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Indonesia: Problems Encountered in Some Unresolved Boundaries and the Outermost Islands Issues

Prof. ETTY R. AGOES¹

Within the framework of national integrity the ocean possesses two key aspects that is, of security and prosperity. The demarcation of the outer limits of national maritime territory and jurisdiction including delimitation of boundaries with neighboring countries will provide a legal basis for a number of marine activities such as defense, fisheries, navigation, seabed and subsoil exploration and exploitation, marine tourism and others. Boundary issues for Indonesia, whether on land, at sea even in the air, have always been a matter of national priority. At present, Indonesia still have some unresolved boundary delimitation with its neighbouring countries. The completion of the boundary of Indonesia's maritime territory and jurisdiction shall also ascertain Indonesia's maritime authority as an independent and sovereign state, provides security for the whole nation, and the fulfillment of strong economy through the utilization of marine resources. This paper would examine various factors affecting the delimitation of maritime boundaries, legal status of the boundary of maritime territory and jurisdiction of Indonesia, the outermost islands issues, and boundary delimitation process.

Keywords: *outermost islands, unresolved boundaries, maritime territory, delimitation*

I. Introduction

Formation of national integrity, among others, can be carried out in the form of a solid territory depicted by fixed borders, including by the delimitation of a definitive boundary lines with the neighboring countries both in land and at sea. For an archipelagic State like Indonesia the existence of the outermost small islands is one of the important geographical conditions that may also affect boundary delimitation.

Within the framework of national integrity the ocean possesses two key aspects that is, of security and prosperity. The demarcation of the outer limits of national maritime territory and jurisdiction including delimitation of boundaries with neighboring countries will provide a legal basis for a

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number of marine activities such as defense, fisheries, navigation, seabed and subsoil exploration and exploitation, marine tourism and others.

Boundary issues for Indonesia, whether on land, at sea even in the air, have always been a matter of national priority.² One of Indonesia's foreign policy objectives is establishing stable, fixed land and maritime boundaries with all of its neighbors. Indonesia has concluded treaties and agreements with almost all of its neighbouring countries, except with Timor Leste, the Philippines and Palau.

At present, Indonesia still have some unresolved boundary delimitation with its neighbouring countries. With Timor Leste (East Timor), for instance, some sections of border along Timor-Leste's (East Timor) Oecussi enclave and maritime boundaries with Timor-Leste remain unresolved. The 1997 treaty between Indonesia and Australia settled some parts of their maritime boundary but outstanding issues remain, especially in relation to boundaries with Timor Leste. ICJ's award of sovereignty of Sipadan and Ligitan islands to Malaysia in 2002 left the maritime boundary in the Ambalat oil block in the Celebes Sea in dispute; the ICJ decision has prompted Indonesia to assert claims to and to establish a presence on its smaller outer islands; Indonesia and Singapore continue to work on finalization of their 1973 maritime boundary agreement by defining unresolved areas north of Indonesia's Batam Island; maritime delimitation talks continue with Palau. A different picture came out of the boundary negotiations with Malaysia. Notwithstanding the fact that both countries have frequently meet to discuss boundary matters.

In the mean time Indonesian groups challenge Australia's claim to Ashmore Reef. Australia has closed parts of the Ashmore and Cartier Reserve to Indonesian traditional fishing and placed restrictions on certain catches. This is not a matter of unresolved boundary, but may have effected existing agreements between Indonesia and Australia.

The completion of the boundary of Indonesia's maritime territory and jurisdiction shall also ascertain Indonesia's maritime authority as an independent and sovereign state, provides security for the whole nation, and the fulfillment of strong economy through the utilization of marine resources.

² Arif Havas Oegroseno, "Indonesia's Maritime Boudaries", in Cribb, Robert and Ford, Michelle (eds), *Indonesiabeyond the Water's Egde – Managing an Archipelagic State*, Indonesia Update Series, Research School of Pacific and Asian Studies, the Australian National University, ISEAS, Singapore, 2009, p. 49.

II. Various Factors Affecting the Delimitation of Maritime Boundaries

In determining the outer limits and of the maritime zones including its boundary with the neighboring countries, Indonesia should take into account various factors. First, geography: unlike the land territory which shares borders only with three countries, the Indonesian maritime territory and jurisdiction share borders with ten countries. Second, resources: besides renewable and non-renewable resources including maritime energy, the sea can also be used as a mean for transportation and communication services, weather management, waste absorption, and for tourism and aesthetical purposes (natural beauty). Third, population : the spread of the Indonesian population is unbalanced, therefore there are some that live in remote regions along the borders with neighboring country far from the centers for development, and has a very low population density. Fourth, ideology: Pancasila as the national ideology has been developed into becoming a national strength to overcome challenges, threats and impediments and disturbances. However, the fact shows that knowledge of the people in the borders area on Indonesia and Pancasila is very limited. Fifth, politics: for people living in the remote border area far from the central government, there is a necessity to enhanced political communication with the central government to enable them to perform their rights and fulfill their obligations as citizens.

Sixth, economy: the majority of people living in the border area are traditional farmers and fishermen, engaged in traditional trading activities with limited market, and terribly low income. The economic activities cannot be separated from the people living on the other side of the border. Better living and economic condition in the bordering countries can affect their economic sustainability. Seventh, socio-culture: as the regions are geographically closer to the neighboring countries, their socio cultural lives are inevitably influenced by the kind of life in those countries. Eighth, defense and security: the bordering areas are vulnerable to a number of challenges, threats, impediments and disturbances either from domestic or international pressure, such as separatist movements, terrorisms, smuggling, and other criminal acts. People in the bordering areas are easily influenced by negative provocation and easily influenced by opponents aiming to upset Indonesia's security.

View from the point of international relations, there is an urgent need for Indonesia to settle the unresolved maritime boundaries, for the following reasons :³

- a. As constitutional mandate and obligation which should be carried out by the government;
- b. To give legal certainty on the Indonesian territory and to ascertain and affirm the boundary of the Republic of Indonesia;
- c. To guarantee the control, security, law enforcement, sovereignty and protection of the Indonesian territory by the national enforcement officials.

III. Legal Status of the Boundary of Maritime Territory and Jurisdiction of Indonesia

Indonesia which proclaimed its independence on 17 August 1945 is geographically an archipelagic state. Regulation of its territorial waters began during the Dutch colonial times through the enactment of *Territoriale Zee en Maritieme Kringen Ordonantie 1939* (TZMKO or Territorial Sea and Maritime Zones Ordinance of 1939)⁴ which provides that the Indonesian territorial sea is measured 3 miles from the low water lines (*laagwaterlijn*) of the islands and part of islands which constitutes the Indonesian land territory (*grondgebied*). Therefore, each island will have its respective territorial sea, and the waters lying outside the territorial sea and connecting those islands will be considered as high seas.

On December 13, 1957 the Indonesian government proclaimed that Indonesian territory consisted as one unit covering land and sea, which are inseparable elements of the archipelagic State and serve as an integral unit. This government proclamation which is also known as the *Djuanda Declaration*, was then strengthened by the enactment of Law No. 4/Prp. of 1960 on Indonesian Territorial Waters.

The territorial concept as is expressed through the *Djuanda Declaration*, is based on the Peoples' Congress (MPR) Decree No. II/MPR/73 of 1973 has been established as the basic outlook in achieving the national development and termed as *Wawasan Nusantara* (the archipelagic outlook),

³ Adapted from "Upaya Penyelesaian Perbatasan Maritim Indonesia Dengan Negara-Negara Tetangga," a presentation by the Ministry of Foreign Affairs at Forum Harmonisasi Hukum Nasional dan Internasional, BPHN, Jakarta, 15 December, 2010.

⁴ *Staatsblad* (State Gazette) 1939, No 442.

which view the archipelago as one political, economic, socio cultural, defense and security unit.

Since then, the Indonesian government has struggled to gain recognition by the international community of its territorial concept. Through maritime territorial and jurisdictional boundary agreements several countries such as Australia, India, Malaysia, Singapore and Thailand have indirectly recognized the archipelagic State concept, by agreeing to use the provisions of Law Number 4/Prp. of 1960 as the Indonesian legal bases for boundary negotiation.

On December 31, 1985, Indonesia ratified the 1982 UN Convention on the Law of the Sea (UNCLOS) through the enactment of Law No 17 of 1985 on the Ratification of the 1982 United Nations Convention on the Law of the Sea. The Convention recognizes the archipelagic State concept through the inclusion of Part IV on Archipelagic States.⁵

Under UNCLOS 1982, Indonesia is entitled to determine the outer limits of a number of maritime zones, with their respective maximum breadths, territorial sea as part of the state territory shall be not more than 12 nautical miles; then the contiguous zones where every State has special jurisdiction with a maximum width of 24 nautical miles; the outer limit of the exclusive economic zone is 200 nautical miles; and the width of the continental shelf can be 200 up to 350 nautical miles or 100 nautical miles measured from the 2.500 meters isobath. In the exclusive economic zone and the continental shelf Indonesia has sovereign rights for the exploration and exploitation of its resources. In addition to that, as an archipelagic State, Indonesia is also entitled to determine the archipelagic waters on the landward side of the straight archipelagic baselines; and internal waters within its archipelagic waters. These various maritime zones have to be measured from the baselines.

On August 8, 1996 the Indonesian Government enacted Law No. 6 of 1996 on Indonesian Waters which confirms the outer limits of Indonesia's maritime sovereignty and jurisdiction, and provides the bases for the determination of its boundary with opposite or adjacent neighboring countries. This law is then complemented with Government Declaration No 38 of 2002 on the List of Geographical Coordinates of Base-points of the Indonesian Archipelagic Baselines. However, this declaration not only receives criticisms from the technical agencies which originally provides the technical inputs but also need to be revised since it has included the

⁵ Articles 46-54

islands of Sipadan and Ligitan as the Indonesian base-points. As already indicated above, according to the International Court of Justice judgment of 2002 sovereignty of both islands belongs to Malaysia. In 2008, after a careful review this regulation was revised by Government Regulation No. No 38 of 2008 on the Revised List of Geographical Coordinates of Base-points of the Indonesian Archipelagic Baselines, which was then submitted to the United Nations.

Meanwhile, both international law as well as national laws and regulations provide for the delimitation of maritime boundary between adjacent or opposite States, i.e. that it shall be effected by agreement; or by establishing a median line, every point of which is equidistance from the nearest points on the baselines of the respective States; and by taking into accounts historic titles or other special circumstances.⁶ In determining the exclusive economic zone or the continent shelf boundaries, UNCLOS 1982 has provided for only one method that is by agreement on the basis of international law, in order to achieve an equitable solution. Pending the final agreement, UNCLOS 1982 recommends a provisional arrangement of a practical nature.⁷

In cases where agreement cannot be achieved, the countries involved may refer to the settlement of disputes mechanism provided in Part XV of UNCLOS 1982, in the form of settlement of disputes by peaceful means through the various fora such as, the International Tribunal for the Law of the Sea (ITLOS); the International Court of Justice (ICJ); Arbitration; or Special Arbitration.

Geographically, Indonesia's maritime territory and jurisdiction directly bordered with ten neighboring countries, namely Australia, the Philippines, India, Malaysia, the Republic of Palau, Papua New Guinea, Singapore, Timor Leste (East Timor), Thailand and Vietnam.

A. Agreed Maritime Boundaries

At present, Indonesia has succeeded in concluding agreements on the territorial sea, EEZ, and continent shelf boundaries with a number of neighboring countries, among others are:

⁶ Art. 15 of UNCLOS 1982 jo Art. 10 para. (1) Law No. 6 of 1996 on the Indonesian Waters.

⁷ Art. 74 and Art. 83 of UNCLOS 1982.

1. Indonesia – Malaysia

The maritime bordering areas between Indonesia and Malaysia are located in four areas of the Straits of Malacca, the Straits of Singapore, the South China Sea and the Sulawesi Sea. The bordering areas between the two countries in the Straits of Malacca generally follows the median line between the baselines of Indonesia and Malaysia, running south from the trijunction point with Thailand to the bordering areas with Singapore.

The two countries have succeeded in delimiting only part of this bordering areas through a continental shelf boundary and a territorial sea boundary treaty. The territorial sea boundary has been agreed by the signing of the Treaty between the Republic of Indonesia and Malaysia relating to the Delimitation of the Territorial Seas of the Two Countries in the Strait of Malacca, 17 March 1970, which was ratified by Law No. 2 of 1971, State Gazette No. 16 of 1971.

A year earlier both countries have also succeeded in reaching a continental shelf boundary agreement in the South China Sea through the Agreement between the Government of the Republic of Indonesia and the Government of Malaysia relating to the Delimitation of the Continental Shelves between the Two Countries, 27 October 1969, ratified by Presidential Decree No, 89 of 1969, State Gazette No. 54 of 1969.

2. Indonesia – Singapore

Indonesia and Singapore have succeeded in delimiting the territorial sea between the two countries running from the end of the bordering areas between Indonesia and Malaysia to the areas in the eastern part out to the South China Sea. An earlier treaty have succeeded in delimiting the bordering areas in the middle of the strait of Singapore through the Treaty between the Republic of Indonesia and the Republic of Singapore relating to the Delimitation of the Territorial Seas of the Two Countries in the Strait of Singapore, 25 May 1973, ratified by Law No. 7 of 1973, State Gazette No. 59 of 1973.

Following a series of negotiations the two countries reached an agreement on the western extension of the existing boundary by signing the Treaty between the Republic of Indonesia and the Republic of Singapore relating to the the Delimitation of the Territorial Seas of the Two Countries in the Western Part of the Strait of Singapore, 10 March 2009. Ratified by Law No. 4 of 2010, State Gazette No. 5138 of 2010.

3. Indonesia –Australia

Indonesia and Australia have succeeded in concluding three agreements concerning the continental shelf (mostly referred to as sea-bed) and the exclusive economic zone. The first one is the Agreement between the Government of the Republic of Indonesia and the Government of the Commonwealth of Australia establishing Certain Seabed Boundaries, 18 May 1971, ratified by Presidential Decree No. 42 of 1971, State Gazette No.42 of 1971. This agreement is further supplemented by the Agreement between the Government of the Republic of Indonesia and the Government of the Commonwealth of Australia establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, Supplementary to the Agreement of 18 May 1971, 9 October 1972, ratified by Presidential Decree No 66 of 1972, State Gazette No. 45 of 1972.

The final agreement concluded between the two countries is the Treaty between the Government of Australia and the Government of the Republic of Indonesia Establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, 14 March 1997, which has not yet been ratified by Indonesia.

4. Indonesia – Thailand

The two countries have concluded two bilateral maritime boundary agreements. They are the Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand relating to the Delimitation of a Continental Shelf Boundary between the Two Countries in the Northern part of the Straits of Malacca and in the Andaman Sea, 17 October 1971, ratified by Presidential Decree No. 21 of 1972, State Gazette No. 16 of 1972; and the Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand relating to the Delimitation of the Sea-bed Boundary between the Two Countries in the Andaman Sea, 11 December 1975, ratified by Presidential Decree No 1 of 1977, State Gazette No. 3 of 1977.

5. Indonesia – India

Two bilateral continental shelf boundary agreements have been signed by Indonesia and India; consisting of the Agreement between the Government of the Republic of Indonesia and the Government of the Republic of India on the Continental Shelf Boundary between the Two Countries in the Andaman Sea and the Indian Ocean, 8 August 1974, ratified by

Presidential Decree No. 51 of 1974, which was later supplemented by the Agreement between the Government of the Republic of Indonesia and the Government of the Republic of India on the Extension of the 1974 Continental Shelf Boundary between the Two Countries in the Andaman Sea and the Indian Ocean, 14 January 1977, ratified by Presidential Decree No 26 of 1977, State Gazette No. 32 of 1977.

6. Indonesia-Papua New Guinea.

Indonesia and Papua New Guinea have succeeded in concluding two maritime boundary agreements. The first one is negotiated and signed with Australia, is the Agreement between the Government of the Republic of Indonesia and Australia concerning Certain Boundaries between Indonesia and Papua New Guinea, 12 February 1973, ratified by Law No. 6 of 1973, State Gazette No. 58 of 1973. The second one concerning the continental shelf and exclusive economic zone boundaries is the Agreement Between the Government of the Republic of Indonesia and the Government of Papua New Guinea Concerning Maritime Boundaries between the Republic of Indonesia and Papua New Guinea and Co-operation on Related Matters, 1980 1982., ratified by Presidential Decree No. 21 of 1982.

7. Indonesia-Vietnam

Indonesia has over two decades of negotiations with Vietnam regarding the continental shelf boundary between the two countries. Finally the two countries signed an Agreement between the Government of the Republic of Indonesia, the Government of the Socialist Republic of Vietnam concerning the Delimitation of the Continental Shelf Boundary, on 26 June 2003, ratified by Law No. 18 of 2007, State Gazette No. 43 of 2007.

In addition to the above bilateral agreements in certain areas where due to the geographical conditions maritime boundaries had to be negotiated in a trilateral setting. Two agreements have been signed, as follows:

a. Indonesia – Malaysia-Thailand

The three countries signed the Agreement between the Government of the Republic on Indonesia, the Government of Malaysia and the Government of the Kingdom of Thailand relating to the Delimitation of the Continental Shelf Boundaries in the Northern Parts of the Straits of Malacca on 21 December 1971. This Agreement was then ratified by Presidential Decree No. 21 of 1972, State Gazette No. 15 of 1972.

b. Indonesia – India – Thailand

Agreement between the Government of the Republic of Indonesia, the Government of the Republic of India and the Government of the Kingdom of Thailand concerning the determination of the Trijunction Point and the Delimitation of the Related Boundaries of the Three Countries in the Andaman Sea was signed on 22 June 1978, and later ratified by Presidential Decree No. 26 of 1978, State Gazette No. 37 of 1978.

The majority of those boundary agreements were concluded before the establishment of the 1982 UN Convention on the Law of the Sea, and were mostly based on the 1958 UN Convention on the Territorial Sea and Contiguous Zones, the 1958 UN Convention on the and Law No. 4/Prp. of 1960 on Indonesian Territorial Waters.

A provisional arrangement on the a zone of cooperation was agreed by Indonesia and Australia with regard to the overlapping continental shelf area in the Timor Gap through the signing and ratifying of the Treaty on the Zone of Cooperation between the Indonesian Province of East Timor and Northern Australia on 11 December 1989, ratified by Law No. 1 of 1991, State Gazette No. 6 of 1991. Upon the transfer of East Timor to the UNTAET, by an MPR (People Congress) Decree, the Treaty was revoked.

B. Unfinished Maritime Boundary Delimitations

Although Indonesia has succeeded in settling most of its maritime boundary delimitations, there are still some areas that has not yet clearly delimited. These areas are, among others:

1. Indonesia and Malaysia :

There are four segments of maritime areas to be further negotiated by the two countries :

- a. The Sulawesi Sea (territorial sea, continental shelf and exclusive economic zone);
- b. Southern part of the Staits of Malacca (territorial sea);
- c. Straits of Singapore (territorial sea), and
- d. In the areas of the Straits of Malacca and the South China Sea (exclusive economic zone).

There is an undelimited gap of sea areas between the territorial sea boundary of Indonesia and Malaysia in the Malacca Straits agreed in Kuala Lumpur on 17 March 1970, and the territorial sea boundary Indonesia and

Singapore agreed in Jakarta on May 25, 1973 in the western part of the Strait of Singapore. Indonesia and Singapore have agreed on a territorial sea boundary in this area in 2009, however, this should be followed with similar bilateral agreements between Indonesia and Malaysia, and a trilateral one between all the riparian States.

In the eastern part of the Strait of Singapore, the three countries will also need to negotiate similar boundaries. There are two parts of the area that have already been the subject of negotiation between the two countries, the first section relates to the continuation of the 1973 territorial sea boundary to the west; the second section deals with the boundary in the areas of the Straits of Malacca and the South China Sea.

In the Straits of Malacca the two countries will still have to resolve their different positions regarding the exclusive economic zone boundary. Both countries have reached an agreement on the continental shelf boundary. Malaysia's position is that it should be a single boundary for both maritime zones, meaning that the exclusive economic zone boundary will fall on the same line of the agreed continental shelf boundary. Indonesia, however, views that the two maritime zones are regulated under different regimes within the 1982 UNCLOS, therefore, the exclusive economic zone boundary cannot fall on the same boundary line with that of the continental shelf.

In the Sulawesi Sea area, there is a need for territorial sea, exclusive economic zone and continental shelf boundaries between Indonesia and Malaysia in the waters bordering the adjacent land area between the two countries in the island of Sebatik, and out into the greater Sulawesi Sea area. Overlapping claims of continental shelf exist in the eastern part of Borneo. After the ICJ judgment of sovereignty of the islands of Sipadan and Ligitan in 2002,⁸ the two countries have entered into a series of negotiations, but have not yet come into any agreement. Negotiations are still underway, in some cases there are room for possible agreement, in other cases the position of the two countries are still far apart.

2. Indonesia-Singapore

The two countries have two outstanding territorial sea boundary problems. In the eastern part of the Strait of Singapore, in the Batam-Changi area the two countries have already started to negotiate the first part of eastern continuation of the 1973 agreement.

⁸ ICJ Judgment, 17 December 2002.

The second part relates to the areas around the Indonesian island of Bintan and South Ledge, Middle Rock, and Pedra Branca. By the International Court of Justice decision Pedra Branca is now under the sovereignty of Singapore, while sovereignty of Middle Rock is given to Malaysia. That left South Ledge to be decided by Malaysia and Singapore. Negotiation has not started yet pending the outcome of the Malaysia-Singapore negotiation on the status of South Ledge.

3. Indonesia-India

As already indicated above Indonesia and India has succeeded in reaching agreements on the continental shelf boundary between the two countries. Therefore, they have outstanding exclusive economic zone boundary to be negotiated. The plan was to start the negotiation in February 2011.

4. Indonesia-Thailand

Similar to the situation between Indonesia and India, Indonesia need to start negotiations on the exclusive economic zone boundary with Thailand. A meeting was initiated on August 25, 2010 in Bangkok. At the time Thailand still needed to consult their parliament before starting any negotiation.

5. Indonesia-Vietnam

Having succeeded in reaching a continental shelf boundary agreement in 2003, both countries have started with negotiations at Ha Noi in May 2010, followed by a second meeting in Bali on October 2010. At the time both country have not yet come to an agreement on the principles and guidelines to be used during the negotiation. Another meeting was scheduled to be held in Ha Noi in February 2011.

6. Indonesia-the Philippines

Negotiations on maritime boundaries between Indonesia and the Philippines up to 2007 have shown significant prospect of agreement between the technical teams of both countries. That progress was hampered because of an internal problem within the Philippines itself. In March 2009 Republic Act No. 9522 was enacted. The Act contains a revision to the basepoints of the Philippines baselines, which was formerly govern under Republic Act No. 3046 of 1961 and Republic Act No. 5446 of 1968.

The new Republic Act was challenged internally resulting in a case before the Philippines Supreme Court on 1 April 2009. The Philippines government were unable to continue with the negotiation because the Republic Act which was going to be used as the basis for negotiation with Indonesia was still awaiting the Supreme Court's decision. Recently, however, the Supreme Court has upheld the Act.⁹

Ownership of Mianggas Island a.k.a Palmas Islands which lies in south of the Philippines archipelago has been decided through arbitral decision of Judge Huber which has been so far accepted by the Philippines, however, was recently questioned by the Philippines Congress¹⁰.

7. Indonesia-Palau

The two countries need to negotiate on both the continental shelf and exclusive economic zone boundaries. Negotiations have already started between Indonesia and Palau on the exclusive economic zone boundary in April 2010.

During the second meeting from 29 November to 1 December 2010, several issues were discussed, i.e. on normal baselines and archipelagic baselines; an exercise on the proposed maritime boundary lines between the two countries.

During the negotiation it was also discussed the status of Palau's Helen Reef, and a potential tri-junction between Indonesia, Palau and the Philippines.

8. Indonesia-Timor Leste

Indonesia has not yet started maritime boundary negotiation with East Timor, pending the settlement of land boundaries, which still have unresolved segments such as the terminal points near the south and north coast.¹¹

In the Timor Sea area, a territorial sea and a special maritime area boundary has to be negotiated between Indonesia and Timor Leste. Apart from the territorial seas of the adjacent land areas between the two countries, there is also the question on a boundary between East Timor's territo-

⁹ News derived by correspondence from Professor Barbara Kwiatkowska, the University of Utrecht, the Netherlands.

¹⁰ The information is obtained by the writer from Alberto Encomiendo, the Philippines diplomat, member of presidential advisor dealing with marine affairs.

¹¹ I Made Arsana, "Settling Indonesia/Australia/Timor Maritime Boundaries," *Asian Survey and Mapping*, 16 June 2007.

rial sea and Indonesian archipelagic waters. The maritime boundary along Timor-Leste's Oecussi enclave is also still to be resolved.

To fulfil the obligation arising from Article 47 paragraph 6, it is necessary for Indonesia to study the possibility of providing a corridor for sea communications between Oekusi and other parts of Timor Leste area. Such accommodation has been carried out by Indonesia with regard to sea communication between West and East Malaysia through the 1982 Agreement.

Another issue that has to be put into consideration is the possibility of substituting a different archipelagic sea-lanes (ALKI), which has formerly been designated to be completely within the Indonesian territorial sea and archipelagic waters, which may now become parts of the territorial sea of East Timor. It goes without saying that such substitution should be brought to the International Maritime Organizations (IMO) to be jointly adopted with Indonesia.

IV. The Outermost Islands Issues

The loss of Sipadan and Ligitan has created new issues on islands. Comments that appeared through the mass media or communicated among government agencies have brought new issues on islands such as:

- a. Nipah island : the issue of Nipah island has come to the surface concurrently with the issue of illegal sand-mining in the Riau Islands. According to Government Regulation (PP) No 38 of 2002, the islands serve as the basepoints of the Indonesian archipelagic baselines (Nos. 175 and 176 respectively). Recent observation shows that the island has started to partly submerge, and there is some concern that by the time it will be completely submerged. Concern were also expressed that the island apart from being "exploited"¹² has also been "controlled" by Singapore.¹³
- b. P. Jarak and P Perak : where parts of Indonesian EEZ might become part of Malaysia's territorial sea¹⁴.
- c. Horsburg Reef : included as Malaysia territory¹⁵.

¹² Media Indonesia, 19 Desember 2002, p. 12.

¹³ Harian Ekonomi Neraca , 20 Desember 2002, p. 11.

¹⁴ Bisnis Indonesia 21 Desember, 2002, p. 7.

¹⁵ Bisnis Indonesi, id.

- d. Batek Island : located at the Oekusi offshore, reported by the Chief of the Indonesian Navy that recently it has been visited by some government agent of Timor Leste.
- e. Mayang Island : in West Kalimantan reported to be “occupied”¹⁶ and even” claimed” by Thai people¹⁷.
- f. Pasir Island : there are two significant names of Pasir Island (Ashmore Reef) which is “inhabited”¹⁸ and “controlled” by Australia¹⁹ and Pulau Pasir Putih located to the south of Kupang.²⁰
- g. Natuna Islands : which is considered to be a “target” of China.²¹
- h. Islands to the north and south of Papua such as Mapia Island.
- i. Small islands within the borders with a number of countries such as Sebetul, Sentut, Rondo and Damar along the border with Malaysia, Nipah and Karimun Kecil along the border with Singapore , and islands bordering with the Philippines such as Maratua, Kawio, and Jiew; Sekatung, islands in the waters of the Aru Sea and Timor Sea on along the border with Australia and Timor Leste, such as Laag, Dana, Asutubun and Masela.²²

In addition to islands having significant values in the determination of boundary with the neighbouring countries as indicated above, the Director General of Coastal Zone and Small Islands also identifies several categories of islands which need attention, among others:²³

- a. Islands vulnerable to political, religious and regional conflicts such as Derawan in East Kalimantan, Rote in East Nusatenggara, and Hinako in Aceh.
- b. Island with high economic value particularly for investment such as Riru Islands, Seribu, Siberut, etc.
- c. Islands potential for marine tourism development such as Banda, Mentawai islands, Nusa Penida islands, etc.
- d. Island subject to submersion such as Nipah, post mining and fishermen relocation such as Gebe and conservation area like Karimun Jawa.

16 *Republika*, 19 Desember 2002, p. 14.

17 *Bisnis Indonesia*, 22 Desember 2002, p. 3.

18 *Republika Supra* No 12

19 *Harian Ekonomi Neraca*, 20 Desember, p. 11.

20 *Koran Tempo*, 23 Desember 2002, p. 6.

21 *Suara Karya*, 20 Desember 2002, p. xi .

22 *Bisnis Indonesia*, supra, n. 10. also *Suara Pembaruan* , 20 Desember 2002, p. 6.

23 *Bisnis Indonesia*, id

V. Boundary Delimitation Process²⁴

To facilitate boundary delimitation process, the Indonesian government through the Ministry of Foreign Affairs as coordinator, has established inter-agency national negotiating team. In the early negotiations which started in 1969 the inter-agency national team worked with key institutions such as the Hydrographic Office of the Indonesian Navy (DISHIDROS), the National Coordinating Agency for Survey and Mapping (BAKOSURTANAL), the navy, the army, and the sectoral agencies of Ministry of Foreign Affairs, Defence, Energy and Mineral Resources, and the Ministry of Marine Affairs and Fisheries.

Later, into this process, the negotiating team were assisted by the advice and expertise of a highly qualified advisory board. It includes former Minister of Foreign Affairs, ambassadors with law of the sea experiences and academic experts. The board has the task to assist the negotiating team in formulating national positions in various negotiations.

The negotiating team also take into account the latest development in the science of maritime boundary delimitation. They are also supplemented with legal and technical training, both at home and at various institutions abroad.

VI. Conclusion

As an archipelagic State with a unique geographical condition Indonesia have put lots of efforts in trying to determine its maritime borders by way of unilateral decision, bilateral and trilateral agreements. Judging from the number of agreements that has been successfully negotiated and agreed, it can be said that the Indonesian places great importance on border issues.

However, judging from the national interest factors involved in maritime boundary negotiation, Indonesia still faces unresolved boundary delimitations. In addition to that the outermost islands of the archipelago also has an important place in maritime boundary delimitations.

²⁴ See Arif Havas Oegroseno, *supra*, n. 2, p. 56-58.

Notes

There are three potentially controversial boundaries: in the Ombai Strait between the enclave of Oecussi and Indonesia's Kepulauan Alor; in the Wetar Strait between East Timor proper and Indonesia's Pulau Wetar; and two lateral boundaries in the Timor Sea.

East Timor has not yet started maritime boundary delimitation with Indonesia. From the Indonesian perspective, the delay is tied up with the pending settlement of land boundaries between the two countries. Indonesia and East Timor have agreed on about 96 percent of their land boundaries in terms of length.

Unfortunately, the unresolved segment includes the terminal points, where the boundary hits the north and south coasts. These must serve as the starting points for the maritime boundaries between the two states. Thus, negotiation of maritime boundaries cannot start until the land boundaries are fully determined.

This is complicated by the fact that the Indonesia state mapping agency, Badan Koordinasi Survei dan Pemetaan Nasional (Bakosurtanal), is currently revising its baseline. This is the reference from which its maritime jurisdiction is measured, and is essential in constructing the boundary line. The revision mainly covers the area around Pulau Timor and the Celebes Sea. This is the location of the hydrocarbon-rich Ambalat Block, which is currently the subject of a separate dispute with Malaysia.

Indonesia, a nation of islands, has invaluable experience negotiating maritime boundaries. Negotiation with East Timor should have been much quicker. But the area in question, to the north of Pulau Timor, does not contain oil and gas deposits, so the Indonesians may not see the establishment of maritime boundaries as urgent. For Indonesia, the most urgent dispute is over the Ambalat Block.

Jakarta and Dili appear to have difference views concerning the urgency of maritime boundary delimitation. In East Timor, Mari Alkatiri, the former prime minister, called maritime boundary delimitation a matter of 'life or death'. His government passed the Maritime Zone Act and established the Timor Sea Office in support of this notion.

However, the election, and the riots of last year may yet bring significant changes in the direction of East Timorese government policy, including that relating to maritime boundaries.

The Ombai and Wetar Straits are neither busy nor strategically economic for commercial navigation. This may have led the Indonesian government to conclude that there are no strong economic or security reasons for urgent maritime boundary delimitation.

But oil, gas and navigation are not the only matters to consider. A lot of people in areas such as Indonesia's Nusa Tenggara Province depend on fishing for a living. Without clear delimitation of territorial sea and exclusive economic zones, fishermen will have no idea of the limits of fishing areas.

In addition, the emergence of a new world-wide approach to coastal zone management -- the marine cadastre -- requires the delimitation of maritime boundaries.

As an archipelagic state, in which around two thirds of its territory are maritime areas, Indonesia needs to seriously pay attention to maritime boundaries.

This is not an issue confined to Timor. According to an article in the Indonesian Kompas newspaper, (3 March), some 70 percent of the Indonesian EEZ has not been officially recognised. For Indonesia, it is time for action. I Made Arsana, "Settling Indonesia/Australia/Timor Maritime Boundaries, Asian Survey and Mapping, 16 June 2007)