



TECHNIUM
SOCIAL SCIENCES JOURNAL

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Indonesia or China: Which Country Has The Rightful Claim Over North Natuna Sea

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Abstract. This research was aimed to give explanation about the conflict between Indonesia and China over North Natuna Sea according to UNCLOS 1982 and Permanent Court of Arbitration, also give explanation about the solution that both countries may take. This research used qualitative and descriptive method which is discusses the phenomena as well as the way to solve the problem. China's claiming North Natuna Sea is a part of Nine-dash line it created. This action made Indonesia became furious. The result of this research concludes that China's claim over North Natuna Sea is against the Unclos 1982 and Permanent Court of Arbitration's statement that makes the claim ilegal.

Keywords. Conflict; North Natuna Sea; Indonesia and China

Introduction

More than 1000 km away from Jakarta and located between two separated regions of Malaysia, Natuna Islands spread across 262.000 km² over the sea. That makes Natuna Sea ten times larger than its land. Geographically, The location of Natuna Islands is challenging because it is located far away from nearest islands around it although this island is in Riau Province jurisdiction. This makes another threat for its border. The absence of direct flight from Jakarta to Ranai, the biggest city in Natuna islands makes it more difficult for commodities distribution which is usually sent from Pontianak, Kalimantan Barat or from Batam, Bintan Islands which relatively closer from Singapore. The minimum amount of harbour makes the trader ships difficult to move ashore (Kassim & Supriyanto, 2017).

This dispute between two countries known as internasional dispute, international dispute happens when the conflict involves governments, law firms or individual from different parts of the worlds and because of misunderstanding over something, one side intentionally violates the rights of another country, two countries quarell over something, and international law or treaty violation (Huala Adolf, 2014).

Indonesia with China quarelling over North Natuna Sea can be categorized as International Dispute. Indonesia as one of the country which in dispute with China because of China claimed over North Natuna Sea by making nine-das line on it. North Natuna Sea itself is a sea with great potency of natural resources such as, fishes, corals, and minerals. Natural Gass resources in North Natuna Sea is also the best one in SouthEast Asia. That is why North Natuna

Sea became the object of the dispute, especially its location which is not too far from another country's border makes it the potential spot for the conflict.

In 1947 this was the beginning of the conflict. Where at that time China was controlled by the Kuomintang Party led by Chiang Kai Sek, which had determined the boundaries of the southern China sea. The Kuomintang Party established a boundary or line called the Eleven-dash Line which claims consist of the Pratas Islands, Macclesfield Bank, the Sparty Islands and the Paracels in the South China Sea. This claim was defended by China in 1949, but in 1953 the Chinese government simplified the Eleven-dash Line to the Nine-dash Line which it maintains to this day (Novianto et al., 2020). The Nine-dash Line itself was used as a historical basis by China to claim nearly 3 million kilometers of nearly all territorial waters. However, these claims intersect with the boundaries of state sovereignty such as the Philippines, Taiwan, Malaysia, Brunei Darussalam, Vietnam and Indonesia. China's dominance in the South China Sea grew when the United States was involved in Vietnam officially ending with the 1974 Paris Peace Agreement. This was evidenced by the Chinese troops occupying the Parcel Islands. They raised the flag and defeated the Vietnamese troops on guard. The same happened on the Sparty Islands. In an effort to reduce tensions, the legal basis was poured into UNCLOS 1982 by emphasizing the territorial sovereignty of the South China Sea as far as 12 miles from the coast and the EEZ as far as 200 miles (Kalembang, 2017).

Since 2015, China has been increasingly active in claiming sovereignty over the South China Sea, China's claim has followed concrete steps. For example, sending warships in the South China Sea. Excessive claims on the island of Sparty which caused reactions from surrounding countries such as Vietnam and the Philippines. In 2019, China sent warships to the Natuna Islands. Which of course this has caused criticism from Indonesia. However, there are arguments stating that China's sovereignty over the South China Sea is not something that the 1982 UNCLOS can break, because China's claim to the area is based on the existing history established by the regime and stands independently outside the 1982 UNCLOS. In addition the pressure from several countries to use UNCLOS 1982 as a solution is not correct because it can result in an increased risk of regional instability (Darusman et al., 2020). But apart from several arguments or opinions which state that China's claim is historical and stands independently outside the 1982 UNCLOS cannot be justified. Because after being determined and approved by the participating countries, UNCLOS 1982 became the basic reference for international law to deal with problems in the sea area. So that the participants of the 1982 UNCLOS ratification must harmonize their national regulations with the 1982 UNCLOS.

Formulation of the Problems.

From the background of the research, concludes that Indonesia has the rightful claim over North Natuna Sea.

Methods

The methods used in this journal are qualitative methods and descriptive methods. Qualitative method is used because this journal will discuss the phenomena experienced by research subjects. This method is also supported by the descriptive method as a procedure in solving a problem that is investigated by describing the subject and object in research in the form of people, institutions, society based on facts.

Discussion

Indonesia has the rightful claim over North Natuna Sea

Regarding the issue of the conflict over the North Natuna Sea between Indonesia and China, it raises a number of questions, one of which is who has more rights over ownership of the Natuna Sea based on its geographic position and history. This is because the issue behind China's claim to the territorial waters of the South China Sea has resurfaced in Indonesia. This happened because the fishing vessels and Coast Guard belonging to China was caught sailed into the Natuna waters. Repeating the events in 2016, on January 8, 2020 President Jokowi again visited the North Natuna Sea with KRI Usman Harun. In addition, the Indonesian government has also taken diplomacy to solve this problem by sending a memorandum of protest against the Chinese government through their ambassador in Jakarta.

Minister of Defence Prabowo Subianto stated that, Indonesia would prioritize peaceful diplomacy to resolve this dispute issue. This needs to be done because China continues to violate the Exclusive Economic Zone (EEZ). Indonesia also rejects claims from China regarding areas they claim to be their traditional fishing ground, which according to the perspective of international law are considered to have no legal basis (Miranda.S, 2018). In addition, Indonesia rejects China's claim to control the waters of the North Natuna Sea on the basis of the Nine Dash Line. The TNI will also conduct intensive surveillance operations in the Natuna Sea area. And finally or fourth, increasing economic activity around the Natuna Sea waters or the Indonesian Exclusive Economic Zone. Through the ASEAN Regional Forum since early 1990s, it has taken the initiative to respond to the potential for increased conflict in the South China Sea. On July 22, 1992 in Manila-Philippines, the Ministers of Foreign Affairs from ASEAN member countries issued the ASEAN Declaration of Conduct on the South China Sea. This declaration contains a call for all parties to settle disputes peacefully and to apply the principles of the Treaty of Amity and Cooperation (TAC). Ten years later, on 4 November 2002 a formal agreement was reached. ASEAN-China agreed to issue a Declaration on Conduct of the Parties in the South China Sea (DOC) (Tampi, 2017).

Signed in Phnom Penh, Cambodia. This declaration contains the ASEAN-China commitment to adhere to legal principles, comply with the principles of international law, with respect for freedom of navigation in the South China Sea, and a commitment to resolve disputes peacefully. Nine years later, in 2011 ASEAN-China agreed on the Guidelines for the Implementation of the DoC (Declaration on Conduct of the Parties in the South China Sea). The success in formulating these guidelines is often referred to as ASEAN's breakthrough and big achievement in 2011. Indonesia at that time was the chair of the regional forum. This agreement is also the first step to initiating the discussion of the Code of Conduct in the South China Sea which functions as an operational mechanism related to conflict prevention, by regulating the behavior of disputing countries in the South China Sea region. One of the key issues of China's claim is the demarcation line. The line is not continuous and there is no map that can show what it will look like if it is made connected, because there has never been an explanation from the Chinese side, so no one knows the true meaning and purpose of making the line in the context of strategy.

Some experts say that the 9 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 line is unstable because it can easily change from eleven to nine lines for no apparent reason and is not well defined because it does not have specific geographic coordinates and does not explain its shape if all the lines are connected. So far there have been no negotiations to determine the EEZ boundary line between China and Indonesia in Natuna waters. This is because China itself and other ASEAN countries that claim sovereignty in the

South China Sea region have not reached an agreement. However, the Indonesian government continues to make diplomatic efforts with the Chinese government so that the South China Sea dispute does not extend to Indonesia's sovereign territory in Natuna Islands. . Where in this case the two countries have agreed to prioritize diplomacy in resolving South China Sea disputes, by fully and effectively implementing the Declaration on the Conduct of Parties in the South China Sea (DOC), by building mutual trust, enhancing cooperation, maintain peace and stability in the South China Sea. In resolving conflicts in the South China Sea, the Indonesian government has adequate conflict resolution instruments. The initiative of former Foreign Minister Marty Natalegawa has proposed that the initial draft code of conduct or zero draft code of conduct for the South China Sea can be used as a powerful point for Indonesian diplomacy. There are three important points which are the objectives of the zero draft code conduct, They are:

- a. Creating mutual trust;
- b. Preventing incidents;
- c. Manage incidents, if they do occur and cannot be avoided.

At these three stages, concrete steps that regulate warships to create mutual trust, prevent incidents and manage incidents are described, which was approved by the Chinese government in August 2013. Indonesian territorial waters have been defined by international law, referring to the UN Convention, UNCLOS 1982 which regulates the Law of the Sea which consists of three maritime boundaries; Territorial Sea, Continental Shelf and Exclusive Economic Zone. EEZ is categorized as an area that is 200 miles from the outer islands. This is where Indonesia has the right to exploit all the potential of its natural resources. China was also involved in UNCLOS 1982 so it was obliged to follow the implementation of this joint consensus. With the activity of illegal fishing by several fishing vessels belonging to China, and then it was found that the Chinese coast guard ship was patrolling, those activity is a form of China's violation to the 1982 UNCLOS Convention. The UN Arbitration itself stated that China's claims were not legal for the North Natuna Sea and Indonesia itself will never recognize the one-sided nine dash line that China claims at this time, especially since this claim has no clear legal basis and has never been acknowledged by Indonesia at all.

Dispute Resolution between Indonesia and China

It should be noted that Indonesia has ratified the 1982 UNCLOS or United Nations Conventions On The Law Of The Sea in 1985. As a country that has ratified the 1982 UNCLOS, Indonesia has the right to determine an Exclusive Economic Zone or EEZ as far as 200 miles which reaches Kabupaten Natuna in Riau Province. China itself claims the North Natuna Sea with its Nine-dash Line unilaterally. Therefore, it is common for Chinese ships to illegally enter the North Natuna Sea to look for fish, not only that, China, which carries out military activities in the North Natuna Sea, is threatening the jurisdiction, especially the North Natuna Sea itself is part of Indonesian Exclusive Economic Zone in accordance with UNCLOS 1982. Because of that, disputes continue to occur in the border area, and below is the diplomatic settlement that can be carried out by the two countries.

Joint Development Agreement or abbreviated as JDA is a concept of an agreement between two countries. The JDA agreement itself creates a scheme regarding the distribution and use of resources which can be done as a mediator in disputes that occur between Indonesia and China. JDA was first introduced to the concept of a business agreement, but over time this agreement can be implemented into agreements between countries. The use of this agreement was first carried out by International Court of Justice (ICJ) Judge, Philip C Jessup as an approach to bilateral justice and equality and to resolve international dispute. In the case of the

North Sea Continental boundary between Germany and Denmark, Judge Jessup discussed the possibility of forming a regime in a joint jurisdiction area between the two zones that intersect with each other to be able to make use of natural resources between the two countries (Natuna, 2020).

However, the solution by using JDA as an alternative dispute resolution through this agreement has met many failures which until now is still a long debate that needs to be discussed further regarding its effectiveness. Although the JDA concept was not successfully applied in disputes in the South China Sea because of the disharmony of relations between China and the disputing parties. However, it is possible that if Indonesia uses JDA the result can be successful. Therefore, it is necessary to compile what things the Indonesian government can do and prepare for the settlement through the JDA. The aspect of adopting bilateral values is quite important, indicators cannot be determined in general but must have the aims, interests, objectives and habits of the two countries in binding contracts to the JDA.

In its application to resolve problems in the North Natuna Sea between Indonesia and China, several factors need to be considered, such as the background of the dispute, the intent of the parties concerned, political objectives, and the stigma of the community itself. When each of the two countries still maintains a very strong argument. Indonesia which refers to the Exclusive Economic Zone which has been regulated in UNCLOS 1982, while China also maintains the Nine-dash Line which it unilaterally made. Therefore, if the mediation line alone is not sufficient, it will allow an agreement between the two countries, there must be a fully binding agreement between the two countries.

Both Indonesian and Chinese must fully understand the claims of interests and views of the parties to realize norms that will reach a common agreement. Apart from the background to the conflict, information regarding the capacity of the economy, industry and technology from both parties is important to note. When the parties understand each other about each other's interests, goals, and capacities, an agreement will be easily achieved. Indonesia needs to align its political will with China through diplomatic agreement between the two regarding the dispute in the North Natuna Sea. The existence of the JDA does not mean that the status quo of the disputed areas becomes divided. Still, JDA is only a bridge that functions to help achieve common goals without waiting for a resolution to the dispute that occurs. JDA can improve the existing bilateral relations between Indonesia and China and this strengthening can be established through the cooperation of the two parties (Natuna, 2020).

Although in reality JDA is still very difficult to be realized in Indonesia and China conflict, it does not rule out the possibility that JDA is an alternative that can be considered carefully to resolve the conflict in the North Natuna Sea. Because, by understanding each others aims and objectives of the two countries, an agreement can be obtained that will give birth to bilateral cooperation between the two countries which may in the future be able to increase stability in various fields, both Indonesia and China.

Conclusion

The dispute between Indonesia and China in the North Natuna Sea is a long-standing thing, starting with China's unilateral claim to the Nine-dash Line from 1953 to the present. Nine-dash Line itself is used as a historical basis by China to claim nearly 3 million kilometers in almost all the territorial waters of the South China Sea that intersect with the ZEEI in the North Natuna Sea region. This unfounded Chinese claim is invalid under the 1982 UNCLOS as well as the statement of the International Arbitration Court itself. This never-ending conflict of Indonesia and China in the North Natuna Sea makes Indonesia must resolve diplomacy, the solution can be through a Joint Development Agreement or JDA. This is important because

when the two countries can mutually agree on the rights, interests and goals of each party so that they can reach a mutual agreement and can establish cooperation between the two disputing parties, that are Indonesia and China.

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