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APPLICATION OF INTERNATIONAL LAW IN DETERMINING THE MARITIME BOUNDARIES OF THE DEMOCRATIC REPUBLIC OF TIMOR LESTE

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ABSTRACT

Based on the method of comparative law approach, and analysis of the concepts that were used in the study on "The application of international law in determining the maritime boundaries countries Republica Democratica de Timor Leste" described in three chapters, namely Chapter One introduction, the second chapter contains the discussion as a description of the principal finding namely: setting the contents of the provisions of Law Number 7 of 2002 on the country's maritime zone of the Republica Democratica de Timor Leste (East Timor) that is to say a concretization of the ratification of international law (UNCLOS 1982). The concept is a wide jurisdiction concept, and in the settlement of marine disputes, the coastal states shall obey the provisions of UNCLOS 1982 and the United Nations Charter as the basis for the settlement of disputes between neighboring countries based on the principles of good neighborhood policy.

Keywords: Concretization of international law

INTRODUCTION

The State of Republica Democratica de Timor Leste (East Timor) has ratified UNCLOS of 1982 with the enactment of Law Number 7/2002 concerning the maritime boundaries on July 23, 2002, and it was announced through the State Gazette on August 24, 2002. In connection with the concept of state, Mr. Soenarko argues that state is an organization of people who have certain territories, in which the state power applies solely as Sovereign. Regarding this matter, Henry C. Black¹, agrees with Mr. Soenarko that state is a group of people who are permanently occupying a definitive territory, bound by the provisions of law by the government, supervising people and their property within their borders, capable of declaring war and peace and of holding international relations with other international communities. This is similar to the provisions of Article 1 of the Montevideo Convention 1933² i.e. a permanent population, a definitive territory, self-government and capacity to enter into relations with other states.

Provisions concerning the maritime area of the State of East Timor (RDTL) can be seen in the provisions of paragraph (2) Article 4 of the Constitution of the State of East Timor³, which says that the legislation will define the extent and the boundaries of territorial waters, exclusive economic zones and the right of the State of East Timor over the sea floor and the adjacent continental shelf. Furthermore, in Article 139 of the Constitution of RDTL, more specifically emphasizes on the continental shelf that the resources contained in the soil, subsoil, the territorial waters, continental shelf and exclusive economic zone which is a

¹ Henry Champel Black, *Black Low Dictionary*, St. Paul Minn: West Publishing Comp, 1979, page 1262 in Manixon RC. Willa, *Konsepsi Hukum Dalam Pengaturan dan Pengelolaan Wilayah Perbatasan Negara* (Conceptions of Law in Setting and Management of the State Border), Alumni, Bandung, 2006. Page. 92

² Montevideo Convention of 1933

³ The State Constitution of Republica Democratica de Timor Leste (RDTL) Tahun 2002

central part of the economy, owned by the State and should be used in a fair and equal manners, in accordance with the interests of the state, or the interests of citizens as a community bound by national law, as Hans Kelsen⁴, defines the state as a community created by a national legal order.

Kranenburg⁵ has an opinion on the State, that the State is essentially a power organization created by a group of people called the nation. Thus, the organization of power that is called the nation, declared to have sovereignty if its rights over a territory gains a real and valid recognition under the provisions of international law. As stated by Willoughby⁶ that "the existence of the state depends on the rights of the State over a territory which belonged to it" On the basis of these rights, the State has the authority to utilize the natural resources available in the State's territory to achieve the goal of the state, namely creating a prosperous and fair society.

State territory is an integral part consisting of land, sea and air. Article 2 of 1982 UNCLOS mentions that "the sovereignty of a coastal State, in addition to land and inland waters, and in the case of an archipelagic State, its archipelagic waters, including also a sea lane that borders with it is called territorial sea".

Under this international provisions, the coastal State has the authority to supervise and manage the natural resources available in territorial waters as the sovereign territory of the State, and in Article 76 (1) of 1982 UNCLOS mentions the size of continental shelf that will be owned by every coastal State, that " the continental shelf of a coastal State includes the seabed and the land under it from the area under the surface of the ocean that lies beyond its territorial sea throughout the continuation of the natural territory of its land to the outer periphery edge of the continent, or up to a distance of 200 nautical miles from the baselines from which the width of the territorial sea is measured ".

In Article 77 of 1982 UNCLOS⁷ also stipulates the rights possessed by the coastal State on the continental shelf. Such rights are sovereign rights on the continental shelf of the coastal State, for the purpose of exploring and exploitation of its natural resources, which comprise a source of mineral wealth, and other non-living, which is on the ocean floor and the ground beneath it. Such rights are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, then no one could perform these activities without the express consent of the coastal State.

Managing the sea as the territory of the State, there are two main things that must be resolved. First, externally namely arranging the sea boundaries with neighboring countries in accordance with the provisions of the applicable international regulations. Especially over the ocean waters of the southern coast of the island of Timor which is generally rich in natural resources, it has been captured by the world that in a document of the Dutch magazine (Elseviers) published in 1979 that reported the opinion of the world geologists stating that there are five areas which has the potential of oil nearly comparable to petroleum potential in the Middle East (Arab countries). These five regions are Mexico, Venezuela, Argentina, Madagascar and the island of Timor⁸. To prevent overlapping claims cases mentioned above,

⁴ Hans Kelsen, *Teori Umum tentang Hukum dan Negara*(the General Theory of Law and State), Nuansa Nusa Media, Bandung, 2006, page261

⁵ Kranenburg, Mr, *Ilmu Negara Umum* ,General Science of State(translated by Mr. Tk. B. Sabaroedin), JB Wolter-Jakarta-Groningen, 1995, page 7-8

⁶ W.W. Willoughby, *Fundamental Concept of Public*, page 64

⁷ UNCLOS 1982

⁸ Ferdi Tanoni, *Skandal Laut Timor Sebuah Barter Politik – Ekonomi Canberra – Jakarta?*(Timor Sea Scandal, A Political and Economic Barter of Canberra and Jakarta?), YPTB, Kupang, 2008. Page 16

it requires optimized control which basically the awareness to obey international law of any maritime states including the RDITL over its maritime territory. Second, internally, i.e. arranging the marine areas, especially the boundaries of the designation of sea areas as regulating the use of the sea, which accommodates all interests while maintaining the principle of coexistence and peace among nations.

The following are the maritime boundaries that must be resolved include:

- a. Territorial sea,
- b. Additional zones outside the territorial sea.
- c. Exclusive Economic Zone (EEZ)
- d. Continental shelf

Under the terms above, it implies that the delimitation of the continental shelf, East Timor has an interest concerns; the continental shelf boundary that facing or adjacent with neighboring countries shall be conducted through approval on the basis of international relations. One of the problems among some of the problems that arose in the sea waters is the unresolved negotiations conducted with the Neighboring Countries, regarding the determination of coordinate points on which the delineation of the territorial sovereignty of each country, so that it becomes an obstacle to law enforcement officers in performing monitoring in the marine environment.

Territorial sea, contiguous zone, EEZ and continental shelf as the territorial sovereignty and sovereign rights which must be protected and monitored, for utilization of natural resources contained therein, and preventing the dispute of utilization of exploration and exploitation of natural resources. In addition to disputes of the use and exploitation of marine resources, disputes may occur due to other causes that arise, either because of other agreements as well as certain actions that cause harm to one of the parties.⁹

It is highly vulnerable to the Defense and State Security, as it can allow violations of territory, either inadvertently or intentionally, with the intention of provoking or other negative purposes. Such condition is an open position that may provide opportunities for other countries, to go in and do the activities in the territorial waters of East Timor by the various impacts. Further impacts may be conflict between the interests of East Timor, with neighboring countries and other countries that use the waters of East Timor, which in turn could pose a potential threat, in the form of both political and military conflicts that threaten the State Sovereignty.

Based on the above reasoning, it can formulate the problems to be analyzed namely whether the provisions of Law No.7 / 2002 on the Maritime Boundary consistent with the provisions of UNCLOS in 1982? And if there is a dispute between the coastal countries which had maritime boundaries, either opposite or adjacent, what are the procedures for settlement under the terms of international law?

After formulating the two problems in the introduction, the two problems will be studied based on the statute approach method, comparative method, conceptual method and analyzed descriptively and qualitatively to find out the common ground in substance between the Law No.7 / 2002 by UNCLOS of 1982, and to find out the concept of broad and narrow

⁹ IBR Supancana, *Laporan Penelitian Aspek-aspek Transnasional Pada sengketa Penanaman Modal Asing di Indonesia* (Research Report on Transnational aspects over Foreign Investment Disputes in Indonesia), a Collaboration between BPHN and Center for the Study on Regulations, Jakarta, 2007.

jurisdiction used by UNCLOS of 1982, then to describe the study of settlement of land and maritime border disputes between the neighboring countries.

DISCUSSION

Comparison between the substance of the National Law of the Sea provisions with the provisions of International Law of the Sea (Law No.7 / 2002 by UNCLOS of 1982)

To carry out the mandate of Article 4, paragraph 2 and Article 139 of Constitution of East Timor above, then on May 20, 2002 the National Parliament of East Timor enacted Law No.7 / 2002 on Regional Maritime Boundaries of RDTL. In Article 10 of Law No. 7 of 2002 mentions; Sovereignty, sovereign rights and jurisdiction whose contents are as follows:

The state sovereignty of Republica Democratica de Timor-Leste over the sea

Based on Paragraph (1) of Article 10 of Law No. 7 of 2002 the sovereignty of Timor Leste covers land and inland waters, territorial sea and airspace above the territorial sea and the seabed and subsoil. The same thing has been regulated in Article 2 of International maritime law conventions of 1982, determining that the sovereignty of a coastal State, that in addition to its land and inland waters and includes the territorial sea, including the air space above and the seabed and subsoil thereof.

Based on the statement of the two laws mentioned above, in international law and national law, Timor Leste has full sovereignty over the territory; land and inland waters, the territorial sea that surrounds the island of East Timor, the island of Atauro and Jaco island and the airspace above the territorial sea, in accordance with the size of the area of respectively 12 nautical miles. As confirmed in Article 5 of Law No. 7 of 2002 that "the area stretch of 12 nautical miles from the base line edge in which the breadth of the territorial sea is measured" and Article 3 of the Law of the Sea of 1982 mentions that every country is entitled to set the width of its territorial sea up to a limit not exceeding 12 nautical miles measured from the baselines determined in accordance with this Convention.

Further the setting in Paragraph (2) of Article 10 of Law No.7 / 2002 states in the contiguous zone, the State of Timor-Leste has required monitoring for:

- a) Prevent violations of laws and regulations on customs, fiscal, immigration or health within the territory or its territorial sea;
- b) Punish any violations of laws and regulations in the territory or territorial sea.

The provisions of paragraph (2) of Article 10 of Law no. The 7/2002, substantially is an international law enforcement in the national law. As the provisions of Paragraph (1) of Article 33 of UNCLOS in 1982 stipulates that in a zone bordering the territorial sea, the so-called contiguous zone, the coastal State may exercise the control necessary to:

- a. Prevent violations of laws and regulations on customs, fiscal, immigration and sanitary in the territory or its territorial sea;
- b. Punish violations of the legislation mentioned above that are carried out in the territory or its territorial sea.

Pursuant to Article 6 of the Law No.7 / 2002 mentions contiguous zone located at a distance of 24 nautical miles from the point of the wide edge of the territorial sea is measured, in these zones do surveillance by the security forces of East Timor. Monitoring carried out in the additional zone, is merely a preventive supervision to prevent violations of the laws and regulations of the coastal State of the customs, fiscal, immigration and sanitary and protection of marine resources contained in the zone. With the exception of full jurisdiction of coastal

states do not apply to other State ships and ships non-commercial foreign governments that often pass the territorial sea. These two types of ships enjoy immunity against the sovereignty of the State. The rationales behind granting this exemption are:

- a. The principle of *Par in parem non habet imperium*, which has become the principle of law in international affairs. That a sovereign state can not execute its jurisdiction over another sovereign State.
- b. The principle of reciprocity (mutual) and comity, relating to not want to be enforced under national law by other countries.
- c. The fact that generally a State court decision can not be carried out against other countries.
- d. The fact that a country that allows other countries to enter its territory, implicitly grant legal immunity to them.
- e. The fact that the subject matter concerning the wisdom of a foreign government should not be investigated by the courts of other States.

Related to immunity, today the State has two statuses, namely: First, *iure imperii*, which measures the State Government related to the sovereignty of the State alone. Second, *gastionis iure*, namely the State government actions related to commercial activities, such as buying and operating merchant ships, has shares of a company, in this case the State has attracted immunity, and subject to the jurisdiction of a foreign State.

The RDTL sovereign rights in the Exclusive Economic Zone and Continental Shelf

External sovereignty related to the sovereign rights of East Timor in the Exclusive Economic Zone (EEZ) and continental shelf. In Article 7 of Law No. 7 of 2002, the EEZ is defined as the line where each point is located at a distance of 200 nautical miles, and Article 8 of the continental shelf located at a distance of 200 nautical miles outer edge of margin of the continent, where the edges of the continent is at a distance from the base line of more than 200 nautical miles , Thus the sovereignty of a State under international law is the right / power / authority of the State based on international law to regulate people, property / actions / events that exclusively an internal affairs (containing the international aspect, as it relates to the border area between countries or zones crossed by ships of other countries). A State is said to be sovereign, because sovereignty is an essential trait of the country. Sovereign state means that the state has a certain power, the state does not recognize any authority higher than the authority of itself, and it contains two (2) important limitations in it:

- 1) The power ends where the power of another State begins.
- 2) Power is limited to the State border that has the power.¹⁰

That the jurisdiction of the coastal State is not limited to the territorial area, but based on the international conventions, the coastal State may conduct surveillance and control in the contiguous zone and exclusive economic zones to guarantee the sovereign rights in the exploration, exploitation, conservation and management of resources of biodiversity in the zone . Paragraph (1) of Article 73 of the Convention UNCLOS of 1982 affirmed that "the coastal State may, in the exercise of its sovereign rights to exploration, exploitation, conservation and management of biodiversity resources of the exclusive economic zone. Taking such measures, including boarding, checking, capturing, and performing the judicial process, as necessary to ensure compliance with the legislation that was determined in accordance with the provisions of this convention. " This is similar to the provisions of

¹⁰Lord Macmillan, 1938

Paragraph (4) of Article 10 of Law No.7 / 2002 which states the State of Timor-Leste has sovereign rights over the continental shelf for exploration and exploitation of natural resources, as well as other rights recognized by international law. Regarding the coastal State jurisdiction stipulated in article 56 paragraph (1) sub (b) of 1982 UNCLOS that include:

- a) Jurisdiction over the manufacture and use of artificial islands, installations and structures.
- b) Jurisdiction in the field of marine scientific research.
- c) Jurisdiction in the field of protection and preservation of the marine environment.

The international provisions were then adopted and enforced in accordance with national law, namely the provision of Article 10 paragraph (3) sub (a), (b) and (c) of Law No.7 / 2002 which states; in the exclusive economic zone, the State of East Timor has the rights of:

- i) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, or non-living, of the waters above the seabed and of the seabed and the land under it and with regard to other activities for the purpose of exploration and exploitation in the exclusive economic zone of Timor Leste for economic purposes, such as the production of energy from water, currents and winds; Jurisdiction in respect of:
 - ii) Placement and the use of artificial islands, installations and structures;
 - iii) marine scientific research, and;
 - iv) Protection and preservation of the marine environment;
 - v) Other rights and duties recognized by the international law.

Based on the substance of paragraph (3) sub (b) of Article 10 of Law Number 7 / 2002, the writer thinks that the substance in the article is the application of Article 56 of paragraph (1) sub (b) of 1982 UNCLOS in the national law, it is a form of concretization of a ratification of fully acceptance of Article 56 paragraph 1 sub (b) of 1982 UNCLOS in the national law, so it can be seen that the definition of the notion of jurisdiction is pursuant to law Number 7 of 2002 that it is no different with the notion of jurisdiction in accordance with 1982 UNCLOS. According to Black's Law Dictionary the word "jurisdiction" has several meanings, namely:¹¹

- a. The authority by which courts and judicial officer take cognizance of and decide cases.
- b. The legal right by which judges exercise their authority.
- c. It exists when court has cognizance of class of cases involved, proper parties are present, and point to be decided is within powers of court.
- d. Power and authority of court to hear and determine a judicial proceeding.
- e. Areas of authority, the geographic area in which the court has power or types of cases it has power to hear.

On the other hand complete English Indonesian Dictionary states the word "jurisdiction" (jurisdiction), means (1) jurisdiction; (2) authority (judiciary); (3) areas that are under the control of it. Meanwhile, according to the Oxford Advanced Dictionary,

¹¹ H Campbell Black, *Black's Law Dictionary*, St. Paul Minn, West Publishing Co., 1979, page 766

"jurisdiction"¹² means: (1) administration of justice; (2) legal authority; (3) Right to exercise this right (right to carry out this legal power); (4) The extent of this (extension of this right). In the law dictionary, "jurisdiction" means; (1) the rule of law; (2) The prosecuting authority.

Based on these quotations, it seems jurisdiction has double meanings: in the narrow sense and in a broad sense. In the narrow sense "jurisdiction" means limited to the court to enforce the rule of law that is not only owned by the judiciary but also in the administrative apparatus. Jurisdiction in the narrow sense is defined by Black's Law Dictionary, a complete English-Indonesian dictionary, and the Advanced Oxford Dictionary. While the dictionary of law compiled by Subekti & Tjtrosoedibio embrace a broader view because "jurisdiction" does not only mean the prosecuting authority but also means the rule of law. Of course, the rule of law also could be owned by any institution other than the judiciary, for example the administrative agencies. In this case the authority of the Maritime Police forces and Officer of the Directorate of Customs and Excise Timor Leste and assisted by the navy Falintil-Forca Defeza Timor Leste (F-FDTL) patrols for sea surveillance area, an additional zone and the EEZ as a function of the implementation of the administrative jurisdiction.

The UN Convention on Law of the Sea/UNCLOS of 1982 turns out to embrace the notion of "jurisdiction" in the broader sense. This can be seen in Article 60 of paragraph (2) which states clearly that the jurisdiction of the coastal State includes law enforcement (by the court) for violations of the law against the artificial island, installation and construction. Moreover coastal state jurisdiction law enforcement coastal states concerned with the customs, fiscal, health, safety and immigration (of course by the administrative authorities) in artificial islands, installations and structures in the EEZ. This is in accordance with Article 56 sub (b), (i). Such administrative jurisdiction can also be seen in Article 62 paragraph (4) particularly with regard to the authority of the coastal State issuing fishing licenses for foreign nationals, especially that they have to pay certain duties and other levies. This is certainly in accordance with the provisions of article 56 paragraph (1) sub b (iii) governing the jurisdiction of coastal States in the field of protection and preservation of the marine environment.

Furthermore, the administrative jurisdiction in the field of marine scientific research such as what is referred to in article 56 paragraph (1) sub b (ii), can be seen also in the contents of Article 246 as follows:

- a) The coastal State is entitled to make the rules, including issuing permits on marine scientific research in the EEZ, the coastal state license is a must.
- b) If the purpose of marine scientific research for the sake of science, the benefit of mankind, and the goal of peace, it is imperative for the coastal State to issue a license, except for:
 - 1) The research has direct significance for the exploration and exploitation of natural resources, both living and non-living.
 - 2) The research covers the continental shelf, the use of explosives or dangerous materials entry into the marine environment.
 - 3) Research that involves the construction, operation or control of artificial islands, installations or buildings, as referred to in Article 60 and 80.
 - 4) The research contains information submitted pursuant to Article 248 regarding the nature and purpose of the project is not appropriate, or if the State which carry out research or competent international organization has obligations that

¹² Subekti & Tjitosudibio, *Kamus Hukum* (Dictionary of Law), Pradnya Paramita, Jakarta, 1969, page 57.

have not been carried out on the coastal State pursuant to a previous research project.

Furthermore, in paragraph (1), (2) and (3) Article 61 of 1982 UNCLOS states that:

1. The coastal State shall determine the number of catches sources of biological wealth that can be obtained in the exclusive economic zone
2. The coastal State, taking into account the best scientific evidence available to it should ensure the conservation and management measures hold the right to the maintenance of biological resources of the exclusive economic zone is not endangered by over-exploitation. Where necessary, the coastal State and competent international organizations, whether subregional, regional or global, should cooperate for these purposes.
3. Such action also aims to maintain or restore populations of species that can guarantee maximum sustainable yield, as determined by the relevant environmental and economic factors, including the special needs of developing countries, and taking into account fishing patterns, the interdependence of supplies of fish and the general recommended international minimum standards, both at the sub-regional, regional and global level.

Referring to the provisions of Article 61 above, the State of East Timor in the exploitation of natural resources in the sea, should remain based on the economic needs of the State, and to consider the interests of coastal States, both its coast that face each other directly or adjacently. The State of RDTL has sovereign rights over the continental shelf, namely the right to explore and exploit all natural resources that exist in the continental shelf. In conducting the Exploration and exploitation rights, it shall not go beyond the limits of the continental shelf area that has been defined in Article 76 of UNCLOS 1982 and Article 8 of Law No. 7 2002.

Furthermore, in Paragraph 5 of Article 10 of Law No. 7 2002 says the sovereign rights committed by the State of East Timor on the continental shelf do not depend on the mastery, real or fictitious, or on anexpressing statement¹³. This means in the management of natural resources in the continental shelf zone, the State of East Timor does not recognize their mastery of the continental shelf by any party provided that the continental shelf zones are in line of two hundred nautical miles in accordance with international regulations. Under these provisions, all living and non-living marine resources are contained within a zone of the continental shelf of the sovereign rights of East Timor, then to explore and exploit the resources of the sea, the explorers had to get permission from the government of East Timor or to work with the Government of East Timor.

Convention as the international regulations that apply universally, for each State ratifying, then, although East Timor has had regulations on maritime boundaries and methods of utilization of marine resources, but in relation to international rights owned by an individual or another State of the EEZ and Continental Shelf , For example; the right of innocent passage, need to be considered. Then, against the required agreements between countries to enact provisions together on these matters.

Provisions of the Sea Boundary Dispute Resolution Issues

In efforts to resolve the dispute, in principle, be the rights of parties to choose what mechanism would be used. Under the provisions of Article 9 of Law Number 7/2002

¹³ LEI No.7/2002. Fronteiras Maritimas do Territorio da Republica Democratica de Timor Leste,art.10. (law number.7/2002 concerning the maritim boundaries)

mentions "Notwithstanding the provisions of Article 5 to Article 8, if there is an overlapping of the demarcation of East Timor with neighboring countries in the maritime space, then this issue shall be resolved through peaceful methods to resolve the dispute. Such arrangements are in line with the provisions of Article 33 of the UN Charter¹⁴, taking into account the principles and rules of international law relating to the demarcation of maritime spaces." That has been agreed internationally, in the vast maritime space, sea continental shelf in each country facing each other directly, it did not use the method of median base line to determine the limits of the continental shelf between the two countries. This means that the size of the sea area outside the contiguous zone is measured as a whole, halved, and each country gets half of ½ as part of sovereign rights over the continental shelf. In this regard, it is necessary to pay attention to the provisions of Article 279 of 1982 UNCLOS that the participating countries should resolve any dispute concerning the interpretation or application of this Convention in a peaceful manner in accordance with Article 2 (3) of the United Nations Charter.

Dispute resolution can be done through the process of Non-Adjudication and Adjudication, namely:

Non-Adjudication Process

- a) The negotiations were done in the case of a dispute occurs between states, the negotiation process has the following characteristics¹⁵:
- The two countries acting together to meet
 - both countries have a concrete object of dispute arising in different international relations
 - the two disputing countries have the same interests to resolve the dispute peacefully through diplomatic means.
 - negotiation is possible at all levels and in all forms (written, verbal, bilateral, multilateral, and others).

Related to the methods of negotiating a settlement of the problem, in the context of East Timor and Indonesia which Timor-Leste was represented by UNTAET (United Nations Transitional administration in East Timor), the method of negotiation has been done several times in terms of determination and affirmation of the boundary line of the states as are listed below:

- 1) 1st Joint Border Committee (JBC) Meeting in Denpasar – Bali, on 30th January 2001;
- 2) 2nd JBC Meeting in Jakarta, on 19th to 20th July 2001 and;
- 3) 3rd JBC Meeting in Denpasar – Bali, on 19th to 21st November 2001

Furthermore, on December 19, 2002 has been held the first meeting of the Joint Border Committee between the Republic of Indonesia and the Democratic Republic of Timor Leste (1st JBC Meeting RI - RDTL) and the implementation of the JBC special Meeting of Indonesia - East Timor in July 2004 in Jakarta¹⁶

¹⁴ Piagam PBB (the UN Charter), 26 June, 1945, San Francisco, effective as of 24 October 1945

¹⁵ Mohammed Bedjaoui (ed), *International Law: Achievement and Prospects*, UNESCO, Paris, 1991, page 515

¹⁶ JBC Meeting RI – RDTL in Suryo Sakti Hadiwijoyo, *Batas Wilayah Negara Indonesia* (the Boundaries of Republic of Indonesia), Yogyakarta, 2009. page 147-148

- b) Mediation, in the case of a dispute between states, mediation is characterized by the involvement of a third party to assist the parties in resolving disputes. These mediators act neutrally, impartially and no conflict of interest and simply facilitate the parties to negotiate and agree on the settlement of disputes. The mediator does not act as a judge in the settlement of disputes.¹⁷
- c) Conciliation, in a dispute between states, the conciliation procedure is a combination of mediation with inquiries. Conciliation can be distinguished from the three (3) characteristics, namely¹⁸:

The first procedure took place in front of a permanent or temporary committee formed by the parties; The second procedure includes a disputed fact-finding; The third consultation procedure relating to the report of the fact-finding commission (commission of inquiries), including recommendations for the settlement of disputes, although these recommendations are not binding.

- d) Good Offices, in a dispute between states, good offices is a means of dispute resolution in which a third party helps bring together parties to negotiate the dispute among themselves or through some sort of "roundtable meeting",¹⁹
- e) Commission of Inquiries, in a dispute between states, Enquiries is the process of peaceful resolution of disputes where the parties form a commission ("Commission of inquiries") with the task of finding the facts are a matter of controversy. Those facts are found on the basis of the inspection documents to the field, expertise, hearings, evidence, and others, which is then reported to the disputing parties without arguments and proposals for the settlement of disputes²⁰.
- f) The combination, settlement of disputes between states on the other hand can be pursued through a merger of several mechanisms for resolving non-adjudication, or it is termed by a combination.²¹

Likewise with the disputes between states that their coastlines facing each other or side by side, even the disputes between the coastal states with the state of marine transportation service users. The mechanisms described above can be applied as an alternative of dispute resolution.

Adjudication Process

- a. Litigation, one of the efforts to be made in resolving disputes between states is by using the International Court of Justice institution if required by the two disputing countries. International Court of Justice is the principal judicial organ of the United Nations within the framework as stipulated in Article 92 of the Charter. In the process of dispute resolution, International Court of Justice's decision will be final and binding upon both parties only if the parties desire, as contained in the submission agreement on the settlement of disputes through the International Court of Justice. International Court of Justice decision also could be "advisory opinion", either in the form "binding opinion" and "non-binding opinion". Although the category is a "recommendation", but must be exercised in good faith by the disputing states.²²

¹⁷ Mohammed Bedjaoui, opcit. page 515

¹⁹ *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, Article 28

²⁰ Ibid, page 516

²¹ Dr. I.B.R. Supancana et all, Opcit, page 46

²² I.d page 47

- b. Arbitration, the Permanent Court of Arbitration is one of the institutions dedicated to the settlement of disputes between states peacefully.

To examine cases of overlapping claims to the sea area, as well as the utilization and exploitation of marine resources, each coastal state is the subject of international law, since the disputed objects either the sea disputes and its utilization in the region as well as the utilization of marine resources in the area of international sea by a State unilaterally are objects that lies in the path of the State, so that it is entered into the domain of international law. 1982 UNCLOS Convention specifies that each State of the Convention should resolve any dispute concerning the interpretation and application of the Convention through peaceful way in accordance with the provisions of Article 2 (3) of the United Nations' Charter.

The Convention regulates the dispute settlement system, in which the States Parties are obliged to submit to one of the institutions of dispute resolution as follows: the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea, the Arbitration General or Special Arbitration. The 1982 Convention established the International Tribunal for Law of the Sea as the standing tribunal and the General Arbitration and the Special Arbitration as the ad hoc Supreme Court of Arbitration (ad hoc tribunals).

Any dispute concerning the interpretation and application of the Convention may be proposed to be solved by one of these four kinds of dispute resolution institutions mentioned above, except for the dispute concerning the interpretation and application of the Convention relating to the problem of international seabed area, which is the absolute jurisdiction of the Chamber of Seabed Disputes.²³

The four dispute resolution institutions mentioned above, are international judicial bodies for settling cases between states with the State and among international organizations with the state, even between individuals or groups with the State, related to marine issues. However, it should be understood mutually, that the resolution of the problem of illegal fishing or maritime boundary disputes with neighboring countries give priority to the spirit of good neighborhood policy or the spirit of good neighbors policy, including with other close related countries, Indonesia and Australia.

Settlement of border disputes is the right of countries that share a border. as Article 280 of UNCLOS in 1982 also provides flexibility that nothing in this chapter reduces the rights of States Parties as well as to agree on the time to resolve the dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice²⁴. This means that any settlement of the problem should not be done through the dispute settlement procedure using the services of the International Judicial institutions, because the imperative International decisions may result in disadvantageous phisicological phenomenon for the parties in terms of international relationships between the neighboring countries. It thus will have a negative impact on the future relations between the countries.

CLOSING

In this section the authors summarize some points as fundamental findings namely:

The setting of substance in the provisions of Law No.7 / 2002 on the maritime zone of the RDTL is a concretization of the ratification of international law (UNCLOS of 1982) into national law. Thus, on the part that regulates the rights of the state of East Timor over the area of the territorial sea, contiguous zone and exclusive economic zones and continental

²³P. Joko Subagyo, *Hukum Laut Indonesia*(Indonesian Law of the Sea), Rineka Cipta, Jakarta, 2009. page 118

²⁴ UNCLOS 1982, Op.Cit Article 280

shelf are substantially the same. Then the concept of jurisdiction used by the international law is the concept of wider jurisdiction.

In the resolution of international disputes in the field of maritime borders or the borders of states, coastal states to obey the provisions of UNCLOS of 1982 and the UN Charter, and it is stipulated in Law No.7 / 2002 on maritime boundaries of the RDTL, which use the internationally accepted dispute resolution procedures that based on the principles of good neighborhood policy.

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