives in regard to the international laws, especially to advance self-critic and suggestion aim at bringing about the legal and peaceful settlement of disputes among countries. Therefore, the ideas and scope of this research are compiled through numerous international law perspectives and the author self-analysis so as to neatly show up the suitable and proper methods on territorial disputes resolution, and with an understanding to omnipresent fickleness of international laws.[6]

C. Discussion

1. Different Methods of Disputes Resolution in the View of International Law

In international law, the settlement of territorial disputes depends upon circumstances therewith, some states dispute in the default of clear delimitation of boundary and others also dispute to the territory land or sea where there is no clear

[6] Throughout analyses of international cases, that some countries have been truly satisfied by adjudication from the international organization on settlement of its territorial disputes, and there are also some states which never find out a suitable resolution in the fact that there is an inconsistency of the international rules.

determination and accuracy ownership as affirmed by international law. Apart from these reasons, the construction of an artificial island becomes the biggest recent dispute, in terms of that there is no legal definition about this matter, even in the UNCLOS. Therefore, the resolution of the dispute should be flexible in accordance with what the countries on disputes are willing for.

a. Legal binding Resolution of International Territorial Disputes

Generally, it is necessary to clarify what is meant by the term ”international legal dispute resolution” that is defined as a resolution refers to state practice of submitting disputes to a deliberative body that assesses the merits of rivals that state claims and issues a summary decision as to how to settle the dispute.[7]

The term International legal dispute resolution is used in a broad sense to include both arbitration bodies and international courts of litigation and non-litigation. While the two types of bodies possess certain differences, in practice arbitration panels[7] and international courts are often function quite similarly.

1) Settlement Of Territorial Disputes At International Court Of Justice

In international law, the ownership of territory is especially significant because the sovereignty over land or sea defines what constitutes a state. In several attempts, however, these boundaries and land disputes are subject to competing international territorial claim. Such land claims can be distinguished determinedly into nine categories: treaties, geography, economy, culture, effective control, history, uti possidetis, and elitism. States have to rely on nine categories to justify legal claims at international courts of justice. The most common claims are cast in terms of effective control of the disputed territory, historical right to title, uti possidetis, geography, treaty law, and cultural homogeneity.[8] Adversely, territorial sea disputes are internationally referred more on UNCLOS, while international laws and international conventions bring about the convention on measurement of continental sea breadth, contiguous Zone and EEZ.

a) Territorial Claims Through Legal Justification

Cases may come before the international court of justice, an independent subsidiary organ of United Nations, by referral through agreement between two or more states, by a treaty provision committing disputes arising under the treaty to the court, or by the parties` statements of compulsory jurisdiction. In fact, under Article 38 of the statute of the international court of justice, when deciding cases in ac-

7 Through claims before UN organs, security council shall when it deems necessary and ICJ.
The instance of arbitration court, which is often, used in international various dispute settlements.

8 Cultural rights in the case law of the ICJ, Cambridge University press: 24 April 2014, vol 27, pp.447-464.

cordance with international law, the court shall apply to the following sources of law:

- International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- International custom, as evidence of general practice accepted as law
- The general principal of law recognized by the civilized nations;
- Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Furthermore, if the parties agree, the court may decide a case under equity principles[9]. Territorial claims before the ICJ usually fall with one of the above four categories. Substantively, treaty claims are the easiest to assert, because the existence of a treaty is easier to prove then the existence of customary international law[10], which requires evidence of state practice or the existence of general principles of law recognized by civilized nations. However, in the lack of these mentioned above the litigant can base on no legal and politic claims. Hence, it is necessary to develop all details about the justifications:

Firstly, treaty law, as compared to other bases for territorial claims, the territory justification is more legal in nature, because it is less emotionally persuasive than historical claim might be. Nevertheless, claims based on treaty are particularly persuasive at the ICJ because Article 38 of the ICJ statute obligates the court to consider the treaties. Thus, it is no surprise that treaties are binding on the parties that have ratified them. Despite the appeal of treaties as contractual agreements between parties to a territorial dispute, a particular difficulty with the ICJ`s use of treaty law is the application of a certain treaty to states not party to the agreement. In the most cases, treaties are used to demonstrate the consent of other states with respect to boundaries later inherited by the litigants before the ICJ.

Secondly, geographical justifications for territorial boundaries or land are neither novel nor uncommon. Natural borders create a clear dividing line between two countries, such mountain ranges, rivers, oceans, and other bodies of water and physical formations have perennially separated political entities; offer a buffer of security; often do not require active patrolling by border guards, and historically have been more difficult to dispute than borders less easily identifiable by a physical landmark. Natural boundaries, however, can present neighboring states with problem

[9] System mostly used in common law countries which refers on to what is fair and reasonable (BIICL, international and comparative law).

[10] Aspect of international law involving the principle of custom, considered as primary sources of international law.

of precision in demarcation[11], delimitation, or both. By their nature, it can be difficult to mark and natural information creating boundaries are not stable; thereby making resource allocations in the frontier region more problematic.

Thirdly, in international rules economic aspect can be as well a genuine justification of territorial claims at international court of justice. The claims assert that the territory in question is necessary to the viability or development of the state. For example, the territory may be necessary to facilitate internal and international transportation routes for goods to exploit raw materials, to cultivate land, and the alike. Economic claims also include the more novel claim that certain territory should belong to the clamant because it presents a close economic relation. State makes this claim with respect to colonies.

Fourthly, cultural justifications are based on the ethnic nation argument, which underlies any justification for drawing a border in a specific place because of common language, religion or other cultural characteristics that defines the group of people living in a particular territory. In a territorial claim based on culture, the claimant state contends that because of shared pasts. The core of the cultural claim is a sense of belonging, but the characteristic creating this belonging varies by group and region. Language also has been used as a distinguishing characteristic that enables ruling classes to emerge to the detriment of the minority groups. It is often agonized to claim based on the doctrine of self-determination, which draws state boundaries corresponding to the distribution of national groups with the territory. Ideally, self-determinative actions would result in a more culturally homogenous state[12].

Fifthly, a claim based on effective control is one in which a group claims certain land because the group has an uncontested administration of the land and its resident population. Basing on juridical conception that effective control is a "*SINE QUA NON*" of a strong territorial claim.[13] The status of abandonment as a precondition to effective control is highly debatable and on the other hand the land "*TERRA NULLIUS*" a territory not belonging to any particular country.[14] Previously, only discovered land was *terra nullius*, term encompasses land over which no state exercises sovereign control.

Principally, when the rightful sovereign acquiesces in the control of territory by the infringing the sovereign, the requirement of abandonment is inapplicable altogeth-

[11] Demarcation Practices, organized by OSCE borders Team in co-operation with the Lithuanian OSCE chairmanship, 31 May to 1 June 2011, Vilnius Lithuania.

[12] The U.N Charter and other international conventions allowing a state to have self-determination, fundamental rights of state, Montevideo convention in 1933.

[13] Strict condition, likewise Israel, Gaza, and the End of its effective control in default non lawful control.

[14] *Terra Nullius* in the ICJ judgments on cases concerning Ligitan/Sipadan (2002) and Pedra Branca 2008, European Journal of I.L, volume,26, issue3,08-2015, pp 709-725, and DANIEL LAVERY written book about Doctrine of *terra nullius*.

er. That is the legal doctrine of acquisition by acquiescence, means appropriation or control of territory with problem and though is inacceptable.

Sixthly, Historical claims to territory are based on historical priority[15], which country was firstly possessed and occupied with duration. Although effective control means the possession, presents the strongest claim under property law, historical claims create an underlying entitlement to territory, regardless of whether a state has actual or constructive possession of the land at the time of the claim. Thus, historical claims tend to be the most common, compared to the other claims discussed here. A claim of historic right is bolstered by the passage of time; when the encroached state does not act to counter the claimant`s right, it is deemed to have acquiesced in that right and is prevented from rejecting the title for lack of consent. In fact, historical claims often relate to culture claims, in the reason that the clamant possesses greater cultural importance of the territory, and it is strong when the territory in question is the claimant group`s homeland because that includes both priority and duration, and expresses the ultimate case of mainland symbiosis.

Seventhly, *Uti possidetis*, a principle used to define postcolonial boundaries in Latin America, Asia, and Africa, is a doctrine under which newly independent states inherit the pre-independence administrative boundaries set by the former colonial power.[16] The doctrine posits that title to the colonial territory devolves to the local authorities and prevails over any competing claim based on occupation. Thus, *Uti possidetis* is predicated on a rejection of self-determination and assumes that internal, administrative boundaries are functionally equivalent to international boundaries.

Eighthly, Elitism claims to territory contend that a particular minority has the right or duties to control certain territories. Historically, such claims were made most frequently, often shaped them in terms of divine right to rule certain territory. The claims have become rarer over time because they run counter the democratic ideal. Nevertheless, elitist claims have a modern and public incarnation in argument for territory based on superior technological ability, a particular group claims control over a territory by virtue of having the capacity to develop the land`s potential most fully.[17]

Finally, the last one is ideological claims; resemble claims of a special mission based in unique identification with land and having inherent exclusivity overtones. While, ideological justifications for

[15] The possession of territory depends upon history of the territory, it is more related with culture of the territory where is claimed or usages as well.

[16] Latin for "as you possess under law", BRIAN TAYLOR SUMMER "Territorial Disputes At the International court of justice "frontier disputes(Burkina Faso/Mali) was based on *uti possedeti in 1983, Duke law Journal, p.19(1986. ICJ.556,556-57.dec.22)*.

[17] Ibid, the use of Elitism claims, territorial disputes (Libia/Chad},1994 I.C.J,6,12-13(feb.3).

territorial claims are more appropriately termed ideologically imperialist. The anti-colonial ideological justification, which argues that colonial boarders are per se inappropriate delimiters of territory for moral or legal reasons, is definitely the antithesis of *Uti possidetis* claim.

b) Value of Jurisprudence on Resolution of Territorial Disputes in the view of International law

This part uses the forgoing categories of justifications for territorial claims for analyzing land disputes adjudicated by the international court of justice. These cases are the only land boundaries cases that the court has adjudicated. As a result, the territorial land refers on these aforementioned reasons opposing the sea that focuses on international conventions. Accordingly, it leaves out the question on how to determine those reasons through the jurisprudence.

At the beginning, it is quite necessary to define the term international jurisprudence. Simply, international jurisprudence is a court`s previous decision that has been used in an ambiguity in which these nine justifications above are not compatible to solven the disputes among countries. Therefore, the court had to find out other perspectives to take as a resolution of the matter, then that decision becomes a reference for the next similar cases.

That definition is obviously required to corroborate how the court adjudicated its decisionand which countries faced the use of jurisprudence on settlement of their disputes.

- *Appropriateness of jurisprudence*

A lot of claims of territorial disputes were rejected at international court of justice by using these justifications above in terms of the court has stated its inconsistency. As a result, the court laid down forthright to jurisprudence as a best way to solve the dispute. Such as in the case when France and the United Kingdom submitted to the ICJ their dispute over the sovereignty of the Minquiers and Ecrehos island groups[18], located in the English Channel between Jersey and the French mainland. The party made arguments based on treaty law, history, and effective control. As the result, the court rejected all arguments based on feudal land grants and fisheries agreements, all of which antedated 1648, because no specified border or islands were held by Kings of England and French respectively. Judge Basdevant, writing a separate opinion, concurred: ”Suzerainty...is not sovereignty,” noting the important distinction that the court implicitly made in dismissing claims based ambiguously on feudal titles.

In the absence of a valid treaty claim, the court considered the effective control arguments and found that the British government exercised sovereign jurisdiction and local administration over Minquiers

[18] Summaries of judgments and orders, 17 November 1953/2.

and Ecrehos through such acts as judicial proceedings, local ordinances regarding the handling of corpses, levying taxes, licensing commercial boats, registering deeds to real property, and conducting census enumerations and customs affairs. Thus, the court awarded the territory to the United Kingdom.

Similarly, in 1998 Indonesia and Malaysia, by special agreement[19], asked the ICJ, to determine, on the basis of the treaties, agreements and any other evidence furnished by the Parties, the sovereignty over the islands of Ligitan and Sipadan, of the cost of Borneo. The parties presented arguments based on treaty law, *Uti possidetis*, effective control and history. The court began its analysis with the 1891 British-Dutch convention and found that it did not address the boundary in question. Lacking a treaty law basis for its decision, the court turned first to subsequent agreements between Great Britain and the Netherlands, and then to the parties' subsequent practice, in unsuccessful attempt to understand the parties' mutual intent. Then the court considered, however, that Malaysia`s regulation of the commercial collection of turtle eggs and establishment of a bird sanctuary on the islands were administratively sufficient to demonstrate effective control.

- *Conception of Jurisprudence in judicial decision*

The existence of a prior boundary treaty or other documentation reflecting interstate agreement as to boundaries is generally dispositive for the court. This rule often holds even when agreement is unclear or incomplete. In cases when state consent is evident, the court has started and ended its legal analysis with the agreement. When no international agreement exists, however, the next most dispositive basis for judgment is *Uti possidetis* alone because almost all colonial boundaries were codified in some kind of instrument. Consequently, the court cannot easily recourse to jurisprudence when other justifications or other legal concept are clear for settling the matters. It is usually used on the case which the court has no clear or accurate adjudication.

2) The Use of Arbitration on Settlement of International Territorial Disputes

a) General Conception

To begin with, Arbitration is defined as one of the legal methods for the out of court dispute settlements, wherein the parties to the dispute refer it to one or more persons (arbitrators, arbiters or arbitral tribunal), by whose decision they agree to be bound. Arbitration in the United States and in other countries often includes alternative

[19] Jointly notified the court for bilateral agreement on controlling the islands between them, signed at Kuala Lumpur on 31 May 1998.

dispute resolution[20], a category that more commonly refers to mediation (a form of settlement negotiation facilitated by a neutral third party). However, tt is more helpful to simply classify arbitration as a form of legal binding dispute resolution, equivalent to litigation in the courts, and entirely distinct from the various forms of non-legal binding dispute resolution, such as negotiation, mediation, or non-binding determinations by experts.

Historically, ever since Great Britain and a recently independent United States agreed to submit a border dispute to arbitration in 1794, in accordance with the Jay Treaty, international arbitration has proved a useful method for settling limited territorial disputes between nations. One of the most attractive features of arbitration is that the proceedings are generally conducted in *ad hoc* courts of arbitration that is specially designed to deal with a particular dispute. The parties can participate in defining the issue to be adjudicated, and they have the power to be used to settle the dispute. Arbitration also provides the parties with the option of holding hearings in secret. Thus, arbitration provides an appealing forum for nations that have decided to resolve their differences through peaceful means because it is much more flexible than a permanent court and allows the parties to maintain more control over the proceedings.

Arbitration has been used over several cases in the past, with lots of effectiveness, to settle limited issues of territorial sovereignty. A lot of countries were satisfied with using arbitration settlement, as the Rann of Kutch Arbitration between Pakistan and India, and the Taba Area Arbitration between Israel and Egypt[21] to name a few.

b) Process of Arbitration in Resolution of the Conflict

Arbitration is often compared to the use of judicial settlement, both are legal means of settling disputes, and both presuppose an obligation of the parties to accept the award (in the case of arbitration) or judgment (in the case of judicial settlement). Additionally, the award or judgment is usually based on rules of international law. The most significant difference between arbitration and judicial settlement involves the reference of a dispute to a permanent courthouse composition is primarily fixed; in arbitration the parties to the dispute select the arbitrators.

When formulating an arbitration proceeding, the parties to the dispute usually define the composition of the tribunal through either an *ad hoc* agreement or by reference to a prior agreement between the parties in which they had agreed to submit future disputes to arbitration. The composition of a tribunal can vary great-

[20] Among the pacific settlement of international disputes set forth in art 33 of U.N. Carla S. Copeland, The Use of Arbitration to settle Territorial Disputes, 67 Fordham L.Rev.3073(1999), https:ir.lawnet.Fordham.edu/flr/vol/iss6/7.

[21] the use of arbitration and its efficiency, claimed area in the Rann of kutch in 04/1965.

ly, depending on the parties' wishes. The most common form of arbitral tribunal presently used is a three or five-member panel, with each party appointing an equal number of members[22]. The final member of the tribunal is a neutral third party. This type of tribunal usually decides disputes by majority vote. The appointment of the members of the arbitral tribunal is often contentious, particularly the selection of neutral arbitrator because only the decision of neutral arbitrator often determines the arbitration`s outcome. Thus, arbitration agreements often provide if the parties cannot agree upon the neutral arbitrator, the president of international court or another disinterested party shall make the selection.

Furthermore, to establish the form of the tribunal, the compromise or treaty that refers the dispute to arbitration should include the applicable rules of procedure. Among these procedural arrangements are the location of the proceedings, how they are to be paid for, the order of pleadings, how the tribunal will obtain evidence, and the majority required for the award. Each procedural arrangement can be negotiated separately, or the parties may elect to adopt standard procedural provisions such as those followed by the international court of justice.

The compromise also incorporates the issues to be decided by the tribunal. The parties may define the issues broadly, but more often the questions presented to the tribunal are narrowly defined. Because the tribunal is limited in its function, it must only address the controversy before it and may not delve.

c) Other Peaceful Methods in International Settlement of Territorial Disputes (Non-legal bindings)

Aside from the above legal settlements of territorial disputes in the view of international law, a lot of further methods are also acceptable to use as tool or compromise to resolve the rivalry among countries[23]. These other methods could be employed by any country around the world; most particularly the countries which are not Member of international organizations assume the settlement of disputes like UN organization (ICJ) or other organs.

1) Conventional Settlement of Disputes by Disputants

To start with, it is quite important to define the meaning of convention among countries in settlement of territorial disputes. It is defined as an accord or special agreement among countries in order to settle its actual matter or future one in accordance with the equity and sovereignty of each state. It is a voluntary action by each state so as to peacefully solve the

[22] see Cambridge University express, Indo-Pakistan Western boundary case tribunal, award 19 February 1968, represented by Mr. B. N. Lokur, special secretary to the government of India in the ministry of law, and member of the law commission of India.

[23] see Art 33 U.N Charter, settlement of international disputes.

rivalry that could be escalated to military conflict and crisis ever.[24]

Generally, most countries that are not member of UN or not satisfied with international adjudication of disputes, are skewing to resolve its disputes by convention. This kind of settlement is mostly used when territory where the conflict arisen presents an interest between the countries. The country always uses this method by accord to use the territory ensemble or equitable division. Many countries in the world also tend to use such method if other resolution does not make sense on the interest of the parties.

The process of advancing into the negotiation is simpler than others because it is a manifestation of wills by each state to agree with the situation happeningat that moment, meanwhile this resolution is a resume of each other`s agreement as a result. In this way, the resolution is absolutely in peace. For example, the neighbors' countries convene to delimitate their boundaries with a commitment; therefore, both of them are bound to respect the convention. In addition to dispute that may occur in the future, the parties easily refer to the previous agreed convention. This case often happens to countries, either member or not member of UN or any international organization. The process of resolution, therefore, evokes by both parties through the document which indicated the agreement, by means that the states on dispute are only required to produce such document as evidence[25].

2) Negotiation

Negotiation for settlement of international territorial disputes is similarly considered as a process of power-based dialogue intended to achieve or resolve a territorial conflict over the satisfaction of all parties. Precisely, resolution by negotiation can be accomplished with dialogue between states; it may also be done through diplomatic negotiation[26].

Diplomatic negotiation between the parties concerned is often considered as the most efficient method of settling international disputes and is clearly the predominant, usual, and preferred method. Indeed, negotiation is used more frequently than all other dispute resolution methods combined. Parties usually prefer negotiation to other methods for a variety of reasons: negotiation allows the parties to maintain maximum control over the outcome; and negotiated settlement is more likely to be accepted by parties; and negotiation is simpler and less costly than other methods.

[24] The peaceful settlement which the countries deem necessary no matter whether it is figured out of international law methods that have been used before.

[25] E.g: the case of Indonesia and Malaysia, special agreement between for controlling the islands, signed at Kuala Lumpur.

[26] The negotiation "ASEAN, the declaration on conduct, and the South China Sea", LESZEK BUSZYNSKI, Contemporary Southeast Asia. Vol.25,No.3(dec.2003),pp.343-362, httpss://www.jstor.org/stable/25798652.

Even though negotiation is the method most likely used combined with other dispute resolution techniques, bilateral negotiations alone has been sufficient to resolve territorial disputes in a number of cases.

The particularity of the negotiation is that decision of resolution bounds the parties when they are agreed. They have to respect what has been negotiated, but it does not mean that they cannot refuse the decision. Each party is not bound to the decision of resolution rendered by the third party, who might be conciliator, negotiator or person concerned in resolution. Therefore, when the negotiation breaks down, the parties still have altenatives to other methods of which they prefer, such Mediation is another commonly used method after failing on Negotiation.

3) Mediation

By definition, mediation is one of the peaceful settlements of international territorial disputes[27]; it involves the participation of third party with the objective of helping parties to the dispute to come into an agreement to solution. This method together with negotiation, good office, conciliation, and inquiry, is usually grouped in the category of political or diplomatic dispute settlement methods. It is also a method which involves direct participation of a third party, individual, or organization in resolving a controversy.

Mediation is among the simplest method of which procedure allows the parties to discuss their disputes with assistance of a trained impartial third person to reach the resolution. The disputants often agree to mediation when bilateral negotiations fail down or cannot be initiated and the parties' desire limited third party intervention. The function of mediator depends on the circumstances, it may be third state or international organization aiming to bring the parties together and facilitate their accord.[28] In fact, the mediator is free to assess the interests of both sides and devise whatever compromise it deems appropriate, but yet has no power to render a decision to the resolution of conflict in the case the parties are not agreed in one point of resolution. The resolution of the conflict depends upon discussing between disputants.

In addition, mediation is a more flexible resolution because the parties are not bound to respect the resolution if they deem its inconstancy and inefficiency therein[29]. In general cases, it is the quickest and most useful when disputants are already in the way of military conflict. It may not cease the roots of the matter right away, but it could lead the disputants into peaceful and appropriate resolution.

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27 An amical resolution of disputes managed by both parties on disputes, there is no legal biding on the decision but it`s up to the parties to value it.

28 See. Art 284.UNCLOS, conciliation, mediation .etc in territorial sea disputes, peaceful resolution chosen by the parties.

29 Ibid.Paragraph.3

4) Expert Determination

Knowingly, a lot of methods can be utilized to solve territorial disputes in the perspective of international law. Consultation of Expert is amongst necessary methods to resolve disputes, but it is not considered to have an international legal-binding.[30] The conception on settling international territorial disputes carries a mission to settle all disputes around the world with other methods supposedly efficient. Consequently, it depends on the parties in conflict to ask for a suggestion from the expert.

To undergo the process two parties on conflict ask for perspective and suggestion from the expert and since the expert is private party, the remuneration of expert also depends on the agreement between them. Having the advantage of only involving the two countries and the expert in settling the dispute, the procedure is, therefore, much simpler and the expert may not be partial in his suggestion because the dispute settlement will not present his favoritism in decision-making. Meantime, the percentage resolution transparency is probably expected.

2. *Trends and Challenges of International law in Territorial Disputes Resolution Recently*

Globally, these methods are all very important, and each has its efficiency and particularity on resolution of international territorial disputes. Conversely, sometimes those methods bring about a ubiquity convulsion interstate by the fact that Decision-Makers do not countervail the adjudication. That attempts might hazard a direct consequence into the behavior of countries, and also could inflict a regardless of the right-purport of international law.

a. Choice of Methods

In referring to many cases of territorial disputes in international law that has occurred and the ongoing settlement which never found out their solution up to recent days, a lot of critics could be drawn as the main matters towards the effective resolution.

Genuinely, the choice of methods used to settle the matter is the roots of disputes resolution. This might be the main cause why many countries are still fighting ever, for example a territorial dispute between Madagascar and France that has been triggered a long time. The dispute is that, knowingly, Madagascar is a country colonized by France that was lasted in length periods. Over time, Madagascar got its Independence in 1960, the period after the UN Charter which required every country around the world endured the colonization, shall be entirely released and should form its sovereignty necessary if the conditions awarded to be an independent

[30] The expert shall be a person who has basic knowledge in international territorial disputes resolution, practitioner, third party and independent.

state are fulfilled. Then pursuant to the requirements of UN, France shall totally give independency to Madagascar, especially the sovereignty of Madagascar over its territory.[31]

Lamentably, France refused to return the small Islands that are legally belonged to Madagascar. In facing this matter, the claim was launched directly towards the UN`s organs, thereafter the instruction and justifications of pretending owner of territory were required, and ultimately the UN recommenders have taken its decision in favor of Madagascar. France, however, refused it; in terms of it did not want to give back the territory to Madagascar easily, and perceived this decision as an impingement to its private affairs and Madagascar. As a matter of fact, it is not privacy affairs, it is fairly a violation of Madagascar`s sovereignty.[32]

In critical approach, according to the main objective and restoration of the United Nations, any country violates regardless the sense and articles of the UN and impingement into sovereignty of other States are withdrawn promptly not to be a country member of the United Nations Organization. Therefore, it is so important to acknowledge beforehand the measurement to choose a method which is probably expected to settle down the disputes in favor of a party that should gain its rights.

In such case, the disputants would better choose the use of arbitration in the reason that it is more appropriate than others. Because it depends on agreement between the countries towards the resolution, which means that when the parties are intended into arbitration, then each of whom would agree with adjudication decision by arbitrators. Furthermore, the initial process of the resolution needs a deeper evaluation of situation that will probably occur. For example, arbitration has proved most productive in relative political disputes where the parties' claims to the land are based on historical arguments and documentary evidence.

The Rann of Kuch and the Taba Area arbitrations provide examples of such situations, the disputes in that arbitration were either not highly sensitive or the parties had previously decided to subordinate their interests in the territory to more profound national concerns. The parties in disputes were, therefore, willing to cooperate and participate in the resolution. This is not to say that arbitration could ever be used effectively to resolve all contentious claims to territory, but the process preceded the agreement appear that negotiation has been concluded in advance. At the same time the parties can then work together to determine the precise issue to be adjudicated and the limits on the tribunal`s authority.

[31] reference, UN charter in its preamble, convention on the law of the sea and Hague convention ,violation of sovereignty over the territory.

[32] The UN General Assembly recommendation over sovereignty of Eparses Islands , disputes between Madagascar and France, resolution 3491 , 1979 December 12th .

In the past, some resolutions were failed, because of evaluation on nature of disputes and the situations of disputants were not deeper, and especially the method awarded is inappropriate with the circumstances therein.

b. Partiality and Favoritism in Adjudication of Decision-Making

In a sharp analysis, the trends in territorial resolution towards the International court of justice or arbitration present an unexpected decision that sometimes favors one party on dispute which should not be benefited in referring to legal documents. Especially, when the conflict touches the interest of decision-maker`s country or a country possesses veto Rights in the UN, they absolutely teeter the settlement of matters. That is the reason why more than 150 disputes underway involve territory, mostly in Africa, Asia, and the Pacific region. The same also appears, even in Europe and America, some countries do not fully trust the legal adjudication from this way of settlement. Likewise, the border dispute between Canada and the United States was guided by arbitration resolution. And when both of them formed their arbitrators with a third-party arbitrator from the United Kingdom, the arbitrators adjudicated that the United States was the winner. Such decision has very much influenced the people of Canada who considered the arbitrators were in favorof the United Nations. They also blamed U.K because the arbitrator third party is root of adjudication decision. Historically, the dispute had been going on between the Russian and British Empires since 1821 and was inherited by the United States as a consequence of the Alaska Purchase in 1867. It was resolved by arbitration in 1903 with a delegation that included 3 Americans, 2 Canadians, and 1 British delegate that became the swing vote. By 4 to 2 votes, the final resolution favored the American position. Canada did not get an outlet from the Yukon gold fields to the sea.[33] The disappointment and anger in Canada were directed less at the United States, and more at the British government for betraying Canadian interests in pursuit of a friendly relationship between Britain and the United States. Such kind of resolution influences many countries on territorial conflict to escape ICJ or others similar positions.

The result provides an additional dimension to patterns discovered in the literature on international dispute resolution, which show that states are biased words certain ”Product Requirement Document” methods. It is obviously known, because the ICJ has rules and procedures that mimic those in civil law systems, not surprisingly civil law states have been much more likely to recognize the jurisdiction of the court than common or Islamic law states. Judges at ICJ exhibit these biases

[33] D.M.L Farr, Niko Block, February 6, 2006, Alaska Boundary Dispute.

in their case decision-making when they show favoritism towards countries that are similar to their home states. The record constitutes another source of bias that makes some methods which are not attached with the United Nations Charter much more appealing to state than other methods, which helps to account for the desire for forum shopping in the international realm. Unfortunately, several practitioners of international law have repeatedly expressed their concern regarding the increase practice of forum shopping.

The one best method for resolution of territorial disputes to be completely solved is that, by advancing mutual agreement[34] from both or more disputants who are involved with. Then the countries can achieve this agreement by bilateral discussion, meaning there is no third party or any international organization`s suggestion interferes on the settlement. The way of achieving the resolution depends upon the two parties' agreement in order to avoid partiality and favoritism through interest of each disputant. Further, the disputants can also process their agreement to a peaceful mediation through mediators agreed by both of them, more precisely, both consent that the decision will be held is fair and impartial.

The use of Army is the last method which is shaped beyond the UN Charter, deemed as worse and shows up regardless the United Nations Charter for country members, yet accurate in any cases according to Humanitarian law[35], thus as to avoid partiality of adjudication could be drawn from international organization or any methods akin to this, whether any others could shut down the relevant disputes in right manners.

c. Challenges of the UN Organs (ICJ) on Settlement of Territorial Disputes

Consequently, to suggest the existence of international organizations and others which are related on settlement of territorial disputes are lessons for us to step towards an effective organization or methods accurate on resolution of disputes. The adjustment can be drawn easilyover the ineffectiveness of all methods that have been used up to now. It is not solution to confine the resolution methods only among countries member in such organization, because disputes may appear between two countries which may be the member of UN or ICJ. Beforehand, the international organs may figure out its competence on the territorial dispute Resolution. It is sometimes become the main cause of terrorism around the world on territorial dispute concerns, and increases

[34] The UN charter on peaceful settlement disputes, the agreement accepted by parties, whether appointed by the court or by both of them.

[35] Reference, Rome statute of International criminal court, *jus ad bellum, Jus in bello*, but not subject to claims to sovereignty over territory.

the disregards of international rules and court`s decision as well.[36]

Those deficiencies of international court of justice, for example Nicaragua cases of non-compliance should lead to better understanding of contemporary issues facing the court. As will be seen, while occasions of non-compliance with final judgments are relatively infrequent, whether before or after Nicaragua and some recent ICJ cases continue to experience compliance problems, decreased hostility towards judgments rendered by virtue of compulsory jurisdiction is perceptible. However, not all of the ICJ`s pronouncements have met similar appreciation, but what is highlighted here have relatively been the weakest.

Similarly, according to the UN General Assembly`s resolution of Madagascar and France rivalry on Bassas da India, Europa Island and Juan de Nova Island, Madagascar has a full right of these territories against France`s impingement into its territory and pronounced its decision also in favor of Madagascar. Unsurprisingly, France rejected that decision and affirmed before the UN`s organs its refusal "NON-COMPLIANCE of decision". That attempt shows up a deficiency of UN advisory opinion in facing resolution of territorial disputes between countries, although transparently known that a member violates the Charter. In fact, skewing towards judicial decision is not a reliable resolution sometimes.

D. Closing

To sum up, an acquisition of territory by dispute has been one of the biggest challenges of international law up to now. Frequently, to escape devastating danger, crisis and violation of sovereignty that might occur in acquisition of disputed-territory among countries, bringing claims before the UN shall be deemed very necessary and common ways, by the fact that it has set forth legal methods on resolving territorial disputes by compulsory decision which comes from ICJ or Arbitration body. Similarly, disputing parties may prefer other methods which are asserted amicably, although they are not legally binding. All these methods are useful in settling dispute which fits its characteristics. In other words, having the right to choose the methods aforementioned for a dispute does not mean adopting one method without considering and regarding its consistency.

Despite all methods of resolution set out by the UN Charter, there are a lot of challenges and reform that should be surmounted particularly in settlement of territorial disputes. Obviously, the UN has been playing tremendous roles in international matters. It has struggled to resolve diverse challenges since its foundation for significance of world peace. Neverthe-

[36] Susan. W. Tiefembrun, comment on "The Role of The World Court in Settling International Disputes": A Recent Assessment, 20 Loy.L.A Int`l &Comp.L. Rev. 1 (1997).

less, it still recently bears more challenges for many reasons which call for reforms. Meanwhile, all current members of the UN ought to emphasize why a lot of disputes are left unresolved, by which is meant they ought to consolidate the rules, intensify the duties, responsibility and liability of state members, and renew the rules so as to sidestep from partiality and favoritism. The biggest issue is that the rules and the institution of UN`s decision body occasionally disregard the interest of small countries and new members. Expressly, legislating new rule of law, enhancing the effectiveness of international organization as the UN, accenting value of sovereignty to each states, and obedience under the international rules in force shall be paramount attempts for all members, without any discrimination, in order to maintain full-fledged relationships, peace and march towards a new world.

Abbreviation List

UN : United Nations
ICJ : International Court of Justice
UNCLOS : United Nation Convention on the Law Of the Sea
EEZ : Exclusive Economic Zone

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CONFORMING PEACEFUL STRATEGY TO SETTLE NATUNA ISLANDS TERRITORIAL DISPUTES: INSTITUTIONAL AND INTERNATIONAL LAW PERSPECTIVES

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ABSTRACT

The Natuna Island's boundaries have been listed according to UNCLOS 1982. However, some countries use their own justification to violate another state's territories which lead to potential territorial disputes. This study elaborates on pursuing a peaceful strategy in accordance with Indonesia's fundamental values to defend Natuna Island's sovereign territory. Indonesia's government said not to turn over the Natuna Island within the conflict on nine dash line in the South China Sea according to China's claim. This study uses literature methods to elaborate the background of Natuna Islands territorial disputes by Indonesia's responses and China's claims, and the conclusion will discuss the peaceful strategy by concerning on international laws approaches and pursuing the roles of institutions for the settlement.

Keywords: Natuna, Peaceful Strategy, Territorial Disputes.

A. Introduction

Indonesia has experienced many territorial disputes that have led to conflicts with several countries. For instance, the dispute over the Sulawesi Sea, Sipadan and Ligitan that involved Indonesia and Malaysia in early 1990s. The conflict of Sipadan and Ligitan became a fairly long conflict and impacted on Indonesia's diplomatic relations with Malaysia. By the end of the conflict, there were many questions on how the conflict had been resolved. The conflict ended in 2002 with the result of Malaysia's defiance in the provisions of the International Court of Justice (ICJ). For Indonesia, the loss of Sipadan and Ligitan in the era of President Soeharto was a big price to pay and also a lesson to pay more attention to its territory. The International Court of Justice (ICJ) had considered on asserting the conflict to political aspects, Suharto's governing type, Indonesia's bargaining position, and its capacity to commit, responsibility in treating its territories. Regarding how the political aspects could be the reasons, we looked on how Soek-

arno and Susilo Bambang Yudhoyono fought for any territorial dispute. As President Susilo Bambang Yudhoyono stated in his speech "Sovereignty is sovereignty, and it is about the state's existence no matter whether we are close neighbors or brothers".[1]

Contrary to Suharto's regime, in Joko Widodo's era, Indonesia has started to confront China and Viet Nam on the territorial disputes since the previous years in the vicinity of Natuna Islands. The disputes over the South China Sea between China and some Southeast Asian countries particularly have included China's claims on Natuna Islands. The tensions toward Natuna Islands disputes has increased since 2014, when China included part of the Natuna waters under their Nine-dash line territorial in the South China Sea. This line has been claimed as the demarcation line used by the government of China to claim most of the South China Sea area and provokes territorial disputes with Southeast Asian countries[2]. Joko Widodo has been trying to focus on the foreign policy on the South China Sea concerning several programs of maritime strategy and how to control it. There were several differences between the governing type in Suharto's period and Joko Widodo's Dave Mc Rae, 2019).[3] As democratic and authoritarian type has been established within Indonesia's foreign policy, this article will discuss the peaceful strategy implemented in this era based on the democratic period in Indonesia.

The overlapping of territorial maritime claims on the South China Sea becomes the longest-standing and strategic challenge for Indonesia. Indonesia should involve directly in the South China Sea disputes attempting to preserve the control over the South China Sea waters adjacent to the Natuna islands, including the exploitation of Natuna Islands' natural resources . The claims over Natuna islands were staked by Vietnam and Malaysia, and also China by its Nine-dash line encircling most of the South China Sea area[4].

In regard to this conflict, Retno Marsudi as the Minister of Foreign Affairs of Indonesia stated that there is no overlapping jurisdiction in Natuna's Islands and Indonesia would always commit to stand on UNCLOS 1982 convention, while China claimed for Nine-dash lines in this case[5]. Indonesia tried to maintain the sovereignty

1 Butcher, G John. "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea". Contemporary Southeast Asia Vol. 35, No. 2 (2013), pp. 235–57.

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of Natuna Islands by persisting in various ways. The statement concerning territorial dispute settlement has been written in the Indonesia's constitution. As stated under the second paragraph of the United Nations Charter, there are several courts such as International Courts, where countries are obliged to approve: International Courts (ICJ), International Tribunal on the Law of the Sea (ITLOS), and General Arbitration or Special Arbitration. The 1982 court was established by the International Tribunal on the Law of the Sea (ITLOS), the General Arbitration, and Special Arbitration as an ad hoc tribunal.

This article consequently suggests that in settling any dispute over claims and the interpretation on Convention should consign to the disputes institutions mentioned above. For any exceptional dispute on interpretation and application of Chapter XI of the Convention on International Seabed Areas and attachments to the Convention relating to the issue of International Basic Sea Areas, the settlement may refer to the jurisdiction of the Seabed Dispute Chamber. In relation to the preparation of International Seabed Authority establishment, the International Tribunal on the Law of the Sea (ITLOS) and the chambers will be prepared by the Preparatory Commission based on the terms and conditions of the Resolution adopted by the third United Nations Conference on the Law of the Sea (UNCLOS III) for immediate application[6].

The fact that many countries are unable and unwilling to resolve their disputes with other countries has prolonged conflicts and brought insecurity in the region. This conflict has taken place in the South China Sea for such a long time. The presence of China and several members of Southeast Asian countries involved in this dispute have eventually put Southeast Asia countries under threat. Subsequently, the questions remain unanswered, particularly on how these disputes will be resolved. This research focuses on the claims toward Natuna Islands and how to draw up strategies on Natuna's Islands disputes by considering international law and institutional contribution.

B. Research Method

This study was conducted based on literature studies from relevant books, journals, government and non-government documents. Thus, it consists of a theoretical investigation based on published literature. Moreover, intensive sources on some related studies about the history and progress of territorial disputes will also be reviewed. The data has been analyzed to associate the main focus on the peaceful strategies with the institutional and international law bases.

[6] Undang-Undang Republik Indonesia Nomor 17 Tahun 1985 Tentang Pengesahan United Nations Convention On The Law Of The Sea (Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut).

C. Discussion

1. Territorial Disputes

The territorial disputes arise when a state occupies the national territory of other's and refuses to relinquish the control and sovereignty over the territory although being demanded or confronted to. Furthermore, wider definition of territorial disputes involves either a disagreement between states over their common homeland or colonial borders. Specifically, the dispute entails one state competing for the right of territory or even to sovereignly dominate partial area, or as a whole, whether it is homeland or colonial borders legacy.[7]

Particularly, the cause of a territorial dispute that exists between two states is commonly related to a situation in which at least one state does not accept the sovereignty of other state's boundary line. Whilst, the neighboring government takes the position of the existing boundary line as the legal border between the two countries based on a previously signed treaty or document. The scope of disagreement over the boundary line may range from a small section of territory to the entire length of the border. In all of these disputes the rival does not question the border existence within the states, but the legitimacy of the existing line boundaries that has been drawn[8].

Each state usually has several elements to justify their claims to dispute. Firstly, treaty laws had been used to demonstrate the consent of other states. Second, the geography or natural borders such as mountain ranges, rivers, oceans, and other physical formations create a clear dividing line between two states. These aspects, historically, have been more difficult to dispute because they are easily identified by a physical landmark. Third, transportation and economic development of instruments such as roads, railways, and foreign investment access are involving countries that have close economic relations and are related to the colony that focuses on domestic needs. Fourth, cultural based claims of self-determination. Fifth, Effective Control, that one of the competitors claims certain lands because they have uncontested administration of the land and its resident population over the territory. Sixth, the historical claims tend to be the most common and related to claims based on first-in-time claims to lands. Seventh, some countries use this claim by the doctrine of *Uti Possidetis,* a principal which has been used in Latin America, Asia, and African countries[9].

In many cases of territorial disputes, states approach the settlement to be the winner of the disputes. They usually adopt all-or-nothing position and not willing to

7 Hunt, Paul K. "*Standing Your Gound : Terittorial Disputes and International Conflict*". (2001).
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settle by any compromise.[10] The justification of their claims should be compatible to the recognition from other country and stated in the official international documents. Nonetheless, some disputes overlap their claims to justifications that tend to rise up the territorial disputes.

2. *Strategy on Settling Territorial Disputes*

a. Institutional Approaches

Although territorial disputes continue to occur in several areas, the role of international organizations in helping those countries to resolve their disputes cannot be denied. Shannon explained the role of international organizations in negotiation is related to an attempt of having a positive relation in which international organizations will encourage the parties of the conflict to solve the problem through a peaceful way. Second, the existence of international organizations is expected to resolve the dispute through conflict management. Not only will the International organizations encourage their members to negotiate bilaterally, but they may also promote and even provide third parties to facilitate talks. Investigating the relationship between International Organizations and peaceful settlement attempts helps understand whether organizations do more than merely prevent conflict between members and also explore the types of conflict management that IO members seek to reveal the mechanisms by which organizations encourage dispute resolution[11].

On the other hand, the roles of institution in settling disputes are clearly undeniable. The roles of diplomacy within the institution could reach a settlement without any general military conflict[12]. The institution also provides kinds of results of disputes settlement by mediation. The theory of Myerson mediation minimizes the equilibrium militarization among all budget-balanced mechanisms. Hence, it can be concluded that mediation has been designed to prevent a strong player who pretending to be weak to gain unfair settlement from the disputes. Myerson mediation then constitute as the settlement strategy, thus, optimize the welfare of any player among all budget balanced mechanism.[13]

Regarding the South China Conflict, ASEAN has been in a difficult situation, whether to show the power for solving problem or to prevent any intervention. While China and Indonesia have different claims on Natuna Islands, the tension between these countries remains in a ”cold” dispute. Fortunately, the tension between these two countries has not escalated

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10 Fang, Songyin and Li, Xiaojun, *”Historical Ownership and Territorial Disputes,”* (2019).

11 Shannon Megan, *”Preventing War and Providing the Peace? International Organizations and the Management of Territorial Disputes,”*, Conflict Management and Peace Science.26 (2009), 144-163.

12 Carr Fergus and Callan Theresa, ”Managing Conflict in the New Europe The Role of International Institutions,” (2002).

13 Meirowitz Adam et al, *”Dispute Resolution Institutions and Strategic Militarization,”* (2019).

into a full bilateral conflict. On the other hand, through ASEAN countries diplomacy, Cambodia finally released an ASEAN statement which contains a call for self-restraint and non-use of force, speeding up the adoption of the code of conduct in the South China Sea, and conflict resolution based on international law, particularly on the regulations in UNCLOS[14]. The role of institution in any dispute will depend on the institutions context, but will be highlighted on the non-use of military force to prevent escalations and domination by the most powerful competitor and unfair settlement.

b. International Law Approaches

In a condition of territorial disputes, any countries often do lie within that region in an unfavorable position. The power capacity of a country can be determined or can determine the country in maintaining its territory. The existence of international law has the possibility to resolve the existing problems of territorial disputes, but some problems have the complexity so that they cannot be resolved by international law. It has the ability to provide a focal point for countries during the conflict. Among the international law capacities to settle the territorial disputes, the fact shows that it is most capable in resolving the territorial dispute peacefully. The first argument, in the bargaining solution the international law has powerful effect to shape the leader's behavior by solving the coordination and distribution problem inherent to disputes territory. Second, the international law serves manner in the realm of security in case there are only few settlements using negotiation to solve territorial disputes. And it cannot be argued that international law to some extent would not be able to be used in certain conditions[15].

Nevertheless, in many cases the countries involved in international disputes are unable to resolve or settle their disputes; during ongoing preparations which sometimes escalate into a conflict. In several occasions, it showed that the conflicting countries have the options at least to try and to resolve their disputes with other countries, by doing such actions as bilateral negotiations, mediation, and adjudication. While some countries try to resolve their disputes by using only bilateral negotiations; other countries agree to take their cases to the International Court of Justice (ICJ). The options to resolve any territorial conflict must aspire for peaceful resolutions as the result of the conflict. It requires international law in the process of settling the conflict.[16]

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14 Wicaksana, I Gede Wahyu. "*Indonesia in the South China Sea: Foreign Policy and Regional Order,*" Global Strategies 13 no. 2 (2019).

15 Huth, Paul K et al. "*Bringing Law to the Table: Legal Claims, Focal Points, and the Settlement of Territorial Disputes Since 1945*". American Journal of Political Science (Midwest Political Science Association (2013). , Vol. 57, No. 1 (January 2013).

16 Wiegand, et al. "*Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes*". Journal of Conflict Resolution (2011). 55(1) 33-59.

However, international law can offset this incentive to renegotiate or facilitate the consolidation of new territorial arrangements. Changes to the territorial status quo supported by international law are more likely to uphold the territorial sovereignty than not according to law change, if the losing country has a strong incentive to avoid establishing a precedent for non-compliance with the international legal principles in the settlement of territorial disputes. Such incentives exist when potential challengers have other ongoing territorial disputes in which they relish legal benefit; that is being able to choose a legal settlement in the dispute. These conditions apply to many countries.[17]

D. Closing

The analysis presented in this article offers several important contributions to territorial disputes strategy. First and foremost, the empirical results suggest that combination of institutional and international law has a powerful role to play in shaping leaders' behavior in negotiations by helping leaders solve the coordination and distribution problem inherent to disputes over territory. During the negotiations and asking for the support and recognitions from others, the government should maintain their claims towards any international law documents to justify and reassure other countries.

On the other hand, regarding the statement above, there are certain problems that cannot be solved, and it is suggested that the management of structured international organizations strongly support under those certain conditions, including the management conflict when the member of institutions has involved in any disputes among each other. The legal and relevant principles established in international law and the international institutions capacity to manage the settlement become the instruments to settle the conflict since there were several countries that do not have any regional institutions to settle unjustified claims and disputes. Second, by the China's claim over the Natuna Island, Indonesia that strongly stands by UNCLOS 1982 should report the problem to ASEAN and gain supports from other countries. Lastly, to settle any unsolved disputes the countries should report the disputes to the International Courts (ICJ), International Tribunal on the Law of the Sea (ITLOS), General Arbitration or Special Arbitration to prevent any escalation.

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THE ROLE OF UNCLOS 1982 IN PROTECTING THE INDONESIA'S SOVEREIGNTY FROM RECLAMATION THREAT

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ABSTRACT

The limited existing land area can be expanded by carrying out reclamation of land from surrounding waters, which is commonly found in many countries throughout the world, such as currently being done by Singapore and Indonesia. The paper raises the issue on the reclamation carried out by Singapore and its impacts on the Indonesian territorial sea. To counteract this issue, Indonesia considered using the United Nations Convention on the Law of the Sea (UNCLOS) 1982, but in fact, UNCLOS 1982 does not provide the reclamation provision. As a result, both Indonesia and Singapore put interpretations on Articles to enlighten their propositions. So the question remains: "Will UNCLOS 1982 be able to fully protect the sovereignty of Indonesia's territorial sea from the Singapore's reclamation threat?" The method was descriptive analysis, which is a research method used to gain an overview of the situation and circumstances, by way of exposure of data obtained as it is. Then, various analyzes are carried out to compil some conclusions; while, studies conducted through normative juridical approach. The analysis showed that in order to secure the sovereignty, Indonesia should make propositions related to reclamation issues to be regulated under the international law of the sea. This will be more effective because it will directly improve the legal basis.

Keywords: Singapore Reclamation, Indonesia Sovereignty, United Nations Convention on the Law of the Sea (UNCLOS) 1982

A. Introduction

Being an archipelagic country which has 76% sea areas of its total territory, Indonesia still has a lot of homework that has not been completed. Problems and friction in Indonesia's waters with neighboring countries still often arise, mainly concerning the maritime border area, sea and water territorial;. To solve these problems, 18 maritime boundary agreements for the territorial and territorial wa-

ters have been produced. However, out of the 18 agreements, 13 agreements were concluded before the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.[1] Out of 10 countries bordering Indonesia, Singapore was the only country that signed the bilateral agreement related to sea boundary. [2] Even then, it has not been able to completely resolve the unsettled maritime border issues of the two countries

Rapid global development of science and technology, obviously, will lead to a change in the mindset in dealing with the development of sea border region. This is also encouraged by modern society's level of need for natural resources, which of course will affect the concept of the state in fulfilling the needs of its people's lives. It is well acknowledged that sea areas have a lot of potentials to be explored, managed, and developed by a state. As an example, a high population growth rate in one state will clearly increase the need for land to live in. The limited existing land area can be expanded by carrying out reclamation of land from waters, which is commonly found in many countries throughout the world, such as currently being done by Singapore and Indonesia.

Reclamation can be interpreted as an effort to procure land by draining swamps, tidal areas, and so on or based on Law of the Republic of Indonesia Number 27 of 2007 concerning Management of Coastal Zone and Small Islands, reclamation is an activity carried out by people in order to increase the benefits of land resources in terms of environmental and socio-economic point of view by means of collection, land drainage, or drainage.[3] From this point of view, Indonesia in particular has apparently regulated reclamation, and this is due to the level of development that requires more land for the benefit of Indonesian people themselves. But what should be underlined is that any form of reclamation can still have certain impacts, both positive and negative.

On the one hand, the positive impact of reclamation is like splitting up and developing an area of land that was initially considered not useful enough to be an area that has high economic value. For example, the profit gained by reclamation which in the coastal area is obtaining land without evicting the population and not paying compensation. On the other hand, there are also many negative impacts caused by reclamation, including:[4] increased pollution of the coastal environment by the waste generated; changes in the current coastline pattern of ocean currents; city traffic patterns disruption; fishing activities pattern is disturbed; disturbances to the ground water system and surface water in-

1 Humas BNPP, *Ini Alasan Perundingan Batas Maritim Indonesia Dengan 10 Negara Belum Selesai,* http://bnpp.go.id/index.php/berita/beritadetail/ini-alasan-perundingan-batas-maritim-indonesia-dengan-10-negara-belum-selesai,)Accessed on 12 April, 2020)

2 *Ibid.*

3 Article 1 (23) Law Number 27 Of 2007 Concerning Management of Coastal Zone And Small Islands.

4 Flora Kalalo, *Implikasi Hukum Kebijakan Reklamasi Pantai dan Laut di Indonesia*, (LoGoz Publishing: 2009), p. 5.

cluding erosion problems, decreased water quality and quantity, and the potential for flooding in coastal areas; coastal pollution during construction; problems with resettlement and land acquisition; potential damage to beaches and underwater installations (cables, gas pipes, etc.); potential disruption to the environment (displacement of fishermen housing, loss of mangrove forests, threatened coastal biota steps); and changes in regional spatial planning, also detailed spatial planning.

In addition to its impact on the environment, reclamation also greatly influences other social aspects;, such as traditional fishermen were displaced from their life sources only to make them lose their livelihoods in the end. Or in another aspect, reclamation can also trigger changes in territorial boundaries, for example the reclamation of eight small islands carried out by Singapore to make Jurong Island. The landfill has caused Jurong Island to widen as far as 12 nautical miles from its original border near the sea border between Singapore and Indonesia's region.[5] And this paper will explore and discuss more about reclamation of land in Singapore and its impact to Indonesia's sovereignty as well as the role of international law on such issu.

Basically, the reclamation that has been and is being carried out by Singapore has led to continual conflict between Indonesia and Singapore since 1966; it is marked by the issuance of Law No. 1 of 1973 concerning the Changi Continental Shelf.[6] Until now, no agreement is concluded to regulate the border issue in the southern part, whilst Singapore continues to implement its domestic policy in an effort to enlarge its land through reclamation. Countless conflicts occurring due to the reclamation activities carried out by the Singapore government could become a time bomb that would threaten Indonesia's sovereignty in the future, if it is not immediately resolved. Bear in mind that sovereignty has a very important role for a country, as exclaimed by *Jean Bodin* in his theory that sovereignty is the highest power of a country to determine the law in that country and is single, original and cannot be divided.[7]

In resolving these maritime border conflicts, Indonesia and Singapore rely on to the United Nations Convention on the Law of the Sea 1982 (*UNCLOS 1982*). However, *UNCLOS 1982* itself does not have articles specifically regulating reclamation. Thus, in order to overcome the reclamation conflict, several articles are used as guidelines, i.e. Article 2 (1) relat-

5 Indira Ardian, *"Singapura Makan Tanah"*, http://www.suarakaryaonline.com/news.html?id, accessed on12 April, 2020.

6 Wisnu Yudha AR, *"Reklamasi Singapura Sebagai Konflik Delimitasi Perbatasan Wilayah Indonesia-Singapura*, *"Skripsi*, Program Sarjana Ilmu Hubungan Internasional Fakultas Ilmu Sosial dan Politik Universitas Airlangga, Surabaya, 2007, p. 1.

7 P. Joko Subagyo, *Hukum Laut Indonesia*, (Jakarta :PT Rineka Cipta,2009), p.15.

ing to territorial seas in an archipelagic states,[8] Article 11,[9] and Article 60 (8) of UNCLOS 1982,[10] which states reclamation project undertaken by Singapore will not affect the determination of the territorial sea-wide territorial limits owned by Indonesia and Singapore using the meridian line Principle.[11]

Based on the aforesaid descriptions, the paper will further explore and discuss; ***"The Role of UNCLOS 1982 For Protecting the Indonesia Sovereignty from Reclamation Threat."*** The main issues to be discussed will be whether or not UNCLOS 1982 has room for reclamation and whether UNCLOS 1982 is able to fully protect Indonesia's territorial sea sovereignty from the Singapore's reclamation threat.

B. Research Methods

A method is a tool to help and answer and find the truth symbolically, methodologically, and consistently. Then the analysis is held to construct the data that has been collected and processed in accordance with the purpose of research. Therefore, a study is a scientific tool to improve and develop the science. The methodology used should be in accordance with science discipline, for example Legal Studies.

The method used in this research is descriptive analysis, in which research data are analyzed qualitatively as an overview of the situation and circumstances. By exposing authentic data, they are then, analyzed, and are compiled into some conclusions. The studies were conducted with normative juridical approach, namely research on the principles of law stated in the regulations, literature and scientific papers related to the object of research, and also sociological juridical approach namely the study was also conducted in the condition as occurred to the people connected with the regulations, literature and scientific writings are closely related within the research. The conclusion, then, is drawn by using deductive thinking method.

C. Discussions

1. Definitions of Reclamation

Experts of this matter give various definitions of land reclamation; as *J.L Stauber, A. Chariton,* and *S. Apte* stated, that the land reclamation is the process of creating new land from the sea. The simplest

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8 Article 2 (1) UNCLOS 1982 stated The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

9 Article 11 UNCLOS 1982 concerning Ports, stated: For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.

10 Article 60 (8) UNCLOS 1982 stated: Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

11 Dikdik Mohamd Sodik, *Hukum LautInternasional Dan Pengaturannya DiIndonesia,* (Bandung:PT Refika Aditama, 2011), p. 22.

method of land reclamation involves simply filling the area with large amounts of heavy rock and/or cement, then filling with clay and soil until the desired height is reached.[12]

Kavitha Sandirasegaran and Norpadzlihatun Manap, members of Department of Construction Management, Faculty of Technology Management and Business, *Tun Hussein Onn University*, Malaysia, also define land reclamation as usage of dredged sediments to construct or build new land in the sea which has played an important role in the metropolitan development in many developing countries due to the demand from high population.[13]

Those definitions are in line with the definition of reclamation given by the Organization for Economic Co-operation and Development (OECD). It is defined as "Land acquisition from the sea, swamps or other waters, and restoration of productivity / use on land that has been degraded by human activity or has been damaged due to natural phenomena".[14]

Alongside those definitions, Indonesia also has a regulation which specifically defines the reclamation term. According to Law of the Republic of Indonesia Number 27 of 2007 concerning Management of Coastal Zone and Small Islands under Article 1 (23), reclamation is defined as an activity carried out by a Person for the purpose of improving the use of the terrain viewed from the environment and socio-economic aspects, by piling, draining or drainage. All the definitions cited above underline that reclamation has its own characteristic. In general speaking, reclamation is always done in the sovereign waters of a state like a territorial sea.[15] Some examples of reclamation projects are world famous places such as Kansai Airport, Hong Kong Airport, and Palm Island Dubai. Conversely, other reclamation projects have triggered problems and conflicts at international level, such as the reclamation of *Tekong* Island and *Ubin* Island, both of which are in the South China Sea.

Given the definitions above, a further comparison is drawn to analyze some articles in the UNCLOS 1982 that usually used in reclamation issues between states. With some outlooks, it will reveal the characteristic from itself. Thus, it can be accommodated and regulated, and become the rules for bringing law certainty into the international society.

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12 J.L Stauber, e.l, Marine Ecotoxicology Current Knowledge And Future Issues, (Massachusetts: Academic Press, 2017) , p. 273-313.

13 KavithaSandirasegaran and NorpadzlihatunManap, "Impacts of Dredging and Reclamation Projects" *Jurnal Teknologi (Sciences & Engineering)* 78: 7–3 (2016) https://www.researchgate.net/publication/306133057 (accessed on 22 April,2020).

14 Retno Windari Purwito, "Aspek Hukum Internasional Terkait Dengan Reklamasi" *Pandangan Forum Guru Besar Institut Teknologi Bandung Terhadap Reklamasi Pantai Utara Provinsi DKI Jakarta* (Bandung: FGB-ITB,2016), p. 13.

15 *Ibid.*

2. *Reclamation Provisions in UNCLOS 1982*

Renownedas the constitution for the oceans, UNCLOS 1982 was considered to be one of the most successful codifications and progressive developments of international law made by the United Nations since the end of the World War II. UNCLOS 1982 produces an international legal order to regulate all activities in the oceans and seas . As a comprehensive legal framework for the law of the sea, UNCLOS 1982 elucidates the rights and obligations of all States, including: coastal, land-locked and geographically-disadvantaged States and other international actors in various functional maritime areas; the protection of marine environment; marine scientific research; activities in the Area as well as settlement of disputes mechanism applicable for disputes that may arise during the implementation and interpretation of UNCLOS 1982.[16]

Although UNCLOS 1982 is a reference for all forms of dispute in the maritime affairs, it cannot always be used as the solution for every maritime problem. Interpretation of the existing rules is often done by the parties by looking for theones which are more beneficial to their interests. Relatedly, UNCLOS 1982 has no specific provision that regulates reclamation. However, with the existing developments, also by looking at the number of reclamations carried out by many countries including Indonesia, there are some articles that can be used as references or guidelines in reclamation activities; there are:[17]

a. Article 11 concerning Ports, stated:
   For the purpose of delimiting the territorial sea, the outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbor works.

b. Article 56 (1) point b rules about rights and obligation of the coastal state into Exclusive Economic Zone, which explained:
   Jurisdiction as provided for in the relevant provisions of this Convention with regard to:
   i. the establishment and use of artificial islands, installations and structures;
   ii. marine scientific research.
   iii. the protection and preservation of the marine environment.

[16] Nguyen, Dong Manh, *Settlement of disputes under the 1982 United Nations Convention on the Law of the Sea The case of the South China Sea dispute*, UN-Nippon FoundationFellowship on the Law of the Sea, December 2005, p. 3.

[17] Siti Azizah, Pengaturan Tentang Reklamasi Pantai Berdasarkan Unclos 1982 Dan Implementasinya Di Indonesia,http://download.garuda.ristekdikti.go.id/article.php?article=925013&val=14393&title=PENGATURAN%20TENTANG%20REKLAMASI%20PANTAI%20BERDASARKAN%20UNCLOS%201982%20DAN%20IMPLEMENTASINYA%20DI%20INDONESIA (accessed on 22 April,2020)

c. Article 60 (1) concerning Artificial Islands, Installations and Structures in the Exclusive Economic Zone explained that:

   In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

   a) artificial islands.
   b) installations and structures for the purposes provided for in article 56 and other economic purposes.
   c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

   These articles explained that states have right to artificial islands, installations, and buildings for economic purposes, and installations and buildings can interfere with the implementation of coastal state rights.

d. Article 60 (2) asserted that:

   The coastal State shall have exclusive jurisdiction over such artificial islands, installations, and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

e. Article 80 concerning Artificial islands, installations and structures on the continental shelf also explained that:

   Article 60 applies mutatis mutandis to artificial islands, installations, and structures on the continental shelf.[18]

Based on the Articles mentioned, it is evident that reclamation is not specifically pointed out under these articles, as in the definition. Instead, the articles were intended more for marine objects definitions and the rights and obligations attached to or related to marine objects. Hence, it shows that UNCLOS 1982 does not have the reclamation provisions; however, the articles are given interpretation to benefit concerned states relating to reclamation. With numerous rules based on interpretations, the legal principle from UNCLOS 1982 will be reduced as one of the products of international law.

Certainly, it is acceptable to state that the provisions in the articles may be interpreted according to deprived wishes. However, it must be considered that UNCLOS 1982 needs to be improved, where Indonesia, as a large archipelagic state in the world, is expected to contribute its ideas to this reclamation issues, and not only focus on bilateral solutions that will require a lengthy period..

3. Can UNCLOS 1982 Protect Indonesia's Sovereignty from Reclamation Threat?

Before discussing the questions more deeply, it is essential to bring up some

[18] Fella Defilla, "Reklamasi Singapura Terhadap Kedaulatan Wilayah Republik Indonesia Berdasarkan Hukum Laut Internasional" *JOM Fakultas Hukum Volume III Nomor 1* (2016), p.11-12.

understanding about the conception of the state's sovereignty itself. As previously stated, the sovereignty issue of *Jean Bodin* theory reveales that sovereignty is the highest power of a state to determine the law in that state and is solitary, original, and cannot be divided.[19]

In its journey in the 18th century, this theory developed into two different thoughts. On the one hand it considerss sovereignty to be intact. On the other hand, another view arises and develops that considers sovereignty aside and that must remain an essential characteristic of a State that must not be lost.Yet, sovereignty within its implementation will be limited by the rules that apply in relations between States (*pluralism sovereignty ideology*).[20]

Thus, the sovereignty as supreme power concept contains two important limitations, namely:

1) That power is limited to the territorial borders of the state which has that power, and
2) The power ends where the power of another state begins.

State sovereignty in its implementation is manifested into two sides, they were known as *internal sovereignty* and *external sovereignty*. This article discusses the use of external sovereignty theory which is established in the manifestation of the State power including the ability to obtain recognition from other states and to determine cooperation or international relationship with other countries and fellow international law subjects.[21] These capabilities and authorities contain participation in negotiations, international conferences signing multilateral and bilateral agreements, international cooperation in various fields, engaging in international organizations and others. In addition to some of these theories, there is also another, which is known as *territorial sovereignty* that was described by *Max Huber* with the term "Sovereignty in relations between countries signifying independence. Independence in relation to a part of the earth is the right to exercise it, regardless of other countries' functions."[22]

From the brief description of the theory above, it can be concluded that the states sovereignty, which is reflected in its absolute freedom in regulating its own territory form based on its law, has restrictions if it comes in direct contact with the boundaries of other states. In relation to the reclamation issue carried out by Singapore, it shall be seen that basically Indonesian waters bordering Singapore has become narrower because of the reclamation.

In addition, it certainly causes other negative impacts for Indonesia, specifically social and environmental impacts for

19 P. Joko Subagyo, *Loc.Cit*
20 Yudha Bhakti Ardhiwisastra *, Imunitas Kedaulatan Negara Di Forum PengadilanAsing*, (Bandung: Alumni. 1999), p. 13.
21 Suryo Sakti Hadiwijoyo, *Aspek HukumWilayah Negara Indonesia,* (Yogyakarta: Graha Media,2012), p. 46.
22 *Ibid.*, p. 211.

the Indonesian peoples, especially those living around the territorial waters. As well, it is evident that Indonesia sovereignty in the territorial waters will be susceptible to stability, if there is still no solid step taken to uphold the sovereignty of Indonesia in this part of territorial waters.

It should be emphasized, as previously defined, that reclamation is an action to construct or build new land in the sea which has played an important role in the metropolitan development in many developing countries due to the demand from the high population,[23] which of course the construction result will be permanent. If a problem or dispute arises, part of the reclamation cannot be returned to its original form. This should be calculated by the state carrying out reclamation, in this case, Singapore, to submit a reclamation development permit to the state that is directly affected, Indonesia.

It is true that the accentuation of the reclamation issue is not on shifting its territorial boundaries automatically, but the main issue is the impact of Singapore's reclamation to the surrounding of the Indonesian territory. Taking for example the possibility of sinkage of the *Nipa* Island which triggers the assumption that Indonesia's vast territory is increasingly narrow. In fact, the *Nipa* Island is indeed experiencing serious abrasion due to sea sand mining in the vicinity which is sold illegally to Singapore for beach reclamation.[24] Another example was the reclamation to eight small islands which were carried out by Singapore to make *Jurong* Island. The hoarding made *Jurong* Island has now widened as far as 12 nautical miles from its original limit nearing the sea border of Singapore and Indonesia.[25] From these data it can be concluded that it is not automatically that Indonesian sovereignty is directly agitated, but reclamation impacts will ultimately threaten the sovereignty of Indonesia's territory. In brief, it could be said that the impact on sovereignty would emerge later after some time.

Based on the previous discussions in this section, the UNCLOS 1982 can be used as a guideline for raising reclamation issues in a certain vulnerable period of time. In other words, it can be said that it will only be temporary if it is not specifically regulated reclamation under the international law provisions. Consequently, the finest way is how Indonesia can propose its concepts related to reclamation issues to be regulated in a rule of international law of the sea because the UNCLOS 1982 clearly has not been able to fully protect the threat to the sovereignty of Indonesia from reclamation activities carried out by Singapore over a long period of time. With the hope that international law of the sea

[23] KavithaSandirasegaran and NorpadzlihatunManap, *Loc.Cit*.

[24] AjangNurdin, 'Pulau Nipa TerancamTenggelam, Batas Indonesia Bakal Bergeser, Liputan 6. https://www.liputan6.com/news/read/2257248/pulau-nipa-terancam-tenggelam-batas-indonesia-bakal-bergeser, (accessed on 24 April. 2020).

[25] SitiAzizah, *Loc. Cit*.

will accommodate reclamation issue to be regulated, Indonesia indirectly has a definite legal base if the same issue arises with 10 other neighboring countries. Surely this will further strengthen the absolute sovereignty of Indonesia as one of the largest archipelagic states in the world and make it intact as a whole and cannot be divided.

D. Closing

From the analysis and discussion above, there are some conclusions that can be drawn:

1. It showed that UNCLOS 1982 does not have the reclamation provisions. Matters regulated in UNCLOS 1982 concern only on marine objects and the rights as well as obligations attached to or related to those objects. The main issues related to marine objects that are important to understand in relation to reclamation include: internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf, island, and reefs. Therefore, states prefer to use their interpretation of those articles which can bring them a benefit when it is related to the reclamation. With various rules interpretations, the legal principle of UNCLOS 1982 will be weakened as one of the products of international law. The UNCLOS 1982 can be used as a guideline for raising reclamation issues in a certain vulnerable period of time. In brief, it can be said that it will only be temporary if it is not specifically regulated regarding reclamation itself in the international law provisions. For that reason, it can be said that the UNCLOS 1982 clearly has not been able to fully protect the threat to the sovereignty of Indonesia from reclamation activities carried out by Singapore over a long period of time.
2. From these analyses, there is a recommendation to provide one of the options to solve the reclamation issues recently. Indonesia can propose its concepts related to reclamation issues to be regulated in a rule of international law of the sea because the UNCLOS 1982 clearly has not been able to fully protect the threat to the sovereignty of Indonesia from reclamation activities carried out by Singapore over a long period of time. With the expectation that international law of the sea will accommodate reclamation issue to be regulated, so that Indonesia indirectly has a definite legal base if the same issue arises with 10 other neighboring countries. This option will save more energy, and also time because it directly improves the core of legal basis. Surely this will further strengthen the absolute sovereignty of the Indonesian state as one of the largest archipelagic countries in the world and make it intact as a whole and cannot be divided.

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