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DEVELOPING JOINT DEVELOPMENT ZONE IN DISPUTED MARITIME BOUNDARIES

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Abstract

As an archipelagic country, Indonesia has more maritime boundaries than land boundaries. There are 10 countries directly adjacent to Indonesia. Of those countries, Indonesia has just reached a few conclusive bilateral arrangements on maritime boundaries. Many unresolved and potential disputes are there that may arise in the future. Two ways have been used to negotiate Indonesia's maritime boundaries: (1) bilateral talks that result in bilateral agreements and (2) dispute settlement through an international tribunal. However, for more than 50 years, these two methods have not optimally provided the expected result. In fact, the islands of Sipadan-Ligitan have been gone to Malaysia after Indonesia lost in the International Court of Justice. Creating a joint development zone will be good alternative mechanism proposed for the Indonesian government to resolve its dispute especially in an area that has natural resources. Indonesia once created a bilateral treaty on joint development zone with Australia on the Timor Gap and in fact, the treaty was considered a good example. Malaysia-Thailand and Malaysia-Vietnam are among the real examples in the implementation of joint development zones that still ongoing until today. Looking at the advantages and disadvantages of this zone, this alternative dispute resolution may be considered to provide the best solution for disputed countries. Moreover, this is supported by Article 74 paragraph 3 and Article 83 paragraph 3 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982. The creation of relevant and effective agreement, regulatory and institutional frameworks becomes the Indonesian government's homework to optimize this mechanism.

Keywords: Joint Development Zone, Agreement, Disputes, Exclusive Economic Zone, Continental Shelf.

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I. INTRODUCTION

Indonesia, known for its archipelago, has the number of 17,500 islands from the west end (Sabang, the Province of Aceh) to the east one (Merauke, the Province of Papua).¹ Most of Indonesia territory is adjacent by the sea of neighboring countries. The archipelagic country has its own sea border with 10 countries including Malaysia, Australia,

¹ Tim Viva, *Catat, Ini Jumlah Pulau di Indonesia yang Sebenarnya*, Viva, 20 June 2017, <<http://www.viva.co.id/berita/nasional/927968-catat-ini-jumlah-pulau-di-indonesia-yang-sebenarnya>>, accessed on 13 August 2017. The data is revealed by the Centre of Hydrography and Oceanography of Indonesia Marine (*Pusat Hidrografi dan Oseanografi-PUSHIDROSAL*).

Timor Leste, Papua New Guinea, the Philippines, India, Republic of Palau, Singapore, Thailand, and Vietnam. Three of ten neighboring countries such as Malaysia, Papua New Guinea, and Timor Leste are also adjacent to Indonesia in terms of land boundaries.

To determine its own state territory, Indonesia must comply with the bilateral, regional and multilateral arrangement in an exception if there is no state adjacent to Indonesia. Determination land boundaries are set from the Netherlands East Indies map, bilateral agreement and arbitration award or international court decision. The Principle of International Law of *Uti Possidetis Juris* is already applied.² To determine maritime boundaries, the three former way to determine land boundaries and provisions in the United Nations Convention on the Law of the Sea (UNCLOS) 1982 along with multilateral agreement must be used. Given the obligation to achieve interstate agreement on marine boundary delimitation, every government has a heavy challenge to overcome. UNCLOS 1982 give all coastal states the right to explore and to exploit in the Exclusive Economic Zone (EEZ) and the Continental Shelf up to 200 nautical miles and 350 nautical miles respectively from their baseline.³

In terms of sea boundaries or marine delimitation, Indonesia has not fully reached conclusive terms with the ten neighboring countries. In fact, the archipelagic country has not pursued any bilateral talks with Timor Leste and the Republic of Palau in terms of marine delimitation.⁴

² Malcolm N. Shaw states that the principle of *uti possidetis juris* is an attempt to eliminate territorial disputes by obtaining the territorial heritage of new states at the time of independence and converting existing boundaries into globally recognized state borders. Please see Malcolm N. Shaw; *The Heritage of States: The Principle of Uti Possidetis Juris Today*, *British Yearbook of International Law*, Volume 67, Issue 1, 1 January 1997, p. 76, <<https://doi.org/10.1093/bybil/67.1.75>>, accessed on 20 August 2017.

³ Clive H. Schofield, *Blurring the lines: maritime joint development and the cooperative management of ocean resources*, *Issues in Legal Scholarship*, 8(1), Article 3, p. 2. Please see also Leonardo Bernard, *Prospect for Joint Development in the South China Sea*, paper submitted for the “Managing Tensions in the South China Sea”, a conference held by CSIS on 5-6 June 2013, p. 2.

⁴ Iwan Santosa, *Batas Laut RI dan 10 Negara Belum Tuntas*, *Kompas*, 25 February 2013, <<http://nasional.kompas.com/read/2013/02/25/21263866/Batas.Laut.RI.dan.10.Negara.Belum.Tuntas>>, accessed on 20 August 2017.

From this situation, the potential for disputes remains there even though no current debates on marine boundaries arising. Nonetheless, it is possible that the legal action will occur if there are natural and hydrocarbon resources discovered within the boundary zone. One of the notable disputes over these resources is the Ambalat zone disputed by Indonesia and Malaysia in the Sulawesi Sea. The two countries use the same legal basis to acquire the resources *inter alia* the rights to exercise, explore and exploit resources in EEZ.⁵

In addition to previous disputes resolution, there is another way used by various countries in the world and it has been a panacea to overcome the disputes for temporary manner. This way is by establishing a joint development arrangement (JDA) or joint development zone (JDZ) on disputed maritime areas.⁶ Arrangement of JDZ is considered to be an effective way not only for marine boundaries delimitation but also for land boundaries dispute. Specifically, JDA on the land border is implemented from the concept of Special Border Economic Zone (SBEZ).

The concept, implementation and institutional frameworks of JDZ and SBEZ is almost similar. What distinguishes JDZ and SBEZ is the type of zone will be built and the purpose of it. JDZ is established to jointly manage, govern, explore, and exploit living and non-living marine natural and hydrocarbon resources such as oil and gas, while SBEZ is built to accelerate cross-border and international trade as well as to improve people welfare near the border. SBEZ consists of sectors

⁵ John G. Butcher, *The International Court of Justice and the Territorial Dispute Between Indonesia and Malaysia in the Sulawesi Sea*, Contemporary Southeast Asia, Vol. 35, No. 2 (2013), p. 239, 249-251. Please see also Stephen C. Druce and Efri Yoni Baikoeni, Circumventing Conflict: the Indonesia-Malaysia Ambalat Block Dispute, Chapter 7, p. 138-139, inside Mikio Oishi (ed.) *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict of Management*, Institute of Asian Studies, Singapore: Springer Science+Business Media, 2016: pp 137-156.

⁶ Clive H. Schofield, *Blurring the lines: maritime joint development and the cooperative management of ocean resources*, p. 24-25. Please see also Junaido Bello Marshall, *Joint Development of Offshore Oil and Gas in the Gulf of Guinea: A Case of Energy Security for Nigeria and Cameroon*, (2014) 32 Journal of Law, Policy and Globalization, p. 141 & 146. See also Leonardo Bernard, *Prospect for Joint Development in the South China Sea*, p. 8. For this article purpose, the term of JDZ will be used more often than JDA.

of an industrial park, tourism, a border town, residential, logistic, traditional market and so on.⁷

II. THE CONCEPT OF JOINT DEVELOPMENT ZONE

A. DEFINITION AND LEGAL BASIS

There is no formal definition of JDZ. Biang and Miyoshi define the JDZ concept differently but their meaning is similar. Biang mentions that JDZ is a joint arrangement to establish joint jurisdiction over the maritime area where such cooperation is undertaken based on Article 74 paragraph 3 of UNCLOS 1982.⁸ Different from Biang, Miyoshi explains that JDZ or JDA is ‘an intergovernmental arrangement of provisional nature, designed for functional purposes of joint exploration for and/or exploitation of hydrocarbons resources of the sea bed beyond the territorial sea.’⁹ In general, JDZ is a type of cooperation between one government and another government that has a dispute over maritime territorial boundaries by making an agreement to build, to develop and to govern or manage jointly the disputed zones or areas. These areas usually contain living natural resources such as abundant stock of fish and also contain non-living resources such as oil and gas along with

⁷ Montague J. Lord & Pawat Tangtrongjita, *Special Border Economic Zone (SBEZ) in the Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT)*, Munich Personal RePEc Archive(MPRA), MPRA Paper No. 61060, 15 May 2014, <https://mpra.ub.uni-muenchen.de/61060/1/MPRA_paper_61060.pdf>, p. 4-5, accessed on 17 July 2017.

⁸ J. Tangia Biang, *The Joint Development Zone Between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in The Gulf of Guinea International Law, State Practice and Prospects for Regional Integration*, The United Nations – The Nippon Foundation of Japan Fellowship Programme 2009-2010, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, New York:United Nations, 2010, p. 54, <http://www.un.org/depts/los/nippon/uniff_programme_home/fellows_pages/fellows_papers/tanga_0910_cameroon.pdf>, accessed on 28 August 2017.

⁹ Junaido Bello Marshall, *Joint Development of Offshore Oil and Gas in the Gulf of Guinea: A Case of Energy Security for Nigeria and Cameroon*, p. 142. Please see Miyoshi’s original definition from Masahiro Miyoshi, *The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation*, Maritime Briefing, Vol. 2 No. 5, International Boundaries Research Unit, Department of Geography, University of Durham, 1999, p. 3.

hydrocarbon resources.

As the legal basis for JDZ, Article 74 paragraph 3 and Article 83 paragraph 3 of UNCLOS 1982 provide clear provision for coastal states to pursue any efforts in practical nature to cooperate with neighboring country when no deal or consensus been reached for maritime delimitation. The former article regulates arrangement for disputes in EEZ, while the latter one sets it for disputes in the continental shelf. The arrangement must be held in the spirit of understanding and cooperation. The disputed countries are prohibited to jeopardize or to hamper each other by taking actions that are harmful or deterring efforts to achieve final consensus or agreement on maritime delimitation in EEZ and also continental shelf.¹⁰ These articles encourage coastal states that have not been able to resolve their disputes to use convenient, flexible and conducive ways. No formal or standard forms specified by the articles. However, many countries use bilateral agreements or memorandum of understanding to achieve consensus on their points of intent.

The existence of JDZ cannot be separated from the presence of natural resources lying on or under the seabed of adjacent EEZ and continental shelf. Initially, the adjacent states do not intensely pay attention to their maritime border delimitation. They start to care and pay attention when there is a discovery of hidden natural resources including oil, gas and hydrocarbon resources and one of the adjacent states begins granting a concession to private sectors to make exploration and or exploitation of those non-living resources in disputed EEZ or continental shelf area. A country whose territories claimed by others surely unhappy and protest. It is not possible that the country prepares and sends its military vessels and aircraft to the disputed area. The claimant country certainly does not want to lose its face or dignity on its investors. To overcome the situation, the effort to discuss and talk bilaterally including to develop joint cooperation on the disputed zone is necessary and shall be done.

Addressing the issues to an arbitration panel or international

¹⁰ Article 74 paragraph 3 and Article 83 paragraph mention similar provisions: "Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

courts for getting a best decision is sometimes not the best way to achieve. Disputes between two bordering states can explode to be a war. If one state wins the dispute and it is entitled rights to rule the disputed areas, arbitral or tribunal ruling may not be enforceable. This is what happened in the South China Sea after the Philippines won a dispute over Scarborough Shoal where China refused to implement the arbitration award. In fact, the Philippines has already set aside the ruling on Scarborough Shoal.¹¹ In addition, new potential disputes will re-emerge as the marine territory (EEZ and continental shelf) of the country awarded automatically increases. The territory may overlap with adjacent countries. This has already happened between Indonesia and Malaysia after the International Court of Justice (ICJ) grant Malaysia to rule the Islands of Sipadan and Ligitan near the Borneo Island and the Sulawesi Sea.¹²

Discussing joint development cooperation on disputed areas or zones surely provides more benefits rather than negotiating to defend respective opinions on territorial claims. The negotiators can sit together to discuss the prospect of resolution that can give advantages for adjacent states and even they can conduct joint cooperation in ruling and governing the disputed areas. The result of the negotiation is set forth in bilateral agreement or, in any case, if there are more than two disputed coastal states, multilateral agreement. Every state may delegate its representative in a joint commission or authority to manage JDZ. In a period of around 30 to 50 years, the disputed countries can obtain positive achievement from their cooperation rather than defend the ego on claiming the areas. The cooperation between Malaysia and

¹¹ Please see Tom Phillips, Oliver Holmes & Owen Bowcott, *Beijing rejects tribunal's ruling in South China case*, The Guardian, 12 July 2016, <<https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china>>, accessed on 20 August 2017. See also Associated Press, *Philippines to 'set aside' South China sea tribunal ruling to avoid imposing on Beijing*, The Guardian, 17 December 2016, <<https://www.theguardian.com/world/2016/dec/17/philippines-to-set-aside-south-china-sea-tribunal-ruling-to-avoid-imposing-on-beijing>>, accessed on 20 August 2017.

¹² John G. Butcher, *The International Court of Justice and the Territorial Dispute Between Indonesia and Malaysia in the Sulawesi Sea*. . Please see also Stephen C. Druce and Efri Yoni Baikoeni, *Circumventing Conflict: the Indonesia-Malaysia Ambalat Block Dispute*.

Thailand on the Gulf of Thailand is one positive example of such joint arrangement.

B. BRIEF HISTORY OF JDZ

There are some differences of opinion as to when the JDZ concept is applied for the first time on disputed maritime areas. Miyoshi explained that the JDZ for the first time was arranged by Japan and South Korea in 1974 over the continental shelf located in the southern part of the sea of Japan and the eastern sea of South Korea.¹³ This is based on the precedents and studies he did. Different to Miyoshi, Biang, and Schofield stated that the implementation of JDZ was first applied in the Persian Gulf between Saudi Arabia and Bahrain in 1958 and later followed by Saudi Arabia and Kuwait in 1965.¹⁴ Regardless of which countries started first in making JDZ, this concept has long existed since some decades ago and even before the UNCLOS 1982 were entered into force to all coastal states.

Japan and South Korea disagreed over the boundaries of the respective continental shelf. Japan prefers to use the principle of equidistance or median line as its solution. In contrast to Japan, South Korea insists that the boundary line is influenced by geophysical factors. To overcome the deadlock, the two East Asian countries agreed to enter into a written agreement to work together to build and manage the disputed territory. This agreement is intended to facilitate the exploration and exploitation of oil and gas on the seabed for 50 years and can be extended. Institutionally, Japan and South Korea set up a joint commission consisting of representatives of both government as a liaison for them.¹⁵

¹³ Masahiro Miyoshi, *The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation*, p. 1. See also Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*, inside S. WU & N. Hong (Eds.), *Recent Developments in the South China Sea Dispute: the Prospect of a Joint Development Regime*, London: Routledge, 2014: pp 78-98.

¹⁴ J. Tangia Biang, *The Joint Development Zone Between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in The Gulf of Guinea International Law, State Practice and Prospects for Regional Integration*, p. 55. See also See also Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*.

¹⁵ Please see Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*. See also S.P. Jagota, *Maritime Boundary and Joint Development Zones: Emerg-*

In West Asia region, Saudi Arabia and Bahrain entered into joint development cooperation on a marine territory near the Persian Gulf in 1958. This agreement, according to Schofield, is the world's first JDZ agreement despite the management of *Fasht Abu-Sa'fah* oil and gas blocks is in the hand of Saudi Arabia (single state management). Bahrain is not involved in managing the block. Nevertheless, the agreement was successfully implemented until now.¹⁶

In the Southeast Asia region, Indonesia, Malaysia, and Thailand are the first three coastal states that establish JDZ. In fact, JDZ agreements made and arranged by these countries are considered to be the most sophisticated, complex and modelable agreements for arranging and establishing JDZ in the world.¹⁷ Indonesia once agreed to develop JDZ together with Australia in the Timor Sea in 1989 through the Treaty between Australia and Indonesia on the Zone of Cooperation in an Area between the Indonesia Province of East Timor and Northern Australia. Malaysia dan Thailand agreed to create JDZ in the Gulf of Thailand in 1979 through Memorandum of Understanding (MoU) on the Establishment of a Joint Authority for the Exploitation of the Resources of the Seabed in a Defined Area of the Continental Shelf in the Gulf of Thailand. The MoU was then followed up by the agreement on the constitution and other related matters to the establishment of the Malaysia-Thailand Joint Authority signed in 1990.

Concerning the Timor gap, Australia has been negotiating since 1972 with Portugal, which then continued with Indonesia after the integration of East Timor into Indonesia in 1975. Along with the development of international maritime law where UNCLOS was adopted in 1982, negotiations on the Timor gap were deadlock. To break the deadlock, an agreement was made on the JDZ with the concept of Zone of

ing Trends, p 122, inside *Ocean Yearbook*, Vol. 10, Issue 1, Chicago: University of Chicago, 1993: p. 110-131.

¹⁶ Please see Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*. See also Yu Hui, *Joint Development of Mineral Resources – An Asian Solution?*, p. 91, inside Ko Swan Sik et. al (eds.), *Asian Yearbook of International Law*, Vol. 2, Dordrecht: Kluwer Academic Publisher, 1994: pp 87-112.

¹⁷ Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*. See also David M. Ong, *The 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits?*, (1999) 14 (2) *International Journal of Marine and Coastal Law*, p. 245.

Cooperation. The Zone of Cooperation is divided into three sub-zones namely: (1) Zone A which is a neutral territory of sovereignty, where the revenue is divided equally 50:50; (2) Zone B in the southern part of Timor Sea with the ratio of 90:10 (Australia obtains 90%); and (3) Zone C in the northern part of Timor Sea with the ratio of 90:10 (Indonesia obtains 90%). This agreement was signed in 1989 for a term of 40 years and can be extended for another 20 years. Institutionally, the two countries agreed to establish two institutional models in the form of a ministerial council and joint authority (bicameral). The relation amongst both is in the form of subordination from the former to the latter. After East Timor Province was released from Indonesia and become an independent country of the Democratic Republic of Timor Leste, this agreement was replaced by agreement between Australia and this new country.¹⁸

Prior to Indonesia and Australia, Malaysia and Thailand agreed to create JDZ through an MoU on oil and gas blocks management. Although the MoU was signed in 1979, the implementation of the cooperation and ratification could be implemented in 1990. The two countries formed the Malaysia-Thailand Joint Authority (MTJA) which could act on behalf of the two countries in granting the block management concession to investors. MTJA consists of representatives from Malaysia and Thailand with the same composition and co-chaired by the two state representatives.¹⁹

III.MARINE BOUNDARIES REGULATION IN INDONESIA

The legal regime of maritime boundaries in Indonesia consists of the state territory law and maritime law. Each regime has its own legal and institutional arrangements. The first legal regime includes provisions of state territory regulated in Law No. 43/2008 with the National Agency for Border Management (BNPP) chaired by the Minister of Home

¹⁸ Anthony Heiser, *East Timor and the Joint Petroleum Development Area*, (2003) 54 (17) *The Maritime Law Association Australia and New Zealand Journal*, p. 59-61. See also Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*. See also S.P. Jagota, *Maritime Boundary and Joint Development Zones: Emerging Trends*.

¹⁹ Nguyen Hong Thao, 'Joint Development in the Gulf of Thailand' (1999) (3) *IBRU Boundary and Security Bulletin Autumn*, p 79-82.

Affairs as a state institution for governing Indonesia border. The next legal regime includes more regulations comprising Law No. 5/1983 on Exclusive Economic Zone (EEZ Law), Law No. 17/1985 on Ratification of UNCLOS, Law No. 6/1996 on Territorial Water (the Territorial Water Law 1996) and Law No. 32/2014 on Maritime (the Maritime Law 2014). One regulation complements the others, however, all of them refer to UNCLOS 1982. Institutionally, the regulations mandate the Minister of Marine Affairs and Fisheries as regulators in the maritime sector and the Marine Security Agency (*Bakamla*) as authority for securing and enforcing the law at the sea.²⁰

The State Territory Law regulates state border's line, jurisdictional boundaries, sovereign rights of states, border zones and authorized institutions on the border. The territory of the country includes land territory, inland waters, archipelagic waters, and territorial sea along with the land beneath and airspace above them including all natural resources contained therein.²¹ The jurisdictional boundary covers territory outside the real territory of the State which includes the EEZ, continental shelf and contiguous zone where the state has sovereign rights and certain power on these zones in accordance with applicable regulations and international law.²² Indonesia's sovereign right rests on "the territory of the country" and "jurisdictional territory". The border zone or area is determined from the borders of the country located on the inner side along the border of Indonesia with other countries.²³ In the State Territory Law, the territory of the country does not include the jurisdictional territory.

Almost the same as the State Territorial Law, regulations in the maritime sector such as the Territorial Water Law 1996 and the Maritime Law 2014 also regulate the sovereignty rights of Indonesia including in territorial borders, contiguous zones, EEZ, and continental shelf. Based on the Maritime Law 2014, it is possible for governments to cooperate with other countries in bilateral, regional, and multilateral frameworks in managing marine natural resources. The resources here include

²⁰ Article 1 paragraph 14 and Article 59 paragraph 3 of Law No. 32/2014 on Maritime.

²¹ Article 1 paragraph 1 of Law No. 43/2008 on State Territory.

²² Article 1 paragraph 3 of Law No. 43/2008 on State Territory.

²³ Article 1 paragraph 6 of Law No. 43/2008 on State Territory.

renewable resources and non-renewable ones such as oil and gas.²⁴ This provision provides the legitimate basis for the Indonesian government to create JDZ on the disputed maritime territory. Nevertheless, the institutional authority related to the marine sector is in the Ministry of Marine Affairs and Fisheries.²⁵

Specifically, with regard to border institutions, the border law regime and the maritime law regime have two different authorities. BNPP focuses on border management, but the border areas are managed only to the territorial sea and not to the additional zones, ZEE, and the continental shelf. Meanwhile, the Ministry of Marine Affairs and Fisheries has the authority to utilize and manage marine resources including cooperation with other countries for such management. Of the two institutional regimes, the ministries of marine and fisheries have more authority than BNPP.

Specifically, in regards to its institutionally, the state territory and maritime legal regimes have two different authorities. BNPP is more focus on managing or governing the Indonesian border. However, the border areas governed by BNPP are only at the territorial sea and cannot cover contiguous zone, EEZ and continental shelf.²⁶ The Ministry of Marine Affairs and Fisheries has the authority to utilize and manage marine resources including cooperation with other countries for such management. Of the two institutional regimes, the ministry of marine affairs and fisheries has more authority than BNPP.

The availability of regulation on borders and maritime is certainly better than not regulated at all. In fact, when Indonesia agreed on cooperation with Australia on Timor Gap in 1989, the government only bases itself on the EEZ Law 1983 and the UNCLOS Ratification Law 1985. Without adequate regulation and sufficient legal guidance, the

²⁴ Article 1 paragraph 7 and Article 41 paragraph 3 of Law No. 32/2014 on Maritime.

²⁵ Article 1 paragraph 14 of Law No. 32/2014 on Maritime..

²⁶ This is derived from Article 1 paragraph 1 of Law No. 43/2008 on State Territory which mentions that Indonesia's state territory covers land, internal waters, island waters and territorial sea including the seabed and under the seabed along with the air space above them and all natural resources contained therein. According to the State Territory Law, the BNPP has only has authority to govern the border in state territory defined by this Law and cannot govern jurisdictional territory covering contiguous zone, EEZ and continental shelf.

government successfully negotiated its wishes which then materialized as a cooperation agreement on oil and gas block management. In fact, agreements made and signed by Indonesia and Australia are considered as model agreements for other JDZ development in the world.²⁷ This is due to the complexity of the negotiations undertaken by both countries including the status of Indonesia as invaders of East Timor and the country is deemed as an illegitimate representative for the agreement on that period.²⁸

IV. REGULATORY ARRANGEMENT OF JDZ IN INDONESIA

In the context of JDZ, regulations of state territory and maritime can be the main regulations for government to implement Article 74 paragraph 3 and Article 83 paragraph 3 of UNCLOS 1982. However, the two regulations do provide detail provisions in terms of JDZ. In order to operationalize the government to establish the JDZ, the supporting regulations must be drafted and promulgated. This is necessary to prepare Indonesia government to face and negotiate neighboring state when maritime disputes re-emerge and Indonesia takes the option to use this alternative way. Likewise, these supporting regulations can also determine relevant ministries or agencies. The Ministry of Marine Affairs and Fisheries is the main authority in the marine sector. However, due to the complexity of border management covering not only the marine sector but also the energy sector and mineral resources along with defense and security, the involvement of other ministries or institutions is a necessity. To that end, the government is possible to create a special team or task force to be JDZ regulator chaired by the Ministry of Marine Affairs and Fisheries or the Ministry of Energy and Mineral Resources.

If there is a need of supporting regulation for the establishment of JDZ and its institutional framework, what should be regulated in this supporting regulation? Is it necessary to fully adopt what Indonesia and Australia had made relating to agreements on the Timor gap? Is JDZ institutional formation unicameral or bicameral? Is JDZ

²⁷ Clive Schofield, *Defining Areas for Joint Development in Disputed Waters*.

²⁸ S.P. Jagota, *Maritime Boundary and Joint Development Zones: Emerging Trends*.

institutional function authoritative or merely consultative? Is there a space of flexibility for government to negotiate clauses with other countries without being strictly bound by this supporting regulation? All of the questions are relevant to be answered if Indonesia has the willingness to draft and to promulgate supporting regulations for JDZ operationalization.

Referring to the example agreement between Indonesia-Australia and Malaysia-Thailand related to JDZ, main provisions that can be arranged are as follows:

1. Definition of cooperation and JDZ itself. These are important to confirm what is meant by the cooperation and JDZ to be formed;
2. Type of sectors that can be co-operated through JDZ. In this provision, it is important for the government to determine what can be co-operated and not at all. In the event that there is a need in the future that requires the government to cooperate and the sector in cooperation has not been covered, there should be flexibility for the government to implement cooperation on sectors not covered.
3. Power and flexibility of negotiation for the government in determining the contents of the agreement. This is important for the government to have space and to innovate in negotiating Indonesian national interests against other countries;
4. The options to establish “unicameral” or “bicameral” joint institution. In general, JDZ agreements have unicameral institutional frameworks such as the Malaysia-Thailand Joint Authority and the Saudi-Sudanese Joint Commission. However, a bicameral form is used also by coastal states such as Indonesia-Australia that establish Ministerial Council and Joint Authority and Timor Leste-Australia with similar form (the difference is only on the nomenclature of joint commission). Indonesia should provide a flexible regulatory arrangement in order to have an institutional form that is in line with the context of the problems encountered;
5. Choice of institutional function model whether authoritative body or consultative body or a combination of both. The option is tailored to the context of the problem and must, of course, be in accordance with the duties, functions and authorities of each government agency based on applicable regulations;

6. The rights of the government to appoint representative ministry/ institution and local government to sit in JDZ's institutional board. The government, in this case, the President, should be given the authority to appoint who is the most relevant or right person as JDZ institutional board. It is possible that there could have different parties or persons sitting in the various board of joint authority and or ministerial council of JDZ;
7. The choice of law will be applied. This provision is important to emphasize in the territories in which Indonesian law will apply and in which territory the applicable foreign law will apply. In addition, the provision should provide authority for the government to negotiate the choice of law applicable on the block or zone considered neutral; and
8. Dispute resolution options. This provision is to affirm the choice of dispute resolution to be pursued and the adjustment in the JDZ agreement on the freedom of the parties in determining the desired venue and dispute resolution institution.

The proposed arrangement is not an exhaustive list. Surely, it is open to other suggestions and recommendations for the arrangement of JDZ and its agreements with other countries. In addition, there is a possibility too that the rest of the arrangement is left to the negotiating parties. The proposed arrangement is made to facilitate the government in the future in negotiating with other adjacent coastal states. In Indonesia administrative law, the existence of such arrangement is important as the legal basis for government legitimacy and accountability to take progressive action including in terms of policy and funding. The absence of it may prevent the government from taking actions that would benefit and protect Indonesia's national interests.

V.CONCLUSION

JDZ is widely recognized by various countries in the world to be an alternative means of cooperation that can benefit disputing coastal states regarding the delimitation of EEZ or continental shelf. Although its nature is provisional, JDZ is a logical and rational need in practice. Through the formulation of a two-pronged profit sharing clause, the two disputing countries are encouraged to remain happy for at least two

things: (1) the revenue of the state from joint management of marine resources; and (2) peace over the disputed marine territories. Profitable cooperation is better than war-torn disputes.

Most countries do not want conflict or dispute to happen with neighboring countries that lead to war. The settling process through bilateral meetings until the submission of a dispute to international tribunal or arbitration is sometimes not the best course. Arbitral award or international court decision only provides win or lose verdict that could have an adverse effect on neighboring countries. The establishment of JDZ becomes an effective practical solution to temporarily stop the dispute and reduce the tension that exists in two or more neighboring coastal states involved. For Indonesia, the experience of losing of Sipadan and Ligitan Islands to Malaysia and Indonesia-Australia agreement on the Timor gap are a valuable lesson on how to resolve disputes with neighboring countries. Forming a JDZ can provide mutual benefits and can be alternative way besides using the way of: (1) bilateral talks that result in bilateral agreements; and (2) dispute settlement resolution through an international tribunal or arbitration. Arrangement in internal regulation is surely necessary for the government to have a legal basis and pathway to materialize JDZ that protects national and people interests.

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