



LAW DEVELOPMENT DIVISION
2022-2023



LEGAL ESSAY

Volume 05 No. 11

The Role of United Nations Convention on The Law of The Sea (UNCLOS) To Help Solve The Problem Between Indonesia and China Regarding The Natuna Sea

Author:

1. Effie Maria Lamtiur Sipahutar

Reviewed by: Made Maharta Yasa, S.H., M.H.

The Role of United Nations Convention on The Law of The Sea (UNCLOS) To Help Solve The Problem Between Indonesia and China Regarding The Natuna Sea

Effie Maria Lamtiur Sipahutar

Universitas Udayana

I. Introduction

The Natuna Island has major potential for development. This island is loaded of marine fish and natural gas resources. With an area of land and sea reaching 264,198.37 km² with a land area of 2.001.30 km² and sea area of 262.197.07 km². Geographically, the Natuna Sea is located in the middle of Asia Pacific and Southeast Asian countries. The territorial boundaries of Natuna Island surrounded by Vietnam and Cambodia in the north, East Malaysia (Sarawak) and Kalimantan in the east, Bintan Regency in the south, and Peninsular Malaysia and Anambas Islands in the west. The Natuna Island is on the strategic route for international cruise ships. In 2017, the potential of Natuna's marine fish was 767,126 tons.

On May 18, 1956, the Indonesian government officially registered the Natuna Island at the United Nations (UN) as sovereign territory. However, in 1957 the Natuna Island was included in the territory of the Kingdom of Pattani and the Kingdom of Johor in Malaysia. In the 19th century, the Natuna Island included the control of the Riau Sovereignty and became the territory of the Riau Sultanate. After Indonesia's independence, representatives from Riau handed over sovereignty to Indonesia. At that time, the majority of the population of the Natuna Island were Malays ethnic around 85%, Javanese around 6.34%, and Chinese ethnic around 2.52%. In the 20th century, Natuna Island was mostly inhabited by Chinese citizens, but after being officially controlled by Indonesia, the island was predominantly inhabited by Malays and Javanese.

In 2009, China unilaterally created the Nine Dash Line. The Nine Dash Line is an area of 2,000,000 km² in the South China Sea, which 90% is claimed by China as it is maritime rights. The Nine Dash Line stretches for 2.000 km from China mainland to several hundreds of kilometers from the Philippines, Malaysia and Vietnam. China including the Natuna region on their territorial map based on The Nine Dash Line. However, from this Nine Dash Line, Indonesia does not recognize it because according to Indonesia it does not have any international

legal basis.¹ The emergence of this Nine Dash Line was not created by the current Chinese government. The Nine Dash Line has existed since 1947 when the Kuomintang Government came to control China, which was claimed a territorial area almost the entire South China Sea area. Kuomintang politics dictated that China's territory constituted 90% of the South China Sea.² On this issue, China often uses the Nine Dash Line as the basis for its ownership claims over the Natuna Sea.

Indonesia as an archipelagic country has certain boundary on their territory. This thing makes Indonesia difficult to control border areas, especially in the border areas of islands that are directly adjacent to other countries. One source of problems between adjacent or bordering countries is the status of the territory and the ambiguity of state boundaries. The conflict between Indonesia and China began when China demanded that Indonesia stop drilling for oil and natural gas because it claimed the territory belonged to it. On this issue, China often uses the Nine Dash Line as the basis for its ownership claims over the Natuna Sea. Indonesia is one of the part that be injured because of China's action to draw a new Nine Dash Line in the Natuna Island. However, the Indonesian government has emphasized that it will never recognize the Nine Dash Line because it has no legal reasons recognized by international law. Especially The United Nations Convention on The Law of The Sea.

Based on the background above, there are several problem formulations, namely Is it true that the North Natuna Sea is included in China's Exclusive Economic Zone? What is the role of UNCLOS in resolving disputes between Indonesia and China? What are Indonesia's efforts to protect the North Natuna Sea region?

II. Content

United Nations Convention on The Law of The Sea Part V, Article 55
regarding the Special Legal Regime of the Exclusive Economic Zone (EEZ)

¹ Subagyo, P. Joko "Hukum Laut Indonesia", (2005), page 76-90

² Hasibuan, Rosmi, "Kaitan Permasalahan Hukum Zona Ekonomi Eksklusif (ZEE) dan LintasKontinen Dalam Konvensi Hukum Laut, (1982), page 66

explains that the Exclusive Economic Zone is an area outside and adapted to the territorial sea, subject to a special legal regime established in in this area where the jurisdictional rights of the coastal state and the rights and liberties of other countries are regulated by relevant provisions. The EEZ boundary is a state boundary drawn along 200 miles from the baseline (coastline) towards the high seas or the open sea during low tide. The width of the EEZ for each coastal state is not more than 200 miles as stated in Article 57 UNCLOS 1982 which reads "The Exclusive Economic Zone may not exceed 200 nautical miles from the baseline from which the width of the territorial sea is measured." With right holders of EEZ, a country has the right to use it is legal policies, to fly over it, and have freedom of navigation.

United Nations Convention on the Law of the Sea (UNCLOS 1982) classify the sea into three parts. First, the sea which is part of the sovereign territory of a country (territorial sea and inland sea). Second, the sea is not a sovereign territory of a country but that country has a number of rights and jurisdiction over certain activities (additional zone and EEZ). Third, the sea is not a sovereign territory and is not the right/jurisdiction of any country, namely the high seas. In Law Number 5 of 1983 concerning Indonesian EEZ Chapter II Article 2, it states that EEZ is a route outside the border and is directly adjacent to Indonesian territory. Therefore, Indonesia has the right to carry out all forms of exploration, exploitation, conservation and management of natural resources.

The event that brought this issue to the surface was when China asked Indonesia to stop drilling for oil and natural gas in the maritime area of the South China Sea which China claims it is their own. According to China, the Natuna Sea is included in The Nine Dash Line area. However, the claims made by China do not have a solid basis. This proves that The Nine Dash Line is a unilateral claim by China over the sovereignty and control of an area including land, water and seabed. There was never any explanation of the actual purpose of the lines in the strategic context of the Chinese side. Some experts say, that The Nine Dash Line cannot be legalized as a territorial border because it is not in accordance with international law which says that territorial borders must be stable and well

defined.³ The United Nations Convention on the Law of the Sea contained in UNCLOS 1982 clearly stipulates that the Natuna Sea is in Indonesia's Exclusive Economic Zone. Therefore, in 2017 Indonesia changed the name of the South China Sea to the North Natuna Sea. China's claim to the Natuna Sea has no legal reasons recognized by international law, namely the United Nations Convention on the Law of the Sea or UNCLOS. In UNCLOS, the EEZ boundaries of each country have been determined in relation to exploitation rights and other policies in their territorial sea in accordance with international law of the sea. This proves that the North Natuna Sea is not included in China's Exclusive Economic Zone, this is clearly proven by the UNCLOS 1982 decision that Natuna Sea is included in Indonesia's EEZ. With the creation of this decision, Indonesia has the right to rule over economic wealth in the region, namely as Catching fish, Mining, Exploring oil, Implement its legal policies, Navigate, Fly over it, and Embedding cable pipes.

In resolving the conflict in the Natuna Sea, the Indonesian government has adequate conflict resolution instruments. Actually, Indonesia is in a strong position compared to China. This dispute was resolved peacefully in which the two countries agreed to prioritize diplomacy. The Declaration on The Conduct of Parties in the South China Sea was created in 2002 as one of the implementations to build mutual trust, increase cooperation and maintain peace and stability in the Natuna Sea. To resolve a dispute by a country, there are efforts that can be taken, the solutions include:

- a. Settlement litigation is a settlement in a court by directly confronting the two parties to the dispute. Which each has the opportunity to submit a lawsuit and rebuttal.
- b. Non-litigation is a settlement in a court which is often referred to as alternative dispute resolution.⁴

The Indonesian legal basis which is the observer of this matter, is as follows:

³ Tampi, Butje, 'Konflik Kepulauan Natuna antara Indonesia dengan China (Suatu Kajian Yuridis)' (2017), 23 Jurnal Hukum Unsrat

⁴ Jurnal Hukum and others, 'Penyelesaian Sengketa di Laut Natuna Utara' (2020), page 69-78

a. Based on UNCLOS 1982

There are regulations governing all kinds of regulations concerning the sovereign territory of Indonesian waters and sea territories. Based on Article 51 paragraph 1 UNCLOS 1982, explains that archipelagic countries must respect existing agreements with other countries and must recognize traditional fishing rights and other legitimate activities of neighboring countries that take place side by side in certain areas within archipelagic waters. Based on Article 73 of UNCLOS Indonesia as a "coastal state" has the right to explore, exploit, conserve and control natural resources in the EEZ area. Indonesia also has the right to carry out actions such as boarding, detention inspections and conducting legal proceedings to enforce fishing laws. In addition, in Article 58 Paragraph 3 of UNCLOS 1982, other countries must respect and implement the rules implemented by Indonesia as a "coastal state". As explained, to use the sea as a staple livelihood that has been going on for decades or hundreds of years. If the traditional territory extends beyond the territory of another country, then there must be an agreement or bilateral agreement from that country beforehand. So that the territory can be used by the traditional fishermen of the region. If there is no bilateral agreement or agreement between the countries, the traditional fishing rights to go to sea in other countries' territories will still be categorized as illegal fishing.

b. Based on the Indonesia's Exclusive Economic Zone Law

Judging from the EEZ Law Number 5 Article 7 of 1983, it explains that anyone who carries out activities in Indonesian territorial waters must obtain approval from the Indonesian government. If Indonesia's EEZ overlaps with EEZ of countries whose coasts are side by side with Indonesia, then the EEZ boundaries of the two countries are determined by agreement between the Republic of Indonesia and the country concerned. From the explanation above, it is explained that China must follow and obey all the rules that apply in the Indonesian government. The actions taken by the Indonesian government have been firm to resolve this problem.

For Indonesia, the Natuna waters have a very important role and

a strategic area. Therefore, it is necessary to make a tempt to prevent the emergence of a dispute. As a United Nations member state, Indonesia should have contributed to creating and guaranteeing international security. To protect the Natuna Sea, the Indonesian government has made various works. One of the example is by increasing the security of the Natuna Sea by adding Tentara Nasional Indonesia (TNI) troops to patrol around the border area.

In addition, the Indonesian government will increase military strength by building a military base in the Natuna area. So, no more Chinese fishing boats enter Natuna waters illegally. This is due to the frequent occurrence of illegal fishing carried out by Chinese fishermen. This is also a clear sign in Law Number 3 of 2022 concerning National Defense that the President stipulates a general national defense policy which is a reference for planning, implementing and supervising the national defense system.

III. Closing

In the conclusion, we can know that the Natuna Island is one of the islands located in strategic international shipping lanes. Therefore, many countries are interested to controlling this island. One of them is China, which claims that the Natuna Sea is part of their maritime territory. This problem is a big step for Indonesia to fight for power over the Natuna Islands because this island has enormous potential for development. China admits that it owns the Natuna Sea area unilaterally by creating The Nine Dash Line. However, The Nine Dash Line cannot be legalized as a territorial border because it is not in accordance with international law which says that territorial borders must be stable and well defined. The decision of The United Nations Convention on The Law of The Sea (UNCLOS 1982) is proof that the Natuna Sea is part of Indonesia's Exclusive Economic Zone (EEZ). In 2017, Indonesia changed the name of the South China Sea to the North Natuna Sea. This dispute was resolved peacefully in which the two countries agreed to prioritize diplomacy. The legal foundations that form the basis of regulations on this issue are the UNCLOS 1982 and the EEZ Law. The attempt made by the Indonesian government in protecting the North Natuna Sea region are increasing the security of the Natuna Sea area. An obvious example is adding Tentara Nasional Indonesia (TNI) troops to patrol around the border area. Border issues have the potential to cause conflict, there is no one of a country is willing to lose their

territory. As an archipelagic country, Indonesia must strictly and precisely be able to secure the boundaries of their territory.

REFERENCE

Journal

Marianus Tefi, 'Tinjauan Hukum Terhadap Pelanggaran Zona Ekonomi Eksklusif Perairan Natuna Oleh Negara Republik Rakyat Tiongkok' (2020)

Butje Tampi, 'Konflik Kepulauan Natuna Antara Indonesia dengan China (Suatu Kajian Yuridis)' (2017), 23 Jurnal Hukum Unsrat.