

## THE BICKERING BRETHREN: MALAYSIA-BRUNEI TERRITORIAL DISPUTES 2003-2009 AND THEIR RESOLUTIONS

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### 1. INTRODUCTION

Malaysia's territorial disputes in the South China Sea are shared with many other claimants. Among the territorial disputes occurred between Malaysia and other members of the Association of Southeast Asian Nation (ASEAN) are Indonesia over Sipadan – Ligitan Islands, Singapore over Batu Puteh Island, the Philippines and Vietnam over the Spratly Islands and Brunei over Lawas, Limbang, Terusan, Rangau and Louisa Reef (*Terumbu Semarang Barat Kecil*) (Asri, 2016). About this dispute, there were several methods that Malaysia decided to employ. For example, Malaysia engaged with the International Court of Justice (ICJ) to solve the Batu Puteh dispute with Singapore. However, in the disputes with Brunei, Malaysia rejected the idea of using ICJ to solve the issue. This shows that Malaysia and Brunei opted to use peaceful settlement which is in line with the principle of ASEAN and a good foreign policy approach through dialogues to achieve a peaceful resolution that benefited both countries' national interests. In Malaysia and Brunei territorial disputes, a few issues had arisen. One of the issues was about the Limbang status claimed by Brunei. The former Malaysian Prime Minister, Dr. Mahathir Mohamad queried about the loss of USD 100 billion of Malaysia's oil in the deal with Brunei to get back Limbang during Abdullah Ahmad Badawi's administration as the Prime Minister. Dr. Mahathir continued to comment on how Abdullah Badawi's government had negotiated with the Sultan of Brunei to drop his claim of Limbang, Sarawak which involved the exchange of two newly discovered oil blocks. Dr. Mahathir also believed that the two oil blocks are no longer parts of Malaysia even though Malaysia has the right to claim the two blocks based on historical facts ("Mahathir Queries Loss of USD 100 Billion", 2010). The purpose of this paper is to explain the current territorial disputes that occurred between Malaysian and Brunei between 2003 and 2009. This paper also highlights which territories that were in dispute between the two countries, the reason behind these conflicts, and resolutions taken by Malaysia and Brunei.

### 2. TERRITORIES IN DISPUTE

Several significant events occurred regarding the territories in dispute between Malaysia and Brunei. The territorial disputes between Brunei and Malaysia started as early as 1979. The significant events that have initiated the disputes in the bilateral relations of Malaysia and Brunei are as explained below:

## 2.1 The New Map or “Peta Baru”: Lawas, Limbang, Terusan, Rangau and Louisa Reef

The Malaysia-Brunei territorial dispute started when Malaysia released “The New Map” in 1979. Later in August 1980, Britain as Brunei’s representative due to Brunei’s status as a British protectorate protested the *Peta Baru*. This can be traced from the letter from the British High Commission in Kuala Lumpur to Malaysia’s Ministry of Foreign Affairs dated 2nd May 1981. In the letter, Britain questioned the proposal of the *Peta Baru*. Britain worried that this map would bring up many problems. Among Britain’s concerns is the delimitation of the continental shelves of Malaysia and Brunei. Brunei had claimed Limbang in Sarawak as part of its territory since 1970. Despite the efforts to conciliate the claims and counterclaims between the two countries, Brunei continued to establish three series of maps to show its territorial waters, its continental shelf, and fishery limits. The maps were named Map Showing Territorial Waters of Brunei Darussalam (1987), Maps Showing Continental Shelf of Brunei Darussalam (1988), and Maps Showing Fishery Limits of Brunei Darussalam (1988) (Asri, 2016). Brunei’s claims on Limbang, Terusan, Lawas, Rangau, and Louisa Reef became official with the publication of the maps. Limbang is considered important as it stands between the two parts of Brunei’s boundaries and is rich with timber.

## 2.2 Oil Discovery in 2003: Increasing Tensions and Disputes

A huge oil deposit discovered at the coast of Borneo initiated another territorial dispute between Malaysia and Brunei. According to Jayasankaran and McBeth (2003), an independent contractor who worked for Malaysia’s Petroliaam Nasional Berhad struck the oil deposit 4,400 feet of water off the coast of Sabah, neighbouring the Malaysia’s state of Brunei. The area called Kikeh was found to have a recoverable reserve, approximately 21% of Malaysia’s current oil reserves at that (Jayasankaran & McBeth, 2003). Thus, the discovery of Kikeh was thought of as the potential new oil resource that has the large capacity as an additional oil reserve to supplement Malaysia’s declining oil resources, as well as to provide benefits and assured solidity of the country’s economy.

## 3. RESOLUTIONS TAKEN

The Malaysia-Brunei territorial disputes took approximately 6 years of negotiations to resolve territorial disputes between the two countries. The negotiations were a closed-door event in which most of the details are not disclosed publicly or to international legal communities or conferences until March 2009, when a joint press statement was made in Brunei during Abdullah Ahmad Badawi’s visit to the country. The Malaysia-Brunei governments disclosed 4 matters in general terms:

- An apparent settlement of maritime boundaries between Brunei and Malaysia.
- Resolution on the establishment of a joint petroleum development area off Borneo - a kind of trade agreement.
- The initiation of a frontier survey to define the boundaries of Malaysia’s Limbang district.
- The assurance of transit rights for the citizens of both countries through the inshore maritime area north of Limbang.

The agreement concluded by Malaysia and Brunei in 2009 (known as the Exchange of Letters) was not publicly known in Malaysia nor Brunei. There was not much information available regarding the matter for the public. However, as revealed by the informant during the data gathering to complete this paper, it was made to understand that the settlement package agreed by both countries includes:

- The final delimitation of maritime boundaries between Malaysia and Brunei Darussalam.
- The establishment of Commercial Arrangement Areas (CAA) in the oil and gas sector to collaborate in the exploration and exploitation of hydrocarbon resources. Oil deposits at Kikeh are given to Brunei. However, Brunei agreed to have Malaysia participate commercially for 40 years. Under the joint Commercial Arrangement Area (CAA), it enables the two countries to share the proceeds from the exploitation of hydrocarbon resources in the disputed area.
- Modalities for the final demarcation of land boundaries between the two countries.
- Unsuspendable rights of maritime access for citizens and residents of Malaysia across Brunei's maritime zones en route to and from their destination in Sarawak, Malaysia if Brunei's laws and regulations are observed.

About the delimitation of maritime boundaries between Malaysia and Brunei, according to the personal view of the informant, the agreement has favoured Brunei. It seems that Brunei has gained the whole maritime area as it claimed as shown in their 1980s maps. Though technically Malaysia has a strong case to argue the limits of Brunei's claim, the decision taken by the Heads of the Governments of both countries is final. Malaysia also has officially recognised Louise Reef (*Terumbu Semarang Barat Kecil*) as belonging to Brunei. The Malaysia-Brunei 2009 Settlement agreement which concluded the long outstanding land and maritime boundaries issues has enhanced the bilateral relations between the two countries. It is learned that Malaysia receives some percentage of royalty for a certain period from the CAA. Both countries continue with the demarcation of land boundaries to resolve the issue based on existing historical agreements between the government of Brunei and Sarawak. After the conclusion of the Malaysia-Brunei 2009 Settlement Agreement, all the outstanding land and maritime boundaries issues between the two countries are resolved.

On 13th December 2010, Malaysian Prime Minister Mohd. Najib Tun Abdul Razak was invited to meet His Majesty Sultan Hassanal Bolkiah Mu'izzuddin Waddaulah, Brunei's current Sultan. Prime Minister Mohd. Najib made a working visit and among the important reasons for his visit was to discuss the overall bilateral relations between the two countries after the Malaysia-Brunei Settlement Agreement 2009 was signed. Among the key points from this meeting are:

- Both parties reaffirmed their commitment to raise the existing bilateral relations to a newly strengthened partnership, which would express the countries' mutual desire for the continuation and rapid implementation of the contents agreed in the 2009 Exchange of Letters.
- Welcome the signing of the Brunei Deepwater block Production Sharing Agreement (PSA) for Block CA2 of the CAA. This seems to be the importance of the signing of the PSAs for both Blocks CA1 and CA2 of the CAA, which carry out the commercial arrangement aspect of the Exchange of Letters and thus both countries expressed satisfaction with the progress made.

- Both leaders restated their views on the good potential future cooperation in both countries, especially beyond the two oil blocks, and between Malaysia's states of Sarawak and Sabah in the development of downstream industries as well as in the exploration and exploitation of the oil and gas.
- Finalizing Joint Malaysia – Brunei Land Boundary Technical Committee to complete the Terms of Reference and the Memorandum of Understanding on the Joint Demarcation and the Survey of the Land Boundary. Upon completion of these, it would enable the joint demarcation and survey activities by Malaysia and Brunei to be held as early as 2011.
- Both leaders also looked into another development regarding the implementation of other components of the Exchange of Letters which includes maritime access.

#### 4. CONCLUSION

Among the claimed territories in Malaysia-Brunei territorial disputes were Limbang, Rangau, Terusan, Lawas, and Louisa Reef (*Terumbu Semarang Barat Kecil*). However, only Limbang was mostly mentioned by Brunei. Another reason why the claim of Limbang was always on the table was because of the Limbang factor in Brunei's historical views, whereby Limbang was taken away by the British unjustly before it was ceded to Sarawak. The second reason found was that Limbang was once seen as strategic economic growth for Brunei. The Limbang Basin was once considered as the 'rice - bowl' of Brunei due to its strategic importance as the heart of Brunei (Cleary & Shaw, 1992) before it was ceded to Sarawak. The tension between the two countries increased in 2003 because of the two oil blocks in Brunei's maritime zone – the Kikeh field. The negotiations started as early as 2003 but finally reached their resolution in 2009 under the Exchange of Letters to bind the agreement reached by both parties. The method of settlement has been seen as a good approach in settling bilateral disputes. This can be seen from how both countries agreed to engage in a joint agreement towards the oil blocks concession, although Brunei has sovereignty over the two oil blocks. This has resulted in Malaysia being able to commercially join the Joint Commercial Arrangement Area (CAA) for 40 years. Malaysia – Brunei's bilateral relations outcomes seem to be more positive after the resolution of the disputes. This indicated that both countries prioritized the diplomatic relations so that they can dissolve any dispute harmoniously and achieve a win-win solution.

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