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Testing the Suitability of the Indonesian and Vietnamese Baselines Under UNCLOS

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Abstract

The method for drawing baselines for the determination of maritime areas has been regulated in UNCLOS through three legal baselines, namely Normal Baselines, Straight Baselines, and Archipelagic Baselines. Respectively these approaches have been modified to suit the typical geographic features of a coastal state. However, the determination of baselines by several states is inconsistent with applicable regulations and has the potential to cause disputes with neighboring states. Indonesia has established straight baselines based on archipelago theory, on the other hand, Vietnam has established straight baselines. This article tries to identify the suitability of determining the baseline from Indonesia and Vietnam based on UNCLOS provisions and concludes that there was a violation of Article 7 of UNCLOS by Vietnam.

Keywords: Indonesian baseline; maritime boundary; maritime delimitation; UNCLOS; Vietnamese baseline

A. INTRODUCTION

The 1982 United Nations Convention on the Law of the Sea (hereinafter referred to as UNCLOS), is significant progress in contemporary international law regarding the maritime regime which establishes a set of orders in the law of the sea to manage systems that have the possibility of disputes between states in interactions in modern international society. A set of rights and obligations of states has been outlined in the provisions of UNCLOS.² Nowadays, 168 countries are participating in the UNCLOS.³ Most of the provisions in this convention are a collection of customary international law that are recognized to exist, and this makes non state

parties such as Iran and the United States still able to be bound by them.⁴

Challenges, both potential conflicts, and conflicts that have occurred, that are faced by maritime states today can be overcome through the practice of the ordinance of the Convention, showing that UNCLOS is a fundamental tool and is respected by state parties and non-state parties.⁵ After going through a long and tortuous process from 1975 to 1982, a consensus has been reached internationally, given a large number of States parties, that defines the Continental Shelf and the Exclusive Economic Zone (hereinafter referred to as EEZ) as general principles, which give states the authority to manage the

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² Damos Dumoli Agusman & Citra Yuda Nur Fatihah, Celebrating The 25th Anniversary of UNCLOS Legal Perspective: The Natuna Sea, *Indonesian Journal of International Law*, Vol. 17, No. 4, 2020, p. 539.

³ UNCLOS 1982, Chapter XXI. Accessed 8 December 2022,

https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en

⁴ Anthony Aust, *Handbook of International Law 2nd Edition*, Cambridge: Cambridge University Press, 2010, p.279.

⁵ Secretary-General's remarks to Meeting of State Parties to the UN Convention on the Law of the Sea on the 25th anniversary of its entry into force [as delivered], United Nations Secretary-General, accessed 8 December 2022, <https://www.un.org/sg/en/content/sg/statement/2019-06-17/secretary-generals-remarks-meeting-of-state-parties-the-un-convention-the-law-of-the-sea-the-25th-anniversary-of-its-entry-force-delivered>

economic potential in the coastal area as well as fishing rights preferential stretches from the coast seaward for up to 200 miles.⁶ The establishment of new norms regulating the EEZ and Continental Shelf in UNCLOS grants coastal states the right to extend their territorial jurisdiction and exercise sovereignty beyond traditional boundaries to reap economic benefits in those areas.⁷ Coastal states can expand their maritime domain and exercise exclusive control over it.

The initial step in maritime territorial expansion is to determine the base points, which will then serve as reference points for drawing the baseline. This step is a unilateral action by a state, taking into account its respective geographic conditions. However, it should be emphasized that the procedures for establishing maritime boundary lines are regulated in UNCLOS. Three valid and recognized methods for drawing baseline according to this convention are the Normal Baseline as per Article 5, Straight Baseline as per Article 7, and Archipelagic Baseline as per Article 47. Each of these approaches has been modified to suit general geographic conditions, characteristic of coastal states.⁸

Indonesia and Vietnam are two neighboring countries involved in maritime border disputes. The borderline of the Continental Shelf of the respective states was established through a bilateral agreement in 2003, but the boundaries of the EEZ are still unresolved. Overlapping claims in the North Natuna Sea region have made relations between these states experience ups and downs.

Based on Government Regulation Number 38 of 2002, Indonesia uses a combination of methods to determine the baseline, namely, Archipelagic Straight Baselines, Normal Baselines, Straight Baselines, Bay Closure Lines, River Estuary Closing Lines, Canals and Kualas, and Closing Lines at Ports.⁹ Meanwhile, Vietnam uses a straight baseline that connects coordinate points on three islands, namely Conson Island, Hon Khoai Island, and Dao Phu Quy Island.¹⁰

Delimitation of maritime boundaries is a complicated procedure, and globally, numerous maritime boundaries still require delimited. Determination of baselines that do not comply with the rules in UNCLOS can be considered detrimental to neighboring states. In certain cases, unresolved delineation issues can escalate into disputes, either regarding territorial sovereignty, overlapping maritime rights, or both,¹¹ and it is the choice of the parties to the dispute, whether it will be resolved bilaterally or using channels based on article 287 (1) for settling such disputes.¹² The option to resolve maritime border disputes due to the establishment of baselines that do not conform to international norms was pursued by *Nicaragua v. Colombia*, which brought their dispute to the ICJ. One of the ICJ's judgments stated that the straight baseline established by the Republic of Nicaragua did not comply with customary international law, and therefore, it affected the determination of each country's maritime zones.¹³

This article attempts to examine unilateral actions in determining the baselines

⁶ W. Michael Reisman, "Straight Baselines in International Law: A Call for Reconsideration. Proceedings of the Annual Meeting", *American Society of International Law*, vol. 82, 1988, at. 260. JSTOR, <http://www.jstor.org/stable/25658428>. Accessed 12 Dec. 2022.

⁷ Anne Hsiu-An Hsiao, *Unilateral Actions and the Rule of Law in Maritime Boundary Disputes*, Brill: Asian Yearbook of International Law, Vol. 22, 2016, at. 237.

⁸ Rebecca Strating and Joanne Wallis, "Maritime sovereignty and territorialisation: Comparing the Pacific Islands and South China Sea", *Marine Policy*, Volume 141, 2022, p. 29.

⁹ Article 2 Regulation of The Government of The Republic of Indonesia Number 38 of 2002 on List of Geographical

Coordinates of the Base Line Points of the Indonesian Archipelago

¹⁰ Statemen of 12 november 1982 by the government of the socialist republic of vietnam in the territorial sea baseline of vietnam

¹¹ Victoria Mitchell, "Maritime Boundaries and Maritime Security", in: Lisa Otto (eds), *Global Challenges in Maritime Security an Introduction*, Switzerland: Springer Cham, 2020, p. 114

¹² Andreas Østhagen, "Troubled Seas? The Changing Politics of Maritime Boundary Disputes", *Ocean and Coastal Management* 205, 2021, p. 2.

¹³ Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment of 21 April 2022, available at

of each states. Besides the Introduction and Conclusion, the main part of this article is divided into the following sections. The first part will provide an interpretation of the provisions in UNCLOS in drawing baselines based on eminent publicists and landmark-related cases. The second part tries to identify the suitability of determining the baselines from Indonesia and Vietnam based on UNCLOS provisions.

B. INTERNATIONAL LAW CONCERNING BASELINE DETERMINATION METHODS

The provisions of the maritime zone in UNCLOS give authority to archipelagic states to draw straight baselines under certain conditions according to their geographical conditions. Baselines have a very important role for a states because it is from there that the outermost boundaries of the territorial sea, contiguous zones, EEZ, and continental lines of the outer limits of the shelves are measured. Furthermore, coastal State may in turn establish baselines using one of the procedures outlined in the articles to accommodate various circumstances. Nonetheless, baselines are not always used as a baseline for establishing maritime boundaries, this must be emphasized. We will not discuss the normal baseline method as this method is not used by either Indonesia or Vietnam.

1. Straight Baselines (Article 7 UNCLOS)

Article 7 UNCLOS regulates several terms and conditions that must be fulfilled by a coastal state to use the straight baseline drawing approach.¹⁴ This article repeats almost in its entirety the construction of article 4 of the 1958 Law of the Sea Convention which was born from the Decision of the

Norwegian Anglo Fisheries Case by the International Court of Justice. Straight baselines can be used for drawing baselines on the coast that have deeply indented and truncated geographic contours, or those with surrounding island fringes.¹⁵ Straight baselines must be drawn subject to requirements relating to the common direction of the shore, the connectivity with the land for areas of the sea that lie within the lines subject to the inland waters regime, the use of low tide elevations, and the access of other States to their territories EEZ or high seas.¹⁶

In other words, Straight baselines are artificial geometric patterns, created to connect basepoints around coastal areas as an alternative way of showing baselines under certain conditions, such as deep indentations or uneven island coasts.¹⁷ This methodology is a model that defines the sea area by combining several suitable places, often the outermost extension of land geography or coastal watermarks by connecting selected places in a straight line, and the line is placed in the sea area preferably over naturally occurring coastal low-water marks.¹⁸

The straight baselines concept is constructed to ward off the operation of rules related to normal baselines and river mouths and bays because in practice it will give rise to complicated territorial sea patterns. Application of this concept must submit and conform under international law that coastal states may only use the straight baseline technique provided the contour of the coastal pattern complies with the requirements of Article 7 UNCLOS,

<https://www.icj-cij.org/sites/default/files/case-related/155/155-20220421-jud-01-00-en.pdf>

¹⁴ Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries*, New York: United Nations, 2000, para. 30.

¹⁵ Office for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, New York: United Nations, 1989, p. 17.

¹⁶ Blake, G. (Ed.), *Maritime Boundaries and Ocean Resources 1st edition*, London: Routledge Revivals, 1987, pp. 40-41.

¹⁷ Waseem Ahmad Qureshi, "State Practices of Straight Baselines Institute Excessive Maritime Claims", *Southern Illinois University Law Journal*, Vol. 42, No. 1, 2018, p. 434.

¹⁸ Robin Rolf Churchill & Alan Vaughan Lowe, *The Law of the Sea 2nd edition*, Manchester: Manchester University Press, 1988, p.33.

among low-water marks should be used to draw straight baselines, however, Article 7 paragraph 1 does not clearly state this. Instead, it is commonly recognized that points should be put on the sea territory's outermost extensions rather than toward their inner seas. Article 7 UNCLOS, paragraph 2, addresses this premise and eliminates any confusion by referencing low-water markers and stating that they should be used to establish straight baselines.¹⁹ To date, no generally accepted objective tests have been developed to enable experts to agree on the identification of indented beaches. However, it is generally agreed that there must be several loopholes that individually meet the requirements that make up a juridical bay, although there may be other, less prominent curves associated with them.²⁰

The phrase "deeply indented" can be applied absolutely or relatively, as an illustration, that a narrow indentation about five nautical miles across a wide area of terrain like the main island might not deserve to be described in depth, but if the narrow indentation were placed on an islet ten miles wide it would cut it in two.²¹ The term "indentation" can be referred to as a deep indentation in the shoreline. Beach configuration must be very indented and asymmetrical, besides that the beach also has a small curvature and varies along the coastline. The term "Deeply" is defined as "extremely", or "to a great depth". The element jutting into the land area becomes very important. Then the phrase "deep indentation" is a condition indicating curvature of the coast must penetrate the shoreline extremely and unusually. The opinion of the ICJ in this regard also implies the

same interpretation, that coast is said to be very indented and dissected, as in the case of East Finnmark, or around the area bordering the Skjaergaard archipelago along the western part of the shore, the baseline not suitable to the low water mark and more suited to be measured through geometric construction methods.²²

The phrase "a fringe of islands along the coast in its immediate vicinity" is an extension of the phrase adopted in the judgment of the Anglo-Norwegian Fisheries case, which denotes the area where the coast is bounded by the island. There are no general parameters for testing so-called peripheral islands around the coast, however, states must adhere to the general spirit set out in article 7. The position of fringe islands must be in a row "along the coast", and this term does not conform to islands in a position like stepping stones perpendicular to the beach. What could be called "along the coast" are islands that occur as a single unified form with the coastal, or islets that form a sail covering most of the coast from the sea.²³

The descriptive phrase "in its (the coasts) immediate vicinity" commonly admits that with a territorial sea area across 12 miles, a distance of around 24 miles will fulfill the requirements. The use of straight baselines must not deviate too far through the common direction of the shore, and the maritime territory located within those lines shall be tightly connected with the terrain area that is obedient to the inland waters regime.²⁴

¹⁹ Waseem Ahmad Qureshi, *Op.Cit.*, p.435.

²⁰ Office for Ocean Affairs and the Law of the Sea, *Op.Cit.*, p.18.

²¹ Office for Ocean Affairs and the Law of the Sea, *Op.Cit.*, p.18.

²² Johan Henrik Nossu, *Straight Baselines of Vietnam, Master Thesis of Law*, Centre for Development and the

Environment: University of Oslo, 2000, (unpublished theses), p.38.

²³ Office for Ocean Affairs and the Law of the Sea, *Ibid*, p. 21.

²⁴ Office for Ocean Affairs and the Law of the Sea, *Ibid*, p.22.

2. Archipelago Baselines (Articles 47 UNCLOS)

The UNCLOS contains arrangements regarding the terms, obligations, and rights of archipelagic states. An archipelagic state is defined as a country that consists entirely of one or more islands and may include other islands, as explained in article 46 of UNCLOS.²⁵ A group of islands can be referred to as an archipelago if the group consists of islands and waters and other natural features that are closely related to each other as a single unit so that the islands, waters, and other natural features form a single intrinsic politics, geographical, and economic, or historically it has been regarded as such.²⁶ In this world, only a few states that are recognized as archipelagic states can use the method of drawing archipelagic baselines stipulated in article 47 of UNCLOS and must meet geographical criteria in determining archipelagic baselines. Indonesia is one of the states included in the internationally recognized archipelagic states.

The rules in article 47 are divided into nine paragraphs which contain arrangements for the use of archipelagic baselines, safeguards for neighboring states that may be affected, as well as the recording and announcement of the archipelagic baselines.²⁷ Paragraphs one to three of article 47 stipulate five conditions that must be met by archipelagic baselines.²⁸ The archipelago baseline encompassing the main islands and sea areas at least equal to the land area covered but not exceeding nine times the area of the island, each segment on the baseline does not have a length of more than 125 nautical miles but it is permitted to have a baseline

segment that has a length exceeding 100 nautical miles provided that the number is a maximum of 3 per percent of the entire segment, and finally, the direction of the baselines must follow the general configuration of the islands but in some cases, it may be allowed to deviate to a certain extent.²⁹

The term "main island" may be interpreted differently in different states. The main island can be interpreted as having the biggest, the greater population, the most productive and advantageous economically, or important either in a historical or cultural sense.³⁰ One test requires that baselines must be encompassing a large sea area not less than the land it covers but must not exceed nine times the land area.³¹ The next requirement is that baselines must conform to the general configuration of the islands and must not deviate too far, the same as the requirements in Article 7 UNCLOS which require that baseline must be drawn under and follow the common course of the shore.³² Basepoints that can be linked to the baselines comprise both low tide elevations that lie within the breadth of the territorial sea as measured from the land and low tide elevations that lie outside that distance if elevated by lighthouses or identical installations.³³

Similar to the method for determining straight baselines, archipelagic baselines are not allowed to be made in a complicated and manipulative manner to provide benefits to the states and intersect the territorial sea or EEZ of a neighboring state. The sixth paragraph discusses the situation where a state has archipelagic waters located between two parts of

²⁵ UNCLOS 1982, article 46(a).

²⁶ UNCLOS 1982, article 46(b).

²⁷ Division for Ocean Affairs and the Law of the Sea, *Op.Cit*, para.41.

²⁸ Division for Ocean Affairs and the Law of the Sea, *Ibid*, para.42.

²⁹ Office for Ocean Affairs and the Law of the Sea, *Op.Cit*, p.36.

³⁰ Division for Ocean Affairs and the Law of the Sea, *Op.Cit*, para.43.

³¹ Blake, G. (Ed.), *Op.Cit*, p.47.

³² Office for Ocean Affairs and the Law of the Sea, *Op.Cit*, p.36.

³³ Office for Ocean Affairs and the Law of the Sea, *Op.Cit*, p.36.

adjacent states.³⁴ This event arose in conditions between mainland Malaysia and Sarawak by the expansion of Indonesian waters in the area around the Bunguran Islands and Anambas Islands in the North Natuna Sea.³⁵ In this situation, the archipelagic state must continue to respect the rights of neighboring states and all the traditional interests of citizens of neighboring states which are carried out in good faith by neighboring states. Respect for these rights and interests is determined based on an agreement between the two parties.

C. INDONESIAN AND VIETNAMESE BASELINE UNDER INTERNATIONAL LAW

One of the important issues in the maritime field today is the establishment of maritime boundaries by the state as a way to secure its territorial rights based on the modern law of the sea. The determination of maritime zones must follow international law regulated in UNCLOS because it relates to the jurisdiction and authority of a country in the area which includes the territorial sea, EEZ, and continental shelf. In practice, unilateral actions by a country in establishing maritime zones often lead to overlapping claims with neighboring states. This issue is included in the process which is quite sensitive politically. This will have a direct impact, not only on upholding the sovereignty of a state within national jurisdiction, but also on the rights and interests of these states concerning access to resources in the mineral and hydrocarbon, marine and fisheries sectors, sea and air traffic over the territory, and any kind of uses of ocean resources for economic purposes.³⁶

Except for Antarctica, the entire surface of the earth's land is now divided into national jurisdictional mastery by each state, most of which occurred in the last one and a half centuries as a result of the activities of European states. Although maritime boundary disputes still commonly occur, the trend is towards formal agreements and progressive demarcation on the ground.³⁷ Disputes between Indonesia and Vietnam started from differences in the method of drawing baselines in determining the EEZ in the Natuna Sea. Based on Government Regulation Number 38 of 2002, Indonesia uses an amalgamation of the existing approaches in UNCLOS to draw baselines that are in accordance with the characteristics of the territory, namely Straight Archipelagic Baselines.³⁸ Meanwhile, Vietnam uses a straight baseline that connects coordinate points on three islands, namely Conson Island, Hon Khoai Island, and Dao Phu Quy Island.³⁹ The way the baseline was drawn resulted in overlapping EEZs of the two states, and the dispute has not been resolved until now.

1. Indonesian Baseline

The legal basis for the Indonesian Sea is contained in several regulations. Indonesian legislation on the continental shelf is contained in Act No. 1 of 1973,⁴⁰ Act No. 5 of 1983 on the Indonesian exclusive economic zone established a 200 nm EEZ,⁴¹ then, Act No. 6 of 1996, regarding Indonesian Waters established a 12 nm territorial sea and addressed Indonesia's archipelagic waters.⁴² Indonesia has also ratified the 1982 United Nations Convention on the Law of the Sea

³⁴ Vivian Louis Forbes, *Indonesia's Delimited Maritime Boundaries*, Heidelberg: Springer Berlin, 2014, p.17.

³⁵ *Ibid*, p.37.

³⁶ Division for Ocean Affairs and the Law of the Sea, *Op.Cit*, para.4.

³⁷ Gerald Blake (Ed.), *Op.Cit*, p.2.

³⁸ Article 2 Regulation of The Government of The Republic of Indonesia Number 38 of 2002 on List of Geographical Coordinates of the Base Line Points of the Indonesian Archipelago

³⁹ Statemen of 12 november 1982 by The Government of The Socialist Republic of Vietnam in The Territorial Sea Baseline of Vietnam

⁴⁰ Law of The Republic of Indonesia Number 1 of 1973 on the Indonesian Continental Shelf

⁴¹ Law of The Republic of Indonesia Number 5 of 1983 on the Indonesian Exclusive Economic Zone

⁴² Law of The Republic of Indonesia Number 6 of 1996 on the Indonesian Waters

(UNCLOS)⁴³ and ratified the 1994 Agreement Relating to the Implementation of Part XI of the Convention.⁴⁴

On February 18, 1960, the Government of Indonesia decreed straight baselines for the republic.⁴⁵ The Republic of Indonesia as the largest archipelagic state in the world uses straight baselines within the framework of the archipelago theory. Indonesia claims an area of approximately 8,000 nm from the outer limits which are on the outermost islands in Indonesian territory which include at least 666,100 nm of inland waters and not less than 98,000 nm of territorial waters.⁴⁶ This system links points on the outer islands, as well as covers a large area of the sea as the inland sea, and includes many straits that are important for the world's shipping lanes in the region.

Subsequently, Government Regulation no. 37 of 2008 which revised Government Regulation no. 38 of 2002 announced the geographical coordinates of the Indonesian archipelago baselines.⁴⁷ The Indonesian archipelagic baseline system consists of 192 baseline segments, consisting of 160 straight archipelagic baselines and 32 normal baselines. The straight archipelagic baselines range in length from 0.51 nm (segment 97-98) to 122.75 nm (segment 44-45), with a total length of 6,920 nm.⁴⁸ This regulatory document also contains the rights and obligations for aircraft and ships of other states that

use the right of innocent passage through designated official archipelagic sea lanes.

The archipelagic baseline system adopted by Indonesia is consistent with the requirements set out in Article 47 of UNCLOS. Indonesia easily fulfills the expression of the main islands. The main Indonesian islands that are used as baselines, such as Kalimantan, Java, Sulawesi, Sumatra, and Papua,⁴⁹ can meet the requirements of being superior in a historical or cultural sense, the most economically productive island, or the most populous island, the largest island.

Following article 47(2), five basic segments of Indonesia are longer than 100 nm, but no defined segments are longer than 125 nm. Those segments i.e. the segments connecting basepoints 20 and 21, 44 and 45, 54 and 55, 142 and 143, and 155 and 156, account for 2.6 percent of the total number of segments.⁵⁰ Only two line segments are 122.7 and 123.2 nautical miles long. This occurs between baselines 59–60 and 71–72 but is within the tolerances given in this provision.⁵¹ Annex 1 Regulation No. 37 of 2008 contains a description of the geographical coordinates and the length of each segment. Regarding the rule regarding 3% of the total baseline segment whose length is allowed to exceed 100 nautical miles, because there are no rules regarding the limit on the number of segments that can be set, a state can determine as many segments

⁴³ Law of The Republic of Indonesia Number 17 of 1985 on Ratification of the United Nations Convention on The Law of The Sea

⁴⁴ Presidential Decree of The Republic of Indonesia Number 178 of 1999 on Ratification Agreement Relating to The Implementation of Part XI of The United Nations Convention on The Law of The Sea of 10 December 1982

⁴⁵ Government Regulation In Lieu of Law Number 4 of 1960 on the Indonesian Waters

⁴⁶ Bureau of Intelligence and Research, *International Boundary Study, Limit in the Sea: Straight Baseline Indonesia*, Washington: Department of State USA, 1971, p.2.

⁴⁷ Regulation of The Government of The Republic of Indonesia Number 37 of 2008 on Amendment To Regulation of The

Government of The Republic of Indonesia Number 38 of 2002 on List of Geographical Coordinates of the Base Line Points of the Indonesian Archipelago

⁴⁸ *Ibid.*

⁴⁹ Kementerian Luar Negeri, About Indonesia, accessed 8 December 2022, https://kemlu.go.id/frankfurt/en/pages/sekilas_tentang_indonesia/4695/etc-menu.

⁵⁰ Appendix 1 Regulation of The Government of The Republic of Indonesia Number 37 of 2008 on Amendment To Regulation of The Government of The Republic of Indonesia Number 38 of 2002 on List of Geographical Coordinates of the Base Line Points of the Indonesian Archipelago

⁵¹ Vivian Louis Forbes, *Loc.Cit.*

as possible to comply with these rules by following the prevalent composition of islands and do not violate these provisions. The more segments that are made, the shorter the length produced by each segment.⁵²

Furthermore, based on the requirements contained in article 47.3 of UNCLOS, it seems that Indonesia's baseline configuration does not deviate much from the prevalent composition of an archipelagic state.⁵³ Indonesia is an archipelagic state that has the right to determine baselines connecting the most distant points whose positions are on the outermost islands and dry coral reefs, as well as for islands that are scattered within the archipelago.⁵⁴

None of Indonesia's baselines are noticeable to be delineated by using low tide elevation under Article 47.4 UNCLOS. Points connected by baselines to assemble all segments in the archipelago, do not use low tide elevations whose position is within the territorial sea, and also do not use low tide elevations that are on the outside of the area, unless only used at points elevated by a lighthouse or similar installation.⁵⁵

In conclusion, the Indonesian archipelago baseline system as stipulated in PP No. 37 of 2008 in general can be considered to comply with the provisions in Article 47 UNCLOS. Except for one situation that is not following Article 47.5 UNCLOS, namely Indonesia's baseline intersects the territorial sea of an adjacent state, namely Timor Leste. In 2012 Timor-Leste rejected two segments of the Indonesian archipelago baseline based on their cut-off effect.⁵⁶

Adhering to the principle of an archipelagic state in drawing straight baselines to cover its territory, Indonesia lists 200 geographic coordinate points located at the forefront, small islands, coral reefs, and low tide. All segments can be divided into five sectors, the first sector from basepoint 1 to 35, the second sector from basepoint 36 to 81, the third sector from basepoint 82 to 113, the fourth sector from basepoint 114 to 115, and the fifth sector from basepoints 116 to 195.⁵⁷ In relation to the boundary line to determine Indonesia's EEZ which overlaps with Vietnam, the first sector becomes important to examine.

The first sector started from base point 1 located at Tanjong Berakit on Bintan Island, this sector was expanded to base point 35 located at Tanjong Datu, on the western tip of the land border between Indonesia and Malaysia in the Sarawak region, North Kalimantan. Straight lines link the starting points of this sector which are located on the outer coastline of islands, small islands, and coral reefs, including the Anambas and Natuna Islands. The 35 line segments have a length of 1334.7 M and an average length of 38.13 M, and the shortest segments are at basepoints 1 and 2 which have a length of 12.0 M, while the longest is at basepoints 15 and 16 which have a length of 85,7 M.⁵⁸ This sector is a doorstep that effectively closes access from the north to the Java Sea and includes several small island groups that are separate and isolated within the territory of Indonesia. Concerning base points 1-35, referring to the previous general analysis of all basepoints which are the starting points

⁵² Vivian Louis Forbes, *Ibid*.

⁵³ Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas No. 141 Indonesia: Archipelagic and other Maritime Claims and Boundaries*, Washington: Department of State USA, 2014, p. 3.

⁵⁴ Victor Prescott and Clive Schofield, *The Maritime Boundaries of The World 2nd Edition*, Leiden: Martinus Nijhoff Publishers, 2014, p.173.

⁵⁵ Victor Prescott and Clive Schofield, *Ibid*, p.174.

⁵⁶ Kevin Baumert & Brian Melchior, *Ocean Development & International Law*, London: Routledge, 2015, p.66.

⁵⁷ Vivian Louis Forbes, *Op.Cit*, p.19.

⁵⁸ Vivian Louis Forbes, *Op.Cit*, pp.20-21.

of the established baselines, there is no infringement of the stipulation in article 47 of UNCLOS.

Concerning maritime border in parts of the North Natuna Sea, Indonesia has signed a maritime boundary bilateral agreement with Vietnam, which was finalized in 2003, delimiting the continental shelf with a line extending approximately 250 nm connecting the northern ends of the two shelf boundaries. However, for EEZ restrictions, the two states have not yet reached an agreement.

2. Vietnam's Baseline

The Socialist Republic of Vietnam on May 12, 1977, declared its maritime area which includes the territorial sea, contiguous zone, EEZ, and continental shelf. Vietnam uses a straight baseline system used to determine from which maritime boundaries will be measured.⁵⁹ Furthermore, on November 12, 1982, the Vietnamese government issued an official statement regarding the establishment of baselines used to determine the width of the territorial sea,⁶⁰ giving the exact geographic coordinates of any specified base point. The system does not include geographic coordinates on points that are in areas bordering the maritime jurisdictions of Cambodia and China. The total area of internal waters claimed under this system enclosed an area of about 27,000 square nm equivalent to 93,000 square km. The 1982 declaration as an application of the previous statement regarding Vietnam's territorial waters in 1977, shows Vietnam's policy in

determining its maritime area based on a straight baseline system.⁶¹

The straight baseline system unites 10 segments, and 11 baselines named A1 to A11 along the Vietnam coast, have a total length of 846.0 nm. The shortest distance is 2.0 nm the longest is 161.8 nm, and the average distance between basepoints is 84.6 nm. The position of the nine base points is on the island where the average distance is 39.4 nm from the mainland and the farthest distance from the mainland is 80.7 nm, namely point A6 which is on Hon Hai Island.⁶²

Concerning Vietnam's claim to maritime territory based on straight baselines, the America Government protested the declaration, in an *aide memoire*, In essence, it contains a statement reminding Vietnam that the practice of using the straight baseline system must be following customary law and international conventions, that a state can use the straight baseline method if the state is a coastal state and is merely used in places where the shoreline is very indented and intersect, or when there are islands along the surrounding coast.⁶³ In this case, the general direction of the coast becomes the benchmark in determining the baseline determined by the coastal state and may not deviate far from it. The opinion expressed by the Government of the United States of America to the Government of the Socialist Republic of Vietnam is that the system used by Vietnam in determining baselines does not meet these requirements and there is no solid basis in modern international law. The United States government

⁵⁹ Socialist Republic of Vietnam, 1977, Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf of Vietnam. accessed 8 December 2022, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/VNM_1977_Statement.pdf

⁶⁰ Socialist Republic of Vietnam, 1982, Statement of 12 November 1982 by the Government of the Socialist Republic of Viet Nam on the Territorial Sea Baseline of Viet Nam.

accessed 8 December 2022, https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/VNM_1982_Statement.pdf

⁶¹ Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas No. 99 Straight Baseline: Vietnam (Washington: Department of State USA, 1983), p.8.

⁶² *Ibid.*

⁶³ J. Ashley Roach & Robert W. Smith, *Excessive Maritime Claims 3rd edition*, Leiden: Martinus Nijhoff, 2012, p.58.

firmly rejected the maritime claims of the Government of the Socialist Republic of Vietnam.

Further analysis is the position of several base points located on islands along the coast of Vietnam far from the mainland. The main focus of the analysis is the position of the base points in the Phu Quy Islands (Catwick Islands), Tho Chu, and Con Dao, which are each about 50 nm from the mainland, and their segments are between 99 - 160 nm long.⁶⁴

The next issue in Vietnam's straight baseline is, Vietnam claims a system of ten straight baselines, at an undetermined end in the Gulf of Thailand adjacent to Cambodia, position point 0 on the high seas, and the direct line connecting the Poulo Wai Island to Tho Chu Islands.⁶⁵ The results of an analysis conducted by the United States Department of State's Geographic Office stated that the point set by Vietnam was not measured from the low tide elevation with a permanent structure or the high tide elevation, so the baseline at point 0 can be said to have violated UNCLOS article 7.⁶⁶

A coastal state must meet the geography test if it will apply a straight baseline system in delineating maritime zones. The deeply indented and cut-into requirements are met when the indentation meets the semicircular test and there are at least three indentations. According to the US Department of State, the indentations must account for at least 70% of the coast in any baseline segment.⁶⁷ The baseline segment between basepoints A6 and A8 covers a change in the coastal configuration. The coast in the southern part is quite even, featuring only mere curvatures, while in the north there is a

system of islands and indentations.⁶⁸ This leads to a situation where the whole baseline must be rejected since it does not fulfill the requirement of the coastal segment's geographical configuration. Although there is no exact percentage of how much of the coastal segment must be covered by curves to make a straight baseline valid, it can be concluded that the Vietnam baseline drawn from basepoints A6 to A7 is not valid, due to the length of the beach section without deep indentations.

The Vietnamese government has drawn straight baselines from base points A5 and A6 which are on Con Dao Island and Hon Hao Island. These basepoints are located 51.5 and 74.2 nm from shore, respectively.⁶⁹ Another condition of Article 7 is that the fringe of islands shall be situated along the shore. This shall be interpreted as a condition based on the direction so that straight baselines are valid, the edges of the islands that delimit the coast must have the same direction as the general coastline. The vague character of Article 7 gives little guidance as to how the directional trend criterion should be understood. In this baseline segment, there are only two islands, and the basepoints are situated on these islands. Taking into account the considerable distance from the mainland, the condition that a fringe of islands should cover a certain proportion of the coast is clearly not fulfilled. In conclusion, the islands are not in the vicinity of the shore, and the preliminary tests were not met.

The baselines off the southeastern coast of Vietnam have their basepoints situated on the islands of Bay Chan, 51.5 nm from the terra firma (A5), and Hon Hai, 74.2 nm (A6)

⁶⁴ Bureau of Intelligence and Research, *Op.Cit*, 1983, p.10.

⁶⁵ J. Ashley Roach & Robert W. Smith, *Op.Cit*, p.73.

⁶⁶ Bureau of Intelligence and Research, *Op.Cit*, 1983, p.7.

⁶⁷ Bureau of Intelligence and Research, *Limits in the Seas No. 106 Developing Standard Guidelines for Evaluating Straight Baseline*, Washington: Department of State USA, 1987, p.5.

⁶⁸ Johan Henrik Nossu, *Op.Cit*, 2000, p.62.

⁶⁹ Johan Henrik Nossu, *Op.Cit*, 2000, p.90.

from the terra firma.⁷⁰ These baselines, which cover a coastline of 275.1 nm, are opposite the southern part of the disputed Spratly Islands.⁷¹ If we assume that the islands in the Spratly area cannot generate an EEZ or continental shelf on their own, then the Vietnamese EEZ or continental shelf claim would cover almost the entire island group, thus creating a huge overlap with the claims of the Philippines, Malaysia, and Brunei. They also have a bearing on the overlapping claims between Vietnam and Indonesia, north of Natuna. The significance of the Vietnamese baselines should therefore not be underestimated. If the baselines were drawn from the low-water mark of the shore, an area of up to 31,850 square nautical miles would have to be left out of the Vietnamese claim.⁷² Here, the Vietnamese waters are entire without islands, so the distance between the basepoints and the mainland is only constituted by sea. It is therefore highly unlikely that these baselines satisfy the condition of the internal water. The westernmost Vietnamese baselines of 1982 are probably illegitimate due to the internal character condition (A1-A2 and A5 – A6).

Others argue that there are two situations in the context of Vietnam's baseline, both the result of a 1982 law. The first situation is on the north-south line that closes off the Gulf of Tonkin and appears to bend out to sea for more than 200 miles. The intersecting lines extending to Hon Co Island are more than 60 miles long. All of the Gulf of Tonkin is closed to international traffic. The second situation, as a consequence of the first situation, is that within the boundaries of competition with the PRC,

which belongs to Hon Co Island, this line is strictly drawn in the interests of Vietnam. Of course, collective claims to what should be the common heritage diminished proportionately as Vietnam shifted the baselines seaward away from the mainland.⁷³

D. CONCLUSION

Balancing the factors that influence the use of a particular baseline method will show that various aspects must be included in the calculation. Considerations related to the geological approach, unique geographical aspects of the coast, and other aspects related to opinions about any sedimentary unit. These aspects can be the basic arguments in the decision-making process that are adapted to the factual situation, even though they are not entirely correct.⁷⁴

In practice, the archipelagic baseline system used by Indonesia in general still complies with the provisions in Article 47 UNCLOS. However, Indonesia needs to discuss bilaterally and equalize perceptions regarding the aftermath of its archipelagic baselines cutting through the territorial sea of Timor-Leste.⁷⁵

On the other hand, there are many examples of state practices using straight baselines drawn that are violating modern international law. The United States protests most of the straight baseline claims by coastal states that violate the provisions in UNCLOS Article 7(1). These violations include straight lines drawn from the coastline that is not indented and cut or do not have island edges along the coast. At least one of two geographical conditions must be met by a coastal state before it can apply the straight baseline rule to define its maritime area.⁷⁶

For areas along the coastline that meet the required conditions, the next step that must be taken is to determine the appropriate

⁷⁰ Bureau of Intelligence and Research, *Op.Cit.*, 1983, p. 4.

⁷¹ Bureau of Intelligence and Research, *Ibid.*, p. 6.

⁷² W. Michael Reisman & Gayl S. Westerman, *Straight Baselines in International Maritime Boundary Delimitation*, London: Palgrave Macmillan, 1992, p. 107.

⁷³ Gayl S. Westerman, *Straight Baselines in International Law: A Call for Reconsideration*, Pace University: Pace Law Faculty

Publications, 1988, at.268. <http://digitalcommons.pace.edu/lawfaculty/230/>

⁷⁴ North Sea Continental Shelf Cases 1969, para. 94.

⁷⁵ Bureau of Oceans and International Environmental and Scientific Affairs, *Op.Cit.*, p. 11.

⁷⁶ W. Michael Reisman & Gayl S. Westerman, *Op.Cit.*, p.136.

base point for establishing a straight baseline that can be drawn as a maritime zone boundary. The base points to be determined shall refer to the provisions in Article 7 paragraphs 2 to 6 of UNCLOS. Apart from physically finding the base point, it must be established that three requirements are met. First of all, the general direction of baselines must not deviate from the common direction of the shore (paragraph 3). Furthermore, the waters on the landward side of the baselines must be close enough to the coast to be subject to the inland waters regime (paragraph 3), and lastly, baselines may not cross to other state territorial seas (paragraph 6).⁷⁷

If these requirements can be met, the coastal state can use straight baselines. However, if one of the requirements is not satisfied then a supplementary provision can be possible to use on provides article 7 paragraph 5. A straight baseline can still be drawn if there are distinct economic interests in the area that significantly support community life. Because Vietnam's coastline generally does not meet these three conditions and does not provide support for the extreme baseline system as stipulated by the Vietnamese government, it is paragraph 5 that has been used to serve as the legal argument for Vietnam's current straight baseline system. Nevertheless, the provisions in paragraph 5 need to be linked to the EEZ provisions set out in UNCLOS. This becomes quite certain that opinions about the EEZ, territorial sea, and contiguous zones can be related and are important factors for the economic interests of communities around the coast. The provisions of Article 7(5) can be interpreted as a residual from a time when the coastal state only owned territorial waters and had no rights over the EEZ. Thus, economic interests that are dominant and have a strong influence on people's lives which are used as the basis for arguments for controlling the sea area as inland waters and pushing EEZ claims further

out to sea, must be accompanied by evidence to support this argument.⁷⁸

A common breach of Article 7 is those straight baselines drawn to link islets are far enough from the main island's coast. Generally, the islets in such cases are too far away from the coast or not enough in number to entitled the characteristics of a fringe near the coast. Instances of improperly defined straight baselines along part or all of the coast of Malta, Vietnam, Ecuador, Colombia, Iran, France, Iceland, Guinea, and Italy.⁷⁹ Although there are no detailed standards that are accepted and established internationally to clearly define the terms contained in article 7 of UNCLOS, only certain coastal states that have geographical conditions of coastline that can meet the requirements for straight baselines.⁸⁰ However, the current practice of states in determining straight-line boundaries, in many ways violates international law and deviates from the guidelines that serve as guidelines for drawing straight baselines. Claims for straight baselines that are not following international law will impact the international community's right to utilize sea resources and air space above them. One of the visible consequences is that the use of straight baselines has created a large inland water area that will legally become a territorial sea, where freedom of overflight and sea navigation should be exercised in this area.⁸¹

The baselines in the south-eastern region of southern Vietnam's A5 and A6 base points, which are 161.4 nm long and 70 nm away from the main island, should be examined more closely. Vietnam has established a straight baseline that is far from the coast so it does not comply with the requirements in article 7 of UNCLOS. The coast does not have deeply indented contours, and there are no groups of islands along the coastline. Thus it can be concluded that the baseline set is invalid even though it is submitted based on arguments of economic interest. Vietnam can lawfully draw a straight

⁷⁷ Johan Henrik Nossu, *What Vietnam Could Gain from Redrawing its Baselines*, IBRU Boundary and Security Bulletin, Winter 2001-2002, p.97

⁷⁸ *Ibid*, p.98

⁷⁹ Blake, G. (Ed.), *Op.Cit*, p.43.

⁸⁰ W. Michael Reisman & Gayl S. Westerman, *Op.Cit*, p.133.

⁸¹ J. Ashley Roach & Robert W. Smith, *Op.Cit*, p.44.

baseline that is not too extreme based on the curve in the Mekong River delta following the provisions in UNCLOS article 7 (2). This article allows for establishing straight baselines drawn across river mouths in deltas.

Analysis of the straight baseline system on the Vietnamese coastline shows that the baseline has been established illegally and is not consistent with international law. It is a well-established fact that many authors state that some of the provisions of UNCLOS were not complied with by Vietnam and that its maritime zones were defined under a system that did not fully comply with article 7.⁸² A more detailed observation of the geographical conditions of the coast in Vietnam provides evidence that only a small portion of baselines have been established, namely in the area immediately south of baseline A7 to baseline A9 with coordinates between 11° to 14° north latitude, that meets the requirements and can be justified to draw straight baselines following Article 7 UNCLOS.⁸³

Here we must equate the perception that the unique economic interests in the coastal area cannot be directly used as a justification for using a straight baseline in the absence of a deep enough coastal indentation and many or groups of islands along the coast. Unique economic interests can only be used as a reinforcing reason for implementing the basic system if the preliminary tests can be met first.⁸⁴ When Vietnam tries to defend the use of Vietnam's baseline by using the provisions of UNCLOS Article 7 (5) and based on economic interests justifying its actions, it must be accompanied by strong evidence and can show the existence of historic titles held in the past.⁸⁵ Arguments in favor of a direct baseline based on economic interests, without first passing a preliminary test, are unacceptable under modern international law and must be rejected. This argument is laden with political interests and motives to control natural resources but lacks a proper legal basis.⁸⁶

Vietnam has no support from other states regarding the view that a baseline should be drawn by connecting the outermost points of its territory, either on the continent or on its outer islands.⁸⁷

Provisions on article 279 of UNCLOS state that the resolution of disputes between States Parties regarding the application or interpretation of the articles in this convention is carried out peacefully following Article 2, paragraph 3, UN Charter, and for this purpose the parties use settlement methods such as contained in Article 33, paragraph 1 of the UN Charter.⁸⁸ Indonesia and Vietnam must find a middle ground in negotiating the EEZ's delimitation boundaries that are disputed by the two states to maintain tranquility in the Southeast Asian region, desire, and a shared spirit to live in an area that has lasting peace, security, and stability. Taking into account the legal analysis of the baseline determination for each state that has been stated above, the parties must be aware of their respective positions in the perspective of international law.

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⁸² Johan Henrik Nossu, *Op.Cit*, 2001-2002, p.101

⁸³ Johan Henrik Nossu, *Op.Cit*, 2000, at.67.

⁸⁴ Office for Ocean Affairs and the Law of the Sea, *Op.Cit*, p.26.

⁸⁵ Johan Henrik Nossu, *Op.Cit*, 2001-2002, p.99.

⁸⁶ R. Platzöder, *Second Summary Records, 7th Meeting Third United Nations Conference on the law of the sea*, New York, Oceana, 1982, p.389.

⁸⁷ Johan Henrik Nossu, *Op.Cit*, 2001-2002, p.99.

⁸⁸ Anne Hsiu-An Hsiao, *Op.Cit*. p.246.

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