

# LEGAL ANALYSIS OF CANCELLATION OF TIMOR LESTE AND AUSTRALIA MARITIME AGREEMENTS

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## ***Abstrack***

*International treaties are all agreements between the State and the subject subject to international law and include the following legal obligations: If one of the contracting parties does not follow the previously determined rules, the injured party may decide to terminate / terminate the contract. The factors behind the abolition of international agreements consist of various causes and consequences of both formal and serious irregularities. The legal position between East Timor and Australia is equally strong, the contracting parties cannot feel power and each contracting party must follow as a new law (Pacta Sun Servanda Principles). Timor-Leste wants the CMAST agreement to be abolished in terms of international treaty law on Australia and has not shown good faith (violation of the principle of good faith) from the beginning as Australia has committed a serious breach, namely espionage carried out at the Timor Leste embassy in Canberra.*

## BACKGROUND

An international treaty, which is essentially the source of international law, is a legal document that takes into account the will and consent of the state or other subject matter of international law in order to achieve a common goal, Collective agreements developed in the Convention are the basis of international law that regulates the activities of national or other

international law subjects in this world. According to Article 38 (1) of the International Court of Justice Charter, international agreements are one of the sources of information for all countries and states to conclude agreements. What they have done must comply with the rules and regulations contained therein, This is because it is the principle of a legal agreement that "commitment must be binding and fulfilled in good faith" This principle is known as the Pacta sunt servanda principle.<sup>1</sup>

Timor Leste and Australia entered into a technical agreement for the PLT through the International Unification Agreement (IUA) in 2003 and the Treaty on the Special Maritime Agreement in the Timor Sea (CMATS) in 2006, the CMATS proposed. specifically to the operation and management of the Rising Sun. oil fields located outside the JDPA area of Australia and Timor Leste. Each country will receive 50% of the revenue from the Greater Sunrise oilfield, the CMATS being an interim arrangement, as well as the PLT and IUA, formed under Articles 74 and 83 of the United Nations Convention on the Law of the United Nations. On the Sea (KHL), the two countries have agreed to split the revenue of the Greater Sunrise mine, which is also an renewal of the previous IUA regulations, the CMATS came into force for the parties after the Exchange of Notes at Dili , Timor Leste on 23 February 2007, This is governed by Article 13 of the CMATS.<sup>2</sup>

The CMAST Agreement is not an agreement on the limits of the continental shelf but a provisional agreement providing for the cooperation in the management of the oil and natural resource areas (JPDA) located most of the seabed of Timor. The management cooperation

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<sup>1</sup> yordan gunawan, 2021, *hukum internasional: sebuah pendekatan modern*, yogyakarta, lp3m umy, p.29

<sup>2</sup> parliament of australia, australia-east timor certain maritime arrangements treaty, *available on 27february2007*, p. 40.

agreement between the two countries seeks to find a way to mediate to avoid protracted disputes.

The factors that lead to the annulment of an international agreement can include a variety of causes and consequences, both formal and substantial irregularities. Meanwhile, what in the case will be discussed regarding the substantial irregularities that Australia has committed in terms of misconduct (eavesdropping and data theft) related to the implementation of the Timor Sea treaty this. Of course, Timor Leste as an independent country does not want to be deceived by Australia in the context of actions taken against the honor of its country.

International agreements are defined as agreements concluded by subjects of international law granting rights and obligations, and must be implemented by the parties to the agreement. International agreements are one of the sources of international law, which can regulate different types of interactions between entities of international law in the international sphere. In addition, the agreement must be consistent with the national values of the country as well as the general principles of international law. International agreements are concluded by international legal entities recognized by international law, sovereign states and international organizations. However, the document will focus on the agreements<sup>3</sup> concluded by the State, as the State is the most important actor who has every opportunity to conclude an international contract, which becomes one of the requirements of state

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<sup>3</sup> yordan gunawan, verocha jayustin sastra, adyatma tsany prakosa, mutia ovitasari, lathifah yuli kurniasih, 2020, "the validity of turkey-libya's agreement on maritime boundaries in international law", *jurnal hukum dan peradilan*, vol. 9 no. 2, pp. 170-185.

institutions. According to the number of parties bound to the agreement, international agreements can be divided into bilateral agreements and multilateral agreements. Meanwhile, multilateral agreements are concluded between many countries or parties, the interests and rules between countries are contained in international agreements, which bind the parties and become laws for those bound by the agreements, however, bilateral agreements may be concluded in more than one country. This happens when a group of countries come together to create a bilateral agreement with another group of countries.

#### **A. Research Problem**

Analyze the legal impact of canceling the maritime treaty between Timor Leste and Australia.

#### **B. Research Method**

This study uses court cases as the standard used to measure the law. Normative juridical is research conducted by reviewing library materials or secondary data as the basis for research by conducting a search for laws and regulations relating to the problem under study. This research is descriptive.

Analytical The purpose of this research is to provide a clear and comprehensive picture of the provisions of international maritime law regarding a country's compliance with international law to be associated with the settlement of the cancellation of the maritime treaty between Timor Leste and Australia.

### **DISCUSSION**

#### **A. ANALYSIS BASED ON INTERNATIONAL LAW PERSPECTIVE**

Timor-Leste's legal status in terms of international legal studies under the 2006 CMAST Agreement, A party/party subject to the new law in previous agreements with the same legal entity, except for Australia, after the people of Timor-Leste issued a referendum in 1999 and declared the independence of Timor-Leste in 2002. Automatically the previous agreement on the Gulf of East Timor between Indonesia and Australia is no longer in effect. Then, in 2002, the Timor-Leste Government began negotiations with the Australian Government for the same facility (East Timor Sea). Negotiations conducted until 2006 resulted in two changes in both the name and content of the agreement, and the last agreement ratified was named CMAST (Partial Seas Agreement in the East Timor Sea) in 2006.<sup>4</sup>

1. There are rights and obligations for each party under the 2006 CMAST Agreement, below are the rights and obligations of Timor-Leste. This Agreement ensures that Timor-Leste is harmless to other Parties in relation to Australia's maritime borders (Article 2.1. Letter A),
2. Timor-Leste does not claim sovereignty (Article 4.1), negotiate maritime boundaries (Articles 4.6 and 4.7), or participate in maritime boundaries or litigation concerning maritime boundaries, With territorial jurisdiction (Articles 4.4 and 4.5),
3. Timor-Leste has the same rights to a portion of the revenue derived from oil production in the JPDA area (Article 5)

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<sup>4</sup> shana lia mifroh, vol.6, no.2 2021 analisis hubungan antara timor leste dan australia terkait perebutan sumber daya minyak dan gas pada sengketa celah timor (timor gap), vol.6, no.2 2021 analisis

4. and Timor-Leste is obliged to notify Australia of the amount of the income. (In Australia and Timor-Leste, within 90 days after the end of the quarter (Article 5) the quarter is vested on the first business day,
5. and Timor-Leste is entitled to form the Maritime Commission (Article 9).
6. Timor-Leste continues to have jurisdiction over the award of orders. and exercise the sovereign right to the order resources north of the boundary line described in Annex II (Article 8).<sup>5</sup>

Australian law's position in terms of the study of international law under the 2006 CMAST Agreement (part of the East Timor Sea) is similar to having the following rights and obligations.

1. Australia is obliged not to take any action that may infringe the maritime borders of Timor-Leste (Articles 2, 1, a).
2. Australia has the power to establish Maritime Commissions (Article 9)
3. Australia is obligated to pay for oil imports to Timor-Leste
4. Australia has the right to continue producing oil in the region Previously, JPDA (JOINT PETROLEUM DEVELOPMENT AREA) is included in Article 4.2,
5. Australia does not claim sovereignty (Articles 4.1), negotiate maritime boundaries (Articles 4.6 and 4.7), or participate in litigation over maritime boundaries or territorial jurisdiction (Articles 4.4 and 4.5), basically, in international law, all the rights and obligations of the parties to the relationship are to make new laws/laws

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<sup>5</sup> muhammad risal ,dinamika keamanan maritim indonesia pasca kemerdekaan timor leste,journal interdependence,vol.5,no.1

binding on them (Pacta Sun Servanda principle) this is because the status between Australia is equally strong and has become a principle of international treaty principles/principles of international law stating that neither party to the agreement can feel any power and each party must obey the agreement. Under this agreement, revenues derived from petroleum activities in the East Timor Sea are divided equally between East Timor and Australia. Australian media reports that most of the oil and gas in the East Timor Sea is in East Timor. Timor-Leste's first action was to order the International Court of Justice to return documents seized by the Australian intelligence service in November 2013.<sup>6</sup>

## **B. ANALYSIS CERTAIN MARITIM ARRANGEMENT IN THE TIMOR SEA PERSPECTIVE**

International agreements have principles that underlie their implementation and also affect sustainability. i.e. the pacta sun servanda principle (Article 26 VCLT), the principle pacta tertiis nec nocent prosunt (Article 34 VCLT), the irrevocable principle (Article 28), the Basic Principle (Article 27 VCLT) and the normative code (Article 53). Some of these legal principles can be understood to affect the continuity of the contract. Because even if there is a contract and the contract binds the parties, later events or the application of other legal principles may delay or terminate the contract's validity. The action taken by Timor-Leste, namely the nullification of the CMAST Agreement from the point of view of international treaty law, may be

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<sup>6</sup> Harry Purwanto, Keberadaan Asas Rebus Sic Stantibus dalam Perjanjian Internasional

justified because Article 60 of the Vienna Convention considers grave violations committed by other countries as a motive for its termination. Treaty,<sup>7</sup>The term of the contract is final or legal, On the other hand, this breach does not result in automatic termination of the contract, but only the possibility of using the contract termination procedure as provided for in Article 65 of the Vienna Convention of 1969.<sup>8</sup>

reconciliation between republics Democratic East Timor and Australia It happened on March 6th in New York,2018, That's Timor-Leste Australia signs border treaty New Maritime Democratic Republic of East Timor ("East Timor") and the Commonwealth Australia signs border treaty their new marines,consciousness signed by The UN is the pinnacle of that process,East Timor International Reconciliation and Australia is over Coordination Committee under the Convention United Nations Law of the Sea and its Under the auspices of the Permanent Court of Arbitration,contract signing New maritime borders are regulated,UN Secretary-General H.E. Antonio Guterres prove the signing of the contract with the Chairman of the Conciliation Committee that. Ambassador Peter Taxo Jensen Coordinator Dr. Rosalie, Balkin Khakim Abdul G. Koroma, Professor Donald McRae and Judge Rudiger Wolf Room. maritime boundary treaty Recently, in the East Timor Sea, a maritime border was established between East Timor and Australia. border agreement The limits of the second comprehensive and final "continental shelf" who needs rights use of seabed resources, such as oil and economic zones 'exclusive', the right is

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<sup>7</sup> japanton sitohang, masalah perbatasan wilayah laut indonesia di laut arafura dan laut timor,p.123

<sup>8</sup> vienna convention



required resources exploited from the water column, I like fishing. also this agreement  
Discussing the legal status of gas fields Wonderful sunrise, special formation  
Awesome sunrise modes and routes We aim for resource development. Bigger  
Sunrise E&P revenue If the sector is developed by pipeline, split 70/30 in favor of  
Timor-Leste East Timor or 80/20 in favor Timor-Leste, if the sector is under  
development Pipeline to Australia.<sup>9</sup>

### **What happens if the East Timor and Australia maritime treaty is cancelled?**

After the completion of several efforts to settle the issue of a maritime treaty with Timor-Leste, Timor-Leste and Australia signed the Maritime Demarcation Agreement on March 6, which is a treaty between Australia and the Democratic Republic of Timor-Leste that sets out their maritime affairs in the East Timor Sea. boundary. 2018. The signing ceremony was held at 5pm at the United Nations Headquarters in New York and was the culmination of the forced settlement process between East Timor and Australia conducted under the auspices of the UNCLOS Reconciliation Commission and the Permanent Arbitration Court. (PCA) The Hague, Netherlands. The signing of the Maritime Boundary Treaty was organized by the UN Secretary-General E. Antonio Guterres, who, together with the Coordinating Committee Ambassador E. and Ambassador Peter Taxho Jensen, witnessed the direction of the parties to the agreement. Conciliation Committee Dr.

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<sup>9</sup> josefa dos santos sarmento barreto, upaya australia dan timor - leste dalam penyelesaian konflik batas maritim ( kasus : greater sunrise tahun 2016-2018)

Rosalie Balkin, Judge Abdul G. Koroma, Professor Donald McRae and Judge Rüdiger Wolfrum.

The Treaty consists of several closely related elements that are part of the agreement's common origin, including 1) a treaty establishing a permanent maritime boundary between Australia and East Timor in the East Timor Sea, and 2) a treaty recognizing sovereignty. A great sunrise for the development of both countries and the creation of a special regime. Use and Management of the Greater Sunrise Gas Field; 3) This Agreement contains transitional measures to provide certainty and transcendental regulation to affected investors in East Timor's oil and gas sector. As with all negotiations, both sides find a compromise. This agreement states that the result is a mutual reconciliation without prejudice to the legal status of both parties. both parties and the committee Think of this as a fair and balanced result. The 2018 Naval Treaty was ratified through an exchange of diplomatic notes on 30 August 2019 in commemoration of the 20th anniversary of the Timor Leste referendum. 42 people of Parliament voted in favor of the ratification of this treaty. when the Prime Minister of Australia visited Timor-Leste.<sup>10</sup>

The Australian government initially criticized Timor-Leste's proposal to submit a compulsory reconciliation process to the PCA, saying there was no further discussion of a permanent maritime boundary. However, Australia has no choice but to submit to the mechanism, as the reconciliation process must be pursued and respected by UNCLOS member states. However, Australia, one of the parties involved in the reconciliation process,

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<sup>10</sup> 26 Desember 2021, Department, of Foreign Affairs and Trade, "Australia. and Timor Leste Maritime Boundaries". 26 Desember 2021

certainly has different interests in defining fixed maritime boundaries. Australia's interests include: 1) Economic benefits to Australia, where maritime boundaries remain defined in the treaty. Maritime 2018 is expected to bring economic benefits to both parties and ensure the sustainable development of natural resources in the East Timor Sea, giving confidence and stability to companies investing in the East Timor Sea. 2) Establishing a permanent maritime border between Australia and Timor-Leste will support the economic development of Timor-Leste, which will have a significant impact on the future economic development of Timor-Leste. The NIA holds the view that a stable and prosperous Timor-Leste is in Australia's national interest, as evidenced by the news that Australia is Timor-Leste's largest development and security partner. 3) Australia's consistency in supporting the peaceful resolution of maritime disputes, Australia is known as a country that supports the peaceful resolution of maritime parallels. This can be attributed to the origin of Australia's actions in the case of China and the Philippines in the South China Sea in 2016, when China rejected the PCA decision that China's claims in the South China Sea (LTS) violated UNCLOS. Australia, through Foreign Minister Julie Bishop, said that China should respect and implement the PCA decision. Bishop also said the PCA decision is legally binding and Australia hopes all parties involved can seize the opportunity to negotiate peacefully. law. Under the statement, Australia is committed to maintaining consistency in the peaceful resolution of maritime parallels and the resolution of maritime disputes through East Timor. This can be judged from the origins of Australia's struggle when negotiating an agreement that is beneficial to both the country and Timor-Leste. Negotiating the simplest maritime demarcation agreement could take years, but for this reason the Commission has adopted an ambitious agenda to elevate the negotiating word to unprecedented levels. The parties will

conduct a structured dialogue with the Committee over a 10-month period from January to October 2017. Structure of the negotiating process, 16-20 January 2017: Singapore meeting: Parties submit material to the Commission on rules on the location of maritime borders. The meeting kicked off with a press statement from the parties and the committee jointly announcing their commitment to terminating the CMTS and negotiating maritime boundaries. It ends with 4,444 relevant reviews, with an additional note indicating that on March 26-31, 2017, the Commission began studying the positions of the parties to establish a maritime boundary in the East Timor Sea. meeting in Washington DC; The Commission submitted documents to the parties that did not set forth a possible resolution designed to provoke and challenge them with regard to a "clean stand". June 6, 2017: Copenhagen Meeting: The Commission seeks a deeper understanding of the factors influencing both sides' positions on the issue of maritime borders. July 24-28, 2017: Singapore Meeting: Chairpersons mentioned goodwill between the two sides, but a difficult dilemma persists, including the origin and location of the eastern seabed border. Shortly after that dinner, Judge Koroma visited Dili to speak with the East Timorese leadership and discuss proposals for an agreement on maritime boundaries. Copenhagen meeting on 1 September, 28 August 2017; There is a break in conversation. The Commission announced on 30 August that the parties had reached agreement on key elements of the settlement package, including the definition of a permanent maritime boundary and the relaxation of a special regime for Greater Sunrise. After a rendezvous in The Hague on October 13, 2017, the parties met exclusively to finalize the contract after hours of negotiating the contract over several weeks via teleconference. A. Preamble to the draft agreement (Marine Boundaries - 44). Two days before the start of the

TST arbitration hearings discussed above, the Australian Security Intelligence Agency (ASIO) raided an Australian workplace.

Attorneys representing East Timor confiscated the documents in this case. After the confiscation, Timor-Leste demanded the return of documents and property of those caught in the attack. Australia did not comply, arguing that the raid was carried out to protect "national interests" and had nothing to do with arbitration. On December 17, 2013, Timor-Leste sued the International Court of Justice for the return of the documents. Timor-Leste claims that "Australian agents" seized "documents and data relating to the upcoming 2002 East Timor sea arbitration under the East Timor-Australia Agreement" belonging to Timor-Leste during the raid. The Timor-Leste government has requested the return of the documents, the destruction of all written copies, the approval of an Australian apology and an order for the payment of royalties to Timor-Leste. Timor-Leste has also asked the courts to grant interim measures, and to exercise the power of the chairman of the court "to act on the parties in a manner that subsequently permits any order issued by the court upon request." Temporary measures shall remain "adequately in effect until resolved upon request. From 18 December 2013, pursuant to Article 74(4).

## **CONCLUSION**

Based on the explanation provided by the author, the author draws several conclusions from the case. These conclusions are as follows.

1. Legal status of East Timor and Australia

Legal Perspectives of International Treaties Depending on the principles of the case, international agreements may be terminated by law. In other words, Australia did not

show goodwill from the outset when it entered into the agreement (violation of the principles of the Pacta Sun Servanda), The East Timorese embassy in Canber, who committed the crime of espionage, took action to seize important East Timor-owned documents that East Timorese lawyer Bernard Coley kept at his Darwin home, which was later prosecuted in court. used as evidence, in the International Court of Arbitration. Hague. Equal right, i.e. principle/principle international law norms It explains that all countries where relationships exist are basically legally identical. The legal status between Timor-Leste and Australia is equally strong, neither party to the agreement can feel any power, and each party to the agreement must comply with a new law (the Pacta Sun Servanda Principles). This has become the grundnorm of international treaty law. According to the Vienna Convention of 1969.

2. Timor-Leste's legal position is that it hopes to terminate the CMAST Agreement in accordance with Article of the Law of the International Treaty, which can be justified. This is because Australia did not show goodwill from the beginning (violation of the principle of goodwill). Australia committed serious espionage at the Timor-Leste embassy in Canber. Additionally, the seizure of important East Timor documents by East Timorese lawyer Bernard Colley from his home in Darwin was to be used as evidence before the International Court of Arbitration in The Hague. 1969 Vienna Convention.

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