

## Revise of the Law Exclusive Economic Zone in Indonesia: An Urgent Necessity

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### Article

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### Abstract

Indonesia is an archipelago with massive oceans. In 1982, the United Nations Convention on the Law of the Sea (UNCLOS) was signed in Jamaica. In 1983 the Indonesian government passed Law Number 5 of 1983 concerning Exclusive Economic Zone, and UNCLOS 1982 was set as one of the fundamental considerations in the Law. However, the issue is what is the legal basis of including the UNCLOS 1982 as one of the basic considerations and how these two laws are related. This research employed a normative method aiming to study one of the fundamental considerations of the making of Law Number 5 of 1983 concerning the Exclusive Economic Zone in Indonesia. The results of the discussion show that the inclusion of UNCLOS 1982 as a basis for consideration in making Law Number 5 of 1983 concerning Indonesia's EEZ is problematic from the legal position of the rules. Law Number 5 of 1983 concerning the EEZ of Indonesia needs to be revised by referring to Law Number 17 of 1985 concerning the Ratification of the Convention of The Law of the Sea. This revision is intended to improve the regulation concerning the implementation of sovereign rights and jurisdiction and related regulatory provisions regarding the EEZ of Indonesia in terms of the interest of security on the sea.



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### Introduction

Indonesia is the largest archipelago in the world with its largest oceanic areas, or almost 70% of the areas consist of oceans with abundant biodiversity and non-biodiversity richness (Rochwulaningsih, et.al., 2019). In 1982, the United Nations Convention on the Law of the Sea (henceforth referred to as UNCLOS 1982) was signed in Jamaica, and this convention regulates sea zonation or the distribution of oceanic

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zonation including inland seas, archipelagic waters, territorial seas, contiguous zones, exclusive economic zones, and high seas (Stevenson & Oxman, 1994).

On 21 March 1980, the government announced the declaration of the exclusive economic zone of Indonesia, and, in 1983, Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone was passed (Kurnia & Martinelli, 2017). The UNCLOS 1982 was set forth as the basic consideration in the making of the Law although the UNCLOS 1982 had not been ratified. According to Law Number 24 of 2000 concerning International Treaties and Vienna Convention on the Law of Treaties 1969/Vienna Convention 1969, ratification is defined as a process of the transformation of an international treaty to a national law (Merdekawati, et.al., 2021). This ratification is a way of being bound to and complying with the norms set forth in the international treaty, meaning that the UNCLOS 1982 is not yet valid to be the national law and positive law of Indonesia, and its position is considered temporary (Juwana, 2019).

UNCLOS 1982 contains 17 chapters, 320 articles, and 9 annexes which represent monumental achievements of the international community and constitute a comprehensive regulatory framework in regulating almost all activities at sea (Letts, 2020). Apart from being important as a new law of the sea instrument, the 1982 Law of the Sea Convention is also very important because in addition to reflecting the results of efforts by the international community to codify existing provisions of international law, it also describes a progressive development in international law (Boyle, 2005). UNCLOS 1982 has quite broad arrangements ranging from maritime zones that can be claimed by a State, regarding marine research, pollution, to procedures for settling disputes between States. The breadth and foundation of the 1982 UNCLOS arrangement, has made UNCLOS dubbed the "Constitution of the Oceans" by some of the world's international legal experts (Koh, 2020). The declaration of the UNCLOS 1982 as the basic consideration of the making of Law Number 5 of 1983 concerning the Exclusive Economic Zone of Indonesia is, therefore, considered a flaw and it sparks a legal problem. This issue leads to a question of what serves as the basic law of the inclusion of this matter, what is the connection between Law Number 5 of 1983 concerning the Exclusive Economic Zone of Indonesia and Law Number 17 of 1985 concerning the Ratification of UNCLOS 1982, and what legal standing do they hold?

Studies about Exclusive Economic Zone are countless but majorly they discuss the rights and obligations of coastline countries or other countries in EEZ. First, the study conducted by Ida Kurnia entitled "the Implementation of the 1982 UNCLOS in National

Laws, especially in EEZ of Indonesia” was focused more on the connection between the making of Law Number 5 of 1983 concerning EEZ of Indonesia and the UNCLOS 1982 ratified into Law Number 17 of 1985 concerning the Ratification of the UNCLOS 1982 (Kurnia, 2008). The findings of this study, surprisingly, justified that the Law concerning the EEZ of Indonesia was relevant to the UNCLOS 1982 recalling that it had been ratified. The second study conducted by Aditya Taufan Nugraha and Irma with the topic “Legal Protection of EEZ for the Existence of Indonesia as a Maritime State” was focused on the inception of the Law concerning EEZ of Indonesia as the manifestation of the devotion of Indonesian Government to the protection of the sovereignty of the waters of Indonesia and the enforcement of Law governing EEZ of Indonesia, and this law represents the protection of the jurisdiction of the state (Nugraha & Irma, 2014).

This research aims to study the inclusion of UNCLOS 1982 as one of the fundamental considerations in the making of Law Number 5 of 1983 concerning the EEZ of Indonesia, and the research results reveal that this inclusion is not attached to any strong legal basis, leading to a legal problem in a way that Law Number 5 of 1983 concerning EEZ of Indonesia and Law Number 17 of 1985 concerning Ratification of the UNCLOS 1982 do not hold any connection in their substances.

## Method

This research employed a normative method involving library research and statutory and conceptual approaches (Ibrahim, 2006). The primary data consisted of Law Number 5 of 1983 concerning Exclusive Economic Zone, Law Number 17 of 1985 concerning Ratification of the UNCLOS 1982, Law Number 24 of 2000 concerning International Treaties, Law Number 12 of 2011 concerning Law Making (as most recently amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations) and Vienna Convention 1969 concerning International Treaties, while the secondary data were collected from journals, articles, and analyses of legal materials. All the data collected were further analyzed based on a qualitative technique.

## Discussion

### 1. UNCLOS 1982 as a Consideration in the Formulation of Law Number 5 of 1983 Concerning the Exclusive Economic Zone of Indonesia

Indonesia announced the Indonesian Exclusive Economic Zone on March 21, 1980, through a government announcement, without waiting for the formal convention to be formed (Aziz, et.al., 2020). This action has legal consequences, namely the need for regulations that can protect Indonesia's national interests. Then this government announcement was followed by the formation of the Indonesian Exclusive Economic Zone Law, namely Law Number 5 of 1983 (Agusta, 2017). This law was born based on the following considerations (Kamarudin, 2021):

- a. About Indonesia's national goals in the framework of improving the people's welfare, the maximum use of all existing resources in the Indonesian Exclusive Economic Zone.
- b. To protect this national interest, a national legal instrument is needed as a constitutional basis, so the Indonesian Exclusive Economic Zone Law was formed.

Point g of a fundamental consideration of Law Number 5 of 1983 concerning EEZ of Indonesia mentions: "State practices or the Third United Nations Convention on The Law of The Sea indicate that the regime of the 200-nautical-mile exclusive economic zone is recognized as part of the new international law of the sea". Point h mentions "regarding those matters above, it is essential to set a law as the basis for the exercise of sovereign rights, other rights, jurisdiction, and the obligations of the Republic of Indonesia in Exclusive Economic Zone of Indonesia". (Addendum to the State Gazette of the Republic of Indonesia of 1983 Number 3260). The UNCLOS 1982 served as the fundamental consideration for Law Number 5 of 1983 although this Convention had not been ratified. In terms of the substances, Law Number 5 of 1983 concerning EEZ and UNCLOS 1982 share similar provisions regarding EEZ, the rights of coastline countries, the guarantee regarding the violations of law in fishing, determining EEZ borders between two states and the provisions of the exercise of the rights of other states (Winardi & Chomariyah, 2018).

Both Law Number 5 of 1983 concerning EEZ of Indonesia and UNCLOS 1982 share the same substances, meaning that, on one hand, systematically the convention has been the basis that Law Number 5 of 1982 adheres to regarding EEZ in Indonesia. On the other hand, UNCLOS 1982 was not valid yet to be a positive law in Indonesia at the time Law

Number 5 of 1983 was made. The convention is an international treaty that is deemed lawful if the state signing the convention has ratified it, meaning that the state concerned is bound to the norms outlined in the convention. The ratification of UNCLOS 1982 into Law Number 17 of 1985 concerning the Ratification of UNCLOS 1982 means that since 1985, UNCLOS 1982 has been recognized as a national law in Indonesia and in positive law of Indonesia. This law serves as one of the bases of consideration in the making of a law that should hold valid legal standing. UNCLOS 1982 had not been ratified into the national law during the making of Law Number 5 of 1983 concerning the EEZ of Indonesia.

UNCLOS 1982 had not been ratified in the making of Law Number 5 of 1983 and it held only a temporary status because the delegated representatives of Indonesia only signed it without being bound to the norms outlined in UNCLOS 1982. In the internal constitutional systems, we have not rechecked the substances of the convention through the process of legislation. In this system, laws must be passed to the parliament. Similarly, in order to allow the UNCLOS 1982 to take into effect as the national law, it must take the process of the legislation in DPR (Indonesian House of Representatives), considering that this matter deals with sovereignty, sovereign rights, and the jurisdiction of the state. Article 308 of UNCLOS 1982 implies that this Convention was put in place and binding after 12 months of the deposit of the 60<sup>th</sup> ratification charter (Simbawa & Ume, 2020). Therefore, the effectuation of this convention depends on the process of ratification of the states involved in the convention, while ratification follows the internal mechanism of the states involved. During the time Law Number 5 of 1983 concerning EEZ of Indonesia was in progress, UNCLOS 1982 did not hold the status as a positive law in Indonesia, and, therefore, it could serve as the basis of the consideration in law-making.

By including 1982 UNCLOS as the consideration, Law Number 5 of 1983 concerning EEZ would lead further to a legal problem, in which this law would not be deemed effective in terms of juridical, philosophical, and sociological aspects (Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Legislation Making) (Rokilah, 2021).

In other words, the inclusion of UNCLOS 1982 as the basis of consideration for the making of Law Number 5 of 1983 concerning EEZ would not hold any strong legal basis since it is deemed to demonstrate a legal flaw considering that UNCLOS 1982 did not hold its position as a positive law because it had not been ratified.

## **2. The Connection and the Legal Standing of Law Number 5 of 1983 Concerning the EEZ of Indonesia and Law Number 17 of 1985 Concerning the Ratification of UNCLOS 1982**

Law Number 5 of 1983 concerning the EEZ of Indonesia was internally made, initiated by the Government of Indonesia, and approved by House of Representative of Indonesia Republic (hereinafter referred to as DPR RI). This law refers to the vision of the law of Indonesia and the value in the declaration of EEZ of 1980. Law Number 17 of 1983 concerning the Ratification of UNCLOS 1982 resulted from the ratification of UNCLOS 1982. According to Law Number 24 of 2000 concerning International Treaties, ratification is a legal procedure aiming to transform an international treaty into a positive law of a state. The constitutional system in Indonesia does not regulate the legal standing of international treaties in national law. Furthermore, Indonesia has not even decided whether it goes with the dualism principle or monism principle, where the former positions international law as a legal system separate from national law, and both do not have any hierarchical connection, and, thus, it requires the process of transformation into positive law. The latter, however, positions international law and national law within a legal system unit, needing no transformation process. This inconsistency remains to date, where international treaties have always taken the process of ratification according to the legislation. Utrecht and Mochtar Kusumaatmadja once stated that the product of an old law tended to follow the primate monism principle of international law (Tenripadang, 2016).

The ratification of the international treaty that also took the validation given by the DPR RI) puts Indonesia in a position that is bound to the norms of the international treaty concerned (Hasim, 2019). in the process of ratification, there is no material in the international treaty that has been discussed since it only validates (Riry, 2021). After the ratification and the shift to Law, this treaty is then equal to other laws whose process took the legislative stage. The ratification process that took place does not make it any different in terms of the position and implementation, and it can be said that the legislative products through ratification are equal to other national legal products. The difference between national law and a national treaty lies in the subject of the national law represented by individuals or citizens. The source of international treaties takes the agreement of all the states involved while the source of the national law takes the agreement of a state.



Ratification can involve the two main processes in the legislative body in DPR RI, where the ratification result may come as the law of the state and the executive process may result in a Presidential Decree. These two different levels of ratification products hold different standings. According to Law Number 12 of 2011 concerning Legislation Making, the hierarchical structure of the legislation implies that a Presidential Decree is under Law, and this Presidential Decree serves as a delegated regulation of the Law (Rahman, et.al., 2022). The ratification result is not always in the form of a law equal to other laws, but the ratification could also result in a Presidential Decree that is positioned under Law.

Law Number 5 of 1983 concerning the EEZ of Indonesia and law Number 17 of 1985 concerning the Ratification of UNCLOS 1982 have a different process in the making, where the former represents the initiation of the government of Indonesia to realize the vision set forth in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia as well as the value outlined in the declaration of the Indonesian Government dated on 21 of March 1980 regarding EEZ of Indonesia. The process of this law-making took the legislation process according to the laws that apply. Law Number 17 of 1985 concerning the Ratification of UNCLOS 1982, however, departed from the United Nations Convention on The Law of The Sea 1982. According to law Number 24 of 2000 concerning International Treaties, every International Treaty must take the process of ratification to be a national law. The ratification process does not embed any particular characteristics, but the law produced will be the same as other laws made through legislative processes. Although these two laws differ in terms of the making process, both function as national laws or positive laws put in place in the waters and jurisdiction of Indonesia. With their position as the national laws in Indonesia, these two laws are parallel but they do not have any hierarchical connection.

## Conclusion

The inclusion of UNCLOS 1982 as the basic consideration in the making of Law Number 5 of 1983 concerning the EEZ of Indonesia does not hold any binding legal standing or it could be deemed to demonstrate a legal flaw. The positions of Law Number 5 of 1983 concerning the EEZ of Indonesia and law Number 17 of 1985 concerning the Ratification of UNCLOS 1982 are equal to the national laws and positive laws in Indonesia and they are in place equally in the waters and jurisdiction of Indonesia. In other words, they are parallel but hold no hierarchical connection. Law

Number 5 of 1983 concerning the EEZ of Indonesia needs to be revised by referring to Law Number 17 of 1985 concerning the Ratification of the Convention of The Law of the Sea. This revision is intended to improve the regulation concerning the implementation of sovereign rights and jurisdiction and related regulatory provisions regarding the EEZ of Indonesia in terms of the interest of security on the sea.

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