

Climate Change And The Challenges Of Setting Countries' Maritime Boundaries In The Perspective Of International Law

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Abstrak: Climate change is a global phenomenon that has various impacts on human life, including on the country's maritime region. Sea level rise, coastal abrasion, and the sinking of small islands have the potential to change the geographical conditions that have been the basis for determining maritime boundaries. These changes raise legal issues related to territorial certainty, the implementation of state sovereignty, and the management of marine resources. This research aims to analyze the regulation of maritime boundaries in international law and examine the challenges that arise due to climate change to the determination of countries' maritime boundaries. The formulation of the problem in this study is how to regulate maritime boundaries according to international law and how the challenges of determining maritime boundaries due to climate change. The research method used is normative legal research with a legislative approach and a conceptual approach through the study of various international legal instruments, especially the United Nations Convention on the Law of the Sea (UNCLOS) 1982. The results of the study show that climate change has the potential to affect the baseline on which a country's marine area is measured. In addition, there are problems in the form of blurring norms, conflict of norms, and gaps in norms in international law related to the status of maritime boundaries affected by geographical changes due to sea level rise. This study concludes that a more adaptive development of international law is needed to ensure legal certainty, protect state sovereignty, and prevent future maritime disputes

Keywords: Climate Change, Maritime Boundaries, International Law

INTRODUCTION

Climate change has become one of the global issues that has received serious attention from the international community. Various scientific reports show that the increase in the earth's average temperature leads to the melting of the polar ice sheets, an increase in the frequency of extreme weather, and a rise in sea levels.¹

This phenomenon not only has an impact on environmental and

social aspects, but also has significant legal consequences. One of the legal impacts that is getting more attention is changes in the geographical conditions of coastal and maritime areas that can affect the determination of the country's territorial boundaries.

The gradual rise in sea level has the potential to cause a reduction in land area, the sinking of small islands, and changes in the coastline that have been used as the basis for drawing the baseline in determining maritime

¹ International Law Commission, *Sea-Level Rise in Relation to International Law, First Issues Paper* (2020), hlm. 1–5.

boundaries.² This condition is a concern because maritime boundaries have a very close

In the practice of international relations, maritime boundaries are an important instrument for determining the scope of state rights and obligations.³ Clarity of maritime boundaries is the basis for the state to carry out exploration and exploitation of marine resources, fisheries management, marine environmental protection, and law enforcement in waters. Therefore, any change that affects maritime boundaries has the potential to cause complex legal issues and even disputes between countries.

Normatively, the regulation of maritime boundaries is regulated in UNCLOS 1982. The convention regulates baselines, territorial seas, additional zones, exclusive economic zones, and continental shelf. In addition to UNCLOS 1982, there are also other international legal instruments related to environmental protection and climate change such as the United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the 2015 Paris Agreement. These instruments show that the international community has paid attention to climate change, but has not specifically regulated its impact on countries' maritime boundaries.⁴

Relationship with state sovereignty, state jurisdiction, and the right to manage natural resources in the marine area. If there is a change in the coastline and the base point, questions arise regarding the status of the maritime boundary that has been previously determined.

Climate change poses a greater threat to island nations than continental countries. Gradual sea level rise can lead to a reduction in the area of land that is home to residents and becomes the basis for the withdrawal of the maritime baseline. For island countries, the existence of small islands has a very important meaning because it not only functions as a sovereign territory of the country, but determines the area of sea area that can be claimed under international law.⁵

The threat has been felt by a number of small island nations in the Pacific region, such as Kiribati, Tuvalu, and the Marshall Islands. These countries face the risk of sinking part of the land due to the rising sea level that continues to increase from year to year. Even in various international forums, concerns have arisen about the possibility of permanent loss of the country's territory if climate change cannot be controlled. This condition raises legal questions regarding the sustainability of the statehood, sovereignty, and maritime rights owned by these countries if their land areas shrink or are physically lost.⁶

Indonesia as the largest archipelagic country in the world also faces similar challenges. With more than 17,000 islands spread across various regions, Indonesia has a high dependence on the stability of the geographical conditions of coastal areas and small islands. Sea level rise has the potential to threaten the existence of the outermost islands which have been serving as a base point in the withdrawal of the archipelago's baseline. If this

² David D. Caron, "When Law Makes Climate Change Worse," *Ecology Law Quarterly*, Vol. 38 (2011), hlm. 621.

³ Donald R. Rothwell dan Tim Stephens, *The International Law of the Sea* (Oxford: Hart Publishing, 2023), hlm. 145.

⁴ United Nations Convention on the Law of the Sea 1982, Pasal 5–7; United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015.

⁵ James Crawford, *Brownlie's Principles of Public International Law* (Oxford: Oxford University Press, 2019), hlm. 447

⁶ International Law Association, *Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise* (2018).

condition occurs, then legal issues may arise related to the boundary of Indonesia's maritime area with neighboring countries.⁷

In international law, legal certainty is one of the most important principles in determining the boundaries of a country's territory. Clarity regarding maritime boundaries is needed to prevent disputes between countries and ensure the implementation of state rights and obligations in the maritime area. The unclear status of maritime boundaries due to climate change can cause various problems, ranging from territorial disputes, conflicts in the use of natural resources, to maritime security problems. Therefore, legal arrangements are needed that are able to provide certainty regarding the status of maritime boundaries in situations of geographical change caused by climate change.⁸

This research is important because until now international law still faces various problems regarding the regulation of the status of maritime boundaries due to climate change, both in the form of ambiguity of norms, conflicts of norms, and voids of norms.

Therefore, an analysis of the applicable international legal arrangements and the possibility of their development in the future is needed.⁹ It is also expected to make an academic contribution to the development of international law of the sea, particularly related to the protection of the sovereignty of island states in the midst of global climate change challenges.¹⁰

METHODOLOGY

This research uses normative legal research methods with a statutory approach and a conceptual approach. The primary legal materials consist of UNCLOS 1982, UNFCCC 1992, and Paris Agreement 2015. Secondary legal materials are obtained from books, scientific journals, articles, and relevant research results. The analysis was carried out qualitatively by examining international legal norms related to maritime boundaries and climate change.

DISCUSSION RESULTS

A. Regulation of State Maritime Boundaries in International Law

1. The Concept of Maritime Boundaries in International Law

Maritime boundaries are the territorial boundaries of countries located in the sea and function to determine the scope of the exercise of sovereignty and jurisdiction of a country over its territorial waters. In international law, maritime boundaries have a very important position because they relate to the right of states to manage natural resources, carry out law enforcement, maintain national security, and protect the marine environment. Clarity of maritime boundaries is also an important instrument in preventing disputes between countries that have adjacent sea areas.¹¹

The concept of maritime boundaries is developing as the country's interest in the sea area increases. In the past, the sea area was considered a free territory (*mare liberum*) that could be used by all countries without the presence of exclusive control by a particular country. This view developed through the thought of Hugo Grotius who affirmed that the sea is the common property of the international community and is open to shipping and trade

⁷ Donald R. Rothwell dan Tim Stephens, *The International Law of the Sea*, hlm. 234.

⁸ H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 2012), hlm. 124.

⁹ Joost Pauwelyn, *Conflict of Norms in Public International Law* (Cambridge: Cambridge University Press, 2003), hlm. 8.

¹⁰ International Law Commission, *Sea-Level Rise in Relation to International Law* (2020), hlm. 17–19.

¹¹ Donald R. Rothwell dan Tim Stephens, *The International Law of the Sea* (Oxford: Hart Publishing, 2023), hlm. 145.

throughout the country.¹² However, the development of shipping technology, offshore oil and gas exploration, and the increasing need for marine resources have prompted countries to expand their regulation of the marine areas around their territory. As a result, the concept of freedom of the sea absolutely began to undergo changes towards a more structured arrangement based on international law.

These changes have led to the birth of various provisions of international law that govern the division of maritime areas along with the rights and obligations of each country. In its development, maritime boundaries are not only understood as geographical boundaries, but also as legal instruments that determine the scope of the exercise of state sovereignty and jurisdiction over various activities that take place at sea. Thus, maritime boundaries have a strategic function in providing certainty regarding the area where a country can exercise its legal authority.

The determination of maritime boundaries is basically carried out based on the principles of international law that prioritize legal certainty, justice, and respect for state sovereignty. In practice, the determination of maritime boundaries can be carried out through international agreements, decisions of international judicial institutions, or bilateral agreements between countries. Settlement through negotiations is the most frequently used mechanism because it provides an opportunity for countries to reach mutually beneficial solutions according to their respective geographical conditions.¹³

In addition, various decisions of the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS) have also made significant contributions to the development of the principles of maritime boundary determination. These rulings serve as a reference in resolving

maritime disputes, especially when countries do not succeed in reaching an agreement through negotiations. Therefore, the practice of international justice has enriched the development of international maritime law in addition to the provisions contained in the 1982 UNCLOS.

In addition to being related to state sovereignty, maritime boundaries also have a very large economic dimension. The marine area contains various natural resources such as fish, petroleum, natural gas, and minerals that have strategic value for national development. The use of these resources contributes to economic growth, energy security, and community welfare. Therefore, each country has an interest in defending its rights to the maritime areas that are part of its jurisdiction.¹⁴

In addition to economic interests, maritime boundaries are also closely related to the country's security and defense aspects. Sea areas that have clear boundaries make it easier for the state to supervise international shipping activities, eradicate illegal fishing, smuggling, human trafficking, and various other forms of transnational crimes. Thus, the existence of a definite maritime boundary not only provides legal certainty, but also supports regional stability and international security.

2. Maritime Boundary Arrangements in UNCLOS 1982

The regulation of maritime boundaries comprehensively is contained in the United Nations Convention on the Law of the Sea (UNCLOS) 1982. This convention is an international legal instrument that is the main basis for the regulation of modern law of the sea. UNCLOS regulates various aspects related to maritime areas, including the determination

¹² Hugo Grotius, *Mare Liberum* (Leiden: Elzevier, 1609), hlm. 7–10.

¹³ James Crawford, *Brownlie's Principles of Public International Law* (Oxford: Oxford University Press, 2019), hlm. 447.

¹⁴ R.R. Churchill dan A.V. Lowe, *The Law of the Sea* (Manchester: Manchester University Press, 1999), hlm. 185.

of countries' maritime boundaries.¹⁵ This convention is often referred to as the constitution for the oceans because it provides a comprehensive legal framework regarding the use of the ocean by all countries.

One of the important concepts in UNCLOS is the baseline, which is the line used as the starting point for measurement R.R. Churchill and A.V. Lowe, *The Law of the Sea* (Manchester: Manchester University Press, 1999), p. 185. various maritime zones. From the baseline, the state can establish a territorial sea as far as 12 nautical miles. Within the territorial sea area, the state has full sovereignty as in the land area, including the authority to form laws and regulations, enforce the law, and protect national security.¹⁶

In addition to the territorial sea, UNCLOS also regulates contiguous zones that are outside the territorial sea. In this zone, the state has certain authorities to prevent and take action against violations of laws related to customs, immigration, fiscal, and health. The arrangement suggests that even if the state does not have full sovereignty over the additional zone, it is still granted limited jurisdiction to protect its national interests.

Furthermore, there is an Exclusive Economic Zone (EEZ) which can reach 200 nautical miles from the baseline. In the EEZ, the state has the sovereign right to explore, exploit, manage, and conserve biological and non-biological natural resources located in the waters, seabed, and soil below. The state also has the authority to conduct marine scientific research and build artificial islands and other installations in accordance with the provisions of international law.¹⁷

UNCLOS also regulates the continental shelf which gives countries the right to natural resources found on the seabed and the land

below. The right to the continental shelf is ipso facto and ab initio, meaning that the right is born automatically based on international law without requiring effective occupation or control by the state. This provision provides legal certainty for the state in utilizing natural resources located on the seabed.

The arrangement shows that the baseline has a very important role in determining the area of a country's sea area. All maritime zone measurements depend on the existence of the baseline as the starting point for calculation. Therefore, changes to the baseline can affect various maritime rights owned by countries, including territorial sea area, EEZs, and continental shelf.¹⁸

In addition to regulating the division of maritime areas, UNCLOS also provides a dispute resolution mechanism through negotiation, arbitration, the International Court, and the International Tribunal for the Law of the Sea (ITLOS). The existence of such a mechanism shows that UNCLOS not only regulates the rights and obligations of states, but also provides legal instruments to maintain the stability of international relations in the event of disputes over maritime boundaries.

3. Principles of International Law in the Determination of Maritime Boundaries

Determination of maritime boundaries is based not only on the provisions of UNCLOS, but also on the principles of international law that are evolving in the practice of countries. One of the most important principles is the principle of state sovereignty. This principle gives the right to the state to control its territory and exercise legal authority in the territory and exercise legal authority in the territory¹⁹ Sovereignty is a fundamental element in international law because it is the basis for the

¹⁵ United Nations, United Nations Convention on the Law of the Sea 1982, Preamble.

¹⁶ UNCLOS 1982, Article 3 and Article 5–7.

¹⁷ UNCLOS 1982, Pasal 76–77; Donald R.

¹⁸ UNCLOS 1982, Pasal 76–77; Donald R. Rothwell dan Tim Stephens, *The International Law of the Sea*, hlm. 234.

¹⁹ Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2021), hlm. 415.

state to protect its territory, population, and national interests.

In addition to the principle of sovereignty, there is also the principle of legal certainty. In the context of determining maritime boundaries, territorial boundaries must be clearly defined so as to avoid disputes between countries. Legal certainty is an important factor in ensuring the stability of international relations and providing protection for the rights of countries over their maritime areas. The state needs certainty regarding the scope of its jurisdiction so that the implementation of economic, security, and marine environmental protection activities can run effectively.

The principle of equity also has an important position in the maritime boundary delimitation process, especially when the maritime areas of the two countries overlap. In various International Court of Justice rulings, the principle of justice is used to ensure that the determination of maritime boundaries is not only guided by technical calculations, but also takes into account geographical conditions and relevant interests so as to result in a fair settlement for all parties.

Another principle that is also relevant is the principle of peaceful dispute resolution. In the event of a dispute regarding maritime boundaries, countries are required to resolve the dispute through negotiation, mediation, arbitration, or other international dispute resolution mechanisms. This principle aims to maintain international peace and security while avoiding the use of force that could worsen relations between countries.²⁰

In addition, modern international law also emphasizes the importance of the principle of international cooperation. Countries are encouraged to cooperate with each other in marine area management, protection of the marine environment, sustainable use of natural

resources, and the resolution of various cross-border problems. Such cooperation is becoming increasingly important considering that global challenges such as climate change, ocean pollution, and the exploitation of natural resources cannot be solved by one country alone.

B. Analysis of Legal Issues in Determining Maritime Boundaries Due to Climate Change

Climate change has posed new challenges in the development of international law, particularly with regard to the determination of countries' maritime boundaries. Sea level rise, coastal abrasion, and the sinking of small islands have the potential to change the geographical conditions that have been the basis for the withdrawal of *the baseline*. As a result, various legal issues arise regarding the enforceability of maritime boundaries that have been determined based on the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) 1982.²¹

One of the legal issues that arises is the vague norm. Ambiguity of norms occurs when a rule of law does not provide a clear arrangement so that it allows for different interpretations. In the context of maritime boundaries, UNCLOS 1982 does regulate the withdrawal of the base line as the basis for determining sea areas, but does not expressly regulate the status of maritime boundaries if the coastline changes due to sea level rise.²² As a result, two different views emerged in international law. Some experts argue that maritime boundaries should be *fixed baselines* in order to maintain legal certainty and stability in international relations. On the contrary, there is an opinion that maritime boundaries must follow changes in natural geographical

²⁰ UNCLOS 1982, Part XV on the Settlement of Disputes

²¹ Donald R. Rothwell dan Tim Stephens, *The International Law of the Sea* (Oxford: Hart Publishing, 2023), hlm. 234.

²² International Law Commission, *Sea-Level Rise in Relation to International Law*, 2020, hlm. 17–19.

conditions (*ambulatory baselines*). These differences in interpretation show that there is still a vagueness of norms that have the potential to cause disputes between countries if legal certainty is not immediately given.²³

In addition to the ambiguity of norms, climate change also causes a conflict of norms in international law. This conflict arises because there are several legal principles that apply equally but can produce different consequences. On the one hand, the principle of legal certainty requires that the maritime boundaries that have been set remain in force so as to provide protection for the rights of the state and prevent disputes from arising. On the other hand, international law also recognizes the principle that changes in geographical conditions can affect the determination of a country's territory. If the second principle is applied absolutely, then changes in the coastline due to sea level rise can result in changes in existing maritime boundaries.²⁴ The conflict of these norms becomes increasingly complex for island countries that have many small islands as the base point for the draw.

Countries that have lost some of their land area due to climate change tend to maintain maritime boundaries that have been pre-established to protect sovereign rights over natural resources in its marine areas. On the other hand, neighboring countries may argue that changes in geographical conditions should be followed by adjustments to maritime boundaries according to the latest circumstances. These differences in interests have the potential to give rise to disputes

regarding marine areas and the use of natural resources if there are no clear rules.²⁵ Therefore, the harmonization between the principle of legal certainty and the development of geographical conditions is one of the main challenges in international maritime law.

The most basic problem is the existence of a legal vacuum. Until now, there has been no provision of international law that specifically regulates the legal consequences of sea level rise on the status of the country's maritime boundary. UNCLOS 1982 was drafted at a time when the issue of climate change was not yet the main concern of the international community so it did not anticipate the possibility of geographical changes due to rising sea levels.²⁶ This condition causes countries to have their own interpretation of existing provisions when facing the problem of changing coastlines or sinking small islands.

The void of norms can also be seen from the lack of regulation regarding the status of islands that have sunk due to climate change. International law has not provided certainty whether islands that have been physically lost can still be used as a base point for drawing the baseline or the basis for determining a country's sea area. This ambiguity can affect the area of territorial seas, the Exclusive Economic Zone (EEZ), and the continental shelf owned by a country. If this condition continues to be left without new arrangements, the potential for disputes over maritime boundaries will increase, especially for island states that are highly dependent on the existence of small islands.²⁷

²³ David D. Caron, "When Law Makes Climate Change Worse," *Ecology Law Quarterly*, Vol. 38, 2011, hlm. 621.

²⁴ H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 2012), hlm. 124; Joost Pauwelyn, *Conflict of Norms in Public International Law* (Cambridge: Cambridge University Press, 2003), hlm. 8.

²⁵ Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2021), hlm. 415.

²⁶ International Law Commission, *Sea-Level Rise in Relation to International Law, First Issues Paper*, 2020.

²⁷ International Law Association, *Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise*, 2018.

Based on this description, it can be understood that climate change not only poses environmental problems, but also presents serious challenges to the development of international law. The existence of ambiguity of norms, conflicts of norms, and gaps in norms shows that the regulation of maritime boundaries in international law still needs development in order to be able to respond to the problems arising from climate change. Therefore, it is necessary to establish new norms, progressive interpretation of the provisions of UNCLOS 1982, and strengthen international cooperation in order to create legal certainty, protection of state sovereignty, and peaceful settlement of maritime disputes.²⁸

CONCLUSION

Based on the results of the research, it can be concluded that the regulation of the maritime boundaries of countries in international law has a strong legal basis through the *United Nations Convention on the Law of the Sea* (UNCLOS) 1982. The convention regulates the determination of baselines, territorial seas, additional zones, Exclusive Economic Zones (EEZs), and continental shelf as the basis for states to exercise sovereignty, jurisdiction, and the use of natural resources in the maritime area. However, UNCLOS 1982 was drafted at a time when the issue of climate change was not yet the main concern of the international community, so it did not provide regulations that specifically anticipated the impact of sea level rise on the sustainability of a country's maritime boundaries.

Climate change, especially sea level rise, poses a serious challenge to maritime boundary determination because it has the potential to alter coastlines and groundpoints that are referenced in the drawing of baselines. These conditions can affect the size of a country's maritime area, especially for archipelagic countries such as Indonesia which

have many small islands and outermost islands. If there is no legal certainty regarding the status of maritime boundaries affected by geographical changes, the potential for disputes between countries, conflicts in the use of marine resources, and sovereignty problems will increase.

The results of the analysis show that international law still faces three main problems, namely the ambiguity of norms (*vague norm*), conflict norm (*conflict of norms*), and the emptiness of norms (*legal vacuum*) related to the determination of maritime boundaries due to climate change. These three issues lead to a lack of certainty as to whether maritime boundaries should be maintained (*fixed baselines*) or following naturally occurring changes in geographical conditions. Therefore, it is necessary to develop more adaptive international law through the establishment of new norms, progressive interpretation of the provisions of UNCLOS 1982, and closer international cooperation in order to create legal certainty, protection of state sovereignty, and resolve maritime disputes in a fair and peaceful manner in the midst of the challenges of global climate change.

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²⁸ UNCLOS 1982, Part XV on the *Settlement of Disputes*.

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