



Climate change impact on the median line principle application in Indonesian maritime boundaries determination

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Abstract

An increase in the Earth's surface temperature has consequences for sea level rise. A sustained rise in sea level due to climate change can result in a shift in the country's territory over the sea and subsequently can lead to potential disputes and even the threat of sinking a state-owned island. According to the identification results, there are 17,508 islands throughout Indonesia. There are 7,353 named islands and 10,155 unnamed islands throughout the Republic of Indonesia. Of the 7,353 named islands, there are 67 islands that border directly with neighboring countries, 10 of which need special attention, because they are located on the outer border. The research methods used in this article are descriptive and explanatory methods. Descriptive research presents a complete picture of the problem that focuses on the application of the median line method in determining Indonesia's maritime boundaries due to climate change. By registering the names of Indonesia's outermost small islands as a reference for determining Indonesia's maritime boundaries with neighboring countries, the outermost island is the ownership of Indonesia so that the median line application in determining Indonesia's maritime boundaries can still be applied.

Keywords: Median line, climate change, Indonesian outermost island

Introduction

The ocean has many benefits for living creatures, one of which is as an important natural resource to support life on earth. Fishing is one kind of utilizing the sea for human life. Data from the Food and Agriculture Organization (FAO) shows that 50% of the world's population meets 20% of their protein needs from fish. ^[1] The sea also contains minerals needed by humans, where the concentration of 73 of the 93 types of minerals in the sea can be measured. These minerals will be absorbed by seaweed which will then be consumed by humans. Apart from that, the benefits of these minerals can also be obtained by consuming sea salt.

On World Oceans Day (WOD) 2022, the UN stated that the current state of the world's oceans is worrying, as many as 90% of large fish populations have been depleted and 50% of coral reefs have been destroyed. ^[3] Coral reef ecosystems are mostly found in tropical waters, are very sensitive to changes in their environment, especially temperature, salinity, sedimentation, and eutrophication, and require natural water quality. Indonesia is the largest maritime state in the world with a water area of 93 thousand km², 17,480 islands, and a coastline of 95,000 km. Indonesia is also the coastal state with the best coral reefs and the richest biodiversity in the world with a coral reef area reaching 284,300 km² or the equivalent of 18% of the world's total coral reefs.

Identification of climate change, among other things, is the occurrence of global warming which has caused a trend (tendency) to increase air temperature and sea surface temperature. In terms of climate elements, this can be seen from changes in rainfall patterns, such as shifts in the start of the seasons, both rainy and dry seasons, longer periods of the dry season or shorter periods of the rainy season, as well as shifts in the peak of the rainy season. The impact of climate change can cover almost all activity sectors, including agriculture, plantations, animal husbandry,

forestry, health, and other sectors. Generally, this impact causes quite significant losses.

The increase in Earth's surface temperature is the consequence of rising sea levels. Sea level rise is triggered by two main causes. First, the expansion of water molecules in the sea due to higher temperatures at the surface. Second, the addition of water from snow melts on land. On the other hand, melting sea ice will not contribute to additional sea levels. The second cause is the one that worries many people the most because the volume of ice reserves on land is very large. Continuously rising sea levels due to climate change can result in a shift in the state's territory over the sea, and in turn, can give rise to the potential for disputes and even the threat of sinking of a state-owned island. One of the states that experiencing the impact is the Marshal Islands. When sea level rise continues to occur, the possibility of the loss of the entire state's territory is very large and citizens have no other choice but to move or take action to raise the land. Losing a state's territory partially or completely can have a big impact not only on the state that loses it, but also on another state around it.

To monitor sea level rise in Indonesia, the National Survey and Mapping Coordinating Agency uses tidal stations spread across Jakarta, Semarang, Jepara, Batam, Kupang, Biak, and Sorong. Monitoring of current sea level rise It can also be obtained from remote sensing satellite data with an inadequate level of accuracy. This is because sea level rise is very slow and on a very small scale. Apart from that, the height of sea level on Earth is not the same between shallow seas and deep seas, the result of rising sea levels in Indonesia is the retreat of the archipelagic baselines if there are small outer islands of Indonesia that are threatened with sinking.

The archipelagic waters, territorial seas and inland waters of Indonesia is approximately 2.7 million square kilometers, or around 70% of the territory of the Unitary State of the Republic of Indonesia or NKRI. ^[3] With the addition of the

Indonesian Exclusive Economic Zone (ZEEI) covering an area of 3.1 million square kilometers, the total area of Indonesia's national jurisdictional sea area will be 5.8 million square kilometers. The total area of Indonesia's waters is 6.4 million km², of which 3.1 million km² are inland waters and archipelagic waters, 3 million km² are Exclusive Economic Zones and 290 thousand km² are territorial seas.^[4]

According to the identification results, there are 17,508 islands throughout Indonesia. Inventoryed are 7,353 named islands and 10,155 unnamed islands throughout the Republic of Indonesia. There are 67 7,353 named islands that directly border neighboring states, 10 of which require special attention, because they are located on the outermost borders.^[5] The ten islands are Sekatung Island in the Riau Islands province, Marore Island and Miangas Island in North Sulawesi Province, Fani Island, Fanildo Island and Bras Island in Papua Province, Rondo Island in Nangro Aceh Darussalam (NAD), Berhala Island in North Sumatra Province, Nipa Island in Riau Province and Batek Island in East Nusa Tenggara (NTT) Province.

Considering the maritime boundary between Indonesia and Singapore, there are several things to pay attention to, namely that there is a small outer island, namely Nipa Island, which is affected by climate change. Nipa Island is the basic point in determining the territorial boundaries of Indonesia and Singapore. Likewise with the maritime boundary with Malaysia. The Indonesian Sea areas that border the Philippines are Miangas Island and Marampit Island, both of which are the outermost islands of Indonesia, if you pay attention to Marampit Island which is the outermost small island of Indonesia. The maritime border between Indonesia and Vietnam. Sekatung Island covers an area of around 0.3 square kilometers. This island is uninhabited, often used as a stopover for local and foreign fishermen. Meanwhile, Indonesia and India also have the potential for conflict over territorial waters around the Andaman Islands. Indonesia and Palau also do not agree regarding the EEZ boundaries of the two states, especially on the Asian Islands and the Mapia Islands (Indonesia territory) which are north of Papua. Fani Island in Ayau District, Raja Ampat Regency, Papua Province is one of the outermost islands in the Asian Islands group.^[6]

Indonesia's outermost small islands, which are located in border areas, have not received serious supervision, especially with the current phenomenon, namely climate change. If the Indonesian government does not take the impacts of climate change seriously, it is inevitable that Indonesia's territory will experience shifts in maritime boundaries.

Research Method

The research methods used in this article are descriptive and explanatory methods. Descriptive research presents a complete picture of the problem that focuses on the application of the median line method in determining Indonesia's maritime boundaries due to climate change. We will analyze Indonesia's outer islands bordering other countries that are affected by climate change. This research uses a statutory approach and a case approach as material for analysis in this research.

Result and Discussion

Determination of Indonesian Maritime Boundaries

In dividing sea areas or determining sea area boundaries, it is known as delimitation. Delimitation is a process that involves determining territorial boundaries between states.

^[7] The problem with how easily territorial claims can be made by neighboring states regarding the territory of Indonesia or Indonesia to other countries is because there is no agreement on boundary points between bordering countries. Therefore, the Indonesian government or governments of other countries are expected to immediately resolve the issue of border delimitation with neighboring countries.

The outer boundaries of a country's territory cannot be separated from contact with the sovereignty of other countries. Because of this, states cannot independently determine their state boundary points. If there is, borders drawn by the country unilaterally without paying attention to the authority of other countries' authorities will result in conflict between the two countries. The nature of this country's borders is very sensitive. So the determination of the border must be discussed by both parties involved.

Disputes regarding sovereignty over areas that have coastlines, whether land, islands, or small islands are regulated in the United Nations Convention Law of the Sea 1982 (hereinafter referred to as UNCLOS 1982) which stipulates that islands have the right to obtain territorial sea, zone exclusive economy and continental shelf. Thus, one of the main reasons why claims to island sovereignty are contested and protected lies in the state's valuable natural resources and economic interests. States cannot be divided from their territory and will go to war to protect it. Any potential loss of territory, however small, will affect sovereignty, security, and integrity. Overlapping territorial claims will give rise to disputes regarding uncertainty regarding territorial jurisdiction which in turn has implications for maritime regional security.

Besides that, national defense and security interests are often raised as relevant factors in maritime border negotiations, especially in the case of boundaries located near the coastlines of other states. In addition, security interests in a broad sense, it is often an inseparable part of other factors, for example, economic problems and political factors.

In dividing sea areas or determining sea area boundaries, it is known as delimitation. Delimitation is a process that involves determining territorial boundaries between states. The problem with the ease of territorial claims by neighboring states towards Indonesian territory or Indonesia towards other states is that there is no agreement on the basic coordinate points between bordering countries. Therefore, the Indonesian government or governments of other states are expected to immediately resolve the issue of border delimitation with neighboring states.

Based on Article 5 of UNCLOS 1982, a baseline is a drawing of basic points from the outermost coastline of a state, which is used to measure the maritime boundaries of a state's sovereignty and other maritime zones. The baseline is the main and significant foundation in determining a country's maritime jurisdiction so without a baseline, the state cannot determine the limits and measures of its sovereignty. Even though periodically the nature of seawater levels is dynamic or always changes over time. a certain fixed and static height of sea level must be determined to be used as a determinant of the state's coastline.

Basic Concepts for the Median Line Principle Application

In fact there is no difference between the use of a median line and an equidistance line, but some opinions say that the term median line is usually used for the case of opposite coast states, while the term equidistance line is used for adjacent coast state.^[8] Although there are differences in terms, both actually refer to the same mathematical geometric expression, namely for the center line obtained by the equal distance method. In the draft article 12 and article 14 of the Territorial Sea Convention and the 1958 Continental Shelf Convention, the determination of territorial sea boundaries uses the same principles as the division of continental shelf boundaries, namely the median line principle and the equidistance line principle. The ILC notes that in the case of beaches facing special circumstances (for example, navigation and fisheries interests) then use the median line principle and if the coast is adjacent to certain cases, the proposed method will not lead to an equitable solution, then the dispute resolution is through negotiation.

This definition is used in Article 6 paragraph 1 of the Continental Shelf Convention and Articles 12 paragraphs 1 and 24 paragraph 3 of the Territorial Sea Convention.^[9] When dealing with the case of adjacent beaches, Kennedy does not refer to one, but three methods, namely: First, the Median line principle amounts to calculating the median line of two adjacent coasts. Second, the offshore equidistances line principle method is a series of boundaries along the coasts of adjacent states. This circle method is followed by determining the point of the outermost island of the state. The resulting lines are the intersection points of different distance boundaries offshore and are a series of straight baselines. Third, the Equidistance line principle of territorial boundaries is based on combining straight baselines, each of which is the same distance from a point on the coast of the outermost island.

Based on Boog's opinion the resolution of disputes over determining maritime boundaries uses an interpretation of the equidistance line principle method.^[10] Noting that the equidistance line principle is embodied in the concept of the median line, the difference between the equidistance line principle and the median line seems to apply from a geometric point of view, for the median line draws a center line by dividing the area equally. Referring to the equidistance line principle, the baseline is measured from the outermost island of the disputed state which is theoretically the boundary line through the territorial sea between two adjacent states where the baseline point is the same distance, not the median line.

Based on customary law, the median line can be used to provide a solution for determining maritime boundaries that provide equal parts of the country where there is overlap between sovereign countries. However, due to the specificity of coastal geography and other interests related to navigation or historic rights, the application of the median line cannot be implemented to guarantee a just solution. So it is necessary to combine the median line and thalweg line methods as a solution to overcome difficulties. Based on Article 15 of UNCLOS 1982 which confirms that:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its

territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

The 1958 equidistance line convention defines equidistance as a line at any point that is the same distance from the nearest point from the baseline from which the width of the territorial sea of each of the two countries is measured. Continental Shelf Convention 1958 uses the term median line for the equidistance line between opposite states.^[11] However, it should be noted that in applying the median line or equidistance principle to maritime boundary disputes, other factors apart from this distance factor are also taken into account

Technical aspects of territorial sea delimitation, from the delimitation process, also require technical aspects in the practices of these countries. The most important aspects are hydrographic data collection and delimitation methods. This method for determining maritime boundaries is prepared based on an approach, planning mindset, description of the existence of regulations relating to maritime boundary management linked to national development interests and still paying attention to national and international maritime law.

A sovereign states remains subject to international law and cannot violate or harm the sovereignty of other states.^[12] Looking at the sovereignty described above, it can be said that a sovereign state is a state that has the ability to regulate and manage its own domestic and foreign interests. One embodiment of this concept is through an International Agreement, an International agreement as an "agreement" between two or more subjects of International law regarding a certain object which is formulated in writing and is subject to or regulated by International law.^[13]

This International Agreement is a legal instrument that shows the close relationship between national law and international law. Furthermore, it can be said that an international agreement is a form of law that embodies international relations or relations between states peacefully. Besides that, international agreements are also a source of international law.^[14] International law is not something higher that has binding power beyond the will of states.^[15] International agreements are agreements entered into between members of a community of nations and aim to produce certain legal consequences.^[16]

Jurisdiction is closely related to a state's territorial boundaries, where the existence of a state's territorial boundaries indicates the end of a state's legal authority and also explains the application of legal authority to other states at that border. International law gives full rights and authority to regulate its own domestic issues, strictly speaking, matters that exist or occur within its territorial boundaries.

International borders are also an important factor in efforts to identify and preserve national sovereignty. Even neighboring states that enjoy the most friendly relations need to know the exact location of their borders in order to enforce their respective laws and regulations. Therefore, clearly establishing borders between states can not only

reduce the risk of border conflicts arising in the future but can also guarantee the implementation of the law on each side of the border. Borders are synonymous with the territorial area and sovereignty of a state, the issue of determining state borders has high relevance and urgency in efforts to maintain territorial integrity.

The Climate Change Impact on Determining Indonesian Maritime Boundaries

Shifting areas due to climate change is a potential problem for archipelagic or coastal states that have low-lying islands if one of the low-lying islands or islets used as a baseline is lost and submerged forever. Thus, an archipelagic state could be threatened with losing its archipelagic state status because it does not fulfill the conditions specified in Article 47 of UNCLOS 1982 considering the possibility of losing the outermost islands which are the basic point for drawing archipelagic baselines. Therefore, normatively based on UNCLOS 1982, states whose islands or territories are submerged and shifted due to natural events cannot meet the original baseline measurement elements, so it is necessary to draw new baselines in accordance with the de facto of the state's territorial lines after being affected by this natural phenomenon.

A shift in a state's territory can result in a reduction or increase in a state's territory. With the rise in sea levels and erosion of the region, a form of shift in the state's territory is the retreat of the coastline from the original, so that an area that was originally included in a state's territorial sea can change into an Exclusive Economic Zone. The consequence of this shift lies in the state's authority over territory which previously had full sovereignty, changing to only having sovereign rights. Therefore, the impact that will occur due to the shift in territory on archipelagic states will be very large - this is because of the possibility of losing its island status, considering that the requirements for being an archipelagic state will no longer be fulfilled due to the loss of the outermost islands, based on UNCLOS 1982.

International law is a law that moves progressively, the regulations that are formed will continue to develop and keep pace with changes. Form international community awareness of the issue of rising sea levels due to natural phenomena such as climate change and erosion, and accretion can be seen from the formation of the United Nations General Assembly Resolution A/RES/44.206 which contains awareness of the potential problems that will be faced by the world due to rising sea levels so that it can have an impact on coastal states and archipelagic states, especially those with low island areas.^[17] The resolution states that further research is needed regarding climate change, including the possibility of rising sea levels due to global warming. However, the General Assembly Resolution does not have legal force to bind states legally and is only a notification to be more aware and pay attention to the possible consequences of climate change in discussions of related international conventions or actions. The General Assembly Resolution can be said to be an initial form of concern from the international community.

Coastal state can renew or replace lost baselines and follow the criteria set out in Article 5 and Article 7 of UNCLOS 1982 regarding normal and straight baselines according to the geography of their respective state. Article 7(2) of UNCLOS 1982 emphasizes that if natural conditions make the coastline very unstable, then a straight baseline will be

effective as long as it is not changed by the coastal state. The implementation of Article 7(2) is very limited considering that in practice many states do not routinely or have not changed their baseline data, especially coastal states.

Basically, according to Article 58 of UNCLOS 1982, states are required to register or deposit baselines with the UN Secretary General as a form of communication of their archipelagic claims to the international community, so that if the state has determined and deposited baselines measured based on its geographical lines to the UN Secretary General, then the baseline deposits as regulated in Articles 16 and 76 paragraph (9) of UNCLOS 1982 are permanent and effectively have valid legal status, as long as there is no recognition of changes from the state concerned in accordance with the state's authority over their different geographical conditions with other states.

Determination of Indonesia's territorial boundaries is based on the Indonesian Archipelago Base Line which connects the points of Indonesia's Outer Islands. The results of data collection by the Home Affairs Department, of the 17,504 islands in the entire territory of the Republic of Indonesia, only 7,870 islands have names. A total of 9,634 or 55% have not been named. Observing the real conditions in the field, in order to inventory the islands and declare the existence of the Republic of Indonesia's sovereignty over these islands, it is necessary to make efforts to name the islands by referring to the Resolution of the United Nations Conference on the Standardization of Geographical Names.^[18]

All 92 outermost islands of Indonesia, including the 12 outermost small islands, belong to Indonesia on a strong legal basis. These islands have fulfilled these criteria, namely being regulated in international agreements, in arbitration decisions, and in clear legislation, and have never been protested by any country. Four islands in West Aceh that border India have been used as a reference for determining the Indonesia-India Continental Shelf Boundary Agreement. One of these 4 islands, namely Rondo Island, is also a reference for determining the Indonesia-Thailand Continental Shelf Boundary Agreement. Four small islands in the Malacca Strait have been used as a reference for determining the Agreement on the Boundaries of the Continental Shelf and the Indonesia-Malaysia Territorial Sea. Four small islands in the Singapore Strait have become a reference for determining the boundaries of the Indonesia-Singapore Territorial Sea. Pulau Sebatik in the Sulawesi sea has regulated ownership and distribution.

Eight small islands at the end of the Singapore Strait and in the Natuna Sea are the reference points for determining the Indonesia-Malaysia Continental Shelf Boundary Agreement in the Natuna Sea. Two small islands in the Natuna Sea are also a reference for determining the Indonesia-Vietnam Continental Shelf Boundary Agreement. Three islands in the South China Sea are the reference for determining the Indonesia-Malaysia Continental Shelf Boundary Agreement in the South China Sea.

Meanwhile, 9 small islands in the Indian Ocean south of Sumatra border the open sea and there are no states facing these small islands. One island in the Sulawesi Sea, namely Miangas Island, belongs to Indonesia because of the inheritance of the Dutch who obtained it through an arbitration decision in their dispute with the US. It was

decided that the Netherlands was able to prove effective occupation on Miangas Island.

The ninety-two outer islands, including other outer islands which are not regulated in an international agreement or contained in arbitration decisions, have been regulated in Law 4/Prp 1960 which is the legal basis for Indonesia in filing its struggle to become a semi-legal archipelagic state. Not a single state protested Law 4/Prp 1960, either in terms of the proclamation of an archipelagic state or in terms of determining the base point on the outermost small islands which were clearly declared as islands belonging to Indonesia. Apart from showing that Indonesia's outermost islands have a legal and solid basis and have been recognized by neighboring states as belonging to Indonesia, the entire legal evidence also dispels the wrong assumption that Indonesia is a state that does not have international borders with neighboring state or the wrong assumption that the territory Indonesia is legally unclear.

Furthermore, security posts, infrastructure, boundary signs, communications and other public facilities needed by the local community/resident will be built on these islands. In 2005, Presidential Regulation of the Republic of Indonesia No. 78 of 2005 concerning Management of Outermost Small Islands. The objectives of managing the outermost small islands are stated in Article 2, namely: *First*, maintaining the territorial integrity of the Unitary State of the Republic of Indonesia, national security, state, and national defense and creating regional stability. *Second*, utilizing natural resources in the context of sustainable development and, *third*, empowering communities in the context of increasing welfare. Indonesia's outermost islands have strategic value as the Base Point and Archipelagic Straight baseline in determining Indonesia's territorial waters, Indonesia's exclusive economic zone, and Indonesia's continental shelf. Based on the considerations above, the government has stipulated Presidential Regulation Number 78 of 2005 concerning Management of the Outermost Small Islands. ^[20] Management of the outermost small islands is carried out with the aim of maintaining the territorial integrity of the Unitary State of the Republic of Indonesia, national security, state and national defense as well as creating regional stability, as well as utilizing natural resources in the context of sustainable development. By registering the names of Indonesia's outermost small islands which serve as a reference for determining Indonesia's maritime boundaries with neighboring countries, these outer islands are owned by Indonesia.

Conclusion

The outer boundaries of a country's territory cannot be separated from the intersection with the sovereignty of other countries. Therefore, the state cannot determine its own boundary points. Even if it does, borders drawn by the state unilaterally without regard to the authority of other state authorities will result in conflict between the two countries. The nature of state borders is very sensitive. So the determination of the border must be discussed and by both parties that intersect. Based on Article 5 of the 1982 UNCLOS, a baseline is a withdrawal of basic points from the country's outer coastline, which is used to measure the country's sovereign sea boundaries and other maritime zones. Coastal states can renew or replace lost baselines and follow the criteria set out in Article 5 and Article 7 of

UNCLOS 1982 regarding normal and straight baselines according to the geography of their respective countries. Article 7(2) of UNCLOS 1982 confirms that if natural conditions make the coastline very unstable, then a straight baseline will be effective as long as it is not changed by the coastal state. The application of the median line in determining the maritime boundary between Indonesia and neighboring countries also puts forward the principles of the median line as a reference for determining the maritime boundary.

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