

INTISARI

Dekonstruksi Prinsip *Equitable Solution* dalam Penerapan Metode *Three-Stage Approach* (TSA): Unifikasi pasca Delimitasi Batas Maritim di Samudra Hindia (Somalia/Kenya)

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Penulisan hukum ini bertujuan untuk memberikan preskripsi sekaligus penjelasan yang komprehensif mengenai: i) perkembangan *interpretasi equitable solution* dalam Pasal 74 (1) dan 83 (1) UNCLOS 1982 khususnya dalam konteks metode delimitasi batas ZEE dan LK; ii) kesesuaian penggunaan metode *three-stage approach* dalam praktik khususnya merujuk dalam perkembangan terakhirnya di kasus Somalia/Kenya; dan iii) implikasi penggunaan metode *three-stage approach* pasca Somalia/Kenya terhadap perkembangan metode delimitasi batas ZEE dan LK. Penelitian hukum ini dapat dikategorikan sebagai penelitian hukum dengan metode normatif. Sebagai hasil dari penelitian ini, penulis menemukan bahwa *equitable solution* merupakan frasa hukum yang memiliki fungsi *corrective* sebagai wujud pengaturan yang mengutamakan keseimbangan antara *predictability* dan *fleksibility*. Dalam perkembangannya, interpretasi pasal *a quo* dibebankan pada aplikasi *case by case* baik itu praktik negosiasi antar negara maupun penyelesaian pihak ketiga dimana dalam konteks penyelesaian melalui pihak ketiga (khususnya ICJ, ITLOS, dan PCA) terjadi unifikasi pemaknaan *equitable solution* berupa pendekatan berbasis *corrective-equity*. Dalam level implementasi, *corrective-equity* dimaknai sebagai pendekatan *two-stage approach* (*equidistant-relevant circumstances*) yang kemudian berevolusi menjadi *three-stages approach*/TSA (*equidistant-relevant circumstances-proportionality*). Dalam kasus Somalia/Kenya, metode TSA mengulang tahapan dalam putusan-putusan sebelumnya yang terdiri dari 3 (tiga) tahapan yakni: i) pembentukan garis *equidistant*, ii) dilanjutkan dengan tinjauan mengenai urgensi penyesuaian garis *a quo* (*relevant circumstances*), dan iii) kemudian dilanjutkan dengan uji *disproporsionalitas*. Meskipun masih ditemukan beberapa kelemahan, secara implisit implikasi pasca Somalia/Kenya membuktikan afirmasinya bahwa prinsip-prinsip dalam metode TSA merupakan prinsip yang diterima baik sebagai hukum *preceden* putusan pengadilan internasional. Namun demikian, penegasan status hukum tetap perlu dilakukan baik menegaskan posisinya sebagai kebiasaan internasional atau berupa *implementing agreement* UNCLOS 1982 guna optimalisasi adopsi metode TSA dalam delimitasi ZEE dan LK.

Kata Kunci: *equitable solution*, *three-stage approach* (TSA), *corrective equity*, *equidistant*, dan UNCLOS 1982.

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ABSTRACT

Deconstruction of the Equitable Solution Principle in the Application of the Three-Stage Approach (TSA): Towards a Unified Approach after Maritime Delimitation in the Indian Ocean (Somalia/Kenya)

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This research aims to provide a prescription and comprehensive explanation regarding: i) the development of an equitable solution interpretation in Articles 74 (1) and 83 (1) of UNCLOS 1982, especially in the context of the EEZ and CS boundary delimitation method; ii) a three-stage approach in practice in particular referring to recent developments in the case of Somalia/Kenya; and iii) implication of the three-stage approach in Somali/Kenya to the development of the EEZ and CS boundary delimitation method. This legal research utilized a normative research methodology. As a result of this study, the authors found that equitable solution is a legal phrase that has a corrective function as a form of regulation that combines predictability and flexibility. In its development, the interpretation of the article is imposed on case by case applications. Crystallized by the practice of negotiations between countries and the third party settlement (especially ICJ, ITLOS, and PCA) the unification of the meaning of an equitable solution is in the form of an corrective-equity approach. In level implementation, corrective-equity is defined as a two-stage approach (equidistant-relevant circumstances) which was later revolutionized into a three-stages approach/TSA (equidistant-relevant circumstances-proportionality). In the case of Somalia/Kenya, the TSA method repeats the steps in previous decisions which consists of 3 (three) stages, namely: i) establishment of an equal distance line, ii) followed by regarding the urgency of adjusting the a quo line (relevant circumstances), and iii) then proceed with the disproportionality test. Although there are still some legal gaps implicitly after Somalia/Kenya was found to prove its affirmation that the principles in the TSA method are principles that are well accepted as legal precedents for international court decisions. However, it is still necessary to confirm the legal status, whether placed as an international custom or in the form of implementing the 1982 UNCLOS agreement in order to optimize the adoption of the TSA method in EEZ and CS delimitation.

Keywords: *equitable solution, three-stage approach (TSA), corrective equity, equidistant, and UNCLOS 1982.*

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