NEGOTIATING MARITIME BOUNDARIES
DELIMITATION: INDONESIA’S EXPERIENCE

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Dili International Conference on Maritime Boundaries
Dili, 19 May 2016
OUTLINE

☐ Preparation and Process of Maritime Boundary Delimitation Negotiation

☐ Challenges in Maritime Boundary Delimitation Negotiation

☐ Options for Solutions and Way Forward

☐ Indonesia’s Experience on Maritime Boundary Delimitation Negotiation: the Special Envoy Track
PREPARATION OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

- Consolidating national position
  - Various interest handled by various government agencies

- Collecting relevant technical data
  - Data collection cannot be collected in a short period of time
  - Human resources and technological barrier

- Obtain mandate
  - Clear mandate is necessary to negotiate boundaries agreement
PREPARATION OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

**Substantive**
- Legal and Relevant Aspects Analysis
- Technical Exercises
- Strategy
- Position Paper and Record of Discussion

**Administrative**
- Proceedings
- Date and Venue
- Correspondence
- Agenda and Business Arrangement
CURRENT INDONESIAN MARITIME BOUNDARY DELIMITATION TECHNICAL TEAM

Ministry of Foreign Affairs (Leading Sector)

Ministry of Defense

Ministry of Marine Affairs and Fisheries

Ministry of Energy and Mineral Resources

Ministry of Transportation

Indonesian Armed Forces

Geospatial Information Agency

Hydro-Oceanographic Office - Indonesian Navy

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NEGOTIATION STAGE: COUNTERPART READINESS

- Mandate
- Negotiating team
- Scheduling
- Budgeting
NEGOTIATION STAGE: SUBSTANCE OF THE DELIMITATION — HOW TO DRAW THE LINE?

- Non Party to the 1982, UNCLOS
- Selection of basepoints
- Applicable baseline:
  - Normal baseline
  - Straight baseline
  - Archipelagic baseline
- Historic claim
- Definition of “rock” vs “island”
- Emerging delimitation rule in recent cases
- Where is the equidistance?
- What is considered to be “equitable”?
PROCESS OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

Negotiation

Records/Notes from Negotiation
Report to respective higher authorities

Agreement
Ratification – Entry into Force

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CHALLENGES IN MARITIME BOUNDARY DELIMITATION NEGOTIATION

- Internal political situation: security, natural disaster, public opinion and political will.
- Preparedness to negotiate: priority, human resources, finance/budget.
- Personal: Head of Delegation’s style to negotiate, negotiator’s competence and negotiation skills
- Support from national stakeholders (higher authority, members of the technical team, local government, academicians, public)
- Language barrier
- Public awareness and expectation vs. complexity of delimitation
- Change of base points:
  - Natural factors
  - Man made changes (the use of original coastline)
  - Separation of part of States
  - Territorial / ownership dispute of maritime features / land terminus point
CHALLENGES IN MARITIME BOUNDARY DELIMITATION NEGOTIATION


- Sensitivity of the issue relates to sovereignty and sovereign rights

- Interpretation of international law: method of drawing baseline, historic claim, definition of rock v. island, giving weights to relevant circumstances

- Technical: different approaches to construct the proposed delimitation line, change of features due to natural factors

- Other relevant factors: unresolved land boundary terminus, ownership dispute over maritime features
UNIQUENESS OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

- Long-haul process (eg. Indonesia-Vietnam 20 years), once its done, cannot be changed even by fundamental change of circumstances

- Importance of Understanding legal and technical aspects
  - Importance of developing human resources: sending personnel for international training
  - Importance to pass on the institutional memory for negotiator to understand the matter thoroughly, preventing going back and forth in negotiation process: holding a national scale training as a forum to pass on the knowledge and experience

- The necessity to have a solid, single national position
  - Understanding essential element of interest in every aspect of delimitation (including economic aspect)
  - Coordination between all stakeholders
OPTIONS FOR SOLUTIONS: PREPARATION STAGE

- Conduct coordination meetings between relevant ministries/agencies
- Report to the highest political leader (president/prime minister) to obtain necessary mandate
- Regularly conduct national training:
  - Improve human resources capacity from various related background (legal, geographers, hydrographers, cartographers, etc.)
  - Regeneration of the negotiation team
- Regularly conduct research (court judgments, state practices)
OPTIONS FOR SOLUTIONS: NEGOTIATION STAGE

- Convene an exploratory meeting
  - Confirm mandates
  - Confirm procedures to conduct negotiation
  - Agree on the Term of References
  - Organization of work (including setting time scheduling)

- Wait until the counterpart have the necessary mandate and ready for negotiation

- Finding similar circumstances
  - Delimitation cases in international courts
  - Practice of other states in their delimitation agreement

- Recourse to experts opinion

- If deadlocked:
  - Report to higher decision making authority for more mandate
  - Continue negotiations after receiving mandate
WAY FORWARD

- Explore creative line that is mutually agreed (political solution)
- Explore High-Level Track (i.e. Special Envoy)
- Explore other alternatives:
  - Provisional arrangement
  - Third party (non binding and binding) – last resort
INDONESIA’S RECENT EXPERIENCE: A COMPARISON

- **Singapore**
  - 8 Meetings (2005-2009): concluded West Segment
  - 10 Meetings (2011-2014): concluded East (Batam-Changi) Segment

- **Philippines**:
  8 Meetings (1994-2014), concluded EEZ boundary

- **Malaysia**:
  29 Meetings (2005-2016) – **ongoing process**
SPECIAL ENVOY MECHANISM INDONESIA-MALAYSIA

10th Annual Consultation, Jakarta 19 December 2013
- RI President and Malaysia PM agreed to establish Special Envoy Mechanism

Malaysian PM Letter dated 9 January 2014
- Informing Malaysia appoints Tan Sri Mohd. Radzi Abdul Rahman as Special Envoy

State Visit of the Indonesian President 5-7 February 2015
- RI President and Malaysia PM agreed to expedite the conclusion of the maritime boundaries and the Special Envoy Mechanism to give political push to the process

Indonesian President Decision No. 67/M 2015
- RI President appoints Ambassador Eddy Pratomo as Special Envoy
- Subsequently RI President informed Malaysian PM through letter dated 6 July 2015
Mandate of the Special Envoy (Indonesia)

- Provides consideration for the conclusion of the maritime boundaries delimitation
- Seek comprehensive solution beyond legal and technical aspects of maritime boundaries delimitation
- Report to the President on the progress of its function
- Perform other tasks in relation to the maritime boundaries delimitation
TOR OF SPECIAL ENVOY MECHANISM

Objective: expedite the resolution of the delimitation of maritime boundaries

Special envoy also discuss:
- feasibility of the new approach
- develop initiatives leading to the resolution of the delimitation
- establishment of its own methods and program of work