NEGOTIATING MARITIME BOUNDARIES
DELIMITATION: INDONESIA’S EXPERIENCE

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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 INDOONESIAN MARITIME BOUNDARY
DELIMITATION TECHNICAL TEAM

Technical Team

- Ministry of Foreign Affairs (Leading Sector)
- Ministry of Defense
- Ministry of Maritime 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
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.

- 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 (e.g. 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) — on going 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