

Indonesia-Australia Timor Gap Agreement: A Pseudo Political Victory or Territorial Contest Defeat

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Abstract

This article focuses on the dynamics of Indonesia-Australia relations in the context of the Timor Gap Treaty. Political victory or defeat over territorial disputes is vital in bilateral relations between Indonesia and Australia. Historical methods were used to examine the problem, in which the data is extracted from primary sources, including news and articles in newspapers and magazines. Many factors determine the issue of neighbourly relations between two countries. The research results show that Indonesia's political interests are a priority in resolving the Timor Gap conflict. Australia's recognition of Indonesia's sovereignty over East Timor is the primary consideration for the Indonesian Government in resolving disputes in the Timor Gap. This factor also causes Indonesia to recognize Australia's maritime claims over areas that close to Indonesia.

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Introduction

Bilateral relations between countries are an interesting study. Bilateral relations aim to benefit both countries mutually. In this case, bilateral relations between countries are part of international relations, including relations between nations, national groups and the world community, as well as the forces and processes that determine ways of life, thinking and acting. In international relations, there is also interaction between the state and society (Darmayadi 2015, 22). Thus, despite having different goals and agendas, the relationship between two countries is still called international relations. However, in its development, it must be acknowledged that relations between countries do not always run harmoniously. Various issues, ranging from political, economic, social and cultural problems, can trigger disharmony and even lead to conflict between countries.

One of the issues of international relations, especially bilateral relations between countries, is that it is crucial to discuss the relationship between Indonesia and Australia. The relationship between these two neighbouring countries often experiences ups and downs, making it unique. Moreover, Indonesia and Australia are bordered directly by sea (Wiyatiningrum 2015, 2-3). There are times when the relationship between the two countries is very "friendly", and they mutually support each other. Still, there are times when the relationship between the two countries heats up for one reason or another. Australia's support for Indonesia during the physical revolution, for example, and the emergence of a dock workers' strike in Australia is clear evidence of the friendly relations between Indonesia and Australia. However, in the following period, various problems disturbed relations between the two countries. During the New Order era, relations between Indonesia and Australia experienced their lowest point, mainly because of the East Timor issue.

Another problem was the appearance of David Jenkis' article in the Sydney Morning Herald in April 1986, which was considered insulting to President Soeharto. The article "After Marcos, now for the Suharto Billions" inflamed one of the sharpest diplomatic tensions between Indonesia and

Australia. The article's content compares Philippine President Ferdinand Marcos's wealth with the Suharto family's wealth. This article has heated relations between Indonesia and Australia, resulting in the stalling of negotiations on determining the boundaries of the continental shelf in the Timor Gap area (Hill 2011, 192).

The issue of continental shelf in the territorial waters between Indonesia and Australia emerged after the integration of East Timor into Indonesia. The Agreement on the continental shelf between Indonesia and Australia, which established continental boundaries in the Arafura Sea and the Timor Sea in 1972, did not cover this area because when the agreement was finalized, East Timor was still under Portuguese rule. Therefore, the continental shelf boundary in 1972 was "broken" in the area south of East Timor. Thus, there is an area that seems to be "no man's land" along the continental shelf boundary between Indonesia and Australia, especially in the Timor Sea area, after the integration of East Timor into Indonesia. Based on the Law of the Republic of Indonesia No. 1 1991, this "no man's land" area became known as the "Timor Gap".

This is a problem that must be resolved by the Indonesian Government because the completion of the continental shelf boundary line in the Timor Sea, especially on the southern side of East Timor, is not only related to economic factors but also to political issues especially the validity of the integration of East Timor into the Republic of Indonesia. For Australia, the Timor Gap not only has significant oil and gas content, so it is essential from an economic perspective, but also because it can be a trump card in the issue of Indonesia's territorial sovereignty. Australia used the issue of East Timor integration, which was considered incomplete, in the Timor Gap negotiations. Australia used the East Timor issue to pressure the Indonesian Government. At the same time, the Australian Government also used it to pressure the Indonesian Government to gain other advantages in territorial boundaries through talks about the Timor Gap. This factor makes the Timor Gap, or what is known as the Timor Gap, crucial.

Method

According to Gottschalk (1986, 95-117), this article is organized using four stages, namely heuristics or source collection, criticism or verification of historical sources, interpretation, and historiography or historical writing. Primary sources in this article are the treaty between Indonesia and Australia regarding the Timor Gap, the Presidential Decree, and the Law Governing the treaty between Indonesia and Australia regarding the Timor Gap. Moreover, primary sources were obtained from newspapers such as *Kompas*, *Suara Merdeka*, *Pikiran Rakyat*, and *Suara Karya* which were obtained from the Jakarta National Library, Press Monument, Kompas Office, Suara Merdeka Office, Jogja Library Center, and Center Strategic for International Studies (CSIS). The newspapers used are also contemporaneous newspapers from Australia obtained at the National Library of Australia by accessing trove.nla.gov.au. Secondary sources of this paper are relevant books, obtained from several libraries in Indonesia and Melbourne University Library.

The Economic and Political Side of the Timor Gap

The Timor Sea, which became known as the Timor Gap, is rich in oil and gas reserves. Initial estimates put the total oil and gas reserves in the Timor Sea at 10 billion barrels. Exploitation carried out in this area has reached more than 5 billion barrels. These oil and gas reserves are spread across the Evans Shoal field, Petrel-Tern Blacktip with 1.540 million barrels, Elang-Kakatua, Bayu-Undan, Chudditch-Kuda-Tasi Jahal with 1.110 million barrels. These oil reserves include oil that has been exploited, amounting to 30 million barrels, and the Greater Sunrise field, estimated to reach 1.920 million barrels, Laminaria-Corralina-Buffalo-Jabiru reaching 410 million barrels. Data regarding oil reserves in the Timor Sea was obtained from various sources, including a number of oil and gas companies operating in the Timor Sea long before East Timor became independent (Tanoni 2008, 88-89). The potential for such a high-grade oil discovery makes a resolution of the Timor Gap issue critical to the

future energy and economic prospects of both countries. According to optimistic estimates, successful oil recovery in the Timor Gap could be twice the size of Bass Strait reserves and would ensure Australia's energy independence into the next century (Stepan 1990, 2). With such large oil reserves, it is clear that the Timor Sea region, including the Timor Gap, is very attractive to any country, including Indonesia and Australia.

Oil and gas exploration in the East Timor region has continued for a century. W.A. Duff, a British engineer, started drilling operations in 1902 in the Laclubar area, Viqueque, an area called by residents as the "land of eternal fire". W.A. Duff finally succeeded in getting petroleum, which was then exported abroad. John Elliot, from Sydney, also obtained a petroleum concession in East Timor in the same year and began exploration, but six years later, it stopped. The oil concession in Timor was reorganized with French, Japanese, and Australian capital in 1910. Australia then received total shares in the oil concession in the same year. Even though this effort produced a 320-foot-tall oil jet, this concession was ultimately abandoned due to technical and capital problems (Aditjondro 1999, 7).

Oil and gas exploration in the East Timor region gave positive signals after World War II. An oil and gas company based in Australia called Timor Oil obtained a significant concession, both offshore and on the southern mainland of East Timor. Another company, Broken Hill Propriety (BHP) from Australia, sent surveyors to East Timor in the early 1970s. The company obtained a concession to search for possible minerals in early 1972 (Aditjondro 1999, 16). Several US-based companies are also starting to look at the oil and gas potential in East Timor. They approached the Portuguese government after the coup in Lisbon. Portugal granted exploration rights in the eastern area, including shallow offshore areas, to Adobe Oil of Texas in September 1974. Portugal then granted a concession to the oil company Oceanic Exploration Company of Denver to operate in an area stretching to the midline. However, Portugal sued the company three months later, on 11 December 1974. This was because the area overlapped with the area permitted by Australia for foreign companies in the late 1960s and early 1970s by the boundary lines requested by Australia, namely the Timor Trench (Lokollo 1991, 43-44).

Australia's rush for oil and gas around the Timor Gap began in the late 1960s and early 1970s. Oil and gas exploration off the northern coast of Australia began in the Bonaparte basin. The activity, located west of Darwin, continues to grow northward, deeper into the ocean. The oil was found in rocks 2,500 to 3,500 meters from the seabed. Australia began operating an offshore rig (Ocean Digger) to drill for oil and gas off the coast of Bonaparte Bay in October 1981, followed by the operation of the drilling vessel "Glomar Grand Isle" the following month. Various exploration and production activities in the 1970s and 1980s ultimately placed the northern region of Australia as producing 8 per cent of Australia's total oil and gas production. This country succeeded in creating 1.9 million cubic meters of crude oil and 260 million cubic meters of natural gas in 1988 (Soesilo 1991, 10).

After East Timor was integrated into Indonesian territory in 1975, the Australian company BHP drilled the Jabiru 1a oil well in the Timor Sea between West Timor and Australia. The exploration discovered quite large oil deposits. Exploration and testing of oil wells continued with refining, which started in 1986. Oil reserves in the Timor Sea were confirmed at around 241 million barrels, and the Jabiru 1a oil well produced 42,000 barrels daily in 1989 (Monteiro 2002).

Based on this explanation, the Timor Sea is rich in oil and natural gas, especially in the southern part of East Timor. That's what makes Australia very competitive. This condition was supported by the decline in Australian oil production from the Gippsland and Bass Strait fields ("DPR Setujui RUU Celah Timor," 1990). Resolving the Timor Gap problem ultimately provided financial benefits for Australia because it received official recognition for oil and gas exploration in the area. In other words, completing the Timor Gap negotiations will benefit Australia and provide a juridical basis for Australia to explore the area. Australia would benefit economically if a political settlement regarding the area known as the Timor Gap was achieved.

The Timor Gap issue for Indonesia not only has economic value but is full of political issues. Official discussions between Indonesia and Australia regarding the continental shelf boundary in the

Timor Sea area, especially in the south of the East Timor region, resulted in Australia officially recognizing the integration of East Timor into the Republic of Indonesia. For the Indonesian Government, Australia's consistent support in the international arena for the integration of East Timor was more critical. This was what Indonesia wants to pursue in negotiations on the Timor Gap. This condition also gave the impression that Indonesia was "giving in" to Australia in talks regarding the Timor Gap. Despite this, the Indonesian Government still views the Timor Gap problem from an economic perspective. The Indonesian Government hopes that the resolution of the Timor Gap issue will encourage economic growth in the area around the Timor Gap area. In this case, the Government has made Kupang, the capital of East Nusa Tenggara Province (NTT), a "sub-base" to serve oil exploration activities in the Timor Gap after being agreed upon by the Authority Team from Darwin consisting of the Indonesian and Australian Governments, October 1992. The Memorandum of Understanding (MoU) between PT NTT Development Corporation (NTT-DC), PT Thiess Contractors Indonesia (TCI), and PT Petrolog Indah Jakarta has been signed. This was an effort to support a "sub-base" for oil and gas exploration in Kupang ("Pemboran Celah Timor Dimulai," 1992).

Thus, Indonesia had two targets in negotiations with Australia regarding the area known as the Timor Gap. First, these negotiations prove that Australia officially recognizes Indonesia's sovereignty over East Timor. Australia supports Indonesia's position on the East Timor issue in international diplomacy. Second, it was related to economic issues. Indonesia views the Timor Gap area as rich in oil and gas. Therefore, there is hope that Indonesia will also benefit from this. Indonesia will benefit from oil and gas mined in this area. At the same time, Indonesia also hopes that oil and gas exploration in the Timor Gap area can catalyse economic development in the Eastern Indonesia region. This can be seen from establishing Kupang as a sub-base to serve oil and gas exploration activities in the Timor Gap area. In this case, Jakarta hopes that Kupang will become a growth centre in eastern Indonesia, especially NTT. In reality, investment for oil drilling in the Timor Gap area in 1993 cost up to US\$68.9 million. The investment was used for seismic survey costs and drilling nine exploration wells.

The influx of investment indirectly flows money into the area around the Timor Gap. The flow of fresh funds to the region will indirectly encourage economic activity in the NTT. Circumstances related to this will, of course, involve local communities either directly or indirectly. Ultimately, local communities will enjoy abundant "economic cake" from oil and gas exploration in the Timor Gap area and achieve prosperity. This is what Jakarta wants, related to using the Timor Gap to develop the community's economy.

Basis for the Claim

Australia's attitude in integrating East Timor into Indonesian territory has caused "tension" in relations between the two countries. More than that, it even became one of the obstacles in implementing the Timor Gap negotiations. This is due to differences in the views of the ruling parties in Australia. They have different views regarding the integration of East Timor into the Republic of Indonesia. The Liberal Party, for example, supports Indonesia internationally on the East Timor issue. In line with this, negotiations on the Timor Gap issue went smoothly when the party was in power. The opposite happened when the Labor Party rejected the integration of East Timor into the Republic of Indonesia. In other words, when the Labor Party came to power, Australia's Government opposed Indonesia in international forums regarding the East Timor issue. More firmly, Australia even demanded self-determination for the people of East Timor. This factor caused the "ups and downs" of the Timor Gap negotiations.

Since the integration of East Timor into Indonesian territory in 1976, negotiations on determining the continental shelf between the two countries only began on February 14 1979, namely after the Liberal Party Government under Prime Minister Fraser recognized the integration of East Timor with Indonesia on January 21 1978 (Usman 1986, 995). The negotiations at the Australian Ministry of Foreign Affairs began with discussions regarding the 240 km long boundary of the continental shelf in the Timor Gap ("Talks Mark Recognition," 1979). With the debate on the Timor

Gap between Indonesia and Australia, Australia has indirectly acknowledged *de jure* recognition of Indonesia's sovereignty in East Timor.

However, during the negotiations, it turned out that Indonesia and Australia had different concepts regarding determining their continental shelves in the Timor Gap. Indonesia bases its position on the principle of the median line as the boundary line of the continental shelf (Usman 1986, 986). This claim was strengthened by UNCLOS in 1982. With this principle, the division of the disputed area will be equal or fair to each other because the Timor Gap will be divided into two equally based on the centre line of both sides. In that context, Indonesia wants to avoid repeating the previous agreement, when, in 1972, Australia was given 70% rights to the oil-rich Timor Sea.

Meanwhile, Indonesia only had the remainder, 30% (Luhulima 1990). Australia opposes Indonesia's rationale. There were at least several reasons why Australia was opposed. Firstly, even though it signed UNCLOS in 1982, it still needs to ratify it. Second, if the Timor Gap area divides the continental shelf based on the median line, Australia will get a small area as in the 1972 agreement. Therefore, the Australian side uses a geological or geomorphological approach and measures of technological capability (technical exploitability) in determining the boundaries of its jurisdiction on the seabed and the land beneath it. Australia has ratified the 1958 Geneva Convention regarding the continental shelf, which was in effect when the two countries discussed the boundary line of the continental shelf in 1969. However, Australia does not want to apply the principles set out in Article 6 of the convention, which states, among other things: In the case of the same continental shelf borders the territory of two or more countries whose coasts face each other, then the continental shelf boundary line is the centre line. According to Etty R. Agoes (1991), Australia, using a geological and geomorphological approach, claims the boundary of its continental shelf to a boundary called the bathymetric axis, namely the Timor Trench, which is to the south of the coast of East Timor. This opinion has been maintained since before 1972 when the two countries met to discuss the boundary line between the Eastern continental shelf and the Northern coast of Australia. Long before 1972, Australia, through its mining companies, had begun exploring the area (Hendrapati 2003, 419). Australia considers the continental shelf a natural prolongation of its coast cut off in the Timor Trench. For this reason, Australia demands that the continental shelf of the two countries be set on the bathymetric axis or Timor Trench Axis. This claim means that Australia has a more expansive territory than if it were based on Indonesia's claim, namely by drawing the middle line of the border between the two countries. Australia's claim is new because it crosses the line of agreement on the continental shelf between Indonesia and Australia, which was reached in 1972.

The area where the claims of the two countries overlapped became known as the disputed area (Timor Gap), namely the area located between the median line as Indonesia's claim and the Timor Trough Axis as Australia's claim (Kusumaatmadja 1992, 221). According to Richardson, Australia wanted the boundary line that "bridged" the Timor Gap to be more or less straight, connecting the boundary lines agreed upon in 1972. On that basis, Australia used the 200-mile depth and exploitability of the 1958 Geneva Convention to determine the border of the two countries.

Negotiations on Determining the Continental Shelf Boundary between Indonesia and Australia

Informal negotiations between Indonesia and Australia regarding the sharing of natural resources in the Timor Gap began in February 1976, coinciding with a change in Australia's view on the East Timor issue at the UN General Assembly. Australia, which previously supported the resolution for East Timor, then changed its stance to abstention. Australia believes that ratifying Indonesia's sovereign rights in East Timor is a prerequisite for the successful completion of the agreement on the Timor Gap. According to James Dunn, the real motivation behind Canberra's move to legally recognize the integration of East Timor was to facilitate negotiations with the Indonesian Government regarding seabed rights and oil exploration in the Timor Gap (Katsumi 2004, 277). In this regard, Minister of Foreign Affairs Peacock stated the terms of negotiations regarding seabed resources in the Timor Gap on 11 May 1978 as follows. Australia and Indonesia have yet to enter

into negotiations on the seabed boundary between southern East Timor and Australia. The question of whether the negotiations and conclusion of an agreement with Indonesia on this issue would amount to a *de jure* recognition of Indonesia's incorporation of East Timor would depend on all the circumstances existing at the time (emphasis added) (Katsumi 2004, 278)

Formal negotiations between Australia and Indonesia first began on 14 February 1979, marking a significant step in the negotiation process. The main issues discussed in these formal negotiations were threefold. First, the negotiations aimed to continue the western continental shelf boundary at the end of 1972 at point A 25 south of Rote Island. Second, they sought to continue discussions regarding the seabed boundary between Christmas Island and Java Island. Third, the negotiations addressed the boundaries that separate fisheries jurisdiction areas. These key issues formed the backbone of the negotiations and were crucial in determining the outcome of the discussions.

Principal differences over which seabed boundaries should be drawn have been a major obstacle in the negotiations. On the one hand, Australia has maintained its original negotiating position, arguing that there are two continental shelves separated by the Timor Trench and advocating for implementation based on the "bathymetric axis" or the axis of the Timor Trench. On the other hand, Indonesia has a different perspective, believing that the Timor Trench is a coincidental dip in the continental shelf and advocating for the centre-line principle as the correct way to apply it. This stark difference in positions has been a significant challenge in the negotiations. The first meeting in formal negotiations was a crucial step, as it provided the first opportunity for both parties to explain in detail their respective positions. At the end of the meeting, the parties acknowledged that they would begin the next round of negotiations with the aim of putting forward concrete proposals covering the main unresolved issues, including the Timor Gap; western boundary; Christmas Island boundaries and fisheries (Lokollo 1991, 15).

The second negotiations regarding the Timor Gap were held on 22-26 May 1979. In the second agreement, Indonesia proposed the concept of a joint exploration and exploitation zone in a particular area. The proposal became known as a Joint Development Zone (ZPB). ZPB is not a new method. ZPB is another method coastal country use to resolve disputes over maritime boundaries to explore regional mineral resources. Other countries that have resolved disputes through joint development agreements are Taiwan, Japan, and the Republic of Korea in the East China Sea. In this concept, the countries involved will explore natural resources in the disputed area and share the profits equally. However, Indonesia's proposal was rejected by Australia because the idea required detailed discussion and technical examination. Each party also files lawsuits, defends its position and tries to convince the other party of its position regarding maritime law. Although no compromise was reached during that round of talks, both sides acted unilaterally to defend their respective maritime demands (Lokollo 1991, 15).

The third round of negotiations began in Canberra on 4 November 1980. One of the main points of discussion at that time was the issue of fisheries jurisdiction. In that round of talks, Indonesia formally proposed what the Ministry of Foreign Affairs called a "mini package" including ZPB. Indonesia's willingness to compromise on the proposal for a division zone has caused Australia to continue to try to improve its bargaining position by taking a solid stance. This resulted in no meaningful solution being found. Both sides agreed to continue negotiations regarding an area north of the median line. In this region, Western and Northern Australian governments submitted proposals to defend the interests of oil companies and convince Indonesia that in this region, the companies had obtained permission from the Australian government based on the 1958 Geneva Convention on the continental shelf. In contrast, Indonesia has opposed it, creating a stalemate and leading to no agreement on fisheries jurisdiction in the disputed area.

The fourth round of negotiations, a notable step forward, was held in Jakarta in October 1981. The negotiations saw significant progress, particularly on the issue of fisheries jurisdiction, with the achievement of a temporary compromise. A memorandum of delivery was signed by the two governments on 28 October 1981, specifically addressing "temporary fisheries" supervision and its implementation, which came into effect on 1 February 1982. According to the agreement, both Australia and Indonesia agreed not to carry out strict supervision of fishing vessels that obtained

permits to operate in the disputed area. The compromise was reached without much difficulty, as the life of biological creatures was divided according to oceanographic conditions. However, mineral and oil resources were divided according to geomorphological conditions, resulting in an uneven distribution of profits. One of the main issues discussed in the fourth round of negotiations was Indonesia's proposal for a ZPB with a northern boundary, which was determined as Australia's 200 nautical mile boundary and a southern boundary determined through Indonesia's EEZ. Australian officials reiterated their previous stance not to approve joint development zones. The agreement reached on 28 October 1981 on a provisional fisheries agreement made little progress regarding the continental shelf in the Timor Gap. This temporary agreement, a significant achievement after three years of negotiations, was the result of the fourth round of negotiations. The 1982 and 1983 rounds of negotiations were not held and the fifth negotiations continued in February 1984 (Lokollo 1991, 23).

The Fifth Negotiations, held in 1984 from 2-4 February in Canberra, were marked by the unresolved issue of the continental shelf line between Indonesia and Australia. This was primarily due to the differences in the legal basis used by both parties to determine the continental shelf of each country. The negotiations focused on the continental shelf issues, which formed a comprehensive package, including the continental shelf line to the south of East Timor, west of Timor Island (western sector), the boundary line between Christmas Island and Java Island, and the fisheries jurisdiction boundary line, particularly in the Timor Sea and western sector ("Perundingan Batas Landas Kontinen Indonesia-Australia," 1984).

The fifth negotiation in 1984 saw Indonesia planning to withdraw its proposal. However, Australia, in a surprising turn of events, accepted Indonesia's proposal to form a ZPB in the Timor Gap. This decision led to a joint study of the ZPB's feasibility (Ministry of Foreign Affairs and Department of Mining and Energy of the Republic of Indonesia 1989, 9). The sixth negotiations, held in Jakarta on 14-16 November 1984 ("Ada Pengertian Lebih Baik Lagi antara Indonesia dengan Australia," 1984), were the sixth since they began in 1979, four years after the integration of East Timor ("Timor Gap Dibicarakan Lagi," 1984). The Indonesian delegation, led by Petronella Luhulima SA, Director of International Agreements at the Department of Foreign Affairs, consisted of 11 people.

Meanwhile, the Australian delegation numbered 13 people led by John Brook from the Australian Ministry of Foreign Affairs ("Perundingan Pembatasan Landas Kontinen," 1984). However, these negotiations still face obstacles from issues that previously never ended, namely the problem of the continental shelf line to the south of East Timor, west of Timor Island, the boundary line between Christmas Island and Java Island, as well as the fisheries jurisdiction boundary line, especially in the Timor Sea and western sector. Because there was no agreement, the sixth round of negotiations was extended by one day. However, many of the expected results still need to be achieved. The joint press statement issued by the State Department should have addressed the issues discussed in the negotiations. The content only explains that the negotiations on the continental shelf were conducted in a friendly atmosphere and supported by a spirit of cooperation. In their closing statement, each delegation stated that they would report the results of the negotiations to their government, with a recommendation that further negotiations would be held in Canberra in 1985. One positive thing from the sixth round of negotiations is that there is better mutual understanding between Indonesia and Australia. This was stated in a joint broadcast by the two delegations on Friday, 16 November 1984, after the meeting had finished, and previous negotiations failed to produce an agreement regarding the seabed boundary area.

One interesting thing was stated by Foreign Minister Mochtar Kusumaatmadja, who said that Australia had proposed the idea of establishing a "Joint Exploitation Zone." Australia's idea was proposed at a meeting of technical delegations from the two countries, which took place in Jakarta on November 13 1984. Foreign Minister Mochtar said that Australia's idea stated that the management and utilization of natural resources on the seabed in the border areas of the two countries would be carried out jointly. According to Mochtar, this can be done through the formation of a "joint authority" between the oil and gas mining companies of the two countries. This idea was

then studied by Indonesia because Indonesia's main priority remains the success of the two countries in establishing the boundary line completely. With the approval of the boundary line, both Indonesia and Australia can carry out their own exploration and exploitation. According to Mochtar, the sixth technical delegation meeting between the two countries was more about exchanging views and exchanging opinions regarding Australian ideas ("Pembentukan Zona Eksploitasi bersama RI di Timor Gap," 1984).

The seventh negotiations in 1985 discussed the possibility of creating a temporary joint development regime pending a final and definitive agreement on the precise boundaries of the Timor Gap (Onorato and Valencia 2000, 62). Australia agreed to establish ZPB, but its size and shape are still problems. Australia continues to maintain its stance that the "disputed area" is located in the area between the Timor Trench axis and the median line, while the area located between the median line and the 200 nautical mile line from the East Timor coast is Australia's exclusive jurisdiction area and cannot be used as ZPB.

Furthermore, the eighth negotiations in Jakarta held on 26-28 June 1986. During the negotiations in Jakarta, discussions regarding the ZPB, which covered an area from the southern midline to the northern line, resumed. Australia submitted a detailed paper on the principles of ZPB, proposed the formation of a working group to be an expert in delimitation, and suggested that Indonesia do the same. Meanwhile, Indonesia proposed expanding the ZPB area to the 200 nautical mile line of its EEZ (Lokollo 1991, 28).

During the negotiations, another agenda was also discussed, namely the possibility of determining the eastern and western boundaries of the gap area based on the principle of equal distance (equidistance line). At the end of the meeting, the two delegations changed the proposal regarding ZPB and agreed to discuss the proposal with representatives of their respective governments. Both countries acknowledged that a working group with expertise in boundary determination would be established. Meetings of Australian and Indonesian small groups in October and December 1986 resulted in the proposal that a ZPB cover three areas. The report confirms that Australia refuses to recognize economic interests south of the midline. On the other hand, Indonesia continues to bargain for most of the territory under its sovereignty due to the existence of Kelp structures, which are believed to be rich in oil.

Negotiations regarding ZPB continued on 3-4 September 1988 in Jakarta. In the ninth round of the talks, officials from both countries agreed to propose to their respective governments the establishment of a zone of cooperation in the Timor Gap area for the exploration and exploitation of petroleum. The proposal would pave the way for joint development of an area with billions of oil and natural gas barrels. However, this proposal still needs to be mature. The Australian Minister of Trade and Foreign Affairs, Gareth Evans, stated that the area under discussion covers an area of around 200 square kilometres at the territorial boundary and has the potential to contain oil and gas reserves ("Timor Gap tetap Misteri," 1988, 7).

Foreign Minister Evans expressed his hope that the talks with his Indonesian counterpart would build on the progress made in previous negotiations and bring mutual benefits. The issue of the Timor Gap discussions ultimately hinged on the continental shelf between the two countries. President Soeharto's positive response to resolving this issue is a testament to the mutual goodwill and commitment of both parties to finding the best solution that benefits both countries ("Pak Harto akan pertimbangkan serius," 1988, 1).

The follow-up action taken by Australia to resolve the Timor Gap problem was to send Foreign Minister Gareth Evans to Jakarta. During Foreign Minister Evans' visit to Jakarta on Saturday, 24 October 1988, there was also a group of 17 Australian journalists. During the visit, the Australian Foreign Minister and Indonesian Foreign Minister Ali Alatas completed talks and produced a joint statement after their two-hour conversation in Pejambon, Jakarta. The two Foreign Ministers have carefully studied the recommendations regarding a cooperation zone in the Timor Gap in the context of cooperation in oil exploitation and exploration, as well as the basic principles for managing this zone, outlined in a comprehensive agreement. The proposal regarding the cooperation zone and the

basic principles of the arrangement was made after senior officials from the two countries held their 9th meeting in Jakarta in early September 1988.

The concept of the zone of cooperation was finally reached in technical negotiations on 4 September 1988 and was approved by the two Foreign Ministers on 25 October 1988. However, this agreement was a temporary arrangement. The cooperation zone, the boundaries of which have been determined, is not a determination of the national jurisdiction of each country, and the arrangement is only valid until an agreement on the boundaries of the continental shelf can be reached (“Tidak benar, Indonesia dirugikan di Celah Timor,” 1989). In that case, the Zone of Cooperation is a restricted area in the north by the Timor Trench axis line, in the south by the 200 nautical mile line measured from the Indonesian territorial sea baseline, and in the east and west by equidistant lines. The negotiations were agreed to be a breakthrough compromise settlement that covers the region and the basic principles of cooperation. The two countries agreed to establish a Zone of Cooperation that covers the disputed and expansion areas per Indonesia’s demands. It is 200 nautical miles from the East Timor Coast and the centre line.

Area A is a disputed area between the centre and sea depth lines of 1500 m, namely ZPB. After deducting costs, oil and natural gas produced in the area are known to produce net results (net production). It is agreed to be shared 50%-50% based on a Production Sharing Contract (PSC) applied to explore and exploit regional oil and gas resources. Each country’s tax payment obligations apply on the portion of net production divided into two (SO/SO). As for the management of the area, a Council of Ministers and a Joint Authority were formed. Management (management) of the “Zone of Cooperation” is carried out, among other things, by A Ministerial Council consisting of equal numbers of ministerial-level representatives from both countries who determine policies regarding cooperation in the exploration and exploitation of oil and gas resources in region A and has the highest supervisory authority over the implementation of the agreement. A Joint Authority responsible for oil and gas exploration and exploitation activities in area A, including technical supervision of production operations. The membership of the Joint Authority consists of representatives from both countries in equal numbers. For ZPB, namely Region A, The production system for wealth development or resource development used is based on the PSC system, pioneered by Indonesia in 1960, so it has spread worldwide. Production will be based on a Mining Code and PSC Model precisely prepared and mutually approved for use in Area “A”.

Area B has never been claimed by Indonesia and has been worked on by Australia, where Australian law is fully enforced. Indonesia will receive “prior notification” regarding activities to be carried out and receive a 16% share of Australia’s net resource rent tax. Meanwhile, Region C is part of Indonesia but has never been “claimed” by Australia. The region is also a cooperation zone but not ZPB. According to Indonesian law, Indonesia is still working on Region C. Australia will receive a “prior notification” for the activities to be carried out and a 10% share of the Indonesian contractor’s income tax (Kusumaatmadja 1992, 223).

Timor Gap Treaty in the Context of Indo-Ausie Relations

With the signing of the Timor Gap agreement, a new chapter in Indonesian-Australian political relations began. The agreement is a political agreement that strengthens relations between the two countries. With the Timor Gap agreement, the Australian Government *de jure* recognized Indonesia’s sovereignty over East Timor. In other words, the Australian Government supports Indonesia in the East Timor issue. Australia’s support for Indonesia is what the Indonesian Government is pursuing more. Thus, from a political perspective, the agreement is a mutual agreement to reaffirm both *de facto* and *de jure* recognition of East Timor’s integration into the Republic of Indonesia and becomes a recognition in an international agreement in the form of a treaty (Lokollo 1991, 52). Through the Timor Gap Agreement, the source of conflict between the two countries disappeared. This is important considering the fragile relationship between Indonesia and Australia due to differences in views and philosophies. The agreement also institutionalizes bilateral relations as concrete

cooperation for common goals within the Council of Ministers and Joint Authority (Department of Foreign Affairs 1989, 27).

Ali Alatas emphasized that the agreement was a victory for ratio. In line with Ali Alatas, Foreign Minister Gareth Evans added that this agreement was influential in the 40 years of relations between the two countries (“Perjanjian RI-Australia tentang Zona Kerja Sama,” 1989). On the other hand, according to Foreign Minister Evans, this agreement is an important milestone that is very beneficial for increasing future cooperation between the two countries. According to Alatas, the signing was the most crucial step achieved by the two countries. The agreement also involves the mining department with the hope that subsequent agreements will follow in various fields. Foreign Minister Evans emphasized the three key values in the Timor Gap agreement, with the first being the resolution of political and diplomatic tensions. This significant achievement not only brought relief but also paved the way for the creation of economic opportunities and the opening of doors for cooperation in various dimensions. Evans’s optimistic view of the future relations between the two countries further reinforces the positive impact of the agreement (“Perjanjian Celah Timor Ditandatangani,” 1989, 1).

Thus, the importance of the Timor Gap Agreement for the Government is seen more from a political perspective. In the view of the Indonesian Government, the Timor Gap Agreement will not affect or harm the sovereign rights claimed by Indonesia in the Timor Gap and will strengthen bilateral relations between the two countries. The Indonesian Government places greater importance on Australia’s consistent support in the international arena for the integration of East Timor. This factor is the primary consideration for the Indonesian Government in the framework of bilateral relations with Australia. By prioritizing Australia’s support for integrating East Timor in the international political arena, the Indonesian Government recognizes Australia’s claim to Christmast Island’s sovereignty, which is geographically and ethnically closer to Indonesia. More than that, Indonesia also recognizes Australia’s claim to the Pasir Island group, which Australia calls Ashmore Reef. This island group is located closer to Rote Island, East Nusa Tenggara. The distance from Rote Island is only 170 km, while the distance from Darwin, North Australia, is 840 km or 610 km from Broome in West Australia.

The Pasir Island group has historically been part of traditional Indonesian fishing activities. This island group is a resting place or shelter for conventional fisheries from Rote, Flores, Alor, Buton, Sabu, Madura, Timor, Sulawesi, and Maluku islands. Indonesia’s ownership of Pasir Island can be traced back to the Dutch colonial period. Based on archival research, it is stated that the Dutch (VOC) permitted Chinese merchants to look for turtle shells in the Pasir Island group south of Timor Island in 1751. This proves that the ownership and economic activities of the Indonesian people on Pasir Island predate the arrival of Captain Samuel Ashmore (Solihin 2010, 33).

Meanwhile, the importance of the Timor Gap Agreement from an economic perspective allows Indonesia and Australia to optimally utilize the potential of oil and gas resources on the continental shelf between the provinces of East Timor and Northern Australia without having to wait to reach an agreement on the boundaries of the continental shelf which will continue to be sought by both countries. Another advantage is the utilization of potential oil and gas resources in the cooperation zone, the results of which can be used by the Indonesian Government to finance national development. In this case, the Timor Gap Agreement can increase national oil reserves so that the Indonesian Government can save foreign exchange because oil imports to meet national needs can be minimized. It is also hoped that the Timor Gap Agreement can realize government policies to equalize prosperity throughout Indonesia, including the Eastern Indonesia region. This was demonstrated by making Kupang, the capital of East Nusa Tenggara Province, a Sub Base for Services for Timor Gap Activities. Through the Timor Gap Agreement, it is hoped that investment in the Eastern Indonesia region will also be widely opened. This was proven when 1993 an oil drilling program was agreed on in the Timor Gap, which required an investment of Rp140.

The subsequent development in the context of Indonesia-Australia relations was the signing of an agreement between Ali Alatas and Alexander Downer regarding the “Republic of Indonesia-Australia Agreement on ZEE and Certain Maritime Boundaries” in the Timor and Arafura Seas which also included the Pasir Island Group on March 14 1997. The Agreement, which has been ongoing

intensively since 1993, regulates three critical locations covering 3,000 miles of maritime borders. The negotiating team found differences regarding the boundaries of the ZEE and the Continental Shelf, an issue that had yet to be resolved since 1969. The three locations include the Arafura Sea area, where the Provisional Fisheries Surveillance and Enforcement Line (PFSEL) in 1981 was designated as the boundary of the permanent ZEE. Second, the Timor Sea south of Sawu and Sumba Islands, which also includes the Pasir Island Group (according to Article 121 of the 1982 International Maritime Law Convention, the 12 nautical mile PFSEL line around these islands has been widened to 24 nautical miles). However, the MoU regarding the rights of traditional fisheries, which was approved in 1974 and revised in 1989, cannot be contested. Traditional Indonesian fisheries are still allowed to fish in the Timor and Arafura Seas, claimed to be Australian waters. Technically, conventional Indonesian fisheries must cross waters claimed to belong to Australia as far as 12 nautical miles to reach the agreed MoU area. This has resulted in traditional Indonesian fisheries being muzzled by Australia because they had entered Australian waters. The only way for conventional Indonesian fisheries to reach the 1974 MoU area is to enter the 12-mile area of Australia first. Third, the border between Java Island and Christmas Island makes reaching the border at this location complicated because the distance between the coasts of Christmas Island and Java Island is only 198 miles. This small island has the right to have an EEZ boundary, where the distance between the EEZ line and Christmas Island is 38.75 nautical miles based on expert calculations (Tanoni 2008, 71-73).

Indonesia and Australia admit that the 1997 Agreement is not yet in force, based on Article 11 of the Agreement, which clearly states, “The Agreement must be ratified and will come into force on the date of exchange of ratification certificates.” However, Canberra, under the leadership of John Howard, suppressed traditional Indonesian fisheries who carried out fishing activities and other marine biota in the Timor and Arafura Seas on the basis of the Agreement, which had not been ratified (Tanoni 2008, 73-74).

Conclusions

The Timor Gap Agreement does not address the continental shelf boundary between Indonesia and Australia in the Timor Sea, or more precisely, in the south of East Timor Province, which was still integrated with Indonesia at the time. The agreement emphasizes the joint use of marine areas in the southern province of East Timor, where there is no agreement on the continental shelf between the two countries.

The agreement regarding the use of the area, known as the Timor Gap for Indonesia, was more driven by political motives, namely the achievement of *de jure* and *de facto* agreement on integrating East Timor into the Republic of Indonesia. This factor became Indonesia’s main focus in every negotiation regarding the maritime continental shelf between Indonesia and Australia. This then caused Indonesia to “give up” Australia’s claims to various coral island areas, even Christmas Island, which is geographically and historically closer to Indonesia. Thus, Indonesia could claim ownership of the island groups without East Timor issues. In other words, Indonesia’s claim to sovereignty over East Timor must be paid dearly, with the recognition of Australia’s claims to several territories that should belong to Indonesia. As a further consequence, traditional Indonesian fisheries are also disadvantaged. Traditional Indonesian fisheries accustomed to fishing in areas later recognized as belonging to Australia were then deemed to have carried out “illegal fishing” when fishing in these areas.

Thus, the issue of integrating East Timor into the Republic of Indonesia has had profound consequences for Indonesian society, especially fisheries. They are the ones who suffer the most from the Indonesian government’s desire to obtain *de jure* and *de facto* recognition from Australia for the integration of East Timor into the Republic of Indonesia. In other words, Indonesia’s claim of sovereignty over East Timor had to be paid dearly by traditional Indonesian fisheries because they lost their right to fish in an area that had been their hunting ground for fish and other marine biota for generations.

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