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CHINA'S CLAIM TO THE TRADITIONAL FISHING GROUND OVER SOUTH CHINA SEA

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Keywords: Exclusive Economic Zone, traditional fishing ground, traditional fishing right.

ABSTRACT:

Introduction: The phenomenon of Chinese fishermen who arrested by Indonesian Maritime and Fisheries Ministry patrol boat in Natuna waters, Riau Islands becomes a major topic. On the one hand, the People's Republic of China must set aside its unique intention to dominate much of the South China Sea as a traditional fishing ground, even though the area used as a fishing ground is an Exclusive Economic Zone (EEZ) of Indonesia. **Objectives:** The aim of this study is to explain the determination of the EEZ boundaries in accordance with the rights and obligations of a country facing or coincide, and explain the traditional claims of fishing ground by China against the South China Sea. **Methods:** The method used in this research is qualitative. The data is taken from the perspective of normative law research with a statutory and conceptual approach. **Results:** The results of the study revealed that the rights and obligations of the countries owning the Exclusive Economic Zone while the traditional fishing ground claims against the South China Sea, including a part of the Natuna island from the perspective of international maritime law, in this case the United Nations Convention On The Law Of The Sea 1982, cannot be justified. Apart from the fact that there is no traditional fishing ground in UNCLO 1982, fishing in the waters of the Exclusive Economic Zone of a country must be based on the permission of the owner of the Exclusive Economic Zone. **Conclusion:** China's claim to the traditional fishing ground over South China sea is valued by the rights and obligations of the state that owns the EEZ does not have an international sea law basis, namely traditional fishing right.

Keywords: Exclusive Economic Zone, traditional fishing ground, traditional fishing right.

INTRODUCTION

International law is a set of rules and regulations that bind and regulate relations between countries and other legal subjects in international life (Mauna, 2015). International law covers international law which covers land, air and sea. The regulation of a country's sea area is determined based on international sea law (Chotib, Djazuli, Tri Suharno, Suardi Abubakar dan Muchlis Catio., 2007). The control and use of seas by a country must comply with the provisions of international sea law which are regulated in the 1982 United Nations Convention on the Law of the Sea (referred to as UNCLOS 1982). As mentioned in Article 1 paragraph 2 Number 1 UNCLOS 1982:

The maintenance and control of the sea aims to maintain justice for each country and maintain sovereignty and order as stated in the opening of the 1982 UNCLOS paragraphs 4-5 on preamble of the UNCLOS 1982 which states as follows:

“Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment, Bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked.”

Based on this, UNCLOS 1982 was principally structured for purposes together with the development and progress of the country, especially developing countries. UNCLOS 1982 is a reference for efforts to use the sea for the benefit of welfare, such as the Exclusive Economic Zone (EEZ) and continental shelf (Sumarsono, 2006). UNCLOS 1982 provides guidance to countries to maintain the sovereignty of their respective countries and the crime of other countries UNCLOS 1982 more than 150 countries including China and Indonesia.

Indonesia and China are two countries that have been bound by UNCLOS 1982, thus, it must comply with the provisions of UNCLOS 1982. However, it does not always relate to a fully submissive country, one of which is China. China claims nine broken lines that enter the middle of the sea and protrude into Indonesia's EEZ. The claim is based on historical reasons, namely the Traditional Fishing Ground. The term has no international legal basis, but what China uses to claim is the South China Sea. There is no term Traditional Fishing Ground. The term is known and recognized by all countries commonly called Traditional Fishing Right (Estu, 2016).

18 South China Sea stretches from the Southwest to the Northeast, from Singapore to the Taiwan strait, countries whose territories bordering the South China Sea are Malakka, Hong Kong, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, Thailand, Cambodia and Vietnam. In the South China Sea, there are 200 islands and corals that form the Spratly archipelago and are scattered along 810-900 kilometers. In 1947, South China Sea was in conflict. Based on the map of China, the region is part of its territory. China argues that the region is a historical reason, but China claims that the region has been a Chinese territory since the Han Dynasty (206-220 BC). The claim was challenged by its border countries which disputed the Paracel and Spratly islands (Wirasuta, 2013).

Geographically, South China Sea is very strategic for the trade lane or the Sea Line of Trade (SLOT) and the international communication lane that connects the Indian and Pacific oceans. South China Sea is very good in domestic political competition, encompassing the interests of regional sovereignty and regional stability of the Association of South East Asian Nations (ASEAN) (Wirasuta, 2013). Every country is a subject to international sea law, as are Indonesia and China. For Indonesia itself, compliance was proven one of them by endorsing UNCLOS 1982 through Law Number 17 of 1985. Based on this, it must be a guideline in carrying out its maintenance and authority.

21 Problems relating to the sovereignty of a country are the cases between the People's Republic of China (PRC) and the Republic of Indonesia (RI). On March 19, 2016 a patrol boat from the Indonesian Ministry of Maritime Affairs and Fisheries captured a Chinese ship suspected of illegal fishing in Natuna waters, Riau Islands. This caused the relationship between the PRC and the Republic of Indonesia to become problematic. As a result, the PRC Government strongly protested the action taken by the Government of the Republic of Indonesia and assumed that Chinese fishing vessels had caught fish in a traditionally visited by Chinese fishermen and stated that Chinese fishermen committed three violations. First, namely violations of Indonesia's sovereign rights and jurisdiction on EEZ and on the basis of continents. Second, violations of law enforcement efforts by Indonesian authorities in the EEZ region on a continental shelf. and third, violations of Indonesia's territorial sea sovereignty (Supriyanto, 2016). On the one hand, the PRC must set aside its unique intention to dominate much of South China Sea as a traditional fishing ground, even though the area used as a fishing ground is the Exclusive Economic Zone of Indonesia (Marthen Napang, 2019).

3 The EEZ territory belongs to Indonesia, a distance of no more than 200 nautical miles from the base line. However, the PRC Government did not make the Government of Indonesia release the Chinese fishermen, but instead continued to arrest them. The Chinese claim to the South China Sea only uses historical arguments that Chinese control of the islands of Spratly and Paracel (two islands in the South China Sea from 206-220 BC) and archaeological evidence claims the South China Sea is the discovery of a

number of merchandise made in China (Farhana, 2014).¹⁵ Based on the above phenomena, it is important to conduct a more in-depth study related to territorial sea disputes between China and Indonesia from a legal perspective. China claims the territory that belongs to Indonesia on the grounds of the Traditional Fishing Ground, but that reason is not in accordance with international sea law.

LITERATURE REVIEW

Exclusive Economic Zone (EEZ)

The definition of EEZ, according to article 57 of UNCLOS 1982, is the maximum limit provisions related to the width of EEZ as far as 200 nautical miles indicates, that not every coastal country must have EEZ and only coastal countries that have a sea area width of more than 24 miles that are possible to have EEZ, as long as it does not border directly to the coast of another country at a distance of 24 nautical miles (article 3 and article 57 UNCLOS 1982) (R Kurniaty, 2018).

Coastal Country

In article 57, the specified maximum limit is in width EEZ and 2200 nautical miles. Coastal sovereign rights limit with a maximum of 200 miles from the coast. The limit of the sovereign rights of this coastal state can be used as a reference for the coastal states to determine the sovereign rights of the EEZ region.

Traditional Fishing Ground According to International Sea Law

Traditional fishing rights or traditional fishing rights received recognition as stipulated in article 47 paragraph 6 of UNCLOS 1982, explains that the rights exercised traditionally in the recognition of traditional fisheries rights are contained in an agreement in Article 51 paragraph 1 of UNCLOS 1982:

“Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals”

Based on these provisions, UNCLOS 1982 was familiar with the term Fishing right and did not recognize the term traditional fishing ground.

Characteristics of Traditional Fishing Right

The fulfillment of traditional characteristics does not necessarily mean that a country is free to fish in a country based on the agreement of the two countries, namely the bilateral agreement concerned with traditional fisheries rights. To the countries which do not cooperate with bilateral agreements are not allowed to catch fishes even though they have traditional fishing territories. Therefore, eight Chinese fishermen entering Indonesian

archipelagic waters were captured in Natuna Island waters by Indonesian coast guards, as stated by the Indonesian government through the Minister of Maritime Affairs and Fisheries that Indonesia only has traditional fishing rights agreements with Malaysia. Consequently, China's term to claim the territorial waters of Indonesia uses the term traditional fishing ground is not well known in international sea law.

Difference between the Nine Dash Line and the Traditional Fishing Right's Boundary

Nine-dash line is nine dotted lines in the shape of the letter U. Nine-dash line is used by China on its official map to display 90 percent of the South China Sea. In the Nine-dash line, there are the Spratly and Paracel islands which are still in Vietnam and Scarborough Reef in the Philippine territory and also the Natuna Sea which is the Exclusive Indonesian Economic Zone (Forum, 2015).

METHODS

The research method used is qualitative. Data was taken from the perspective of normative normative law research with a statutory approach and a conceptual approach. Normative legal research focuses on an inventory of positive law, legal discovery in concreto cases, principles and doctrines of law, systematic law, comparative law, the extent of synchronization, and the history of law. (Muhammad, 2004).

Legal Material Sources

Secondary legal material sources are all legal publications which are not categorized as documents. Intended as doctrines in books, the internet and legal journals. Secondary legal material, namely law material that is not binding but explains the primary law, is the result of processed thoughts or opinions from experts or experts who study a particular field will provide guidance to researchers.

Legal Material Collection Technique

The technique of gathering legal material in this study was carried out by using a documentary method. The documents referred to in this study are all legal materials both primary legal materials and secondary legal materials.

Legal Material Processing Technique

Legal material that has been collected through a documentary method was then processed. Processing of legal materials was done by conducting in-depth studies.

Legal Material Analysis

Various steps in the analysis of legal materials can be used in research, namely searching for legal rules, classification and systematic of all legal materials in order to make it harmonious with the issues discussed. Moreover, legal materials were analyzed using the inductive-qualitative method.

RESULT

6

Rights and Obligations of the State in EEZ Under International Law

Rights and Obligations of the State in EEZ is a State that has an exclusive economic zone has sovereign rights to explore and exploit, manage and conserve biological and non-biological natural resources from the seabed and the land beneath it and the water on it and other activities for the exploration and exploitation of economic zones e.g. power plants from water, currents, and wind.

Jurisdiction, according to the *Kamus Besar Bahasa Indonesia (KBBI)*, is the power to adjudicate the rights of obligations and responsibilities in a particular area (<http://badanbahasa.kemdikbud.go.id/kbbi/index.php>). Based on this, each country has jurisdiction over its territory, whether sea, land or air. According to International Law, Jurisdiction is the authority of a country to regulate or influence with an act that is legislative, executive, or judicial on individual rights, property rights, or assets, behavior or events that are not only domestic problems, but also become problems abroad (Sutartoyo, 2015).

Territorial Sea of States

The determination of the EEZ of a country is not only based on the willingness and claims of a country alone related to disturbance of peace between countries. The determination of EEZ in article 57 of UNCLOS 1982 is confronted, so the first step is the determination of territorial sea boundaries as explained in article 15 of UNCLOS 1982:

“Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.”

Based on the provisions in UNCLOS 1982 which states that the determination of the EEZ should not exceed 200 miles from the measured territorial sea base. Meanwhile, the determination of EEZ for countries that have a coastline facing each other is with the approval of the country concerned under the principles of International Law.

Adjacent States

Countries in the world have certain territorial boundaries. In the context of Indonesia, the territory is bordered by nine neighboring countries, namely India, Thailand, Malaysia, Philippines, Palau, PNG, Australia, Timor Leste, and Vietnam (Sulistiyanto, 2011). Then, the determination of the boundary of the sea area that faces between countries is adjoining or side by side using the median line principle and equidistant principle. Secondly, the determination of the EEZ between countries that face and side by side must be based on

equitable principle of justice through international legal mechanisms. Next, the third determination of the boundary line of continental shelf can be done by making agreements with interested coastal countries based on the midline method and applying the same distance and determination by using other methods that are justified based on special circumstances. According to Articles 5, 6, and 8 of Law No. 43 of 2008 regulates that the management of territorial borders including bordering or side by side countries is based on bilateral and trilateral agreements.

DISCUSSION

China's Traditional Fishing Ground Claims against South China Sea in accordance with International Sea Law Provisions

Indonesia's Action against China's Claim on EEZ in South China Sea Region

The Chinese government responded to the incident by stating that Chinese fishermen should not have been caught by the CTF, because they were fishing in the Traditional Grounds of China (Traditional Fishing Zone). Even though the concept of Traditional Fishing Grounds is unknown in UNCLOS 1982, it is where China and Indonesia are member countries. In the Convention, the familiar concept is Traditional Fishing Rights (not Grounds) as stipulated in Article 51 of UNCLOS 1982. Under the provisions of Article 51, the existence of Traditional Fishing Rights must be based on bilateral agreements. Until now, Indonesia only has bilateral agreements related to Traditional Fishing Rights with Australia.

China and Indonesia's Territorial Boundaries

Territorially, the territory of China does not cover the entire sea, because there are only 200 islands and corals that form the *Spartly* archipelago from 810 to 900 kilometers (Wirasuta, 2013). Meanwhile, Indonesia is an archipelagic country which has the second longest beach in the world with a coastline of 81,900 km. In this case, Indonesia's vast sea borders are within many other countries. Based on the study of territorial waters, between China waters and Indonesian waters, Indonesia does not have a border with China. Nevertheless, Indonesia has a potential border with China and then it is claimed by China as South China Sea.

Implications of China's Claim on South China Sea for Indonesia

Indonesia's economic interests in South China Sea serve as a source of income from the oil, gas and fisheries sector and other marine biodiversity. In the oil and gas sector, Indonesia's EEZ in South China Sea region holds a total reserve of 222 trillion cubic feet and hydrocarbon gas of 46 trillion cubic feet, which is one of the largest sources in Asia. On the other hand, from the fisheries sector, the Ministry of Maritime Affairs and Fisheries (2010) reported that the wealth potential of Indonesia's EEZ in South China Sea area was 1,5057.05 tons and only 379.90 tons were cultivated (Ariffien, 2014).

The huge potential of oil and gas has led many countries to seize and claim the waters of South China Sea, making many fishermen from several countries

come with high fishing efforts (McClanahan, 2006) one of them was a fisherman from China who caught fish in South China Sea near the Indonesian island of Natuna which was finally caught by an Indonesian patrol boat. China's argument about traditional fishing grounds in Natuna against the nine lines of the map is a one-sided claim, there are no international legal norms that can be used as a legal basis. Indonesia and a number of ASEAN countries have internationally validated bilateral agreements on the continental shelf i.e. Indonesia-Vietnam and Indonesia-Malaysia. Thus, Natuna was included in the map of the China's nine lines rejecting the status of Indonesia's water law under UNCLOS 1982 (R Kurniaty, 2018)

The protest from China over the capture of its fishermen is a diplomatic measure to protect its citizens (Puspita, 2012). Indonesia also protested China due to the arrested process, the Indonesian Patrol Boat was disturbed by the coastguard when it captured Chinese fishermen. An informant, Intan I Soeparna, stated that the actions of the Chinese ship proved that China had no desire to implement the provisions of UNCLOS 1982 (Wadrianto, 2016). In fact, Indonesia's actions in protecting the Natuna island have actually been carried out a long time ago. One of Indonesia's was to use diplomacy at that time. Indonesian foreign minister in 2014 along with Chinese foreign minister agreed to prioritize diplomatic efforts in completing the South China Sea trumpet (Ariffien, 2014).

CONCLUSION

Overall, it can be concluded that the China's claim on the traditional fishing ground over South China Sea is assessed as having the rights and obligations of the state that owns the EEZ does not correlate with the basis of international sea law, namely the traditional fishing right.

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