

## BAB III

### PENUTUP

#### A. Kesimpulan

Berdasarkan uraian di depan dapat ditarik kesimpulan bahwa penerapan MoU Box 1974 saat ini menjadi tidak efektif lagi terutama sejak disepakatinya *Agreed Minutes 1989*. Hal ini karena pada *Agreed Minutes 1989*, hak nelayan tradisional di *Ashmore Reef* (Pulau Pasir) dan *Cartier Islet* (Pulau Baru) dibatasi. Nelayan tradisional tidak boleh lagi menangkap ikan dan teripang, para nelayan tersebut hanya boleh menangkap ikan di Pulau Pasir untuk dikonsumsi sendiri. Di Pulau Baru, para nelayan tradisional tersebut hanya boleh singgah untuk berteduh. Di Pulau Barat, nelayan tradisional Indonesia hanya boleh mengambil air untuk persediaan berlayar. Ketiga pulau tersebut, termasuk dalam Ashmore Reef yang oleh pemerintah Australia telah dijadikan sebagai kawasan cagar alam nasional. Sejak itu banyak nelayan tradisional asal Nusa Tenggara Timur ditangkap, diadili, dan dipenjarakan oleh Pemerintah Australia karena wilayah yang dahulu bebas dimasuki oleh nelayan tradisional, dengan adanya *Agreed Minutes 1989* tidak diperbolehkan lagi.

## **B. Saran**

Adapun saran yang dapat diberikan antara lain:

### **1. Bagi Pemerintah Indonesia dan Australia**

Disarankan untuk mengamandemen MoU Box 1974 beserta perjanjian yang mengikutinya karena sudah tidak sesuai dengan perkembangan zaman.

### **2. Bagi Para Nelayan Tradisional NTT**

Disarankan untuk meningkatkan pengetahuan dan teknologi tentang wilayah yang dimasuki agar terhindar dari penangkapan dan pemenjaraan.

### **3. Bagi Pemerintah setempat**

Disarankan untuk merumuskan model pemberdayaan nelayan termasuk membantu dan mendampingi nelayan ketika menghadapi persoalan hukum agar mendapat perlakuan yang adil.

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*Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut*, Departemen Luar Negeri Direktorat Perjanjian Internasional

MoU Box 1974

# **Memorandum of Understanding Between the Government of Australia and the Government of the Republic of Indonesia Regarding the Operations of Indonesian Traditional Fishermen in Areas of the Australian Exclusive Fishing Zone and Continental Shelf (7 November 1974)**

Following discussions held in Jakarta on 6 and 7 November, 1974, the representatives of the Government of Australia and of the Government of the Republic of Indonesia have agreed to record the following understandings.

1. These understandings shall apply to operations by Indonesian traditional fishermen in the exclusive fishing zone and over the continental shelf adjacent to the Australian mainland and offshore islands.

By "traditional fishermen" is meant the fishermen who have traditionally taken fish and sedentary organisms in Australian waters by methods which have been the tradition over decades of time.

By "exclusive fishing zone" is meant the zone of waters extending twelve miles seaward off the baseline from which the territorial sea of Australia is measured.

2. The Government of the Republic of Indonesia understands that in relation to fishing in the exclusive Australian fishing zone and the exploration for and exploitation of the living natural resources of the Australian continental shelf, in each case adjacent to:

Ashmore Reef (Pulau Pasir) (Latitude 12° 15' South, Longitude 123° 03' East), Cartier Islet (Latitude 12° 32' South, Longitude 123° 33' East), Scott Reef (Latitude 14° 03' South, Longitude 121° 47' East), Seringapatam Reef (Pulau Datu) (Latitude 11° 37' South, Longitude 122° 03' East), Browse Islet (Latitude 14° 06' South, Longitude 123° 32' East).

The Government of Australia will, subject to paragraph 8 of these understandings, refrain from applying its laws regarding fisheries to Indonesian traditional fishermen who conduct their operations in accordance with these understandings.

3. The Government of the Republic of Indonesia understands that, in the part of the areas described in paragraph 2 of these understandings where the Government of Australia is authorised by international law to regulate fishing or exploitation for or exploitation of the living natural resources of the Australian continental shelf by foreign nationals, the Government of Australia will permit operations by Indonesian nationals subject to the following conditions:

a) Indonesian operations in the areas mentioned in paragraph 2 of the understandings shall be confined to traditional fishermen.

b) Landings by Indonesian traditional fishermen shall be confined to East Islet (Latitude 12° 15' South, Longitude 123° 07' East), and Middle Islet (Latitude 12° 15' South, Longitude 123° 03' East) of Ashmore Reef for the purposes of obtaining supplies of fresh water.

c) Traditional Indonesian fishing vessels may take shelter within the island groups described in paragraph 2 of these understandings but the persons on board shall not go ashore except as allowed in (b) above.

4. The Government of the Republic of Indonesia understands that the Indonesian will not be permitted to take turtles in the Australian exclusive fishing zone. Trochus, beche de mer, abalone, green snail, sponges and all molluscs will not be taken from the seabed from high water marks to the edge of the continental

shelf, except the seabed adjacent to Ashmore and Cartier Islands, Browse Islet and the Scott and Seringapatam Reef.

5. The Government of the Republic of Indonesia understands that the persons on board Indonesian fishing vessels engaging in fishing in the exclusive Australian fishing zone or exploring for or exploiting the living natural resources of the Australian continental shelf, in either case in areas other than those specified in paragraph 2 of these understandings, shall be subject to the provisions of Australian law.

6. The Government of Australia understands that the Government of the Republic of Indonesia will use its best endeavours to notify all Indonesian fishermen likely to operate in areas adjacent to Australia of the contents of these understandings.

7. Both Governments will facilitate the exchange of information concerning the activities of the traditional Indonesian fishing boats operating in the area west of the Timor Sea.

8. The Government of the Republic of Indonesia understands that the Government of Australia will, until the twenty-eighth day of February 1975, refrain from applying its laws relating to fisheries to Indonesian traditional fishermen in areas of the Australian exclusive fishing zone and continental shelf other than those specified in paragraph 2 of these understandings.



## **Agreed Minutes of Meeting Between Officials of Australia and Indonesia on Fisheries (29 April 1989)**

1. In accordance with the agreement reached by Mr. Ali Alatas, the Foreign Minister of Indonesia and Senator Gareth Evans, the Foreign Minister of Australia in Canberra on 2 March, 1989, Officials from Indonesia and Australia met in Jakarta on 28 and 29 April 1989 to discuss activities of Indonesian fishing vessels under the Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Australia regarding the operation of Indonesian traditional fishermen in an Area of the Australian Fishing Zone and Continental Shelf, concluded in Jakarta on 7 November 1974. They also discussed activities of Indonesian fishing vessels in the Australian Fishing Zone off the coast of North West Australia and in the Arafura Sea, and fishing in the waters between Christmas Island and Java.

### **Memorandum of Understanding of 1974**

2. Officials reviewed the operation of the MOU. Both sides stressed their desire to address the issues in a spirit of cooperation and good neighbourliness. They noted that there had been a number of developments since 1974 which had affected the MOU. In 1974 Australia and Indonesia exercised jurisdiction over fisheries on 12 nautical miles from their respective territorial sea baselines. In 1979 and 1980, Australia and Indonesia respectively extended their fisheries jurisdiction to 200 nautical miles from their respective territorial sea baselines, and in 1981 a provisional fishing line was agreed. Since the areas referred to in the MOU are south of this line, new arrangements are necessary for the access by Indonesian traditional fishermen to these areas under the MOU.

3. The Australian side informed the Indonesian side that there were also changes in the status of Ashmore Reef and Cartier Islet as a separate territory of the Commonwealth of Australia and the establishment of the Ashmore Reef National Nature Reserve. The Australian side further informed that there had been a considerable increase in the number of Indonesian fishermen visiting the Australian Fishing Zone and a depletion of fishery stocks around the Ashmore Reef, that wells on Middle Islet and East Islet where Indonesian traditional fishermen were permitted under the MOU to land for taking fresh water had been contaminated; that Australia had also incurred international obligations to protect wildlife, including that in the territory of Ashmore and Cartier Islands. The Indonesian side took note of this information.

4. Since the conclusion of the MOU, both Indonesia and Australia had become parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

5. The Indonesian and Australian Officials discussed the implications of the developments mentioned in the preceding paragraphs. They affirmed the continued operation of the MOU for Indonesian traditional fishermen operating by traditional methods and using traditional fishing vessels. An Australian proposal that Indonesian traditional fishermen could conduct fishing not only in the areas adjacent to Ashmore Reef, Cartier Islet, Scott Reef, Seringapatam Reef and Browse Islet as designated in the MOU, but in a wider 'box' area in the Australian Fishing Zone and Continental Shelf was welcomed by the Indonesian side. A sketch map and coordinates of this 'box' area appears in Annex 1 of this Agreed Minutes.

6. In view of the developments that had occurred since 1974 as highlighted above, Officials considered that to improve the implementation of the MOU, practical guidelines for implementing the MOU as appears in the Annex of these Agreed Minutes were considered necessary.

7. The Indonesian side informed the Australian side on measures that had been and were being taken by the Indonesian authorities to prevent breaches of the MOU. The Indonesian side indicated its willingness to assist in preventing breaches of the MOU and to take necessary steps to inform Indonesian fishermen of the practical guidelines annexed to this Agreed Minutes.

8. The Indonesian and Australian Officials agreed to make arrangements for cooperation in developing alternative income projects in Eastern Indonesia for traditional fishermen traditionally engaged in fishing under the MOU. The Indonesian side indicated they might include mariculture and nucleus fishing enterprise scheme (Perikanan Inti Rakyat or PIR). Both sides mutually decided to discuss the possibility of channelling Australian aid funds to such projects with appropriate authorities in their respective countries.

#### **North West Coast of Australia**

9. The Indonesian and Australian Officials discussed matters related to the activities of Indonesian fishing vessels in the Australian Fishing Zone off the coast of North West Australia. They noted that those activities were outside the scope of the MOU and that Australia would take appropriate enforcement action. The Australian side indicated the legal and economic implications of such activities.

10. The Indonesian and Australian Officials felt the need for a long-term solution to the problem. To this end, they agreed to make arrangements for cooperation in projects to provide income alternatives in Eastern Indonesia for Indonesian fishermen engaged in fishing off the coast of North West Australia. The Indonesian side indicated that they might include mariculture and nucleus fishing enterprise scheme (Perikanan Inti Rakyat or PIR). Both sides decided mutually to discuss the



possibility of channelling Australian aid funds to such projects with appropriate authorities in their respective countries.

### **Arafura Sea**

11. Indonesian and Australian Officials discussed the activities of Indonesian non-traditional fishing vessels in the Arafura Sea on the Australian side of the provisional fishing line of 1981. Officials agreed that both Governments should take effective measures, including enforcement measures, to prevent Indonesian non-traditional fishing vessels from fishing on the Australian side of the provisional fishing line without the authorisation of the Australian authorities.

12. Officials agreed to make arrangements for cooperation in exchange of information on shared stocks in the Arafura Sea for the purpose of effective management and conservation of the stocks.

### **Fishing in waters between Christmas Island and Java and other waters**

13. The Officials of Indonesia and Australia noted that fisheries delimitation in waters between Christmas Island and Java and in the west of the provisional fishing line remained to be negotiated and agreed. Pending such an agreement, the Officials noted that both Governments would endeavour to avoid incidents in the area of overlapping jurisdictional claims.

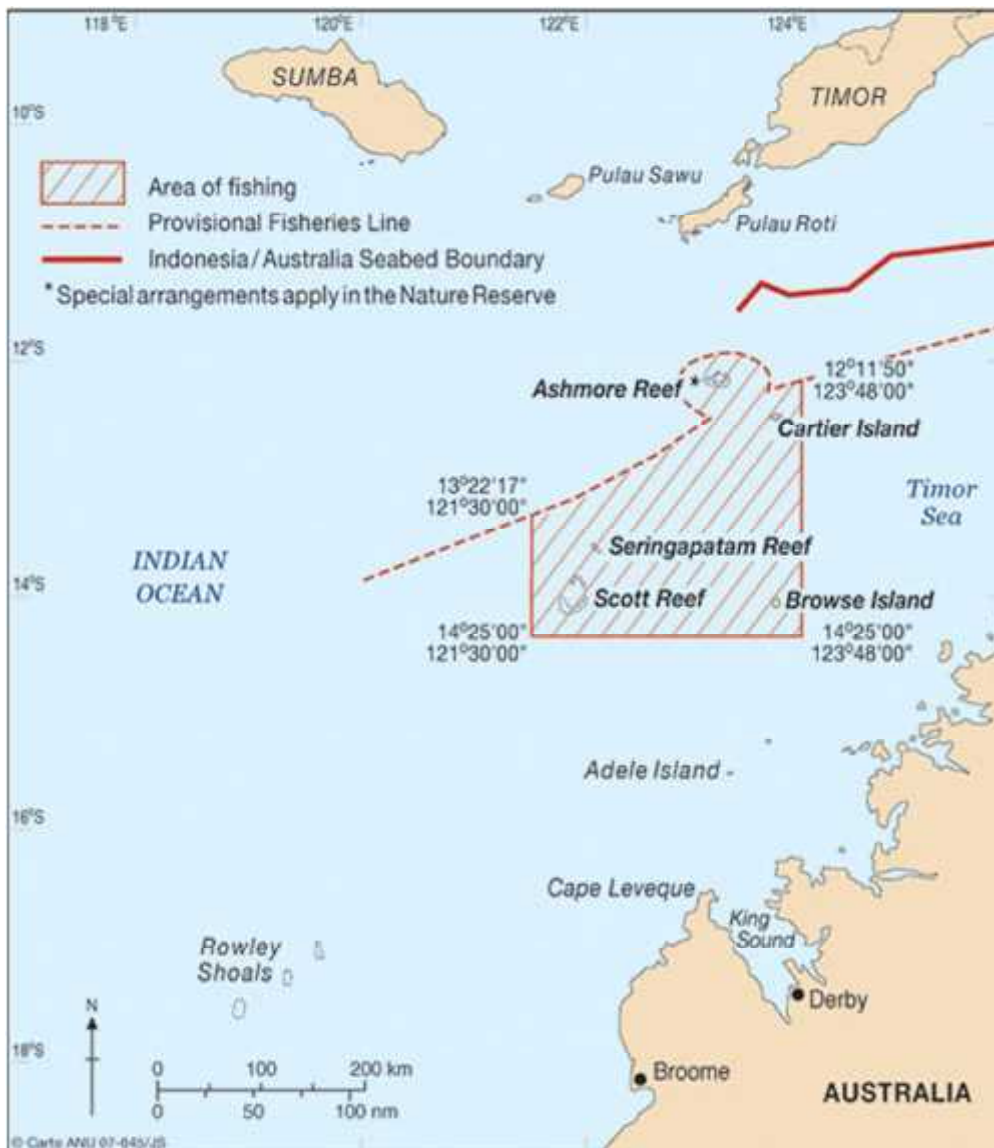
### **Wildlife Cooperation**

14. The Indonesian and Australian Officials considered the mutual advantages of the exchange of information on wildlife species populations believed to be common to both countries. It was agreed that each country's nature conservation authorities would exchange information on such wildlife populations and management programs and cooperation in the management of wildlife protected areas. In the first instance Indonesian authorities would be consulted on the management plan for the Ashmore Reef National Nature Reserve.

### **Consultations**

15. The Indonesian and Australian Officials agreed to hold consultations as and when necessary to ensure the effective implementation of the MOU and agreed minutes.

## Annex I: Co-ordinates of MOU Area ('The Box')



## Annex II: Practical Guidelines for Implementing the 1974 MOU

1. Access to the MOU area would continue to be limited to Indonesian traditional fishermen using traditional methods and traditional vessels consistent with the tradition over decades of time, which does not include fishing methods or vessels utilising motors or engines.
2. The Indonesian traditional fishermen would continue to conduct traditional activities under the MOU in the area of the Australian Fishing Zone and the continental shelf adjacent to Ashmore Reef, Cartier Islet, Scott Reef, Seringapatam Reef and Browse Islet. In addition, Indonesian traditional fishermen would be able to conduct traditional fishing activities in an expanded area as described in the sketch map and coordinates attached to Annex 1 of the Agreed Minutes.

3. To cope with the depletion of certain stocks of fish and sedentary species in the Ashmore Reef area, the Australian Government had prohibited all fishing activities in the Ashmore Reef National Nature Reserve, but was expected soon to adopt a management plan for the Reserve which might allow some subsistence fishing by the Indonesian traditional fishermen. The Australian side indicated that Indonesia would be consulted on the draft plan. Because of the low level of stock, the taking of sedentary species particularly *Trochus niloticus* in the Reserve would be prohibited at this stage to allow stocks to recover. The possibility of renewed Indonesian traditional fishing of the species would be considered in future reviews of the management plan.

4. As both Australia and Indonesia are parties to CITES, Officials agreed that any taking of protected wildlife including turtles and clams would continue to be prohibited in accordance with CITES.

5. Indonesian traditional fishermen would be permitted to land on West Islet for the purpose of obtaining supplies of fresh water. The Indonesian side indicated its willingness to discourage Indonesian traditional fishermen from landings on East and Middle Islets because of the lack of fresh water on the two islets.