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Legal scenario towards the policy of marine natural resources on the continental shelf: Ambalat case study

[PW Hananto](#), [AD Lumbanraja](#), [RR Prananda](#), AA Musyafah

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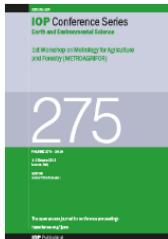
The conflict in the continental shelf in Ambalat's Zone between Indonesia and Malaysia always end up with miserable deadlocks and legal uncertainty. The concentration of the offering solution only focuses on the aspect of sovereignty but does not criticize or highlighting the regulatory aspect regarding natural resources and biodiversity. Based on UNCLOS 1982, the coastal State has the right to enforce its authority on the continental shelf and this is implying that everything contained instead of them including natural

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Abstract. The conflict in the continental shelf in Ambalat's Zone between Indonesia and Malaysia always end up with miserable deadlocks and legal uncertainty. The concentration of the offering solution only focuses on the aspect of sovereignty but does not criticize or highlighting the regulatory aspect regarding natural resources and biodiversity. Based on UNCLOS 1982, the coastal State has the right to enforce its authority on the continental shelf and this is implying that everything contained instead of them including natural resources, can be claimed by the coastal State itself. The Ambalat case is a very complex issue to be studied in this journal, where the continental shelf is claimed by two coastal states: Indonesia and Malaysia. Some previous research only emphasized 'unsettled dispute settlement' without providing legal certainty in the form of clear regulations regarding the existence and the regulation of natural resources on the continental shelf. This opens the Pandora's box whether the management of natural resources can be managed independently by their respective coastal states or joint sharing. The results of the study of this article is criticize and provide an option in the form of legal construction of how should or ideally legal policies regarding the regulation of natural resources on the continental shelf are full of potential conflicts (with special conditions).

1. Introduction.

The sea and the riches of the sea contained therein are a valuable natural heritage that a country can have. Natural resources and energy from marine resources can support a country's economy. For a long time, claims of inter-state maritime territories bordering one another often occur. This claim conflict is because the region deviates from its abundant reserves of natural resources and energy that can bring prosperity to the countries that dominate it. The Sulawesi Sea Region holds abundant marine wealth. In sea beds and subsoils, there are abundant reserves of gas and oil, and in water areas, there are diverse natural resources. However, the higher amounts of the potential of marine natural resources, the higher the potential risk of claim conflict to posse this area.

The conflict between Indonesia and Malaysia regarding ownership of islands in the Sulawesi Sea region has started since the 1990s. This conflict originated from a conflict of ownership claims over two small islands. They are the Sipadan and Ligitan islands. In 1996, Indonesia and Malaysia agreed to take the case to the International Court of Justice (ICJ). In 2002 the ICJ decided that the islands of Sipadan and Ligitan belonged to Malaysia.

The Sipadan and Ligitan Conflicts have the potential for regional conflicts which are close to the two islands, namely Ambalat Block. Malaysia's Sipadan Ligitan Island, which is legally owned by Malaysia, is claimed to be the basis for expanding the jurisdiction of Ambalat Block. This claim means that Ambalat Block is included in the ZEE and Continental Shelf regimes of Malaysia by drawing the archipelagic baselines from Sipadan and Ligitan islands, this could be seen from the New Map made by Malaysia without



Serious gaming for port development as a learning tool: a case study of port constructor

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Abstract. Ports play an essential role in nation's economic growth by fostering trade and development. Making a master plan for port development includes several actions that need to be taken before a final master plan is decided. Implementing such actions in a real situation as a try out for port development will result in time and financial loss, not to mention the effect to the environment and availability of space. Port Constructor is introduced last year as the newest tool to simulate all the planning and development process of a port and see the result of every action in relatively short time. Port Constructor is a serious game, it looks like a game, but it also has a learning objective that needs to be achieved. The primary function of this game is that players can take several actions, undertake tasks, and experience situations which would be impossible to be tried in a real life situation. In addition, Port Constructor allows players to have a position as a port planner and developer, which may not be possible in reality, and experience a real situation within a short period of time. By developing their own port scenario (or real-port scenario) in the Port Constructor, the player will have a real experience as a port planner. This study was conducted to assess the Port Constructor game as a learning tool in port planning and development both for student and more experienced port developers. Furthermore, this study also provides a way of developing scenarios inside the Port Constructor game as well as ensuring that the aim of this game can be achieved by doing a game session together with students and professionals participants. The game sessions were held to prove the playability of the game as a single-player and multi-player game. Resulting in a better outcome when the game played as a multi-player game because players can have a discussion before deciding the next actions that they will take. Examples of several port layouts are provided to prove the flexibility of this game that can be used to accommodate uncertainty of port development when using in the future. In conclusion, developers believe that Port Constructor can be a useful instrument for the learning process of people at the educational level as well as for port developers on their port planning course and project.

1. Introduction

1.1. General Background

During recent years, the expansion of global trade has led to an increase of vessel sizes, and the demand to build new port infrastructure or manage existing facilities that will reflect on growing wealth worldwide. Usually, an extension of a new port only focuses on increasing the capacity of an existing port (Schipper et al., 2015). Planning a port is a multidisciplinary work supported by various fields of expertise, such as oceanographer, safety and logistic, shipping, economic, and nautical engineering



Legal scenario towards the policy of marine natural resources on the continental shelf: Ambalat case study

by Pulung Widhi Hari Hananto

Submission date: 24-Nov-2023 10:56AM (UTC+0700)

Submission ID: 2237225337

File name: 9_Legal_scenarioLegal_Scenario.pdf (1.94M)

Word count: 4360

Character count: 22683

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To cite this article: Pulung Widhi Hananto *et al* 2020 *IOP Conf. Ser.: Earth Environ. Sci.* **530** 012003

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Indonesian knowledge and approval [1]. This unilateral claim by Malaysia has caused overlaps in the territory of the EEZ regime and Continental Shelf Indonesia. The potential threat of this conflict is increasingly worrying because the Ambalat Block region contains abundant oil and gas deposits [2]. This began to be felt with increased oil drilling activities in the seabed and subsoil areas, fishing activities in water areas, even patrol boats from these two countries patrolled over the same sea area. The potential for this escalating conflict has begun to be tempered by negotiations between the two countries in 2005 but does not seem to find a point of clarity.

According to the International Law of the Sea Ambalat block is a seabed in the ZEE and Continental Shelf, so that the region has a sovereign right rather than sovereignty. According to UNCLOS, if two countries have the same continental shelf area, then it must be regulated in an agreement made by both parties.

2. Materials and Methods

This research is legal research. In legal research, there is a library study. This is because the library is a legal laboratory and law books are stuff from legal research that is not only descriptive but prescriptive. Library studies are not only limited to the study of books but can include legislation, judges' decisions or legal information in the community [3]. The researcher collected secondary data, namely literature related to the Ambalat Block and Conflict Areas that arose. This literature is in the form of journals, books, government agency documents, scientific articles, reports of an organization/institution and legislation both from national and international law relating to the regulation of the continental shelf in the Ambalat Block region. By using data obtained from these reference sources, the author tries to explain how and to what extent the potential conflicts in the Ambalat Block region, so the author makes a conceptual idea about the Legal Scenario towards the policy of marine natural resources in the continental shelf region by referring to this Ambalat Block case. This research is conducted by collecting data through literature, processing and analyzing data and elaborating the results in this article.

3. Result and Discussion

3.1. Case Position

Ambalat is a sea block which located in the Sulawesi Sea or Makassar Strait covering an area of 15,235 km² which is within the territory of Indonesia as an archipelagic state [4]. Indonesia's ownership of the Ambalat Block can be seen by the signing of the Indonesia-Malaysia Continental Boundary Treaty on October 27, 1969, which was signed in Kuala Lumpur, then ratified on November 7, 1969. This then became the legal basis that the Ambalat Block was under Indonesian sovereignty. However, the geographical location of the Ambalat Block which borders directly with Malaysia, is prone to cause border conflicts [5].

The Legal issue was discovered after in 1967 the first meeting was held between Indonesia and Malaysia concerning the law of the sea. The two parties agreed (except Sipadan and Ligitan were enacted as a status quo) on October 27, 1969, an agreement was signed between Indonesia and Malaysia, which was referred to as the Indonesia - Malaysia Continental Boundary Agreement. The two countries each ratified it on November 7, 1969. Not long ago still in 1969 Malaysia made a new map that included the islands of Sipadan, Ligitan and Batu Puteh (Pedra blanca). This confuses Indonesia and Singapore. In the end, Indonesia and Singapore did not recognize the new map of Malaysia.

On March 17, 1970 the Indonesian and Malaysian Sea Boundaries were signed. But in 1979 Malaysia made a new map of the continental and maritime boundaries. In the new map, Malaysia unilaterally made a maritime border by inserting the Ambalat block into its territory by advancing coordinates 4°10 north northward through Sebatik Island. Indonesia then protested and stated not to recognize the one-sided claim. In its protest, Indonesia referred to the 1969 Indonesia - Malaysia Continental Border Treaty and the 1970 Indonesia and Malaysia Sea Boundary Agreements. Seeing this unilateral claim, Indonesia considered that Malaysia was trying to expand into Indonesian territory.

The 1958 Convention (UNCLOS I) was strongly suspected to be the basis of the new Malaysian map 1979. Based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1979 new Malaysian map could no longer be applied because it was not in accordance with the provisions of the

convention. Article 311 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) states that this convention must take precedence over previous conventions. However, Malaysia issued a new map not based on UNCLOS 1982 rules, and still stated that the New Malaysia Map is the national map of Malaysia.

Under the provisions of UNCLOS 1982, Indonesia as an archipelagic country has the right to determine the base line with the archipelagic to connect the outer points of the outer islands and corals. With the enactment of the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), it can be said that Indonesia's maritime territorial claims are in accordance with international legal provisions, and Indonesia has also carried out its obligations as an archipelagic state under UNCLOS 1982.

A dispute between Indonesia and Malaysia over the Ambalat block also surfaced in 2005, after Malaysia granted an oil concession to Shell through Petronas in the region. Even though Indonesia also signed an oil production sharing contract with ENI in 1999 and UNOCAL in 2004.

The granting of oil concessions by Indonesia began with the JAPEX block in 1966. Then the data of the Director General of Oil and Gas at the Ministry of Energy and Mineral Resources stated that there were a number of production sharing contractors (KPS) that had carried out oil and gas operational activities in the Ambalat region since 1967 which included; Total Indonesia manages the Bunyu Block since 1967, BP manages off the North East Kalimantan coast in 1970, and Hadson Bunyu manages the Bunyu Block in 1983. Then, Eni Bukat manages the Bukat Block in 1988 and Eni Ambalat manages the Ambalat Block in 1999 [6].

In September 2004, through Petronas, Malaysia gave Shell a concession in accordance with the oil and gas mining working area under the name ND 7 and ND 6. Indonesia then reacted with protest, because Indonesia had made a contract to manage the block under the name Ambalat Block and East Block Ambalat. The Ambalat Block has been managed by ENI since 1999, while the East Ambalat Block was given to UNOCAL in 2004. The granting of concessions was done through a public offering from before until after the 1979 New Map was published. During this time, Malaysia never protested against the granting of a concession given by Indonesia even though the territory that was deducted cut across Malaysia in the 1979 New Map. Malaysia only filed a protest in 2004 after the verdict of the Sipadan and Ligitan cases. The attitude of Malaysia that does not protest the granting of concessions by Indonesia can be interpreted as a recognition of Indonesia sovereignty.

This issue became serious and provoked both countries and made Malaysia send patrol warships that several times crossed Indonesia's sovereignty limits, forcing the Indonesian side to do the same thing by placing also several warships to maintain sovereignty in the Ambalat Block which in fact still belongs to Indonesia. The presumption of Malaysia's expansion of Indonesia is thought to be inseparable from economic motives. It is known that in the Aster field Block Ambalat is indicated to contain substantial oil reserves of around 30,000-40,000 barrels per day, which are produced and managed by the Italian oil and gas company ENI.

3.2. Legal Scenario

The object of the dispute in the Ambalat block is legal claim between Indonesia and Malaysia which has been an area of water that is in the sea area around the waters on the east side of the island of Borneo bordering the Malaysia waters. This seabed block is indicated to contain a lot of mineral resources, especially oil and natural gas reserves. In the data compiled by the Republic of Indonesia's Ministry of Energy and Mineral Resources there are nine potential oil and gas mining points, where one mining object holds a potential reserve of 764 million barrels of oil and 1.4 trillion cubic feet of gas (ESDM: 2019). ICJ's final decision to win Malaysia over Indonesia in a dispute over claims of ownership of the island of Sipadan indirectly formed the basis of the Malaysian Government to expand its territorial waters by claiming the Ambalat Waters Block on the basis of Article 121 of UNCLOS 1982 that each island has the right to have territorial sea territories, the Exclusive Economic Zone and the Continuous Platform itself. [4]. However, in determining the continental shelf boundary, a State must pay attention to geological conditions whether the land on the seabed has a further correlation with its above land which can qualify as a benchmark for

the continental shelf of a State and must pay attention to the continental shelf boundary agreement with its neighboring State.

The Most important point that needs to be observed when the ICJ Judge refrains this decision is that there is no decision that sets the maritime boundary line between the two countries. In the ICJ decision related to the disputes between Sipadan and Ligitan Islands, the focus was only on granting the ownership status of the island without addressing the issue of the Ambalat block which is geographically located around the two islands (Figure 1). This matter cannot be drawn as a basis or legal basis for Malaysia to draw a baseline. Viewed in the category of country qualifications according to UNCLOS, Malaysia is categorized as a coastal country and not an island nation. In this perspective, Malaysia is only permitted to draw baselines in coastal states and not use baselines. In its realization, Malaysia actually made a claim on the ownership of ambalat where the claim is based on the archipelagic baseline drawn through the islands of Sipadan and Ligitan Island. Another basic claim used is the effective use of oil drilling activities which are carried out on continents at the seabed and subsoil in the Ambalat block .

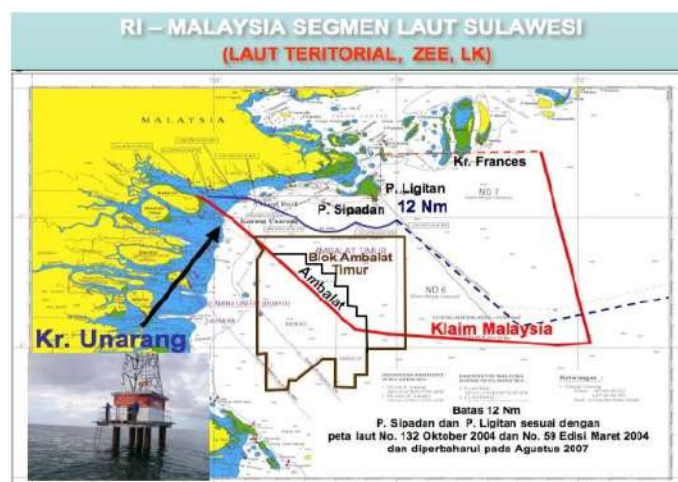


Figure 1. Claim of Malaysia on Sulawesi Sea After Sipadan and Ligitan Has Officially Became Their Territorial

Malaysia's claim to enforce its sovereign rights in the Ambalat territory is one-sided and not objective. This legality is based on the claim map for the Ambalat Block issued by the Malaysian side in 1979 in which the Malaysian side determined the state boundary drawn from the sea boundary between Sabah and East Kalimantan by drawing a baseline from Sipadan-Ligitan Island (Figure 2). The implication of the emergence of the map is getting protests from Indonesia followed by other neighboring countries. Malaysia's unilateral statement regarding Ambalat's claim is considered to have no legal implications and the legitimacy of its legitimacy is of course questionable, invalid and inaccurate.

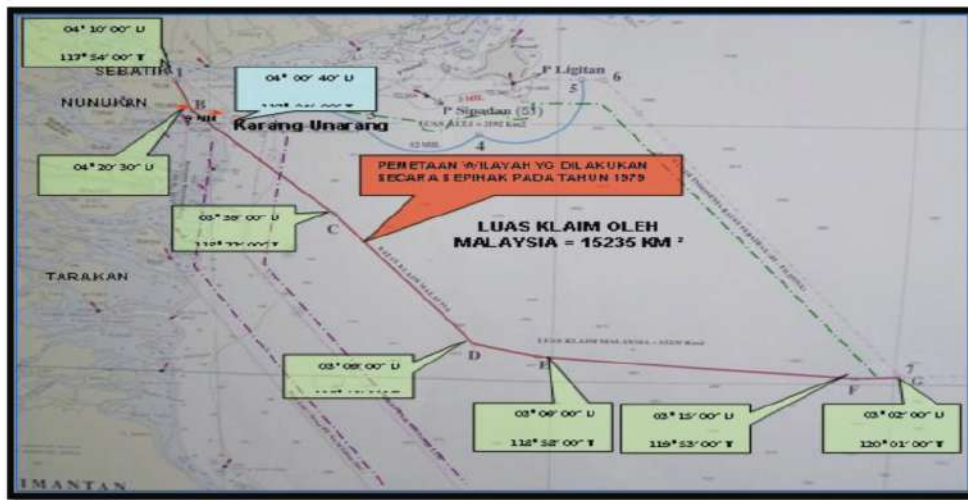


Figure 2. The Ambalat Block Map made by Malaysia on 1979

The perspective on this case needs to be focused that the concept of the Ambalat terminology must be clearly defined. It viewed from its geographical aspect, Ambalat is a seabed block which has a geographical location in the eastern area of the island of Borneo. Schofield, C and Storey, I. [7] describe Ambalat as a seabed in the EEO regime and a continental shelf, which means it is not qualified into a sovereignty regime, but a sovereign right. According to [8] Ambalat is a seabed block in the Sulawesi Sea, further emphasized that the ambalat area only covers the seabed area (continental shelf) and does not include water bodies.

UNCLOS distinguishes typical state control into three mechanisms namely sovereignty, sovereign rights and jurisdiction. To be able to implement sovereignty or sovereign rights in a maritime zone a coastal country must determine each maritime zone for its country. On the continental shelf or seabed, sovereign rights do not require an active declaration as regulated in article 77 of UNCLOS 1982. Determination of the outer boundaries of each of these zones is carried out in a customary international (figure 3). The different approaches and perspectives to be used as a basis for claims on water between Indonesia and Malaysia in measuring their maritime boundaries show the inconsistency of the Government of Malaysia as one of the countries that participated in ratifying UNCLOS 1982 (figure 4). As the consequences from the point above, a State ratified an international regulation must implement in there national level rules and regulation.

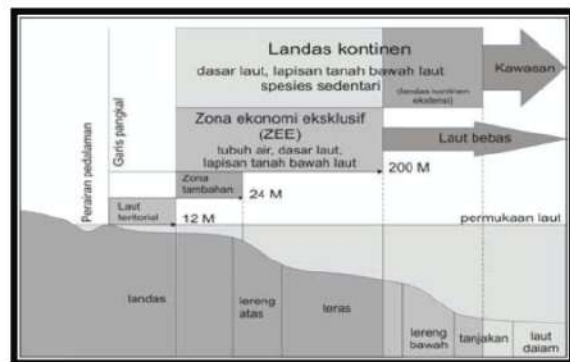


Figure 3. Map of Delimitation UNCLOS 1982 Accessed from I Made Aksana

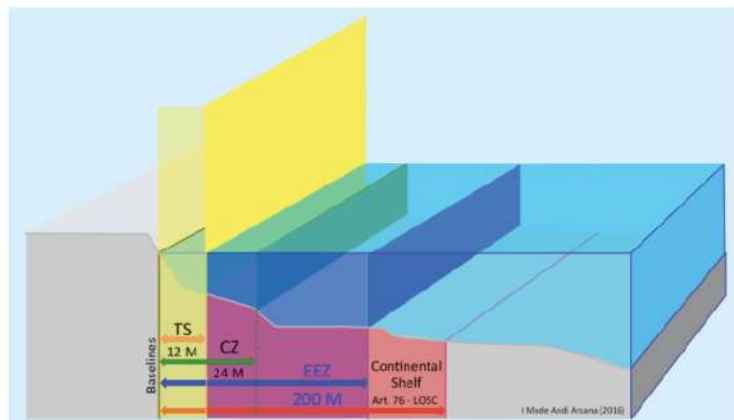


Figure 4. Map of Delimitation UNCLOS 1982 Accessed from I Made Aksana

4.3. The Continental Shelf Theory

Continental Shelf concept as outlined in Article 76 of Part 3 of UNCLOS 1982 is defined as an extension of the continuation of the territorial land area under the sea to the edge of the continental shelf or 200 Miles from the coastline, but its width must not exceed 350 Miles calculated from the territorial sea floor. If beyond the 200-mile sea radius there is a seabed area which is a natural continuation of the area of the dardan region as long as it meets the characteristic of the sedimentation depth specified in this convention. The coverage of the continental shelf owned by the coastal State includes the seabed and subsoil of the underwater area: the slope and its rise; excluding the deep seabed with oceanic ridges or layers of soil [9].

The continental shelf becomes the object of regulation in UNCLOS 1982 because of its position as a marine zone that plays an important role for biotic and abiotic natural resources from the seabed and soil along with living organisms belonging to sedentary species, ie organisms which, at harvest stage, either move in or under the seabed or unable to move except in constant physical contact with the seabed or the subsoil [10]. Expansion of the continental shelf contained in UNCLOS 1982 provides a significant advantage for developing countries that are located as coastal states with rights sovereign to carry out economic activities especially exploration of natural resources in the maritime zone.

UNCLOS 1982 [11] was used as a legal instrument which became the basis for dealing with disputes over continental shelf territories, especially those relating to the legitimacy of the use of resources in the region. In UNCLOS 1982, Indonesia as an archipelagic country can draw baselines with the baselines of the islands. In the realization of the Ambalat case, the Ambalat area is clearly included in the Indonesian territory. This can be seen from the boundary between East Kalimantan and Sabah which was then drawn from the 7-batik islands based on the archipelagic baseline. On this basis it has the implication that Indonesia has sovereign rights to the natural resources of the seabed beneath it, including oil and gas up to 200 miles from the Indonesian archipelagic baselines or even further to the natural continuation of Indonesia's outer islands to the seabed. The Ambalat Block is a natural continuation of East Kalimantan because its basic rocks are part of the continental plates forming Kalimantan. The location of the Ambalat Block is still within 200 miles of the archipelago base line on the coast of East Kalimantan (figure 5). This fact reinforces that the Ambalat Block is still within the reach of Indonesia and Indonesia has the right to manage it. Moreover, Indonesia has exploited and explored Ambalat Block and the surrounding area for a long time. At that time, Malaysia never sent a complain note even over the Indonesian claim [12].

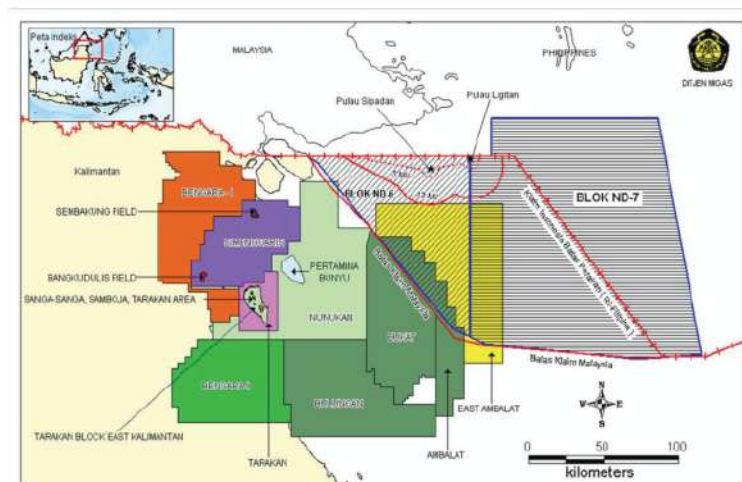


Figure 5. Ambalat Block Map in East Kalimantan

In the case of Ambalat it is necessary to emphasize again that Ambalat is only related to the seabed which is actually referred to as continental shelf only and has no realization with water bodies or bodies of water. As written in Article 77 of UNCLOS 1982 which states that if the seabed is a continuum of an island's continental shelf it can be said that all forms of natural resources are contained in the seabed and subsoil. When viewed from the position of the parties, between Indonesia and Malaysia are participants or parties who signed UNCLOS 1982 so that it has legal and legal consequences.

Indonesia's control of the continental shelf is also based on another international instrument, the Convention on Biological Diversity. In Article 3 of the Convention on Biological Diversity (hereinafter abbreviated as CBD) explains: "states have, in accordance with the chapter of the United Nations and the principles of International law, the sovereign right to exploit their own resources, pursuant to their own environmental policies and the responsibility to ensure activities within their jurisdiction". The essence of the contents of the article emphasizes the parameters of the extent to which a country's sovereign right to control natural resources on the continental shelf. In principle, sovereign rights mean that the state has the power and jurisdiction to regulate the distribution, utilization and ownership of natural resources within its sovereignty. It is clear that here Indonesia has the validity and legitimacy of the ownership of natural

resources on the Ambalat continental shelf considering that Ambalat is a continuation of the Indonesian continental shelf.

In the Ambalat block, Indonesia has exercised effective control and on the other hand Indonesia has also carried out activities to exploit genetic or mineral resources. The activity has been carried out regularly and continuously so that it gives a strong signal of ownership of Ambalat. In carrying out these activities Indonesia is also based on two international instruments namely UNCLOS 1982 and CBD. Indonesia has conducted harmonization in implementing the control of the Ambalat Block and the protection of natural resources at the bottom of the Ambalat sea. In Article 22 the CBD explains "contracting parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of states under the law of the sea". As a member of the CBD and UNCLOS, Indonesia has fully committed to adjusting internal policies regarding the protection of marine natural resources and genetic resources.

4. Conclusion

The claim by Malaysia in regard to the ownership of the Ambalat Block, definitely cannot be justified legally and factually. These finding of these research shows the legal construction and legal analyze that answer the claim proposed by Malaysia: First, unilateral claims made by Malaysia are not accepted by the international community and the claims itself are contrary to the international legal instruments such as UNCLOS 1982 and the Convention on Biological Diversity. The Ambalat Block can be claimed to be the of Indonesia because the Ambalat Block is geographically a continuation of the Borneo island's continental shelf. Second, the legal scenario option that suggested and highlighted in this discussion are to strengthen Indonesia's basis for the ownership of the Ambalat Block as stipulated on UNCLOS 1982 and the Convention on Biological Diversity. In addition, Indonesia has legally right and national jurisdiction toward the Ambalat block areas in order to manage, conquer and protect the natural resources (marine biodiversity and genetic resources) instead in both seabed and subsoil.

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