

## INDONESIA'S DEFENSE OF SEBATIK ISLAND IN A BORDER DISPUTE BASED ON THE PRINCIPLE OF UTI POSSIDETIS

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 Ryan Phillip Azarya<sup>4</sup>, Meria Utama<sup>5</sup>, and Rizka Nurliyantika<sup>6</sup>

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| Article   | Abstract  |
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| <p><b>Keywords:</b><br/>           Uti Possidetis, Sebatik Islands, Border Dispute</p> <p><b>DOI:</b><br/>           10.28946/scsls.v2i1.3566</p> | <p>Indonesia is the largest archipelagic country on the Asian continent, with more than 17,000 islands. The government has yet to identify many small and outermost islands in detail. Identifying these outer islands further emphasizes the sovereignty of the Republic of Indonesia regarding the location of the country's borders. Border areas are an essential aspect because they are a marker of a country's jurisdiction. Border areas are an arena for interactions between global and local communities that occur every day. Indonesia has several disputes with neighboring countries about the outer islands directly adjacent to it. Sebatik Island is one of the disputed islands. Meanwhile, Indonesia obtained its territory according to colonial jurisdiction. Sebatik Island which was obtained based on the Uti Possidetis principle. The research method used is normative juridical, examining library materials through norms, rules, legal principles, and doctrine. Among them are the Technical Aspects of the United Nations Convention on the Law of the Sea (TALOS) and the United Nations Convention on the Law of the Sea (UNCLOS). This paper examines Indonesia's potential to defend Sebatik Island using the Uti Possidetis principle. This principle holds that the territories of former colonies should be recognized as independent states with the same borders they had prior to colonization. By invoking this principle, Indonesia sought to assert its rightful claim to Sebatik Island and protect its sovereignty. This legal precedent has been recognized by many countries and has been used to resolve other border disputes around the world.</p> |

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## A. INTRODUCTION

In 1957, Indonesia was declared an archipelagic state consisting of various large to small islands with an estimated total of 17,505 islands and an area of 7.7 million km<sup>2</sup>. The sea area, with a ratio of two-thirds of the area reaching 5.8 million km<sup>2</sup>, dominates compared to the land area of only 1.9 million km<sup>2</sup>. In addition, as an archipelagic country, Indonesia's sea territory is directly adjacent to several neighboring countries such as Malaysia, Singapore, Thailand, Vietnam, Papua New Guinea, Australia, Palau, and Timor Leste.

The Sebatik Island, a significant part of the territorial disputes between Indonesia and Malaysia, is a prime example of potential conflicts that arise due to misunderstandings and political reasons involving local residents.<sup>1</sup> The unclear delimitation of Indonesia's territorial waters with neighboring countries such as Malaysia has led to conflicts over the determination of territorial sea boundaries, resulting in border disputes. The Sebatik Island region is a case in point, where the dispute is fueled by different interpretations of the unclear boundaries and the absence of a clear boundary determination, leading to overlapping claims between the two countries.

The historical context plays a crucial role in the territorial dispute on Sebatik Island. The island, once part of the Sultanate of Sulu, later became a colony of the British and Dutch. The changes in power dynamics after Indonesian independence further complicated the territorial claims of both countries, adding a layer of historical complexity to the dispute.

On December 21, 1979, Malaysia unilaterally issued a new chart with the outer limits of its excessive maritime claims in the Sulawesi Sea and Kalimantan Sea to have a legal aspect. This map is detrimental to Malaysia's neighboring countries because of the determination of the baseline and base point in determining its territorial boundaries. This is undoubtedly contradictory in international relations, where the state should notify the base points and baselines of its territorial sea to other countries. International law recognizes that determining the boundaries of the two countries must pay attention to the relevant principles of international law. One of them is the principle of equal sovereignty, the principle that does not harm both parties and reasonable provisions, and the principle of peaceful settlement of disputes. Malaysia's actions are considered an attempt to seize territory and invite protests from neighboring countries such as the Philippines, Singapore, Thailand, China, Vietnam, and Indonesia. Despite being involved in disputes with several countries, such as the Spratly Islands territorial dispute by the Philippines and China and the dispute over Batu Puteh Island by Singapore, Malaysia continues establishing the 1979 Map as the official map that applies today.

The location of Sebatik Island in East Kalimantan province is the object of dispute between Indonesia and Malaysia related to overlapping territorial sea boundary claims. Legally, the determination of territorial sea boundaries is closely related to the sovereignty of a country's territory. Technical grounds are needed as a basis for determining territorial sea boundaries, and international law as a basis is also required, such as the Technical Aspects of the United Nations Convention on the Law of the Sea (TALOS) and the United Nations Convention on the Law of the Sea (UNCLOS) precisely in Article 15 concerning the determination of territorial sea boundaries using the equidistance principle.<sup>2</sup>

The difference in position owned by each country in the qualification position is that Indonesia is a coastal and archipelagic state, while Malaysia is only a coastal state. The effects

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<sup>1</sup> Baskoro Wicaksono, "Penguatan Wilayah Perbatasan : Studi Kasus Pulau Sebatik Kabupaten Nunukan Provinsi Kalimantan Timur," *Jurnal Ilmu Pemerintahan* 2, 15AD, 144.

<sup>2</sup> Agus Hendra Gunawan, "Analisis Teknik Batas Laut Teritorial Antara Indonesia Dan Malaysia Dengan Metode Ekuidistan (Studi Kasus: Perairan Pulau Sebatik, Kalimantan Timur)," *Jurnal Chart Datum* 2, no. 1 (2016): 30.

of the rights in determining the use of the baseline, where coastal states can only use the normal baseline. However, suppose the coastline protrudes by the provisions of UNCLOS 1982. In that case, it can use a straight baseline, unlike the case with an archipelagic country that uses an archipelagic baseline by connecting the points of the outermost island.

According to the background explanation above, several issues are considered to arise due to the Indonesia and Malaysia Sebatik Island dispute, such as how the process of resolving the Sebatik Island dispute between Indonesia and Malaysia and how the effectiveness of the Uti Possidetis principle in supporting Indonesia to defend Sebatik Island?

The following issues will be discussed further in this paper, titled "Indonesia's Defense of Sebatik Island in a Border Dispute Based on The Principle of Uti Possidetis".

## **B. RESEARCH METHODS**

The research method used in this research is a qualitative normative method, a significant approach in the field of international maritime law. This method involves a discussion that refers to documents, regulations, and other references relevant to international maritime law issues.<sup>3</sup> It explores how normative provisions relating to naval borders between countries are established, and how normative regulations on international maritime law and the provisions contained therein relate to maritime borders between countries. This normative juridical approach is a cornerstone of our research, commanding respect in the field.

The collection of legal materials will be conducted through a comprehensive search for literature both online and offline. Online literature, which includes journals, legal magazines, newspapers, and the Ministry of Foreign Affairs website, will be selected based on their relevance, credibility, and recency. Offline literature, sourced from books, will be chosen for their authoritative nature and in-depth coverage. The collected legal material will then be analyzed and grouped based on the categories of discussion, given meaning, explained and connected with concepts related to the core of the problem, and defined descriptively with the deductive-inductive method to find answers to problems.

## **C. ANALYSIS AND DISCUSSION**

### **1. Settlement Dispute of Sebatik Island between Indonesia and Malaysia**

The historical backdrop of the Sebatik Island dispute between Indonesia and Malaysia can be traced back to the era of Dutch and British colonization. The issue of land boundaries, which was initially addressed by the colonial powers, continued to be a point of contention even after their departure. Despite the agreement between Indonesia and Malaysia to resolve the land boundary issue, there are still 9 (nine) border points in Kalimantan that remain undetermined since 1985, known as the Outstanding Boundary Problems (OBP).<sup>4</sup>

The boundary problems between the two countries eventually resulted in a complex dispute settlement between the two parties. There are 2 (two) types of international dispute resolution in international law, namely legal disputes (legal or judicial disputes) and political disputes (political or nonjusticiable disputes).<sup>5</sup> Theoretically, in principle, international disputes can always be resolved by international courts. Based on decency and fairness (*ex quo et bono*).

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<sup>3</sup> Irwansyah and Yunus Ahsan, *Penelitian Hukum Pilihan Metode Dan Praktik Penulisan Artikel*, 4th ed. (Yogyakarta: Mirra Buana Media, 2021).

<sup>4</sup> Ditjen Pemerintahan Umum Departemen Dalam Negeri, "Kumpulan Hasil Pelaksanaan Survei Dan Penegasan Batas Wilayah Indonesia - Malaysia Di Kalimantan Tahun 1975-1995" (Jakarta, 2004).

<sup>5</sup> Huala Adolf, *Hukum Penyelesaian Sengketa Internasional* (Jakarta: Sinar Grafika, 2006).

Article 33 of the 1899 Hague Convention divides the peaceful settlement of disputes into 2 (two) parts: diplomatic settlement, in the form of negotiation, mediation, and goodwill; and legal settlement, in the form of arbitration and court.

In this section, the author summarizes the research result based on the problem of the writing. The author must accurately arrange the research results to evade similarity in the article. The conclusion of the writing comes into comparison, cause and effect, prediction, and another way depending on the problem variable.<sup>6</sup> According to the 1982 Convention on the International Law of the Sea (UNCLOS 1982), dispute settlement is regulated in Chapter XV on Settlement of Disputes in Article 279. The article reads:(India and the United Nations Convention on the Law of the Sea, 1995):

*"States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means by Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter."*

The article explains dispute settlement as recommended in Article 33, paragraph (1) of the UN Charter, which reads:

*"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."*

The article states that disputes should be resolved by amicable means in the form of negotiation, mediation, conciliation, and arbitration in a manner agreed by the parties.<sup>7</sup> In the case of the Sebatik Island dispute, the 'Uti Possidetis Juris' principle was considered for determining the boundary between Indonesia and Malaysia.'Uti Possidetis' is Latin for 'as you possess', a principle derived from Roman law. It stipulates that territory and other assets follow their original owner at the end of a conflict, as presented in a treaty. This principle aims to prevent the claim of a territory based on terra nullius (no man's land).<sup>8</sup>

The principle was also affirmed by the International Court of Justice (ICJ), which applies to a former colony outside of Burkina Faso vs. Republic of Mali case regardless of the legal and political status of the entity on the other side of the border.<sup>9</sup>

*"The territorial boundaries which have to be respected may also derive from international frontiers which previously divided a colony of one State from a colony of another, or indeed a colonial territory from the territory of an independent State, or one which was under the protectorate, but had retained its international personality. There is no doubt that the obligation to respect preexisting international frontiers in the event of State succession derives from a general rule of international law, whether or not the rule is expressed in the formula of Uti Possidetis"*.

According to international law, the boundary between two countries must be based on an agreement reached between the two countries. State boundaries can arise on land and water areas. In particular, land boundaries can be either boundaries determined by natural conditions such as mountains, rivers, or seas), or boundaries defined by artificial conditions such as pillars or stakes, fences, or imaginary lines.<sup>10</sup> In this case, Indonesia and Malaysia have made concerted

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<sup>6</sup> Ibid.

<sup>7</sup> Perserikatan Bangsa-Bangsa, "Piagam PBB.Pdf" (1945).

<sup>8</sup> Arifin Saru, "Pelaksanaan Asas Uti Possidetis Dalam Penentuan Titik Patok Perbatasan Darat Indonesia Dengan Malaysia," *Jurnal Hukum Ius Quia Iustum* 16, no. 2 (2009): 183-204, <https://doi.org/10.20885/iustum.vol16.iss2.art2>.

<sup>9</sup> Ibid.

<sup>10</sup> Suryo Sakti Hadiwijoyo, *Perbatasan Negara Dalam Dimensi Hukum Internasional* (Yogyakarta: Graha Ilmu, 2011).

efforts to resolve the dispute by diplomatic means, namely the negotiation method or diplomatic negotiations. This can be seen from the several meetings that representatives of the two countries have held. So far, Indonesia and Malaysia have used negotiations as their primary tool to resolve the dispute, demonstrating their commitment to peaceful resolutions.

It is known that negotiations between the parties have been carried out 14 times since the Ambalat issue but have never found a meeting point. Efforts to resolve land boundary disputes through peaceful negotiations conducted by Indonesia and Malaysia used the MOU and the results of a joint mapping survey as the basis for dispute resolution. Negotiations conducted by Indonesia and Malaysia are pursued by forming a unique team that handles border issues. Indonesia and Malaysia routinely hold delegation meetings every year with the levels of the Joint Boundary Committee, Joint Boundary Technical Committee, and Co-Project Director.<sup>11</sup>

There are several factors why the boundary dispute between Indonesia and Malaysia using the negotiation route is considered better than bringing the case to the ICJ. These factors include the fact that both parties can make optimal efforts by having full control over the case, and the settlement of the case through the ICJ will take a long time and cost a lot of money, such as in the case of Sipadan and Ligitan which cost no less than Rp. 16 billion.<sup>12</sup>

However, if the methods recommended by Article 279 of UNCLOS 1982 by Article 33 paragraph (1) of the UN Charter are not achieved, the parties may proceed to the following procedure by reporting the dispute to one of the judicial bodies provided by UNCLOS 1982 in Article 287 which are the International Tribunal for the Law of the Sea, the International Court of Justice, the Arbitral Tribunal, and the specialized Arbitral Tribunal.<sup>13</sup>

## 2. Indonesia's Fundamental Defense of Sebatik Island with Uti Possidetis Principle

Sebatik is an area with many people. This island is one of the small outermost islands in the Indonesian border area around Kalimantan Island. Sebatik Island has several pillars, about 16 of which were set by the colonizers who once occupied the island, namely the Netherlands and Britain. An agreement was made between these two rulers. This produces a problem when these rulers give or independent countries take colonies from these two rulers, Malaysia and Indonesia. Sebatik Island is a unique and special island. During colonialism, the area was divided according to the interests of the colonials. The consequence was for the countries that had become independent from this colonial era. Sebatik Island is a clear example of this. Socio-culturally, Sebatik Island is populated by the Malay community, which is a widespread tribe in Malaysia. Sebatik Island is also a strategic island for international trade.

The dispute over Sebatik Island arose when Malaysia claimed it based on a document from a National Level meeting, the 10th JM/JIM. This document, which became the basis for Malaysia's claim, was not recognized by Indonesia, leading to a legal standoff over the island.

According to the Indonesian government, the document did not include signatures by representatives of the two rulers at that time, so Indonesia should have considered the document could not be used as a basis for claiming Sebatik Island. In the 1891 document, the coordinates in some of the exact points differ significantly from what is on the monuments.

Nowadays, International Law has a very favorable principle in resolving island disputes, namely Uti Possidetis. Indonesia also has reasons for using the Uti Possidetis principle. The Uti

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<sup>11</sup> Sumaryo Sobar Sutisna, Sora Lokita, "Boundary Making Theory Dan Pengelolaan Perbatasan Di Indonesia" (Yogyakarta, 2008).

<sup>12</sup> Bernama, "Ambalat Case May Not Be Brought To International Court," n.d.

<sup>13</sup> United Nation, "India and the United Nations Convention on the Law of the Sea," 26 Ocean Development and International Law § (1995), <https://doi.org/10.1080/00908329509546068>.

Possidetis principle is a principle in international law that means "as owned." this principle says that the ruler of a country or colonial of a country will be indirectly by the government independent from the colonial. The meaning of the Uti Possidetis principle itself is based on two sources of international law itself. The first source is the practice of the global legal community in the Organization of African Unity (OAU), which existed in 1964. In its resolution, Article 16, the first paragraph stipulates that African countries must establish their borders by previous colonial colonies. The second is the International Court of Justice Decision in 1986, which states that colonial boundaries must be respected and must be the territory of the independent state itself. This can be used as a concrete basis for maintaining Indonesia because the Dutch were already on Sebatik Island long before the British arrived. The Dutch were colonizers or colonials for the Indonesian people who later lost the war with the British, meaning that the Dutch had been there since before the British were defeated in the war.

Indonesia also uses the principle of Effective Control, which says that a state has the right to control an area because the state "takes care" of the area. It is proven that Indonesia, through its people, conducts economic trade and life in the area without any elements from other countries. Malaysia also used this method when they obtained the islands of Sipadan and Ligitan, where they used the basis that they had "taken care" of the islands for a long time and Indonesia never issued any opinion about it.<sup>14</sup>

### 3. The Cases

#### a. Peru vs Chile

In international law, the principle of Uti Possidetis is a concept that the territory or boundary of a state follows the territory or boundary of the predecessor colonial power. Determining territory based on Uti Possidetis Juris is a general principle that has become a habit of the international community in determining new territories, whether newborn through the process of unilateral independence or the use of the right to self-determination. The principle contained in Uti Possidetis Juris etymologically comes from Latin, meaning "as you possess". This meaning comes from the long history of Roman law, which means that territory and other assets follow the control of the original owner, which has been agreed upon by the old owner and the new country decided upon through a treaty. Thus, applying the Uti Possidetis prevents conflicts based on border disputes by new states. This principle has become part of customary international law.<sup>15</sup>

In the case of Peru and Chile, the principle of Uti Possidetis can be applied because of the history of the formation of the Chilean state, which is a separation from the Bolivian state. Initially, Chile was given provisions regarding territorial boundaries, which Peru approved. This was also the case with the agreement in Lima, which was agreed upon by Peru and Chile.<sup>16</sup>

However, due to unilateral claims relating to 200 nautical miles from the coastal baseline motivated by the claims of the United States. So, Chile and Peru claim to have border sea areas. If returned by the initial agreement, then the conflict between these two neighboring countries cannot occur. Of course, it must be on condition that the two countries must have

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<sup>14</sup> Abraham Bell and Eugene Kontorovich, "Palestine, Uti Possidetis Juris and the Borders of Israel," *SSRN Electronic Journal*, 2016, <https://doi.org/10.2139/ssrn.2745094>.

<sup>15</sup> Junef Muhar, "Sengketa Wilayah Maritim Di Laut China Selatan," *Jurnal Penelitian Hukum* 18, no. 740 (2018): 22.

<sup>16</sup> Dwi Imroatus Sholikah, "Analysis of the Settlement of the Sea Border Between," *Jurnal Hukum Lex Generalis* 1, no. 1 (2020): 25-34.

the same interpretation perception as specified in the Santiago Declaration and the Special Maritime Boundary Zone Agreement.<sup>17</sup>

The implications of different interpretations of international agreements can be far-reaching, as demonstrated in the case of Chile vs Peru. The parties' divergent views on the Santiago Declaration led to the issuance of laws that directly affected their territorial sea boundaries. The International Court of Justice, a key legal institution in the realm of international law, played a pivotal role in the Chile vs Peru case. Its decision, which we will now examine, has significant implications for the interpretation of the Santiago Declaration.

The International Court of Justice's decision in the Chile vs Peru case was as follows:<sup>18</sup>

*"The maritime boundary between the Parties commences at the intersection of the parallel of latitude passing through Boundary Marker No. The low water line extends for 80 nautical miles along that parallel latitude to Point A. From this point, the maritime boundary runs along the equidistance line to Point B and the 200 nautical mile limit measured from the Chilean baselines to Point C."*

## b. West Papua

Embedded in the historical narrative of the Papua region's integration into Indonesia is the profound significance of the Uti Possidetis juris principle. This principle, as defined by the black law dictionary, stipulates that colonial administrative boundaries transform into international boundaries upon a political subdivision or colony's attainment of independence.<sup>19</sup> Following Indonesia's declaration of independence in 1945, the Netherlands retained control over the Papua region, arguing that it was not part of Indonesia and therefore could not be incorporated into Negara Kesatuan Republik Indonesia due to perceived differences between Papuans and the majority of Indonesians.

In the history of independence, Papua was the last region to integrate into Indonesia; Papua joined Indonesia in 1969. Papua has now been granted Special Autonomy to organize its government. However, there are still demands from several groups to conduct another referendum asking for independence for the Papua region. These demands need to be improved by the applicable principles of international law, namely Uti Possidetis juris. This is related to determining the borders of former colonies; in International law, there are very distinctive differences. These differences can be caused by factors uniquely exclusive to each country. The clarity of Indonesia's border points will have implications for the peaceful exercise of state sovereignty in border management because borders are the primary manifestation of state territorial sovereignty at the forefront of natural resource utilization, maintaining security, and territorial sovereignty. Conversely, if the border points are not clear, it can lead to potential disputes with neighboring countries.<sup>20</sup>

International law has a doctrine or principle known as the Uti Possidetis juris principle. According to this principle, in principle, the territorial boundaries of a new state will follow the territorial limits of the state that occupies it, stated in principle because, in reality, the territorial limits of a state (old or new) can change in The Land, Island, And Maritime Frontier Dispute Case (1912) between El Salvador and Honduras, the Court held that the boundaries of a state established at the time a state gained independence can change. Changes can occur

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<sup>17</sup> Ibid.

<sup>18</sup> International Court of Justice, Maritime Dispute (Peru v Chile) (2014).

<sup>19</sup> Garner A Bryan, *Black's Law Dictionary*, 8th editio (English: Thomson West, 2004).

<sup>20</sup> Saru, "Pelaksanaan Asas Uti Possidetis Dalam Penentuan Titik Patok Perbatasan Darat Indonesia Dengan Malaysia."

due to court decisions that decide border disputes or the parties' actions that affect their countries' borders. For example, the parties make a border agreement. The principle of Uti Possidetis juris was born from the practice of countries in Latin America when these countries gained their independence soon after the Spanish empire collapsed. Later, international courts adopted this principle in resolving border disputes between states. For example, in the frontiers dispute case, the Court emphasized that Uti Possidetis juris is a principle of general application.<sup>21</sup>

The Court held in this dispute that the principle of Uti Possidetis juris is the most essential principle among other principles of international law. The primary purpose of this principle is to prevent the independence and stability of a newborn state from being disrupted or threatened by a challenge to its boundaries. Since quite several border disputes are settled by applying this principle, Martin Dixon argues that the principle of Uti Possidetis juris is now a principle of customary law of general application.<sup>22</sup>

The Uti Possidetis juris principle holds particular significance for third-world countries in determining their borders. This principle, however, is not universally applied. European countries, for instance, often disregard it.<sup>23</sup> In Indonesia, several border demarcations, such as those with Malaysia, Timor Leste, and Papua New Guinea, are based on the Uti Possidetis juris principle. Yet, the issue of state borders, particularly between Indonesia and Malaysia, frequently sparks political tensions. According to Saru Arifin, the Uti Possidetis principle asserts that the territory of a new state encompasses all the territories of the former colonizers who colonized the region.

Until now, efforts to separate the territories of Papua and West Papua continue to occur as previously explained, therefore the principle of Uti Possidetis is used as a "weapon" to fight these demands as well as a basis for maintaining the unity of the Republic of Indonesia, although on the other hand the view of the exclusivity of territorial sovereignty based on the principles of international law has begun to be degraded and graded due to the increasing recognition of the right to self-determination which is also based on the principle of the right of self-determination which is also a recognized principle of international law and recognition of human rights.<sup>24</sup>

### c. Indonesia vs Vietnam

UNCLOS 1982, with its intricate provisions, plays a pivotal role in the prompt resolution of highly complex maritime disputes. These disputes, often due to the intricate web of international relations, can arise from various sources such as borders, natural resources, environmental harm, and trade. The primary objective of resolving such conflicts is to provide a framework for the parties involved to resolve their disagreement in accordance with international legal principles. UNCLOS 1982 outlines a three-part dispute settlement mechanism, which initially governs the resolution of conflicts through a friendly agreement between two parties. It then establishes a process for resolving disputes that leads to a

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<sup>21</sup> Adolf, *Hukum Penyelesaian Sengketa Internasional*.

<sup>22</sup> Ibid.

<sup>23</sup> Saru, "Pelaksanaan Asas Uti Possidetis Dalam Penentuan Titik Patok Perbatasan Darat Indonesia Dengan Malaysia."

<sup>24</sup> Ketua Divisi, *Kajian Ilmiah*, and M C S Fh, "5 . 1 2," no. 4 (1970).



binding decision. Lastly, it includes certain restrictions and allowances for jurisdiction in the procedures outlined in the second part.<sup>25</sup>

Regarding international relations, the government is responsible for establishing legal certainty and confirming Indonesia's maritime borders with Vietnam. This involves ensuring security, sovereignty, law enforcement, and protection of Indonesian territory by relevant officials; the government of the Socialist Republic of Vietnam officially established a straight baseline as the territorial sea baseline of Vietnam in its November 12, 1982 Statement. This baseline was subsequently submitted to the United Nations. By Article 7 of UNCLOS 1982, Vietnam asserts its claim to the straight baseline depicted by the red line on the map above. Vietnam's straight baseline does not align with the principles stated in Article 7 of UNCLOS 1982, which addresses the coast's physical shape, fringing on the coast, and the scattered fringing islands along the coast. Unlike Vietnam, Indonesia did not establish its maritime outer boundary through a deposit. On March 25, 2009, Indonesia submitted a record of geographic coordinates of the island's boundaries by Government Regulation No. 37/2008 to the UN Secretary-General, as stipulated in Article 47 paragraph (9) of UNCLOS 1982.<sup>26</sup> The maritime border between Indonesia and Vietnam is situated in the South China Sea, north of Indonesia's Natuna Islands.

Diplomacy, the art of managing relationships between nations, emerges as a beacon of hope in resolving complex maritime disputes. A nation's foreign policy is implemented through diplomatic efforts, which have expanded to cover various subjects and areas. Maritime diplomacy, in particular, involves steering relationships between countries through their interactions at sea. It's not just about managing conflicts and tensions but also about tackling maritime issues by creating international legal instruments.<sup>27</sup> Maritime diplomacy is the strategic use of resources and assets in the maritime sphere for diplomatic purposes, managing the interactions between nations.

On June 26, 2003, an agreement was signed by two countries in Ha Noi, Vietnam, and later approved by law number in 2007. Indonesia and Vietnam had 18 agreements about the coordinates of the boundary of the continental shelf as stipulated in the agreement between the Government Republic of Indonesia and the Socialist Republic of Vietnam. The agreement resulted in a six-point coordinate regarding the length of the boundary line of the continental. The shelf is approximately 251,03 nautical miles or roughly 464,9 kilometers.<sup>28</sup> Multiple external islands are adjacent to Vietnam, like Natuna, Anambas, and Riau.

The Indonesian Navy and Bakamla Maritime diplomacy's collaborative maritime diplomacy can take form in various ways, such as collaborating on joint patrols. However, the effort to implement has yet to be successful in the Exclusive Economic Zone (EEZ) waters of the Natuna Islands due to the divergent political interests of both nations. Specific actions taken include advocating for the resolution of EEZ delimitation and strengthening collaboration in maritime affairs with Vietnam, holding talks on establishing naval boundaries between the two nations, implementing temporary measures for dealing with

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<sup>25</sup> United Nations, "United Nations Convention on the Law of the Sea" (1982), <https://doi.org/10.1080/00908329509546068>.

<sup>26</sup> Doni Adi Supriyo and Rusito Rusito, "Konflik Perbatasan Indonesia Dengan Vietnam Di Perairan Zona Ekonomi Eksklusif Indonesia," *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 25, no. 1 (2023): 1-9, <https://doi.org/10.51921/chk.v25i1.222>.

<sup>27</sup> Jamal Hi Arsyad, "Indonesia - Vietnam Maritime Boundary: Problems and Prospects of Settlement," *Scholars International Journal of Law, Crime and Justice* 3, no. 10 (2020): 328-33, <https://doi.org/10.36348/sijlcj.2020.v03i10.003>.

<sup>28</sup> Supriyo and Rusito, "Konflik Perbatasan Indonesia Dengan Vietnam Di Perairan Zona Ekonomi Eksklusif Indonesia."

overlapping EEZ claims in the North Natuna area, efforts by Indonesia to protect the Natuna Sea Area, enhancement of border management in the Natuna Sea region, boosting economic activities by exploring oil and enhancing Natuna Sea defense capability.<sup>29</sup>

#### d. Sipadan and Ligitan

The territorial dispute began in 1969 when the two countries conducted discussions to define the boundaries of the continental shelf. From 1988 to 1997, the two countries attempted to resolve the ownership dispute over the islands of Sipadan and Ligitan at the governmental level through negotiations. Still, they were unsuccessful in reaching an agreement. Negotiation commenced with a meeting of the President of Indonesia, Soeharto, and The Prime Minister of Malaysia, Mahathir Mohammad, in Yogyakarta in June 1998. Subsequent negotiations included Joint Working Group Meetings, Senior Official Meetings, and Joint Commission Meetings. In 1994, Indonesia and Malaysia attempted to progress by naming their delegates for in-depth discussions. Indonesia named Moerdiono, the Minister of State Secretary at the time, while Malaysia designed its Deputy Prime Minister, Anwar Ibrahim, to represent their country in negotiations. The two delegates convened on four occasions, first in Jakarta on July 17, 1995, and September 16, 1995, then in Kuala Lumpur on September 22, 1995, and July 21, 1996. After these discussions, both Indonesia and Malaysia eventually reached an agreement to refer the resolution of the two conflicting territories to the International Court of Justice.<sup>30</sup>

The International Court of Justice determined that when Indonesia and Malaysia were disputing Sipadan and Ligitan, the islands were considered 'terra nullius', a Latin term meaning 'nobody's land'. This legal concept is applied when there is no clear ownership of a territory. If we apply the principle of Uti Possidetis juris, the initial consideration is determining whether Sipadan or Ligitan were part of the British or Dutch colonies. This is evident from maps dating back to the colonial era. The handover of Sipadan and Ligitan also aligns with the principle of peace. Based on Article 2 Paragraph (3) of the UN Charter, countries must resolve disputes or problems peacefully. UN member countries do this to preserve peace among nations. This article aims to promote harmony among all UN members and prevent any country from wanting to leave the UN. This beneficial rule promotes actions endorsed by all countries, specifically global peace. The transfer of the islands of Sipadan and Ligitan from Indonesia to Malaysia, as dictated by the International Court of Justice, aligns with UN regulation.<sup>31</sup>

The International Court of Justice's ruling, which stated that Indonesia and Malaysia could not automatically claim ownership of the two islands, had significant geopolitical implications. Despite the court's clear decision, the public's belief that Sipadan and Ligitan were no longer part of Indonesia persisted. This was due to a mismatch between mass media coverage and the actual conditions, with the media often misinterpreting the term affective control, which was the basis of the decision. Several media outlets reported that Malaysia has effectively managed the island since 1969, leading to the misconception that Indonesia lost

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<sup>29</sup> Muhar, "Sengketa Wilayah Maritim Di Laut China Selatan."

<sup>30</sup> Choirunnisa, N, "Analisis Putusan Mahkamah Internasional dalam Kasus Sengketa Indoensia-Malaysia Mengenai Pulau Sipadan dan Ligitan", *Journal of Jurisprudence & Legisprudence*,(2021), 9

<sup>31</sup> Jaka, B, "Analisis Mengenai Kesepakatan Negara Indonesia Dalam Memutuskan Penyelesaian Kasus Sipadan dan Ligitan Melalui Mahkamah Internasional". *Jurnal Analisis Hukum*.(2021), 17

the case because Malaysia had developed the island. This misunderstanding highlights the need for accurate and balanced reporting in such sensitive matters.<sup>32</sup>

The transfer of Sipadan and Ligitan from Indonesia to Malaysia can't be considered a gift without any strings attached. As a result of a territorial dispute between Indonesia and Malaysia, the International Court of Justice ruled in favor of Malaysia, granting them ownership of two islands. Indonesia's assertion that the two islands are its rightful territory. Furthermore, considering Indonesia's status as an archipelagic state, it is likely that the Indonesian government has ownership of the two islands. Nevertheless, in an attempt to promote peace and abide by the law, Indonesia should be able to accept the decision gracefully. The principle of Uti Possidetis juris, a Latin term meaning 'as you possess, so may you continue to possess', must be adhered to in accepting this situation, as it pertains to the ownership of the territory if the colonizer made a legitimate claim at that time.<sup>33</sup> This principle is often applied in cases of decolonization or territorial disputes.

#### e. Israel vs Palestine

The Israeli-Palestinian conflict is not something conflict new in this modern world. Israel has an opinion that they are entitled to land or regions where Palestine stands. This conflict started in 1948 or years previously. In history, Palestine was a nation far before 1948. We can't forget the history that the "Ottoman" Turkish sultanate was on the ground in Palestine for a long time since the region and the Middle East, in general, were under the power of the sultanate for around three centuries forever.<sup>34</sup> Then, after the fall of the Turkish sultanate "Ottoman," land from Palestine, this experience moved power several times, until the end fall lah to power English.

During World War I, there was a time when the "Ottoman" sultanate wanted to cooperate with the empire in Germany. Actions carried out by this "Ottoman" brought the British Empire a little worry than the British Empire wanted to hinder action with the help of the president of the United States, namely Woodrow Wilson, through the Jews in the United States. The result of that was the Declaration of Balfour, which was an agreement that help would be given by America to the British empire and also, in return, Jewish for land in Palestine to nation Jews.<sup>35</sup> After the agreement, yes, Jews started to invade in quite a "subtle" way, with methods starting from doing activities, trading, and selling assets in the area. From there, you know that the Jews want to use the principle Uti Possidetis as a weapon to get land. Uti Possidetis made as a base for taking the land the steps that overwhelm the nation Palestine. Some factors make that complicated, among others:

- 1) Palestine does not yet own a government  
Because it continues to be colonized by nations else continuously, the nation Palestine cannot establish a legitimate government. Pressure after pressure, he feels it day by day
- 2) Palestine has already been silent self since a long time ago

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<sup>32</sup> Choirunnisa

<sup>33</sup> Jaka

<sup>34</sup> Christopher J Fettweis, "The Ottoman Empire," ed. Christopher J Fettweis, *The Pursuit of Dominance: 2000 Years of Superpower Grand Strategy* (Oxford University Press, November 2022), <https://doi.org/10.1093/oso/9780197646649.003.0005>.

<sup>35</sup> Karin Loevy, "The Balfour Declaration's Territorial Landscape: Between Protection and Self-Determination," *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 12, no. 2 (2021): 138-58, <https://doi.org/https://doi.org/10.1353/hum.2021.0010>.

Principle Uti Possidetis no arrange about time What we can be sure of is something the nation can take the land, so if calculated, Palestine already a long time ago, in fact, longer than the Israelites were present in the soil.

Of two factors, this makes the second conflict very difficult to resolve even by party third. The solution has already been deployed; however, we still need to find a point with the problem.

#### **f. Timor Leste vs Indonesia**

Timor Leste is a country that existed after a referendum around 2000. This country emerged when the people of Timor Leste wanted to confirm their history. Colonialists from the Netherlands, Portugal, and Spain dominated Southeast Asia. The Dutch became colonialists who had territories spread across Southeast Asia.<sup>36</sup> Uti Possidetis de jure is the principle specifically used to win the referendum.

Uti Possidetis de jure, in the perspective of international law, states that the territorial boundaries of a new country must be based on the territorial limits of the owner of that territory. In this sense, there is a shift in the meaning of establishing a new country, not based on the boundaries recognized and maintained by indigenous peoples in border areas but instead on former colonial countries' territory. According to history, Indonesia was colonized by the Dutch for three hundred and fifty years. Meanwhile, the Portuguese controlled the Timor Leste region. So, according to the Uti Possidetis principle, Indonesia has no right to make this region part of an Indonesian province.

## **D. CONCLUSION**

Indonesia and Malaysia have embarked on a significant journey of negotiations to resolve the Sebatik Island dispute. These talks, which have spanned over 14 meetings, have involved the formation of a special team, the use of an MOU, and a joint mapping survey as a basis for settlement. Despite the robust arguments from both countries, an agreement is yet to be reached. This underscores the importance of adhering to applicable international legal procedures for a fair and just settlement.

Understanding the historical context of Sebatik Island, located on the border between Indonesia and Malaysia, is crucial to grasp the complexities of the dispute. Once part of the Dutch East Indies, it was later controlled by the British and became part of Indonesian territory after the proclamation of independence in 1945. A recent study suggests that the Uti Possidetis principle, which asserts that the boundaries of a newly formed state should conform to the boundaries that existed during the colonial era, could be a viable basis for deliberation. By prioritizing these principles, the territorial integrity of Sebatik Island can be upheld.

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<sup>36</sup> Aurel Croissant, "Timor-Leste: Challenges of Creating a Democratic and Effective State BT - Comparative Politics of Southeast Asia: An Introduction to Governments and Political Regimes," ed. Aurel Croissant (Cham: Springer International Publishing, 2022), 361-99, [https://doi.org/10.1007/978-3-031-05114-2\\_11](https://doi.org/10.1007/978-3-031-05114-2_11).

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