



Title : NATIONAL AND INTERNATIONAL DIMENSION IN
INDONESIA'S EXCLUSIVE ECONOMIC ZONE
Author : Ida Kurnia dan Imelda Martinelli

MIMBAR HUKUM

DOI : <http://doi.org/10.22146/jmh.25548>
Publisher : Faculty of Law Universitas Gadjah Mada
URL : jurnal.ugm.ac.id/jmh
E Issn : 2443-0994
P Issn : 0852-100x

NATIONAL AND INTERNATIONAL DIMENSION IN INDONESIA'S EXCLUSIVE ECONOMIC ZONE*

Ida Kurnia** and Imelda Martinelli***

Department of International Law and Departement of Civil Law
Faculty of Law, Universitas Tarumanagara, Jakarta
Jalan Letjen S. Parman, Grogol, Jakarta 11440

Abstract

Attempts to establish international regulation can be understood to establish. The purpose of those attempts is to preserve and secure marine fisheries resources as utilization without regulation might lead to exploitation and pose a threat to national interests. Indonesia needs to prepare and revisit EEZ of Indonesia regulation. This is due to the fact that in EEZ there are two dimensions. The approaches that are being used is normative approach and identification of facts.

Keywords: Exclusive Economic Zone, People's Welfare, National and International Dimension.

Intisari

Upaya untuk mengadakan pengaturan hukum internasional dapat dipahami karena kegiatan manusia dalam memanfaatkan sumber daya ikan semakin lama semakin berkembang. Tujuan dari upaya pengaturan tersebut adalah untuk menjaga dan mengamankan sumber daya ikan karena pemanfaatan yang tidak dilandasi dengan suatu pengaturan dapat membahayakan kepentingan negara-negara. Indonesia perlu menyiapkan dan melihat kembali pengaturan ZEE Indonesia. Hal ini disebabkan di dalam ZEE berlaku dua dimensi. Adapun pendekatan yang digunakan adalah pendekatan normatif dan identifikasi fakta.

Kata Kunci: Zona Ekonomi Eksklusif, Kesejahteraan Rakyat, Dimensi Nasional dan Internasional.

Pokok Muatan

A. Background	576
B. Research Method	577
C. Result and Discussion	578
1. Chronology of Establishing International Law	578
2. National Regulation Regarding EEZ	583
D. Conclusion	586

* Belum diisi oleh Penulis

** Correspondence address: idah@fh.untar.ac.id.

*** Correspondence address: imeldam@fh.untar.ac.id.

A. Research Background

Indonesia is well known to be an archipelagic state, which consists of islands of various sizes. These islands are connected with one another through the vast arrays of seas. The regulations for both land and sea territories are inseparable from the history of the Declaration of December 13th, 1957 which stated:

That all body of waters around, between and connecting the islands, or part of the islands, including the mainland of Indonesia irrespective of its width and area, is part of the territory of Indonesia and thus under the sovereignty of the Republic of Indonesia.

Djuanda Declaration of December 13th, 1957 would then be implemented in legislation, as Indonesian Law No.4 of 1960 on Indonesian Waters.¹ In the following development, the Law would then be updated as Indonesian Law No.6 of 1996 on Indonesian Waters.² These two regulations need to be discussed as both contain two main points regarding Indonesia's EEZ. The first point is the statement of sovereignty of land and water as a unity, thus enabling the government to maintain the security of the nation, both in terms of the integrity of Indonesia itself, as well as protecting natural resources within, including marine fisheries resources, that could form as a driving force in improving people's welfare. The second point is the fact that the regulations act as the starting point of expansion for the jurisdiction of the Republic of Indonesia, and marine area 200 miles wide measured from the baselines, would give major implications regarding the increase of natural resources under the authority of Indonesia.

It can be seen very clearly that Indonesia is required to take appropriate measures in utilizing, maintaining, and preserving natural resources, especially marine fisheries resources in its own

EEZ, due to its massive quantity compared to other natural resources, and its sheer potential to fulfill the needs of Indonesian. It should be noticed that, in terms of regulations, EEZ focuses on both national dimension scope (coastal states adjacent to its EEZ), as well as international scope, that is, if a coastal state cannot utilize its fisheries resources entirely within its EEZ, then that coastal state, in this case, Indonesia, should provide the opportunity for other countries to be able to utilize its fisheries resources in its EEZ, subject to terms and agreements made by the Indonesian government beforehand. Furthermore, in order to preserve its natural marine fisheries resources within its EEZ, Indonesia is obliged to maintain its EEZ from illegal activities that deviate from regulations, i.e. illegal fishing.

Regarding the people's welfare, natural marine fisheries resources could play a major part as Indonesian's diet lacks protein and is one of the world's lowest in terms of animal protein. Thus, appropriate utilization of marine fisheries resources might improve the nutrients needed. Another method to supplement the lack of protein in Indonesian diet had been implemented, such as developing farms to boost the number of livestock. However, those methods were proven to be too expensive, and therefore the most appropriate measures that can be taken is to maximize the natural resources within the waters. In order to do that, regulations must be prepared and implemented to accommodate the utilization of marine fisheries resources for the greater good and the welfare of Indonesian people.³

Based on the idea above, Government Announcement of March 21st, 1980 regarding Indonesia's EEZ was established. It would later be used as the initial rules and guidelines regarding the expansion of the jurisdiction of the Republic of Indonesia, and its coastal area of 200 miles from baselines of Indonesia's territorial sea. According

¹ Law No. 4 of 1960 concerning Indonesian Waters (State Gazette of the Republic of Indonesia No. 22 of 1960, Supplement to State Gazette of the Republic of Indonesia No. 1942).

² Law No. 6 of 1996 concerning Indonesian Waters (State Gazette of the Republic of Indonesia No. 73 of 1996, Supplement to State Gazette of the Republic of Indonesia No. 3647).

³ General Overview of Law No. 4 of 1960 concerning Indonesian Waters (State Gazette of the Republic of Indonesia No. 22 of 1960, Supplement to State Gazette of the Republic of Indonesia No. 1942).

to Koesnadi Hardjasoemantri, the move played a major part in adding the jurisdiction of Indonesia and its natural resources by 2,7 km² outside of the 3,1 million km² contained within the waters of Indonesia.⁴

The next step for Indonesia is to properly protect and keep its EEZ, by enacting Indonesia Law No.5 of 1983 on Indonesian Exclusive Economic Zone.⁵ This action is a form of implementation from the current related situation, and as anticipation for international law interference.

In reality, Indonesia as a participant in the international community can not shy away from international laws, in this case, the United Nations Convention on Law of the Sea of 1982, as international agreements and therefore act as Law Making Treaty. Seeing the development and steps taken by Indonesia, this particular issue needs to be investigated, especially for several related issues. The first issue is a discussion of the alignment of national laws and international regulations, as Indonesia unilaterally set its own EEZ by issuing an Indonesia National Law, prior to ratifying the United Nations Convention on the Law of the Sea of 1982. The second issue regards to the content of the laws themselves, whether they managed to fulfill the interests of the people of Indonesia. The third issue is the fact that international demand regarding marine fisheries resources far outweighs some nation's supply, and in addition, the ever-growing number of illegal fishing cases raises the question as to whether Indonesia is prepared or not. Having described the three issues as the main points of this study, several questions need to be answered:

1. How are the alignment and conformity of national legislation and international legislations regarding the regulations of Indonesia's EEZ?
2. Do existing legislations, both national

and international regulations that govern the use of marine fisheries resources, incline towards the need of the people of Indonesia?

3. Are current regulations powerful enough to protect against illegal fishing?

B. Research Method

In this study, the normative approach is utilized. Therefore, the type of data used is secondary data in the form of regulations, from either national regulations and law or international regulations, legal documents, and related articles or books, as well as various internet resources. However, primary data can also be utilized in order to support the secondary data.

This study focuses on conducting statute approach by examining thoroughly all relevant laws and regulations. This approach relies on the consistency and coordination of the substance of laws and regulations, by studying the ontologism of why the law was created in the first place, its philosophical foundation, and the *ratiolegis* of the provisions of law.⁶ According to Soerjono Soekanto and Sri Mamudji, in terms of normative legislation, the study regarding the principles of law was conducted against the rules of law itself. The study can be conducted on the legal materials for both primary and secondary data, as long as these materials contain the rule of law.⁷

A normative legal research study on the rule of law is not enough, thus further study on aspects of the legal system was needed. The system by definition is an order or a unified whole, consisting of parts or elements that are closely linked to one another, namely the rules or any statement about what it should be so that the legal system is normative.⁸

⁴ Koesnadi Hardjasoemantri, 1988, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta, pp. 110-111.

⁵ Law No.5 of 1983 concerning Indonesian Exclusive Economic Zone (State Gazette of the Republic of Indonesia No. 44 of 1983, Supplement to State Gazette of the Republic of Indonesia No. 3260).

⁶ Peter Mahmud Marzuki, 2007, *Penelitian Hukum*, Kencana, Jakarta, pp. 93-94.

⁷ Soerjono Soekanto and Sri Mamudji, 2003, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT Raja Grafindo Persada, Jakarta, p. 62.

⁸ Sudikno Mertokusumo, 2001, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta, p. 18.

C. Research Result and Analysis

As any other country, Indonesia ratified the United Nations Convention on the Law of the Sea of 1982, which means that Indonesia is bound by the principle of *Pacta Sunt Servanda*, and thus Indonesia must commit to the agreement (United Nations Convention on the Law of the Sea of 1982) in good faith. Furthermore, Indonesia is also bounded by the principle of justification, which constitutes a form of commitment after being bound by the international agreement, and must respect the agreement. The agreement must take place and no excuses can be made, even on the grounds that the agreement itself contradicts with the national law.

1. Chronology of Establishing International Law

a. Unilateral actions and habits

Keeping in mind that Indonesia ratified the United Nations Convention on The Law of the Sea 1982 in 1985 by implementing the Indonesia Law No.17 of 1985, and even issued the Indonesia Law No.5 of 1983 for its EEZ before that, this particular issue needs to be studied even further, considering that it, directly and indirectly, affects the nation itself, due to the consistency of both regulations.

As the first step, chronological and historical information regarding Indonesia Law No.5 of 1983, as well as International Regulations were established. It was considered to be necessary, as United Nations Convention on The Law of the Sea 1982 significantly affected the nations in terms of jurisdictions regulations relating to the utilization of biological resources.

In reality, the basic notion of the regulations of the sea is to divide it into two parts, sea which includes as part of a sovereignty of a country, and seas which are not included in the sovereignty of any territory usually called as high seas. However, this basic notion simply cannot carry on. Basically, due to the demands and

interests of natural resources of each country. The tendency of coastal states to stock up on biological resources for their national interest, and their desire to be independent of any outside influence regarding the utilization of such biological resources, were major reasons of why coastal states act unilaterally.

Seas located outside the territorial sea of a sovereignty is a zone reserved for coastal states for their national interests and to fulfill the demands of biological resources. This concept would later in its development be referred to as the concept of the EEZ. The concept of the EEZ was initiated indirectly from President Truman's Proclamation of Marine Fisheries.

Titled as "Proclamation 2668—Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas", this act affected the definition of regions and regulations, even though it can be considered as a unilateral act. The region is considered to be a clear boundary and measured in valuable resources within the region for the importance of the people, while regulations can be defined as the control of biological resources, in this case, marine fisheries resources, as to who, where, and how the utilization of such resources should be allowed.

This unilateral action, undertaken by President Truman regarding coastal fisheries, would soon be followed by Latin American countries, such as Mexico, Chile, Ecuador, and Peru. Basically, the actions taken by those Latin American countries were limited to the arrangements and regulations regarding the ownership of marine fisheries resources which can be utilized to fulfill the needs of their respective people.

Maritime Zone Concept, announced on the 23rd of June, 1947, would later be followed up with the Declaration of Santiago of 18th of August, 1952 which includes the signs of agreements from Peru and Ecuador,

contained elements of the EEZ for the first time.

In its development in 1970, several Latin American countries such as Uruguay, Chile, Ecuador, Peru, Panama, Brazil, El Salvador, Argentina, and Nicaragua, declared themselves the sovereignty over the waters which do not exceed the limit of 200 miles. The declaration was titled as the Declaration of Montevideo on the Law of the Sea, of 8th of May 1970. Several major points from the declaration can be seen as followed:

- 1) The coastal states' rights over the natural resources within the body of waters adjacent to their coastlines, as well as the seabed and subsoil underneath to be utilized as much as possible to encourage economic growth and development to improve the welfare of the people.
- 2) The right to determine the boundaries of sovereignty and maritime jurisdiction depending on the geographical and geological characteristics, as well as other factors that affect the availability of maritime natural resources and the need for rational utilization of such resources.
- 3) The right to explore and preserve natural biological resources within the body of waters adjacent to their respective territorial sea and regulate necessary laws and rules of fishing.
- 4) Recognizing the freedom of voyages and air travels for all nation under the era of sovereignty and maritime jurisdiction.

Subsequent developments were due to the discussion held by 20 countries which include Uruguay, Chile, Ecuador, Peru, Panama, Brazil, El Salvador, Argentina, Nicaragua, Mexico, Colombia, Guatemala, Dominican Republic and Honduras, which

produced the Declaration of Lima of 8th of August 1970. Substantial result from the Declaration of Lima, 8th of August 1970, was the addition of 2 conditional points: first, the rights for coastal state to prevent contamination and other threats within their body of waters, possibly due to the utilization of marine resources near and/or adjacent to each other; second, is the rights for coastal state to authorize, supervise, and participate in all activities of scientific research conducted in the maritime zones under the sovereignty and jurisdiction of the coastal states involved, and to obtain the results from such researches.

On the 9th of June, 1972, Caribbean Nations held a regional conference and came to the conclusion of the Declaration of Santa Domingo. The main point of interest from the declaration is to clarify the definition of "patrimonial sea" and "territorial sea". In it, the patrimonial sea is defined as, for coastal states to held the sovereign rights regarding its natural resources, both renewable or non-renewable resources, within the body of water, seabed, and subsoil underneath, outside of territorial sea, with a width of no more than 200 miles. Furthermore, coastal states have the right to conduct experimental research, which includes taking actions to prevent contamination, freedom of voyage and air travel, as well as regarding underwater cables and pipes. Thus, the patrimonial sea is more concerned with the functionality and economical aspect, while the territorial sea is more concerned to the conception of sovereignty and regional boundaries. As for the difference between patrimonial sea with high seas is the sovereign rights held by coastal states over the natural resources within the zone specified.

Another subsequent and significant development of EEZ was in terms of regional aspects, which means that it was not constricted to Latin American countries, and

even spread throughout other countries from Asia and Africa. This phenomenon can be seen from the usage of the patrimonial sea as a starting point, or initiative, of developing the relationship between other countries from Asia and Africa.

In the Asian-African Legal Consultative Committee (AALCC), which includes participants from delegations of Indonesia, Malaysia, Japan, India, Kenya and Sri Lanka, the term “EEZ” was first introduced as a new concept from Sri Lanka. Aspects regarding the concepts of EEZ, which includes the rights and obligation of coastal states and other countries, were discussed. Furthermore, in the AALCC, a Sub Committee on the Law of the Sea was formed, to confirm that each country under the international law has the rights to claim territorial sea for a width of 12 miles from the coastline used beforehand. This basic principal of regulations was accepted by some delegations, both regarding the 12-miles territorial sea as well as the rights for the coastal state of exclusive jurisdiction of the sea adjacent to their respective territory.

Another development of the issue occurred in Lagos at 1972, which includes further detailed discussion regarding the regime of high seas which only favors developed countries with advanced technology. The striking differences of utilizing the high seas between developed nations and their advanced technology, with coastal states, could mean that the natural marine resources within the area to be significantly drained, thus needs further regulations.

Further regulations and measures mentioned above are more of a one-sided action, commonly and continuously

practiced, and can be from the same or different regions.

b. International Conferences

1) United Nations Conference on the Law of the Sea 1958

On February 24th, 1958 in Geneva, an international conference regarding the First Law of the Sea was held and took place on the 27th of April, 1958, attended by representatives from 86 countries including Indonesia.⁹ The basic work that was underlined in the resolution stipulates that the conference should discuss the Law of the Sea not only from a legal aspect, but also includes aspects of engineering, biology, economics, and politics into consideration. To understand the issues related to aspects outside the scope of the law, included in the resolutions above and their influence towards the Law of the Sea and marine natural resources, several points can be stated as below:

- a) Economical Aspect, the relationship between the demand of marine fisheries resources, supported by the advances in technology, towards the limitation of the natural resources themselves, in order to fulfill the ever-increasing needs of the people.
- b) Technical Aspect, as the development of new techniques of fishing, adds to the importance of the seas as a pivotal source of biological resources. At first, marine fisheries resources within the water was unable to be utilized

⁹ United Nations Convention on the Fishing and Conservation of the Living Resources of the High Seas (Final Act of the Conference, 1958: U.N. Doc. A/Conf. 13/58/L. 54).

- with lack of technical ability. However, with the development of new techniques, fishing gets to be a lot easier and more manageable.¹⁰
- c) Biological Aspect. As any resources, marine fisheries resources have their limit. Thus, adding to the point of preserving the natural resources to prevent extinction.
 - d) Political Aspect. Part of the people that rely heavily on marine fisheries resources is part of the society as a whole. In terms of integration, human society is organized within certain political units independent of each other, and each has its own sets of government, population, and regions.¹¹
 - e) Non-juridical aspects mentioned above, that influenced the steps that would need to be taken by a country, and those steps may as well be unilateral action and/or exclusive actions.
- c) Convention on Fishing and Conservation of the Living Resources of the High Seas.¹⁴
 - d) Convention on the Continental Shelf.¹⁵

Those four conventions, hereinafter referred to as UNCLOS I do not necessarily mean that United Nations Conference on the Law of the Sea was successful in accommodating the demands of the international community. Quite the contrary, since UNCLOS I was not clear and failed to establish the width of the territorial sea, it was declared as a failure. The failure affected not only on the Convention of Territorial Sea and Additional Line but also to other conventions. The effects to other conventions were understandable because determining the width of the territorial sea is key to decide the width of other areas and to establish the authority of a coastal state.

Even though UNCLOS I was considered a failure, it did have an effect in developing the Law of the Sea, particularly on how to utilize and preserve marine fisheries resources. This attempt was recorded in history part of the development of the Law of the Sea and mapped out the targets of developed coastal states as well as developing countries in terms of sovereignty, determination of sea territory, and adjacent body of waters from a country's coastline.

The United Nations Conference on the Law of the Sea 1, which lasted for approximately two months, managed to produce 4 conventions, as followed:

- a) Convention on the Territorial Sea and Contiguous Zone.¹²
- b) Convention on the High Seas.¹³

¹⁰ United Nations Convention on the Fishing and Conservation of the Living Resources of the High Seas (Preliminary U.N. 1958: Doc. A/Conf. 13/L. 54).

¹¹ Mochtar Kusumaatmadja, 1962, *Masalah Lebar Laut Teritorial pada Konferensi-Konferensi Hukum Laut Djenewa*, Penerbitan Universitas, Bandung, p. 10.

¹² United Nations Convention on the Territorial Sea and Contiguous Zone (1958: U.N. Doc. A/Conf. 13/L. 52)

¹³ United Nations Convention on the High Seas (1958: U.N. Doc. A/Conf. 13/L. 53)

¹⁴ United Nations Convention on Fishing and Conservation of the Living Resources of the High Seas (1958: U.N. Doc. A/Conf.13/L. 54)

¹⁵ United Nations Convention on the Continental Shelf (United Nations, 1958: U.N. Doc. A/Conf. 13/L. 55)

The desire from the international community for appropriate regulations regarding marine fisheries resources within their body of waters and adjacent to their coastline was clear to be seen as multiple attempts for that particular issue were initiated in every opportunity within international regulations scope.

2) **United Nations Conference on the Law of the Sea 1960**

The failure to determine the width of territorial sea in UNCLOS I was followed up by the United Nations General Assembly by establishing Resolution 1307 (XII) of December 10th, 1958 set to convene a second international conference (1960) which talked about the determination of territorial sea width and boundary zones for fishing.¹⁶

Attempts to achieve international regulation can be understood, due to ever-growing demands of marine fisheries resources. Attempts to regulate would aid the effort to preserve and safeguard the marine fisheries resources themselves, as utilization without regulation might lead to exploitation and pose a threat to national interests. Thus, the United Nations General Assembly held the 2nd United Nations Conference or UNCLOS II.

UNCLOS II was a follow up from the first UNCLOS from the United Nations. In it, the discussion was mainly focused on the width of the territorial sea, and natural marine fisheries, as the determination of the

width directly affect countries that fished from other country's coast and body of water.¹⁷ The conference, attended by 88 countries including Indonesia, called for the expansion of territorial sea limit and rejected the idea of a 3-mile limit.¹⁸

3) **United Nations Convention on the Law of the Sea 1982**

The coastal states in EEZ simply obtained sovereign rights, but not sovereignty. Which means that EEZ does not oblige to full sovereignty of coastal states that prevailed in the regime of the territorial sea, as coastal states have rights and obligations relating to their marine fisheries resources in EEZ.

The existence of EEZ as new regime in the Law of the Sea changed the structure of marine law and created new relationships between coastal states and other countries regarding the utilization of natural resources, especially marine fisheries resources. The basic changes from the marine law answered problems which had long been a major issue.

During the United Nations Conference on the Law of the Sea III sessions, the most discussed issue was the regulations of EEZ. Negotiations regarding EEZ were always filled with debates and different opinions. Those differing opinions were due to the characteristics of EEZ which underpinned the relationship for the rights and obligation of coastal states and other countries.¹⁹ In the United

¹⁶ United Nations Convention on the Territorial Sea and Contiguous Zone (United Nations 1958: General Assembly Resolution 1307 (XII), U.N. Doc. A/Conf. 13/L. 52).

¹⁷ Shigeru Oda, 1989, *International Control of Sea Resources*, Martinus Nijhoff Publisher, Dordrecht, pp. 99-110.

¹⁸ *Ibid.*

¹⁹ V.F. Tsarev, 1987, *The Juridical Nature of Exclusive Economic Zone and The Legal regime of Navigation of foreign Vessels There in The United Nations Convention on the Law of the Sea, Impact and Implementation*, University of Hawaii, Hawaii, p. 591.

Nations Conference on the Law of the Sea III, which resulted in UNCLOS 1982, successfully accommodate the demands that posed as the root of the problems, often seen as different opinions regarding exclusive rights and jurisdiction in EEZ. The certainty of UNCLOS 1982 resolved the issue that had been there for 10 years, and also provided universal regulation, desired by coastal states for a long time and projected in unilateral actions.

The legal status of EEZ, regulated in Article 55, stated that EEZ is an area outside of, and adjacent to, territorial sea, which is subject to sui generis legal regime set out in the chapter of EEZ itself. Furthermore, accordingly, the rights and jurisdiction of coastal states and the rights and freedoms of other countries are governed by the relevant provisions of this Convention. The purpose of the relevant provisions is further elaborated in the next few articles, regarding the rights and obligation of coastal states. Such circumstances would intensify the status of sui generis law, one of which is the fact that a coastal state has sovereignty of natural marine resources, as well as jurisdiction power, such as fishing and establishing a research facility, within the area of their EEZ. Those actions required further approval and supervision of a coastal state. Moreover, to implement it properly certain rights and regulations of the coastal states need to be obeyed and respected.

Regulations regarding the rights and obligation of coastal states in the

EEZ do not necessarily mean that the elements of high seas are lost. Freedoms of the high seas can still be found in the EEZ. In it, the EEZ also consider several aspects of territorial sea and the rights of natural resources, as well as other economic activities such as installation, scientific research, and preservation of the environment.²⁰ These elements have been formulated and adjusted and put into a special regime which is different from the legal regime of the territorial sea and the legal regime of the high seas.

2. National Regulation Regarding EEZ

EEZ is a zone that arises from the concept of protection of the coastal state over fish resources contained in the sea beyond and adjacent to the territorial waters. Which is basically a concept of protection from the possibility of marine fisheries resources utilized by other countries based on the principle of freedom of the high seas.

The objective of EEZ, as a concept to protect coastal states of their own marine fisheries resources, is to utilize the resources effectively and sustainably, without neglecting the interests and rights of other countries of marine fisheries resources in accordance with international regulations. This concept is then applied to rights and obligations of coastal states in the EEZ.

The EEZ is the development of international law to regulate the sea, in terms of economic benefits such as the utilization of natural resources for national interests, with a keen focus on preservation and sustainability. Regarding Indonesia, the EEZ regime which was regulated in UNCLOS III had to be followed up. Thus, the Indonesian government ratified UNCLOS III, and consequently:

- a) Indonesia became the largest maritime nation in the world, due to its massive area of a sea of 5.8 million kilometer² or $\frac{3}{4}$ of the whole area of Indonesia,

²⁰ Francisco Orrego Vicuna, 1984, *The Exclusive Economic Zone, A Latin American Perspective*, Westview Press, Colorado, pp. 127-130.

- thus Indonesia has a huge potential in the maritime sector.²¹ According to Indonesia Law No.43 of 2008 regarding National Territory of Indonesia, the official territory of the Republic of Indonesia and Indonesian Jurisdiction Territory includes total area of sea of 5,8 million km², with 3.1 million km² as archipelagic area and territorial sea, 2.7 km² area of EEZ, and a coastline that spans to 81.290 km.²²
- b) Indonesia has a vast EEZ, which reaches approximately 2.7 km². Just like Indonesia, countries that have a relatively wide EEZ are the United States, Australia, New Zealand, Canada, Russia, Japan, Brazil, Mexico, Chile, Norway, India, the Philippines, Portugal, and Madagascar. Indonesia has sovereign rights over the natural resources contained therein. Based on the sovereign rights, then Indonesia can carry out exploration and exploitation, as well as management and conservation of natural resources in its EEZ.
- c) The natural resources in Indonesia's EEZ can potentially be utilized directly and can act as support for the national marine fisheries resources, throughout Indonesia's body of water. Which means, in terms of national development especially in fisheries sub-sector, the natural resources within the EEZ has 2 main functions: as natural resources that can be utilized directly by way of fishing, and as support of the natural marine resources in the waters of Indonesia.²³
- d) Indonesia's EEZ store various natural resources with high economic value. One of which is the population of various tuna species, which brings hope and optimism for the nation to develop its fishing industry in the near future. By 2010, Indonesia had
- already fished several tuna species such as Skipjack, Albacore, Yellowfin, Southern Bluefin, and Bigeye as many as 577.430 million tons from an estimated total potential of 1.145.400 million ton. Which yield a value of 567.970 million ton left unfished and the potential remained unrealized.²⁴
- e) Indonesia has a huge economic potential in its marine fisheries resources and can be harnessed for the future of the nation and as the backbone of national development. Optimal utilization of its resources, by taking into account the existing carrying capacity and sustainability, would help fulfill the people's needs of good nutritional animal protein, help improve the living standards of fishermen, help in increasing foreign exchange due to marine resources export, help in expanding work and employment opportunity, help in improving productivity, added value, and competitiveness, and ensuring the sustainability of marine natural resources.

Further prove that Indonesia's EEZ is a national asset full of potential can be seen as it received recognition from the Marine and Fisheries Research Agencies. The recognition was delivered and presented in the opening speech of the National Forum of Fish Resources Utilization Policy in Regional Fisheries Management, in collaboration with the National Forum of Fish Resources and Conservation Management in Indonesia, on December 3rd, 2009, which stated:

Marine Fisheries Resources within the Indonesian sea is considered to have the highest biodiversity level. The resources consist of at least 37% of fish species from the world. If utilized properly, i.e. not exceeding its carrying of capacity,

²¹ Idris, "Hukum Laut dan Pengelolaan Perikanan Dalam Kerangka Pelaksanaan Otonomi Daerah", *International Journal of Law*, Vol.. 1, No. 2, 2002, p. 114.

²² Jawatan Hidro-Oseanografi TNI AL, 2006, *Pulau-Pulau Kecil Terluar Negara Kesatuan Republik Indonesia*, Markas Besar Angkatan Laut Jawatan Hidro-Oseanografi TNI AL, Jakarta, p. i.

²³ Government Regulation No. 15 of 1984 concerning the Management of Biological Resources in Indonesian Exclusive Economic Zone (State Gazette of the Republic of Indonesia No. 23 of 1984, Supplement to State Gazette of the Republic of Indonesia No. 3275).

²⁴ Director of Fish Resources Management, Directorate of Fishing, Department of Maritime and Fisheries Affairs, "Tuna Fisheries Management in Indonesia", *Paper*, 1st ASEAN Tuna Working Group Meeting, Jakarta, 25-26 May 2011.

Indonesia would be able to produce a maximum sustainable production of about 6.4 million ton per year.²⁵

Biodiversity is a potential wealth of natural resources which has its own appeal. This is because biodiversity is one of the most important aspects and major driving force of the development of biotechnology. This wealth of natural resources is classified as renewable resources, and thus can be utilized and developed continuously as one component of a country's development assets.²⁶

Such conditions should receive serious attention in terms of management. Shifting the discourse patterns of economic management (developmental patterns) to the ecology and environment (sustainable pattern) should be followed up with clear policy direction. This shift pattern is in accordance with the motto of Department of Marine and Fisheries Affairs (DKP): pro-jobs, pro-growth, pro-poor and pro-sustainable.

With eyes firmly forward, human population will keep on increasing whilst land will become scarcer, and the sea that holds so much potential and natural resources need to be regulated in order to conduct sustainable growth and development. Thus, some arrangements have to be made in terms of the design of regulation regarding marine fisheries resources within Indonesia's EEZ, because marine fisheries resources are the soul of the sea. In accordance to Susan Hanna from several of her published international journals, which stated that the existence of marine biota shows that the sea has a "soul", and if marine fisheries resources and hence the marine biota deteriorates, it means that the sea has lost its "soul".²⁷ Keeping in mind that marine fisheries resources are the most important indicator of the sea and marine ecosystem.²⁸

Taking into account existing conditions, of which Indonesia is an archipelagic nation with a relatively large EEZ of 2.7 million km²,²⁹ and is located within a geographically strategic location between two oceans, it is no wonder that Indonesia is considered to be "rich" of natural marine resources. Thus, it may come as no surprise that there is a saying: "The triumph of Indonesia is within the sea, and with the sea, Indonesia will triumph". However, rather ironically the quality of life of Indonesian fishermen (and most parts of the community directly related to marine fisheries resources) are mostly under the poverty line. This condition cannot be tolerated and it is necessary to conduct a major revamp of the regulations concerning marine fisheries resources, especially within the area of Indonesia's EEZ.

The regulation regarding the development of marine fisheries in the EEZ becomes an important aspect and measure. This is mostly due to the fact that an estimated 90% of commercial fishing is conducted in the EEZ.³⁰ Furthermore, with international regulation in place (UNCLOS 1982), if a coastal state utilizes the marine fisheries resources within its EEZ and there is a surplus, then the surplus must be shared with other countries. It can be said that with the implementation of the common heritage of nations in EEZ, there are options in the regulation itself. Thus, if a coastal state can utilize the marine fisheries resources within its EEZ up to its potential and leave no surplus, then there is no obligation for that coastal state to share its surplus with other countries. On the contrary, if the coastal state cannot utilize the marine fisheries resources completely up to its potential and leave a surplus, then that coastal state must provide the opportunity to other countries to utilize the marine fisheries

²⁵ Head of Research, Marine and Fisheries Research Agency, Department of Maritime and Fisheries Affairs, "Fish Resources Utilization Policy in Regional Fisheries Management and Conservation of Fish Resources Management in Indonesia", *Opening Speech for the National Forum of Regulation on Marine Fisheries Resources*, Jakarta, 3rd of Desember 2009.

²⁶ Andreas Pramudianto, "Biodiversity and International Law", *International Journal of Law*, Volume , No. , 2010, p.

²⁷ From various literature, soul can be interpreted as the cycle of life in the sea, one of the example is fisheries.

²⁸ Arif Satria, 2009, *Pesisir dan Laut Untuk Rakyat*, IPB Press, Bogor, p. 93.

²⁹ Jawatan Hidro-Oseanografi TNI AL, *Loc.cit*.

³⁰ Jon Van Steenis, "Pirates as Poachers: International Fisheries Law and The Bluefin Tuna", *Capital University Law Review*, 2002, p. 659.

resources located in its EEZ.

Conceptually, the sustainable development and utilization of marine fisheries resources within Indonesia's EEZ are meant for the interests of the people's welfare. This means, in order to achieve the level of the people's welfare, sustainable development, as well as responsible utilization of the marine fisheries resources with optimum results, need to be conducted.

The utilization management of fish resources in ZEE of a coastal state according to UNCLOS 1982 was preceded by a survey and research. Such action is a conservation effort undertaken by the coastal state. Conservation efforts are realized by the determination of the Number of Licensed Catch (JTB), and the determination of capture capabilities that can be done by the coastal state in question is referred as KTN. The determination of the presence or absence of surplus fish resources depends on the difference between JTB and KTN. It will be surplus if JTB is higher than the KTN. This surplus can be utilized by other countries. It means that conservation aspect and optimum utilization of fish resources in ZEE related to JTB and KTN and also access to surplus fish resources for other countries are the basic of fishing arrangements by other countries in ZEE coastal countries.

The conservation aspect and optimum utilization arrangements in UNCLOS 1982 serve as guidelines for coastal states in regulating the issue of fisheries participation of other countries in the ZEE of a coastal state. This action includes utilization intended for the benefit of the nation and the use of surplus that involve other countries, namely a management of utilization that can meet the aspects of conservation, optimum utilization and access to fisheries surplus for other countries.

D. Conclusion

To conclude, even though regulation concerning Indonesia's EEZ was issued before Indonesia ratified UNCLOS 1982, the government of Indonesia had prepared a set of regulations and laws to support the utilization of marine fisheries resources within Indonesia's EEZ. Which means that Indonesian Law No.5 of 1983 for Indonesia's Exclusive Economic Zone accommodated the provisions contained in UNCLOS 1982. However, the allowable number of catches and national fishing capability needs to be determined. This is due to the fact that in EEZ there are two dimensions and scope of regulations in place, namely the national dimension and international dimension.

REFERENCES

A. Books

- Hardjosoemantri, Koesnadi, 1988, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta.
- Kusumaatmadja, Mochtar, 1962, *Masalah Lebar Laut Teritorial pada Konferensi-Konferensi Hukum Laut Djenewa*, PT Penerbitan Universitas, Bandung.
- Marzuki, Peter Mahmud, 2007, *Penelitian Hukum*, Kencana, Jakarta.
- Mertokusumo, Sudikno, 2001, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta.
- Oda, Shigeru, 1989, *International Control of Sea Resources*, Martinus Nijhoff Publisher, Dordrecht.
- Orrego Vicuna, Francisco, 1984, *The Exclusive Economic Zone, A Latin American Perspective*, Westview Press, Colorado.
- Satria, Arif, 2009, *Pesisir dan Laut Untuk Rakyat*, IPB Press, Bogor.
- Soekanto, Soerjono dan Sri Mamudji, 2003, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT Raja Grafindo Persada, Jakarta.
- TNI AL, Jawatan Hidro-Oseanografi, 2006, *Pulau-Pulau Kecil Terluar Negara Kesatuan Republik Indonesia*, Markas Besar Angkatan Laut Jawatan Hidro-Oseanografi TNI AL,

Jakarta.

Tsarev, V.F., 1987, *The Juridical Nature of Exclusive Economic Zone and The Legal regime of Navigation of foreign Vessels There in The United Nations Convention on the Law of the Sea, Impact, and Implementation*, University of Hawaii, Hawaii.

B. Journal Articles

Idris, "Hukum Laut dan Pengelolaan Perikanan Dalam Kerangka Pelaksanaan Otonomi Daerah", *International Journal of Law*, Volume. 1, No. 2, 2002.

Van Steenis, Jon, 2002, *Pirates as Poachers: International Fisheries Law and The Bluefin Tuna*, Capital University Law Review.

C. Papers/Speech

Director of Fish Resources Management, Directorate of Fishing, Department of Maritime and Fisheries Affairs, "Tuna Fisheries Management in Indonesia", *Makalah*, 1st ASEAN Tuna Working Group Meeting, Jakarta, 25-26 May 2011.

Head of Research, Marine and Fisheries Research Agency, Department of Maritime and Fisheries Affairs, "Fish Resources Utilization Policy in Regional Fisheries Management and Conservation of Fish Resources Management in Indonesia", *Opening Speech for the National Forum on Regulation on Marine Fisheries Resources*, Jakarta, 3rd of December 2009.

D. Regulations

Law No. 4 of 1960 concerning Indonesian Waters (State Gazette of the Republic of Indonesia No. 22 of 1960, Supplement to State Gazette of the Republic of Indonesia No. 1942).

Law No. 6 of 1996 concerning Indonesian Waters

(State Gazette of the Republic of Indonesia No. 73 of 1996, Supplement to State Gazette of the Republic of Indonesia No. 3647).

Law No.5 of 1983 concerning Indonesian Exclusive Economic Zone (State Gazette of the Republic of Indonesia No. 44 of 1983, Supplement to State Gazette of the Republic of Indonesia No. 3260).

Government Regulation No. 15 of 1984 concerning the Management of Biological Resources in Indonesian Exclusive Economic Zone (State Gazette of the Republic of Indonesia No. 23 of 1984, Supplement to State Gazette of the Republic of Indonesia No. 3275).

E. Other Documents

United Nations Convention on the Territorial Sea and Contiguous Zone (1958: U.N. Doc. A/Conf.13/L.52)

United Nations Convention on the Territorial Sea and Contiguous Zone (1958: General Assembly Resolution 1307 (XII), U.N. Doc. A/Conf. 13/L. 52).

United Nations Convention on the High Seas (1958: U.N. Doc. A/Conf.13/L.53).

United Nations Convention on the Fishing and Conservation of the Living Resources of the High Seas, 1958 (Preliminary 1958: U.N. Doc. A/Conf. 13/L. 54).

United Nations Convention on the Fishing and Conservation of the Living Resources of the High Seas, 1958 (Final Act of the Conference, 1958: U.N. Doc. A/Conf. 13/58/L. 54).

United Nations Convention on Fishing and Conservation of the Living Resources of the High Seas (United Nations, 1958: U.N. Doc. A/Conf. 13/L. 54)

United Nations Convention on the Continental Shelf (United Nations, 1958: U.N. Doc. A/Conf. 13/L. 55).