

No. 114/20, 39–58
ISSN 2657-6988 (online)
ISSN 2657-5841 (printed)
DOI: 10.26408/114.05

Submitted: 08.01.2020
Accepted: 18.02.2020
Published: 30.06.2020

JURIDICAL REVIEW OF MARITIME BOUNDARY BETWEEN AUSTRALIA-TIMOR LESTE AND INDONESIA

Muhammad Al Imran Zani R.

Faculty of Law, Hang Tuah University, Surabaya, Indonesia
ORCID 0000-0002-9847-4698,
e-mail: maizr54@yahoo.com

Abstract: The sea area has a strategic position, so it is necessary to regulate the boundaries of international maritime zones to prevent seizure of waters between countries of the world. The purpose of this study was to legally analyze the maritime boundary between Australia-East Timor and Indonesia. This research method uses descriptive-qualitative analysis, normative juridical approach, and collects primary and secondary legal materials. Juridically, Indonesia has borders with several countries including Australia. With regard to sea areas or waters, what can be used as a legal basis is the 1982 International Ocean Law Conference held by the United Nations through the United Conference on The Law of the Sea (UNCLOS) held in Jamaica. The maritime boundary between Indonesia and Australia has been agreed in the Indonesia-Australia maritime boundary agreement at the Geneva Convention 1958. With this agreement, the continental shelf boundary has been agreed at a depth of 200 m and can be exploited.

Keywords: Juridical, Maritime boundary, Continental Shelf Boundary, Maritime Boundaries Agreement.

1. INTRODUCTION

Earth does not only consist of land areas but also oceans that can be a liaison for one country to another, and citizens in a country can travel to other countries by sea using ships as a means of transportation. Yet, the sea area is not only used as a liaison between countries, but also can be exploited, the natural wealth contained therein to be utilized optimally as it has commercial value. With regard to sea areas or waters, what can be used as a legal basis is the 1982 International Ocean Law Conference held by the United Nations held in Jamaica, through the United Conference on the Law of the Sea (UNCLOS). The conference was signed by 119 participants from 117 countries and 2 international organizations [Jonan 2018]. In the convention, the sea area that enters into a particular country's territory is called territorial waters or territorial sea. Outside the sea area is the free sea or

international waters (*mare liberum*) [Jonan 2018]. Based on 1982 UNCLOS, the Indonesian archipelago has sovereignty over internal waters, archipelagic waters, and territorial seas of 12 miles, as well as sovereign rights in the 200-mile Exclusive Economic Zone and continental shelf [Purwaka 2016].

Based on its geographical position, the country of Indonesia has the following boundaries: North – Malaysia, Singapore, Vietnam, the Philippines, Thailand, Palau, and the South China Sea; South – Australia, Timor Leste and the Indian Ocean; West – Indian Ocean; East – Papua New Guinea and Pacific Ocean. These boundaries are in the 111 outermost islands that need to be properly maintained and managed [BPS 2017]. The islands are used to determine the baselines of Indonesia's and other countries.

Indonesia is the largest archipelago country in the world, with 17.499 islands from Sabang to Merauke. The total area of Indonesia is 7.81 million km² consisting of 2.01 million km² of land, 3.25 million km² of the sea, and 2.55 million km² of the Exclusive Economic Zone (EEZ) [Roza 2017]. Indonesia's sea area is larger than its land area so that it can be established that the country of Indonesia is a maritime country. As also stated in Article 25A of the Constitution (UUD) 1945 (the result of the second amendment), Indonesia is an archipelagic country characterized by the archipelago with territorial boundaries and its rights determined by law. With the passing of UU No. 27/2007 concerning Management of Coastal Areas and Small Islands, the existence of Indonesia as a maritime country is increasingly shown.

Determination of maritime boundaries must consider the interests of the international community in the field of foreign shipping and aviation crossing archipelagic waters. Such rights include the right to cross in peace, the right to cross the archipelago's sea lane, the right of transit and the right of communication access [Hutagalung 2017]. These rights are guaranteed by Law No. 6 of 1996 concerning Indonesian waters as an implementation of UNCLOS 1982. This means that the archipelago state must respect the rights of other countries and the user country rights must also receive attention. Law No. 6 of 1996 also recognizes several rights, for example, recognition of traditional fishing rights and shipping rights in archipelago waters.

Indonesia being part of the international community, any events or events related to the determination of maritime boundaries by neighboring countries will certainly also has an impact on Indonesia's maritime boundaries – as happened with Australia and Timor Leste which signed the agreement on the maritime zone in the East Sea. On 6 March 2018, the Governments of Australia and Timor Leste agreed on a maritime zone in the Timor Sea based on the UNCLOS 1982 mechanism [Roza 2018]. Herein, the Timor Leste Representative particularly wanted the determination of people's rights from Timor Leste based on UNCLOS, not based on the Australia and Indonesia agreement on the Timor Gap. The reason is that according to UNCLOS, Timor Leste must obtain most of the oil and natural gas

potential and actual in the Timor Gap since its independence [Rahman 2013]. Of note, the Timor Gap is estimated to have huge oil and gas reserves, as based on 1974 exploration.

Even though the government of Indonesia was not included in the agreement, it still had to review the results of the agreement between the two countries because it could have implications for Indonesia's interests in the territorial waters. This is because the existence of the Australia-Timor Leste agreement could have implications for Indonesia's limited sovereignty over the waters around the Timor Gap region.

Post-independence Timor Leste in 1999 changed the maritime border area in the Timor Sea and Arafura Sea which was originally only owned by Indonesia and Australia [Risal 2017]. There are currently no maritime boundary agreements between Indonesia and Timor Leste. The two countries are still focusing on resolving land borders, the maritime borders of the two countries have not been discussed. The absence of definite maritime boundaries in the Timor Sea and Arafura Sea poses traditional and non-traditional security threats that threaten Indonesian sovereignty in both sea territories. East Timor's independence made significant changes in the area of Indonesian sovereignty in the Timor Sea and Arafura Sea. Unclear maritime boundaries pose maritime security threats in the form of traditional and non-traditional security threats.

Traditional security threats occur in the form of security disturbances at sea, such as the entry of an Australian military patrol ship around the territorial waters of Rote Island. The entry of the Australian military patrol ship was a serious violation of sovereignty, considering that a territorial sea is a sea area where a country has full sovereignty in it. This violation occurred repeatedly six times in the period of 1 December 2013 to 20 January 2014 [Risal 2017].

Based on the description stated above, the authors are interested in conducting research under the title "Delimitation of the Indonesian Sea After the Maritime Boundary Agreement between Australia-Timor Leste in 2018."

2. METHOD

This research is using juridical normative. This type of normative juridical research is carried out through literature studies that examine secondary data in the form of legislation, court rulings, agreements, contracts, other legal documents, and the results of research or other scientific studies [Khaleed 2014].

This research approach used is the (*statue approach*), (*case approach*) and (*comparative approach*). Statue approach is carried out by examining all laws and regulations that are closely related to the legal issues being being handled [Marzuki 2017]. This study also uses a conceptual approach, which is an approach in legal research that is based on the views and doctrines that develop in the legal science

[Marzuki 2017]. As a consequence, researchers will find ideas that can give birth to legal understandings, legal concepts, and legal principles that have relevance to the issues that faced. Case approach is an approach used to identify cases or court decisions that have qualified jurisprudence for use in concrete cases [Diantha 2017]. This case approach can be used when the research problem concerns a vacancy, that is, if the law has not been regulated, or the ambiguity of norms in its application is noted by a judge. The comparative approach compares the laws of a country with its constitution or that of more of other countries regarding the same thing.

The data of law that was used in this research includes:

A. Primary law data

The primary law data that was used in this research are:

- 1) The Constitution (UUD) of Republic Indonesia of 1945.
- 2) The Constitution (UUD) of Republic Indonesia No. 6 of 1996 regarding Indonesia Waters such as:

Article 6

- (1) The making of an international agreement is carried out through the stages of exploration, negotiation, formulation of manuscripts, acceptance and signing.
 - (2) The signing of an international agreement is an agreement on the text of the international agreement that has been produced and/or is a statement to commit themselves definitively in accordance with the agreement of the parties.
- 3) The Indonesia Constitution (UU) No. 24 of 2000 regarding International Agreement, specifically:
 - a. that in order to achieve the objectives of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution, namely protecting all Indonesians and all Indonesian blood, promoting public welfare, educating the life of the nation and participating in carrying out world order based on independence, eternal peace and social justice. The Government of the Republic of Indonesia, as part of the international community, engages in international relations and cooperation embodied in international agreements;
 - b. that the provisions regarding the making and ratification of international agreements as regulated in the 1945 Constitution are very concise, so that they need to be further elaborated in a statutory regulation;
 - c. that the Presidential Letter of the Republic of Indonesia Number 2826 / HK / 1960 dated August 22, 1960 concerning "Formation of Agreements with Other Countries" which has been used as a guideline for making and ratifying international treaties is no longer in line with the spirit of reform;
 - d. that the making and ratification of an international agreement between the Government of the Republic of Indonesia and the governments of other countries, international organizations, and other international legal subjects is a very important legal act because it binds the state to certain fields, and therefore the making and ratification of an agreement international must be carried out with a clear and strong basis, using clear statutory instruments as well;

e. that based on the considerations referred to in letters a, b, c and d, it is necessary to establish a Law concerning International Treaties;

- 4) Government Regulation (PP) of the Republic of Indonesia Number 38 of 2002 concerning the Geographic Coordinate List of Indonesian Archipelagic Lines, such as:

Article 1

In this Government Regulation what is meant by:

1. Geographical coordinates are the magnitude coordinates set in degrees, minutes, and seconds' angle based on the system of geographical latitude and longitude axis.
2. Low Water Line is a map hydrographic datum navigation defined as the average position of the Bold Line Low water.
3. Datum Hydrographic is the face of the refined map used as a reference to sea level when describing the sea depths on navigation maps.
4. Navigation Maps are sea maps drawn up for interest in navigating at sea by paying attention to international standards, in the context of shipping safety.
5. Geodetic Datum is a mathematical reference for setting the geographical coordinates of the points or for mapping hydrographic.
6. The general direction of the beach is the average direction indicated by the direction of the coastlines that have similar common direction in certain places.
7. General configuration of islands is the layout of islands or groups of outer islands or dry coral outermost boundaries.
8. Latitude and Longitude are the geographical axis coordinate reference system of the surface of the earth.
9. Ocean miles are geographical miles whose magnitude is 1/60 (one per sixty) degrees of latitude.

- 5) Presidential Decree Number 6 of 2017 concerning Determination of Outermost Islands, there are:

Article 1

Establish 111 (one hundred and eleven) Islands as Outermost Islands.

Article 2

- (1) Outermost Small Islands as referred to in Article 1 are arranged in a list consisting of island names, other names of islands, waters, coordinates of outermost points, base points and baseline type instructions, and provinces, as stated in Attachment I which is an inseparable part of This Presidential Decree.
- (2) Outermost Small Islands as referred to in Article 1 with Maps as listed in Appendix II which is an inseparable part of this Presidential Decree.

Article 3

When this Presidential Decree comes into force, the provisions in Article 1 paragraph (2) and the Appendix to the Regulation President Number 78 of 2005 concerning Management of Small Outer Islands are revoked and declared not applicable.

Article 4

This Presidential Decree shall come into force as from the date of stipulation.

- 6) United Nations Convention on the Law of the Sea in 1982, there are:
1. Distances of up to 200 nautical miles if the outer edge of the continent does not reach a distance of 200 nautical miles;
 2. Natural continuation (natural prolongation) of the land area under the sea to the outer edge of the continent whose width must not exceed 350 nautical miles measured from the bottom of the territorial Sea, if beyond 200 nautical miles there is still a seabed area which is a natural continuation of the land area and if it meets the sedimentation depth criteria specified in the convention; or
 3. Must not exceed 100 nautical miles from the 2500 meters depth line (isobaths).

B. Secondary law data

The secondary legal material in this study is a textbook that contains the basic principles of legal science or previous research journals that have relevance to the research topic.

The technique of collecting legal material in this research uses literature study tracking [Thalib 2006], which is collecting documents relating to research problems. After the legal materials are collected, the next step is to inventory all legal materials and then classify according to the type. It will continue to analyzed descriptively, with deductive logic. Legal material is elaborated to obtain a systematic explanation. Descriptions are carried out to determine the content or meaning of legal materials adapted to the topic of the problems. In accordance with the data that has been collected from the results of library research, qualitative descriptive analysis is then performed to describe the actual situation regarding the research problem.

3. RESULT AND DISCUSSION

A. The Boundary Condition of Indonesia Australia-Timor Leste Pre and Post Agreement

National borders are a manifestation of the territorial sovereignty of a country. National borders have an important role in determining sovereignty boundaries, utilizing natural resources and maintaining the security and integrity of territories. State borders are in many ways determined by historical, political and national and international legal processes [Marwasta 2016].

A border is a meeting area for two or more countries and the sovereignty limit of each country. The geographical location of these borders often lead to contact both in the socio-cultural, political and economic aspects between the two countries concerned [Damarjana 2014]. Border areas are strategic areas in maintaining the territorial integrity of a country, therefore special management is needed to provide legal certainty regarding the scope of the country's territory, and the authority to manage state territory, and sovereign rights, security and environmental sustainability [Atika 2017].

The boundaries of a country's territory occupy strategic positions based on geographical, legal and political aspects [Bangun 2017]. Geographically, territorial borders mark the area of a country and includes the land, sea and air above it and below it. By law, the national boundary determines the scope of national law enforcement, whereas politically the state's boundary is the end of the reach of the country's highest power over the territory and everything in the territory.

According to O.J Martinez, that there are four types of borders: *alienated borderland*, *coexistent borderland*, *interdependent borderland*, and *integrated borderland* [Damarjana 2014]. Therein:

1. *Alienated Borderland*, are a type of border where conditions and activities of the border are very passive, as a result of a country that is in conflict with its neighbors.
2. *Coexistent borderland*, is a type of border where the problems in it can still be suppressed and rarely cause conflict.
3. *Interdependent borderland*, is a type of border in which international relations are relatively stable.
4. *Integrated borderland*, is a border area whose economic activities constitute a unity.

The functions of a border include:

1. Military-strategic function, as a fulfillment of the military-strategic needs of a country, especially building marine, air and land defense systems to guard against external threats.
2. Economic function, as the determination of certain regions where a country controls data on capital flows, inter-state trade, foreign investment, and movement of goods between countries. The economic function provides guidelines for a country to legally explore natural resources in certain areas.
3. Constitutive function, is an international law concept wherein a sovereign state must have a clearly defined border region; this means the existence of a state boundary determines the constitutive position of a particular state in the international community, so that a country has full sovereignty over that region.
4. National identity function, is an emotional binding on communities that exist in certain territories. Historical similarities and experiences directly or indirectly bind people emotionally to claim certain identities and territories.
5. National unity function, is when a well-bound border national identity will help maintain national unity.
6. The function of the development of the nation state, that is borders are very helpful in the development of nation-states because they provide the power for the state to determine how the nation's history is formed, determine what symbols are widely accepted, and determine normative and cultural shared identity.
7. Domestic interest function, is a function of achieving domestic interests, namely providing geographical boundaries for the state to achieve national interests in

all fields and determining the extent to which the state can do all its efforts for its national interests.

The maritime border dispute between Indonesia and Timor Leste begins with the release of Timor Leste from Indonesia. With Timor Leste declaring its independence in 2002, Timor Leste and Indonesia had to begin to determine the boundaries of land, sea and air. This has become even more complicated because before Timor Leste escaped from Indonesia, an agreement between Indonesia and Australia had been agreed on a maritime boundary agreement between the two countries, as well as an oil processing cooperation agreement [Maritime Boundary Agreement of Timor Leste and Australia 2018] in the Timor Sea and the Timor gap.

Initially, an agreement was reached regarding the continental shelf boundary between Indonesia and Australia in 1972, based on the 1958 Geneva Convention stipulating the geography of the continental shelf at the 200 depth and its *exploitability* status. With those criteria, when a dispute arises between Indonesia and Australia, each has an establishment for resolving the situation. Here, by setting limits using the conditions of the border provisions of the 1958 Geneva Conventions, the Australia side benefits more than Indonesia. However, the Treaty of 1972 does not include the East Timor area because it was still in the authority of the Portuguese, so it became known as the “Timor Gap”. This was in existence until 1976, when East Timor officially joined the territory of Indonesia, therefore, opportunity arise for the negotiation of the Timor sea boundary. Negotiations that took place between Indonesia and Australia began in 1979 based on the position of the (median line) as the continental shelf boundary of the two countries in Timor Gap. This was reinforced by the 1982 UNCLOS results that establish a continental shelf for a coastal country of at least 200 nautical miles from the sea baseline without being influenced by the fact that there is a trough such as the Timor Trench. This caused a default to only a center line (median line) that divided the continent shelf or sea bed (*seabed*) between Indonesia and Australia, hence, Indonesian and Australian territorial claims have 200 mil overlapping ones (*overlap*) [Kusumaatadja 1992].

In 1988, because there was no agreement between the two parties, it was proposed that there be a Joint Statement with Zone of Cooperation. In 1989, a cooperation agreement between Indonesia and Australia was ratified. This is also referred to as the Timor Gap Treaty (Kusumaatadja, 1992). Accordingly, the Cooperation Zone in the North is bounded by sea depth (*bathymetric axis*) simplified with (*continuous lines*), in the south it is limited by the 200 miles sea distance measured from the East Timor coast. In East and West area, the cooperation zone is limited by distance lines (*equidistance*) drawn from points on Timor Island (Mota Tolas and midpoint between De Jaco Island and Leli Island) and Northern territory, Australia (Hololhuria Cape Van Diemen). This agreement resulted in [Kusumaatadja 1992]:

1. Area A: Joint Development area (Joint Development Zone) which is determined as the joint processing of oil and gas resources by the two countries. Thus, the portion of the net production results is then divided into two along with the tax payment obligations.
2. Area B: Area south of the midline (*median line*) has been developed by Australia and never claimed by Indonesia, thus it can be developed by Australia according to Australia Law. Nevertheless, Australia still gives 16% from net income tax or "net Resource Rent Tax" (nel RRT) or 10% of the net tax income (gross RRT). Australia also gives information to Indonesia regarding exploration activities and exploitation before the activity starts.
3. Area C: Area C is in reality part of the overlapping territorial demands of each party so that actually Region C must be worked on together with the distribution of results 50 – 50. In the negotiations, area C is deliberately designated an "Indonesian area". This is a compromise settlement proposed by Australia, so that it appears that important Australian concessions in Region B are balanced by the existence of Region C with the same regime as in Region B. Region C will be developed (worked on) by Indonesia with the provision that Indonesia will provides only 10% of the Contractor's Income Tax. In addition, Indonesia will also notify Australia of exploration and exploitation activities in Region C before carrying out these activities.

The Timor Gap Treaty between the Indonesia and Australia then ended because Timor Leste separated from Indonesia. As an independent country, Timor Leste has the right to its territorial borders – which are bordered by Indonesia and Australia. As its history shows, the effort to determine the boundaries of this region is prone to result in dispute.

The border revision will result in the generation of an agreement. According to Indonesia Civil Code (KUHPperdata) Article 1313, an agreement is defined as "An act by which one or more persons binds themselves to one or more other persons". An agreement or syah has legal force if it meets the requirements as stated in Indonesia Civil Code (KHUPERdata) below¹:

1. The agreement of those who bound themselves.
2. The ability to make an engagement.
3. A certain subject matter.
4. A reason that is not forbidden.

A legitimate agreement is a legal obligation for both parties that is to be respected by third parties outside the agreement. Therefore, the cooperation agreement between Indonesia and Australia ended as a result of Timor Leste breaking away from Indonesia. With the independence of East Timor, East Timor borders the sea with Australia. This resulted in the emergence of a new border agreement between Timor Leste and Australia, also known as the "Maritime

¹ The Indonesia Civil Code (KUHPperdata) Article 1320.

Boundary Agreement in the Timor Sea”. This was signed in 2018. The contents of the agreement agreed on several issues including [Maritime Boundary Agreement of Timor Leste and Australia 2018]:

1. Continent Shelf Boundary

Article 2, in this agreement explains that the two nations, Timor Leste and Australia agree on continental shelf boundaries that can be seen on the geodesic line connecting the following points:

Table 1. Continent Shelf Border points of Timor Leste and Australia [Maritime Boundary Agreement of Timor Leste and Australia 2018]

Point	Latitude	Longitude
TA-1	10° 27' 54.91"S	126° 00' 04.40"E
TA-2	11° 24' 00.61"S	126° 18' 22.48"E
TA-3	11° 21' 00.00"S	126° 28' 00.00"E
TA-4	11° 20' 00.00"S	126° 31' 00.00"E
TA-5	11° 20' 02.90"S	126° 31' 58.40"E
TA-6	11° 04' 37.65"S	127° 39' 32.81"E
TA-7	10° 55' 20.88"S	127° 47' 08.37"E
TA-8	10° 53' 36.88"S	127° 48' 49.37"E
TA-9	10° 43' 37.88"S	127° 59' 20.36"E
TA-10	10° 29' 11.87"S	128° 12' 28.36"E
TA-11	09° 42' 21.49"S	128° 28' 35.97"E
TA-12	09° 37' 57.54"S	128° 30' 07.24"E
TA-13	09° 27' 54.88"S	127° 56' 04.35"E

Article 3, explains that if Timor-Leste and Indonesia agree to the end point for their continental shelf boundary to be to the west of point A17 or east of point A16 according to the 1972 Seabed Agreement Boundary, the continental shelf boundary between Timor-Leste and Australia must be adjusted in accordance with paragraphs 2, 3 and 4.

The second paragraph sets out the agreement between the two nations on the Commercial Depletion of the Laminaria and Corallina Field. In addition, this paragraph also explains the validity of the agreement between Timor-Leste and Indonesia on the continental shelf boundary between the two States, as well as the continental shelf boundary between Timor-Leste and Australia. Paragraph 3 of this Article stipulates that it must be adjusted so that it results in a geodesic line from point TA-2, ending at a point between points A17 and A18 as per the Boundary Agreement 1972, based on UNCLOS 1972 (Fig. 1).

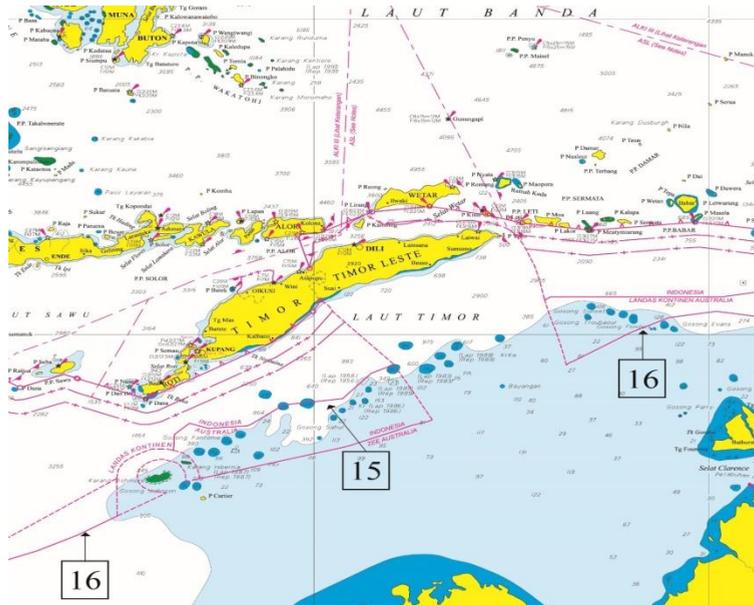


Fig. 1. Boundary map as agreed between Timor-Leste, Australia, and Indonesia [Pusat Hidrografi dan Oseanografi TNI AL 2017]

The third Paragraph states that in the case of the continental shelf boundary being agreed between Timor-Leste and Indonesia in accordance with UNCLOS 1972, to end at a point west of point A18, the continental shelf boundary must be adjusted so that it results in a geodesic line from point TA-2 to point A18.

The fourth paragraph explains that the two nations also have agreed on the commercialization of the Greater Sunrise field. Moreover, this paragraph also further explains the enactment agreement between Timor-Leste and Indonesia limiting the continental shelf boundaries between the two Nations and based upon UNCLOS 1972 rules.

2. Exclusive Economic Zone Border

The agreement result of the article 4 explains that the Exclusive Economic Zone (EEZ) border between Timor Leste and Australia in Timor Sea consists of a geodesy line that connects the points that can be seen in the following table:

Table 2. Boundaries of the Exclusive Economic Zones between Timor Leste and Australia in the Timor Sea [Maritime Boundary Agreement of Timor Leste and Australia 2018]

Point	Latitude	Longitude
TA-5	11° 20' 02.90"S	126° 31' 58.40"E
TA-6	11° 04' 37.65"S	127° 39' 32.81"E
TA-7	10° 55' 20.88"S	127° 47' 08.37"E
TA-8	10° 53' 36.88"S	127° 48' 49.37"E
TA-9	10° 43' 37.88"S	127° 59' 20.36"E
TA-10	10° 29' 11.87"S	128° 12' 28.36"E

3. Illustration of Maritime Border

Based on article 5, and explained in Article 2 and 4, the border is thus (Fig. 2):

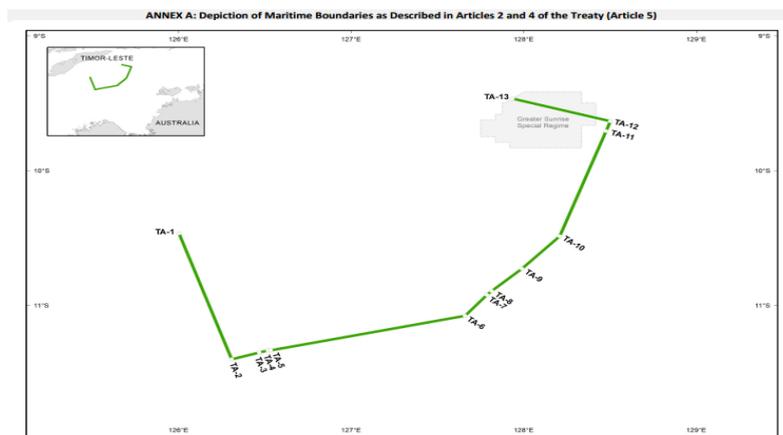


Fig. 2. Illustration Maritime Border

4. Greater Sunrise Special Regime

In article 7 it is explained that Timor Leste and Australia will re-establish the Greater Sunrise Special Regime as arranged in Attachment B of this Agreement for Special Regime Area. Within the Special Regime, the Parties shall jointly use their rights as coastal States in accordance with Article 77 of the Convention: “Governance and implementation of jurisdiction in the Special Regime Territory as regulated in the Greater Sunrise Special Regime”.

Except as provided for in Article 3 of this Agreement, the entry into force of the agreement between Timor-Leste and Indonesia which limits the continental shelf boundary between the two Countries will not have an impact on the Greater Sunrise Special Regime.

In Appendix B Article 2 it is stated that Timor-Leste and Australia are entitled to all Oil produced in the Greater Sunrise Fields. The Parties will share upstream income, which means income derived directly from upstream Petroleum exploitation produced in Greater Sunrise Fields:

- (a) At a ratio of 70 percent for Timor-Leste and 30 percent for Australia in the case that Greater Sunrise Fields were developed through a Pipeline to Timor-Leste; or
- (b) In an 80 percent ratio for Timor-Leste and 20 percent for Australia in the case that the Greater Sunrise Fields were developed through a Pipeline to Australia.

5. Compensation

Article 10 explains that Timor-Leste and Australia has agreed that neither Party will have a claim for compensation in connection with Petroleum Activities carried out in the Timor Sea as a result of:

- (a) The termination of the Joint Petroleum Development Area as determined by Article 3 of the Timor Sea Treaty at the time of termination of that agreement;
- (b) Determination of continental shelf boundaries based on this Agreement;
- (c) Adjusting continental shelf boundaries as a result of the application of Article 3 of this Agreement; or
- (d) Termination of the Greater Sunrise Special Regime

6. Dispute Resolving

In Article 12, paragraph 1, an explanation is provided that in any dispute between Timor Leste and Australia, without reducing the content from paragraph 3 of this Article, for period of 5 years after enactment of this Agreement, each dispute about interpretation or application this Agreement that was not resolved from negotiation within six months from one of the Party informing the other Party about the existence of a dispute, the Parties are to take the dispute to one or more member Conciliation Commissions.

Article 12 paragraphs 2 explains after the dispute is filed in accordance with paragraph 1 of this Article, members or members of the Conciliation Commission must listen to the Parties, examine their claims and objections, and submit proposals to the Parties with a view to reaching a peaceful settlement.

Article 12 paragraph 3 explains that every dispute about interpretation or application of this Agreement that cannot be solved by negotiation in six months, may be submitted by one of the Parties to an agreed arbitration court.

Article 12 paragraph 4 explains that neither Timor Leste nor Australia can submit a dispute to the arbitral tribunal for any dispute concerning the interpretation or application of Article 2, 3, 4, 5, 7 or 11, or a dispute that falls within the scope of Article 8, because any disagreement over the interpretation of the Articles must be resolved in accordance with the provisions of the aforementioned Articles.

The border agreement between Timor Leste and Australia will also affect Indonesia (Fig. 3). Article 9 of the Timor Leste and Australia agreement also states that with the agreement, several agreements will cease to apply, including the Timor Sea Treaty of Indonesia and Australia, the International Unitation Agreement. The impact of the maritime agreement between Timor Leste and Australia on Indonesia will be explained in the next sub-chapter.

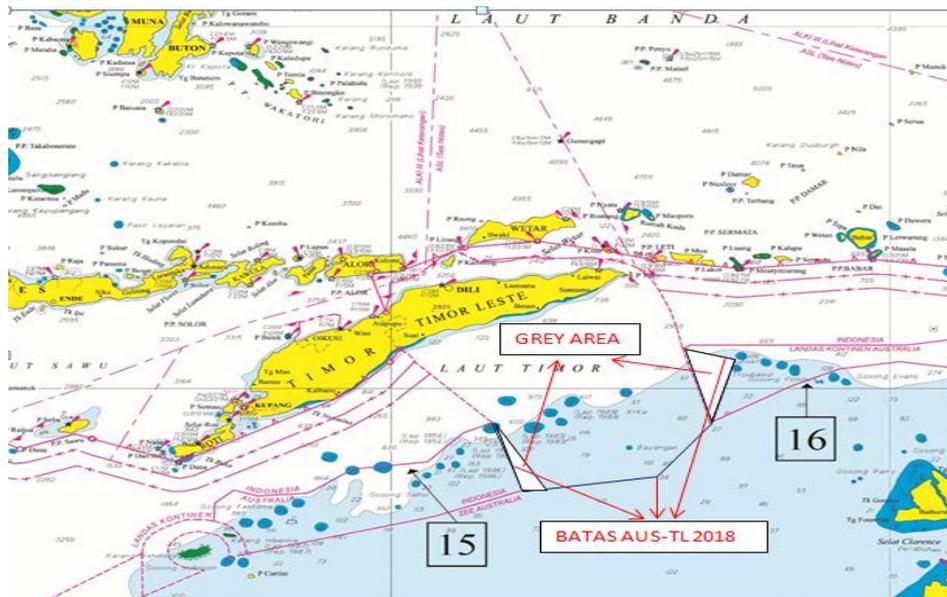


Fig. 3. Approximate map overlapping area (grey area) in border of Indonesia-Timor-Leste-Australia

B. The effect of Maritime Agreement between Timor-Leste and Australia to Indonesia

1. Borderline

The release of Timor Leste from Indonesia resulted in changes in the national borders. To remedy these, throughout 2015, an intensive approach was taken that included a series of bilateral meetings of the Technical Teams of the two countries. The first consultation meeting was in Dili on 18 September 2015; and the second consultation meeting was held at Surabaya on 29–30 October 2015 [Patmasari, Artanto and Rimayanti 2016]. The results of the consultation meeting between the two countries was the agreement: the Principles and Guidelines for Maritime Boundary Negotiations which contains the basic principles that need to be guided by both parties in negotiating the determination of maritime boundaries. Both countries have identified relevant water areas for their maritime boundaries to

be determined (*area of delimitation*) as below [Patmasari, Artanto and Rimayanti 2016]:

- a. Wetar Strait: Eastern waters of Wetar Island, Kisar Island, Leti Island RI – Jaco and Mainland RDTL;
- b. Eastern waters of the Ombai Strait: Eastern waters of Alor Island, Western waters of Wetar Island, Liran Island RI – Atauro and Mainland RDTL;
- c. Western waters of the Ombai Strait / Savu Sea: Pantar Island, Western waters of Alor Island RI – Oecussi RDTL
- d. Timor Sea.

Both nations then agreed upon a Plan of Work Together (Joint Plan of Work) that determined the negotiations and resulted in the delineation seen in Figure 4.

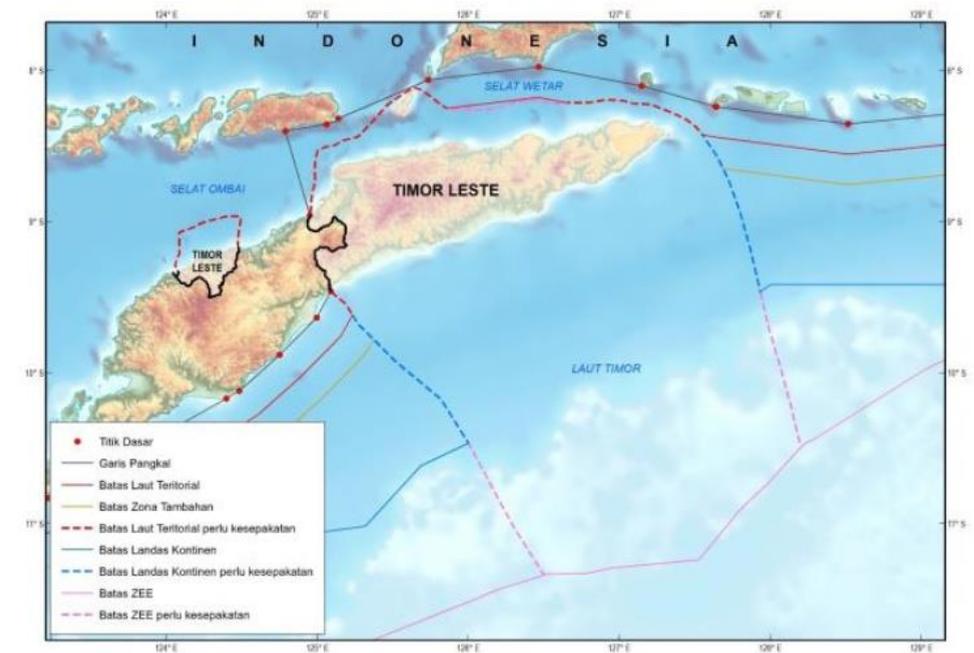


Fig. 4. Maritime Border between Indonesia and Timor Leste
[Patmasari, Artanto and Rimayanti 2016]

The maritime boundary established in the Agreement between Australia and Timor Leste is also known to have an impact on Indonesia's sovereign territories bordering the territory of Timor Leste. This will lead to renegotiations related to maritime boundaries between Indonesia and Australia. The results of the East Timor and Australia agreement indicate that Australia is following the rules for determining boundaries based on UNCLOS. This is different from the sea

boundary agreement that was agreed upon by Indonesia and Australia at the 1958 Geneva Convention that was considered detrimental to Indonesia. Initially, the entire Arafura Sea and Timor Sea were sea territories owned by Indonesia and Australia. However, following the sea boundary agreement between Timor Leste and Australia, the Arafura Sea became an area that must be divided between Indonesia, Australia and Timor Leste. Meanwhile, the Timor Sea is a sea area that is under the sovereignty of Timor Leste and Australia, this is because Indonesia no longer has the rights to the Timor Sea. The delineation of maritime boundaries between the three countries of Indonesia, Timor Leste and Australia can be seen in Figure 5.

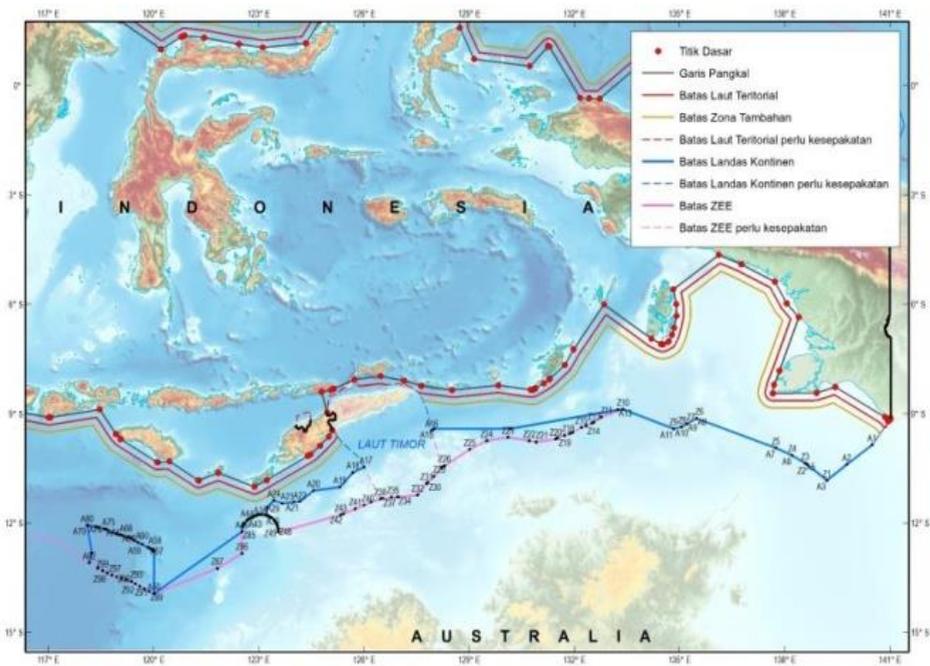


Fig. 5. Maritime Border between Indonesia and Australia [Patmasari, Artanto and Rimayanti 2016]

Where the sea boundary does not overlap with that of Timor Leste, Australia and Indonesian still follow the Indonesia Sea boundary agreement (Fig. 6).

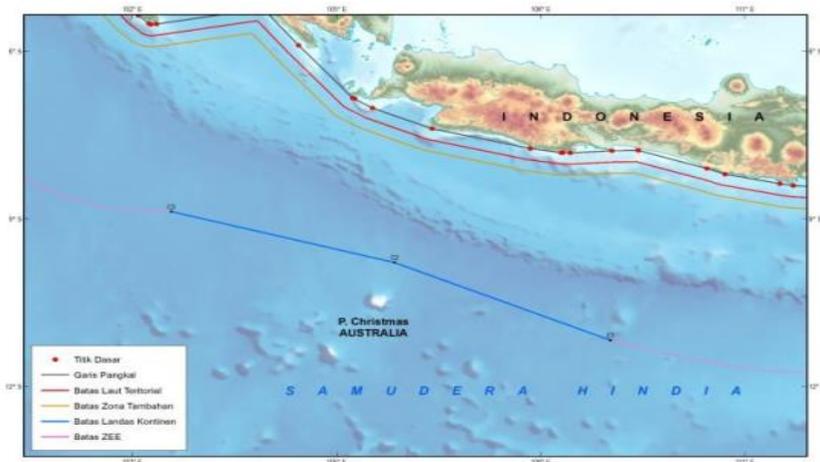


Fig. 6. Maritime Border between Indonesia and Australia (South Java Island)
[Patmasari, Artanto and Rimayanti 2016]

2. Economic

The Timor Leste and Australia Treaty does not only affect the boundaries, but also impacts upon the Economic life of Indonesia. With the Timor Sea Treaty between Timor Leste and Australia, Indonesia lost several sea areas that had economic value (Timor Sea or the Timor Gap). It has been previously known that Indonesia and Australia already had an Oil and Gas Resources processing agreement for the Timor Gap. After Timor Leste broke away from Indonesia, the Timor Sea region was no longer within Indonesia Sovereignty and Indonesia no longer has the rights to Oil and Gas Resources in Timor Sea region, especially the Timor Gap. This is further strengthened by the agreement agreed upon by East Timor and Australia in that all Oil that is produced in Greater Sunrise Fields is shared between East Timor and Australia. Thus, the loss of output from Oil and Gas processing in the Timor Gap and the Greater Sunrise Fields to Indonesia. [Kusumaatadja 1992]. This was:

- a. 50% of the shares of the Exploration Regional Joint Development Zone (A);
- b. 16% of net income tax or "net Resource Rent Tax" (nel RRT) or 10% of gross tax revenue (gross RRT) B exploration area;
- c. 90% of Contractor Income Tax on exploration and exploitation results in Region C.

Furthermore, the agreement between Timor Leste and Australia does not guarantee the existence of clear regional boundaries, especially in overlapping areas such as the Arafura Sea and Timor Sea. As a result, traditional security threats often occur that harm Indonesia economically, namely Illegal Fishing. The great need for fresh fish raw materials makes neighboring countries compete to collect fish illegally in the waters of the Timor Sea and Arafura Sea. The perpetrators of illegal fishing use the absence of clear maritime boundaries in the

two seas to take fish massively and illegally with the argument that the EEZ concept provides an alternative *open access* to fish in in the waters of the EEZ of other countries where and when the country does not have the capacity to utilize fish resources of that region. As of 2017, losses due to illegal fishing in the Arafura Sea have reached IDR. 40 Trillion/year [Risal 2017].

3. Transportation

The existence of an agreement between Timor Leste and Australia had the effect of changing the territorial sea boundaries of the sovereignty of three countries, Indonesia, Timor Leste and Australia. Transportation between countries is known to have to require cross-border route permits in accordance with the standing agreement between the three countries. The changes in the state sea boundaries due to the agreement will also affect inter-state transportation. Access to enter a country, especially those by sea, will change. Until now the maritime borders of Indonesia and Timor Leste still have not been agreed upon. Indeed, the determination of land borders is either incomplete or not yet reached an agreement. The existence of an agreement between Timor Leste and Australia does not guarantee that there are clear boundaries between the three countries, Indonesia, Australia and Timor Leste, especially in the overlapping Arafura Sea area. Indonesia is therefore threatened with international transboundary crime.

The threat of international cross border crime cannot be separated from the strategic position of the two seas in that it is an international shipping lane. There are no clear maritime boundaries and a weak surveillance system makes the perpetration of crime easy. This not only applies to the smuggling of goods such as drugs, firearms, but also humans. Here, the weak surveillance system means that there is not valid data on the extent of the problem, hence, making it difficult for the decision-making process in the process of containing piracy and smuggling [Risal 2017].

4. Sea Security

After the two maritime boundary agreements that affirm the continental shelf and EEZ of the two countries were made, there were many violations of sovereignty in the two seas. In other words, maritime security, especially under Indonesian sovereignty is low. This low sea security can be evidenced from the many violations or crimes that occur – carried out by local residents of Indonesia, Australia, and by ships from foreign countries. Violations such as cross-border crime, smuggling, illegal immigration, and foreign ship patrols that have entered Indonesian territory without permission have occurred with greater frequency. These violations are difficult to overcome because Indonesia's capabilities and resources in the field of maritime surveillance are inadequate. Conditions in both seas tend to be conflictual even though there is a maritime boundary agreement in force [Risal 2017]. One example is the six-time repeated entry of an Australian

military patrol ship around the territorial waters of Rote Island (1 december 2013 to 20 January 2014) [Risal 2017].

4. CONCLUSION

The maritime boundary between Indonesia and Australia was agreed upon in 1971–1972 based on the Geneva Convention 1958. With this agreement, the Continent shelf boundary line was set at 200 m depth. However, the agreement did not include the East Timor area because at that time it was still under Portuguese control. When East Timor was absorbed into Indonesia, all the Arafura Seas and Timor Seas were territorial seas shared by Indonesia and Australia after the Timor-Australia treaty took place. In 2018, Timor Leste as an independent country made an agreement with Australia about their shared maritime boundaries, including the boundary in Timor Sea especially the right to process Oil and Gas resources in Timor Gap. With the agreement between Timor Leste and Australia, even though Indonesia was not included in the active party, Indonesia also experienced the impact of the agreement. This happens because, in some sea areas, overlapping claims occur between the three nations (in the Timor Sea and Arafura Sea areas). As a result, Indonesia suffered losses in several aspects, including aspect of territorial boundaries, economy, transportation and sea security. The maritime border issues being unresolved, makes the sea around Timor vulnerable to cross-border crimes such as illegal fishing, smuggling, piracy and unauthorized entry.

REFERENCES

- Atika, N., 2017, *Upaya Pemerintah Indonesia Dalam Menjaga Wilayah Perbatasan Indonesia – Vietnam Tahun (2010–2014)*, JOM FISIP, vol. 4(1).
- Bangun, B.H., 2017, *Konsepsi dan Pengelolaan Wilayah Perbatasan Negara: Perspektif Hukum Internasional*, Tanjungpura Law Journal, vol. 1(1).
- BPS (2017) *Statistik Indonesia 2017*, Jakarta, Indonesia.
- Damarjana, A., 2014, *Postur Kebijakan Perbatasan Indonesia-Papua New Guinea*, Journal Analysis Hubungan Internasional, vol. 3(1).
- Diantha, I.M.P., 2017, *Metode Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media Group, Jakarta, Indonesia.
- Government Regulation of the Republic of Indonesia Number 38 of 2002, Concerning the Geographic Coordinate List of Indonesian Archipelagic Lines.
- Hutagalung, S.M., 2017, *Penetapan Alur Laut Kepulauan Indonesia (ALKI): Manfaatnya dan Ancaman Bagi Keamanan Pelayaran di Wilayah Perairan Indonesia*, Journal Asia Pacific Studies, vol. 1(1).
- Jonan, T.S.B., 2018, *Perkembangan Ilmu Negara Dalam Peradaban Globalisasi Dunia*, Yogyakarta, DeePublish.

- Khaleed, B., 2014, *Legislative Drafting*, Penerbit MedPress Digital, Yogyakarta: Penerbit MedPress Digital.
- Kusumaatadja, M., 1992a, *Perjanjian Indonesia-Australia di Celah Timor*, Hukum dan, Indonesia.
- Kusumaatadja, M., 1992b, *Perjanjian Indonesia-Australia di Celah Timor*, Hukum dan, Indonesia.
- Law No. 24 Year 2000 Article 1 Paragraph (1) Concerning International Treaties. State Gazette of the Republic of Indonesia No. 4012.
- Law No. 27 of 2007 Concerning Management of Coastal Areas and Small Islands State Gazette of the Republic Indonesia No. 4739.
- Law of the Republic of Indonesia Number 6 of 1996 Concerning Indonesian Waters. State Gazette of the Republic of Indonesia No. 3647.
- Law of the Republic of Indonesia Number 24 of 2011 Article 18 Concerning the International Treaties. State Gazette of the Republic of Indonesia No.5256.
- Maritime Boundary Agreement of Timor Leste and Australia, 2018, *Annex 28: Treaty signed by the Parties*.
- Marwasta, D., 2016, *Pendampingan Pengelolaan Wilayah Perbatasan di Indonesia: Lesson Learned dari KKN-PPM UGM di Kawasan Perbatasan*, Indonesian Journal of Community Engagement, vol. 1(2).
- Marzuki, P.M., 2017, *Penelitian Hukum*, Jakarta, Kencana, Indonesia.
- Patmasari, T., Artanto, E., Rimayanti, A., 2016, *Perkembangan Terakhir Batas Maritim Indonesia dengan Negara Tetangga*.
- Presidential Decree Number 6 of 2017 concerning Determination of Outermost Islands.
- Purwaka, T.H., 2016, *Penelitian Ilmiah Batas Wilayah Laut Indonesia Berdasarkan Konvensi Hukum Laut PBB*, Jilid 44, Masalah Hukum, Indonesia.
- Pusat Hidrografi dan Oseanografi TNI AL, 2017, *Proyeksi: Mercator Sistem Perambuan: Iala-Region A Spheroida: World Geodetic System 1984*, <http://www.pushidrosal.id/buku-nautika/51/>.
- Rahman, R.Y., 2013, *Upaya Timor Leste Dalam Penyelesaian Garis Tapal Batas dengan Australia*, eJournal Ilmu Hubungan Internasional, vol. 1(2).
- Risal, M., 2017, *Dinamika Keamanan Maritim Indonesia Pasca Kemerdekaan Timor Leste*, Journal Interdependence, vol. 5(1).
- Roza, E., 2017, *Maritim Indonesia, Kemewahan Yang Luar Biasa*, Kementerian Kelautan dan Perikanan Republik Indonesia, <http://www2.kkp.go.id/artikel/2233-maritim-indonesia-kemewahan-yang-luar-biasa> (Accessed: 19 February 2018).
- Roza, R., 2018, *Penyelesaian Sengketa Celah Timor dan Implikasinya Bagi Indonesia*, Kajian Singkat Terhadap Isu Aktual dan Strategis, vol. 10(6).
- Thalib, A.R., 2006, *Wewenang Mahkamah Konstitusi dan Implikasinya Dalam Sistem Ketatanegaraan Republik Indonesia*, Bandung: PT. Citra Aditya Bakti.
- The 1945 Constitution of the Republic of Indonesia.
- UNCLOS, 1982, United Nations Convention about Law of the Sea in 1982.