

Marine Biodiversity Joint Exploitation Agreement in the Border Area of the Continental Shelf between Coastal States

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Abstract: In the era of globalization, which is characterized by trade liberalization and increasingly fierce competition between nations, all economic sectors must be able to produce goods and services that are highly competitive. Indonesia, as the largest archipelagic country in the world, Indonesia has a large and diverse marine economic potential. The state must be able to utilize the economic potential and coastal and marine resources optimally by considering aspects of environmental sustainability and sustainability. Coastal and marine biological resources have a substantial chance of experiencing species extinction. This is due to the many exploitation cases from several parties that occur due to overlapping regulations regarding marine areas. Sources of such disputes are directed to be used as cooperation objects by entering into agreements on joint exploitation or joint development. The method in this research is normative. The purpose of this study is to minimize and resolve disputes that occur between countries, especially Indonesia, related to the protection of natural resources by entering into agreements on the division of marine areas and increasing the role of local communities.

1 INTRODUCTION

In the era of globalization, which is characterized by trade liberalization and increasingly fierce competition between nations, all economic sectors must be able to produce goods and services that are highly competitive. As the largest maritime and archipelagic country globally, Indonesia has a large and diverse marine economic potential. The development of the national economy that continues to grow will increasingly depend on the potential of the marine economy. The state must be able to utilize the economic potential and coastal and marine resources optimally by considering aspects of environmental sustainability and sustainability.

The marine area has enormous uses and benefits for people's lives and livelihoods. The high marine biodiversity can reflect the economic potential of these coastal and oceanic waters. The intrinsic value of natural resources, namely as wealth or economic assets for current and future generations. Coastal and marine biological resources have a huge chance of experiencing species extinction. This is mainly because marine biological resources can be shared or common property or anyone can use them at any time (Djamali, 1998). This condition will encourage

people to use these resources as much as possible, without the proper limit of responsibility.

Utilization of natural resources located under and around the boundary line of the sea, or also known as transboundary natural resources. Strictly classified as transboundary natural resources that exist from the seabed or under the seabed that extends from the boundary line on both sides of the continental shelf, so that natural resources from the continental shelf of the one party, either in whole or in part, can be exploited from the other party's continental shelf. In general, border areas contain natural resources that can be developed to strengthen community resilience and are the basic capital and opportunities for accelerating the development of their respective regions. Likewise, in marine areas where the boundary line is still a dispute. Some dispute arised due to the problem of exploitation of its natural resources (Johnson). In areas that do not yet exist or where agreement has not been reached on maritime boundaries or overlaps, a Joint Exploitation Agreement is needed to share the benefits of marine resources between states.

2 RESULTS AND DISCUSSION

2.1 Marine Biodiversity Joint Exploitation

The sea zonation had occurred since the 15th century when there was an agreement between Portugal and Spain with their power to divide the world's seas. Both of them were the great power of the time which was very influential. In the 20th century, the effort to control this sea continues. In 1945 America took even more aggressive steps. President Harry S. Truman proclaimed that the seabed around the American mainland was under American jurisdiction, so that they had the right to take advantage of their existing resources. This statement is known as the Truman Proclamation, which was followed by other Latin American countries. In 1957, Indonesia declared the archipelagic concept through the Djuanda declaration.

The phenomenon of sporadic claims to marine areas, in 1958, the United Nations felt the need for an arrangement of control over the sea. The first United Nations Conference on the Law of the Sea resulted in the United Nations Convention on United Nations Conference on the Law of the Sea 1958 (Arsana, 2016). In its development, there was an increase until the latest convention was agreed, namely the United Nations Conference on the Law of the Sea 1982, which has now been recognized (ratified) by 159 countries and one European Union (Arsana, 2016). Awareness of the protection of the marine environment has begun to grow among the states participating in the convention, especially regarding the exploitation of natural resources on a large scale in the marine environment and prevention of water pollution that occurs due to vessel accidents marine debris discard. Continental shelf boundaries agreement, dispute resolution regarding the boundary line of the continental shelf, or the failure of the parties to reach the boundary line of the continental shelf still leaves some problems (Law of the Sea Bulletin, 1998).

2.2 Joint Exploitation as Dispute Settlement

If the exploitation is carried out individually by each party, a dispute will likely arise. In the state's practices, the settlement of this dispute is made by some cooperation by the parties. An agreement settles the dispute on joint exploitation or joint development.

In the first case, the agreement is a continuation of the agreement on the boundary line of the continental shelf. In contrast, in the second case, the agreement is an alternative to the failure of the parties to agree on the boundary line of the continental shelf. In the doctrine, literature, or practice of countries, such an agreement is called a joint exploitation agreement or a joint development agreement.

Through this agreement, the natural resources that are the object of cooperation in the continental shelf boundary area or the overlapping continental shelf area are legally used as a single unit of deposit to be further exploited together following or based on the provisions of the agreement that they have agreed (Harrison, 2007). Regarding problems that were initially potential sources of conflict, they were changed and directed into sources of cooperation. The cooperation generally includes exploration, exploitation, and sharing of profits derived from exploiting natural resources in the area for the parties—agreement on joint exploitation or joint development as a continuation.

Suppose the boundary line of the continental shelf is determined based on the decision of the international dispute resolution body (judicial or arbitration body), of course. In that case, the nature of the agreement regarding the transboundary exploitation of natural resources is no different from that based on the pre-existing continental shelf boundary line agreement (Harrison, 2007). It's just that the legal basis is the decision of the dispute resolution body itself. It is different if the conclusion of the international dispute settlement body does not correctly determine the boundaries of its continental shelf but only affirms the principles and rules of international law that can be applied, such as the decision of the International Court of Justice in the North Sea Continental Shelf Case, 1969. In this case, the definite boundary line of the continental shelf must be determined in advance by the parties concerned in the form of an agreement based on the decision of the dispute settlement body (Law of the Sea Briefing Book).

In general, the agreements on the continental shelf boundary line in one of their articles emphasize the agreement of the parties to effectively exploit transboundary natural resources located around the continental shelf boundary line itself (Anglo vs French Cases 1977, Guinea vs Guinea Bissau Case 1985.)

This kind of provision in the agreements concerning the boundary line of the continental shelf provides a legal basis for the parties concerned to follow up by entering into agreements on joint

exploitation or joint development. However, suppose an agreement on the boundary line of the continental shelf does not explicitly stipulate it. In that case, the parties may agree on joint exploitation or joint development if natural resources are found that cross borders on the boundary line of the continental shelf (Borgerson, 2009). However, the object of these agreements, in general, is all or any transboundary natural resources, so they are not limited to oil and natural gas only. However, in practice, it turns out that natural resources in the form of oil and natural gas are the most commonly found as natural resources that cross borders. Because of its nature, it also makes it a natural resource that, if exploited from the side of the continental shelf on one side, will also be used on the other side (Borgerson, 2009).

Treaties on the boundaries of the continental shelf directly and explicitly define oil and natural gas. However, there are also agreements on the continental shelf boundary which only mention in general terms natural resources, without explicit mention of specific natural resources. Because each natural resource has different characteristics, each type of natural resource found across borders requires its arrangement in an agreement on joint exploitation or joint development. In other words, the setting is casuistic. So it is not possible for all- natural resources found across borders to be regulated in one agreement on joint exploitation or development (Jakobsen).

In this case, the arrangement of natural resources in the overlapping continental shelf area can also be regulated in the form of an agreement or agreement. However, the agreement is no longer a continuation of the agreement on the continental shelf boundary line because the agreement on the continental shelf boundary line itself does not yet exist. Such an agreement is only an alternative taken by the parties in exploiting their natural resources while waiting for an agreement on the boundary line of the continental shelf. In other words, the agreement is temporary (Jakobsen). If the agreement is an alternative to the absence of an agreement on the boundary line of the continental shelf in the overlapping area, then while exploiting its natural resources, the parties can continue to negotiate to reach an agreement on the boundary line the continental shelf. This agreement is sufficient to meet the wishes of countries whose continental shelf borders, especially in exploiting their natural resources across borders. This is evidenced by the increasing number of such agreements (Agoes, 1991). Thus, the potential for conflict between the parties can be accommodated and transformed into a collaboration. This is a positive step both in bilateral relations between the

two parties or in increasing cooperation between countries in the region (Agoes, 1991).

On December 11st, 1982, UNCLOS established the basic principles for marine management, including making national regulations to conserve living resources in the open sea and cooperating with other countries in the conservation and management of living resources in the high seas, establishing the outer edge of the continental margin. Article 83 paragraph 3 of the 1982 United Nations Law of the Sea Convention does not exist in the 1958 Convention on the Continental Shelf. However, in the agreement or agreement on joint exploitation or joint development, this can be accepted in the state's practices. This is evident from the agreements on the continental shelf boundaries in various regions of the world held between 1958 and 1982 and even later. Many of those agreements included provisions whose content and spirit was the basis for joint exploitation agreements. joint development. Some of them have been followed up by holding joint exploitation or joint development agreements. Likewise, countries that fail to reach an agreement on the boundary line of the continental shelf take an alternative by agreeing on joint exploitation or joint development.

In addition, the existence of an agreement on joint exploitation of this accelerates the process of utilizing natural resources from the area for the sake of the parties' national interests. This treaty resolves the problems left by the treaty on the boundary line of the continental shelf as described above. If the parties stop at the agreement on the boundary line of the continental shelf, it is equivalent to leaving one crucial issue that may arise at some point in the future. Even if the parties fail to reach an agreement on the determination of the continental shelf boundary line, without waiting for the birth of an agreement on the continental boundary line which has failed to be reached, the parties can proceed directly to form an agreement or agreement on joint exploitation or development as an alternative to failure.

Local wisdom in creating sustainable development is due to the high awareness of individuals from the world community on the importance of development that preserves and protects the environment. In addition, local wisdom developed by indigenous peoples or indigenous peoples is considered capable of bridging development demands while still creating healthy environmental conditions. The world community's trust in the effectiveness and efficiency of the role of local wisdom in creating harmony between development activities (economics) and ecological sustainability (ecology) was accommodated in

Agenda 21 and the Convention on Biological Diversity in Rio De Janeiro in 1992.

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3 CONCLUSIONS

Whereas the provisions in the legislation relating to marine living resources, and currently in force, are more oriented towards the used-oriented approach, they have not considered aspects of the conservation of marine living resources and their marine environment resource-oriented and ecosystem principles. The technical and scientific aspects of protecting the sustainability of marine living resources and the marine environment, in general, are increasingly affecting the nature of their regulation, so the determination of technical measures must be made as flexible as possible to accommodate the development of the marine ecosystem science.

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