

Today's Ambalat Neglecting the Basepoints

by Farida Patittingi

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1 Today's Ambalat: Neglecting the Basepoints of Sipadan and Ligitan Islands for Maintaining the Equidistance Principle in the Disputed Area

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The "Sipadan and Ligitan" dispute was settled by the ICJ (2002), but its impact on basepoint for baseline and maritime delimitation on the Ambalat remains a contentious issue until now. Since the islands are used as basepoints by Malaysia that results in controversy between Indonesia and Malaysia. This essay will investigate the current situation over Ambalat regarding two basepoints islands for maintaining Equidistance Line in Disputed Area. It will discuss why Malaysia has no right to use the straight baseline or straight archipelagic baseline to connect the basepoints of Sipadan and Ligitan at Sabah and suggest measures to maintain equidistance line in Ambalat.

Keywords

Neglecting, Basepoint, Straight Archipelagic Baseline, Ambalat, Maritime Delimitation, Separate Opinion.

1. Introduction

Sipadan and Ligitan islands are owned by Malaysia as per the International Court of Justice's ("ICJ") decision on December 16, 2002.¹ In 1996, President Soeharto of Indonesian Republic and Prime Minister Mahathir Mohammad of Malaysia agreed that both would obey any decision reached by the ICJ and implement it in order to

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¹ Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon. v. Malay.), Judgment, 2001 I.C.J. Rep. 263 (Dec. 17), available at <http://www.icj-cij.org/docket/files/102/10570.pdf> (last visited on May 3, 2017).

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ensure adherence to the rule of law relates to the status of the two disputed islands.² The legal right of Malaysia's ownership of the islands is recognized by Indonesia through the enactment of Government Regulation Number 37 (2008), which stipulates that basepoints are not in the Ligitan Island any more, but in Sebatik Island and Karang Unarang. The ICJ's decision on the Sipadan-Ligitan case is based on the principle of 'effective occupation.' Malaysia and the predecessor state (UK) succeeded in protecting and preserving a suitable environment that can support life, and were recognized for exercising governmental functions relating to the territory.³

The principle of 'effective occupation' has often been invoked by international courts and tribunals on a variety of territorial dispute cases regarding, *e.g.*, Palmas Island (Miangas Island) and Clipperton Island.⁴ The ICJ might be inspired by these precedents while deciding the sovereignty of the disputed Sipadan and Ligitan islands back in 2002.

The claim of sovereign rights by Malaysia over Ambalat could be interpreted as an attempt to extend its victory to the Sipadan and Ligitan case, considering that Malaysia holds every possible measure to gain a certain part of the Celebes Sea without paying attention to the principle of 'proportionality.' The disproportionate measures are conducted by drawing a straight baseline or archipelagic straight baseline from the points of Sipadan and Ligitan to the points of Sebatik, Sabah and Sarawak.⁵ These measures cause maritime boundary dispute, mainly in the Ambalat area.

The delimitation dispute involving the two States emerged on February 16, 2005, when the oil company of Malaysia (Petronas) issued an exploration concession for two oil blocks (deep-water oil concession blocks), named ND-6 and ND-7, to its subsidiary company (Petronas Carigali),⁶ which operates a joint venture with Shell, a part of which is owned by the Royal Dutch. (Figure 1).⁷

² Baradina, *The Impact of ICJ Decision in Sipadan and Ligitan Case towards Territorial Integrity of Indonesian Republic*, in *The Problem of Maritime Boundary between Indonesia and Indonesian Republic in The Celebes Sea* (Irewati et al., eds., 2006).

³ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahr.)*, Judgment, 2001 I.C.J. Rep. 197 (Mar. 16), available at <http://www.icj-cij.org/docket/files/87/7027.pdf> (last visited on May 8, 2013).

⁴ M. Hendrapati, *Implication of the ICJ Decision Respecting to Sipadan-Ligitan Case towards Basepoints and Maritime Delimitation*, 14 *INT'L J. Sci.: basic & applied Res.* 382-4 (2014).

⁵ *Id.* at 148-9. See also d. OTT, *Public international Law in the Modern world* 117 (1987).

⁶ Irewati et al., *supra* note 2, at 130. See also I Made Andi Arsana, *Ambalat Dispute Settlement through Maritime Delimitation: Geospatial and Juridical Study*, 1 *Scientific J. Social & Political Sci.* 48-9 (2010).

⁷ *Id.* See also G. Triggs, *Maritime boundary dispute in The South China Sea: International Legal Issues* 3 (2009).

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