

Maritime Boundary Disputes Between Neighboring Countries and Dispute Resolution Mechanisms Through the International Court on the Law of The Sea

Ade Riusma Ariyana¹⁾ & Nur Azizah²⁾

¹⁾Faculty of Law, Universitas Semarang, Indonesia, E-mail: aderiusma@gmail.com

²⁾Notary Public Office of Anik Budi Megawati Kendal, Indonesia, E-mail: nurazizahh2422@gmail.com

Abstract. *Maritime boundary disputes between neighboring countries are international legal issues related to the determination of sovereignty boundaries, sovereign rights, jurisdiction, and utilization of marine resources. These issues are increasingly complex due to overlapping maritime territorial claims, differing interpretations of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and the strategic and economic interests of coastal states. This study aims to analyze the legal basis for maritime boundary determination and dispute resolution mechanisms through the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and international arbitration. The study uses normative legal methods with statutory, conceptual, and case-based approaches. Primary legal materials include the 1982 UNCLOS, the United Nations Charter, and relevant international court decisions. The results indicate that the resolution of maritime boundary disputes must prioritize agreements based on international law and the principle of equitable solutions. ITLOS, the ICJ, and arbitration all play a crucial role in providing legal certainty, but their jurisdiction depends on state consent and the provisions of UNCLOS. Therefore, bilateral diplomacy, the exchange of technical data, and international judicial mechanisms need to be combined to achieve peaceful, just, and sustainable dispute resolution.*

Keywords: *Maritime boundaries, UNCLOS 1982, ITLOS, International Court of Justice, Dispute resolution.*

1. Introduction

The sea holds a strategic position in international relations because it serves as a transportation route, a source of economic resources, a defense and security space, and a hub for trade activities between nations. A significant portion of international trade relies on maritime transportation, while territorial waters also contain fisheries, oil, natural gas, and various minerals of high economic value. These conditions make the sea not merely a geographical space but also a sphere of political, economic, and national security interests.

Competition for access to resources and shipping lanes can increase a country's interest in ensuring legal certainty in its maritime boundaries. Therefore, maritime boundary delimitation is a crucial part of regulating interstate relations and maintaining regional stability. In the study of maritime law, maritime spatial regulation is necessary to distinguish the authority of coastal states from the freedoms that other states retain under international law.(Tanaka, 2019)

The increasing economic and strategic importance of maritime territories has increased the likelihood of maritime boundary disputes. Disputes can arise when two countries have opposite or adjacent coasts, resulting in overlapping claims to maritime territory derived from their respective baselines. This situation is not always caused by disagreements over land ownership but can also arise from differences in interpretation of delimitation methods, determination of baselines, island status, or the relevance of certain geographic features. Unclear boundaries can create uncertainty for fishing activities, natural resource exploration, marine research, and the implementation of surveillance and law enforcement. Therefore, maritime boundary disputes are legal issues with direct consequences for diplomatic relations, economic interests, and the security stability of the countries involved.(Klein, 2005)

In international law, the term maritime boundary refers to the line separating maritime territories or zones under the jurisdiction of adjacent states. However, not all maritime zones have the same legal regime. Territorial seas are the sea areas over which coastal states exercise their sovereignty, while adhering to international law, including the right of innocent passage for foreign vessels. The exclusive economic zone (EEZ) grants coastal states sovereign rights for the exploration, exploitation, conservation, and management of natural resources, as well as certain jurisdictions stipulated in the law of the sea. Meanwhile, the continental shelf relates to the sovereign rights of coastal states over the natural resources of the seabed and subsoil. These differences in characteristics require that the legal basis and delimitation methods for each zone be analyzed precisely, rather than generalized in a single approach.(UNCLOS 1982, Pasal 2, 3, 56, 57, 76, and 77)

The primary legal instrument that underpins modern maritime boundary regulation is the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This convention regulates various maritime zones, the rights and obligations of coastal states, protection of the marine environment, utilization of resources, and the resolution of disputes regarding their interpretation and application. UNCLOS is important because it provides a legal framework that states can use to resolve differing claims based on internationally agreed norms. For state parties, the provisions of the convention serve as a primary reference in determining the scope of maritime authority and drafting boundary agreements. Thus, UNCLOS serves not only as an instrument for regulating maritime territory but also as a basis for establishing more definite and orderly legal relations among coastal states.(Churchill, Lowe, dan Sander, 2022; UNCLOS 1982)

The delimitation provisions in UNCLOS distinguish the determination of territorial sea boundaries from the delimitation of the EEZ and continental shelf. Article 15 stipulates that where the coasts of two countries are opposite or adjacent, neither country in principle has the right to extend its territorial sea beyond the median line, each point of which is equidistant from the nearest points on the baselines of both countries, unless there are historical rights or other special circumstances that justify a different determination. Meanwhile, Articles 74 and 83 stipulate that the delimitation of the EEZ and continental shelf is carried out through agreements based on international law as referred to in Article 38 of the Statute of the International Court of Justice, to achieve a just settlement. The difference in formulation shows that the median line method in the territorial sea cannot be applied mechanically to every case of EEZ and continental shelf delimitation without considering the relevant principles and circumstances. (ICJ, 2009; UNCLOS 1982, Pasal 15, 74, and 83, 38; Statuta ICJ, 1945)

While UNCLOS provides a normative basis, the application of delimitation provisions often faces complex technical and legal challenges. The shape of the coastline, the presence of small islands, the configuration of the archipelago, the length of the relevant coastline, and the geographic location of each state can influence the outcome of the delimitation. In some cases, the use of a single baseline or the granting of full influence to a particular island can result in a delimitation that is considered unequal by other states. Therefore, the delimitation process requires an analysis that considers both law and geography simultaneously. International tribunals in various delimitation cases have developed an approach that generally begins with the drawing of a provisional equidistant line, continues with an examination of relevant circumstances that might justify an adjustment, and concludes with a test to determine whether the result creates a manifest imbalance. (Charney, 1994; ICJ, 2009)

The existence of islands, coral reefs, and other geographical features can also be a source of differences in interpretation in maritime boundary disputes. Article 121 of UNCLOS regulates the legal regime of islands and distinguishes islands in general from coral reefs that cannot support human habitation or economic life on their own as referred to in paragraph (3). This difference in status affects the ability of a geographical feature to generate an EEZ and continental shelf. In addition to its legal status, the influence of an island on the delimitation line can be a problem in itself because giving full influence to a particular feature does not always result in a fair resolution in the overall geographical context. Therefore, the assessment of an island or geographical feature must be made based on the provisions of UNCLOS, its factual characteristics, and the principles of delimitation that have developed in international judicial practice. (Tanaka, 2019; UNCLOS 1982, Pasal 121)

Maritime boundary disputes are not only about determining lines on maps, but also concern legal certainty regarding the exercise of state authority. Unagreement on boundaries can create difficulties in determining jurisdiction over fishing activities, oil and gas exploration, marine scientific research, and law enforcement against vessels suspected of violating them.

In certain circumstances, this uncertainty can trigger incidents between officials of the two countries if each party considers its actions to be within its jurisdiction. Such situations require states to act cautiously, prioritize diplomatic communication, and avoid actions that could exacerbate the dispute. Certainty about maritime boundaries thus has a preventive function, namely reducing the potential for conflict while supporting the implementation of state rights and obligations in a more measured manner.(Oxman, 1980)

International law obliges states to resolve disputes through peaceful means. This principle is reflected in Article 2 paragraph (3) of the United Nations Charter, which obliges members to resolve international disputes by peaceful means so that international peace, security, and justice are not threatened. Article 33 paragraph (1) of the UN Charter further mentions various methods of resolution, including negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, and the use of regional mechanisms or arrangements. In the context of maritime boundary disputes, this obligation requires states to seek a resolution that does not increase the risk of conflict. The choice of a particular mechanism can be adjusted to the nature of the dispute, bilateral relations, the basis of jurisdiction, and the willingness of the parties to accept the available resolution process.(Piagam PBB, 1945)

Bilateral negotiations generally play a crucial role because they allow disputing countries to develop agreements based on legal, geographical, technical, and mutually beneficial considerations. Through negotiations, the parties can discuss the determination of starting points, the exchange of maps and coordinates, delimitation methods, and the possibility of interim arrangements before a final agreement is reached. The advantage of negotiations lies in their flexibility and the opportunity to maintain good relations between countries. However, the process can face obstacles when fundamental differences arise regarding the basis of claims, economic interests, or domestic political pressures. If negotiations fail to produce a resolution, countries can consider other mechanisms in accordance with international law and the applicable agreements. Therefore, negotiations should be supported by adequate technical and legal preparation, not just a general exchange of diplomatic views.(Klein, 2005)

One forum for resolving maritime law disputes is the International Tribunal for the Law of the Sea (ITLOS), established under UNCLOS and based in Hamburg, Germany. ITLOS has the authority to handle disputes within its jurisdiction under the Convention and related legal instruments. The existence of this specialized institution allows maritime law disputes to be examined by a tribunal with competence in that area. However, ITLOS does not automatically have jurisdiction over every maritime boundary dispute. The basis for state consent, the choice of procedure under Article 287 of UNCLOS, and the possibility of relevant exceptions must first be examined. Therefore, an understanding of ITLOS's authority needs to be placed within the overall framework of UNCLOS dispute resolution.(UNCLOS 1982, Pasal 287 and Annex VI of the ITLOS Statute)

In addition to ITLOS, the International Court of Justice (ICJ) also plays a crucial role in resolving maritime boundary disputes. As the principal judicial organ of the United Nations, the ICJ has the authority to hear disputes between states where there is a legitimate basis for jurisdiction, for example through a special treaty, a dispute settlement clause in an international treaty, or a declaration of acceptance of compulsory jurisdiction under the ICJ Statute. ICJ decisions in maritime delimitation cases have clarified a number of principles used to determine boundary lines, including an assessment of relevant geographical circumstances. In addition to these judicial mechanisms, UNCLOS also provides for arbitration under Annex VII and special arbitration under Annex VIII. Thus, the law of the sea dispute resolution system offers several forum options, but their use remains dependent on applicable jurisdictional and procedural provisions.(ICJ, 2009; UNCLOS 1982, Pasal 287 and 298, 36; Statuta ICJ, 1945)

International judicial practice demonstrates that dispute resolution mechanisms can help clarify the application of delimitation law in specific cases. In the 2009 Maritime Delimitation in the Black Sea (Romania v. Ukraine) case, the ICJ adopted a stepwise approach to maritime boundary determination. Meanwhile, in the 2012 Bangladesh/Myanmar case, the International Criminal Court (ITLOS) resolved a delimitation dispute involving the territorial sea, the EEZ, and the continental shelf. The 2014 Bangladesh–India maritime boundary arbitration also demonstrated the role of arbitration under Annex VII of UNCLOS. These decisions demonstrate the importance of analyzing the legal provisions, geographical conditions, and facts of each case. While international precedent can be a guideline, the outcome of one dispute cannot be automatically applied to another case because the characteristics of the coast, the basis for jurisdiction, and the relevant circumstances may differ.(ICJ, 2009; ITLOS, 2012; PCA, 2014)

For Indonesia, the issue of maritime delimitation is strategically important due to its archipelagic nature and proximity to a number of neighboring countries. Clear maritime boundary delimitation supports legal certainty, natural resource management, shipping safety, fisheries surveillance, and law enforcement coordination. These efforts require integrated diplomacy, hydrographic data, official maps, international legal analysis, and coordination between ministries and institutions. Indonesia also needs to pay attention to Article 74 paragraph (3) and Article 83 paragraph (3) of UNCLOS, which regulates efforts to make practical temporary arrangements while the delimitation of the EEZ or continental shelf has not been achieved, without jeopardizing or hindering the achievement of a final agreement. This approach can support practical cooperation without requiring countries to abandon their legal positions regarding final boundaries.(UNCLOS 1982, Pasal 74 paragraph (3) and Article 83 paragraph (3))

Based on the above description, research on maritime boundary disputes between neighboring countries and their resolution mechanisms has both academic and practical relevance. Delimitation issues require a thorough understanding of the legal regime of each maritime zone, the principles of peaceful dispute resolution, and the jurisdictional limits of

international forums. ITLOS, the ICJ, and arbitration provide possible resolution pathways if the legal and jurisdictional requirements are met, while bilateral diplomacy remains crucial in reaching an agreement acceptable to the parties. Therefore, this research aims to analyze international legal regulations regarding maritime boundary delimitation, the authority and mechanisms for resolution through international forums, and legal-diplomatic strategies that can support peaceful and just dispute resolution. The results of this study are expected to contribute to the development of international maritime law and serve as considerations in strengthening Indonesia's maritime delimitation policy.(Tanaka, 2019; Klein, 2005)

2. Research Method

This research uses a normative legal research method, namely a research method that focuses on the study of legal norms, legal principles, legal principles, expert doctrines, and decisions of international judicial bodies related to maritime boundary disputes between countries. Normative legal research is used to analyze how international law regulates the determination of maritime boundaries, determines the rights and obligations of coastal states, and provides a dispute resolution mechanism in the event of differences in the interpretation or application of maritime law provisions. In this context, the research focus is directed at the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 as the main legal instrument governing the delimitation of territorial seas, exclusive economic zones (EEZ), and continental shelves. In addition, the research also examines the relationship between the obligation to resolve disputes peacefully and state consent to the jurisdiction of international dispute resolution institutions.(Tanaka, 2019)

3. Results and Discussion

3.1. International Legal Regulations on Maritime Boundary Delimitation

Maritime boundary delimitation is an international legal process for determining the boundary line separating the maritime territories or maritime rights of two or more countries whose coasts face each other or are adjacent. Delimitation is crucial because it directly relates to the certainty of a country's jurisdiction, the exercise of sovereign rights, the management of natural resources, the security of navigation, and the maintenance of relations between countries. In the practice of international relations, unclear maritime boundaries can lead to overlapping claims over fishing grounds, oil and gas reserves, and mineral resources on the seabed. This issue becomes even more complex when the countries in conflict have complex geographic configurations, irregular coastlines, or islands located around the claimed area. Therefore, delimitation cannot be understood solely as the technical activity of drawing lines on a map, but rather is a legal process that must be based on international legal norms and take into account relevant geographic circumstances.(Tanaka, 2019)

The primary legal framework for maritime boundary delimitation is found in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This convention established a maritime

law regime that distinguishes between maritime zones based on their location, distance from baselines, and the nature of the coastal state's rights. These distinctions determine the legal basis and method of boundary delimitation. The territorial sea, including the airspace above it and the seabed and subsoil beneath it, is under the sovereignty of the coastal state, subject to international law regarding the right of innocent passage and other restrictions. In contrast, the exclusive economic zone (EEZ) is not a fully sovereign area, but rather a zone within which the coastal state has sovereign rights to explore, exploit, manage, and conserve natural resources and certain jurisdictions as stipulated in UNCLOS. The continental shelf, on the other hand, relates to the coastal state's sovereign rights over the natural resources of the seabed and subsoil. This distinction is important because the delimitation of each zone cannot be done without ignoring its respective legal characteristics.(UNCLOS 1982, Pasal 2, 3, 56, 57, 76, and 77)

In the context of territorial seas, Article 3 of UNCLOS 1982 grants each country the right to establish the breadth of its territorial sea up to a maximum of 12 nautical miles, measured from baselines determined in accordance with the convention. However, where the coasts of two countries face each other or are adjacent, the delimitation of the territorial sea requires a separate delimitation rule. Article 15 of UNCLOS stipulates that, unless otherwise agreed, no country has the right to extend its territorial sea beyond the median line, each point of which is equidistant from the nearest points on the baselines of both countries. This provision does not apply absolutely where there are historical rights or other special circumstances that require a different delimitation method. Thus, the median line principle is an important starting point in the delimitation of territorial seas, but its application must still take into account the exceptions expressly recognized in the convention.(UNCLOS 1982, Pasal 3 and Article 15)

The application of Article 15 of UNCLOS requires the determination of valid baselines and the identification of relevant geographic points. A normal baseline is generally the low-water line along the coast as shown on a large-scale map officially recognized by the coastal state, while straight baselines may be used in certain geographic conditions as required by UNCLOS. Mistakes in determining baselines can affect the calculation of the width of the territorial sea and the position of boundaries with neighboring states. Therefore, boundary determination must be supported by hydrographic data, geographic coordinates, verifiable nautical charts, and consistent measurement methods. In the case of islands, bays, coastal indentations, or unusual geographic conditions, disputing states need to verify whether the use of specific baselines complies with UNCLOS provisions. This technical approach is crucial to ensure that the delimitation process not only produces cartographically accurate lines but also has a legally justifiable basis.(UNCLOS 1982, Pasal 5 and Article 7)

Unlike territorial seas, the delimitation of the EEZ is regulated in Article 74 of UNCLOS 1982. This provision states that delimitation between states with opposite or adjacent coasts must be carried out through agreement based on international law as referred to in Article 38 of the Statute of the International Court of Justice, to achieve an equitable solution. This

formulation shows that UNCLOS does not establish a single mathematical formula that must be applied identically in every case of EEZ delimitation. Delimitation must take into account relevant international law and the specific circumstances of each dispute. Agreement can be reached through bilateral negotiations or other diplomatic mechanisms, while if these efforts do not produce a solution, the parties can consider international dispute resolution mechanisms in accordance with the applicable jurisdictional basis. Thus, agreement and equitable settlement are essential elements in the EEZ delimitation regime.(ICJ, 2009; UNCLOS 1982, Pasal 74 paragraph (1), 38; Statuta ICJ, 1945)

A similar principle applies to the delimitation of the continental shelf under Article 83 of UNCLOS 1982. This provision requires states with opposite or adjacent coasts to establish the boundaries of the continental shelf through agreements based on international law in order to achieve an equitable solution. The continental shelf has a special character because the coastal state's rights over it relate to the exploration and exploitation of the natural resources of the seabed and subsoil, including mineral resources and certain living organisms. These rights are exclusive and do not depend on formal occupation or proclamation. However, the existence of rights over the continental shelf does not in itself resolve the problem of delimitation when claims by two states overlap. In such circumstances, delimitation is necessary to more precisely identify the scope of each state's rights and reduce the potential for conflict over the exploration and exploitation of natural resources.(UNCLOS 1982, Pasal 77 and Article 83 paragraph (1))

The provisions of Articles 74 and 83 share a fundamental similarity: prioritizing agreements based on international law to achieve a just settlement. This similarity reflects the need to apply a consistent approach to the delimitation of the EEZ and continental shelf, particularly when the two zones have adjacent or geographically interconnected boundaries. However, this similar formulation does not mean that every EEZ and continental shelf boundary line must always be identical in all circumstances. Delimitation must still take into account legitimate maritime rights, geographic characteristics, and legal norms applicable to the zone in question. International judicial practice demonstrates that the approach used to resolve delimitation disputes develops through the interpretation of convention provisions, principles of international law, and the factual circumstances of each case. Therefore, dispute resolution requires a structured analysis so that the outcome not only meets the interests of one party but is also accountable under international law.(Churchill, Lowe, dan Sander, 2022)

In the development of international judicial practice, the three-stage delimitation method has become an important approach, particularly in determining the boundaries of the EEZ and continental shelf. The first stage involves drawing a provisional equidistant line based on relevant baselines on each country's coast. The second stage involves examining relevant circumstances that might necessitate adjustments to that line to achieve an equitable solution. Relevant circumstances may include the configuration of the coast, the presence of islands, the geographic features of the area, or other factors recognized as relevant under

international law. The third stage examines whether the resulting line creates a significant imbalance between the length of each country's relevant coastline and the allocated maritime area. This proportionality test is not a mathematical division of maritime territory based on coastline length, but rather a final examination to assess whether the delimitation results in a significant imbalance.(ICJ, 2009)

This three-stage approach received significant clarification in the Maritime Delimitation in the Black Sea case (Romania v. Ukraine), decided by the International Court of Justice on 3 February 2009. In this case, the Court used a provisional equidistance line as a starting point, then considered whether or not there were relevant circumstances requiring adjustment, and finally assessed the proportionality of the resulting delimitation. The judgment demonstrates that the equidistance line method is not an end in itself to be applied without evaluation, but rather a preliminary instrument for establishing a boundary line that is then tested in light of the specific circumstances of the case. This approach helps to enhance consistency and transparency in the legal reasoning of international courts, although its application remains dependent on the geographical facts and legal context under review. For states negotiating maritime boundaries, the judgment also provides a reference point for the importance of using accurate geographic data and constructing objectively testable legal arguments.(ICJ, 2009)

In addition to coastal configuration, the existence of islands and other geographical features is often a key issue in delimitation. Article 121 of UNCLOS 1982 defines an island as a naturally formed piece of land, surrounded by water, and above sea level at high tide. In principle, islands have a territorial sea, a contiguous zone, an EEZ, and a continental shelf in accordance with the provisions of the convention. However, Article 121 paragraph (3) stipulates that coral reefs that cannot support human habitation or economic activity do not have an EEZ or a continental shelf. This provision raises two issues that need to be distinguished: determining the legal status of a geographical feature and determining the effect of that feature on the delimitation line. An island may meet the criteria for creating a maritime zone, but its effect on the boundary line in a given case may still be limited if giving it full effect would result in a disproportionate distortion of the overall delimitation.(UNCLOS 1982, Pasal 121 paragraphs (1)–(3))

The influence of an island on delimitation cannot be determined solely on the basis of its physical size. International tribunals consider the island's position relative to the main coast, its location within the geographical configuration, and its effect on the balance of the boundary line. In some cases, insular features are given full effect, partial effect, or no significant influence on the drawing of a particular delimitation line, depending on the factual and legal circumstances examined. This assessment must be distinguished from determining whether a feature is an island or a rock under Article 121 of UNCLOS. This means that the legal status of a feature and its delimitation effect are two interrelated, but not identical, issues. This distinction is important so that maritime claims are not based

solely on the existence of a geographical feature without assessing its impact on a just settlement.(Klein, 2005)

In addition to regulating the principle of delimitation, UNCLOS 1982 also regulates the obligations of states during the period when the boundary determination process is not yet complete. Article 74 paragraph (3) for the EEZ and Article 83 paragraph (3) for the continental shelf require the states concerned, in a spirit of mutual understanding and cooperation, to make every effort to make provisional arrangements that are practical and do not jeopardize or hinder the achievement of a final agreement. This provision is important because the delimitation negotiation process can be lengthy, while economic activities, shipping, research, and management of marine resources continue. Provisional arrangements can take the form of cooperation in resource management, coordination of exploration activities, communication mechanisms, or other arrangements agreed upon by the parties. However, these provisional arrangements do not in themselves establish final boundaries or reduce the legal position of each state, unless the parties agree otherwise. Therefore, their implementation must be carefully designed to avoid actions that exacerbate the dispute.(UNCLOS 1982, Pasal 74 paragraph (3) and Article 83 paragraph (3))

The obligation to resolve disputes peacefully is also an important basis in regulating maritime delimitation. Article 2 paragraph (3) of the UN Charter requires UN members to resolve international disputes by peaceful means so that international peace, security, and justice are not threatened. Article 33 paragraph (1) of the UN Charter mentions various methods of peaceful settlement, including negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, and other peaceful mechanisms chosen by the parties. Within the framework of UNCLOS, these provisions are complemented by Part XV which regulates the settlement of disputes regarding the interpretation and application of the convention. Article 287 provides a choice of dispute resolution procedures, including ITLOS, ICJ, arbitration under Annex VII, and special arbitration under Annex VIII. However, the choice of forum cannot be separated from the provisions on jurisdiction, the choice of procedure made by the state, and applicable exceptions. Thus, not every maritime dispute can automatically be submitted to any forum without examining the basis of its jurisdiction.(UNCLOS 1982, Pasal 2 paragraph (3) and Article 33, 287 and Article 298)

The role of international judicial institutions in maritime delimitation is evident in various cases that have contributed to the development of maritime law. In addition to the 2009 case of Romania v. Ukraine, the International Labour Organization (ITLOS), through its 2012 ruling in the Bangladesh/Myanmar case, addressed the delimitation of territorial seas, EEZs, and continental shelves in the Bay of Bengal, including the continental shelf beyond 200 nautical miles within its jurisdiction. Furthermore, an arbitral tribunal based on Annex VII of UNCLOS, in the 2014 case of Bangladesh and India, resolved a maritime boundary dispute in the same area. These three cases demonstrate that international dispute resolution mechanisms can contribute to maritime boundary certainty, but each ruling must be interpreted in light of the jurisdictional basis, the scope of the dispute, and the facts

examined. These rulings also demonstrate that international law provides a framework for resolving differing claims without resorting to unilateral action or the use of force.(ITLOS, 2012; PCA, 2014)

For Indonesia, the regulation of maritime boundary delimitation has strategic significance because Indonesia is an archipelagic country with maritime borders with a number of neighboring countries. Clarity of maritime boundaries is necessary to support the implementation of sovereign rights over natural resources, fisheries surveillance, marine environmental protection, shipping security, and certainty of economic activities in border areas. At the same time, dispute resolution must be carried out while respecting international law, maintaining bilateral relations, and avoiding actions that could exacerbate differences in claims. If the EEZ or continental shelf boundaries have not been agreed upon, Indonesia and the countries concerned need to prioritize negotiations based on technical data and legal arguments, while considering interim arrangements in accordance with Article 74 paragraph (3) and Article 83 paragraph (3) of UNCLOS. If negotiations do not produce a resolution, the option of an international forum can be considered after assessing the jurisdictional basis, the provisions binding on the parties, and the legal consequences of each mechanism.(Rothwell dan Stephens, 2016)

Based on the above description, maritime boundary delimitation is a process that integrates international legal norms, geographical conditions, technical data, and dispute resolution mechanisms. Article 15 of UNCLOS provides specific guidelines for the delimitation of territorial seas, while Articles 74 and 83 emphasize agreements based on international law to achieve a just settlement in the delimitation of the EEZ and continental shelf. International judicial practice demonstrates the importance of a structured method, consideration of relevant circumstances, and proportionality examination without ignoring the characteristics of each case. In addition, Article 121 concerning the island regime, Article 74 paragraph (3) and Article 83 paragraph (3) concerning temporary arrangements, and Part XV concerning dispute settlement complete the legal framework for delimitation. By consistently applying these provisions, disputing countries have a foundation for establishing maritime boundaries that are more certain, fair, and in accordance with international law, while reducing the risk of conflict and encouraging cooperation in the management of maritime areas.

3.2. The Authority of ITLOS, ICJ, and International Arbitration in Dispute Settlement

Settlement of maritime boundary disputes is a crucial part of the international legal system as it relates to the determination of the rights, obligations, and jurisdiction of states over maritime areas claimed by each other. Within the framework of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), dispute resolution is not limited to diplomatic negotiations but can also be pursued through international judicial and arbitration mechanisms. Part XV of UNCLOS provides a framework for resolving disputes concerning the interpretation and application of the convention, including disputes related to maritime

boundary delimitation. This mechanism aims to promote peaceful resolution based on law while providing certainty regarding the maritime rights of disputing states. However, the authority of each institution is not universal or unlimited. Its application depends on the basis of jurisdiction, state consent, the choice of applicable procedures, and the exceptions stipulated in international law. Therefore, determining the forum for settlement must begin with an examination of the legal basis that authorizes the institution to examine and decide the case.(UNCLOS 1982, Pasal 279–299)

The International Tribunal for the Law of the Sea (ITLOS) is an international tribunal established under Annex VI of UNCLOS 1982. ITLOS is based in Hamburg, Germany, and has a specific mandate to handle cases within its jurisdiction under UNCLOS and other international treaties that expressly grant it authority. The existence of ITLOS reflects the need for a judicial institution with specialized competence in the field of maritime law, including the interpretation of provisions regarding maritime rights, the utilization of marine resources, and the resolution of disputes between parties related to the convention. In delimitation cases, ITLOS can examine disputes if there is a valid jurisdictional basis and procedural requirements have been met. Therefore, ITLOS's specialization in maritime law does not mean that all maritime boundary disputes automatically fall under its jurisdiction. Each case must still be assessed based on the provisions binding on the parties, including whether the dispute falls within the scope of UNCLOS and whether the mechanism used authorizes the tribunal to decide it.(ITLOS, 2012; UNCLOS 1982, Pasal 1 and 21)

The jurisdiction of ITLOS derives primarily from the provisions of UNCLOS and the consent of relevant states. Article 288 of UNCLOS provides for the jurisdiction of a court or tribunal over disputes concerning the interpretation or application of the convention and other categories of disputes specifically assigned to it by applicable legal instruments. In practice, ITLOS also has the authority to handle requests for interim measures under Article 290 in circumstances specified by the convention, and cases concerning the release of ships and crews under Article 292. However, these powers have their own requirements and scope. In maritime boundary disputes, the primary question is not simply whether ITLOS has expertise in the law of the sea, but rather whether the parties are bound by a jurisdictional basis that allows the case to be submitted to that tribunal. The jurisdictional examination includes identifying the parties, the UNCLOS provisions underlying the claim, the applicable settlement procedures, and any possible limitations or exceptions. Such analysis is crucial to avoid the mistaken conclusion that all disputes concerning maritime territory can be directly submitted to and decided by ITLOS.(UNCLOS 1982, Pasal 288, Article 290, and Article 292)

The role of ITLOS in maritime boundary delimitation can be seen in the Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal case, decided on March 14, 2012. In this case, Bangladesh and Myanmar disputed the delimitation of their territorial seas, EEZs, and continental shelves in the Bay of Bengal. ITLOS assessed the legal basis and relevant geographical circumstances for establishing the boundary between the two countries. This decision is important because it demonstrates

that a tribunal established under UNCLOS can examine delimitation disputes when its jurisdictional basis is met. The case also demonstrates the relationship between the provisions regarding various maritime zones and the need to produce a boundary line that can provide legal certainty for both countries. However, the decision in the Bangladesh/Myanmar case cannot be automatically applied to all delimitation disputes. Each case has a different coastal configuration, legal claims, and geographical conditions, so the application of delimitation principles must still be adjusted to the relevant facts and laws.(ITLOS, 2012)

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations, established under the UN Charter and further regulated in the ICJ Statute. Unlike the ITLOS, which specializes in maritime law, the ICJ handles a variety of international legal disputes between states, including disputes over territorial sovereignty, the delimitation of land and sea boundaries, the interpretation of treaties, and state responsibility. Based on Article 34 paragraph (1) of the ICJ Statute, only states can be parties to disputes before the Court. However, status as a state does not automatically enable a dispute to be directly submitted to the ICJ. Jurisdiction over certain cases still requires the consent of the state concerned. In the context of maritime delimitation, the ICJ has made important contributions through decisions that explain the principles of boundary delimitation, the assessment of relevant circumstances, and the application of international legal norms to different geographical conditions. These decisions serve as important references for the development of maritime law, although their application in other cases must still take into account differences in facts and legal basis.(ICJ, 2009; Piagam PBB, 1945; Statuta ICJ, 1945)

The basis for the ICJ's jurisdiction over interstate disputes can be established through several mechanisms. First, the disputing states can enter into a special agreement or compromise to submit a particular dispute to the ICJ. Second, jurisdiction can stem from a dispute resolution clause in an international treaty that binds the parties and grants the Court authority. Third, jurisdiction can be based on a declaration of acceptance of compulsory jurisdiction under Article 36 paragraph (2) of the ICJ Statute, taking into account the scope of the declaration and the reciprocal relationship between the states concerned. This mechanism demonstrates that the ICJ's jurisdiction is based on state consent, not general authority that can be applied to all states without legal basis. In maritime boundary disputes, examining the basis for consent is the initial stage in determining whether the Court has the authority to examine the subject matter. If the basis for jurisdiction is not met, the Court may discontinue examining the substance of the dispute, even if the issue is significant for international relations or the management of maritime areas.(ICJ, 2009; Statuta ICJ, 1945)

One of the ICJ's landmark decisions in the field of delimitation is the Maritime Delimitation in the Black Sea (Romania v. Ukraine) case, decided on February 3, 2009. The Court adopted a stepwise approach to delimiting the EEZ and continental shelf: establishing a provisional equidistance line, examining relevant circumstances that may justify an adjustment, and

assessing the proportionality of the final result. This approach helps establish a more systematic analytical framework for resolving maritime boundary disputes. The ICJ's contribution lies not only in establishing the boundary line in a specific case but also in elucidating a method of legal reasoning that can be used as a reference in other cases. However, this principle is not a mechanical formula that eliminates the need to assess geographical conditions and applicable legal provisions. Delimitation still requires an analysis of the length and configuration of the relevant coastline, the presence of islands, and other circumstances that could legitimately influence the outcome of the delimitation.(ICJ, 2009)

In addition to the ITLOS and the ICJ, international arbitration is an important mechanism for resolving maritime boundary disputes. UNCLOS 1982 provides for arbitration under Annex VII and special arbitration under Annex VIII. Annex VII arbitration is one of the main procedures available under Article 287 of UNCLOS, while special arbitration under Annex VIII is intended for specific categories of disputes specified in the convention, such as fisheries, the protection and preservation of the marine environment, marine scientific research, and navigation, including pollution from ships and discharges. Arbitration provides space for the establishment of tribunals to handle cases based on applicable legal procedures and provisions. While the parties may have room to determine certain aspects of the arbitration process, this flexibility is still limited by UNCLOS, the instrument that provides the basis for jurisdiction, and the binding procedural rules. Thus, arbitration is not a mechanism that stands outside of international law, but rather part of the dispute resolution system with a specific basis and limits of authority.(UNCLOS 1982, Pasal 287 and Appendix VIII)

Arbitration under Annex VII of UNCLOS plays a crucial role because it can be the applicable procedure when the disputing states do not accept the same procedure under Article 287 and there is no other agreement governing the resolution of the dispute. In such circumstances, Annex VII arbitration applies in principle according to the mechanism determined by UNCLOS, while still taking into account other relevant provisions. An arbitration tribunal is established to handle a specific dispute and exercises its authority based on applicable law. The tribunal's decision is binding on the parties in accordance with relevant provisions, including Article 296 of UNCLOS and Article 11 of Annex VII. The advantage of this mechanism lies in its ability to render a binding decision without requiring the parties to first agree on all elements of the tribunal's formation after the dispute arises, as long as the jurisdictional and procedural requirements of UNCLOS are met. However, the application of arbitration still requires adequate legal and technical preparation, particularly in maritime boundary disputes that require geographical evidence, maps, coordinates, and analysis of overlapping maritime rights.(UNCLOS 1982, Pasal 296 and Annex VII, Article 11)

Article 287 of UNCLOS gives states parties the option to accept one or more dispute resolution procedures, namely ITLOS, ICJ, arbitration under Annex VII, and special arbitration under Annex VIII. States may make a written declaration regarding their choice of procedure. If the parties to a dispute have accepted the same procedure, settlement will in principle be carried out through that procedure, unless the parties agree otherwise. Conversely, if the

parties do not accept the same procedure, and there is no other agreement in force, the dispute will in principle be submitted to arbitration under Annex VII in accordance with Article 287 paragraph (5). This provision shows that the selection of a dispute resolution forum in UNCLOS has systematic rules and does not solely depend on the unilateral preference of one state. Therefore, before submitting a dispute, states need to examine the declaration of each party's choice of procedure, their status of adherence to UNCLOS, and the possibility of a special agreement governing the settlement forum.(UNCLOS 1982, Pasal 287 paragraphs (1)–(5))

While UNCLOS provides a dispute resolution mechanism that can result in binding decisions, its application does not always apply to all categories of disputes. Article 298 allows a State Party to make a written declaration to exempt certain categories from the mandatory procedures that result in binding decisions under Part XV, including disputes concerning the delimitation of territorial seas, the EEZ, or the continental shelf, disputes involving gulfs or historic titles, certain military activities, and certain law enforcement activities. The impact of the exclusion must be determined based on the content of the declaration, the categories of disputes covered, and the relevant provisions of UNCLOS. Therefore, a declaration under Article 298 should not be interpreted as precluding all possibilities for settlement through international law. In certain circumstances, the conciliation mechanism under Annex V may be available, including for the categories of delimitation disputes covered by that provision, subject to applicable requirements and exceptions.(UNCLOS 1982, Pasal 298 and Appendix V)

The main differences between the ITLOS, the ICJ, and international arbitration lie in their basis of formation, jurisdictional scope, institutional structure, and dispute resolution procedures. The ITLOS is a permanent tribunal specializing in maritime law under UNCLOS. The ICJ is the principal judicial organ of the United Nations, handling various international legal disputes between states. Meanwhile, arbitration is a mechanism in which a tribunal is established to resolve specific disputes based on applicable legal instruments and procedures. These differences influence a country's strategy in filing cases, compiling evidence, and establishing legal arguments. However, it is inappropriate to conclude that one forum is always superior to another. The appropriateness of a forum must be assessed based on its jurisdictional basis, the type of dispute, the scope of the claim, the availability of evidence, and the applicable procedures. Selecting the appropriate forum is part of a country's legal strategy to achieve a legitimate and enforceable resolution.(ICJ, 2009; UNCLOS 1982; Statuta ICJ, 1945)

International judicial and arbitration mechanisms do not diminish the importance of diplomatic negotiations. Article 279 of UNCLOS affirms the obligation of state parties to resolve disputes concerning the interpretation or application of conventions by peaceful means in accordance with Article 2 paragraph (3) of the UN Charter, while Article 280 recognizes the right of the parties to agree on a settlement by peaceful means of their choice. In delimitation disputes, negotiations can be used to agree on delimitation

principles, technical data, coordinates, and forms of arrangement acceptable to both states. If negotiations do not produce an agreement, judicial or arbitration mechanisms can be an alternative if there is an adequate jurisdictional basis. The relationship between diplomacy and adjudication is therefore complementary: diplomacy opens the space for agreement based on mutual interests, while international decisions can provide legal resolution when the parties are unable to reach an agreement.(UNCLOS 1982, Pasal 279 and Article 280, 2 paragraph (3) and Article 33; Piagam PBB, 1945)

The determination of the forum for resolving maritime boundary disputes must be based on a comprehensive legal and strategic evaluation. States must first identify the object of the dispute, for example, whether the dispute concerns the delimitation of territorial seas, the EEZ, the continental shelf, or a combination of several maritime zones. Next, states must examine the available jurisdictional bases, the choice of procedure declaration under Article 287 of UNCLOS, the possibility of exceptions under Article 298, and the existence of specific agreements between the parties. In addition to jurisdictional aspects, considerations should also include the cost of the process, the duration of the examination, the need for technical expertise, the confidentiality of legitimate information, and the impact of the decision on bilateral relations. These considerations cannot replace legal requirements, but they can help states determine the most appropriate course of action once they have ensured that the chosen mechanism is legally available. In disputes involving strategic areas or high-value resources, such analysis should be supported by coordination between international legal experts, diplomats, hydrographers, geodesists, and cartographers.(Klein, 2005)

Based on this description, ITLOS, the ICJ, and international arbitration provide mechanisms that can help states resolve maritime boundary disputes under international law. ITLOS offers specialized expertise in the law of the sea, the ICJ provides a general judicial forum for legal disputes between states, while arbitration provides a mechanism for resolving disputes in accordance with applicable procedures. However, the effectiveness of each forum depends on meeting jurisdictional requirements, the availability of evidence, the quality of legal arguments, and the state's willingness to comply with its international obligations. In this context, states must not only understand the institutional characteristics of each forum but also understand the relationship between Part XV of UNCLOS, the basis for consent to jurisdiction, and any applicable exceptions. This approach is relevant for Indonesia in building legal readiness to address delimitation issues, without neglecting bilateral negotiations and practical cooperation as important instruments for maintaining regional stability.

4. Conclusion

Maritime boundary disputes between neighboring countries are a matter of international law that require the integrated application of norms, geographical analysis, and diplomacy. UNCLOS 1982 provides the primary legal framework for the delimitation of territorial seas, EEZs, and continental shelves. Article 15 governs the delimitation of territorial seas, while

Articles 74 and 83 emphasize agreement based on international law to achieve a just settlement in the delimitation of EEZs and continental shelves. Disputes can be resolved through negotiation, conciliation, ITLOS, the ICJ, and international arbitration. However, the authority of each forum depends on the jurisdictional basis and consent of the state, as well as the applicable provisions of UNCLOS. Article 287 provides a choice of dispute resolution procedures, while Article 298 allows for exceptions to certain categories of disputes with procedural consequences regulated by the Convention. Therefore, the determination of the forum must be preceded by a careful analysis of the jurisdiction and scope of the dispute. The ICJ rulings in the *Romania v. Ukraine* case, the ITLOS ruling in the *Bangladesh v. Myanmar* case, and the *Bangladesh v. India* arbitration demonstrate that maritime delimitation is based on legal norms and relevant circumstances, not merely on mathematical divisions of maritime territory. These practices emphasize the importance of accurate technical data, consistent legal arguments, and a country's ability to prepare for the dispute resolution process. For Indonesia, the resolution of maritime boundary disputes needs to be directed at strengthening bilateral diplomacy, preparing for international judicial processes, improving the quality of technical data, and developing interim arrangements while boundaries are pending. This approach is expected to strengthen legal certainty and prevent conflict escalation. Therefore, effective resolution of maritime boundary disputes depends not only on the choice of forum but also on a country's commitment to comply with international law, implementing the settlement outcome in good faith, and maintaining peaceful neighborly relations.

5. References

Journals:

- Agung, AA, & Yustisianthia, R. (2021). "Settlement of Maritime Border Disputes Between Indonesia and Vietnam in the Waters of Indonesia's Exclusive Economic Zone." *Uti Possidetis: Journal of International Law*, 2(2), 167–188.
- Charney, Jonathan I. (1994). "Progress in International Maritime Boundary Delimitation Law." *American Journal of International Law*, Vol. 88, no. 2, p. 227–256.
- Firmansyah, H., & Pratama, R. (2022). "A Legal Analysis of the ITLOS Decision in the Maritime Delimitation Dispute and Its Impact on Legal Certainty of Coastal States." *Jurnal Veritas et Justitia*, 8(2), 312–330.
- Gaver, Craig D. (2021). "Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)." *American Journal of International Law*, 115(3), 519–526.
- Kusuma, IM, & Setiawan, A. (2020). "The Role of the International Tribunal for the Law of the Sea (ITLOS) in Settling Maritime Delimitation Disputes." *Journal of International Law*, 18(1), 89–108.
- Lathrop, Coalter G. (2013). "International Tribunal for the Law of the Sea: Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and

- Myanmar in the Bay of Bengal." American Journal of International Law, 107(1), 211–217.
- Oxman, Bernard H. (1980). "The Third United Nations Conference on the Law of the Sea: The Eighth Session (1979)." American Journal of International Law, Vol. 74, no. 1, p. 1–23.
- Setiadi, D., & Rahayu, S. (2023). "ITLOS Jurisdiction and the Implementation of Article 287 of UNCLOS 1982 Mechanism in Settling Overlapping Maritime Claims." Journal of Environmental & Development Law, 53(1), 45–67.
- Syahrin, MA (2019). "Mandatory Maritime Dispute Settlement Mechanisms Based on UNCLOS 1982 and Their Implications for Neighboring Countries." Jurnal Samudra Hukum, 14(2), 201–215.
- Treves, Tullio. (2010). "The Jurisdiction of the International Tribunal for the Law of the Sea." Chinese Journal of International Law, 9(4), 811–831.

Book:

- Churchill, RR, and AV Lowe. The Law of the Sea. 3rd edition. Manchester: Manchester University Press, 1999.
- Evans, Malcolm D., ed. International Law. 5th Edition. Oxford: Oxford University Press, 2018.
- Klein, Natalie. Dispute Settlement in the UN Convention on the Law of the Sea. Cambridge: Cambridge University Press, 2005.
- Rothwell, Donald R., and Tim Stephens. (2016). The International Law of the Sea, 2nd Edition. Oxford: Hart Publishing.
- Tanaka, Yoshifumi. The International Law of the Sea. 3rd Edition. Cambridge: Cambridge University Press, 2019.

Regulation:

- Charter of the United Nations, 1945.
- International Court of Justice. Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, ICJ Reports 2009, p. 61, 3 February 2009.
- International Court of Justice. Statute of the International Court of Justice. 1945.
- International Tribunal for the Law of the Sea. Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment, 14 March 2012.
- Permanent Court of Arbitration. Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award, 7 July 2014.
- United Nations. United Nations Convention on the Law of the Sea. Montego Bay, 10 December 1982.
- United Nations. Vienna Convention on the Law of Treaties. Vienna, 23 May 1969.