

The Role of ASEAN in Sipadan and Ligitan Case: An Analysis from Law and Diplomacy

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Abstract—Southeast Asian countries, as well as Association for Southeast Asian countries (ASEAN) was become an important regional organizations not only in regional but also for international. Some benefits come up from the ASEAN cooperation among its ASEAN countries or other countries out of ASEAN. However, some problems occurred and faced by ASEAN especially concerning to the State conflict, State border claims, and also law enforcement in ASEAN itself. The paper examines how the Role of ASEAN in the settlement of Sipadan and Ligitan case between Indonesia and Malaysia. The method used for this research is a normative legal research, which analyzed laws and regulations as well as previous research reports. The paper underlined that, for Sipadan and Ligitan case, some diplomatic ways has been supported by ASEAN, however, the conflict between Indonesia and Malaysia become a more complex when it related to political issues.

Keywords—Human Rights, AEC, ASEAN Economic Community, Poverty, Resources, Borders

I. INTRODUCTION

Humans are social beings, meaning humans cannot live alone. In other words, human life needs the help of others. As for human beings who always need help from others or always live in a community are to meet food and drink needs, to defend yourself to obtain offspring. In short, humans need other people to maintain their lives. It is impossible for anyone to live alone without interacting with others. In interacting with other people there must be a conflict of interest between one person to another. Because everyone has their own desires, needs and needs. So that there will be disputes in a common life if there is a conflict of interest. The strong group defeats and oppresses the weak. Therefore, for the existence of peacefulness or to prevent division in social life, a regulation or law called law is required.[4][7]

Law is the most important system in the implementation of a series of institutional powers. From the form of abuse of power in the fields of politics, economy and society in various ways and acting, as the main intermediary in social relations between people towards criminalization in criminal law, criminal law that strives for the way the state can prosecute perpetrators in the legal constitution provides a framework for the creation of law, protection of human rights and expanding political power and the way their representatives will be elected. Southeast Asian countries form a legal organization with the aim of stabilizing the region in terms of economy, politics, resources, culture, bilateral-multilateral relations, borders, education, and others. Countries joined in ASEAN face the

same social problems which are related to social welfare of children, elderly people (elderly) and also persons with disabilities. One of the weaknesses faced by ASEAN is the movement of ASEAN which is considered slow. Slow in developing ASEAN as a fairly compact regional group. Slow in increasing aspects of integration: among others in developing the inter-ASEAN trade sector. Also slow in increasing productivity, technological progress and ASEAN's competitiveness as a group and in each country.[1][4]

In this connection it should be noted that among ASEAN countries the problem of "rivalry" is still very strong. So that this factor is often an obstacle to achieving faster progress. It may be true what has been stated by a foreign figure that ASEAN must choose between "rivalry or cooperation".[1][5][6]

ASEAN itself is an abbreviation of the Association of South-East Asia Nation or if translated into Indonesia means the Association of Southeast Asian Nations. The ASEAN regional international organization was established on 8 August 1967 in Bangkok, through the signing of the Bangkok Declaration (Bangkok Declaration), or often also called the ASEAN Declaration, by Indonesia, Singapore, Malaysia, Thailand and the Philippines.[1][14]

This organization aims to increase friendship and cooperation in the fields of economic growth, social progress and cultural development of its member countries. In relation to the diverse background of ASEAN member countries, the forms of cooperation that exist must be based on togetherness factors so that ASEAN can develop into an effective regional international organization.[14][22][24]

Basically the establishment of ASEAN is to create the Southeast Asian region in an atmosphere of friendship, prosperity and peace. More importantly politically, ASEAN affirms itself as an organization respect and determination to uphold human rights and democratic values. This is in accordance with the contents of the Bangkok Declaration which reads:

First, the establishment of a Regional Cooperation Association between Southeast Asian countries known as the Association of Southeast Asian Nations (ASEAN). *Second*, that the purposes and objectives of the Association are:

- a. To accelerate economic growth, social progress and cultural development in the region through joint efforts in the spirit of equality and partnership to strengthen the foundation for a prosperous and peaceful society of Southeast Asian Nations;
- b. To promote regional peace and stability by respecting justice and the rule of law in relations between countries in the region and adherence to the principles of the UN Charter;
- c. To promote active cooperation and mutual assistance in matters of mutual interest in the economic, social, cultural, technical, scientific and administrative fields;
- d. Providing assistance to each other in the form of training and research facilities in the field of professional, technical and administrative education;
- e. To collaborate more effectively for greater use of agriculture and industry, expanding their trade, including studies on the issue of international commodity trading, improvement of transportation and communication facilities and improvement of living standards of their people;
- f. To promote Southeast Asian studies; and
- g. To maintain close and profitable cooperation with existing international and regional organizations with the same goals and objectives, and explore all roads for closer collaboration between themselves.

Third, that in order to implement the purposes and objectives, the following activities must be established, such as:

- a. The Minister of Foreign Affairs Annual Meeting, which must be in rotation and is called the ASEAN Ministerial Meeting. Special Foreign Minister Special Meetings can be held as needed.
- b. Standing committee, under the leadership of the Minister of Foreign Affairs of the host country or its representative and having as a member Accredited Ambassadors from other member countries, to continue the work of the Association between the Foreign Ministers Meeting.
- c. Ad-Hoc Committees and specialist Standing Committees serve in certain fields.
- d. National Secretariat in each member country to carry out association work on behalf of the country and to serve the Annual Meeting or specifically from the Minister of Foreign Affairs.

Fourth, that the Association is open to participation in all countries in the Southeast Asia Region to implement the principles and objectives. *Fifth*, that the Association

represents the collective will of nations in Southeast Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, are safe for their communities and for posterity the blessings of peace, freedom and prosperity.[1][2][14]

As an umbrella for cooperation between countries in Southeast Asia, ASEAN has a great responsibility in the development and life of diplomatic relations between countries in Southeast Asia. Not only in favorable diplomatic relations within the region, ASEAN is also expected to be a liaison and mediator for disputes that arise among ASEAN members themselves. In its development, many conflicts and disputes occurred between ASEAN members themselves that have not been resolved. ASEAN is expected to be a bridge for member countries involved in the dispute to resolve the dispute. Because, if there is a less harmonious relationship between ASEAN members themselves, it can lead to obstruction of the objectives and functions of the formation of ASEAN. If disputes between member countries can be resolved properly, then there will be harmonious conditions in relations between countries in Southeast Asia. So, the aspirations of ASEAN to increasing economic growth, advancing social politics, and achieving cultural development in Southeast Asian countries.

II. METHOD

The research is a normative legal research, which only looking for the facts based on laws and regulations, and some previous reports. The research analyzes the context of Southeast Asian countries in the perspective of regional constitutionalism in ASEAN. The paper analyzes Sipadan and Ligitan case in the context of Law Enforcement and Diplomacy in Southeast Asia.

III. RESULT AND DISCUSSION

A. LAW ENFORCEMENT PROBLEMS IN ASEAN

In fact, there are many problems among ASEAN member countries that have not been resolved or have not been able to be resolved by ASEAN. One of the problems between ASEAN members that has not yet been completed is between Indonesia and Malaysia regarding the claim of the Ambalat block.[25][26]

Ambalat is a block of seabed/continental shelf with an area of 15,235 square kilometers and is located 80 miles off the coast of East Kalimantan, at a depth of 2.5 km of the waters of the Sulawesi Sea. The Ambalat block is located within the Indonesian EEZ, where there is Indonesia's sovereign rights to manage the natural resources contained in it. According to the 1982 United Nations Convention on the Law of the Sea, the Maritime Zone is divided into several zones with different arrangements and rights. Territory Territorial or Marine Zone is a maritime zone that is drawn as far as 12 nautical miles from the baseline. In the case of Indonesia, the baseline used is the straight archipelagic baseline, which is the right of Indonesia as an archipelagic state. In this Territorial Zone, national jurisdiction applies, as is the case in the coastal country in full territory. Next is the Additional Zone, which is drawn

24 nautical miles from the baseline. In this zone, limited coastal national laws apply, including health, fiscal, immigration and customs. In addition to these two zones, the Exclusive Economic Zone (EEZ) is drawn 200 nautical miles from the base line. Outside the Territorial Zone, state sovereign rights apply beach to manage natural resources in the region. However, ships and planes foreigners are still allowed to sail and fly over the EEZ. Territory in the seabed (continental shelf) has its own settings. The coastal state has the right over the continental shelf area, which is considered a natural continuation of the region the land, as far as a minimum of 200 nautical miles and a maximum of 350 nautical miles.[1][20][21]

This continent, the coastal state has the right to manage the natural resources contained there in. The continental shelf of a coastal country covers the seabed and the land below it from below the sea surface located outside its territorial sea along the natural continuity of its land area to the outer edge of the continental shelf, or up to 200 nautical miles from the baseline from where the width of the continental edge not reach that distance. The Ambalat block became a dispute when Malaysia claimed that the region is included in its sovereignty. Claims made Malaysia is based on a map of its marine area issued in the year 1979. The map was issued unilaterally by Malaysia so that it has no legal (illegal) implications, but has political implications Claims made by Malaysia by using the map there were many protests from neighboring Malaysia, especially Indonesia.[14][15][22]

Malaysia considered to have committed a violation because they determined a map of their territorial boundaries without hold negotiations with countries that have sea territories bordering Malaysia. Malaysia also claims to be an archipelagic country after winning a dispute with Indonesia regarding the Sipadan and Ligitan Islands in the International Court of Justice[25][12]. On this basis, Malaysia considers that Sipadan and Ligitan Islands must have territorial seas, which if measured from the baseline points on Sipadan and Ligitan Islands, the territorial waters above the Ambalat Block will enter Malaysia's territorial territory. The action of Malaysia that claims in the continental shelf area has provoked a reaction from Indonesia. Indonesia feels that the Ambalat Block is part of Indonesia's territory. Some of the reasons behind Indonesia's background in claiming against Block Ambalat are, among others:[22][25]

1. Ambalat As a natural continuation of East Kalimantan

If viewed from a geographical point of view, Indonesia is stronger in position because the Ambalat and East Kalimantan Blocs are natural prolongations from the East Kalimantan mainland, while between Sabah-Malaysia and Ambalat waters there is a deep sea, which is impossible to say that Ambalat is a natural continuation of Sabah. Malaysia. Whereas natural continuation from the land is State authority over marine territories, as stated in UNCLOS 1982 Article 76 Paragraph (3), which reads: *"The continental margin comprises the submerged prolongation of the land mass of the coastal state, and consist of the seabed and sub-principle of the shelf, the slope and the rise"*. The continental edge consists of the natural continuation of

the land from the coastal state and consists of areas of the seabed and the land below it.

2. Decision from the International Court of Justice

Indonesia argues that the International Court of Justice's ruling in 2002 which won Malaysia as the owner of Sipadan-Ligitan only concerns the issue of ownership of the island (mainland), and does not include the sea area. Indonesia's actions which continue to maintain and maintain Ambalat as a sovereign territory from Indonesia de facto is enough to prove that the waters of Ambalat are part of Indonesia's sovereignty. Judge Shigeru Oda, who was one of the International Court Justices in the case of Pulau Sipadan and Ligitan, gave the following statement; "The sovereignty over the island present judgment does not necessarily have a direct bearing on the delimitation of the continental shelf (Ambalat).[7] The judge said that the judge's decision for the sovereignty of Sipadan and Ligitan Islands had no direct influence on the continental shelf delimitation. So, Sipadan and Ligitan islands may be controlled by Malaysia, but Malaysia still cannot take waters and continental shelf around Sipadan and Ligitan Islands (Laut Ambalat), because Malaysia is only a coastal state and not an archipelago as well as the Unitary Republic of Indonesia.[8]

3. Indonesia as an Archipelagic State

Indonesia has also continuously claimed the Ambalat region since the Dutch colonial era. Indonesia is an archipelagic state, the Declaration of the Archipelago has begun with the publication of the Djuanda Declaration in 1957, followed by Prp No.4 / 1960 concerning Indonesian Waters. The Declaration of the Archipelago has also been endorsed by the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, Part IV. While Malaysia is not an archipelagic country, it is also known as an ordinary coastal country that can only use a normal baseline or a straight baseline.

B. ASEAN LAW RESOLUTION

The idea of efforts to resolve disputes between Indonesia and Malaysia with diplomatic channels at the ASEAN level was also given by Indonesia. ASEAN itself actually has an ASEAN High Council (ASEAN High Council) which can be used as a Court to resolve conflicts between its members.[10] Indonesia itself is not interested in bringing this matter to the International Court of Justice due to bad experiences and is considered to tarnish the name of the international world after losing in disputes over Sipadan and Ligitan Islands.

ASEAN can work alone or appoint one member country to be a mediator in the mediation process that will be carried out by the two countries. The appointment of one member country is expected to be a good solution provider because of the existence of an effective approach process with a background of friendship. In a number of international organizations, dispute resolution is a basic constitutional object and consequently the Secretary General and regional counterparts are often involved in providing good services and mediation. Because mediation provides an opportunity to be involved in disputes and influence the outcome, the mediator's role also has an attraction for the

countries involved to find out that a dispute is resolved peacefully, or with an interest in a particular settlement. So is it unusual to find the continuity of international disputes that are plagued by mediation offers from one or more outside parties.[7][21][23] In addition to mediating the dispute between its members, there is a forum within ASEAN itself called the ARF (ASEAN Regional Forum), where all ASEAN members can express all opinions and problems they face in the forum. This makes it easier for countries in conflict to be able to solve problems through diplomatic or negotiation. The ASEAN regional forum was held for the first time in 1994, with the following main objectives:

1. To create a forum for constructive dialogue, where each member can consult on political and security issues, and discuss common desires or common interests.
2. Make a significant contribution to development confidence building in each member country, as well as holding preventive diplomacy in the Asia Pacific region.

This forum is not only attended by countries in ASEAN, but there are several member countries that come from outside the region, which function as supervisors. members of ARF include: Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples' Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Sri Lanka, Thailand, Timor Leste, United States, and Vietnam. Here are some things that are considered important by ARF members, if they want to join after their meeting in 1996:

1. Commitment: That all ARF members are sovereign countries, and want to work cooperatively in order to achieve the objectives of the ARF. All members who have just joined ARF, must agree and comply with all rules that have been made by ARF before. All ASEAN members are automatically ARF members.
2. Relevance: that every new member who joins must be able to show that he is dedicated to achieving peace and security.
3. Gradual expansion: that ARF must be able to manage the capabilities of each member in achieving achievements so that the effectiveness of each ARF member is guaranteed[12].

But in the case of this Ambalat, everything written above seems to be meaningless. ASEAN as a place that should be able to help solve the problem of the Ambalat block between Indonesia and Malaysia, as if to be silent and look unable to do anything. Even though it is clear that it must be, symbolically ASEAN can help solve this problem. Whether by becoming an intermediary country, or by the ASEAN Regional Forum. The principle of non interference which is always considered as a clash in every ASEAN problem, is also not a problem with the existence of this ARF. With ARF member countries should be able to diplomate more easily and openly. Not to mention the role of other countries that should be able to contribute to providing solutions or suggestions regarding solutions to

this problem. For ASEAN it is clear this is a new smudge for ASEAN's face. ASEAN will be judged to be less able to deal with problems that occur within the region. There are so many problems that occur within ASEAN, without any follow-up and clear handling. ASEAN as a regional institution in the world will increasingly question its credibility.

Therefore the role of ASEAN as a regional international organization that oversees Indonesia and Malaysia is expected to be able to resolve the conflicts between the two countries with a peaceful and full of friendship. Indonesia and Malaysia as ASEAN members are important instruments in the development in the Southeast Asia region. The influence of the two countries in various fields is very large for other ASEAN member countries. Therefore, with a conducive and harmonious situation will make the ASEAN region or Southeast Asia become more developed and prosperous.[4][8][11]

IV. CONCLUSION

The paper highlighted that, in the case of Sipadan and Ligitan (Indonesia and Malaysia), ASEAN as an organization in the regional has its own role, not only for the third party and mediator, but also as the platform of justice and law enforcement in Southeast Asia countries region. Some cases in ASEAN region need to be resolve together with the same perspective and same goals, without any political intention.

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