

## THE LEGALITY OF BORDER SHIFTS DUE TO COASTAL RECLAMATION

Dita Birahayu\*

### Abstract

Based on Declaration of Djuanda, it declared that Indonesia maritime was defined as the entity of the Republic of Indonesia (NKRI), and thus, Indonesia is known as an archipelagic country with a very broad maritime territory directly adjacent to 10 neighboring countries. However, it poses a lot of potential maritime boundary conflict. Supported by this current advanced science, both artificial islands and coastal reclamation were being carried out. Singapore is one having a reclamation named Jurong Island, and it is very close to the territory of NKRI. As an independent country, Indonesia is attempting to protect its territory by having a diplomatic negotiation with Singapore in order to decide the legal certainty over their maritime borders, especially in east area. In addition, they need to define the legal status of that reclaimed island. Based on UNCLOS 1982 article 11 and 80, the legal status of the reclaimed island may not threaten the sovereignty of NKRI as its presence does not change the maritime territory of a country, and it has been agreed in the previous agreement.

### Keywords

archipelagic state, coastal reclamation, border.

---

\* Faculty of Law, Hang Tuah University, Surabaya, East Java, Indonesia

## Introduction

As declared by Ir. Djuanda Kartawidjaja in Declaration of Djuanda, Indonesia maritime belongs to the territorial entity of the Republic of Indonesia (NKRI). Therefore, Indonesia is known as an archipelagic country; an entity of land, inland maritime, archipelagic maritime, and territorial maritime along with the ground and land beneath, as well as the space upon, including all of the sources within (Article 1 subsection (1) of Act of the Republic of Indonesia No. 43 2008 about the State Territory).

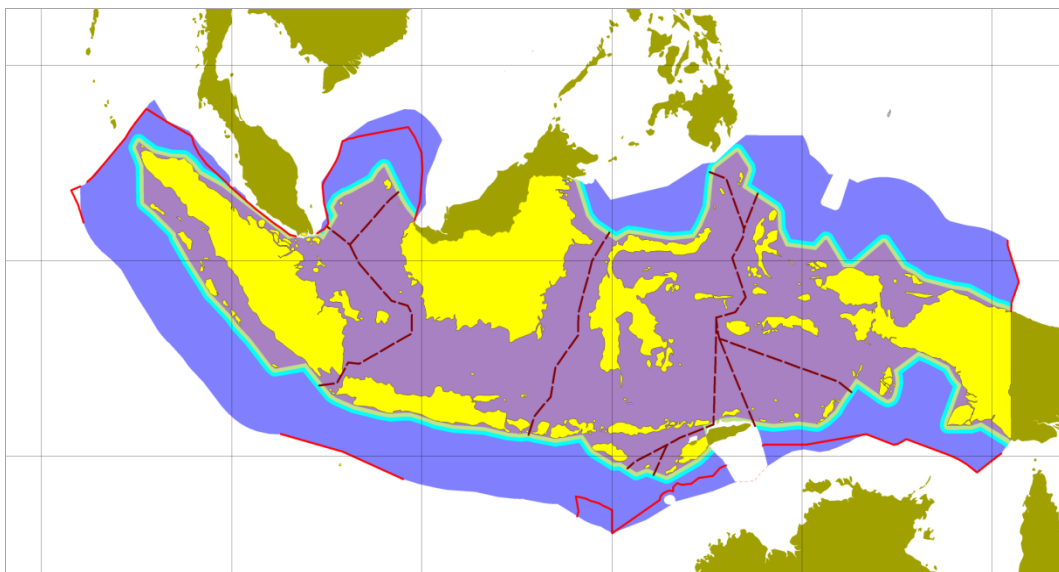


Figure 1. The map of Indonesia territory. Source: Department of Marine Hydro-Oceanography- 2011

Based on the map above, Indonesia is very broad, consisting of millions islands and maritime. The borders of Indonesia territory include the land and maritime. In general, the border region may geographically and directly be seen from the geography of the country, including the state border and maritime borders. Astronomically, the territory of Indonesia is seen from its coordinate based on the latitude and longitude. Those are imaginary lines dividing the globe horizontally and vertically (Tommy Hendra Purwoko, 2010).

Indonesia maritime is very broad, and it directly adjoin 10 neighboring countries including Malaysia, Singapore, Thailand, India, Philippines, Vietnam, Papua New Guinea, Australia, Palau, and Timor Leste. Viewing the boundary of a state borders in relation to the base line, it has been set in Article 5 UNCLOS, referring to the definition

of an ordinary baseline. It is the position of low water line across the coasts. The baseline should be mentioned in the official big-scale map of a coastal country or showed in the form of geographical coordinate. The copy is in turn officially announced as filed to the Secretary General of the United Nation (Direktorat Kelembagaan Internasional, 2005).

UNCLOS gives an authorship to every coastal state to determine the baseline of their maritime territory. In defining the maritime baseline of two countries, it needs an agreement from both countries, as long as it still corresponds to the regulation of UNCLOS.

Determining baselines may potentially pose conflicts on maritime borders when the legal regulation is weak or having no consent from the pertinent countries. Thus, the delimitation of maritime borders is crucial in order to monitor, manage, and utilize the territory of Indonesia maritime. The delimitation of maritime borders is vital to assure the jurisdictional clarity and certainty. This legal certainty along with the determination of maritime borders may significantly influence the economy of maritime as well as the assurance of right for Indonesia to access and manage its sources, both maritime and non-maritime.

One crucial agreement of delimitation on Indonesia maritime borders is the agreement of maritime delimitation between Indonesia and Singapore. These two countries have three maritime agreements regulating the borders of their territorial maritime. In case of Indonesia-Singapore maritime delimitation in 2009, Indonesia used its archipelagic baseline. It corresponds to UNCLOS 1982.

In Indonesia-Singapore delimitation agreement 2009, the principle is territorial maritime delimitation, and the method is the equidistance which is divided into pure, simplified, and modified equidistance. This is based on Article 15 of UNCLOS and Article 10 of Act No. 6 1996 about Indonesia maritime.

The importance of this maritime delimitation upholds the sovereignty of a state and provides a legal certainty, especially in relation to artificial islands as Singapore did in Jurong Island in which the presence is very close to the territory of the Republic of Indonesia as presented in the following figure.

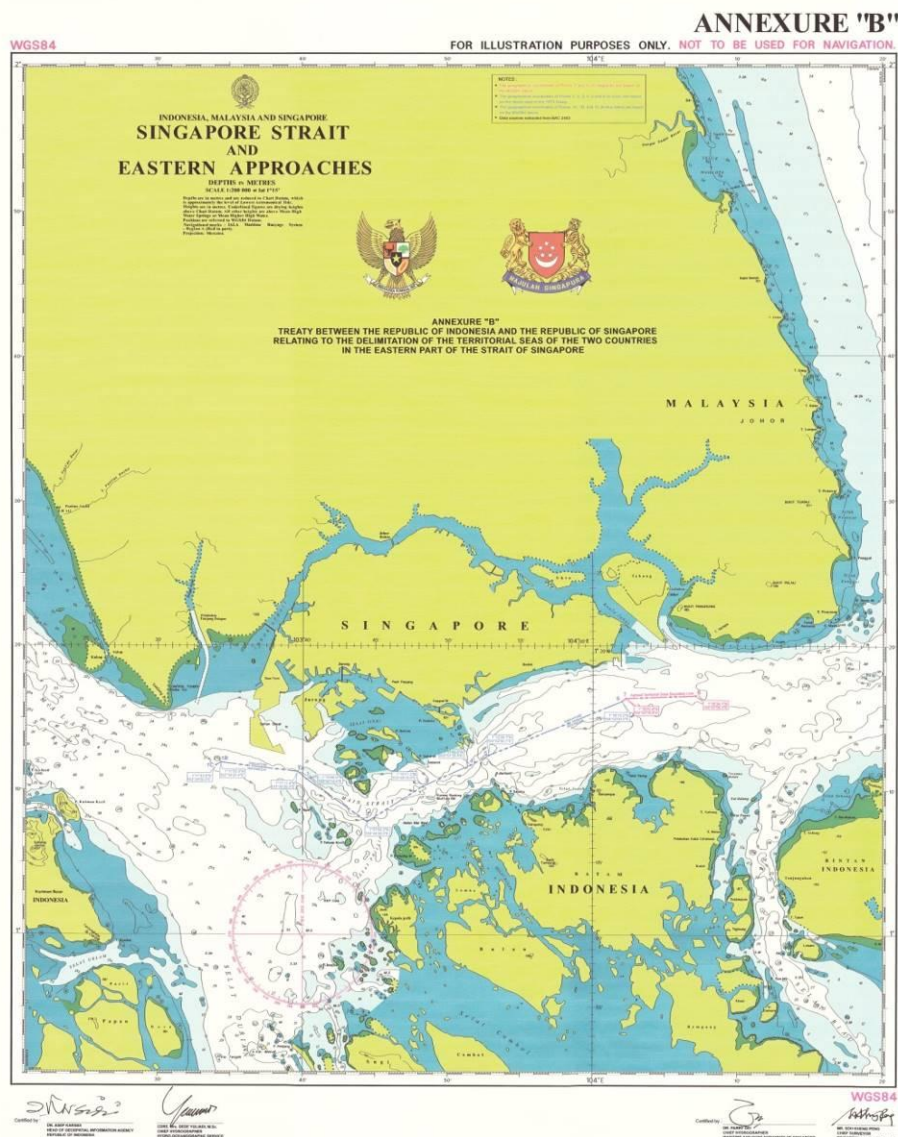


Figure 2. Indonesia-Singapore treaty related to the delimitation of maritime territory in Singapore's east and straight parts

According to the map above, the border shifts on archipelagic territory may occur in a state life. The shift is due to reclamation or global warming. The case of reclamation in Jurong Island, Singapore, had posed a border shift which might bring effect on the sovereignty of a country, particularly to Singapore and Indonesia.

The scope of this research is restricted only on the status of territorial border shifts due to reclamation. Similar to what has happened between Indonesia and Singapore, in order to expand Jurong Island, Singapore has expanded the area by conducting reclamation which effected on shifting the borders of Singapore approaching Indonesia

borders. Referring to the case, the regulation of border shifts in UNCLOS is not set firmly.

### Research Problem

According to the background of this study, the research problem is the legal status of border shifts due to reclamation.

### Research Method

This study is juridical-normative. It aimed to examine the applied legislation and regulations, as well as the theoretical review from the existing literatures, and related those all with the research problem. It used statute and case approaches. Those two approaches were expected to be complementary to one another, and in turn resulted in a comprehensive research. This study used the primary, secondary, and tertiary legal materials. The primary materials consisted of any legislation relating to the research problem. The secondary one was from literatures, magazines, and other mass as well as electronic media supporting this study. The tertiary one was from dictionaries, encyclopedia, and doctrines relating to the legal status of border shifts due to reclamation. The collection of materials was through literature study in order to get both primary and secondary materials. After inventorying the materials by identifying the legal fields through card system, those all legal materials would be systematically and logically classified into primary and secondary before having analysis to reach a pragmatic truth and/or coherence in the form of a full picture about the research problem. Both primary and secondary materials would be synchronized in systematic way and then further analyzed based on the legal principles, theories, concepts, doctrines, and other references in order to get a scientific formula for addressing the studied legal issue.

### Discussion

#### The Legal Status of Border Shifts due to Reclamation

##### a. The Reclamation of Jurong Island

Reclamation is an activity of improving the benefits of land resources in the context of environment and social-economy by either filling or drying or drainage (Ludiyo Madu, 2010). It has several systems as follow (Fella Defilla, 2016).

##### 1. Filling System

It is reclamation by filling up a coastal maritime on the surface of land in high water level. Such system may develop with support of heavy machines such as soil excavators, soil dredging machine, etc.

## 2. Polder System

It is conducted by covering wetlands (puddle) with a waterproof dike functioned to decrease the high level of ground water beneath the area, and it is useful to keep the debit of water under the expected threshold. Therefore, a quite dry and ready-to-use area will be ready for plant, industry, etc.

## 3. Combination System (Filling-Polder)

This reclamation is a combination between filling and polder systems up to particular level of height, so that the difference of elevation among reclaimed maritime areas will be quite safe. The filling is to reform the coastal areas which are commonly very soft.

## 4. Drainage System

This reclamation system is useful for relatively lower coastal areas among the surrounding, yet the elevation of its land surface should be higher than the elevation of water surface. The area can be in the form of tidal and non-tidal swamps. Using this drainage system along with its controlling doors, the coastal areas will be useful for living and planting.

The Concept Plan 2001, based on the vision of Singapore for 40 – 50 years ahead with a projection of citizen up to 5.5 million people, is the increasing needs of areas for living, industries, tourisms, infrastructures, water reservoir, military needs, and other supporting and technical needs for the operation of Changi Airport. Consistent with the Concept Plan 2001, Singapore has targeted to conduct a further reclamation (Wisnu Yudha, 2017).

Singapore's reclamation may bring concerns on Indonesia sovereignty, as it may shift the territorial borders between Indonesia and Singapore. It is seen from the fact that reclamation has made the land of Singapore shift up to 12 km from the Original Baseline mentioned in the treaty of borders between Indonesia and Singapore in 1973.

### b. The Legal Status of Territorial Shifts due to Coastal Reclamation



Both Indonesia and Singapore ratified UNCLOS 1982. To see the legal status of territorial shift due to reclamation, it may refer to UNCLOS 1982. Although UNCLOS 1982 does not specifically mention the issue of reclamation, the interpretation of UNCLOS articles may be helpful as reference.

The legal status of reclamation by Singapore is considerably LEGAL based on Article 60 subsection (1) of UNCLOS, "In Exclusive Economic Zone, every coastal state has an exclusive right to build and endorse and set the operation and utilization of artificial islands, installations, and buildings for their needs as mentioned in Article 56, as well as other economic purposes such as installations and buildings which may disturb the rights of coastal state in that zone." It is mentioned that coastal states have an exclusive right to build artificial islands in their exclusive economic zone.

However, the legal status of Singapore's reclamation is considerably ILLEGAL if the reclamation aimed to do a territorial shift as it is based on Article 11, "for the purpose of defining the borders of maritime territory, the installation of the outermost permanent ports as the integral part of port system is seen as a part of coast. Thus, the installation of offshore and artificial islands will not be seen as the installation of permanent ports."

Furthermore, Article 60 subsection (8) mentions, "Artificial islands, installations, and buildings have no status as island. They have no their own territorial maritime, and their existence may not influence either the determination of territorial maritime borders, the exclusive economic zone, or the continent base." In addition, Article 80 mentions, "Article 60 applies in mutatis mutandis manner for artificial islands, installations, and buildings on the continent base."

Based on Article 11, 60 subsection (8) and 80, it firmly asserts that the reclaimed islands are not seen as permanent islands, thus, their existence may not influence the determination of territorial maritime borders, the exclusive economic zone, and the continent base

Although Singapore -as a coastal state- has an exclusive right to make artificial islands, the exclusive right is merely in the context of making and utilizing, not creating a territorial shifts with a purpose to expand its maritime territory. Hence, the existence of those artificial islands may not threaten the sovereignty of the Republic of Indonesia.

Coastal reclamation as mentioned in UNCLOS led both countries to make a treaty of border between Indonesia and Singapore in 1973, 2009, and 2013. This agreement is

effectively applied since cases of border violation between those two countries were seldom found. It indicated that the primary goal of the treaty to provide a legal certainty for both countries had been reached out. Besides, this border treaty might be helpful to provide protection for Indonesia as a coastal state as it defined the baseline of Indonesia maritime territory in more clear way.

Indonesia-Singapore border treaty makes both countries easy to implement the law of shipping, both domestic and international (Lestari). Indonesia-Singapore border treaty is presented as follow.

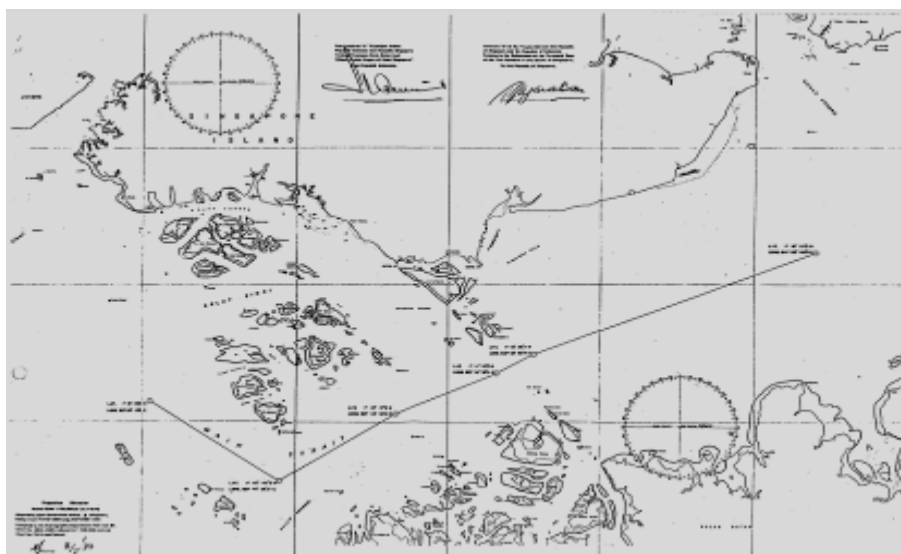


Figure 3. The Copy of Original Map of Indonesia-Singapore Treaty of Maritime Territory in Singapore Strait, 25th May 1973

According to Figure 3, the treaty of territorial maritime border between Indonesia and Singapore was signed in Jakarta on 25th May 1973, and had been ratified with Act RI No. 7 1973.

This treaty approved 6 (six) coordinate spots in Singapore Strait, bordering the maritime territory between Indonesia and Singapore. Seen from the map, the maritime territory of Singapore with no reclamation yet showed the original baseline of Singapore's outermost territory, and it might be useful to determine the territorial border. After having consent on those six spots, especially at the central and west segments, the further stage is defining the Territorial Maritime Borders between Indonesia and Singapore in east I, as seen in the following map.



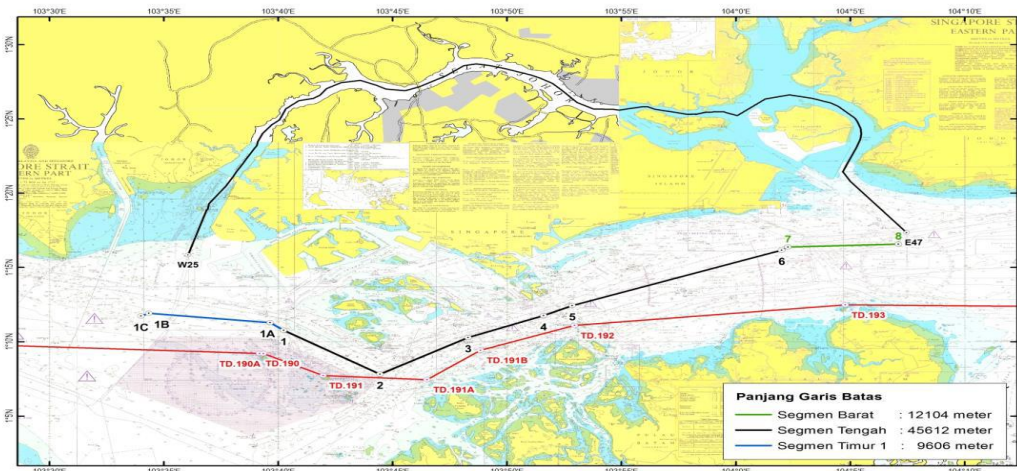


Figure 4. The Area of East I to be defined on its Territorial Maritime Border.

A very broad reclamation by Singapore since 1979 has still been running up to recent days. This likely sustainable condition brings a worry that it may effect on the determination of Indonesia-Singapore territorial maritime border. The reclamation is very intensive in west part (i.e., in Tuas View) which shifted more than 12 km to the south (Markas Besar Angkatan Laut Dinas Hidro Oseanografi). This shift was also in east part (Changi Airport), and it is all presented in the following figure.

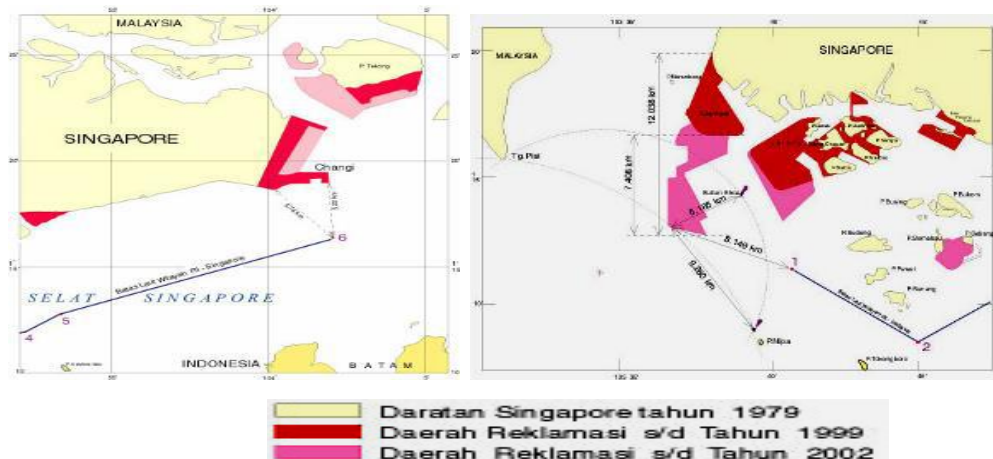


Figure 5. Map of Reclaimed Area in South-West of Singapore which shifted up to 12 km to the south and in the east part of Singapore which shifted up to 5 -6 km to the south.

In order to negotiate the territorial maritime border of both countries, the government of the Republic of Indonesia had organized a Technical Team and Teamwork chaired

by the Ministry of Foreign Affairs since 2011 to do negotiation on Indonesia-Singapore maritime border in the segment of East I which has not been completed yet.

Based on the current result of the negotiation, it showed that the delegations of both countries had dealt to put a territorial maritime border in Singapore Strait. The border line connects the sports of coordinate no. 6, 7 and 8. This constitutes a meaningful progress for both countries and becomes a good initial base to solve the subsequent issue of territorial maritime borders in East I.

### Conclusion

Following the discussion, several conclusions finally reveal as follow :

1. Referring to Article 11 and 60 UNCLOS 1982, the legal status of reclamation by Singapore in Jurong Island may not threaten the sovereignty of the Republic of Indonesia.
2. Referring to the treaty of border between Indonesia and Singapore in 2013, the fundamental point of providing a legal certainty for both pertinent countries in case of reclamation of Jurong Island is that recognizing the utilization archipelagic baselines by other countries in order to define the maritime borders, confirming the practices of international law that reclamation may not either expand the maritime territory of a country or change the signed agreement, confirming the practices of international law that both Traffic Separation Scheme (TSS) and Port Limit are the parameter of defining the maritime border, and preventing any tension between the pertinent legal officials in maritime territory which, this far, constitutes a "disputed area" and for the sake of peacefulness in East part of Singapore Strait.
3. Technically, the fairest solution of accommodating the interests of both parties is as follow :
  - a. Indonesia: the implementation of basepoints-to-archipelagic baseline, strict equidistance method, UNCLOS 1982, and TALOS
  - b. Singapore: adequate maritime space for international shipping safety.

### Suggestion

As a country with very broad maritime territory, Indonesia needs to have a treaty of border to provide a legal certainty for the sake of its sovereignty. The solution of

maritime border through a diplomatic way needs to be effectively improved in order to make a bilateral relationship keep good, and the legal certainty of both countries to define their maritime borders may reach consent to one another. Although the Indonesia-Singapore treaty of east maritime border has reached the consent, Indonesia needs to firmly provide a mandate to the authorized instance of border to monitor to what extent the progress of the reclaimed island, so that it may not violate our maritime border.

### Bibliography

Defilla, Fella, (2016), *Reklamasi Singapura Terhadap Kedaulatan wilayah Republik Indonesia Berdasarkan Hukum Laut Internasional*, *JOM Fakultas Hukum*, Vol.3, No.1, February.

Lestari, *Implikasi Perjanjian tentang Penetapan garis Batas Laut Teritorial antara Indonesia dan Singapura di Selat Singapura*.

Madu, Ludiro, (2010), *Mengelola Perbatasan Indonesia Di Dunia Tanpa Batas Isu*, Yogyakarta: Graha Ilmu.

Purwaka, Tommy Hendra, (2014), *Tinjauan Hukum Laut Terhadap Negara Kesatuan Republik Indonesia*, *Mimbar Hukum*, Vol.26, No.3, October.

Yudha, Wisnu AR, (2017), *Reklamasi Singapura sebagai Potensi Konflik Delimitasi Perbatasan Wilayah Indonesia Singapura*, accessed on July, 14.

Markas Besar Angkatan Laut Dinas Hidro Oseanografi, *Executive Summary Perkembangan Perundingan Batasa Maritim Republik Indonesia dan Republik Singapura*.

[http:// www.eoearth.orghttp/ wiki/ United \\_Nations \\_Convention \\_on\\_Law\\_ of\\_the \\_Sea\\_ %28 UNCLOS%29, \\_1982](http://www.eoearth.orghttp://wiki/United_Nations_Convention_on_Law_of_the_Sea_%28UNCLOS%29,_1982), accessed on January, 5, 2018

The Act of the Republic of Indonesia No. 43 2008 about State Territory, the Gazette of the Republic of Indonesia 2008 No. 1777, Additional Gazette of the Republic of Indonesia No. 4925.

The Act of the Republic of Indonesia No. 17 1985 about the Legitimation of United Nations Convention on Maritime Law, the Gazette of the Republic of Indonesia 1985 No. 76, Additional Gazette of the Republic of Indonesia 1985 No. 3319.

United Nations Convention on the Law of the Sea 1982

Treaty Between The Republic of Indonesia and The Republik of Singapore Relating to The Delimitation of The Territorial Seas of The to Two Countries in The Western Part of the Strait of Singapore March, 10, 2009.