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SOVEREIGN RIGHTS, JURISDICTIONAL OBLIGATIONS AND OTHER RIGHTS IN EXCLUSIVE ECONOMIC ZONE

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Abstract

The international community has succeeded in compiling a law of the sea to regulate all forms of use of the sea as well as the benefits of the natural resources contained therein as outlined in the form of an agreement between States as known as United Nations Convention on the Law of the Sea 1982. The sea is divided into several parts/ zones, namely the territorial sea, internal waters, contiguous zones, archipelagic waters, the exclusive economic zone and the high seas. The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. In the exclusive economic zone, coastal countries have sovereign rights for exploration and exploitation purposes, conservation and management of natural resources, both living and non-living, from the waters above the seabed and from the seabed and the land below and with respect to other activities for the purposes of exploration and economic exploitation of the zone, such as energy production from water, currents and wind; jurisdiction as defined in the relevant provisions of this Convention with respect to the creation and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment. Other rights and obligations as defined in this Convention.

Keywords: Exclusive Economic Zone, Sovereign Rights, Jurisdictional Obligations

I. INTRODUCTION

Background

Since the end of World War II, the law of the sea, which is a branch of international law, has undergone profound changes. In fact, it can be said that it has undergone a revolution in accordance with the development and demands of the times. The role of the law of the sea is not only because 70% or 140 million square miles of the earth's surface consist of the sea, not only because the sea is a highway that connects one nation to another nation to all corners of the world for all kinds of activities, not only because of its wealth and everything. Kinds of fish that are vital to human life, but also and mainly because of the mineral wealth contained in the seabed itself. In the past, the law of the sea basically only took care of activities above sea level, but now it has also been directed at the seabed and the mineral wealth contained therein. The law of the sea which was once one-dimensional has now turned into a plural-dimensional which at

the same time has overhauled the philosophy and conception of the law of the sea in the past. The international community has succeeded in compiling a law of the sea to regulate all forms of use of the sea as well as the benefits of the natural resources contained therein as outlined in the form of an agreement between States as known as United Nations Convention on the Law of the Sea 1982.¹ Applicability of United Nations Convention on the Law of the Sea 1982 in Indonesia with the enactment of Law No. 17 of 1985 on Validation of United Nations Convention on the Law of the Sea 1982 on December 31st 1985, Indonesia claims to be bound by the provisions of the convention.

Until the end of World War II, international maritime law was based on the division between the territorial sea which was under the sovereignty of a State, and the high seas with all its validity, still occurs in the absence of a change. This division has made legal provisions regarding the territorial sea, peaceful passage, real-time pursuit and criminal and civilian jurisdiction of the coastal State against ships that are in its territorial sea.² United Nations Convention on the Law of the Sea, legalized on December 10, 1982, in Montego Bay Jamaica.

- a. The Convention distinguishes States based on geographic aspects into 3, namely non-coastal states, coastal states and archipelagic states;
- b. The sea is divided into several parts / zones, namely:
 - (1) Territorial sea, width does not exceed 12 nautical miles from the baseline.
 - (2) *internal water*.
 - (3) *contiguous zone*.
 - (4) archipelagic water³.
 - (5) *exclusive economic zone*, width does not exceed 200 nautical miles from the baseline.
 - (6) the high sea, the area of the seabed and the land underneath can be divided into two, namely; *continental shelf*, come under national jurisdiction and areas, fall outside of national jurisdiction.

On March 21, 1980, Indonesia announced the boundaries of the Exclusive Economic Zone, which is a 200-mile wide Indonesian sea area measured from the baseline of the Indonesian territory. If the Exclusive Economic Zone of a country is adjacent to the Exclusive Economic Zone of another country then its determination is based on an agreement between the two countries. Because within the boundaries of the Exclusive Economic Zone a country has the right to exploit, explore, manage and conserve natural resources in it, both on the seabed and seawater above it. Therefore, Indonesia is responsible for conserving and protecting natural resources from damage.

¹ Etty R Agoes.1991. *Konvensi Hukum Laut 1982, Masalah Pengaturan Hak Lintas Kapal Asing*. Abardin, Bandung, p.1

² Mochtar Kusumaatmaja. 1972. *"The Legal Regime of Archipelagoes: Problems and Issues"*, hlm 81. Juga dimuat dalam Mochtar Kusumaatmaja. 1978. *Bunga Rampai Hukum Laut*, Bandung, p.65.

³ Abdul Muthalib Tahar. 2015. *Zona-zona Maritim Berdasarkan Konvensi Hukum Laut 1982 dan Perkembangan Hukum Laut Indonesia*. Universitas Lampung, Bandar Lampung, p.5

Issues

- a. What is meant by the Exclusive Economic Zone?
- b. What are the sovereign rights, jurisdictional obligations and other rights in the Exclusive Economic Zone?
- c. What activities can be carried out in the Indonesian Exclusive Economic Zone?
- d. How to determine the outer boundary and width of the Exclusive Economic Zone?

II. DISCUSSION

Definition of Exclusive Economic Zone

Exclusive Economic Zone is a zone 200 miles from the coastline, in this zone a coastal state has the right to natural resources in it, and has the right to exercise its legal policy, freedom of navigation, fly over it, or plant cables and pipes. The concept of the Exclusive Economic Zone arose out of an urgent need. Meanwhile, its historical roots are based on a growing need since 1945 to expand the jurisdiction of the coastal state over its sea. Exclusive Economic Zone regulated in United Nations Convention on the Law of the Sea on the Part V, Article 55 “The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention”. Furthermore, Article 57 determines as follows “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured”.

Based on the two articles mentioned above (Articles 55 and 57), an understanding of the exclusive economic zone can be drawn up as follows (1): “An area outside and adjacent to the territorial sea, the width of which does not exceed 200 nautical miles as measured from the baseline used to measure the width of the territorial sea, based on which the rights and jurisdiction of the coastal State and the rights and freedoms of other states, are governed by the provisions of this Convention”. Or (2) “An area outside and adjacent to the territorial sea as wide as 188 nautical miles from the outer limit of the territorial sea to the side / direction of the sea by virtue of the rights and jurisdiction of the coastal State and the rights and freedoms of other States, governed by the provisions of this Convention”.⁴

Based on the constitution of the Republic of Indonesia number 5 of 1983 concerning the Indonesian Exclusive Economic Zone, it states that “The Indonesian Exclusive Economic Zone is a route outside and bordering the Indonesian territorial sea as determined based on the applicable law on Indonesian waters which includes the seabed, the land

⁴ *Ibid*, p. 34

below and the water above it with an outer limit of 200 (two hundred) nautical miles measured from the line. The base of the sea territory of Indonesia”.

Sovereign Rights, Obligations of Jurisdiction and other rights in the Exclusive Economic Zone.

On this subject set in United Nations Convention on the Law of the Sea Article 56 as follows:

1. In the exclusive economic zone, the coastal State has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
 - (c) Other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

In addition, the coastal state has sovereign rights as stipulated in Article 56 (paragraph 1 a) above, also has the exclusive right to build and to authorize and regulate the construction, operation and use, as provided for in Article 60 (paragraph 1):

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
- (c) Installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations (paragraph 2). If a coastal state constructs artificial islands, installations and structures, then this:

- a. does not have island status;

- b. does not have its own territorial sea; and
- c. their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf. (Article 60 paragraph 8).

In connection with the construction of artificial islands, installations and buildings in the Exclusive Economic Zone, the coastal state is burdened with obligations, among others (see Article 60 paragraphs 3, 4, 5 and 6):

- a. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.
- b. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.
- c. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.
- d. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

Rights and Duties Of Other States In The Exclusive Economic Zone

Regarding this matter, United Nations Convention on the Law of the Sea 1982 (article 58) regulates the following:

- a. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of

ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

- b. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
- c. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Based on the provisions of article 58 above, it can be concluded that other countries also enjoy freedoms in the Exclusive Economic Zone, including: freedom of navigation, freedom of flight, and freedom to lay down submarine cables and pipes having the same status as freedom on the high seas (Article 87), as well as those related to such freedom, such as the use of the sea for the operation of ships, aircraft and cables and submarine pipelines.

Activities in the Indonesian Exclusive Economic Zone

The problem of these activities is regulated in article 5 of Law No. 5 of 1983 concerning Indonesia's exclusive economic zone. Activities for exploration and/or exploitation of natural resources or other activities for economic exploration and/or exploitation such as the generation of power from water, currents and wind in the Indonesian Exclusive Economic Zone carried out by Indonesian citizens or Indonesian legal entities must be based on a permit from Government of the Republic of Indonesia. Meanwhile, the aforementioned activities carried out by a foreign country, a foreign person or legal entity must be based on an international agreement between the Government of the Republic of Indonesia and the foreign country concerned. The terms of the international agreement or agreement state the rights and obligations that must be obeyed by those carrying out exploration and exploitation activities in the zone, including the obligation to pay levies to the Government of the Republic of Indonesia.

Living natural resources basically have the power to recover, but by no means unlimited. Given these characteristics, in carrying out the management and conservation of living natural resources, the Government of the Republic of Indonesia determines the level of utilization either in part or in whole areas in the Indonesian Exclusive Economic Zone. In the event that Indonesian fisheries business has not been able to fully utilize the entire allowable catch, then the difference between the allowed amount of catch and the Indonesian capacity to harvest, may be used by other countries with the permission of the Government of the Republic of Indonesia based on international agreements. For example, the number of catches that is allowed is 1,000 (one thousand) tons while the number of Indonesia's ability to catch is only 600 (six

hundred) tons, so other countries may take advantage of the remaining 400 (four hundred) tons with the permission of the Government of the Republic of Indonesia based on international agreements.

Outer Limits And Width Of The Exclusive Economic Zone

The figure stated for the width of the exclusive economic zone is 200 miles or 370.4 km. This figure does not appear to cause difficulties and is acceptable to developing countries and developed countries. Since the idea of an economic zone was put forward, the figure 200 miles from the baseline has become a guideline. Suppose that the width of the sea area of 12 miles has been accepted, as is currently the case, the actual width of the exclusive economic zone is $200-12 = 188$ miles. As has been stated, the rights of the coastal state over the two seas are different, namely full sovereignty over the territorial sea and sovereign rights over the economic zone for the purpose of exploiting the resources found in the sea area.

The boundary in the Exclusive Economic Zone is the outer boundary of the territorial sea. The area boundary zone shall not exceed the ocean 200 miles from the base line over which the territorial coast area has been determined. The wording of this provision suggests that 200 miles is the maximum limit of the Exclusive Economic Zone, so that if a coastal state wants its territory less than that, it can apply for it. In many areas, of course, coastal countries will not choose to reduce their Exclusive Economic Zone area less than 200 miles, because of the presence of the Exclusive Economic Zone of neighboring countries. Then the question arises why 200 miles of area the maximum choice for the Exclusive Economic Zone is. The reasons are based on history and politics: 200 miles have no real geographic, ecological or biological significance.

At the start of United Nations Convention on the Law of the Sea 1982 the zone most claimed by coastal states was 200 miles, claimed by the Latin American and African states. Then, to facilitate the agreement to determine the outer boundaries of the Exclusive Economic Zone, a figure that most represents the existing claims is chosen. 200 miles was chosen by chance, started by the country of Chile. Initially the Chilean state claimed to be motivated by a desire to protect the whale operations off its coast. The whale industry only wanted a 50 mile zone, but it was suggested that an example was needed. And the most promising example to emerge in zonal protection is the adoption of the 1939 Panama Declaration. This zone has been widely misunderstood that it is 200 miles wide, despite the fact that it varies widely and is no more than 300 miles.

III. CONCLUSION

The Exclusive Economic Zone is a zone 200 nautical miles from the coastline, in which a coastal state has the right to natural resources in it, and has the right to exercise its legal policies, freedom of navigation, fly over it, or plant cables and pipes. The main

provisions in United Nations Conventions on the Law of the Sea 1982 relating to the Exclusive Economic Zone are contained in the 5th part of the convention. Based on the United Nations Conventions on the Law of the Sea 1982, it can be concluded that other countries also enjoy freedoms in the Exclusive Economic Zone, including: freedom of navigation, freedom of flight, and freedom to lay down submarine cables and pipes having the same status as freedom on the high seas (Article 87), as well as those related to such freedom, such as the use of the sea for the operation of ships, aircraft and cables and submarine pipelines.

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