

Navigating the Waters of Conflict: Indonesia and Malaysia's Maritime Boundary Dispute in the Sulawesi Sea and Malacca Straits

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Abstract

This paper examined the maritime border disputes between Indonesia and Malaysia in the Straits of Malacca and Sulawesi Sea. The research comprehensively examined the historical backdrop, current disputes, and recent accords reached following 18 years of discussions. The primary emphasis lies in contrasting the negotiation strategies employed by the two countries with alternative methods of resolving conflicts, such as litigation. The study applied normative legal research methodologies, utilizing a statutory, analytical, and prescriptive approach based on international law. It relied on secondary legal materials and related laws. The historical context highlighted the importance of the Strait of Malacca as a vital maritime passage and the difficulties arising from conflicting claims and territorial sea limits. The study subsequently explored the techniques for resolving conflicts, specifically focusing on the significance of international law, namely the United Nations Convention on the Law of the Sea (UNCLOS).

1. Introduction

Indonesia and Malaysia, being adjacent nations with close geographical proximity, share several sociocultural parallels and maintain a mutually beneficial geo-economic relationship. This habit has consistently had a significant impact on the nation throughout history. However, in actuality, the degree of alignment with expectations varies due to the diverse national interests of the two countries.¹ Despite having a federal structure that suggests a significant amount of decentralization, Malaysia is one of the Southeast Asian countries most consistently administered by the central government.²

Indonesia is a unitary state in an archipelago with a coastline spanning around 81,900 kilometers.³ It has boundaries with several countries India, Thailand, Malaysia, Singapore, Vietnam, Philippines, Papua New Guinea, Timor Leste and Australia., encompassing both land and marine territories. The territorial borders of the Republic of Indonesia immediately abut Malaysia, Papua New Guinea, and Timor Leste. Indonesia's land boundaries are distributed across three islands is Kalimantan Island, Papua Island, and Timor Island. Four provinces are West Kalimantan, North Kalimantan, Papua, and East Nusa Tenggara, and fifteen regencies/cities that is Sambas Regency, Sanggau Regency, Sintang Regency, Kapuas Hulu Regency, Nunukan Regency, Malinau Regency, Merauke Regency, Boven Digoel Regency, Bintang Mountains Regency, Keerom Regency, Belu Regency, Malaka Regency, North Central Timor Regency, and Kupang Regency, each with distinct boundary characteristics. Similarly, adjacent nations possess social, economic, political, cultural, and structural circumstances.⁴ The Strait of Malacca is one of the world's most important maritime channels, derived from a combination of geopolitical, economic, and military factors.

¹ Bambang B. Sulistyono et al., "Malaysia – Indonesia Conflict: In the National Interpretation 1963 – 2010," *Journal of Namibian Studies: History Politics Culture* 33 (2023): 1122–33, <https://doi.org/10.59670/jns.v33i.555>.

² Guanle Lim, Chen Li, and Emirza Adi Syailendra, "Why Is It so Hard to Push Chinese Railway Projects in Southeast Asia? The Role of Domestic Politics in Malaysia and Indonesia," *World Development* 138, no. November 2016 (2021): 105272, <https://doi.org/10.1016/j.worlddev.2020.105272>.

³ F Munir et al., "Strengthening of Substate Actors in Comparative Advantage of SIJORI (Singapore-Johor-Riau Islands) Border Areas Colaboration," *Palarch's Journal of Archaeology of Egypt/Egyptology* 18, no. 08 (2021): 2585–2602.

⁴ Aos Y. Firdaus and Harun Umar, "Indonesia-Malaysia Border Conflict," *Siasat* 7, no. 2 (2022): 176–85, <https://doi.org/10.33258/siasat.v7i2.121>.

This situation is complicated by the fact that in some countries, especially in law enforcement, there are still obstacles.⁵ The Strait is the principal waterway between the Pacific Ocean and the Indian Ocean, joining three of the world's most populous nations, China, India, and Indonesia as well as linking the regions west of the Strait with economic powerhouses such as China, Japan, and South Korea.⁶

The dynamics of life that occur in the current situation experience the same thing along with the development of globalization.⁷ When discussing Indonesia's defense, it encompasses more than only the military forces. Additionally, it discusses the diplomatic functions performed by a nation. Indonesia is presently a crucial focal point globally, given the increasing consciousness of nations in the Asia Pacific region. China, a rapidly advancing and influential nation, aims to relocate its economic hub from the western regions to the eastern regions and establish the Asia Pacific as its primary focus. The territorial waters of Indonesia share direct boundaries with 10 countries: India, Thailand, Malaysia, Singapore, Vietnam, the Philippines, Papua New Guinea, Palau, Timor Leste, and Australia.⁸ The Straits of Malacca and Singapore and Indonesia's archipelagic sea lanes are important maritime routes in Southeast Asia. The cessation of these crucial maritime routes would not only contravene international legal norms but also have a detrimental impact on the overall welfare of the global economy. Of course, the impact on the economic sector will be very crucial for both countries.⁹ These waterways are important routes for maritime transportation, with numerous vessels, including Japanese ships carrying nuclear waste destined for

⁵ Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, "Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse," *Jurnal Media Hukum* 30, no. 1 (July 27, 2023): 21–32, <https://doi.org/10.18196/jmh.v30i1.19322>.

⁶ Noraini Zulkifli et al., "Maritime Cooperation in the Straits of Malacca (2016-2020): Challenges and Recommend For a New Framework," *Asian Journal of Research in Education and Social Sciences* 2, no. 2 (2020): 10–32.

⁷ Yordan Gunawan and Hanna Nur Afifah Yogar, "Indonesia E-Hailing Taxi: The Competition Between Law and Technology," in *Advances in Electronic Commerce*, ed. Mohammad Nabil Almunawar, Muhammad Anshari Ali, and Syamimi Ariff Lim (IGI Global, 2020), 594–606, <https://doi.org/10.4018/978-1-7998-4984-1.ch028>; Yordan Gunawan et al., "The Conundrum Of Crime: To Whom It Belongs To?," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 2 (August 24, 2020): 211, <https://doi.org/10.29303/ius.v8i2.729>.

⁸ Rahma Agun et al., "Sea Power Indonesia Related to Geopolitics in The South China Sea and Geoeconomics in the North Natuna Sea Sloc & Slit," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 735–41.

⁹ Istianah Zainal Asyiqin and Fe Fikran Alfurqon, "Musyarakah Mutanaqisah: Strengthening Islamic Financing in Indonesia and Addressing Murabahah Vulnerabilities," *Jurnal Media Hukum* 31, no. 1 (February 20, 2024): 1–18, <https://doi.org/10.18196/jmh.v31i1.20897>.

reprocessing facilities in Europe, as well as nuclear-powered submarines from powerful nations, passing through them annually.¹⁰

Borders are tangible demarcations established either by natural elements such as rivers or by deliberate agreements among political entities such as federated states, governments, and other subnational organizations. Boundary delimitation refers to the procedure of demarcating borders between political bodies residing inside a particular geographical area.¹¹ Borders can also be delineated by means of violence, colonialism, or straightforward symbiotic agreements between political entities. As only one state can hold sovereignty over a specific territory, overlapping claims automatically create conflicts of interest.¹²

A border is a demarcation that serves to physically or symbolically divide two distinct geographic regions. Borders delineate the boundaries of political jurisdictions.¹³ A border delineates the jurisdictional boundaries of a governing institution. A region's government has the exclusive authority to enact and enforce legislation within its jurisdiction.¹⁴ Global trade, which encompasses a significant portion of the world's energy resources, must traverse specific "choke points" that connect production locations to their ultimate destinations. An example of such "choke points" is the Straits of Malacca. The Strait of Malacca is of paramount geostrategic significance for marine

¹⁰ M. H. M. Rusli, "The Legality of Passage of the Nuclear-Powered Submarines: Are Malaysia and Indonesia in Catch-22?," *Moscow Journal of International Law*, no. 4 (2023): 34–43, <https://doi.org/10.24833/0869-0049-2022-4-34-43>.

¹¹ Yordan Gunawan, Elvita Wati, and Eva Corral, "Iran's Responsibility for the MV Mercer Street Attack under International Law," *Brawijaya Law Journal* 10, no. 1 (April 30, 2023): 72–88, <https://doi.org/10.21776/ub.blj.2023.010.01.05>; Yordan Gunawan, Carissa Shifa Novendra, and Aldha Febrila, "Indonesia's Responsibility towards Rohingya Refugees: Analysis of the 1951 Refugee Convention," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (April 25, 2024): 182–94, <https://doi.org/10.22219/ljih.v32i2.32164>.

¹² Stephen P. Westcott, "Seizing a Window of Opportunity? The Causes and Consequences of the 2020 Sino-Indian Border Stand-Off," *Journal of Asian Security and International Affairs* 8, no. 1 (2021): 7–32, <https://doi.org/10.1177/2347797021992527>.

¹³ Hastings Donnan and Thomas M. Wilson, *Borders: Frontiers of Identity, Nation and State*, Paperback ed. repr (Oxford: Berg, 2001).

¹⁴ Shahril Azhari Jumari, Abdullah Hisam Omar, and Khairulnizam Idris, "The Impact of Delimitation and Demarcation of Interstate Borders after the Colonial Era in Peninsular Malaysia The Impact of Delimitation and Demarcation of Interstate Borders after the Colonial Era in Peninsular Malaysia," *IOP Conference Series: Earth and Environmental Science*, 2023, <https://doi.org/10.1088/1755-1315/1274/1/012012>.

security in the Indo-Pacific region. During the 12th and 13th centuries, there was significant growth in both regional and international trading endeavors.¹⁵

2. Problem Statement

This study discussed problems arising from maritime line disputes in the Straits of Malacca and Sulawesi Sea between Indonesia and Malaysia. This article aims to conduct an in-depth analysis of the dynamics of maritime boundary dispute settlement agreements, particularly in the Malacca Strait and Sulawesi Sea, which were recently concluded after 18 years of negotiations. In addition to focusing on the ongoing negotiations, this research also explored certain aspects related to the efficiency of the negotiation path taken by the two countries in resolving the dispute. Comparisons were made between the negotiation approach taken by Indonesia and Malaysia with alternative dispute resolution through litigation.

In this context, this study examined how the negotiation process can affect the outcome of the dispute settlement agreement, as well as the extent of the effectiveness and efficiency of the negotiation path pursued by Indonesia and Malaysia. This in-depth analysis of the factors influencing the negotiation path was expected to provide further insight into the strategic decisions taken by the two countries to reach a final agreement.

3. Methods

This normative legal research focused on analyzing maritime disputes in the Malacca Strait and Sulawesi Sea between Indonesia and Malaysia using a statutory approach, analytical approach, and prescriptive approach based on international law. The data used in the research were collected from library research with secondary legal materials in the form of books, journals, and research results that were relevant to this research. Meanwhile, the primary legal material was in the form of regulations related to the regulation of maritime sea boundaries.

¹⁵ Tran Hoang Long, Tran Xuan Hiep, and Nguyen Tuan Binh, "Maritime Security in the Indo-Pacific Region: A View From the Geostrategic Position of the Malacca Straits," *Austral: Brazilian Journal of Strategy & International Relations* 11, no. 21 (2022): 115–31, <https://doi.org/10.22456/2238-6912.119787>.

4. Result and Discussion

4.1. History of the Maritime Boundary Conflict between the Malacca Strait and the Sulawesi Sea: Increasing Problems

The evolution of the strategic landscape at the global, regional, and national levels is becoming more intricate and dynamic.¹⁶ Indonesia, an archipelagic nation, has the United Nations Convention on the Law of the Sea UNCLOS 1982, later confirmed by the government by Law No. 17 of 1985 on Ratification of the United Nations Convention on the Law of the Sea. These islands have several outlying islands that are directly next to neighboring countries.¹⁷ According to the Base Point survey conducted by the Indonesian Navy to establish boundaries with neighboring nations, there are presently 183 bases situated on 92 farthest islands, with the remaining bases positioned on the outermost capes in the coastal region. Typically, islands represent a valuable natural asset for a nation.¹⁸

The Strait of Malacca, formerly referred to as the Sea of Malays, has been recognized since ancient times by Arab sailors and merchants who visited the region for trading in the Malay realm. The significance of this trade route, encompassing both the West and East, in the global commerce network has been recognized since its inception. The control of trade by the Malays in this region is attributed to its strategic value and geopolitical position.¹⁹ A strait, such as the Malacca Strait in Indonesia, is an international waterway where foreign ships and aircraft have the right to pass through for navigation purposes, utilizing the transit passage right.²⁰ The Strait of Malacca is an 890 km long narrow canal that serves as a boundary between the Indonesian island of

¹⁶ Fajar Agus Riyadi, "Indonesia-Malaysia Defense Cooperation to Face the Threats of Strategic Environmental Development," *Theijbmt.Com* 5, no. 5 (2021): 110–14.

¹⁷ José María Fernández-Palacios et al., "Scientists' Warning – The Outstanding Biodiversity of Islands Is in Peril," *Global Ecology and Conservation* 31 (November 2021): 1–19, <https://doi.org/10.1016/j.gecco.2021.e01847>.

¹⁸ Tulus Warsito et al., "Indonesia's Foreign Policy towards Malaysia in the Post Soeharto Era: A Case Study of Ambalat Dispute," *Revista UNISCI* 2020, no. 53 (2020): 95–109, <https://doi.org/10.31439/UNISCI-85>.

¹⁹ Al Amril Othman et al., "Regional Historiography of Malacca Straits and the Civilizational Discourse on Post-Colonial Communities," *International Journal of Advanced and Applied Sciences* 6, no. 11 (2019): 75–80, <https://doi.org/10.21833/ijaas.2019.11.010>.

²⁰ Luh Putu Sudini, Anak Agung Gede Raka, and Tutut Herawan, "Strict Liability Principle Application in the Management of Straits Marine Pollution for International Navigation According to the Indonesia Sea Convention Law," *Journal of Environmental Management and Tourism* 11, no. 7 (2020): 1601–8, [https://doi.org/10.14505/jemt.v11.7\(47\).01](https://doi.org/10.14505/jemt.v11.7(47).01).

Sumatera and the Malay Peninsula. The journey commences at Ujung Baka, located at the utmost northern point of Sumatera, and concludes at Tanjung Piai in Johor, Malaysia, as well as Indonesia's Pulau Karimun Kecil. The Strait of Malacca is among the most heavily trafficked straits globally.²¹ Over 84,000 ships traverse the strait annually, serving as a vital link between the Pacific Ocean and the Indian Ocean. This facilitates economic connections among prominent Asian nations such as Malaysia, Indonesia, Japan, China, Taiwan, and South Korea.

Malacca's development was dependent on its commercial endeavors. Malacca managed to acquire substantial earnings via its trade networks. The foundation of a commerce network is in the act of transferring items across varying geographical locations, including diverse entities. A market is the designated location where traders engage in the exchange and sale of their items. Typically, this is positioned as a pivotal point in commercial networks. The connection between a marketplace and other locations can be conceptualized as a market system. This system has the potential to be implemented on a worldwide scale, similar to the world commerce system.²²

Throughout Raffles' tenure as Lieutenant-Governor of Java from 1811 to 1816, it is clear that Raffles recognized the significant strategic value of the Straits of Melaka and the Straits of Sunda, which divided the archipelago.²³ One of the ongoing boundary issues between the two nations involves the establishment of maritime boundaries that have not been mutually agreed upon. This primarily concerns three specific areas: the section of the Malacca Strait, the segment of the South China Sea, and the segment of the Sulawesi Sea. The conflicts in the three sectors mostly pertain to issues with territorial sea boundaries, the Exclusive Economic Zone (EEZ), the continental shelf, and overlapping claims in waterways, particularly in the vicinity of the Ambalat Block. The occurrence of this overlap arose from the ruling made by the International Court of Justice in 2002, which granted possession of the Sipadan-Ligitan Island to the

²¹ Ruhanas Harun and Sabirin Ja'afar, *Malaysia: A Maritime Nation* (Maritime Institute of Malaysia, 2021).

²² Daya Negri Wijaya, "Malacca Beyond European Colonialism (15th-17th Centuries)" (Faculdade de Letras da Universidade do Porto, 2022).

²³ Peter Carey and Christopher Reinhart, "British Naval Power and Its Influence on Indonesia, 1795–1942: An Historical Analysis," *Journal of Maritime Studies and National Integration* 5, no. 1 (2021): 14–29, <https://doi.org/10.14710/jmsni.v5i1.9343>.

Malaysian government. Similar to the situation in the maritime border region, Indonesia and Malaysia continue to encounter conflicts when it comes to establishing their land boundaries. Nine disputed boundary sites exist between the two parties, including five points in the East Kalimantan region and four points in the West Kalimantan region.

International cooperation plays a crucial role in ensuring security in maritime areas, particularly in choke point locations like the Malacca Strait. This cooperation is essential for effectively utilizing the Malacca Strait for pilotage services. Navigational assistance services in the Malacca Strait are a matter of interest for the three countries along its coast and the International Maritime Organization (IMO). In 1977, Indonesia, Malaysia, and Singapore, located along the Malacca Strait, agreed to the traffic separation in that area. The three nations, characterized by significant convergence yet distinct national objectives, possess the potential for future collaboration. The significance of pilotage in the Malacca Strait and the Singapore Strait has prompted the three neighboring countries to establish a collaborative platform known as the Tripartite Technical Expert Group (TTEG). This group convenes annually to discuss and address pertinent matters.²⁴

The election of President Joko Widodo in the 2014 and 2019 presidential elections, along with his *Nawacita Program*, led to the emergence of the idea of Indonesia becoming a World Maritime Axis (PMD). This is due to Indonesia's advantageous geographical position, which lies at the intersection of global trade routes connecting two continents and two oceans. Extensive infrastructure development is being undertaken in the transportation sector, encompassing sea transportation and the construction of toll roads in Sumatra, Java, Kalimantan, Sulawesi, and trans-Papua. Thus, consolidation is a sustainable economic partnership that will pave the way for strategic and political alliances to help progress development.²⁵

²⁴ Awani Irewati and Indriana Kartini, *Politik Luar Negeri Indonesia Di Era Reformasi* (Yayasan Pustaka Obor Indonesia, 2019).

²⁵ Stuti Bhatnagar and Zahid Shahab Ahmed, "Geopolitics of Landlocked States in South Asia: A Comparative Analysis of Afghanistan and Nepal," *Australian Journal of International Affairs* 0, no. 0 (2020): 1–20, <https://doi.org/10.1080/10357718.2020.1793896>.

Indonesia's territory is partitioned into marine trading zones. Specifically, the northern and western coastal parts of Sumatra are inside the Malacca Strait trade zone, while the remaining portions are categorized as the Java Sea trade zone. According to Hall (2019), marine trade zones (commercial zones) emerged in Southeast Asia around the 14th and early 15th centuries. Essentially, each trade network follows a distinct pattern in the progression of trading goods. The trading patterns will be categorized into five distinct forms: 1) insider trading, 2) foreign trade, 3) maritime trading, 4) canoe trading, and 5) animal-based trading involving cows, buffaloes, and horses. Nevertheless, there were also trade connections established among these commercial networks.²⁶

The coastline is the dynamic interface between the sea and land, subject to constant changes caused by various factors such as tides, erosion, and deposition. These changes occur over both short-term and long-term periods, forming a distinct and fragile environment.²⁷ The coastal area has changed as a result of either natural geological processes or human actions. Numerous techniques exist for monitoring alterations in the coastline. Ground surveying methods incur significant costs and require substantial work. However, remote sensing technologies can be considered the optimal choice. Analysis of the history of monitoring of Malaysian and Indonesian coastal areas shows that both have taken concrete steps to monitor and protect their coastal environments. Monitoring the coastal zone is a crucial undertaking in pursuing sustainable development and safeguarding the environment.

The Straits of Malacca, located in Southeast Asia, serves as a means of connection between the Malay Peninsula (now known as West/Peninsular Malaysia) and other areas in the region, including Java and Borneo. For centuries, the Straits have served as a natural connection between the Malay World, which refers to the Malay Archipelago or Nusantara, encompassing a considerable part of insular Southeast Asia. This 'bridge'

²⁶ Tomi Aris et al., "Predicting Tanjung Piai Coastline Changes Using Digital Shoreline Analysis System Method: Impact of Indonesia's Maritime Security," *Applied Information System and Management (AISM)* 5, no. 1 (2022): 53–62, <https://doi.org/10.15408/aism.v5i1.24863>.

²⁷ Nahdia Nur, "Inter-Island Maritime Trade Dynamics and the Role of KPM of Sulawesi at the Beginning of the 20th Century," *International Journal of Innovative Science and Research Technology* 7, no. 11 (2022): 3–7.

had much greater importance before the nineteenth century, becoming evident as early as the mid-seventh century CE.²⁸

The divergent viewpoints among the littoral governments regarding the legal standing of the Malacca, the legal status of the Malacca Strait is regulated by UNCLOS, which provides transit rights for international ships. Channel led to discord and incongruities in managing spatial planning and mitigating marine pollution in the channel international cooperation with user countries in the context of the Strait of Malacca has not been optimal due to conflicting interests. Applying a normative legal perspective and relying on secondary data from UNCLOS 1982, This international agreement defines the rights and responsibilities of nations concerning their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. And the Declaration of the Three Strait States, it can be concluded that the littoral states have sovereignty over the Malacca Strait. Additionally, the strait is utilized for international navigation through transiting passages.²⁹ This emphasizes the significance of straits and their function in global diplomacy. These sites possess strategic and geopolitical significance and impact the security of surrounding nations, as they grant their possessors the ability to exert control over the flow of traffic. Global waterways are vital for the exchange and movement of goods and people by sea. Hence, any obstruction to the unrestricted and harmonious utilization of these sea routes for global transportation could potentially have detrimental consequences on marine commerce and the global economy. Based on this foundation, distinct legal frameworks have been established and unified to provide seamless maritime transportation.³⁰

These security concerns not only pose a threat to the national security of the three countries involved but also have the potential to disrupt the transportation activities of nations utilizing the strait. According to a report from the International Maritime

²⁸ Ooi Keat Gin, "'Bridge' to 'Fence' A Maritime History of the Straits of Malacca," *Journal of Maritime Studies and National Integration* 6, no. 1 (2022): 1–19, <https://doi.org/10.14710/jmsni.v5i2.9443>.

²⁹ Nanik Trihastuti, Stephanie A. Putri Putri, and Pulung W. H Hananto, "Prevention and Management of Marine Pollution in Malacca Strait through the Littoral States Cooperation," *JE Asia & Int'l L* 13, no. 2 (2020): 379–96.

³⁰ Hasan Kamran Dastjerdi and Narjessadat Hosseini Nasrabady, "Role of Malacca Strait with a Geopolitical and Strategic Approach," *Geopolitics Quarterly* 16, no. 4 (2020): 264–87.

Bureau (IMB), there is a tendency for piracy operations to rise. The waterways of East Asia, the South China Sea, and the Malacca Strait in the Asian region are highly susceptible to a substantial rise.³¹ The Malacca Strait holds significant economic importance due to its strategic value. However, it also faces security challenges, such as marine piracy, which poses a threat to the national security of Singapore, Indonesia, and Malaysia, as well as to countries that rely on the strait. According to data from the International Maritime Bureau (IMB), there is a rising trend in the prevalence of piracy incidents. Similar to the Malacca Strait, the Sulawesi Sea is susceptible to piracy and armed robbery. The waters around the Sulawesi Sea, particularly in areas like the Sulu-Celebes Sea, have seen numerous incidents of piracy and kidnapping for ransom by militant groups. The waterways of East Asia, the South China Sea, and the Malacca Strait in the Asian region are highly susceptible to a substantial rise.³²

4.2. Settlement of Maritime Boundary Disputes in the Malacca Strait and Sulawesi Sea

A state is a legal entity established based on three essential elements: territory, population, and administration. About these primary components, the territory of a nation includes landmass, airspace, and maritime areas.³³ Maritime conflicts have become more frequent over the course of the last several decades, and the fact that these disagreements frequently result in threats or the use of military action provides us with a strong cause to investigate whether or not these conflicts pose a potential threat to democratic peace.³⁴ From a legal standpoint, the sovereignty of a state over an island can be established if there is a consistent and peaceful occupation and administration over a significant duration.³⁵ In the field of international law, there exist

³¹ Agus Priyanto et al., "Indonesian Sea Border Security in Malacca Strait," *Cite: Baltic Journal of Law & Politics* 15, no. 1 (2022): 2022, <https://doi.org/10.2478/bjlp-2022-00039>.

³² Agus Priyanto et al., "Indonesia Maritime Security (Study on Interoperability Inter Institution Indonesia Sea Border Security in Malacca Strait)," *Specialusis Ugdymas / Special Education* 2022, no. 43 (2022): 3353–65.

³³ Ambar Suwardi and Zudan Fakhruulloh, "Regulation and Law Enforcement Aspects of Maritime Security," 2022, <https://doi.org/10.4108/eai.30-10-2021.2315676>.

³⁴ Kelly Daniels and Sara Mc Laughlin Mitchell, "Bones of Democratic Contention: Maritime Disputes," *International Area Studies Review* 20, no. 4 (2017): 293–310, <https://doi.org/10.1177/2233865917740269>.

³⁵ T Z Sherazi, "The Simmering Territorial Dispute In South China Sea: A Legal Perspective," *Multicultural Education* 7, no. 11 (2021): 278–86, <https://doi.org/10.5281/zenodo.5682147>.

two distinct types of disputes: legal disputes, which pertain to matters of law and can be resolved through legal or judicial means, and political disputes, which involve non-justiciable matters and are of a political nature.³⁶ Therefore, there needs to be other efforts to increase awareness of the law.³⁷ Maritime boundaries are complex and often cause tensions among coastal states that must be resolved immediately. This is because every “border dispute” has a complex geography and history.³⁸ Countries are affected by maritime security threats differently depending on their actual geographic location.³⁹ The Strait of Malacca and the Sulawesi Sea, two strategic sea lanes in the Southeast Asian region, should be the focus of attention in resolving the protracted dispute. Leaders and politicians must see that disputes regarding maritime space are increasingly entangled within the country's politics.⁴⁰ In handling this dispute, both countries need to adhere to the principles of international law of the sea, particularly UNCLOS.

The dispute that occurred in the Malacca Strait and the Sulawesi Sea is a dispute that must be resolved as soon as possible. The resolution of this dispute has significant implications for security and stability in the region. The Strait of Malacca and the Sulawesi Sea have rich natural resources and are strategic areas for the surrounding countries. Therefore, resolving disputes in these two regions must be a top priority to ensure that the economic, political, and security interests of all parties involved can be properly safeguarded. A diplomatic approach and constructive dialogue between countries are necessary steps to achieve a just and sustainable solution. Apart from that, active participation from regional and international organizations is also very important in mediating and assisting the process of resolving this dispute. In this way,

³⁶ Maswandi Maswandi, “The Management Of The Border Region In Perspective International Law (Indonesia-Malaysia),” *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (2022): 13–22, <https://doi.org/10.59712/iaml.v1i1.4>.

³⁷ Nur Aini Rakhmawati et al., “Development of Indonesian Condtitutional Question Answering System,” *UPB Scientific Bulletin, Series C: Electrical Engineering and Computer Scienc* 85, no. 4 (2023): 59–68.

³⁸ Dhananjay Tripathi and Sanjay Chaturvedi, “South Asia: Boundaries, Borders and Beyond,” *Journal of Borderlands Studies* 35, no. 2 (2020): 173–81, <https://doi.org/10.1080/08865655.2019.1669483>.

³⁹ Basil Germond, “The Geopolitical Dimension of Maritime Security,” *Marine Policy* 54 (2015): 137–42, <https://doi.org/10.1016/j.marpol.2014.12.013>.

⁴⁰ Andreas Østhagen, “Troubled Seas? The Changing Politics of Maritime Boundary Disputes,” *Ocean and Coastal Management* 205 (2021), <https://doi.org/10.1016/j.ocecoaman.2021.105535>.

peace and stability in the Malacca Strait and Sulawesi Sea can be realized, providing great benefits for the entire Southeast Asia region and the world in general.

In the settlement of maritime boundary disputes, the Convention on the Law of the Sea gives freedom to the disputing state to choose the resolution path. UNCLOS also delimits the processes by which maritime boundary-making is to proceed and how disputes should be addressed.⁴¹ This is contained in Article 287 of UNCLOS 1982, which states that:

1. When signing, ratifying, or acceding to this Convention or at any time thereafter, a State shall be free to choose, using a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
 - (a) the International Tribunal for the Law of the Sea established by Annex VI;
 - (b) the International Court of Justice;
 - (c) an arbitral tribunal constituted by Annex VII; and
 - (d) A special arbitral tribunal is constituted by Annex VIII for one or more of the categories of disputes specified therein.

In addition, Article 279 of UNCLOS provides for the peaceful settlement of disputes:

“States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means...”

We can know in the article that in the settlement of maritime boundary disputes, we must prioritize peaceful settlement. The process of resolving a maritime dispute between countries can be taken through litigation or non-litigation channels. Settlement of maritime boundary disputes between Indonesia and Malaysia in the Malacca Strait area can be carried out, among others:

- (1) Maritime boundaries can be resolved by negotiation, mediation, arbitration, and submission to international judicial institutions such as the International

⁴¹ María Catalina García Ch. and Joyeeta Gupta, “Environmental and Sociocultural Claims within Maritime Boundary Disputes,” *Marine Policy* 139, no. March 2021 (2022): 105043, <https://doi.org/10.1016/j.marpol.2022.105043>.

Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS);

- (2) So far Indonesia and Malaysia are still pursuing bilateral negotiations, the advantage of this negotiation is that the case is entirely in the control of the parties to the dispute, different if submitted to the international court; and
- (3) All parties must understand the nature of negotiations that neither party will get everything they want. Thus, all parties will get even less share because that is the essence of negotiations.⁴² The process of settlement through negotiations is challenging and often diplomatically intensive but brings many benefits that are difficult to achieve through other alternatives.⁴³

From the settlement flow above, we can also analyze the comparison of the current settlement flow for maritime boundary settlement, namely through ICJ and ITLOS. These two institutions have different procedures and mechanisms for completing settlements. These differences help us understand the options available to states in resolving maritime settlements.

4.3. Comparison of Settlement through Litigations (ICJ-ITLOS) and Negotiations

4.3.1. Litigations (ICJ-ITLOS)

After trying to negotiate in good faith, disputing countries can submit their cases for trial at the ICJ or other international courts such as ITLOS. Settlement of these disputes through the International Court of Justice can be a role model in resolving disputes in the Southeast Asia Region. For nations that have ratified the UNCLOS, the litigation pathway is more effective because all countries comply with the treaty, and most countries that are contesting with Indonesia have ratified it.⁴⁴

⁴² Maulidya Yuseini et al., "Penyelesaian Sengketa Laut Antara Indonesia Dan Malaysia Di Wilayah Selat Malaka Menurut Hukum Laut Internasional," *Lentera Hukum* 5, no. 3 (2018): 457, <https://doi.org/10.19184/ejrh.v5i3.7731>.

⁴³ Eddy Pratomo and Jonathan Kwik, "Good Agreements Make Good Neighbours: Settlements on Maritime Boundary Disputes in South East Asia," *Marine Policy* 117, no. April (2020): 103943, <https://doi.org/10.1016/j.marpol.2020.103943>.

⁴⁴ Nur Arissa Izzati, Chusnul Qotimah Nita Permata, and Miftah Santalia, "Assessing the Effectiveness of Settling Indonesian Sea Border Disputes through Litigation and Non-Litigation Paths," *Lex Scientia Law Review* 4, no. 1 (2020): 1–17, <https://doi.org/10.15294/lesrev.v4i1.38261>.

Dispute resolution at the ICJ brings concern to the disputing state. It is a widely held belief that litigation invariably involves risks for the parties involved and that the range of legal conclusions available to the court is more restricted than the number of possibilities available to the parties involved in the negotiation process.⁴⁵ Additionally, when parties appear before courts that apply international law, they function under particular frameworks that are not flexible, give little room for creativity, and tend to constantly favor one side while failing to take into consideration the interests of other participants.⁴⁶ However, the use of the judiciary is often seen as abdicating the role of the judiciary as the main judicial institution of the United Nations (UN) organ and has triggered negative reactions from various countries, scholars, and the civil public.⁴⁷ Various gambling avoidance techniques that can be used by the ICJ, Proposes categorization based on impact: benefit avoidance, problem avoidance, and different standards of review.⁴⁸

4.3.2. Negotiations

Negotiation efforts have also become a proposal as a settlement process.⁴⁹ This is in line with the mandate of article 283 of UNCLOS 1982 concerning Obligations to Exchange Views, which:⁵⁰

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

⁴⁵ Arif Ramadhan and Mohammad Abdul Latief Kareem, "How to Resolve the Overlapping Maritime Claims in International Law? Comparing Barbados Trinidad vs Tobago Case and Indonesia-Malaysia Cases," *International Law Discourse in Southeast Asia* 1, no. 2 (2022): 185–216, <https://doi.org/10.15294/ildisea.v1i2.58392>.

⁴⁶ *Ibid.*

⁴⁷ Felix Fouchard, "Allowing 'Leeway to Expediency, without Abandoning Principle'? The International Court of Justice's Use of Avoidance Techniques," *Leiden Journal of International Law* 33, no. 3 (2020): 767–87, <https://doi.org/10.1017/S0922156520000230>.

⁴⁸ *Ibid.*

⁴⁹ Angkasa Dipua et al., "An Analysis Of The South China Sea Conflict: Indonesia's Perspectives, Contexts And Recommendations," *PalArch's Journal of Archaeology of Egypt/Egyptology* 17, no. 4 (2020): 976–90.

⁵⁰ Article 283 of the United Nations Convention on the Law of the Sea 1982

The negotiation process is one of the processes chosen by Indonesia and Malaysia, which reached an agreement to end the conflict over maritime boundary disputes in the Strait of Malacca and the Sulawesi Sea. However, concerns about the negotiation process are a question regarding the efficiency of the agreement that has been made by Indonesia and Malaysia. Dispute resolution through negotiation offers many positive benefits for both countries because:

1. Both parties conduct negotiations directly.
2. They have the freedom to determine the resolution method based on mutual agreement.
3. The resolution procedures can be directly monitored and overseen by the parties involved.
4. Negotiation avoids public attention and domestic political pressure.
5. In negotiations, the parties strive to find solutions that are acceptable and satisfactory to all, achieving agreements that benefit both sides (win-win solution).⁵¹

In the process, of course, negotiation is one way to resolve disputes peacefully. It should also be noted that the most important thing in negotiations to pay attention to is including a clause in the agreement about the steps they must take to minimize the possibility of disagreements regarding the interpretation or application of the agreement, and how they should proceed if disputes still arise. Some of the principles known in the peaceful resolution of disputes are:

a) The principle of good faith (*bona fides*)

Pada principle of good faith, the involved parties must exhibit sincere intentions when resolving conflicts. This commitment to good faith is evident throughout the dispute resolution process, encompassing two key stages: firstly, efforts to proactively prevent disputes from arising, and secondly, the resolution of disputes through internationally acknowledged methods like

⁵¹ Ummi Yusnita, "Penyelesaian Sengketa Batas Laut Antara Indonesia dan Malaysia Dalam Perspektif Hukum Internasional," *Bina mulia Hukum* 7, no. 1 (July 30, 2018): 96-106, <https://doi.org/10.37893/jbh.v7i1.17>.

mediation, negotiation, conciliation, arbitration, court proceedings, or any other mutually agreed upon means.

b) The principle of prohibiting the use of violence in dispute resolution

The parties engaged in international disputes are strictly forbidden from seeking resolution through violent means or the utilization of weapons. It is expressly prohibited for disputing parties to resort to the use of force or arms in addressing their conflicts. This prohibition extends to any attempts to employ physical aggression or weaponry as a method of settling disputes, emphasizing the unequivocal prohibition on resorting to violence during the resolution process of international conflicts.

c) The principle of freedom of choice of law applied in the subject matter of the dispute

If international disputes between the involved parties find resolution through judicial means, the parties are granted the autonomy to exercise their freedom in selecting the applicable law about the subject matter of the dispute. This discretion allows the disputing parties to make a deliberate and mutually agreed-upon choice regarding the legal framework governing the issues in question. The freedom to designate the applicable law in such circumstances empowers the parties to tailor the resolution process to their specific needs and preferences.

d) The principle of agreement of the disputing parties (consensus)

The foundational aspect supporting the application of the freedom to choose both the method of dispute resolution and the governing law on the subject matter of the dispute lies in the fundamental principle of consensus between the parties involved in the dispute. This principle underscores the significance of arriving at a mutual agreement or understanding among the disputing parties. It forms the bedrock upon which the broader concept of freedom to choose is constructed, emphasizing that the parties, through consensus, have the authority to make informed decisions regarding the methodology employed for dispute resolution and the specific legal framework applied to the matters in contention.

e) The principle of exhaustion of local remedies

By this fundamental principle, before the aggrieved party escalates its dispute to the international arena, an avenue is provided wherein the national court is allowed to address and redress the grievances. Following this guiding principle, the party sensing injustice in the dispute is granted the chance to seek a remedy within the national judicial system before resorting to international channels. This approach underscores the importance of exhausting local or domestic remedies as a preliminary step before pursuing resolution at the international level, aligning with the overarching emphasis on utilizing national courts to address disputes initially.⁵²

The negotiation process is one of the processes chosen by Indonesia and Malaysia, which reached an agreement to end the conflict over maritime boundary disputes in the Strait of Malacca and the Sulawesi Sea. In the process, of course, negotiation is one way to resolve disputes peacefully. However, it should be noted that to overcome unsustainable tensions in a region, understanding the interrelationship of the environment, culture, language, and regional security is required.⁵³

5. Conclusion

Resolving maritime border disputes through long-standing negotiations in the Malacca Strait and Sulawesi Sea provides new hope for Indonesia and Malaysia to reach a just and sustainable solution. Collaborative efforts involving various parties, both at regional and global levels, are very important in ensuring maritime security and encouraging the resolution of maritime boundary disputes in the Southeast Asia region. Through close cooperation, the two countries can strengthen diplomatic relations and create greater stability in the region. However, the ongoing negotiation process between Indonesia and Malaysia has not yet reached the expected final stage. There are various challenges and differences of opinion that must be overcome to reach

⁵² Yordan Gunawan et al., "Perspective of International Law on Maritime Territorial Dispute: Case Between Kenya and Somalia," *Jurnal Hukum Unissula* 37, no. 2 (2021): 69-84, <https://doi.org/10.26532/jh.v37i2.16241>.

⁵³ Alexander E. Davis et al., "International Relations and the Himalaya: Connecting Ecologies, Cultures and Geopolitics," *Australian Journal of International Affairs* 75, no. 1 (2021): 15-35, <https://doi.org/10.1080/10357718.2020.1787333>.

a final agreement. Therefore, apart from ongoing negotiations, dispute resolution can be considered through other internationally recognized mechanisms. ICJ, ITLOS, and even International Arbitration are alternatives worth considering in resolving disputes and can provide solutions that are more definitive and acceptable to both parties. This approach is expected to speed up the settlement process and ensure justice for all parties involved.

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