INDONESIA'S FOREIGN POLICY TOWARDS MALAYSIA IN THE POST SOEHARTO ERA: A CASE STUDY OF AMBALAT DISPUTE

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Abstract:

This article seeks to examine Indonesia's foreign policy with Malaysia in the post-Suharto era especially in the Ambalat disputes. The primary objective of this article is to answer questions why the dispute has not been solved for more than half a century? What has been done by both parties? Why the Ambalat Block is still far from been resolved? What kinds of obstacles have been faced by both parties for taking so long on the negotiation process? This article shows that Indonesia's concern on Ambalat issue is due to losing Sipadan-Ligitan that finally belongs to Malaysia after the International Court of Justice's decision in 2002. Interestingly, this study revealed that during Ambalat dispute, both countries were involved in a serious tension with the mobilization of soldiers, warships, and fighter jets, despite that Indonesia and Malaysia are both member countries of ASEAN.

Keywords: Ambalat, Foreign Policy, Dispute, Indonesia, Malaysia

Título en Castellano: Política Exterior de Indonesia con Malasia durante el período post-Suharto: Un estudio de caso del conflicto de Ambalat

Resumen:

En este artículo se aborda la política exterior de Indonesia con Malasia en el período post-Suharto, particularmente en los conflictos de Ambalat. Esta investigación busca resolver las siguientes cuestiones: ¿Por qué no se ha resuelto el conflicto desde hace más de medio siglo? ¿Qué han hecho ambas partes? ¿Por qué no se ha resuelto el conflicto? ¿A qué tipo de obstáculos se han enfrentado ambos partidos para que los procesos de negociación duraran tanto tiempo? Esta investigación muestra que las preocupaciones de Indonesia sobre el problema de Ambalat proceden de la pérdida de Sipadan-Ligitan, que finalmente pertenece a Malasia desde la decisión de la Corte Internacional de Justicia en 2002. El artículo muestra también que ambos países contribuyeron a crear serias tensiones a través de la movilización de soldados, buques de guerra y aviones de combate, a pesar de que tanto Indonesia como Malasia son miembros de la ASEAN.

Palabras Clave: Ambalat, Política Exterior, Conflicto, Indonesia, Malasia

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DOI: <http://dx.doi.org/10.31439/UNISCI-85>

1. Introduction²

Indonesia, which is an archipelagic country, has sea boundaries in accordance with *United Nations Convention on the Law of the Sea* (UNCLOS), 1982, which was subsequently ratified by the government into Law No. 17 of 1985. Indonesia has around 17,506 islands with 2/3 of its area are oceans. From these islands, there are several outermost islands that are directly adjacent to neighbouring countries. Based on the Base Point survey conducted by the Indonesian Navy in setting boundaries with Indonesia's neighbouring countries, there are currently 183 bases located on 92 outermost islands, while the others are on the outermost capes in the coastal area. In general, the existence of islands is a potential natural resource for the country. One of the various potential natural resources is the Ambalat Block. Ambalat is located in the Sulawesi sea or Makassar Strait (Figure 1) with an area of 15,235 square kilometres, estimated to contain oil and gas which can be utilized for up to 30 years.³ The Ambalat Block area belongs to Indonesia as it is proven by the evidence of the signing of the Indonesia-Malaysia Continental Border Agreement on 27 October 1969, which was signed in Kuala Lumpur and was later ratified on 7 November 1969.⁴

Figure 1. Position of Ambalat

Source: Arsana (2010)

The settlement of the Ambalat Block dispute between Indonesia and Malaysia, according to the international law, must be carried out peacefully. The border dispute resolution in water areas is different from land in which it is easier to determine regional boundaries. However, the dispute must be resolved and not be worsened, which may result in the issue of the Ambalat Block dispute becomes increasingly difficult to resolve peacefully. In fact, it has been more than four

² The authors would like to thank the Ministry of Research, Technology, and Higher Education of the Republic of Indonesia for funding this research and the anonymous reviewers for their useful comments. The views expressed in this article are our own and do not represent the Ministry of Research, Technology, and Higher Education of the Republic of Indonesia.

³ "RI Peringatkan Malaysia soal Blok Ambalat", *Kompas.com*, 21 October 2009, at <https://tekno.kompas.com/read/2008/10/21/22413798/ri.peringatkan.malaysia.soal.blok.ambalat>

⁴ Mauna, Boer. (2008): *Hukum Internasional: Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung, Penerbit Alumi.

decades and the problem remains. Furthermore, both parties had even mobilized military forces, warships, and fighter jets to influence the course of negotiations which had been carried out 34 times.⁵

In public international law, there are two kinds of international disputes—legal or judicial and political disputes (political or non-justiciable disputes).⁶ In general, international disputes can always be resolved by international courts. Anything as difficult as a dispute, even if there is no arrangement, the International courts seem to be able to decide by relying on the principle of propriety and feasibility (*ex aequo et bono*). Under the Article 33 of The Hague Convention of 1899, in essence, the peaceful settlement of disputes was divided into two groups—diplomatic settlement (negotiation, investigation, mediation, conciliation) and legal settlement.⁷ This article uses a qualitative approach with a content analysis on provided secondary data. In this case, the authors review some concepts on international laws and previous references on Ambalat issues.

2. Discussions and Results

Based on the aforementioned background, it is important to ask these questions: 1) What is the legal basis for Malaysia to claim for a dispute over the ownership of the Ambalat Block? 2) Has the claim submitted by Malaysia against the Ambalat Block been in accordance with the provisions of UNCLOS 1982? 3) How is the settlement of Malaysian claims in the dispute over the Ambalat Block between Indonesia and Malaysia according to UNCLOS 1982? 4) What are the diplomatic steps taken by Indonesia in facing Malaysia's claims to the Ambalat border?

2.1. The Settlement of the Dispute over the Ambalat block between Indonesia and Malaysia

The following subsections content some important things to note in recognizing the efforts made by Indonesia and Malaysia in solving the Ambalat dispute.

2.1.1 Malaysian Legal Basis for Claiming the Ambalat Block

Based on the Ordinance Powers law which was passed in August 1969, Malaysia established a territorial sea area of 12 nautical miles measured from the baseline by drawing a straight baseline according to provisions of the 1958 Sea Law Convention concerning the Territorial Sea and the Contiguous Zone. Under the law, Malaysia then unilaterally declared the 1979 Malaysia Map on 21 December 1979. Subsequently, in December 1979, Malaysia issued a New Map with the outermost limits of the excessive maritime claims in the Sulawesi Sea. The map clearly included the seabed area as a part of Malaysia which was later called as the Ambalat Block by Indonesia. However, only Malaysia knows the baseline and starting point to determine the boundary of its territory. In international relations, a country must notify the starting points and baselines of its territorial sea for other countries to identify.

The 1979 map issued by the Malaysian government did not only received protests from Indonesia but also from Philippine, Singapore, Thailand, China, and Vietnam, since it is considered as an attempt to seize the territory of another country.⁸ Philippine and China, as an example, protested against Spratly Island. In April 1980, Singapore sent its protest related to

⁵ Minister of Foreign Affairs of Indonesia, 6 March 2019, Warsito, Tulus (Interviewer)

⁶ Adolf, Huala. (2004): *Hukum Penyelesaian Sengketa Internasional*, Bandung, Sinar Grafika.

⁷ *Ibid.* The main part of diplomatic efforts is the peaceful settlement of disputes, one of them is negotiation. For the ways to Peacefully Resolve International Disputes see Krebs, Shiri: "The Legalization of Truth in International Fact-Finding", *Chicago Journal of International Law*, Vol. 18, n°1 (2017), pp. 83-163 and Ford, Stuart: "The Impact of the Ad Hoc Tribunals on the International Criminal Court", 22 February 2018, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3128531

⁸ Butcher, John G.: "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea", *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Vol. 35, n°2 (2013), pp. 235-257. See also Bateman, Sam: "The Future Maritime Security Environment in Asia: A Risk Assessment Approach", *Contemporary Southeast Asia*, Vol. 37, n°1 (2015), pp. 49-84.

Pedra Branca (Batu Puteh Island). Protests were also posted by Vietnam, Taiwan, Thailand, and the United Kingdom on behalf of Brunei Darussalam. Thus, Malaysia's claims to territories based on Map 1979 did not receive recognition from its neighbouring countries and the international community. However, Malaysia continues to make the 1979 Map a valid official map to date.

Judging from international law of the sea, Malaysia is not an archipelago because it is not justified in drawing such baselines as determining the territorial sea boundary and continental shelf. Malaysia is an ordinary coastal country that is only justified in drawing normal (ordinary) baselines and straight baselines if it meets the requirements. There are rows of islands or corals in front of their coastal land and must have a bond of closeness to the land area of Sabah to submit to the inland water law regime in accordance with article 5 CLS 1958 concerning the Territorial Sea and Contiguous Zone. In addition, it is also in accordance with article 7 CLS 1982.⁹ According to the international custom law, it is stated that if the claim of a country is a unilateral action from that country (unilateral action) does not get protests from countries, especially its neighbours¹⁰. Then, after 2 (two) years, the claim is declared valid. In connection with the 1979 Malaysia Map which received many protests from neighbouring countries and other countries, in fact, the map had no legal force.¹¹

If Malaysia believes that "each island has the right to have a territorial sea, an exclusive economic zone and its own continental shelf", then this violates Article 121 of UNCLOS, which can be justified. However, the continental shelf boundary setting regime has a specific rule that proves the existence of islands that are relatively small socially and economically insignificant will not be considered a special circumstance in determining the continental shelf boundary line. Malaysia is not an archipelago. Consequently, it has no right to claim Ambalat. According to the Convention on the Law of the Sea, a coastal state (a country whose land area is directly in contact with the sea) has the right to a territorial marine maritime zone, Exclusive Economic Zone (EEZ), and continental shelf along the conditions (distance and geology) allow.

The process of claims submitted by Malaysia against the Ambalat Block is the following:

- I. In 1979, Malaysia used the 1979 Malaysian Territory Map which unilaterally included the Ambalat area as its territory as the basis of the claim, although the map has been protested not only by Indonesia but also by The Philippines and Singapore.
- II. Malaysian claims, which are 12 nautical miles around the Karang Ambalat Island, are if 70 miles from Sipadan Island and Ligitan Island
- III. Malaysia claimed that the eastern area of East Kalimantan belonged to them and called the Ambalat area an XYZ Block based on the map they had made in 1979. On the other hand, Indonesia referred to the same block as the Ambalat Block and East Ambalat Block. In Ambalat, Indonesia has granted exploration concessions to ENI (Italy) in 1999. Meanwhile, the East Ambalat Block was given to Unocal (United States) in 2004.

⁹ Article 5 Convention on the Law of the Sea (1958); and Article 7 Convention on the Law of the Sea (1982).

¹⁰ Suswanta, S.: "Reconsidering the Stigma of Political Opportunism Among the Kiai: A Critique of the Modernist Perspective," *PCD Journal*, Vol.6, n°1(2018), pp. 147-172.

¹¹ Oegroesewu, Arif H. (2004): *Delimitasi Batas Maritim dalam Kebijakan Border Diplomacy Indonesia International Sea Law Workshop*, Yogyakarta. See also Nainggolan, Poltak P.: "Kebijakan Poros Maritim Dunia Joko Widodo dan Implikasi Internasionalnya", *Politica*, Vol. 6, n°2 (2015), pp. 167-190. And see also Anggraini, Silvia; Kusumawardhana, Indra; Ramadhan, Iqbal: "The Implication of Indonesia's IUU Fishing Policy in Natuna Territorial Waters towards South China Sea Geopolitics", *Jurnal Hubungan Internasional*, Vol. 7, n°2 (2018), pp. 118-132.

- IV. Malaysia was not ready to hold a dialogue with Indonesia in July 2004 because it conducted a precise location survey in 1979.
- V. In 1961, Indonesia began to provide exploration concessions to various oil companies, and until now the concession continues. The problem emerged when Malaysia made a unilateral map in 1979 (Figure 2). In addition, Malaysia felt more involved in the development process in Ambalat.
- VI. The base line is a straight line that connects the outermost points. When drawn from the straight line, the Ambalat enters the line and even farther out again. This standpoint has been included in Indonesia in Law Number 4 of 1960, which was later recognized in the 1982 Convention Law of the Sea.

Figure 2. New Malaysian map 1979

Source: Salleh et al. (2010).

- VII. Indonesia was successful in struggling the concept of an archipelagic state to be recognized internationally. The recognition was perpetuated by the loading of provisions concerning the principles and legal regimes of the island nation in UNCLOS Chapter IV. This convention was established at the United Nations Third Conference on the Law of the Sea in Montego Bay, Jamaica, on December 10, 1982.
- VIII. The problems faced by Indonesia today are related to the case of Sipadan and Ligitan (Figure 3). The problem is that when it clashed with Malaysia in the case of Sipadan and Ligitan, Indonesia did not ask the International Court of Justice to decide on the sea border at the same time. Indonesia never negotiated. In the norms of international law, because Malaysia did not protest it, it meant that it was the recognition of Indonesia's attitude as

stated in Law No. 4 of 1960. On the other hand, Malaysia just started filing for a protest note in 2004 after winning the case of Sipadan-Ligitan Island.

- IX. In 1998, Indonesia gave a concession to Shell to conduct oil exploration. Malaysia knew it, but they did not protest it. In the end of 2004, when Indonesia offered a new block concession in Ambalat, it received protests from Malaysia.

Figure 3. Sipadan and Ligitan Islands included in New Malaysian Map 1979

Source: Salleh et al. (2010) Adapted from Peta Baru Menunjukkan Sempadan Perairan dan pelantar Nenua Malaysia 1979 Map. Directorate of national mapping, Malaysia

2.2 Malaysian Claims according to the Provision of UNCLOS 1982

Malaysian claims for the ownership of the Ambalat block based on 1979 Map and based on sovereignty over Sipadan and Ligitan were given to Malaysia. In the 1979's map, Malaysia announced the territorial sea width of 12 nautical miles measured by the baseline by drawing a straight baseline according to the 1958 marine law, with Malaysia acted to the detriment of neighbouring countries because the baseline was only known by Malaysia. In international relations, a country must notify its territorial points and territorial sea lines for other countries to identify.

As an ordinary coastal country according to UNCLOS 1982, it was stated that Malaysia was only allowed to draw normal baselines or straight bases (Straight Baselines). For this reason, Malaysia should not be allowed to draw its sea base from Sipadan and Ligitan island, since Malaysia is not a coastal country.

On the other hand, Malaysia used UNCLOS Article 121 claiming that each island has the right to a territorial sea, an Exclusive Economic Zone and, a continental shelf, separately, this may be justified. Nevertheless, assessing the continental shelf between countries often needs to pay attention to whether the seabed land is above a natural extension of the surface. At the same time, this scenario often needs to consider whether or not a country's seabed is a natural land

extension area. Finally, existing continental shelf boundary agreements between Indonesia and Malaysia should be included in this process.

Based on the norms of international law, Malaysia has not made claims for Indonesia's actions on mining activities and exploitation in the Ambalat Block area since 1960 until after the issuance of the Malaysian map in 1979. Therefore, this is an evidence of Malaysia's recognition of the Ambalat area meaning that Indonesia had sovereign rights in the region.

In addition, based on the history of the region since the day of the Dutch colonizers, Indonesia is an archipelagic state. The Declaration of the Indonesian Archipelago State began when the Djuanda Declaration was issued in 1957, followed by Indonesian Law No. 4/1960 concerning Indonesian waters. This Declaration of the Archipelago State was also approved by UNCLOS in 1982 Part IV. The contents of the 1982 UNCLOS declaration included that there was no free seas among the Indonesian islands and, as an Archipelagic State, Indonesia may draw its baselines from points of the outermost outer islands.

2.3 Dispute Settlement of Ambalat Block between Indonesia and Malaysia according to UNCLOS 1982

Malaysia and Indonesia have ratified UNCLOS 1982. Hence, ideally, a dispute resolution is based on UNCLOS 1982—not on the provisions that apply unilaterally. According to UNCLOS, Borneo Island (on which there are Indonesia, Malaysia, and Brunei Darussalam) has the right to the territorial sea, additional zones, EEZ, and continental shelf. To the east of Borneo, it can be determined that the territorial sea boundary is 12 miles from the baseline while the line is 200 miles which is the next EEZ boundary for the continental shelf. The zones formed are the rights from the Borneo mainland. It can simply be said that the southern part belongs to Indonesia and the northern part belongs to Malaysia. Indeed, in this case, a boundary line that divides the waters area is needed.

Subsequently, the land boundary line between Indonesia and Malaysia in Borneo has indeed been established. The line is through Sebatik Island, a small island on the eastern tip of Borneo, on the latitude of 4° 10' (four degrees 10 minutes) north latitude. The line stops at the eastern end of Sebatik Island (Figure 4). Ideally, the end point of this land boundary becomes the starting point of the maritime boundary. However, this does not mean that the maritime boundary must be a straight line following the line 4°10' north latitude.

This maritime boundary must be one that is fairly dividing the maritime area in the Sulawesi Sea. This line will determine the "division" of sovereignty and sovereign rights of Indonesia and Malaysia over the maritime area in the Sulawesi Sea, including the Ambalat Block. Until now, the line has not yet been agreed upon and is being negotiated. According to UNCLOS, the process of determining the continental shelf boundary line refers to Article 83 which requires the achievement of a fair or "equitable solution" (Paragraph 1).

In order to formulate this fair solution, the two countries are demanded to be creative so that an adequate capacity negotiating team is needed. It should be noted that 'fair' does not always mean the same distance or equidistance.

Figure 4. The dispute over Ambalat based on 1982 map

Source: Khalid and Valencia (2009).

As a result, it can be concluded that the sovereign rights status of Ambalat is not completely clear. There has not been any maritime boundary established and divided between the authorities of the two countries. However, in the continental shelf (seabed) of the Sulawesi Sea, there has been an exploration of marine resources in the form of concessions by the Government of Indonesia since 1960s to foreign companies that had not been directly protested by Malaysia until 2002. Correspondingly, Malaysia has also stated its claim to certain areas on the Sulawesi Sea through 1979 Maps despite the fact that the map was protested not only by Indonesia, but also by other neighbouring countries and the international community. The claims by Indonesia were in the form of granting concession blocks since the 1960s and claims related to Malaysia will certainly be one of the considerations in carrying out maritime boundary delimitation in the Sulawesi Sea, in addition to referring to UNCLOS which was established later. For Indonesia, the boundaries of the concession blocks that have been around since the 1960s and have not been rejected by Malaysia will certainly be a guideline or a main reference in establishing maritime boundaries in the Sulawesi Sea.

Meanwhile, Malaysia, which is now the legal owner of Sipadan and Ligitan, is unlikely to take advantage of the position of the two islands. Although Malaysia is not an archipelagic country like Indonesia, theoretically, Sipadan and Ligitan remain entitled to the maritime area as stated in UNCLOS, Article 121. However, there is still the possibility that Indonesia refuses to give full effect to the two islands so that they do not have too much influence on Malaysian claims. It is possible that Indonesia will argue that small islands such as Sipadan and Ligitan should not have a disproportionate effect on the maritime boundary between Indonesia and Malaysia. In negotiations, such circumstances are very important and certainly have been considered by the Indonesian team.

As stated earlier, Ambalat is only related to the sea floor (continental shelf). It has nothing to do with the water body. The line options discussed in this section are maritime boundaries for the seabed. However, Indonesia and Malaysia also need to resolve maritime boundaries for their waters, which, in this case, are included in the EEZ regime. If Malaysia and Indonesia choose to

set a single boundary line, then one line will divide the seabed as well as the water. Practically, such a line will determine the authority limit for the exploitation of oil/gas on the seabed as well as fish in its waters. Options like this are very beneficial in terms of the practicality of natural resource management and have been adopted in many cases involving multi-zone delimitation.¹²

In addition, if the delimitation for each regime (seabed and body of water) is performed separately, there is a possibility that different lines will be produced for the seabed (continental shelf) and body of water (EEZ). This solution will create a situation in which there is a maritime area having seabed that is under the Indonesian authority, but the water is under the authority of Malaysia or vice versa. Practically, fish in certain areas will be the right of Malaysia while oil and gas on the seabed are under Indonesian authority or vice versa. Despite the high complexity, options like this have been adopted in some of the previous cases. The maritime boundaries between Indonesia and Australia in the Timor Sea, for example, adhere to this principle. The boundary of the continental shelf (seabed) agreed between 1971 and 1972 between Indonesia and Australia is different from the EEZ (water body) limit set in 1997.¹³ As a result, in a certain area, the seabed is in Australian authority while the water is under Indonesian authority.

The 1982 Sea Law Convention provides various methods in order to resolve sea legal disputes. Judging from the development of the justice system internationally, the mechanism of this Convention is the first time that it can direct participating countries to accept coercive procedures (compulsory procedures), with the Convention system. There is no room for the Convention parties to postpone their maritime legal disputes by hiding behind the concept of state sovereignty for the Convention principally requires states parties to resolve their disputes through the Convention mechanism.¹⁴

The settlement of disputes is regulated in Chapter XV concerning Settlement of Disputes, Article 279 essentially mentions that the states parties are given broad freedom to choose the desired procedure as long as it is mutually agreed upon. This article directs resolution of disputes as recommended in Article 33 (1) of the United Nations Charter. Article 33 (1) The Charter of the United Nations states that if a dispute occurs, it should be resolved by means of negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement resort to regional agencies or other peaceful means on their own choice (Article 33 (1) United Nations Charter on Disputes, 1945). Regarding the disputes that occurred between Indonesia and Malaysia, the two countries chose to use the negotiation method or diplomatic negotiations as a first step to resolve their disputes. This can be seen from the meetings conducted by representatives of the two countries. The cases of maritime boundary settlement have been carried out by negotiation or with the help of third parties.

History proves that there are many disputes negotiated between Indonesia and Malaysia. The problems of Indonesian migrant workers are taken through negotiations, the resolution of disputes over the islands of Sipadan and Pulau Ligitan was initially pursued through negotiations. Both negotiations occurred between the heads of state, ministerial levels of working group formation to the level of negotiations between special representatives. However,

¹² Vidas, Davor: "Consolidation or Deviation? On Trends and Challenges in the Settlement of Maritime Delimitation Disputes by International Courts and Tribunals", in Nerina, Boschiero; Scovazzi, Tullio; Pitea, Cesare; Ragni, Chiara (eds.) (2013): *International Courts and the Development of International Law: Essays in Honour of Tullio Treves*, The Hague, The Netherlands: T.M.C. Asser Press/Springer, pp. 323-332. See also Andreone, Gemma. (ed.). (2017): *The Future of the Law of the Sea Bridging Gaps Between National, Individual and Common Interests*, Switzerland, Springer Open.

¹³ Arsana, I Made A.: "Good Fences Make Good Neighbours: Challenges and Opportunities in Finalising Maritime Boundary Delimitation in the Malacca Strait between Indonesia and Malaysia", *Jurnal Hukum Internasional*, Vol. 12, n°1 (2014), pp. 21-48.

¹⁴ See Mauna, *op. cit.*

in the end, the negotiation efforts were not successful and the final settlement of the dispute was carried out through the International Court of Justice.

Basically, the method of dispute resolution through the mechanism of negotiation is a conventional method that is always used in the framework of dispute resolution efforts by any party involved in the dispute. This method sometimes requires a very long time. For example, the Sipadan-Ligitan Island dispute negotiations took more than 10 years. This can happen since in negotiations it is possible for the parties to remain adamant with their opinions and try to break the arguments given by the opposing parties. This is frequently done as an implementation of the sovereignty of each party, making it difficult to look for a settlement meeting point. The long span of time spent is a risk that must be accepted by the parties if they take this method. However, the negotiation method has a positive side—the sovereignty of the parties is maintained. This method of dispute resolution through negotiations includes a method of non-jurisdictional settlement, which is not binding on the parties to the dispute.

Based on the dispute, peaceful means such as negotiations have been repeatedly carried out, but they have not found a meeting point. Since the issue of Ambalat raised, negotiations have been carried out 34 times alternately in both countries. Indeed, it must be understood that the delimitation of maritime boundaries is not a trifle task. Negotiating maritime boundaries with Vietnam, for example, lasted 25 years before ending in 2003. Meanwhile, with Malaysia, maritime boundary negotiations have been going on since the 1960s with the first agreement signed in 1969. The choice to use the negotiation path was seen as better than leaving it to third parties such as ICJ. First, both parties can fully control the settlement of the case and do not hand it over to a third party. Thus, all parties of interest can fight to win it optimally. Second, solving cases through ICJ takes a long time and the spent cost is much. The cases of Sipadan and Ligitan, for example, cost not less than Rp 16 billion as stated by Foreign Minister Hassan Wirajuda.¹⁵ In fact, Indonesia and Malaysia have indeed agreed to resolve this Ambalat dispute through negotiation channels and will not bring it to ICJ.¹⁶

Other ways such as mediation can also be taken by Indonesia and Malaysia in resolving their disputes. This mediation is a way of resolving disputes involving third parties to help resolve the disputes. The history reveals that Indonesia had taken this method in resolving its disputes. Mediation of The Three Nations Commission (Australia, Belgium, and the USA) formed by the United Nations in August 1997 was very effective in seeking dispute resolution between Indonesia and the Netherlands, and even helped to formulate the Renville Agreement.¹⁷ About 22 mediations had also been opted by other countries as efforts to resolve the disputes they faced.

In the event that a settlement is not achieved in the manner mentioned above, the 1982 Sea Law Convention has another non-jurisdictional method of dispute resolution—by the method of conciliation as stipulated in Article 284 and the technical conditions are set out in Appendix V of the 1982 Sea Law Convention. The method of resolving disputes according to the conciliation procedure begins with a notification from one of the parties to the other (article 1 Annex V UNCLOS '82). UN Secretary General will hold the names of the conciliators (peacemakers) appointed by participating countries of the Convention where each country may appoint 4 conciliators on the condition that these persons must have a good reputation, sufficient competence, and integrity (article 2 Annex V UNCLOS '82).

¹⁵ “Deplu: Tak Ada Lagi Pulau Milik Indonesia dalam Sengketa”, *Tempo.co*, 15 December 2003, at <https://nasional.tempo.co/read/35466/deplu-tak-ada-lagi-pulau-milik-indonesia-dalam-sengketa>

¹⁶ “Ambalat Case may not be brought to International Court”, *Bernama*, 1 June 2009, at <http://maritime.bernama.com/news.php?id=415208&lang=en>

¹⁷ See Mauna, *op. cit.*

The conciliation commission consists of 5 (five) members. Two (2) members are chosen by each party (preferably from the names on the list) and the fifth one will be selected from the list by the four members and will become the Chairman of the Commission. If this appointment cannot be performed, then the UN Secretary General will appoint the member from the list after the relevant (article 3 Annex V UNCLOS '82). The decisions on the procedural matters, reports, and recommendations from the Commission were carried out by voting to find the most favourable one (article 4 Annex V UNCLOS '82). The Commission will listen to the disputing parties, examine their claims and the objections raised, and prepare proposals for peaceful settlement (article 6 Annex V UNCLOS '82). The Commission will provide a report (report) within 12 months of the commission being formed. The report will record each agreement reached, failed agreement, and conclusions on all facts and laws which are important for the disputed problem and recommendations that the commission considers useful for the settlement of peace. The report will be kept at the office of the UN Secretary General and will immediately be forwarded to each party. This report is not binding on the parties concerned (article 7 Annex V UNCLOS '82). This report is not binding on the parties concerned (article 7 Annex V UNCLOS '82). The conciliation will end if the settlement has been reached, when the concerned parties accepts or one of the parties rejects the report with a written note addressed to the Secretary General of the United Nations or if the period of 3 months has passed since the report was submitted to parties (article 8 Annex V UNCLOS '82). The fees and expenses of the Commission are borne by the disputing parties (Article 9 Annex V UNCLOS '82).

Finally, if through the procedure described above the parties have not been able to resolve the dispute, then the next procedure is applied. The procedure is to deliver to one of the judicial bodies provided by the convention, in accordance with Article 287 of the 1982 Sea Law Convention as follows:

- a. Court/International Tribunal of the Law of the Sea
- b. International Court of Justice
- c. Arbitration Tribunal
- d. Special Arbitration Tribunal

These institutions have the jurisdiction over disputes submitted to the body regarding the interpretation and application of the provisions of this Convention. Specifically, for Special Arbitration, the procedure is specified in Annex VIII and is intended for disputes concerning:¹⁸

- a. Fishery
- b. Protection and maintenance of the marine environment
- c. Ocean scientific research
- d. Navigation includes ship pollution from dumping.

The institutions mentioned above are institutions that have binding decisions. Every decision that is issued by these institutions is final. Indonesia and Malaysia applied the method of resolving this binding dispute (through the International Court of Justice) when they are resolving the dispute over the Sipadan and Ligitan islands.

De jure and *de facto*, finding a solution in the Ambalat case is highly difficult. This is due to the complexity of the geographical configuration of the Ambalat area. That is, at least for now, it is very difficult to divide the region into two parts, one for Indonesia and another for Malaysia. The most effective way to resolve the Ambalat dispute can be taken through the following three

¹⁸ Article 287 Annex VIII UNCLOS 1982 concerning International Law of the Sea.

methods: first, by the existence of a joint development zone, second, the principle of equity (equitable principles), and third, based on the "Spirit of ASEAN".¹⁹

2.4 Legal Measures of the State of Indonesia in Facing Malaysian Claims on the Ambalat Block

The policy of the Indonesian government regarding the Ambalat conflict could indeed be categorized as still not optimal and not yet on target. If only Indonesia had always paid more attention to the problem of the Indonesian borders, maybe the Ambalat conflict should have not happened. Currently, the Indonesian government has a different approach: It includes all the relevant agencies coordinated together in the policy making process for resolving the Ambalat conflict and for preventing the same conflict from happening again.

Legally, Indonesia benefited from the existence of article 47 of UNCLOS because, as an archipelagic country, Indonesia could draw a line on the outermost islands as a benchmark for the boundary line of its sovereignty. At the very least, there are four steps that can be taken to resolve the dispute over the Ambalat area.

First, bilateral negotiations have to be performed in order to give the opportunity to both parties to submit their arguments about disputed areas in different bilateral forums. Malaysia and Indonesia must clearly convey where the boundaries of the claimed area are and their legal basis. In this case, Malaysia seems to be using the controversial 1979 map, while Indonesia relies on its claim on UNCLOS 1982. If it fails, it needs to be cooled down and then enters next step.

The *second* step is conducted by defining the disputed area as a status quo in a certain period of time. At this stage, exploration could be carried out in the Ambalat Block as a means to foster mutual trust between the two parties (confidence building measures). This pattern has been implemented by Indonesia-Australia in managing the Timor Gap.

The *third* step can be the use of regional organizations as a means of conflict resolution, for example, through ASEAN by utilizing the High Council, as stated in the Treaty of Amity and Cooperation which was once conceived in the 1976 Bali Declaration. Malaysia will be reluctant to use this route for fear of being attacked by other ASEAN countries since they have a problem with the border with Malaysia due to the establishment of Malaysian unilateral claims based on 1979 maps, such as The Philippines, Thailand, and Singapore. In addition, the two countries Indonesia and Malaysia can also use the good office of the country which is the chairman of the ARF (ASEAN Regional Forum) to mediate the disputes.

If the third step does not work, there are still other ways. Bringing the case to the International Court of Justice (ICJ) is a step of non-political legal solution. Perhaps, there is unwillingness for Indonesia to bring the case to ICJ because of the bitter experience of the release of Sipadan and Ligitan. However, if Indonesia is able to show the juridical evidence and other strong facts, the opportunity to win the dispute is quite high. The articles contained in the 1982 UNCLOS are quite beneficial for Indonesia: scientific evidence of the position of Ambalat as a natural extension of the East Kalimantan region, historical evidence that the area is part of the Bulungan Kingdom, and the placement of Indonesian Navy patrol vessels are critical for winning the dispute in Indonesian favour.

3. Conclusion

From the description that has been conveyed in the writing analysis, the following are the formulated conclusions:

¹⁹ Thomas, Marilin: "Tinjauan Yuridis Penyelesaian Sengketa Tentang Penetapan Batas Wilayah Laut Negara (Studi Kasus Sengketa Wilayah Ambalat Antara Indonesia Dengan Malaysia)", *Lex et Societatis*, Vol. 1, n°2 (2013), pp. 60-168.

1. Malaysia's legal basis in claiming the ownership of the Ambalat Block is a map made in 1979 by Malaysia and placing excess maritime outer borders in the Sulawesi Sea area because Malaysia uses Sipadan-Ligitan island to draw the outermost baseline of the country, while Malaysia is not an archipelagic country. Furthermore, Malaysia uses Article 121 of the UNCLOS '82 stating that "each island has the right to have a territorial sea, an exclusive economic zone and its continental shelf". With this new map of Malaysia, Malaysia announces the territorial sea width of 12 nautical miles measured by the baseline by drawing a straight baseline according to the law of the sea in 1958.

2. Claims filed by Malaysia against the Ambalat block are in accordance with the provisions of the International Sea Law, and use the ownership momentum of Sipadan and Ligitan islands that is previously disputed. This is different from the Ambalat block which previously had no dispute with Malaysia because Malaysia did not yet have a strong legal basis. When using the 1979 Map, the claim was weak because the map was made unilaterally and received rejection from Indonesia and other countries. However, when using the ownership basis of Sipadan and Ligitan Islands including the sea area in accordance with UNCLOS Article 12, this may be made as an excuse to submit a claim against the Ambalat Block from Indonesia.

3. The settlement of Malaysian claims in the dispute over the Ambalat Block between Indonesia and Malaysia according to the International Sea Law is by giving freedom for both countries to choose the desired procedure as long as it is mutually agreed upon. In the UN charter Article 33 (1), it states that if a dispute occurs, it should be resolved by negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement resort to regional agencies or other peaceful means on the involved parties' own choice. Malaysia and Indonesia agreed to discuss the methods or diplomatic negotiations as the first step to settle their dispute. It can be seen from the meetings conducted by representatives of the two countries. Maritime boundary settlement cases can be carried out by negotiation or with the help of third parties. So far, Indonesia and Malaysia have chosen negotiations as a way to resolve disputes.

4. The legal steps taken by Indonesia in dealing with Malaysia's claim to the border of the Ambalat area consist of foreign policy diplomatic strategies and legislation. The Ministry of Foreign Affairs emphasizes soft diplomacy—the refined way to solve problems. In addition, it maintains a strong mission without degrading the Indonesian self-esteem. The strategy carried out by the Navy is by holding operations that are categorized as preventive measures (security stability at sea, protecting natural resources from various precautions) and repressive measures (actions). What the Ministry of Fisheries can do as a body that regulates the management of Indonesian islands is delivering orderly government administration and giving names to all islands in Indonesia, but in the National Legislation, it is still considered necessary to study more deeply and to facilitate the need for improvement of problem solving mechanism.

Bibliography

“Ambalat Case May Not Be Brought To International Court”, *Bernama*, 1 June 2009, at <http://maritime.bernama.com/news.php?id=415208&lang=en>

Adolf, Huala. (2004): *Hukum Penyelesaian Sengketa International*, Bandung, Sinar Grafika.

Andreone, Gemma. (ed.). (2017): *The Future of the Law of the Sea Bridging Gaps Between National, Individual and Common Interests*, Switzerland, Springer Open.

Anggraini, Silvia; Kusumawardhana, Indra; Ramadhan, Iqbal: “The Implication of Indonesia’s IUU Fishing Policy in Natuna Territorial Waters towards South China Sea Geopolitics”, *Jurnal Hubungan Internasional*, Vol. 7, n°2 (2018), pp. 118-132.

Arsana, I.M. Andi.: “Penyelesaian sengketa Ambalat dengan delimitasi maritim: kajian geospasial dan yuridis,” *Jurnal Ilmiah Fakultas Ilmu Sosial dan Ilmu Politik*, Vol.1, n°1(2010), pp. 46-58.

Arsana, I Made A.: “Good Fences Make Good Neighbours: Challenges and Opportunities in Finalising Maritime Boundary Delimitation in the Malacca Strait between Indonesia and Malaysia”, *Jurnal Hukum Internasional*, Vol. 12, n°1 (2014), pp. 21-48.

Article 33 (1) United Nations Charter on Disputes. (1945).

Article 5, Convention on the Law of the Sea. (1958).

Article 7, Convention on the Law of the Sea. (1982).

Bateman, Sam: “The Future Maritime Security Environment in Asia: A Risk Assessment Approach”, *Contemporary Southeast Asia*, Vol. 37, n°1 (2015), pp. 49-84.

Butcher, John G.: “The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea”, *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Vol. 35, n°2 (2013), pp. 235-257.

“Deplu: Tak Ada Lagi Pulau Milik Indonesia dalam Sengketa”, *Tempo.co*, 15 December 2003, at <https://nasional.tempo.co/read/35466/deplu-tak-ada-lagi-pulau-milik-indonesia-dalam-sengketa>

Ford, Stuart: “The Impact of the Ad Hoc Tribunals on the International Criminal Court”, 22 February 2018, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3128531

Khalid, Nazery and Valencia, Mark J. (2009): “The Sulawesi Sea Situation: Stage for Tension or Storm in a Teacup?” *Asia-Pacific Journal: Japan Focus*, <http://nautilus.org/wp-content/uploads/2011/12/09060ValeniaKhalid.pdf>

Krebs, Shiri: “The Legalization of Truth in International Fact-Finding”, *Chicago Journal of International Law*, Vol. 18, n°1 (2017), pp. 83-163.

Mauna, Boer. (2008): *Hukum Internasional: Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung, Penerbit Alumni.

Meerts, Paul. (2015): *Diplomatic Negotiation: Essence and Evolution*, The Hague, Clingendael Institute.

Minister of Foreign Affairs of Indonesia, 6 March 2019, Warsito, Tulus (Interviewer)

Nainggolan, Poltak P.: “Kebijakan Poros Maritim Dunia Joko Widodo dan Implikasi Internasionalnya”, *Politica*, Vol. 6, n°2 (2015), pp. 167-190.

Oegrosewu, Arif H. (2004): *Delimitasi Batas Maritim dalam Kebijakan Border Diplomacy Indonesia International Sea Law Workshop*, Yogyakarta

Poeggel, Walter; Oeser, Eedith. "Methods of Diplomatic Settlement", in Bedjaoui, Mohammed (ed.) (1991): *International Law: Achievements and Prospects*, Paris, UNESCO and Martinus Nijhoff.

"RI Peringatkan Malaysia soal Blok Ambalat", Kompas.com, 21 October 2009, at <https://tekno.kompas.com/read/2008/10/21/22413798/ri.peringatkan.malaysia.soal.blok.ambalat>

Salleh, Asri, Che Mohd Razali, Che Hamdan, Jusoff, Kamaruzaman: "Malaysia's policy towards its 1963 - 2008 territorial disputes," *Journal of Law and Conflict Resolution*, Vol.1, n°5(2010), pp. 107-116

Suswanta, S.: "Reconsidering the Stigma of Political Opportunism Among the Kiai: A Critique of the Modernist Perspective," *PCD Journal*, Vol.6, n°1(2018), pp. 147-172.

Thomas, Marilin: "Tinjauan Yuridis Penyelesaian Sengketa Tentang Penetapan Batas Wilayah Laut Negara (Studi Kasus Sengketa Wilayah Ambalat Antara Indonesia Dengan Malaysia)", *Lex et Societatis*, Vol. 1, n°2 (2013), pp. 60-168.

Vidas, Davor: "Consolidation or Deviation? On Trends and Challenges in the Settlement of Maritime Delimitation Disputes by International Courts and Tribunals", in Nerina, Boschiero; Scovazzi, Tullio; Pitea, Cesare; Ragni, Chiara (eds.) (2013): *International Courts and the Development of International Law: Essays in Honour of Tullio Treves*, The Hague, The Netherlands: T.M.