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# The Dispute Case of Sipadan Island and Ligitan Island by Countries of Indonesia and Malaysia

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**ABSTRACT.** Sipadan and Ligitan islands are islands located near the big island Borneo (Borneo) is uninhabited. These two islands are the case of this dispute stems from a meeting between Indonesia and Malaysia in a technical meeting law of the sea in 1967. Unclear state boundaries and territorial, regional and status international interests, as well as economic interests are one source of that disputes. Which method used in resolving this dispute, namely through the Law Court International. Indonesia and Malaysia have also prepared evidence that will be submitted. This dispute case was finally resolved through the International Court of Justice. The result of the decision of the International Court of Justice is the ownership of Sipadan and Ligitan Islands had won by Malaysia.

**Keywords:** Maritime Boundaries, Maritime Boundary Disputes, the International Court of Justice, Sipadan and Ligitan

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## 1. Introduction

The case of the dispute between Sipadan Island and Ligitan Island by the State of Indonesia and Malaysia is a case of the seizure of Sipadan Island and Ligitan Island which is located between Indonesia and Malaysia. Sipadan Island Ligitan Island is a small island. The territory of Indonesia is an archipelagic country that is very wide and contains abundant natural resources that are invaluable as well as an attraction that can provoke many parties to use it both legally and illegally. There are ten countries whose waters directly border the waters of Indonesia, there are Malaysia, Singapore, Thailand, Vietnam, Papua New Guinea, Australia, Palau, and Timor Leste. With many countries directly bordering Indonesia, this will have the potential to cause conflict (Yusnita, 2018). Disputes can arise due to the application of different principles to the determination of the boundaries of the continental shelf between countries, giving rise to overlapping areas that can lead to disputes (Widiyanta, 2010).

The Sipadan and Ligitan Islands dispute is a dispute between Indonesia and Malaysia in defending the territory of a country. During the colonial period there was a dispute between the Dutch East Indies government and the British where the British government had made regulations regarding the protection of turtles (Turtle Preservation Ordinance) and had collected taxes on turtle farmers on the island and there was a lighthouse with the words "built by England". Which was later opposed by the Dutch East Indies government because it was the Dutch East Indies who felt they owned the island.

The case of a dispute between Indonesia and Malaysia emerged in 1967 when in a technical meeting on the law of the sea between the two countries, each country apparently included the island of Sipadan and the island of Ligitan within

its territorial boundaries. The two countries then agreed that Sipadan and Ligitan be declared in a state of status quo. However, the Malaysian side is building a new tourist resort managed by a Malaysian private party. Because Malaysia understands the status quo as remaining under Malaysia until the dispute is over, while the Indonesian side means that in this status it means that the status of the two islands cannot be occupied or occupied until the issue of ownership of these two islands is resolved.

Above Sipadan, an island that covers that wide only 4 km<sup>2</sup>, Malaysia made nearly 20 accommodations to be used as tourist spots. The Indonesian government, which also felt that it owned the islands, immediately sent a protest to Kuala Lumpur, asking for development to stop that. The reason is that Sipadan and Ligitan are still in dispute, the owner has not yet been decided. In 1969 the Malaysian side unilaterally included the two islands on its national map when setting the boundaries of the continental shelf (Juwana, 2013).

Disputes between the Governments of Indonesia and Malaysia have occurred since 1969 regarding the ownership of the islands of Sipadan and Ligitan. Then, on May 31 of 1997, the two countries agreed to settle the dispute over ownership of the islands of Sipadan and Ligitan through legal channels or an international judicial court through the ICJ (International Court of Justice) or the International Court of Justice (Tuhulele, 2011). On May 31, 1997 the two countries agreed on a "Special Agreement for the submission to the International Court of Justice the dispute between Indonesia and Malaysia concerning the sovereignty over Pulau Sipadan and Pulau Ligitan". The Special Agreement was then submitted to the International Court of Law on November 2, 1998 through a Joint Letter. The main issue proposed and requested in the Special Agreement is for the International Court of Law to decide who is sovereign

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over Sipadan Island and Ligitan Island based on agreements, evidence and documents from the Indonesian government and the Malaysian government.

This conflict began when Indonesia and Malaysia held a technical meeting on the law of the sea in 1967, but disagreements began to heat up two years later in 1969. The beginning of the dispute between Indonesia and Malaysia was at the meeting of the two delegates in determining the boundaries of the continental shelf between Indonesia and Malaysia in Kuala Lumpur on September 22 of 1969. During the conversations on the continental shelf in the Sulawesi sea, the two delegations both claimed Sipadan Island and Ligitan Island as part of its territory. About 64 kilometers from the east coast of Sebatik Island where the northern part is Malaysian territory and the southern eastern part is Indonesian territory. Ligitan Island is located 21 nautical miles about 34 kilometers from the mainland coast of Sabah Malaysia and 57.6 nautical miles about 93 kilometers from the east coast of Sebatik Island. The area of Sipadan Island is 10.4 hectares and Ligitan Island is 7.9 hectares. From this point, the dispute between Indonesia and the island of Sipadan and the island of Ligitan began. Both countries have their respective weaknesses, namely on the part of Indonesia not including the two islands in government regulations in lieu of law, Perpu No. 4 of 1960 concerning Indonesian waters. On the other hand, Malaysia did not include the two islands in maps that was published until the 1970's.

The Indonesian government and the Malaysian government conducted negotiations on the islands of Sipadan Island and Ligitan Island. Both participants agreed to establish the island of Sipadan Island and Ligitan Island in the status quo. On September 22, 1969, agreed a Memorandum of Understanding (MOU) which stipulates Sipadan Island and Ligitan Island in the status quo, which means that they cannot be occupied, occupied or exploited by either Indonesia or Malaysia. However, in 1979 Malaysia violated the agreement by making a new map by including the islands of Sipadan and Ligitan as part of Malaysia and granting permits to several private entrepreneurs to carry out tourism activities. Malaysia has built resorts, cottages, and several lodging places. From the Indonesian side, this is a violation of the agreement which states that the two islands are still *quo status*.

## 2. Methods



Fig. 1 The maps of Sipadan Island and Ligitan Island

In the case of the Sipadan and Ligitan islands disputes were initially resolved using negotiations. Negotiation is an effort to resolve the dispute between the parties without going through a judicial process with the aim of reaching a mutual agreement on the basis of greater cooperation harmonious and creative. In this case the parties dealing directly with each other carefully in discussing the problems they face in a cooperative and open way (Emirzon, 2001). However, during the negotiation process there was no decision so that the

resolution of the problem was shifted to using an International Court. The International Court of Justice is a judicial institution of the United Nations based in The Dutch Hague, Netherlands, which is tasked with resolving dispute cases in a non-violent manner.

The islands of Sipadan and Ligitan are islands that located in the Makassar Strait, which borders East Kalimantan and Sabah (East Malaysia). The issue of the claims of Sipadan and Ligitan has emerged since 1967 when the two countries were holding a technical meeting on the law of the sea between Indonesia and Malaysia. During the meeting, Indonesia emphasized that its territorial boundaries include the islands of Sipadan and Ligitan. However, Malaysia objected to the statement from Indonesia because according to Malaysia the two islands were. On September 19, 1969 in negotiations on the boundaries of the contingent shelf between Indonesia and Malaysia, for the first time they negotiated ownership of the two disputed islands. Considering that in the first negotiations there was no agreement that satisfies the two parties, then the two countries agreed that the islands of Sipadan and Ligitan were in the status quo as meant by the two countries, they were not allowed to carry out activities on the two islands. Negotiations have been carried out by both of them in 1991, 1992, 1994, and 1996. However, they have not produced results that can satisfy both countries. In the same year, Indonesia and Malaysia agreed to find a solution alternative that ended up bringing the island dispute case to the International Court (Tri, 2019).

## 3. Results and Discussion

The continues conflict make Indonesia had to invite Malaysia to resolve it through the "Treaty of Amity and Corporation". An institution under the auspices of ASEAN consisting of Foreign Ministers from ASEAN members. However, on the Malaysian side, they refused because Malaysia had been involved in a dispute over Batu Puteh Island with Singapore, so Malaysia thought it would result in defeat if this case was resolved by the ASEAN High Council.

At first Indonesia didn't want to take this case to the ICJ but in 1998 the Indonesian-Malaysian government took this case to the International Court of Justice. The decision of Indonesia and Malaysia to take the issue of Ligitan and Sipadan to the International Court of Justice is stated in a signed agreement in Kuala Lumpur on May 31, 1997. The two countries submitted a joint notification to the International Court of Justice on November 2, 1998 which essentially asked the court to decide on the sovereignty of the two islands based on treaties, agreements, and other evidence submitted by each part.

Indonesia submitted evidence that this island was part of the territory of the unitary state of the Republic of Indonesia based on the June 20, 1891 Convention between Britain and the Netherlands. The 1891 Convention regulates the determination of boundaries on the island of Borneo between the Netherlands and the countries on the island of Borneo which are under the protectorate of the United Kingdom. Furthermore, Indonesia also claims that Indonesia has the right to the two islands on the basis of Indonesia being the heir to the Sultan of Bulungan who has power over Ligitan Island and Sipadan Island. Indonesia also submitted evidence of effective occupation shown by the Netherlands and Indonesia as the basis for proving the existence of Indonesian (or Dutch) power over Ligitan Island and Sipadan Island. The forms of effective occupation proposed as evidence by Indonesia were the Dutch

Navy patrols in 1921 and the Indonesian Navy after Indonesia's independence. Indonesia also refers to the activities of fishermen in the waters around Ligitan Island and Sipadan Island as evidence of effective occupation.

Malaysia submitted evidence that these two islands were part of Malaysia on the basis of an agreement between the Sultan of Sulu with the British which later became Malaysian territory after the Sultan of Sulu independent from England. Malaysia also filed a claim on the basis of effective occupation. The evidence presented by Malaysia was in the form of control and management of turtles and the collection of turtle eggs by the British, the establishment of a bird sanctuary area in Sipadan in 1933, and the construction of lighthouses on the two islands by the colonial authorities of British North Borneo in the 1960s which was then regularly maintained by the Malaysian government.

The International Court of Justice rejected Indonesia's first argument regarding the 1891 Convention. In the court's view, the 1891 Convention was not intended to delimit the boundaries in the territorial waters east of the islands of Kalimantan and Sebatik or to stipulate sovereignty over the other islands. Thus, the Indonesian argument that the line 40 10' LU is an allocation line is rejected. The International Court of Justice also rejected both Indonesia and Malaysia's succession claims. Both countries are considered unable to provide evidence strongly that the Sultan of Bulungan or the Sultan of Sulu controlled the two islands.

In this case, Indonesia cannot prove the existence of Dutch or Indonesian actions that meet these criteria, moreover, Indonesia did not include Ligitan Island and Sipadan Island in PerPu No. 4 of 1960. In the view of the International Court of Justice, Malaysia's actions "both in its own name and as successor State of Great Britain, are modest in number but diverse in character and include legislative, administrative and quasi-judicial acts".

On December 17, 2002, the International Court of Law granted Malaysia the sovereignty over the ownership of the islands of Sipadan and Ligitan. In the decision making of the International Court of Law uses the basis of an effective occupation claim which has stronger and more provable evidence than tends to be somewhat based on historical evidence which tends to be more difficult to prove. The decision of the International Court of Law gives sovereignty to Malaysia because Malaysia is more dominant in managing and provides evidence that Malaysia has power on the island. The cause of Indonesia's defeat was that Indonesia lacked historical and data showing that the Dutch had a stronger and action to exercise their power than the British at that time. And the International Court of Law also rejected Indonesia's argument about the 1891 convention because it only regulates the border of Kalimantan and does not regulate the boundaries of the territorial waters. At the 1891 convention, it only drew 3 miles

from the beach point where as far as 3 miles did not reach the islands of Sipadan and Ligitan (Hendarwati, 2015). Of the 17 ICJ judges, 16 supported the decision and only one rejected it.

The granting of sovereignty over Sipadan and Ligitan to Malaysia by the ICJ certainly gave birth to the potential for changing the configuration of the baselines for Indonesia and Malaysia. Indonesia's baseline no longer uses the two islands as a starting point so that the sea zone that can be claimed will change and tend to narrow. Meanwhile, Malaysia uses the two islands as a starting point, which will result in a claimable sea area that will expand to the south. Therefore, the Indonesia-Malaysia border is a sensitive issue in the relations between the two countries.

#### 4. Conclusion

The conclusions that can be drawn from the Ligitan and Sipadan Island dispute between Indonesia and Malaysia are as follows between Indonesia and Malaysia in Kuala Lumpur on September 22, 1969. During the talks on the continental shelf in the Sulawesi sea, the two countries both claimed Sipadan Island and Ligitan Island as their own. Indonesia and Malaysia agreed that to resolve the territorial dispute between Sipadan Island and Ligitan Island, it was resolved through the International Court of Justice. Malaysia won the territorial dispute case, then Sipadan Island and Ligitan Island fell to the regions Malaysian power. The cause of Indonesia's defeat was that Indonesia lacked historical data and evidence that could show that the Dutch also had the will and action to make the islands of Sipadan and Ligitan a legacy of the colonialists.

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