

## The Islands Claimed By Malaysia In The Spratly Islands:A Review Based On United Nations Convention On The Law Of The Sea 1982

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**Abstract:** Malaysia's claim at Spratly Island or also best known as Layang-Layang Island, Erica Reef, Investigator Shoal, Mariveles Reef, Ardasier Reef, Commodore Reef, Amboyna Cay, Barque Canada Reef, James Shoal, North Lucionia Shoals, and Shout Luconia Shoals has overlapped with other countries claims. This research employed normative approach method by means of literature review. The review results reveals that United Nations Convention on the Law of the Sea (UNCLOS) 1982 differentiates between right and responsibility among countries regarding rocks and island. As one of the islands claimed by Malaysia, Layang-Layang Island is apparently rock and has at the moment turned an Island after being landfilled. Despite numerous arguments, there does not exist the international law that regulates the right and responsibility toward coastal state that has rock and whose status has promoted to Island.

**Keywords:** Spratly Islands, Rock, International law of the sea.

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### I. INTRODUCTION

South China Sea incorporates four island groups, namely Spratly Islands, Paracel Island, Pratas Island, and Macclesfield Bank. Nonetheless, the sovereignty issues pertaining to Pratas island, and Macclesfield Bank are not prominent because their authorities do not cause any hurdles to the international relationship. Pratas Island and Macclesfield Bank are closer to the China land (situated approximately merely 170 mil from Southeast China) and are now occupied by the Taiwanese navy. <sup>2</sup>Paracel Island and Spratly Islands spark controversy and become a problem among Southeast Asia countries. Spratly Islands is located in the South central Chinese Sea, bordered with Kalimantan Island to the North comprising Brunei and Eastern part of Malaysia, namely Serawak and Sabah, with Vietnam to the east and with Philippines and South China <sup>3</sup> to the west. <sup>4</sup>The whole part of Spratly Islands is claimed by China, Taiwan and Vietnam, whereas several islands and other coral reefs <sup>5</sup> are claimed by Malaysia and Philippines. Brunei has also demanded the overlapping maritime zone in the Southern reef, yet it has not made an official claim. <sup>6</sup>

The conflict on the sovereignty seizure has elevated a strong sense of nationalism of the involved countries. The Spratly Islands location is strategic since it is situated closer to the main passage of the international shipping. The Spratly Islands also has ample natural resources such as fish. International law regulates how a country can acquire and lose its territorial sovereignty. UNCLOS 1982 also regulates the rights

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<sup>1</sup>Lo, Chi-kin, *China's policy towards territorial disputes: the case of the South China Sea Islands*, Routledge, London, 1989, hlm. 26.

<sup>2</sup>Lo, Chi-kin, *China's policy towards territorial disputes: the case of the South China Sea Islands*, Routledge, London, 1989, hlm. 26.

<sup>3</sup>Hainan is a region which is a part of China.

<sup>4</sup>Robert Beckman, 2011, *China, UNCLOS and the South China Sea*, Asian Society of International Law Third Biennial Conference, Beijing, China 27-28 August 2011, page. 3.

<sup>5</sup>Such names, islands, and coral reefs are: Layang-Layang Island, Erica Reef, Peninjau reef, Montanani reef, Permatangubi, Laksamana reef, Kecil Amboyna, Mascado, Beting Serupai, Gugusanbeting raja Jarum, and Gugusanbetingpetinggi Ali.

<sup>6</sup>Robert Beckman, 2011, *China, UNCLOS and the South China Sea*, Asian Society of International Law Third Biennial Conference, Beijing, China 27-28 August 2011, page. 3.

of coastal state in measuring its maritime zones. China, Vietnam, Malaysia, Philippines and Brunei<sup>7</sup> are all the countries close to the South China Sea which have ratified UNCLOS 1982.<sup>8</sup>

Malaysia claims seven islands or rocks in the Spratly Islands, two of which are occupied by Vietnam, and one by the Philippines. Malaysia occupies the remaining four and has constructed sturdy mini-naval stations with small boat basins on each of these features.<sup>9</sup> However, other resources mention that Malaysia only claims five islands, whereas Vietnam occupies 21 islands, Philippines 9 islands.<sup>10</sup> Therefore, this study will give a reference regarding the rights of Malaysia in the Spratly Islands conflict under either UNCLOS 1982 or other international laws.

## II. STUDY METHOD

This study employs the normative approach method.<sup>11</sup> Normative research is carried out through library research, namely the review toward library resources. Normative approach is a historical law, the comparison between law and philosophy of law. The law research is new, precise and systematic in nature and it researches factual data or theoretical concepts regarding principles and regulation of particular law issues to ensure information to generate a research finding, conceptual, theoretical, and principal revisions and their uses.<sup>12</sup>

## III. TERRITORIAL CLAIMS OF MALAYSIA SEA IN SPRATLY ISLANDS

Based on the geography, Malaysia lies at 10°0'N- 70°0'N and 10°00'E-19°90'E. The width of Malaysia area is 330.300 km<sup>2</sup>. The eastern part of Malaysia is located in the south-eastern land of Asia (Malaysia peninsula), and is bordered with Thailand to the north, with Johor and Malacca strait to the south, with the South China and Natuna sea to the east, and with Malacca strait to the west. Meanwhile, the eastern part of Malaysia is located in the northern Kalimantan bordered with South China Sea and Brunei Darussalam. It is bordered with Indonesia to the south, with Sulu Sea to the east, and South China and Natuna Sea to the west.<sup>13</sup> However, Spratly Islands comprises more than a hundred of small islands, coral reefs, and the ships that sail along that area which covers some 410.000 square km located in the middle of South China Sea.<sup>14</sup>

The countries surrounding South China Sea have claimed the sovereignty of some islands in the Spratly Islands. There has not existed any regulation in UNCLOS 1982 concerning how to determine the sovereignty of the islands outside of a country's territorial sea.<sup>15</sup> UNCLOS 1982 only has the regulation to measure the maritime zones. The article 121 UNCLOS 1982 regulates handover of the authority to an island to manage its maritime zones (territorial sea, contiguous zone, exclusive economic zone and continental shelf). If that island is a part of the naturally formed area, it is surrounded by sea water and soil above sea level during receding water.<sup>16</sup> Nevertheless, rock that cannot sustain the humans' life or its own economy is not allowed to measure exclusive economic zone and contiguous zone.<sup>17</sup> There has not been any fixed number of the islands in

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<sup>7</sup>China first ratified UNCLOS 1982 tarikh 7 Jun 1996, Malaysia ratified, 14 Oktober 1996, Filipina, 8 May 1984, Vietnam, 25 Julai 1994 and Brunei Darussalam, 5 November 1996. Source: *Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks*. [http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf) (retrieved on 23 Oktober 2015).

<sup>8</sup>*Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks*. [http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf) (retrieved on 23 Oktober 2015).

<sup>9</sup>J. Ashley Roach, 2014, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, A CNA Occasional Paper, August 2014, page. i.

<sup>10</sup>Robert Beckman, 2011, *China, UNCLOS and the South China Sea*, Asian Society of International Law Third Biennial Conference Beijing, China 27-28 August 2011, page. 3.

<sup>11</sup>A. Yakin, *Legal Research and Writing*, Lexis Nexis, Kelana Jaya, 1992, page. 10.

<sup>12</sup>Mahdi Zahraa, *Research Methods for Law Postgraduate Overseas Student*, StiglowSdn. Bhd. Kuala Lumpur, 1998, page. 17.

<sup>13</sup><http://sejarahnasionaldandunia.blogspot.com/2013/06/tentang-negara-malaysia.html> (retrieved on 24 September 2014).

<sup>14</sup><https://www.cia.gov/library/publications/the-world-factbook/geos/pg.html> (retrieved on , 25 September 2014).

<sup>15</sup>Robert Beckman, 2011, *China, UNCLOS and the South China Sea*, Asian Society of International Law Third Biennial Conference Beijing, China 27-28 August 2011, page. 2.

<sup>16</sup>Article 121 (1) UNCLOS 1982.

<sup>17</sup>Article 121 (3) UNCLOS 1982.

the Spratly Islands that can satisfactorily suits the definition of a naturally formed island surrounded by sea water and soil above sea level during receding water.

Malaysia draws a baseline by means of straight baseline along the coast facing the South China Sea. Malaysia also has a maritime border treaty with Indonesia, Brunei, and Philippines.<sup>18</sup> The treaties regarding the sea border of Malaysia are:

- (i) The border treaty of Continental Shelf in 1969 between Indonesia and Malaysia in the South China Sea.
- (ii) Technical Aspect on the Law of the Sea (TALOS) Special Publication International Hydrographic Organization (IHO) No. 51, 2006, for the border of exclusive economic zone in the South China Sea.<sup>19</sup>

The idea for a bilateral discussion to tackle the maritime border issue between Malaysia and Brunei was restarted in 1994 and 1997. However, both countries were unable to reach a mutual decision. After that, both countries resumed the discussion from 2003 to 2008.<sup>20</sup> Finally, both countries agreed to continue the maritime border issue by cooperating in the sector of exploration and exploitation of hydrocarbon sources. The completion of such issues resulted in a guarantee regarding the sovereignty and authority rights on the continental shelf and exclusive economic zone of both countries.<sup>21</sup> Simultaneously, the overlapping claim of maritime of both countries could also be settled. Additionally, the completion of the conflict permitted both countries to have developmental activities and applied the regulation and constitution in their own maritime zones without any conflict. Either Brunei or Malaysia has given information to the society that the maritime border for both countries is based on the article 75(22)<sup>22</sup> and article 84(2)<sup>23</sup> UNCLOS 1982.

The border treaty of Continental Shelf between Malaysia and Vietnam in the southern part of South China Sea is the border line that continues to form U letter in the Malaysia continent (Johor)- Indonesia, Eastern Malaysia-Vietnam and Eastern Malaysia-Indonesia in the international border, a borderline that continues to 200 mil for Malaysia. Apart from that, it states that the division of the border between Vietnam and Malaysia lies on an overlapping claim of both countries at 2800 km<sup>2</sup> in the Thailand bay created by Vietnamese government in 1971 and Malaysia in 1979.<sup>22</sup> Vietnam and Malaysia had run a discussion in 1992 to settle a conflict of such overlapping claim. In that discussion, both parties arranged a treaty together to exploit oil sources in that area. The Vietnam Petro Syarikat and Malaysia Petronas have applied the principle of togetherness in the right and responsibility.<sup>23</sup> Besides that, there had been found an overlapping claim of 875 km<sup>2</sup> claimed by Vietnam in 1971 and 1973 as well as the claim made by Malaysia in 1979. Concerning this problem, the discussion was carried out in 1971 to determine that area. Those three parties, Thailand, Malaysia, and Vietnam, agreed on the principle of joint development in that area.<sup>24</sup>

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<sup>18</sup>Article 121 (3) UNCLOS 1982; Article 3 UNCLOS 1982; Peruntukan Malaysia iaitu Akta Zon Ekonomi Eksklusif 1984 or <http://www.agc.gov.my/Akta/Vol.%207/Act%20311%20-%20Exclusive%20Economic%20Zone%20Act%201984.pdf> (retrieved on 26 September 2014) and the act of Pelantar Benua 1966 – act No. 57, 1966, as has been regulated in the act No. 83, 1972, or retrieved from <http://www.agc.gov.my/Akta/Vol.%202/Act%2083%20-%20Continental%20Shelf%20Act%201966%20Revised%201972.pdf>

<sup>19</sup>Indonesia Ministry of defense, general directorate of defense strategy, directorate of defense area, 2010, the concept of border determination of ZEE Indonesia-Malaysia in the South China Sea, Jakarta, page. 2.

<sup>20</sup>A big statement of Malaysia prime Minister in the work visit to Brunei Darussalam and the Republic of Indonesia from 15 to 17 March 2009. Retrieved from: <https://www.kln.gov.my/archive/content.php?t=3&articleId=422666> (on 7 July 2017).

<sup>21</sup>A big statement of Malaysia prime Minister in the work visit to Brunei Darussalam and the Republic of Indonesia from 15 to 17 March 2009. Retrieved from: <https://www.kln.gov.my/archive/content.php?t=3&articleId=422666> (on 7 July 2017).

<sup>22</sup> Manh Dong, 2009, *Maritime delimitation between Vietnam and her neighboring Countries*, UN-Nippon Foundation Alumni Meeting Tokyo 13-16 April 2009, page. 14. Retrieved from [http://www.un.org/depts/los/nippon/unff\\_programme\\_home/alumni/tokyo\\_alumni\\_presents\\_files/alum\\_tokyo\\_dong.pdf](http://www.un.org/depts/los/nippon/unff_programme_home/alumni/tokyo_alumni_presents_files/alum_tokyo_dong.pdf) (on, 11 July 2017).

<sup>23</sup> Manh Dong, 2009, *Maritime delimitation between Vietnam and her neighboring Countries*, UN-Nippon Foundation Alumni Meeting Tokyo 13-16 April 2009, hlm. 14. Retrieved from [http://www.un.org/depts/los/nippon/unff\\_programme\\_home/alumni/tokyo\\_alumni\\_presents\\_files/alum\\_tokyo\\_dong.pdf](http://www.un.org/depts/los/nippon/unff_programme_home/alumni/tokyo_alumni_presents_files/alum_tokyo_dong.pdf) (on, 11 July 2017).

<sup>24</sup> Manh Dong, 2009, *Maritime delimitation between Vietnam and her neighboring Countries*, UN-Nippon Foundation Alumni Meeting Tokyo 13-16 April 2009, page. 3.

Malaysia has seven maritime boundary agreements in other areas.<sup>25</sup> Malaysia has other undelimited maritime boundaries, with Indonesia in the Natuna Sea (exclusive economic zone) and the Sulawesi Sea (territorial sea, exclusive economic zone, continental shelf); with Singapore and Indonesia in the Singapore Strait (Territorial sea) and with Thailand and Indonesia in the northern part of the Strait of Malacca.<sup>26</sup>

#### IV. MALAYSIA CLAIM IN SPRATLY ISLANDS

Malaysia has claimed several islands, coral reef and rock in the southern part of Spratly Islands located in EEZ claimed from Sabah, Northern part of Kalimantan Island. Malaysia has claimed more than eleven islands, coral reef, and rock<sup>27</sup> in the Spratly Islands.<sup>28</sup> The following is some islands, coral reef, and rock controlled by Malaysia, yet at the same time also claimed by other countries:

##### a. Island

One of the islands claimed by Malaysia in the Spratly islands is Layang-Layang Island (in the Malay language) or Swallow Reef (in English). Swallow reef located in the South China Sea is included as Malaysia Continental Shelf.<sup>29</sup> Swallow Reef lies in the geographical position at 7° 23" latitude and 113° 35" longitude approximately 162 mil or 300 km from the northwest of Kinabalu city, Sbah, that is, around 200 mill of exclusive economic zone. This island appears almost 2000 meter from the ocean bottom. This rectangular-like island with 1.2 square kilometer in length and 200 meter in width is interesting since it has various beautiful undersea scenery, coral reef, fish reef, including oceanic animals that can be attractive to divers.<sup>30</sup> Swallow Reef also serves as a protecting place to thousands of migratory birds. Swallow Reef is one out of 11 biggest island in the South China Sea.<sup>31</sup>

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<sup>25</sup>Some treaties between Malaysia and other neighboring countries are as follow: *Agreement between the Government of Malaysia and the Government of Indonesia on the delimitation of the continental shelves between the two countries, October 27, 1969*, retrieved from: [www.state.gov/documents/organization/61975.pdf](http://www.state.gov/documents/organization/61975.pdf) (on: 30 September 2014); *Treaty between the Republic of Indonesia and Malaysia relating to the delimitation of the Territorial Seas of the Two Countries in the Strait of Malacca*, Kuala Lumpur March 17, 1970, retrieved from: [www.state.gov/documents/organization/61975.pdf](http://www.state.gov/documents/organization/61975.pdf) (on: 30 September 2014); *Agreement between the Government of the Republic of Indonesia, The Government of Malaysia and the Government of the Kingdom of Thailand Relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Strait of Malacca*, Kuala Lumpur December 21, 1971, retrieved from: <http://www.state.gov/documents/organization/59574.pdf> (akses tarikh: 30 September 2014); *Treaty between the Kingdom of Thailand and Malaysia relating to the delimitation of the territorial seas of the two countries, Kuala Lumpur October 24, 1979*, retrieved from: <http://treaties.un.org/doc/Publication/UNTS/Volume%201291/volume-1291-I-21270-English.pdf>; (on : 30 September 2014); *Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the delimitation of the continental shelf boundary between the two countries in the Gulf of Thailand (with map)*, Kuala Lumpur October 24, 1979, retrieved from <http://treaties.un.org/doc/Publication/UNTS/Volume%201291/volume-1291-I-21271-English.pdf> (on: 30 September 2014); *Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf involving the Two Countries*, Kuala Lumpur June 5, 1992 retrieved from : <http://cil.nus.edu.sg/rp/il/pdf/1992%20MOU%20between%20Malaysia%20and%20Vietnam%20for%20the%20Exploration%20and%20Exploitation%20of%20Petroleum-pdf.pdf> (akses tarikh: 30 September 2014); *Agreement between the Government of Malaysia and the Government of the Republic of Singapore to Delimit Precisely the Territorial Waters Boundary in Accordance with the Straits Settlements and Johore Territorial Waters Agreement 1927*. Retrieved from : <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/MYS.htm> (on 12 July 2017).

<sup>26</sup>J. Ashley Roach, 2014, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.8.

<sup>27</sup>Those eleven islands and coral reefs in English are: *Aradasier Reef, Dallas Reef, Louisa Reef, Mariveles Reef, Royal Charlotte Reef, Swallow Reef, Erica Reef, Investigator Reef, Commodore Reef, Amboyna Cay and Barque Canada Reef*. Also see: Robert C Beckman and Tara Davenport, *CLCS Submissions and Claims in the South China Sea*, The Second International Workshop the South China Sea: Cooperation for Regional Security and Development, 10-12 Nov 2010, Ho Chi Minh City, Vietnam, page. 13.

<sup>28</sup>Robert C Beckman and Tara Davenport, *CLCS Submissions and Claims in the South China Sea*, The Second International Workshop the South China Sea: Cooperation for Regional Security and Development, 10-12 Nov 2010, Ho Chi Minh City, Vietnam, page. 13.

<sup>29</sup>Mohamed Pauzi bin Abdullah, 2005, *2004 & 2005 Highlight, Marine Research Station Layang-Layang Malaysia, Department of Fisheries Malaysia Ministry of Agriculture and Agro-based Industry* page. 6. Retrieved from: [http://www.fri.gov.my/marsal/penerbitan/hl04\\_05\\_part\\_a.PDF](http://www.fri.gov.my/marsal/penerbitan/hl04_05_part_a.PDF).

<sup>30</sup>J. Ashley Roach, 2014, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.10.

<sup>31</sup>J. Ashley Roach, 2014, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.10.

This island is claimed by Malaysia and also seized by several other countries such as China, Vietnam, Philippines, and Brunei because it is believed to have ample wealth with such its natural resources as fosforus, natural gas, petroleum, and other sea resources. Malaysia government stipulated this island to be a part of Malaysia exclusive economic zone or continental shelf on 20 September 1979.<sup>32</sup> The first monument of Swallow Reef or Lima station was established on June 21, 1980. There were 18 members of the command of the marine force of the sea (PASKAL) are assigned to guard that area in the beginning. The other four coral reefs were guarded by Malaysia navy (TLDM), while the command of PASKAL acts as the offshore station.<sup>33</sup> The result of reclamation of 70.000 cubic of the sand forms a land with 2.5 square kilometer in width. This island also has the 1.367 meter airplane runways that can accommodate the CN-235 and C-130 Hercules planes after its status was raised on July 20 2003. The availability of clean water reaches 57 ton per day gained from the water distilling system.<sup>34</sup> A regiment of Malaysia army architect, Tuan Saifuzie, involved in the establishment of Layang-layang coral around 1981. According to his experience, laying-layang coral is a grassless rocky island which only had rocks composed of coral reefs and sand. After that, there was a massive change that occurred few years later. The trees and grass were grown so that it became a permanent land that consists of two residential areas and a lighthouse.<sup>35</sup> The pictures below illustrate the history of the establishment of TLDM placements in the TerumbuLayang-Layang<sup>36</sup>



**Picture:** Construction of the current platform of low tide on the Layang-Layang Island which has no growing of trees and grass.



Picture: Layang-Layang Island at the beginning of construction

<sup>32</sup>History of Station Lima at Swallow Reef (Layang-Layang coral), <http://konflikdanmiliter.blogspot.co.id/2014/09/history-of-station-lima-at-swallow-reef.html> (on, 12 Julai 2017).

<sup>33</sup>History of Station Lima at Swallow Reef (Layang-LayangCaral), <http://konflikdanmiliter.blogspot.co.id/2014/09/history-of-station-lima-at-swallow-reef.html> (oni, 12 July 2017).

<sup>34</sup>History of Station Lima at Swallow Reef (Layang-Layang coral), <http://konflikdanmiliter.blogspot.co.id/2014/09/history-of-station-lima-at-swallow-reef.html>(retrieved, 12 July 2017).

<sup>35</sup>Tuan Saifuzie, *The history of LayangLayang Coral-Swallow Reef*, <http://tsaifuzie.blogspot.co.id/2013/12/kisah-pulau-terumbu-layang-layang.html> (retrieved, 2 June 2017).

<sup>36</sup>Tuan Saifuzie, *The history of LayangLayang Coral-Swallow Reef*, <http://tsaifuzie.blogspot.co.id/2013/12/kisah-pulau-terumbu-layang-layang.html> (retrieved, 2 June 2017).



Picture: Layang-Layang Island now

#### **b. Rocks**

Several rock islands and coral reefs claimed by Malaysia are as follow:

- i. *Erica Reef*. *Erica Reef* lies on the geographical position of 8 ° 6'0 "N 114 ° 8'37" E located in 24 km northeast of Mariveles reef. Erica Reef is one of the small coral reef. It wholly turns dry when the sea water recedes. Some of the coral reefs can be seen in the east when the water recedes, yet there is no clear border line there. Erica Reef is also claimed by China, Taiwan, Philippines, and Vietnam.<sup>37</sup>
- ii. *Investigator Shoal*, or also called by Peninjau reef. Geographically, it is located in 8 ° 6'51 "N 114 ° 42'7" E with the distance of 130 mil northwest from negeri Sabah. This peninjau reef appears to the surface when the water recedes. Some of the biggest reef in the west might be visible during tide water. Peninjau coral is also claimed by China, Taiwan, Philippines, and Vietnam.<sup>38</sup>
- iii. *Mariveles Reef* in the Malay language is also called Montanani reef. Geographically, Montanani reef is situated in 7 ° 59'38 "N 113 ° 53'42" E with the distance of 170 mil from Negeri Sabah and 59 km from Layang-Layang Island to the North. Montanani reef is dry over the tide water and it is the small coral reef with solely 1.5 and 2 meter in height. Several Malaysia armies were ever tasked in that area which has been occupied since 1986. This island is also claimed by China, Taiwan, Philippines, and Vietnam.<sup>39</sup>

#### **c. Low-Tide Elevations**

- i. *Ardasier Reef*, also called PematangUbi in Malay, lies on 7 ° 37'19 "N 113 ° 51'39" E with a distance of approximately 140 mil from the northwest of Sabah. PematangUbi is naturally situated on the water surface only during the receding water. This coral has a triangle shape located in 26 km in the north of the northeast of Layang-Layang Island. PematangUbi is also claimed by China, Taiwan, Philippines, and Vietnam.<sup>40</sup>
- ii. *Commodore Reef / Rizal Reef* is also called Laksamana reef in Malay, while Philippines calls it as Rizal reef. Laksamana reef lies on 8° 22'32 "N 115° 13'10" E and is located in 118 mil from the northwest of Balambangan Island,<sup>41</sup> East Malaysia. Some parts of this reef appear on the water surface during tide water. Claimed by Malaysia, this reef is also claimed by Philippines after Malaysia released a map in 1979 that claims this reef as a part of Malaysia continental shelf.<sup>42</sup>
- iii. *Amboyna Cay* is also called small island of Amboyna in Malay. This island lies 7°53'45"N 112°55'2" with the distance of 205 mil from the northwest of negeri Sabah. This island has 1.6 hectare in width, making it as the 13rd biggest island in the Spratly islands and the 6<sup>th</sup> biggest island in Vietnam. This island is also claimed by China, Taiwan, Philippines, and Malaysia.<sup>43</sup>

<sup>37</sup><http://wikimapia.org/9641170/Erica-Reef-Malaysia>(retrieved on, 12 July 2017).

<sup>38</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, page. 53-57. Also see: J. Ashley Roach, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11.

<sup>39</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, page. 53-57. Also see: J. Ashley Roach *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11.

<sup>40</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, page. 53-57. Also see: J. Ashley Roach, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11.

<sup>41</sup> J. Ashley Roach, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11

<sup>42</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, page. 53-57.

<sup>43</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, page. 53-57. Also see: J. Ashley Roach, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11.

- iv. Barque Canada Reef is also called as Mascado reef in Malay. This island lies on 8°10'33"N 113°15'45"E with the distance of approximately 205 mil from the northwest of Negeri Sabah. Most of the reefs appear on the water surface during receding water. This Mascado has approximately 4.5 meter in height and thus remains visible during high tide. Mascado has also been claimed by Vietnam since 1987.<sup>44</sup>

**d. Submerged features**

- i. *James Shoal* is also called by Beting Serupai in Malay. This coral reef lies in 03°58'26"N 112°20'56"E. BetingSerupai is a group of coral reefs in the South China Sea with 22 meter in depth. However, BetingSerupai is located in the southern-most claimed by China. China navy ever visited this place several times in May, 1983, 1994, and on March 26, 2013. BetingSerupai is located in 60 mil from northwest of Bintulu, Continental Shelf of NegeriSerawak, Malaysia, approximately 1.800 km from China. Geographically, it lies in the south of Spratly islands.<sup>45</sup>
- ii. North Luconia Shoals and South Luconia Shoals. North Luconia Shoals is in Malay also called as GugusanBeting Raja Jarum. Meanwhile, South Luconia Shoals is also called GugusanBetingPetinggi Ali. These two terminologies are at times known as LuconiaTerumbu, one of the biggest reefs and very popular in the South China Sea. This reef lies approximately 100 kilometer in the offshore of the Serawak beach, Kalimantan, and southwest and it is a group of coral reef lying in the southern-most of Spratly islands. Both of these reefs currently submerge in the depth of 5 to 40 meter from the ocean surface. There are a lot of oil resources in the ocean floor of this area and numerous fish such as Pari Kola, Wrasse, and grouper. North Luconia Shoals and South Luconia Shoals have been claimed by China, Taiwan dan Malaysia. Malaysia has also established oil exploration station in both of these reefs.<sup>46</sup>

There is no any document that states the number of islands in the Spratly Islands that fulfill the criteria of an island or an area naturally formed, surrounded by water above the water surface during receding water. Some of the requirement can be seen in the article 121 UNCLOS 1982, namely a plot of land naturally formed, surrounded by water and appearing on the sea surface during water tide. However, UNCLOS 1982 does not explain how wide a plot of land is surrounded by water and appearing on the water surface during water tide so that it can be regarded as an island. In the other words, there is not any explanation regarding the width of an island. If the article 121 (1) UNCLOS 1982 regulates that an island is a land area naturally formed, surrounded by water and appearing on the water surface during water tide, it should have perpetuated the human's life, namely to provide the water resources and economy, so that it can be classified as a naturally formed island. However, this regulation has been received by international society

*Artificial island* refers to a landfill structure that is established by putting the materials such as gravel, sand, and stones. Meanwhile, an artificial installment uses a pipe and pole installed reaching to the bottom of ocean.<sup>47</sup> Artificial islands is used to develop economy, exploration, and exploitation of the natural resources, fishing industry. Such artificial installment is also used for communication and transportation, such as floating dock, warehouse, floating plane runaways, scientific research, and weather broadcasting.<sup>48</sup>

This might be a cause why there is no regulation concerning artificial island in the UNCLOS 1982. However, on the other side, this problem will complicate the issue regarding the legal position of artificial islands. Although UNCLOS 1982 does not set a clear regulation regarding the artificial islands, there are some regulations that can be used. As has been stipulated in the article 56 (1b) UNCLOS 1982, if a country close to artificial islands involves, coastal state has a right to develop artificial islands and establish their territorial sea. In the exclusive economic zone, coastal state has an exclusive right to develop and give an authority as well as maintain the development and utility toward such artificial islands.

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<sup>44</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, hlm. 53-57. Also See: J. Ashley Roach, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11.

<sup>45</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, hlm. 53-57. Also See: J. Ashley Roach, *Malaysia and Brunei: An Analysis of their Claims in the South China Sea*, page.11.

<sup>46</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, page. 53-57. Also see [http://www.ask.com/wiki/Luconia\\_Shoals?o=2801&qsrc=999&ad=doubleDown&an=apn&ap=ask.com](http://www.ask.com/wiki/Luconia_Shoals?o=2801&qsrc=999&ad=doubleDown&an=apn&ap=ask.com)

<sup>47</sup> Zou Keyuan, *The Impact of Artificial Islands on Territorial Disputes Over The Spratly Islands*. (dapat dilayari dalam: <http://nghiencuubiendong.vn/en/conferences-and-seminars-/second-international-workshop/597-the-impact-of-artificial-islands-on-territorial-disputes-over-the-spratly-islands-by-zou-keyuan>).

<sup>48</sup> Zou Keyuan, *The Impact of Artificial Islands on Territorial Disputes Over The Spratly Islands*. (dapat dilayari dalam: <http://nghiencuubiendong.vn/en/conferences-and-seminars-/second-international-workshop/597-the-impact-of-artificial-islands-on-territorial-disputes-over-the-spratly-islands-by-zou-keyuan>).

As has been stipulated in the article 56 UNCLOS 1982, coastal state has several rights in the exclusive economic zone, namely:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

Besides, in the article 60 UNCLOS 1982, it has also regulated that in the exclusive economic zone, coastal state has an exclusive sovereignty towards other islands, installation, and structure, including the sovereignty related to tax duty, fiscal, health, safety, law, and immigration laws.<sup>49</sup> Coastal state can also determine safety zone around artificial island to ensure either the sailing safety or such artificial island safety.<sup>50</sup> The foremost problem in this article is that artificial island together with its installation and building does not have the status such as a naturally formed island. Artificial island along with its installation and building does not have its own territorial sea and does not influence the determination of the territorial sea border, exclusive economic zone or continental shelf.<sup>51</sup> In principle, a domestic law of a country needs to have the regulation regarding the artificial island. The act of economic exclusive zone 1984 (Act 311) also has a regulation concerning artificial islands, such as the regulation pertaining to the ban of installment, control, or the use of artificial islands and others, except all conducted according to the existing law.

Malaysia's Regulation, Part VI act of exclusive economic zone 1984 regulates that:

- i. Nobody is allowed to develop, control, or use of artificial island, installment or structure in the exclusive economic zone or continental shelf except with the government permission and compliance with the existing requirement.
- ii. The government should have an exclusive authority toward an artificial island, installment, and structure in exclusive economic zone and continental shelf, including the authority on tax duty, health, safety, and immigration laws.
- iii. The government is allowed, if necessary, to form a reasonable safety zone around the artificial island together with its installment and structure as measurements to ensure the safety of both sailing and artificial islands along with its installment and building. The safety zone should be set by government by using international standard. An appropriate reminder should be given to safety zone limit.
- iv. All ships need to respect this safety zone and obey the instruction given by government that is based on international standard recognized by public regarding the sailing in the artificial island along with its installment, structure, and safety zone.<sup>52</sup>

Layang-Layang Island in the Spratly Islands claimed by Malaysia has been landfilled by the country. In some references, Layang-Layang Island has some terminologies, such as Swallow Reef. Is the Layang-Layang Island naturally formed or a rock that has been transformed to be an ordinary island or artificial island? The Layang-Layang Island that has been landfilled by Malaysia used to be a rock<sup>53</sup> that cannot sustain human's life and economy, yet after its status was changed, it was deemed able to support human's life completely. This problem is similar to that of Pedra Branca which the majority of the people assumed as an island, whereas actually it is apparently a rock.<sup>54</sup> After Pedra Branca or Batu Puteh Island was owned by Singapore, a new problem regarding the treaty between Malaysia and Singapore appeared.

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<sup>49</sup>Article 60 (2) UNCLOS 1982.

<sup>50</sup>Article 60 (4) UNCLOS 1982.

<sup>51</sup>Article 60 UNCLOS 1982.

<sup>52</sup>Malaysia Constitution, Act 311 Act of Exclusive economy zone 1984, retrieved from <http://www.agc.gov.my/Akta/Vol.%207/Akta%20311%20%20Akta%20Zon%20Ekonomi%20Eksklusif%201984.Pdf>.

<sup>53</sup> Tuan Saifuzie, *The history of Layang-Layang reefs-Swallow Reef*, <http://tsaifuzie.blogspot.co.id/2013/12/kisah-pulau-terumbu-layang-layang.html> (retrieved on , 2 June 2017).

<sup>54</sup>In Kespedra Branca or Batu Puteh Island between Malaysia vs. Singapura, which finally makes that island owned by Singapore. Then, a new problem appeared, namely a lot of works that still needed to be done between Malaysia dan Singapura, especially on maritime sempadan, because Pedra Branca is believed as an island that cannot sustain human's life and economy. *Pedra Branca: A rock, not an island*, the sun daily, 28 May 2008, <http://www.thesundaily.my/node/165899>, retrieved on , 28 February, 2016.



According to Gidel,<sup>55</sup> an artificial island can be regarded as an ordinary island provided that they can satisfy the following requirement: that island is surrounded by water; the land appears above the water surface despite tidewater; natural state can be formulated to sustain the human's life and economy. Apart from that, artificial island can be changed from natural formulation with human's intervention.<sup>56</sup> Other definition of an island can be found in UNCLOS 1982, stating that an island is a land that is formed naturally and surrounded by water, appearing above water surface even during tidewater.<sup>57</sup> Thus, natural island is clearly different from rock, even an island whose status is changed from rock to an ordinary island.

There is no an international law either in UNCLOS 1982 that regulates the merging of regulation between an ordinary island and artificial island. However, Layang-Layang Island is still located in the exclusive economic zone and Malaysia continental Shelf. According to the regulation of exclusive economic zone and continental shelf, Malaysia has a right to develop and manage the islands along with their installment and building as well as to protect them. Although the article 80 UNCLOS 1982 regarding artificial island, its installment, and building in the continental shelf has implemented the principle of *mutatis mutandis* for artificial island, the installment and development of artificial island in the continental island is still regarded relevant because each coastal state has a right in the exclusive economic zone and continental shelf.

A coastal state has two categories of sovereignty, namely: Sovereignty rights and Sovereign rights<sup>58</sup> as has been stated in the UNCLOS 1982. Sovereignty rights is a full right guaranteed for a coastal state. It is usually found in the territorial sea similar to the land. Meanwhile sovereign rights is a limited right given to a coastal state that is applicable in the outside of territorial sea such as contiguous zone, exclusive economic zone, and continental shelf.<sup>59</sup> However, besides the coastal state, other countries also have rights in the exclusive economic zone and continental shelf. That regulation has been stipulated in the article 2, 34, 47, and 49 UNCLOS 1982. The country sovereignty holds the highest power to conduct various actions either in their own country or in their sovereign area based on its own existing law and international law.<sup>60</sup> The country sovereignty includes protecting its territory and interest and controlling all activities in that area. Therefore, the country sovereignty means having a right and authority to determine and conduct their own laws.

## V. CONCLUSION

UNCLOS 1982 does not explain to what extent a land which is surrounded by water and appears above the water surface during tidewater can be regarded as an island. Also, UNCLOS 1982 does not outline how wide an island is to fulfill an article 121 KUALA 1982. However, there are some regulations that can be used by countries. UNCLOS 1982 gives the authority to coastal state to develop artificial island, including in exclusive economic zone as well as to control the development and the use of such artificial island.

Malaysia is one of the countries that involve in the conflict over Spratly islands. Malaysia has claimed some islands and reefs in the Spratly islands, including Layang-Layang Island that is still located in Malaysia continental shelf. Layang-Layang Island which would be a rock that could not support the human's life and economic has been landfilled by Malaysia. Layang-Layang Island has upgraded its status from a rock to an ordinary island that can now sustain the human's life and economy completely. This problem is nearly similar to the case of Pedra Branca or Batu Puteh Island.

There is no a legal regulation in the international constitution or in UNCLOS 1982 that regulates the merging of the regulation regarding the right and responsibility between ordinary island and artificial island, or an island whose status is upgraded from rock to an ordinary island. However, Malaysia has a right to develop and manage the islands, installment, and building within its own continental shelf.

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<sup>55</sup>Gidel, *Le Droit International Public de la Mer*, Vol. III, Paris, 1934, 684. In: Zou Keyuan, *The Impact of Artificial Islands on Territorial Disputes Over The Spratly Islands*. (retrieved from: <http://nghiencubiendong.vn/en/conferences-and-seminars-/second-international-workshop/597-the-impact-of-artificial-islands-on-territorial-disputes-over-the-spratly-islands-by-zou-keyuan>).

<sup>56</sup>Gidel, *Le Droit International Public de la Mer*, Vol. III, Paris, 1934, 684. In: Zou Keyuan, *The Impact of Artificial Islands on Territorial Disputes Over The Spratly Islands*. (retrieved from: <http://nghiencubiendong.vn/en/conferences-and-seminars-/second-international-workshop/597-the-impact-of-artificial-islands-on-territorial-disputes-over-the-spratly-islands-by-zou-keyuan>).

<sup>57</sup>Article 121 (1) UNCLOS 1982.

<sup>58</sup>Mohd Nizam Basiron dan Amir Dastan, *Building a Comprehensive Security Environment in the Straits of Malacca*, Proceedings of the MIMA International Conference on the Straits of Malacca, 11-13 October, 2004, Kuala Lumpur, page. 80.

<sup>59</sup>I Made Andi Arsana, *Ambalat, Ketika Nasionalisme Diuji*, Harian Kompas, 4 June 2009, Jakarta, page. 2.

<sup>60</sup>I Made Andi Arsana, *Ambalat, Ketika Nasionalisme Diuji*, page. 2.

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