

THE ROLE OF UNCLOS 1982 IN PROTECTING THE INDONESIA'S SOVEREIGNTY FROM RECLAMATION THREAT

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ABSTRACT

The limited existing land area can be expanded by carrying out reclamation of land from surrounding waters, which is commonly found in many countries throughout the world, such as currently being done by Singapore and Indonesia. The paper raises the issue on the reclamation carried out by Singapore and its impacts on the Indonesian territorial sea. To counteract this issue, Indonesia considered using the United Nations Convention on the Law of the Sea (UNCLOS) 1982, but in fact, UNCLOS 1982 does not provide the reclamation provision. As a result, both Indonesia and Singapore put interpretations on Articles to enlighten their propositions. So the question remains: "Will UNCLOS 1982 be able to fully protect the sovereignty of Indonesia's territorial sea from the Singapore's reclamation threat?" The method was descriptive analysis, which is a research method used to gain an overview of the situation and circumstances, by way of exposure of data obtained as it is. Then, various analyzes are carried out to compile some conclusions; while, studies conducted through normative juridical approach. The analysis showed that in order to secure the sovereignty, Indonesia should make propositions related to reclamation issues to be regulated under the international law of the sea. This will be more effective because it will directly improve the legal basis.

Keywords: Singapore Reclamation, Indonesia Sovereignty, United Nations Convention on the Law of the Sea (UNCLOS) 1982

A. Introduction

Being an archipelagic country which has 76% sea areas of its total territory, Indonesia still has a lot of homework that has not been completed. Problems and

friction in Indonesia's waters with neighboring countries still often arise, mainly concerning the maritime border area, sea and water territorial;. To solve these problems, 18 maritime boundary agreements for the territorial and territorial wa-

ters have been produced. However, out of the 18 agreements, 13 agreements were concluded before the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.¹ Out of 10 countries bordering Indonesia, Singapore was the only country that signed the bilateral agreement related to sea boundary.² Even then, it has not been able to completely resolve the unsettled maritime border issues of the two countries

Rapid global development of science and technology, obviously, will lead to a change in the mindset in dealing with the development of sea border region. This is also encouraged by modern society's level of need for natural resources, which of course will affect the concept of the state in fulfilling the needs of its people's lives. It is well acknowledged that sea areas have a lot of potentials to be explored, managed, and developed by a state. As an example, a high population growth rate in one state will clearly increase the need for land to live in. The limited existing land area can be expanded by carrying out reclamation of land from waters, which is commonly found in many countries throughout the world, such as currently being done by Singapore and Indonesia.

Reclamation can be interpreted as an effort to procure land by draining swamps, tidal areas, and so on or based on Law of

the Republic of Indonesia Number 27 of 2007 concerning Management of Coastal Zone and Small Islands, reclamation is an activity carried out by people in order to increase the benefits of land resources in terms of environmental and socio-economic point of view by means of collection, land drainage, or drainage.³ From this point of view, Indonesia in particular has apparently regulated reclamation, and this is due to the level of development that requires more land for the benefit of Indonesian people themselves. But what should be underlined is that any form of reclamation can still have certain impacts, both positive and negative.

On the one hand, the positive impact of reclamation is like splitting up and developing an area of land that was initially considered not useful enough to be an area that has high economic value. For example, the profit gained by reclamation which in the coastal area is obtaining land without evicting the population and not paying compensation. On the other hand, there are also many negative impacts caused by reclamation, including:⁴ increased pollution of the coastal environment by the waste generated; changes in the current coastline pattern of ocean currents; city traffic patterns disruption; fishing activities pattern is disturbed; disturbances to the ground water system and surface water in-

¹ Humas BNPP, *Ini Alasan Perundingan Batas Maritim Indonesia Dengan 10 Negara Belum Selesai*, <http://bnpp.go.id/index.php/berita/beritadetail/ini-alasan-perundingan-batas-maritim-indonesia-dengan-10-negara-belum-selesai>, (Accessed on 12 April, 2020)

² *Ibid.*

³ Article 1 (23) Law Number 27 Of 2007 Concerning Management of Coastal Zone And Small Islands.

⁴ Flora Kalalo, *Implikasi Hukum Kebijakan Reklamasi Pantai dan Laut di Indonesia*, (LoGoz Publishing: 2009), p. 5.

cluding erosion problems, decreased water quality and quantity, and the potential for flooding in coastal areas; coastal pollution during construction; problems with resettlement and land acquisition; potential damage to beaches and underwater installations (cables, gas pipes, etc.); potential disruption to the environment (displacement of fishermen housing, loss of mangrove forests, threatened coastal biota steps); and changes in regional spatial planning, also detailed spatial planning.

In addition to its impact on the environment, reclamation also greatly influences other social aspects, such as traditional fishermen were displaced from their life sources only to make them lose their livelihoods in the end. Or in another aspect, reclamation can also trigger changes in territorial boundaries, for example the reclamation of eight small islands carried out by Singapore to make Jurong Island. The landfill has caused Jurong Island to widen as far as 12 nautical miles from its original border near the sea border between Singapore and Indonesia's region.⁵ And this paper will explore and discuss more about reclamation of land in Singapore and its impact to Indonesia's sovereignty as well as the role of international law on such issue.

Basically, the reclamation that has been and is being carried out by Singapore has led to continual conflict between Indonesia and Singapore since 1966; it is marked by the issuance of Law No. 1 of 1973 concerning the Changi Continental Shelf.⁶ Until now, no agreement is concluded to regulate the border issue in the southern part, whilst Singapore continues to implement its domestic policy in an effort to enlarge its land through reclamation. Countless conflicts occurring due to the reclamation activities carried out by the Singapore government could become a time bomb that would threaten Indonesia's sovereignty in the future, if it is not immediately resolved. Bear in mind that sovereignty has a very important role for a country, as exclaimed by *Jean Bodin* in his theory that sovereignty is the highest power of a country to determine the law in that country and is single, original and cannot be divided.⁷

In resolving these maritime border conflicts, Indonesia and Singapore rely on to the United Nations Convention on the Law of the Sea 1982 (*UNCLOS 1982*). However, *UNCLOS 1982* itself does not have articles specifically regulating reclamation. Thus, in order to overcome the reclamation conflict, several articles are used as guidelines, i.e. Article 2 (1) relat-

⁵ Indira Ardian, "Singapura Makan Tanah", <http://www.suarakaryaonline.com/news.html?id>, accessed on 12 April, 2020.

⁶ Wisnu Yudha AR, "Reklamasi Singapura Sebagai Konflik Delimitasi Perbatasan Wilayah Indonesia-Singapura", *Skripsi*, Program Sarjana Ilmu Hubungan Internasional Fakultas Ilmu Sosial dan Politik Universitas Airlangga, Surabaya, 2007, p. 1.

⁷ P. Joko Subagyo, *Hukum Laut Indonesia*, (Jakarta :PT Rineka Cipta,2009), p.15.

ing to territorial seas in an archipelagic states,⁸ Article 11,⁹ and Article 60 (8) of UNCLOS 1982,¹⁰ which states reclamation project undertaken by Singapore will not affect the determination of the territorial sea-wide territorial limits owned by Indonesia and Singapore using the meridian line Principle.¹¹

Based on the aforesaid descriptions, the paper will further explore and discuss; "*The Role of UNCLOS 1982 For Protecting the Indonesia Sovereignty from Reclamation Threat.*" The main issues to be discussed will be whether or not UNCLOS 1982 has room for reclamation and whether UNCLOS 1982 is able to fully protect Indonesia's territorial sea sovereignty from the Singapore's reclamation threat.

B. Research Methods

A method is a tool to help and answer and find the truth symbolically, methodologically, and consistently. Then the analysis is held to construct the data that has been collected and processed in accordance with the purpose of research. Therefore, a study is a scientific tool to improve and develop the science. The methodology used should be in accordance

with science discipline, for example Legal Studies.

The method used in this research is descriptive analysis, in which research data are analyzed qualitatively as an overview of the situation and circumstances. By exposing authentic data, they are then, analyzed, and are compiled into some conclusions. The studies were conducted with normative juridical approach, namely research on the principles of law stated in the regulations, literature and scientific papers related to the object of research, and also sociological juridical approach namely the study was also conducted in the condition as occurred to the people connected with the regulations, literature and scientific writings are closely related within the research. The conclusion, then, is drawn by using deductive thinking method.

C. Discussions

1. Definitions of Reclamation

Experts of this matter give various definitions of land reclamation; as *J.L Stauber*, *A. Chariton*, and *S. Apte* stated, that the land reclamation is the process of creating new land from the sea. The simplest

⁸ Article 2 (1) UNCLOS 1982 stated The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

⁹ Article 11 UNCLOS 1982 concerning Ports, stated: For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.

¹⁰ Article 60 (8) UNCLOS 1982 stated: Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

¹¹ Dikdik Mohamd Sodik, *Hukum Laut Internasional Dan Pengaturannya Di Indonesia*, (Bandung:PT Refika Aditama, 2011), p. 22.

method of land reclamation involves simply filling the area with large amounts of heavy rock and/or cement, then filling with clay and soil until the desired height is reached.¹²

Kavitha Sandirasegaran and Norpadzlihatun Manap, members of Department of Construction Management, Faculty of Technology Management and Business, *Tun Hussein Onn University*, Malaysia, also define land reclamation as usage of dredged sediments to construct or build new land in the sea which has played an important role in the metropolitan development in many developing countries due to the demand from high population.¹³

Those definitions are in line with the definition of reclamation given by the Organization for Economic Co-operation and Development (OECD). It is defined as "Land acquisition from the sea, swamps or other waters, and restoration of productivity / use on land that has been degraded by human activity or has been damaged due to natural phenomena".¹⁴

Alongside those definitions, Indonesia also has a regulation which specifically defines the reclamation term. According to Law of the Republic of Indonesia Number 27 of 2007 concerning Management

of Coastal Zone and Small Islands under Article 1 (23), reclamation is defined as an activity carried out by a Person for the purpose of improving the use of the terrain viewed from the environment and socio-economic aspects, by piling, draining or drainage. All the definitions cited above underline that reclamation has its own characteristic. In general speaking, reclamation is always done in the sovereign waters of a state like a territorial sea.¹⁵ Some examples of reclamation projects are world famous places such as Kansai Airport, Hong Kong Airport, and Palm Island Dubai. Conversely, other reclamation projects have triggered problems and conflicts at international level, such as the reclamation of *Tekong Island* and *Ubin Island*, both of which are in the South China Sea.

Given the definitions above, a further comparison is drawn to analyze some articles in the UNCLOS 1982 that usually used in reclamation issues between states. With some outlooks, it will reveal the characteristic from itself. Thus, it can be accommodated and regulated, and become the rules for bringing law certainty into the international society.

¹² J.L. Stauber, e.l, *Marine Ecotoxicology Current Knowledge And Future Issues*, (Massachusetts: Academic Press, 2017), p. 273-313.

¹³ KavithaSandirasegaran and NorpadzlihatunManap, "Impacts of Dredging and Reclamation Projects" *Jurnal Teknologi (Sciences & Engineering)* 78: 7-3 (2016) <https://www.researchgate.net/publication/306133057> (accessed on 22 April,2020).

¹⁴ Retno Windari Purwito, "Aspek Hukum Internasional Terkait Dengan Reklamasi" *Pandangan Forum Guru Besar Institut Teknologi Bandung Terhadap Reklamasi Pantai Utara Provinsi DKI Jakarta* (Bandung: FGB-ITB,2016), p. 13.

¹⁵ *Ibid.*

2. Reclamation Provisions in UNCLOS 1982

Renowned as the constitution for the oceans, UNCLOS 1982 was considered to be one of the most successful codifications and progressive developments of international law made by the United Nations since the end of the World War II. UNCLOS 1982 produces an international legal order to regulate all activities in the oceans and seas. As a comprehensive legal framework for the law of the sea, UNCLOS 1982 elucidates the rights and obligations of all States, including: coastal, land-locked and geographically-disadvantaged States and other international actors in various functional maritime areas; the protection of marine environment; marine scientific research; activities in the Area as well as settlement of disputes mechanism applicable for disputes that may arise during the implementation and interpretation of UNCLOS 1982.¹⁶

Although UNCLOS 1982 is a reference for all forms of dispute in the maritime affairs, it cannot always be used as the solution for every maritime problem. Interpretation of the existing rules is often done by the parties by looking for the ones which are more beneficial to their interests. Relatedly, UNCLOS 1982 has no specific

provision that regulates reclamation. However, with the existing developments, also by looking at the number of reclamations carried out by many countries including Indonesia, there are some articles that can be used as references or guidelines in reclamation activities; there are:¹⁷

- a. Article 11 concerning Ports, stated:

For the purpose of delimiting the territorial sea, the outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbor works.
- b. Article 56 (1) point b rules about rights and obligation of the coastal state into Exclusive Economic Zone, which explained:

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.

¹⁶ Nguyen, Dong Manh, *Settlement of disputes under the 1982 United Nations Convention on the Law of the Sea The case of the South China Sea dispute*, UN-Nippon Foundation Fellowship on the Law of the Sea, December 2005, p. 3.

¹⁷ Siti Azizah, Pengaturan Tentang Reklamasi Pantai Berdasarkan Unclos 1982 Dan Implementasinya Di Indonesia, <http://download.garuda.ristekdikti.go.id/article.php?article=925013&val=14393&title=PENGATURAN%20TENTANG%20REKLAMASI%20PANTAI%20BERDASARKAN%20UNCLOS%201982%20DAN%20IMPLEMENTASINYA%20DI%20INDONESIA> (accessed on 22 April, 2020)

- c. Article 60 (1) concerning Artificial Islands, Installations and Structures in the Exclusive Economic Zone explained that:

In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

- 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.

These articles explained that states have right to artificial islands, installations, and buildings for economic purposes, and installations and buildings can interfere with the implementation of coastal state rights.

- d. Article 60 (2) asserted that:
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.
- e. Article 80 concerning Artificial islands, installations and structures on the continental shelf also explained that:

Article 60 applies *mutatis mutandis* to artificial islands, installations, and structures on the continental shelf.¹⁸

Based on the Articles mentioned, it is evident that reclamation is not specifically pointed out under these articles, as in the definition. Instead, the articles were intended more for marine objects definitions and the rights and obligations attached to or related to marine objects. Hence, it shows that UNCLOS 1982 does not have the reclamation provisions; however, the articles are given interpretation to benefit concerned states relating to reclamation. With numerous rules based on interpretations, the legal principle from UNCLOS 1982 will be reduced as one of the products of international law.

Certainly, it is acceptable to state that the provisions in the articles may be interpreted according to deprived wishes. However, it must be considered that UNCLOS 1982 needs to be improved, where Indonesia, as a large archipelagic state in the world, is expected to contribute its ideas to this reclamation issues, and not only focus on bilateral solutions that will require a lengthy period..

3. Can UNCLOS 1982 Protect Indonesia's Sovereignty from Reclamation Threat?

Before discussing the questions more deeply, it is essential to bring up some

¹⁸ Fella Defilla, "Reklamasi Singapura Terhadap Kedaulatan Wilayah Republik Indonesia Berdasarkan Hukum Laut Internasional" *JOM Fakultas Hukum Volume III Nomor 1* (2016), p.11-12.

understanding about the conception of the state's sovereignty itself. As previously stated, the sovereignty issue of *Jean Bodin* theory reveals that sovereignty is the highest power of a state to determine the law in that state and is solitary, original, and cannot be divided.¹⁹

In its journey in the 18th century, this theory developed into two different thoughts. On the one hand it considers sovereignty to be intact. On the other hand, another view arises and develops that considers sovereignty aside and that must remain an essential characteristic of a State that must not be lost. Yet, sovereignty within its implementation will be limited by the rules that apply in relations between States (*pluralism sovereignty ideology*).²⁰

Thus, the sovereignty as supreme power concept contains two important limitations, namely:

- 1) That power is limited to the territorial borders of the state which has that power, and
- 2) The power ends where the power of another state begins.

State sovereignty in its implementation is manifested into two sides, they were known as *internal sovereignty* and *external sovereignty*. This article discusses the use of external sovereignty theory which is established in the manifestation of the

State power including the ability to obtain recognition from other states and to determine cooperation or international relationship with other countries and fellow international law subjects.²¹ These capabilities and authorities contain participation in negotiations, international conferences signing multilateral and bilateral agreements, international cooperation in various fields, engaging in international organizations and others. In addition to some of these theories, there is also another, which is known as *territorial sovereignty* that was described by *Max Huber* with the term "Sovereignty in relations between countries signifying independence. Independence in relation to a part of the earth is the right to exercise it, regardless of other countries' functions."²²

From the brief description of the theory above, it can be concluded that the states sovereignty, which is reflected in its absolute freedom in regulating its own territory form based on its law, has restrictions if it comes in direct contact with the boundaries of other states. In relation to the reclamation issue carried out by Singapore, it shall be seen that basically Indonesian waters bordering Singapore has become narrower because of the reclamation.

In addition, it certainly causes other negative impacts for Indonesia, specifically social and environmental impacts for

¹⁹ P. Joko Subagyo, *Loc.Cit*

²⁰ Yudha Bhakti Ardhiwisastra, *Imunitas Kedaulatan Negara Di Forum PengadilanAsing*, (Bandung: Alumni. 1999), p. 13.

²¹ Suryo Sakti Hadiwijoyo, *Aspek Hukum Wilayah Negara Indonesia*, (Yogyakarta: Graha Media, 2012), p. 46.

²² *Ibid.*, p. 211.

the Indonesian peoples, especially those living around the territorial waters. As well, it is evident that Indonesia sovereignty in the territorial waters will be susceptible to stability, if there is still no solid step taken to uphold the sovereignty of Indonesia in this part of territorial waters.

It should be emphasized, as previously defined, that reclamation is an action to construct or build new land in the sea which has played an important role in the metropolitan development in many developing countries due to the demand from the high population,²³ which of course the construction result will be permanent. If a problem or dispute arises, part of the reclamation cannot be returned to its original form. This should be calculated by the state carrying out reclamation, in this case, Singapore, to submit a reclamation development permit to the state that is directly affected, Indonesia.

It is true that the accentuation of the reclamation issue is not on shifting its territorial boundaries automatically, but the main issue is the impact of Singapore's reclamation to the surrounding of the Indonesian territory. Taking for example the possibility of sinkage of the *Nipa* Island which triggers the assumption that Indonesia's vast territory is increasingly narrow. In fact, the *Nipa* Island is indeed experiencing serious abrasion due to sea sand

mining in the vicinity which is sold illegally to Singapore for beach reclamation.²⁴ Another example was the reclamation to eight small islands which were carried out by Singapore to make *Jurong* Island. The hoarding made *Jurong* Island has now widened as far as 12 nautical miles from its original limit nearing the sea border of Singapore and Indonesia.²⁵ From these data it can be concluded that it is not automatically that Indonesian sovereignty is directly agitated, but reclamation impacts will ultimately threaten the sovereignty of Indonesia's territory. In brief, it could be said that the impact on sovereignty would emerge later after some time.

Based on the previous discussions in this section, the UNCLOS 1982 can be used as a guideline for raising reclamation issues in a certain vulnerable period of time. In other words, it can be said that it will only be temporary if it is not specifically regulated reclamation under the international law provisions. Consequently, the finest way is how Indonesia can propose its concepts related to reclamation issues to be regulated in a rule of international law of the sea because the UNCLOS 1982 clearly has not been able to fully protect the threat to the sovereignty of Indonesia from reclamation activities carried out by Singapore over a long period of time. With the hope that international law of the sea

²³ KavithaSandirasegaran and NorpadzlihatunManap, *Loc.Cit.*

²⁴ AjangNurdin, 'Pulau Nipa Terancam Tenggelam, Batas Indonesia Bakal Bergeser, Liputan 6. <https://www.liputan6.com/news/read/2257248/pulau-nipa-terancam-tenggelam-batas-indonesia-bakal-bergeser>, (accessed on 24 April. 2020).

²⁵ SitiAzizah, *Loc. Cit.*

will accommodate reclamation issue to be regulated, Indonesia indirectly has a definite legal base if the same issue arises with 10 other neighboring countries. Surely this will further strengthen the absolute sovereignty of Indonesia as one of the largest archipelagic states in the world and make it intact as a whole and cannot be divided.

D. Closing

From the analysis and discussion above, there are some conclusions that can be drawn:

1. It showed that UNCLOS 1982 does not have the reclamation provisions. Matters regulated in UNCLOS 1982 concern only on marine objects and the rights as well as obligations attached to or related to those objects. The main issues related to marine objects that are important to understand in relation to reclamation include: internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf, island, and reefs. Therefore, states prefer to use their interpretation of those articles which can bring them a benefit when it is related to the reclamation. With various rules interpretations, the legal principle of UNCLOS 1982 will be weakened as one of the products of international law. The UNCLOS 1982 can be used as a guideline for raising reclamation issues in a certain vulnerable period of time. In brief, it can be said that it will only be temporary if it is not specifically regulated regarding reclamation itself in the international

law provisions. For that reason, it can be said that the UNCLOS 1982 clearly has not been able to fully protect the threat to the sovereignty of Indonesia from reclamation activities carried out by Singapore over a long period of time.

2. From these analyses, there is a recommendation to provide one of the options to solve the reclamation issues recently. Indonesia can propose its concepts related to reclamation issues to be regulated in a rule of international law of the sea because the UNCLOS 1982 clearly has not been able to fully protect the threat to the sovereignty of Indonesia from reclamation activities carried out by Singapore over a long period of time. With the expectation that international law of the sea will accommodate reclamation issue to be regulated, so that Indonesia indirectly has a definite legal base if the same issue arises with 10 other neighboring countries. This option will save more energy, and also time because it directly improves the core of legal basis. Surely this will further strengthen the absolute sovereignty of the Indonesian state as one of the largest archipelagic countries in the world and make it intact as a whole and cannot be divided.

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