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Reconstruction of Artificial Islands Regulations in International Law to Realize Territorial Jurisdiction

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Abstract

This research analyzes the weaknesses of The Artificial Islands Regulations In International Law To Realize Territorial Jurisdiction currently and how to reconstruct the law Based On Justice Value in a constructivism paradigm where the type of research method used is normative juridical and the specifications of this research have a prescriptive analytical nature with the approach used by the author being a statutory approach. The research results found that the legal concept of artificial islands has been included in UNCLOS 1982 as a basic framework, although there are gaps and ambiguities in the existing regulations regarding artificial islands. Every country has the right to monopolize the construction of artificial islands and can explore and exploit all natural resources in its territory. However, countries that create artificial islands in accordance with their national interests and consider the status of artificial islands as legally valid artificial islands have caused many conflicts that have an impact on the sovereignty and jurisdiction of the country. This happens because there is still no detailed legal definition and regulation in UNCLOS 1982. Therefore, the reconstruction of regulations regarding artificial islands in international law needs to be carried out so that the determination of the status and criteria for the status of artificial islands can classify the rights and obligations of countries to determine the sovereignty of the country on artificial islands and jurisdiction over artificial islands in their country.

Keywords: Legal Reconstruction, Artificial Island, Jurisdiction, Justice Value.

INTRODUCTION

The Montevideo Convention of 1933 Article 1 states that one of the elements that must be fulfilled as a sovereign state is territory. The territory of a perfect country generally consists of land, sea, and the air above it. Territory as a geographical unit is a place for the population and government of a country to carry out various activities. In International Law, sovereignty as the highest power of a country is limited by the boundaries of the country's territory, meaning that the sovereignty of a country only applies to its territory. Without territory, a country cannot be considered a subject of International Law.

This is challenged because along with the development of the era, 'artificial islands' were discovered. Previously, the word 'artificial island' did not exist and has not existed in legal thought. It cannot be denied that currently there is a tendency for every country, especially coastal countries, to compete in order to expand its territory, especially archipelagic countries (Netula, 2017). In reality, artificial islands have been proven to exist and cannot be avoided as one aspect of the problem that cannot be prevented/dammed from various differences that are growing and developing very quickly. Territorial sovereignty is very important for a country's territory to have its own development program in choosing how to improve the lives of its people, and must also contribute to human welfare (Widodo, 2019). Therefore, the Government of a country is aware of the need to build standardization, in the planning, form, and regulation of the construction of artificial islands that as far as possible do not conflict with applicable National Law or International Law. Each country has a monopoly right to build artificial islands on the continental shelf and may explore and exploit all its natural resources. The location of the artificial island is the right of power/legitimacy to be used as long as it does not conflict and is prohibited by applicable law.

The construction of artificial islands today raises problems both nationally and internationally. A brief definition of an artificial island is an island made by

humans and does not occur naturally, made permanently or transitionally from the seabed that determines its geographical location.

The legal rules regarding artificial islands in international law are regulated mainly by the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982) and several other legal instruments. In International Law, artificial islands have several problems regarding who, what, where, and what laws will apply. But until now there has been no definite answer regarding who can build and how the jurisdiction to supervise the islands. International Law is important in order to truly be able to solve the problem of the jurisdiction of the artificial islands. International Law can develop and adapt to new developments (Widodo, 2018). However, the lack of legal certainty over the creation of artificial islands can cause potential losses for other countries. Therefore, the use of International Law for artificial islands is very necessary so that there is legal certainty in it. A country has territorial sovereignty over inland waters and territorial seas. The possibility of international problems regarding the status of artificial islands can be minimized or even non-existent. Inland waters are waters on the land side of the baseline, including bays, lakes, ports, trenches, rivers, and harbors. In addition, artificial islands also have potential problems on the continental shelf, exclusive economic zones, and high seas in relation to freedom of the high seas. Thus, the role of International Law is very important and necessary to be able to solve the problem of the jurisdiction of artificial islands. This problem was then bough to the author in a research where the problem studied are further organized into research with the following main problem:

1. What are the weaknesses of The Artificial Islands Regulations In International Law To Realize Territorial Jurisdiction currently?
2. How Is The Legal Reconstruction Of The Artificial Islands Regulations In International Law To Realize Territorial Jurisdiction currently Based On Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Artificial Islands Regulations in International Law to Realize Territorial Jurisdiction Currently

With regard to the issue of jurisdiction over artificial islands, the following distinction must be made between islands in territorial waters, islands on the high seas, and islands on the continental shelf of a country, created by private parties, but expressly under the authority and protection of the state, and those created by private parties entirely on their own initiative.

Historically, artificial islands have been considered legitimate islands established by a state or individual under the authority of the state concerned. On the other hand, there are situations where artificial islands are established by individuals without any authority (from the state concerned) and in such situations many problems can arise (Wang, 2023).

If the establishment of these artificial islands is accepted by the state concerned, I mean that the state exceeds its jurisdiction. We cannot imagine what would happen if every state did the same.

Indeed, such islands can certainly become a place de facto without law. This can also happen if the national exclusive jurisdiction is powerless, which only exists de jure and not de facto, which can be analogous to a flag of convenience.

It must be accepted that under the current applicable law (Toebagus, 2022), private individuals are

justified in building artificial islands. Regarding the issue of jurisdiction, from the literature two points of view can be distinguished, some want to apply the principle of protection and give jurisdiction to the nearest country that is considered to have the greatest interest. There is a clear preference for the latter view expected to resolve this unclear situation and prohibit the construction of buildings. by private parties outside the authority of the state. Violators must be treated the same as unregistered ships, not as pirates.

The development of science and technology in the 20th century has influenced the technical use of the ocean as a means of navigation, exploration, and cultivation of natural resources not only individually but also in the international community. Therefore, countries that have limited the sea and require sovereignty over their territory are still the basis for international legal thinking. The development of this situation is evident in the activities of human relations with the sea. In fact, in the international world, this is the background for legal ownership, namely international maritime law where in this case, (the width of the territorial sea) the practice of countries is not always the same where there are many differences and contradictions between them.

The practice is that the states before 1930. For the first time, the practice of countries to obtain the cannon shot rule was first given a standard value of one nautical league or 3 miles in diplomatic practice. For example: the United States and the United Kingdom. However, the practice was far from uniform, and some countries, including France, Germany, and the Russian Empire, did not clearly distinguish their practices.

The Hague Codification Conference of 1930 provided a significant balance considering the stage of development achieved and the clear role of the conference and its predecessors in crystallizing the attitude of the government toward the mile limit the majority of states favored the limit of 6 or 12 miles or took an intermediate position. The differences and contradictions in the requirements between states have made a difference.

In 1958, the first international conference on the law of the sea under the auspices of the United Nations was held in Geneva. However, in 1930, no satisfactory settlement could be reached regarding the width of the territorial sea, although some of them could not be achieved. The underlying issues appear to have been resolved through the adoption of four conventions.

Two years later, at the second UN Conference on the Law of the Sea, also held in Geneva, the territorial sea was virtually the sole subject of debate, but the conference was unable to break the deadlock.

Both conferences saw a marked shift in positions on the jurisdictional issue (Zohourian, 2018). The United Kingdom, for example, proposed a new 6-mile limit that did not receive much support. The famous "6 plus 6" proposal – which failed by only one vote – involved a 6-mile contiguous zone for fisheries control. This proposal essentially failed because of the practice of bloc voting in the Eastern European Socialist countries, some Arab states, and some other newly independent states.

Debates in the sessions of the International Law Commission show that the majority of its members do not consider the "three mile rule" as part of positive law. In 1970 the United States adopted a Maritime Policy, one of the components of which was an effort to achieve an international policy of a maximum agreement of 12 miles. In the results of the third United Nations Conference on the Law of the Sea (1973-1979) and in 1982, the temporary formulation regarding the width of the territorial sea was within a limit not exceeding 12 nautical miles. This acceptance is bound by the provisions of the exclusive economic zone which is no more than 200 miles from the strengthening of the regime that regulates routes through international straits.

Differences and conflicts of needs between members of the international community give rise to differences of opinion between countries that have high technology and those that do not yet have high technology so that in this case it also has an influence on artificial islands within the scope of their territorial seas.

By taking a look at article 1 of the Geneva Convention on territorial seas in 1958 which states that coastal states exercise sovereignty over their territorial seas. However, the sovereignty of the coastal state has very important limitations, namely foreign ships have the right of innocent passage through the territorial sea.

The passage is not dangerous as long as it does not prejudice the peace, good order, or security of the coastal state, fishing vessels must comply with the laws established by the coastal state to prevent fishing, and submarines must navigate on the surface and show their flag. (Article 14 of the Geneva Convention on the Territorial Sea 1958 6)

The sovereignty of the coastal state extends to the territorial sea, the only exception is the right of innocent passage for international navigation provided that care is taken in construction to respect the rights of neighboring states.

In 1970, the United Nations General Assembly passed a resolution calling for a conference in 1973 on the law of the sea. Many of the issues discussed here including artificial islands are scheduled to be discussed at this conference as well as article 63, is that the coastal state may construct and maintain or operate artificial islands, floating ports, or other installations in the

national sea space for peaceful purposes anchored on the seabed.

Now the problem that arises is that artificial islands are in fact in the territory of the coastal state, but do these islands have their own sea area because they are not legitimate islands?

The normal baseline used to measure the width of the territorial sea is the low water line along the coast. This baseline follows the concept of the maritime belt and its equipment and is in accordance with state practice. There is no uniform standard used by countries in practice to determine this line, and article 3 of the Territorial Sea Convention defines the line as a mark on a large-scale map officially recognized by the coastal state.

So, if an artificial island is a legitimate island, it will result in a change in the baseline. In the problem of reclamation, these islands must also be considered as part of the coastal formation that is certain of its arrangement.

Based on this, it can be concluded that artificial islands do not have territorial seas, but considering the existence of territorial sovereignty over them and that these islands are in a direct sense part of the territory, it can be said that these artificial islands seem to have a territorial sea.

2. Legal Reconstruction of the Artificial Islands Regulations in International Law to Realize Territorial Jurisdiction currently based on Justice Value

Article 47 (1) UNCLOS stipulates that an archipelagic State may draw straight archipelagic baselines connecting the outermost points of the islands and outermost dry reefs of the archipelago, with the provision that the baselines include the main islands and an area, which among other things are water areas and land areas. When a State now creates artificial islands outside the territorial sea and is in the EEZ, of course, a question will arise, whether these artificial islands can be categorized as the outermost points of the island in the drawing of straight archipelagic baselines as determined in Article 47 UNCLOS and whether this will later affect the width of the territorial sea and EEZ of the State that creates the artificial islands. The State is given the right to build, authorize, and operate, in this case, the State is also required to establish an appropriate safety zone around the artificial islands, installations, and buildings. Of course in this case the State must also pay attention to applicable international standards, in order to ensure both the safety of shipping and the safety of the artificial islands, installations, and buildings (McDonough, 2024). From several provisions in UNCLOS, the State in its EEZ has the right to build artificial islands only for the purposes as stipulated in Article 56 and other economic purposes. Recalling the determination of the width of the territorial sea by drawing straight baselines of the archipelago connecting the outermost points of a State's islands, in this case, the artificial island cannot be categorized as the outermost points of the islands because the artificial island does not have the status of an island as stipulated in Article 60 (8) UNCLOS. The question that may arise is whether the waters around the artificial islands and their structures can have legal status as territorial waters. The starting point for discussing this problem is Article 10(1) of the Territorial Sea Agreement which contains the definition of an island. If the artificial island and its facilities can be considered an island in the sense of the definition, then the question above can be answered in the affirmative. Article 10 Paragraph 1 reads as follows: "An island is a naturally formed area surrounded by water and located above the water surface at high tide." The article is clear, that it is at least about facilities that cannot be included in this definition. However, some legal scholars still argue that artificial islands can have their own territorial waters. For example, Professor François, then Special Rapporteur on the Law of the Sea to the International Law Commission (I.L.C.) and other legal scholars at the 1958 Geneva Conference on the Law of the Sea, stated that the sea surface of the seabed created artificially has the essential characteristics of an island and has its own territorial waters.

The question addressed in Article 10(1) of the Territorial Sea Treaty is what the expression “naturally formed" actually means. When considering the origins of this article, we must go back to the League of Nations Codification Conference held in The Hague in 1930.

Some argue that "naturally formed" is not the same as "formed by nature". The former may mean that the structure must be composed of natural materials (sand, gravel), and therefore may also be made of such materials, while the latter excludes human intervention. Such a fine distinction seems unreasonable, and also inconsistent with the explanation given in the US amendment proposal. It can therefore be concluded that artificial islands do not have their own territorial seas under existing international law. A very different issue arises when the question arises of which maritime facilities should have their own territorial waters in the future. This suggestion might concern, for example, large inhabited artificial islands. The answer to this question depends on the basic view of the idea of territorial seas. Since a state's economic interests in the natural resources off its coast are, or will be, protected by the existence of an area over which the state has exclusive jurisdiction over those resources, the main reason for the existence of territorial seas seems to be the economic interests of states. the protection of the security of the coastal state.

The reconstruction of the law on artificial islands in international law aims to strengthen the existing legal framework, ensure environmental protection, and regulate the rights and responsibilities of countries involved in the construction and use of

artificial islands. The reconstruction that needs to be updated is related to the discussion on the definition of artificial islands which should be explained in more detail in UNCLOS 1982 by discussing the construction, management and use of artificial islands. At the same time, it includes the rights and obligations of coastal states related to the construction and management of artificial islands in the jurisdiction of the state. So that there is official recognition of artificial islands that can provide legal certainty and avoid ambiguity that can trigger disputes. Determination of the boundaries of state jurisdiction with the presence of artificial islands must be carefully considered if there is a claim from the coastal state. These changes will have an impact on territorial rights, EEZ and continental shelf. Damage to marine resources in the EEZ and shelf due to artificial islands must be regulated in detail related to the management obligations of the countries concerned. Thus, regulations regarding the transparency of development and damage to marine areas should be reported to the international community so that they receive attention and can be significantly improved by coastal states and the construction of artificial islands in a country can have a major impact on other countries. Thus, international law must ensure that international principles are integrated into the new regulatory framework, such as the principles of environmental sustainability, conservation of marine resources and international justice (Halog, 2022).

Claims for artificial island status must be carefully formulated and take into account the interests of all parties involved, including neighbouring states, local communities and other stakeholders. Clear and well-defined criteria must be established to determine whether a marine structure is considered an artificial island or not.

The protection of these interests in the case of artificial islands does not seem to require the existence of a marginal belt over which a State has sovereign rights as in the territorial sea and in particular not in a width of, for example, twelve miles. It may be added that the proposals submitted to the UN Seabed Committee dealing with artificial islands and installations unanimously rejected such facilities as its maritime territory.

However, there will be a need to protect offshore structures. This need can be met by creating a safety zone similar to that permitted for mining installations on the continental shelf. Within this zone, the coastal State has the right to take the necessary measures to protect the installations. The safety zone may extend to a distance of 500 metres around the installation, measured from any point of its outermost edge, and must be respected by ships of all States. Although international law does not currently provide explicitly that islands and artificial installations, other than zones used for exploring the continental shelf and exploiting natural resources, may have safety zones, there seems to be no reason why such zones should not be permitted. When offshore facilities have been constructed, it is in the interests of the users of the adjacent sea area and of the structure itself that such safety zones should be established. Whether a safety zone of 500 metres will be sufficient in all cases remains for experts to decide. It is, however, worth recommending that explicit provisions be made on this matter in a new law of the sea treaty and more specifically the measures that coastal States may take in these zones. This has been proposed by Belgium and the United States in the UN Seabed Committee. Belgium suggested in its working paper that a provision be included stating that artificial islands and installations on the continental shelf may be surrounded by a safety zone not exceeding 500 metres in length. The inclusion of these provisions in the new law of the sea treaty will create a reasonable balance between the interests of offshore facilities themselves on the one hand and the interests of other uses of the marine environment on the other. These provisions can be applied not only to structures in the economic zone but also to structures located in the international seabed area.

CONCLUSION

1. The territorial jurisdiction of a coastal state involves the coastal state's power to regulate its land territory. This jurisdiction does not apply to activities on the high seas, except in the case of structures on the continental shelf used for the exploration or exploitation of natural resources. The competence of the coastal state depends on the fact that the structure is located within the coastal state's continental shelf. The coastal state's territorial jurisdiction also applies to facilities used for loading, unloading, and mooring ships at sea. UNCLOS 1982 prohibits claims to artificial islands, but the coastal state's rights to artificial islands need to be seen as a special sovereignty that is peaceful and in accordance with the purpose of building artificial islands. The creation of artificial islands must be in accordance with international law and must not violate good law. The legal status of an island has full territorial sovereignty and jurisdiction over inland waters and territorial seas. Islands also have sovereign rights and exclusive rights and can exercise their jurisdiction on the continental shelf and exclusive economic zone. This is different from the status of artificial islands because they do not have territorial seas, continental shelves, and exclusive economic zones even though their external form is the same as an island. The existence of differences in legal authority or jurisdiction over islands and artificial islands has given rise to several opinions from experts that artificial islands should be considered separately while other opinions state that

artificial islands can be useful and therefore should not be ignored.

2. The unclear legal status of artificial islands in international law has triggered disputes and conflicts between the countries involved. Therefore, the construction of artificial islands has become a source of regional tension in several regions, for example the artificial islands in the South China Sea. Such tensions indicate the need for a clearer and more widely accepted legal framework to manage claims related to artificial islands. The economic, social, environmental, political and legal fields are the fields most affected by the presence of artificial islands. The construction of artificial islands claiming new territorial rights can also affect the maritime rights of other countries in the vicinity. Legal regulations must provide a clear definition of what is considered an artificial island in the jurisdiction of the country. Official recognition of the status of artificial islands can provide legal certainty and avoid ambiguity that can trigger disputes. The determination of the boundaries of the country's jurisdiction in relation to artificial islands, including territorial rights, Exclusive Economic Zones (EEZs), and continental shelves that may be associated with the artificial islands must be clearly regulated. Legal instruments can provide a clear framework for the rights and obligations of countries related to the construction, management, and use of artificial islands. This can include territorial rights, Exclusive Economic Zones (EEZs), and continental shelves, as well as obligations to protect the environment and respect maritime rights. Clear and well-defined criteria must be established to determine whether a structure at sea can be considered an artificial island or not. These criteria should take into account aspects such as its origin, size, and ability to support human life or economic activity.

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