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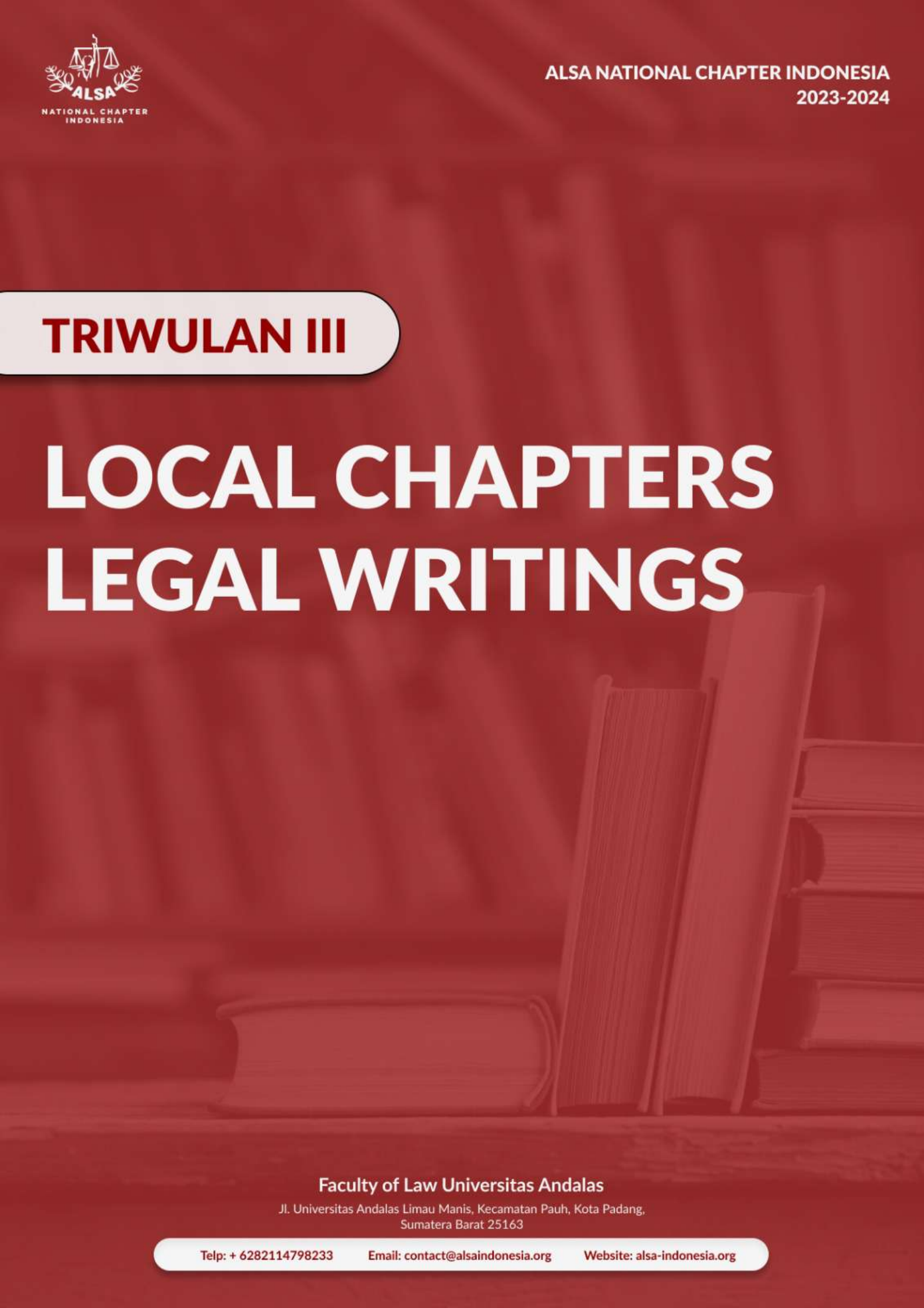

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LEGAL ESSAY

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The Role of United Nations Convention on The Law of The Sea (UNCLOS) To Help Solve The Problem Between Indonesia and China Regarding The Natuna Sea

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The Role of United Nations Convention on The Law of The Sea (UNCLOS) To Help Solve The Problem Between Indonesia and China Regarding The Natuna Sea

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I. Introduction

The Natuna Island has major potential for development. This island is loaded of marine fish and natural gas resources. With an area of land and sea reaching 264,198.37 km2 with a land area of 2.001.30 km2 and sea area of 262.197.07 km2. Geographically, the Natuna Sea is located in the middle of Asia Pacific and Southeast Asian countries. The territorial boundaries of Natuna Island surrounded by Vietnam and Cambodia in the north, East Malaysia (Sarawak) and Kalimantan in the east, Bintan Regency in the south, and Peninsular Malaysia and Anambas Islands in the west. The Natuna Island is on the strategic route for international cruise ships. In 2017, the potential of Natuna's marine fish was 767,126 tons.

On May 18, 1956, the Indonesian government officially registered the Natuna Island at the United Nations (UN) as sovereign territory. However, in 1957 the Natuna Island was included in the territory of the Kingdom of Pattani and the Kingdom of Johor in Malaysia. In the 19th century, the Natuna Island included the control of the Riau Sovereignty and became the territory of the Riau Sultanate. After Indonesia's independence, representatives from Riau handed over sovereignty to Indonesia. At that time, the majority of the population of the Natuna Island were Malays ethnic around 85%, Javanese around 6.34%, and Chinese ethnic around 2.52%. In the 20th century, Natuna Island was mostly inhabited by Chinese citizens, but after being officially controlled by Indonesia, the island was predominantly inhabited by Malays and Javanese.

In 2009, China unilaterally created the Nine Dash Line. The Nine Dash Line is an area of 2,000,000 km2 in the South China Sea, which 90% is claimed by China as it is maritime rights. The Nine Dash Line stretches for 2.000 km from China mainland to several hundreds of kilometers from the Philippines, Malaysia and Vietnam. China including the Natuna region on their territorial map based on The Nine Dash Line. However, from this Nine Dash Line, Indonesia does not recognize it because according to Indonesia it does not have any international

legal basis.[1] The emergence of this Nine Dash Line was not created by the current Chinese government. The Nine Dash Line has existed since 1947 when the Kuomintang Government came to control China, which was claimed a territorial area almost the entire South China Sea area. Kuomintang politics dictated that China's territory constituted 90% of the South China Sea.[2] On this issue, China often uses the Nine Dash Line as the basis for its ownership claims over the Natuna Sea.

Indonesia as an archipelagic country has certain boundary on their territory. This thing makes Indonesia difficult to control border areas, especially in the border areas of islands that are directly adjacent to other countries. One source of problems between adjacent or bordering countries is the status of the territory and the ambiguity of state boundaries. The conflict between Indonesia and China began when China demanded that Indonesia stop drilling for oil and natural gas because it claimed the territory belonged to it. On this issue, China often uses the Nine Dash Line as the basis for its ownership claims over the Natuna Sea. Indonesia is one of the part that be injured because of China's action to draw a new Nine Dash Line in the Natuna Island. However, the Indonesian government has emphasized that it will never recognize the Nine Dash Line because it has no legal reasons recognized by international law. Especially The United Nations Convention on The Law of The Sea.

Based on the background above, there are several problem formulations, namely Is it true that the North Natuna Sea is included in China's Exclusive Economic Zone? What is the role of UNCLOS in resolving disputes between Indonesia and China? What are Indonesia's efforts to protect the North Natuna Sea region?

II. Content

United Nations Convention on The Law of The Sea Part V, Article 55 regarding the Special Legal Regime of the Exclusive Economic Zone (EEZ)

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[1] Subagyo, P. Joko “Hukum Laut Indonesia”, (2005), page 76-90

[2] Hasibuan, Rosmi, “Kaitan Permasalahan Hukum Zona Ekonomi Eksklusif (ZEE) dan LintasKontinen Dalam Konvensi Hukum Laut, (1982), page 66

explains that the Exclusive Economic Zone is an area outside and adapted to the territorial sea, subject to a special legal regime established in in this area where the jurisdictional rights of the coastal state and the rights and liberties of other countries are regulated by relevant provisions. The EEZ boundary is a state boundary drawn along 200 miles from the baseline (coastline) towards the high seas or the open sea during low tide. The width of the EEZ for each coastal state is not more than 200 miles as stated in Article 57 UNCLOS 1982 which reads "The Exclusive Economic Zone may not exceed 200 nautical miles from the baseline from which the width of the territorial sea is measured." With right holders of EEZ, a country has the right to use it is legal policies, to fly over it, and have freedom of navigation.

United Nations Convention on the Law of the Sea (UNCLOS 1982) classify the sea into three parts. First, the sea which is part of the sovereign territory of a country (territorial sea and inland sea). Second, the sea is not a sovereign territory of a country but that country has a number of rights and jurisdiction over certain activities (additional zone and EEZ). Third, the sea is not a sovereign territory and is not the right/jurisdiction of any country, namely the high seas. In Law Number 5 of 1983 concerning Indonesian EEZ Chapter II Article 2, it states that EEZ is a route outside the border and is directly adjacent to Indonesian territory. Therefore, Indonesia has the right to carry out all forms of exploration, exploitation, conservation and management of natural resources.

The event that brought this issue to the surface was when China asked Indonesia to stop drilling for oil and natural gas in the maritime area of the South China Sea which China claims it is their own. According to China, the Natuna Sea is included in The Nine Dash Line area. However, the claims made by China do not have a solid basis. This proves that The Nine Dash Line is a unilateral claim by China over the sovereignty and control of an area including land, water and seabed. There was never any explanation of the actual purpose of the lines in the strategic context of the Chinese side. Some experts say, that The Nine Dash Line cannot be legalized as a territorial border because it is not in accordance with international law which says that territorial borders must be stable and well

defined.[3] The United Nations Convention on the Law of the Sea contained in UNCLOS 1982 clearly stipulates that the Natuna Sea is in Indonesia's Exclusive Economic Zone. Therefore, in 2017 Indonesia changed the name of the South China Sea to the North Natuna Sea. China's claim to the Natuna Sea has no legal reasons recognized by international law, namely the United Nations Convention on the Law of the Sea or UNCLOS. In UNCLOS, the EEZ boundaries of each country have been determined in relation to exploitation rights and other policies in their territorial sea in accordance with international law of the sea. This proves that the North Natuna Sea is not included in China's Exclusive Economic Zone, this is clearly proven by the UNCLOS 1982 decision that Natuna Sea is included in Indonesia's EEZ. With the creation of this decision, Indonesia has the right to rule over economic wealth in the region, namely as Catching fish, Mining, Exploring oil,Implement its legal policies, Navigate, Fly over it, and Embedding cable pipes.

In resolving the conflict in the Natuna Sea, the Indonesian government has adequateconflict resolution instruments. Actually, Indonesia is in a strong position compared to China. This dispute was resolved peacefully in which the two countries agreed to prioritizediplomacy. The Declaration on The Conduct of Parties in the South China Sea was createdin 2002 as one of the implementations to build mutual trust, increase cooperation and maintain peace and stability in the Natuna Sea. To resolve a dispute by a country, there areefforts that can be taken, the solutions include:

a. Settlement litigation is a settlement in a tempt in court by directly confronting the two parties to the dispute. Which each has the opportunity to submit a lawsuit and rebuttal.
b. Non-litigation is a settlement in a tempt which is often referred to as alternative dispute resolution.[4]

The Indonesian legal basis which is the observer of this matter, is as follows:

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[3] Tampi, Butje, 'Konflik Kepulauan Natuna antara Indonesia dengan China (Suatu Kajian Yuridis)' (2017), 23 JurnalHukum Unsrat

[4] Jurnal Hukum and others, 'Penyelesaian Sengketa di Laut Natuna Utara' (2020), page 69-78

a. Based on UNCLOS 1982

There are regulations governing all kinds of regulations concerning the sovereign territory of Indonesian waters and sea territories. Based on Article 51 paragraph 1 UNCLOS 1982, explains that archipelagic countries must respect existing agreements with other countries and must recognize traditional fishing rights and other legitimate activities of neighboring countries that take place side by side in certain areas within archipelagic waters. Based on Article 73 of UNCLOS Indonesia as a "coastal state" has the right to explore, exploit, conserve and control natural resources in the EEZ area. Indonesia also has the right to carry out actions such as boarding, detention inspections and conducting legal proceedings to enforce fishing laws. In addition, in Article 58 Paragraph 3 of UNCLOS 1982, other countries must respect and implement the rules implemented by Indonesia as a "coastal state". As explained, to use the sea as a staple livelihood that has been going on for decades or hundreds of years. If the traditional territory extends beyond the territory of another country, then there must be an agreement or bilateral agreement from that country beforehand. So that the territory can be used by the traditional fishermen of the region. If there is no bilateral agreement or agreement between the countries, the traditional fishing rights to go to sea in other countries' territories will still be categorized as illegal fishing.

b. Based on the Indonesia’s Exclusive Economic Zone Law

Judging from the EEZ Law Number 5 Article 7 of 1983, it explains that anyone who carries out activities in Indonesian territorial waters must obtain approval from the Indonesian government. If Indonesia's EEZ overlaps with EEZ of countries whose coasts are side by side with Indonesia, then the EEZ boundaries of the two countries are determined by agreement between the Republic of Indonesia and the country concerned. From the explanation above, it is explained that China must follow and obey all the rules that apply in the Indonesian government. The actions taken by the Indonesian government have been firm to resolve this problem.

For Indonesia, the Natuna waters have a very important role and

a strategic area. Therefore, it is necessary to make a tempt to prevent the emergence of a dispute. As a United Nations member state, Indonesia should have contributed to creating and guaranteeing international security. To protect the Natuna Sea, the Indonesian government has made various works. One of the example is by increasing the security of the Natuna Sea by adding Tentara Nasional Indonesia (TNI) troops to patrol around the border area.

In addition, the Indonesian government will increase military strength by building a military base in the Natuna area. So, no more Chinese fishing boats enter Natuna waters illegally. This is due to the frequent occurrence of illegal fishing carried out by Chinese fishermen. This is also a clear sign in Law Number 3 of 2022 concerning National Defense that the President stipulates a general national defense policy which is a reference for planning, implementing and supervising the national defense system.

III. Closing

In the conclusion, we can know that the Natuna Island is one of the islands located in strategic international shipping lanes. Therefore, many countries are interested to controlling this island. One of them is China, which claims that the Natuna Sea is part of their maritime territory. This problem is a big step for Indonesia to fight for power over the Natuna Islands because this island has enormous potential for development. China admits that it owns the Natuna Sea area unilaterally by creating The Nine Dash Line. However, The Nine Dash Line cannot be legalized as a territorial border because it is not in accordance with international law which says that territorial borders must be stable and well defined. The decision of The United Nations Convention on The Law of The Sea (UNCLOS 1982) is proof that the Natuna Sea is part of Indonesia's Exclusive Economic Zone (EEZ). In 2017, Indonesia changed the name of the South China Sea to the North Natuna Sea. This dispute was resolved peacefully in which the two countries agreed to prioritize diplomacy. The legal foundations that form the basis of regulations on this issue are the UNCLOS 1982 and the EEZ Law. The attempt made by the Indonesian government in protecting the North Natuna Sea region are increasing the security of the Natuna Sea area. An obvious example is adding Tentara Nasional Indonesia (TNI) troops to patrol around the border area. Border issues have the potential to cause conflict, there is no one of a country is willing to lose their

territory. As an archipelagic country, Indonesia must strictly and precisely be able to secure the boundaries of their territory.

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LEGAL ESSAY

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Australia-Indonesia Maritime Delimitation

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AUSTRALIA-INDONESIA MARITIME DELIMITATION

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I. Introduction

Unclear maritime boundaries may cause a variety of problems as seen in incidents which occurred in the relationship between Indonesia and Malaysia some years ago. Maritime boundary delimitations should generally be executed without expecting any land boundary completeness. Negotiation should be taking place to determine, besides dispute settlement mechanisms, fundamental conditions such as appropriate juridical foundation and available methods aimed at achieving equitable solution and/or equitable result.[1]

The first maritime boundary agreement between Australia and Indonesia was signed on 18th of May 1971 and delimited a small portion of their overlapping maritime entitlements.[2] Quoting the agreement between the government of the commonwealth of Australia and the Government of The Republic of Indonesia establishing certain seabed boundaries, it is said that this treaty was *desiring particularly to cooperate in delimiting by agreement the boundaries of certain areas of seabed in which the two countries respectively exercise sovereign rights for the exploration and exploitation of the natural resources*.

In 1972, initial continental shelf boundary was extended to the west, remaining an amount of maritime space to be delimited. To add on to that, in the year 1976 Australia's government claimed Sand Island as their property, regardless of this island being included in Indonesia's territory. This claim was a trigger to a prolonged polemic over the ownership of the island. Nonetheless, on the 14th of March 1997, Maritime boundary between Australia and Indonesia was fully established through a bilateral agreement, specifically establishing an exclusive economic zone boundary and certain seabed boundaries. It should be emphasised that agreements between both Australia and Indonesia is subject to ratification in accordance with the constitutional requirements of each country, and shall enter into force on the day on which the Instruments of Ratification are exchanged. In this case, the 1997 agreement hasn't been

[1] Marcel Hendrapati, 'Maritime Expansion and Delimitation after the Timor Gap Treaty' (2015), V Indonesia Law Review. [82]
[2] "Australia-Indonesia Maritime Boundary" (Sovereign Limits January 16, 2023) <https://sovereignlimits.com/boundaries/australia-indonesia-maritime> accessed April 12, 2023.

ratified by Indonesia, thus agreement is not a full treaty and hence its revisit is possible.[3]

This essay hence outlines as follows to explain: 1) causes of maritime boundary disputes between Australia and Indonesia; and 2) other alternative solutions in settling the maritime boundary disputes.

As a whole, this essay is based in accordance to article 15 of the United Nation Convention on the Law of the Sea about delimitation of the territorial sea between States with opposite or adjacent coasts has stated that where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitles, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith. Furthermore, other forms of legal basis of this essay are articles in relation to the delimitation of maritime boundary in UNCLOS which are article 15, 16, 50, 60 (8), 74, 75, 76, 259, and 298 as well as treaties and/or agreements between Indonesia and Australia such as Agreement between the Government of the Republic of Indonesia and the Government of the Commonwealth of Australia establishing certain seabed boundaries, signed on May 18, 1971, with ratifications exchanged on November 8, 1973; and Agreement between Indonesia and Australia concerning certain boundaries between Indonesia and Papua New Guinea, signed on February 12, 1973 with ratification exchanged on November 26, 1974.

II. Content

1.1 Territory of Australia-Indonesia which are contested and claimed

It is states authority to own its territory, there is no other power that is higher than it. According to National Geographics encyclopaedic entry, broadly explaining for purposes of international law, territory is a geographical area subject to the sovereignty, control, or jurisdiction of a state or other entity. In addition to land, territory includes adjacent waters and associated airspace.[4] In the case of maritime boundaries, there are several

[3] Arisan DIMA and others, "Renegotiating the Indonesia-Australia Maritime Boundary Agreement? – AILA" (Australian Institute of International Affairs April 24, 2018) <https://www.internationalaffairs.org.au/australianoutlook/renegotiating-the-indonesia-australia-maritime-boundary-agreement/> accessed April 11, 2023.

[4] "Territory" (National Geographic May 19, 2022) <https://education.nationalgeographic.org/resource/territory/> accessed April 20, 2023

measurements of waters that are grouped into several categories of which illustrates its purpose and functions. 0 – 12 mil from the baseline is said to be territorial sea, 12 – 24 mil from the baseline is additional zone, 24 – 200 mil from the baseline is said to be the exclusive economic zone. It should be understood that sovereignty does not exist within the exclusive economic zone, oppositely what it possesses is sovereign rights. Sovereign rights of EEZ are in the purpose of exploring, exploiting, conserving, and managing natural resource of the seabed, subsoil, and waters above it. Outside of the EEZ territory, 200mil+ from the baseline, it is categorised high seas in which part of the mass of saltwater surrounding the globe that are not part of the territorial sea or internal waters of a state.

Australia and Indonesia have always had various number of negotiations as well as discussion concerning the establishment of permanent maritime boundary, in which Indonesia has reportedly shown that they have lost a considerably immense amount of area of the sea containing natural resources. Indonesia's issue is illustrated through Australia's and Indonesia's agreement of maritime boundary in the year 1971 and 1972. The difference in continental shelf stated on the agreement in 1971 and 1972 is immense and quite alarmingly disadvantageous for Indonesia, adding to it, the existing of Timor Trough in between Australia's coastline and the boundary with Timor Island. In this case, Australia assumes that the axis of Timor Trough is the boundaries of the continental shelves of the two countries. On the other hand, Indonesia views that there was only one continental shelf and the Timor Trough should not be taken into account as it is just a depression within the continental base. At this era, Indonesia and Australia viewed to establish a permanent maritime boundary as a form of worry of Portugal's existence in Timor Timur as well as to avoid conflict, primarily due to foreign concession areas that have been given permission by one of the parties, and because of the presence of a third country, namely Portugal. This conflict has passed for years in which both Indonesia and Australia still have not made an agreement concerning the seabed boundary to close the Timor gap, therefore the issue of overlapping maritime territorial claims arises between the two. [5]

Where there are overlapping claims, states must establish and boundary. [6] The delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts shall be effected by an agreement on the basis of international law, as

[5] Aquiles Sarmento Varela, 'Masalah Hukum di Celah Timor Antara Timor-Leste dengan Australia Telaah Dari Aspek Perlindungan Kepentingan Hukum' (2013), Magister Ilmu Hukum Program Pascasarjana Universitas Kristen Satya Wacana.

[6] UNCLOS, supra note 2, art. 74(1)

referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution (article 74/83, paragraph 1).[7] All in all both countries wants an assurance on areas of in which they have sovereign rights: assuring their maritime areas are protected from illegal fishing, preventing environmental maritime pollution, assuring application of maritime risk management, as well as sustainable management in their natural resources.

1.2 Alternative solution in settling the maritime boundary disputes

1.2.1 Effectivity of agreements and treaty

Australia has ratified UNCLOS 1982 on 5th of October 1994 and Indonesia ratified UNCLOS 1982 in the year 1985 through "Undang-Undang No.17 Tahun 1985 tentang Pengesahan UNCLOS". This action expresses that both Australia and Indonesia have given consent to be bound by a convention and apply in good faith its provisions.[8] With this being said, execution of emplacement of boundaries must act in accordance of what has been regulated on the convention. Commonly, resolutions of delimitation issues between neighbouring states are accomplished by complying to the procedures written in UNCLOS 1982, where boundaries are to be drawn using the equidistance principle aimed for clarity in boundary delimitation rather than an equitable division in resources.

Sand Island is an area generally used as a transit point by Indonesian fisherman during sails to the southern part of Indonesia. Despite of this activity, a Memorandum of Understanding has been signed in 1974 between Indonesia and Australia where Australia claimed Sand Island as theirs in which beforehand was included in Indonesia's territory. According to officials reports, statement, and witnesses, a number of people of the Nusa Tenggara Timur population still have access to the sea around the island. In this case, based on data from the Nusa Tenggara Timur Police, from year 2004 to 2006 around three thousand Nusa Tenggara Timur fishermen were arrested while entering the area. It is also reported recently that in 2021, several fishermen were arrested and boats were sunk by Australian border police as the activities of Nusa Tenggara Timur people

[7] R.R Churchill and A.V Lowe, The Law of the Sea (Machester University Press, 1983).
[8] Definition by International Labour Organization

are considered to have violated national boundaries and caught fish in Sand Island waters.[9] However, according to the agreements made, Indonesian fisherman are supposed to be allowed to fish in the area but oil and gas extracted from the seabed are only for Australia.

The zone of Cooperation Treaty between Indonesia and Australia in the Timor Gap was signed on 11 December 1989. This treaty was between the Government of Republic of Indonesia and the Government of Australia establishing an Exclusive Economic Zone boundary and certain seabed boundaries completed at Perth on 14th of March 1997. However, as Indonesia has never ratified the Perth Treaty, hence it cannot enter into force as it stands now as it, inter alia, covers area that now belongs to Timor Leste. EEZ extends 200 miles from the baselines from which the territorial seas are measured and over which Indonesia acquire sovereign rights over all the natural resources contained therein and jurisdiction over installations, artificial islands and structures, regulation of marine scientific research and proception and conservation of the marine environment in accordance with the provision of UNCLOS 1982. According to former news, Jakarta was reportedly struggling to comply upon the Timor agreement as it affects the jurisdiction of energy reserves worth billions of dollars in the gas industry, in which will nullify the 1997 agreement demarcating the exclusive economic zones of Indonesia and Australia.[10]

Part XV UNCLOS 1982 governs the settlement of disputes in which parties are obligated to settle any disputes by peaceful means of their choosing.[11] Generally, when each party cannot reach a settlement upon such means, one party can submit the request to a court or tribunal with jurisdiction, which includes the International Tribunal on the Law of the Sea (ITLOS), the ICJ, or an arbitral tribunal. Articles 17, 74, and 83 are the only three articles which provide actual delimitation criteria, in which those articles do not, however, address the impact such as shifting coastal geography or any correspondent

[9] "Indonesia's efforts to reclaim its right over Sand Island Cluster" (Antara News October 14, 2022) <https://en.antaranews.com/news/254921/indonesias-efforts-to-reclaim-its-right-over-sand-island-cluster> accessed April 20, 2023

[10] Alan Bloyd, "Australia-Indonesia border tensions resurface" (Asia Times, March 13, 2018) <https://asiatimes.com/2018/03/australia-indonesia-border-tensions-resurface/> accessed April 20, 2023

[11] UNCLOS supra note 2 art 279 and article 282 (1)(a)(i)

change in equities. For that reason, despite of whether baselines are ambulatory or fixed under UNCLOS, states like Australia and Indonesia may build an agreement by treaty to ignore the implications of shifting coastlines, subject to the rights of third states.[12]

1.2.2 Resolution in management and/or enforcement of settling maritime boundary disputes

The equitable solution is a principle to arrange the maritime delimitation in the exclusive economic zone/continental shelf. The emergence of this principle during the third conference on the law of the sea was brought about by disagreements and debates between the group of states supporting 'the Equidistance-Special Circumstances rule' and the group of states supporting the 'Equitable principle'. As a result, that no consensus was reached between the two groups, the president of the conference had no option ice but to propose a new formula which did not refer to the two terms, 'equidistance' and 'equitable principles' with regard to the delimitation of the continental shelf and the exclusive economic zone. The formula only established the 'final aim' of maritime delimitation, which it termed the achievement of an 'equitable solution (equitable result)'. Some states do not accept 'the equidistance-special circumstances' rule because the equidistance method might produce an inequitable result in certain cases. In contrast, other states argue that this rule can guarantee 'predictability' concerning maritime delimitation.[13]

Indonesia and Australia have agreed in functioning a maritime cooperation which involves nine important contribution points that is agreed based on the Memorandum of Understanding in which the core values are development of the economy, maritime connectivity and blue economy.[14] A United Nation representative defined that Blue Economy is an economy that comprises a range of economic sectors and related policies that together determine whether the use of ocean resources is sustainable.

Settling disputes is attainable and could easily be resolved, if the parties

[12] Julia Lisztwan, 'Stability of Maritime Boundary Agreements' (2011), XXXVII The Yale Journal of International Law.

[13] Marcel Hendrapati, 'Maritime Expansion and Delimitation after The Timor Gap reaty' (2015), V Indonesia Law Review, [80].

[14] Rahmania Kamarudin, 'Kerjasama Indonesia-Australia Bidang Maritim (Maritime Cooperation) Tahun 2017-2018' (2019), Undergraduate thesis, University of Muhammadiyah Malang.

involved work and discuss upon a goal in wanting to complete and clear the incompatibility of territory. Availability of International Law Institutions exists to aid nor assist parties' desires to resolve existing disagreements. However, parties like Australia and Indonesia should take into account in which international law does not have coercive powers like national institutions. Settling boundaries in which both states would have to agree do have a general rule of thumb in which are usually performed through qualitative delimitation-is the determination of the outer limit based on existing appearance-and the quantitative delimitation in which is the determination of the outer limit using the number parameter. However, if reconciliation between states is not met there are other ways in which disputes can be settled some of which are:

1. International Tribunal for the Law of the Sea: formed according to Annex VI. Settling disputes through ITLOS are submitted through a written request or petition, in which based on the application, an inspection is processed and resolving the case is done in court. Verdict is decided upon the most votes of members of the court present, provided that the chairman's of court can vote determinant, by mentioning the reasons for the decision.
2. International Court of justice: in which a settlement is done according to the procedures of general international court
3. Arbitration or Special Arbitration Procedure arranged in annex VII and annex VII of convention
4. Conciliation according to has been arranged in annex V[15]
5. Other provisional arrangement of a practical nature: moratorium with regard to all uses of the area where claims overlap, joint licensing of a consortium to explore the area, unitisation of specific oil and gas field within the disputed area.[16]

III. Closing

Treaty on the Zone of Cooperation is an area between the Indonesian province of East Timor and Northern Australia, generally known as the Timor Gap Treaty, all in all is not a

[15] Veriena J. B Rehatta, 'Penyelesaian Sengketan Perikanan di Laut Lepas menurut Hukum Internasional' (2014), XX Jurnal Sasi, [64].
[16] United Nation (Maritime Boundary Delimitation 2020) <https://www.un.org/Depts/los/nippon/Presentation_MaritimeDelimitation.pdf> accessed April 21, 2023.

treaty on continental shelf boundary between Indonesia and Australia, but a joint development treaty applied in Timor Sea in which embraces three joint zones. However, as Indonesia has not ratified the agreement, the state has rights to not comply or be bound to its arrangements. Treaties between Indonesia and Australia has been made as a result of assuring each state: maritime areas are protected from illegal fishing, preventing environmental maritime pollution, assuring application of maritime risk management, minimising economic losses through unequal territory, as well as sustainable management in their natural resources. These triggers of disputes are those viewed by the government to have risk the states economy, security, equality and other factors in which could impact on the state as a whole as well as the citizen and their wellbeing.

Maritime boundary disputes between Australia and Indonesia have generally been settled through agreements and treaties, in which from the chapters above can be understood that those agreements are not effective. In that case other options in which can settle the maritime boundary disputes between The Common wealth of Australia and the Republic on Indonesia are through International Tribunal for the Law of Sea, International Court of Justice, Arbitration or Special Arbitration Procedure, Conciliation, and other provisional arrangement of a practical nature such as moratorium with regard to all uses of the area where claims overlap, joint licensing of a consortium to explore the area, unitisation of specific oil and gas field within the disputed area.

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Analisis Yuridis *Central Bank Digital Currency* sebagai Alat Pembayaran Sah dari Perspektif Hukum Positif Indonesia

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ANALISIS YURIDIS *CENTRAL BANK DIGITAL CURRENCY* SEBAGAI ALAT PEMBAYARAN SAH DARI PERSPEKTIF HUKUM POSITIF INDONESIA

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I. Latar Belakang

Teknologi yang semakin berkembang setelah adanya revolusi informasi menjadi faktor pendorong modernisasi dalam berbagai sektor salah satunya sektor keuangan. Salah satu modernisasi yang terjadi dalam sektor keuangan yaitu perbedaan manusia dalam memenuhi kebutuhannya. Zaman dahulu manusia memenuhi kebutuhannya dengan cara barter yang menggunakan *double coincidence of wants*, yaitu keinginan yang sama pada waktu bersamaan antar pihak yang bertransaksi. Seiring dengan zaman yang terus berkembang, barter mulai ditinggalkan karena kebutuhan manusia mulai bervariasi dan kompleks, sehingga *double coincidence of wants* sulit untuk tercapai. Dengan adanya permasalahan tersebut, muncul alat tukar *(medium of exchange)* yang dapat diterima semua pihak secara luas yaitu uang. Uang adalah suatu benda yang dapat ditukarkan dengan benda lain, dapat digunakan untuk menilai benda lain, dan dapat kita simpan.[1] Sejalan dengan perkembangan teknologi yang semakin pesat, uang turut bertransformasi menjadi semakin efisien dari segi bentuk maupun fungsinya.

Dengan teknologi yang semakin berkembang memunculkan banyak perusahaan *financial technology* yang saat ini menjadi pesaing bagi jasa keuangan konvensional. Berdasarkan ketentuan Pasal 1 anhka 1 Peraturan Bank Indonesia Nomor 19/12/PBI/2017 tentang Penyelenggaraan Teknologi Finansial, Teknologi Finansial adalah penggunaan teknologi dalam sistem keuangan yang menghasilkan produk, layanan, teknologi, dan/atau model bisnis baru serta dapat berdampak pada stabilitas moneter, stabilitas sistem keuangan, dan/atau efisiensi, kelancaran, keamanan, dan keandalan sistem pembayaran. *Financial technology* juga dipandang sebagai representasi daripada penggabungan antara layanan keuangan dengan teknologi yang adaptif serta inovatif. Dalam mengembangkan jasa keuangan yang inklusif, Indonesia mengeluarkan Peraturan Presiden RI Nomor 82 Tahun 2016 tentang Strategi Nasional Keuangan Inklusif (SNKI). Perkembangan teknologi yang

[1] Solikin dan Suseno. 2002. Uang (Jakarta:Pusat Pendidikan dan Studi Kebanksentralan Bank Indonesia,2002) hal 2.

pesat yang disertai dengan inklusi keuangan dapat meningkatkan kestabilan sistem keuangan.

Pada tahun 2017 Indonesia melakukan pengembangan *financial technology* melalui Peraturan Bank Indonesia (PBI) Nomor 19/12/PBI/2017 tentang Penyelenggaraan Teknologi Finansial (Fintech). Adanya peraturan tersebut dapat memberikan petunjuk bagi masyarakat dan stakeholders mengenai legalitas transaksi dalam fintech. Dengan adanya layanan *financial technology* membuat masyarakat mulai mengurangi penggunaan uang secara tunai yang biasa disebut sebagai *cashless society.* Adapun salah satu layanan *financial technology* yaitu adanya mata uang elektronik secara virtual yang digunakan untuk transaksi keuangan yaitu *cryptocurrency.* Berdasarkan data oleh tim blockchain proyek Onfo pertumbuhan ketenaran aset *cryptocurrency* di Indonesia ternyata 4 kali lebih pesat dibandingkan Amerika Serikat.[2] Berdasarkan data dari World Bank, lebih dari 2 miliar pengguna *cryptocurrency* tidak memiliki akun rekening bank. Berbagai inovasi dalam layanan keuangan termasuk *cryptocurrency* dijalankan oleh pihak swasta. Namun, sebenarnya hal tersebut merupakan tugas dari bank sentral sebagai lembaga yang berwenang untuk mengatur kebijakan moneter dan finansial. Hal tersebut menyebabkan tidak terjangkaunya perubahan sistem keuangan kepada masyarakat. Selain itu, banyak *cryptocurrency* yang dikelola oleh badan yang tidak berizin. Dengan *cryptocurrency* yang tidak dikelola langsung oleh bank sentral beresiko adanya tindak pidana seperti tindak pidana pencucian uang. Penyebab dari adanya permasalahan tersebut diakibatkan minimnya transparansi dari pengelola *cryptocurrency*. Berdasarkan permasalahan-permasalahan tersebut menimbulkan risiko atas tidak jelasnya hukum terkait *cryptocurrency*.

Berangkat dari kepelikan dan reaksi terhadap *cryptocurrency* dan perkembangan teknologi lainnya, maka bank sentral mendorong pembaharuan sistem transaksi keuangan, salah satunya melalui penerapan mata uang digital yang terintegrasi dari bank sentral sebagai alternatif instrumen pembayaran atau *Central Bank Digital Currency* (CBDC). *Central Bank Digital Currency* (CBDC) merupakan representasi digital dari *sovereign currency* yang diterbitkan oleh bank sentral.

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[2] Coinvenstasi. 2020. Industri Cryptocurrency dan Blockchain di Indonesia Alami Pertumbuhan Besar-besaran. Industri Cryptocurrency dan Blockchain di Indonesia Alami Pertumbuhan Besar-besaran - Tokocrypto News. 18 Februari 2023 (21.46)

Namun, dalam implementasinya CBDC menimbulkan beberapa resiko dalam hal ekonomi, teknologi maupun ketentuan hukum yang berlaku. Berdasarkan latar belakang tersebut, maka penulis menarik permasalahan utama yaitu bagaimana pengaturan *Central Bank Digital Currency* sebagai alat pembayaran yang sah di Indonesia dan manfaat serta resiko seperti apa jika diterbitkannya *Central Bank Digital Currency*.

II. Rumusan Masalah

1) Bagaimana pengaturan *Central Bank Digital Currency* sebagai alat pembayaran yang sah di Indonesia?
2) Bagaimana manfaat dan resiko diterbitkannya *Central Bank Digital Currency* sebagai alat pembayaran yang sah?

III. Analisis

1. Pengaturan *Central Bank Digital Currency* sebagai alat pembayaran yang sah di Indonesia

Bank Indonesia memiliki tugas untuk mencapai dan memelihara kestabilan nilai rupiah sesuai dengan Pasal 7 Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia. Berdasarkan, penjelasan pasal tersebut kestabilan rupiah adalah kestabilan nilai rupiah terhadap barang dan jasa, serta terhadap mata uang negara lain. Perkembangan laju inflasi menjadi dasar tolak ukur kestabilan nilai rupiah dalam hal barang dan jasa. Sedangkan, kestabilan nilai rupiah mata uang diukur dari perkembangan nilai tukar rupiah terhadap mata uang negara lain. Urgensi dari kestabilan nilai rupiah tersebut sebagai faktor pendukung dalam pembangunan ekonomi yang berkelanjutan dan meningkatkan kesejahteraan masyarakat.

Di sisi lain, Bank Indonesia memiliki tugas yang bertujuan untuk mencapai dan memelihara kestabilan nilai rupiah yang sebagaimana dimuat dalam Pasal 8 yang menyatakan,*"Untuk mencapai tujuan sebagaimana dimaksud dalam Pasal 7, Bank Indonesia mempunyai tugas sebagai berikut: a. menetapkan dan melaksanakan kebijaksanaan moneter; b. mengatur dan menjaga kelancaran sistem pembayaran; c. mengatur dan mengawasi Bank."*Dalam menjalankan tugasnya untuk menetapkan dan melaksanakan kebijaksanaan moneter, Bank Indonesia dapat melakukan cara seperti mengendalikan jumlah uang yang beredar dan suku bunga. Pelaksanaan tugas tersebut berkaitan erat dengan tugas lainnya yaitu mengatur dan menjaga kelancaran sistem

pembayaran serta mengatur dan mengawasi bank. Hal ini dikarenakan ketika mengendalikan jumlah uang beredar diperlukan sistem pembayaran yang efisien, cepat, aman dan andal. Sistem pembayaran yang disebutkan sebelumnya memerlukan sistem perbankan yang sehat, yang di mana hal tersebut merupakan sasaran tugas mengatur dan mengawasi Bank. Dan sistem yang perbankan yang sehat menjadi faktor pendukung Bank Indonesia dalam mengendalikan moneter mengingat pelaksanaan kebijakan moneter terutama dilakukan melalui sistem perbankan.

Pada pasal 20 Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia yang menyatakan, *"Bank Indonesia merupakan satu-satunya lembaga yang berwenang untuk mengeluarkan dan mengedarkan mata uang rupiah serta mencabut, menarik dan memusnahkan uang dimaksud dari peredaran."*Dalam pasal tersebut terlihat bahwasanya Bank Indonesia memiliki wewenang dalam mengeluarkan dan mengedarkan mata uang. Pendefinisian mata uang terletak dalam Pasal 1 ayat (1) Undang-Undang Nomor 7 Tahun 2011 tentang Mata Uang yang menyatakan, *"Mata Uang adalah uang yang dikeluarkan oleh Negara Kesatuan Republik Indonesia yang selanjutnya disebut Rupiah"*. Seiring perkembangan zaman dan teknologi menyebabkan Rupiah juga semakin bergeser. Pada awalnya, Rupiah hanya terdiri dari Rupiah kertas dan Rupiah logam. Hal ini dimuat dalam Pasal 2 ayat (2) Undang-Undang Nomor 7 Tahun 2011 tentang Mata Uang yang kemudian diubah menjadi Pasal 10 Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan, perubahan pasal tersebut terdapat satu tambahan jenis Rupiah yaitu Rupiah Digital. Dalam penjelasan ketentuan tersebut, Rupiah digital adalah Rupiah dalam bentuk digital yang dikeluarkan oleh Bank Indonesia dan merupakan kewajiban moneter Bank Indonesia.

Dengan digitalisasi yang tumbuh begitu pesat dan menyebabkan aset kripto semakin berkembang dan dianggap mempunyai potensi dalam mengembangkan inklusi dan efisiensi sistem keuangan yang mempengaruhi stabilitas ekonomi, moneter, dan sistem keuangan. Berangkat dari permasalahan tersebut, Bank Indonesia menempuh beberapa solusi yaitu mengeluarkan Siaran Pers Bank Indonesia nomor 20/4/D/Kom tentang *virtual currency*, melalui siaran pers ini BI secara resmi melarang penggunaan Bitcoin, Ethereum, Ripple, dan lain sebagainya sebagai alat pembayaran. Pelarangan ini bertujuan untuk menghindari resiko negatif yang ditimbulkan seperti nilai yang fluktuatif dan kenaikan harga yang tidak wajar. Selain itu, karena memungkinkan dilakukan dengan identitas yang pseudonymous,

dikhawatirkan pengguna dapat menggunakan ladang tersebut sebagai tempat pencucian uang. Hal ini juga melatarbelakangi diterbitkannya CBDC oleh Bank Indonesia.

Central Bank Digital Currency atau CBDC merupakan sebuah aset yang tersimpan dalam bentuk elektronik yang memiliki kesamaan fungsi dengan uang tunai yaitu sebagai alat pembayaran yang sah. CBDC dikatakan sebagai sebuah representasi digital dari uang yang menjadi simbol kedaulatan negara atau *sovereign currency* yang diterbitkan oleh bank sentral dan menjadi bagian dari kewajiban moneternya. [3]

Sebagai inovasi atas pertumbuhan teknologi yang pesat, *Central Bank Digital Currency* diterbitkan oleh Bank Indonesia dengan tujuan mempertegas fungsi dari Bank Indonesia dalam menerbitkan mata uang termasuk mata uang digital (*sovereignty* Digital Rupiah), memperkuat peran Bank Indonesia di kancah internasional, mengakselerasi integrasi EKD secara nasional.[4] Berangkat dari tujuan tersebut, Bank Indonesia meluncurkan Proyek Garuda memayungi berbagai inisiatif eksplorasi atas berbagai pilihan desain arsitektur CBDC Indonesia yang dinamai Rupiah Digital. Rupiah Digital merupakan uang rupiah yang berformat digital dan bisa digunakan seperti uang kertas dan logam, uang elektronik seperti chip dan uang dalam kredit ataupun *debit card*. Bank Indonesia sebagai bank sentral di Indonesia menjadi satu-satunya lembaga yang berwenang dalam menerbitkan Rupiah Digital. Rupiah Digital sendiri tidak termasuk aset kripto. Penerbitan Rupiah Digital dibagi menjadi dua jenis, yaitu Rupiah Digital wholesale (w-Rupiah Digital) yang cakupannya sangat terbatas karena hanya diperuntukkan dalam menyelesaikan transaksi wholesale seperti operasi moneter, transaksi pasar valas, serta transaksi pasar uang dan Rupiah Digital ritel (r-Rupiah Digital) yang mempunyai cakupan yang luas dan terbuka untuk publik serta didistribusikan untuk berbagai transaksi ritel baik dalam bentuk transaksi pembayaran maupun transfer, oleh personal/individu maupun bisnis (merchant dan korporasi).

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[3] Law, ADCO. 2022. "Central Bank Digital Currency (CBDC): Masa Depan Uang?" ADCO Law. August 23, 2022. https://adcolaw.com/id/blog/central-bank-digital-currency-cbdc-masa-depan-uang/#:~:text=Secara%20definisi%2C%20menurut%20Kepala%20Departemen. 30 Oktober 2023 (17.20)

[4] Departemen Komunikasi. 2022. BI Terbitkan Desain (High Level Design) Pengembangan Digital Rupiah. BI Terbitkan Desain (High Level Design) Pengembangan Digital Rupiah 18 Februari 2023 (18.55)

Dengan demikian, pengaturan terkait CBDC di Indonesia sendiri sebenarnya sudah tercantum dalam Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan. Dalam ketentuan tersebut, Indonesia sendiri memiliki Rupiah Digital sebagai representasi dari CBDC itu sendiri.

2. Manfaat dan Resiko Diterbitkannya *Central Bank Digital Currency* Sebagai Alat Pembayaran Yang Sah

Perkembangan teknologi yang pesat sehingga mendorong modernisasi di berbagai sektor salah satunya sektor keuangan. Inovasi pembayaran mulai dari menggunakan uang kertas dan logam mulai ditinggalkan dengan menggunakan ponsel ataupun credit card maupun debit. Salah satu inovasi dari pembayaran ialah pembayaran menggunakan *digital currency*. Berangkat dari hal tersebut, bank sentral mulai melakukan kajian dalam menerbitkan CBDC. Berdasarkan penelitian Barontini dan Holden, sebagian besar bank sentral di dunia berencana menerbitkan CBDC namun mereka mempertimbangkan apakah manfaat yang diberikan CBDC lebih besar dibanding biayanya. Namun, tidak bisa dipungkiri bahwasanya CBDC bisa menjadi solusi yang baik bagi bank sentral dalam mencapai akselerasi digital sektor jasa keuangan. [5]

CBDC memiliki beberapa keunggulan yaitu meningkatkan *seigniorage* atau pendapatan keuntungan yang diperoleh bank sentral hingga mencapai 90%. Dalam penerbitan CBDC hanya diperlukan biaya produksi yang kecil karena tidak perlu mengeluarkan biaya produksi untuk mencetak sebanyak uang tunai. Mengingat, dalam membuat uang kartal bahan yang digunakan masih impor. Berdasarkan data tahun 2015, Bank Indonesia mengeluarkan biaya hingga Rp3,5 Triliun untuk mencetak uang.[6]

Digitalisasi dalam sektor ekonomi dan inklusi keuangan yang dapat meningkat juga salah satu keunggulan dari CBDC. CBDC dapat mendorong berkembangnya dan majunya ekonomi oleh sistem yang terdigitalisasi sehingga bisa terjadi pembaharuan dan pilihan sistem pembayaran. Selain itu, CBDC bisa menciptakan sistem pembayaran yang inklusif. Para pihak swasta yang menyediakan sistem pembayaran

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[5] Nurullia, Syafira. 2021. "Menggagas Pengaturan Dan Penerapan Central Bank Digital Currency Di Indonesia: Bingkai Ius Constituendum." *Journal of Judicial Review* 23 (2): 279. http://dx.doi.org/10.37253/jjr.v%2023i2.5014.

[6] *Ibid*

digital masih belum merata dikarenakan terdapat beberapa populasi yang tidak bisa menggunakan sistem pembayaran digital karena faktor usia dan disabilitas sehingga membuat beberapa populasi tidak melakukan pembayaran secara efisien. Dengan diterbitkannya CBDC oleh bank sentral, hal ini tentu dapat mengatasi permasalahan tersebut. Bank sentral sebagai badan hukum publik bisa memfasilitasi untuk memenuhi kebutuhan bagi mereka yang kesulitan dalam melakukan pembayaran yang disediakan oleh pihak swasta.

Dengan diterbitkannya CBDC juga berpotensi dalam memperbaiki kebijakan moneter. Bank Indonesia berpendapat bahwasanya implementasi CBDC dapat dikendalikan secara langsung oleh Bank Indonesia dikarenakan pasokan yang bisa ditambah ataupun dikurangi demi tercapainya tujuan ekonomi. Dalam memperbaiki kebijakan moneter, penerapan CBDC dengan *direct access* bisa meningkatkan suku bunga deposito dan menyebabkan transmisi kebijakan moneter melalui jalur suku bunga lebih sensitif. Berdasarkan analisis CGE, peran CBDC berpotensi mendorong pertumbuhan ekonomi nasional rata-rata 0,09% per tahun dengan asumsi peningkatan produktivitas pada sektor restoran dan telekomunikasi. Maka CBDC dapat mendukung mandat bank sentral dalam menjaga stabilitas perekonomian, melindungi konsumen, dan mengatur uang beredar.[7]

Selain hal-hal tersebut, CBDC bisa sebagai media dalam menanggulangi kejahatan terkait dengan keuangan. Beberapa kejahatan yang dapat ditanggulangi terkait keuangan yaitu Tindak Pidana Pencucian Uang, korupsi, ekspor dana ke ranah luar negeri bahkan pemalsuan uang. Selain itu, CBDC bisa menanggulangi kejahatan anonim seperti yang terjadi dalam cryptocurrency karena daftar aktif semua transaksi dalam CBDC dikelola secara langsung oleh Bank Indonesia sehingga bank sentral memiliki kontrol atas hal-hal yang dilarang dalam transaksi keuangan. Nominal dalam CBDC juga ditetapkan dan bisa diakses secara universal serta berlaku sebagai *legal tender* untuk semua transaksi publik dan pribadi. Hal ini, tentu CBDC memiliki perbedaan yang signifikan dengan mata uang virtual yang diciptakan oleh pihak swasta seperti bitcoin, ethereum, dan ripple yang harga pasarnya telah berfluktuasi tajam dalam beberapa tahun terakhir. Namun, disisi lain terdapat dampak negatif yang disebut dengan trilema kebijakan moneter yang tercipta akibat adanya CBDC. Penerbitan CBDC dapat menciptakan pola intermediasi keuangan oleh bank

[7] *Ibid,* hal 280.

komersial. Hal ini dikarenakan, ketika perpindahan dana deposito dari bank komersial ke bank sentral bisa menimbulkan resiko kredit yang lebih rendah dengan bank komersial. Hal ini menyebabkan bank komersial akan bersaing untuk dana deposito dengan menaikan suku bunga dalam mencegah kehilangan simpanan.

IV. Kesimpulan

Penerbitan *Central Bank Digital Currency* dapat menjadi solusi bagi Bank Indonesia dalam menjalankan tugas-tugasnya, yaitu menetapkan melaksanakan kebijaksanaan moneter, mengatur dan menjaga kelancaran sistem pembayaran, dan mengatur dan mengawasi Bank sebagaimana dimuat dalam Pasal 8 Undang-Undang Nomor 23 Tahun 1999 tentang Bank Indonesia. Perkembangan teknologi yang pesat tentu mendorong Indonesia melangkah lebih maju salah satunya dalam sektor keuangan. Indonesia sendiri telah memiliki bentuk dari CBDC yang dinamakan Rupiah Digital. Rupiah digital telah memiliki dasar hukum yang kuat sebagai alat pembayaran yang sah sebagaimana diatur di Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan. Manfaat dari Rupiah Digital sebagai representasi CBDC yang begitu besar bagi perekonomian di Indonesia, seperti meningkatkan keuntungan untuk Bank Indonesia dikarenakan biaya produksi yang rendah, meningkatkan digitalisasi sektor ekonomi dan inklusi keuangan serta bisa memperbaiki kebijakan moneter.

V. Saran

Dengan diterbitkannya *Central Bank Digital Currency,* Bank Indonesia masih memerlukan kebijakan-kebijakan yang lebih kuat untuk memperkuat CBDC sebagai alat pembayaran yang sah. Selain itu, diperlukan keamanan yang kuat dalam menerbitkan *Central Bank Digital Currency* mengingat kejahatan dalam dunia digital sangat sukar diusut dan diatasi.

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