



## INTERNATIONAL LAW AND THE ROLE OF THE STATE OF INDONESIA IN ASEAN AS A CONFLICT MEDIUM ON SOUTHCHINA SEA ISSUES

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### Abstract

*This study discusses the role of Indonesia as a conflict mediator on the issue of the development of problems related to the sovereignty conflict of China which claims most of the South China Sea zone. This problem received intervention from a third country, one of which was the United States. Indonesia and other ASEAN member countries that claim parts of the South China Sea against China's policies are still in the discussion process and in the process of signing the draft SCS Code of Conduct with China.*

### Abstrak

Penelitian ini membahas tentang peran Indonesia sebagai mediator konflik terhadap isu perkembangan permasalahan terkait konflik kedaulatan China yang mengklaim sebagian besar wilayah Laut Cina Selatan. Masalah ini mendapat intervensi dari negara ketiga, salah satunya Amerika Serikat. Indonesia dan negara-negara anggota ASEAN lainnya yang mengklaim sebagian Laut Cina Selatan terhadap kebijakan China masih dalam proses pembahasan dan dalam proses penandatanganan draft Code of Conduct LCS dengan China.

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## **PRELIMINARY**

Relations between countries are indispensable in order to meet the needs and interests of each country. By looking at the background, relations between countries were previously only regulated based on international customs, with various problems that arise as a result of these relations can no longer be resolved by referring to international customs, countries choose to establish relations based on an international agreement. General rules regarding international treaties are contained in the 1969 Vienna Convention on the Law of International Treaties. On 23 May 1969 and entered into force after ratification by 35 countries as stipulated in Article 84, namely on 27 January 1980 (Situngkir, 2018).

State border is an area within the territory of a country that borders the territory of another country. State border areas that directly border between land and sea are very vulnerable to border conflicts. The law and sovereignty that each of them must be guarded makes various countries maintain their respective sovereignty areas. The South China Sea is a direct border between China and ASEAN countries including Indonesia. Problems related to border areas are a problem between China and countries directly bordering the South China Sea.

International law does not impose its law when there is an international agreement that is not ratified by a country, that international law is not something that all countries must follow but is a right given to a country to participate in cross-border relations. In this case, international law has good benefits for each country in carrying out their state life with other countries. International law currently in force is a law made by countries which will then be used as a source of law to carry out their state functions (Fatmawati & Aprina, 2019). Likewise with UNCLOS which was made on the basis of the needs of coastal countries where there are many coastal countries that require regulation of their seas outside the sea area which is the sovereignty of a country. UNCLOS provides sovereign rights that are not regulated in the national law of a country. Countries that ratify UNCLOS make UNCLOS the basis for making national legal rules and as the basis for cooperation and relations between coastal countries and relations between coastal countries and non-coastal states (Fatmawati & Aprina, 2019).

This claim made by China, of course, reaped a lot of reactions from the international community, especially from countries directly bordering the South China Sea. Among the countries directly bordering the South China Sea are the Philippines, Brunei Darussalam, Vietnam, Malaysia and China and Taiwan. Extraordinary economic potential such as oil and gas reserves are considered by these countries to defend their sea areas which are part of the South China Sea. The issue of claims to marine areas has actually been clearly regulated in the United

Nations Convention the Law of the Sea (UNCLOS) in 1982 or known as the 1982 Law of the Sea Convention (KHL). That every coastal state has the right to claim the territorial sea as far as 12 nautical miles, 24 nautical miles additional zone, 200 nautical miles Exclusive Economic Zone and 200 miles or not more than 350 nautical miles of the continental shelf area (Fatmawati & Aprina, 2019).

The South China Sea territorial dispute submitted by the Philippines to the Permanent Court of Arbitration (PCA) resulted in a ruling that the Permanent Court of Arbitration (PCA) did not justify the reasons made by China's claim to control the South China Sea. The Permanent Court of Arbitration (PCA) argument rejected the claims made by China in the South China Sea, because the claims made by China contradicted the 1982 UNCLOS.

As time goes on, this problem occurs, the stronger China's position in claiming the territorial area of the South China Sea has the potential to further seize the sovereignty of other countries and may block freedom of navigation and difficulty in accessing the South China Sea area. This reason is due to external threats, so the Chinese government will continue to develop in the South China Sea territorial area. In the strategy of freedom of navigation, the United States has mobilized all its military power to guard the borders of the South China Sea territorial area.

Various efforts have been made to resolve this issue, namely by bilateral negotiations, especially between the Chinese government and each country, namely multilateral discussions among ASEAN countries (in the form of AIC and ARF), determination of Code of Conduct (COC), submission to the permanent court of arbitration Permanent Court of Arbitration (PCA), pressure from the United States of America on China through the freedom of navigation operation (FONOPS) (Prawira Hutama, 2020).

The governments of China and the US are voicing verbal wars with each other regarding the South China Sea issue with the aim of forming a favorable public opinion for each party in order to take full control of developments in the South China Sea (Seminar by representatives of the Taiwan Government, 2019). The US government through high-ranking US officials including US Vice President Mike Pence, National Security Advisor John Bolton, Secretary of State Mike Pompeo has criticized the Chinese government for its militarization in the South China Sea and accused China of not respecting international law and seeking to monopolize resources. maritime. The US officials also stressed to Indo-Pacific countries to voice their opposition against the imposition of China's claims in the South China Sea (Seminar by representatives of the Taiwan Government, 2019).

## DISCUSSION

### Definition and Settings Sea Zonation Claims Based on Law International

International law (International law) is a term that was first introduced by Jeremy Bentham, a British legal expert and philosopher of utilitarianism. The term international law has several other terms such as the law of nations. The scope of a more comprehensive understanding put forward by Ivan A. Shearer that international law is: "A set of legal rules that mostly regulate the principles and rules that must be obeyed by states (subjects of international law) and their relationship to one another, and also includes:

1. Legal rules relating to the functions of institutions or organizations, the relationship between these institutions and organizations, and the relationship between these institutions and organizations and the state and individuals; and,
2. Certain legal rules relating to individuals of interest to the international community other than 'state entities'."

International law has its own rules and regulations made by the international community, meaning that these rules and provisions are born from the international community. The international community in question are countries (Fatmawati & Aprina, 2019). As explained above that international law is made by states, either through customary law or through written law and those states are also actors and supervisors of the implementation of existing international law, international law may not be as strong as national law. International law is the law that regulates the actors equally, which in essence is a real reflection of the structure of the world community (Fatmawati & Aprina, 2019).

Looking at the location of the South China Sea itself, this sea can be categorized as a semi-enclosed sea, where in the provisions of the Convention it is explained that a closed sea or a semi-enclosed sea means a bay, basin, or sea that surrounded by two or more countries and connected to other seas or oceans by a narrow channel or which consists mainly of the territorial sea and the exclusive economic zone of two or more coastal states (United Nations Convention The Law of the Sea, 1982).

Sea areas categorized as semi-enclosed seas have a high level of potential for conflict, as is the South China Sea which is surrounded by several countries namely China including Taiwan, Thailand, Philippines, Malaysia, Indonesia, Vietnam, Brunei Darussalam, Singapore and Cambodia. Besides being surrounded by countries, this sea area also has many small islands and coral clusters, namely, the Pratas islands group, the Paracel Islands group and the Spratly archipelago which is the largest archipelago (Setyawan, 2010). China is a country that has a dominant claim in the

South China Sea, its claims are more than 80% of the South China Sea (Koesrianti, 2016).

China claims the South China Sea on historical and geographical grounds. The territory claimed by China are two groups of islands in the South China Sea, namely the Paracel and Spratly islands. According to China, their rights to the area date back 2,000 years and the Paracels and Spratlys are part of China's territory. Most of this sea area has indeed been claimed by China on the basis of a claim of nine dash lines (nine dashed lines). This nine-dash line claim is used as the basis for the title claim as well as the maritime imitation of this title claim related to the sovereign rights granted by the Convention.

The Permanent Court of Arbitration (PCA) is in its trial process, examining historical records to determine whether China actually had historical rights to resources in the South China Sea prior to the entry into force of the Convention. The Permanent Court of Arbitration (PCA) noted that there was historical evidence prior to UNCLOS, namely by continuous fishing. However, fishing is not carried out exclusively and there is no prohibition against other countries from catching fish. This means that the South China Sea area is a free sea for any coastal country and proves that there is no complete sovereignty in the area. Then, the Permanent Court of Arbitration (PCA) stated that prior to the existence of UNCLOS, The South China Sea area is an area of the high seas which can be traversed by any country. Therefore, China's claim of historical rights according to the Permanent Court of Arbitration (PCA) has no international legal basis.

The Permanent Court of Arbitration (PCA) is considering a "rock" feature claimed by China that could entitle a maritime zone beyond its territorial sea. The Permanent Court of Arbitration (PCA) concludes that the features that can result in rights to maritime zones, namely the existence of objective capacity, good natural conditions, population by a human community, who live permanently in the feature concerned, the existence of economic activities that are not dependent on the parties concerned. outside.

### **Activities of Indonesia and ASEAN in the South China Sea**

Indonesia, Vietnam and Malaysia have sent patrol boats and drones to several areas in the South China Sea. This effort was made to clarify that the South China Sea is under the protection of the Philippines Mutual Defense Treaty.

Third countries such as the United States have stated that they will defend the Philippines if their ships are intercepted or attacked by China in the South China Sea area. This is part of the protection for the Philippines and other claimant countries in order to protect their sovereignty, economy, and national security from China. The US military presence in the South China Sea aims to help provide the security and stability that fuels diplomatic talks. The US believes that no single country can

dominate the Indo-Pacific region. Therefore, the US has acted decisively against China's aggressiveness in the waters of the South China Sea (Fravel, 2012). Meanwhile, China views that freedom of navigation should not be used to violate the rights of other countries.

On May 6-8 2019, the US carried out joint military exercises with Japan, India and the Philippines in the waters of the South China Sea. The exercise involved a US missile destroyer (USS William P Lawrence), a Japanese aircraft carrier (Izumo), two Indian Navy vessels (the destroyer INS Kolkata and tanker INS Shakti), and a Philippine marine patrol vessel (VOA Indonesia, 2019). The US will sell 34 unmanned reconnaissance aircraft (ScanEagle) to Malaysia, Indonesia, the Philippines and Vietnam which will be used to conduct intelligence surveillance on matters that disturb security in the South China Sea region. Work on the equipment is expected to be completed in March 2022. Of the total 34 drones, Malaysia will buy 12 units, Indonesia and the Philippines 8 units, and Vietnam 6 units (VOA Indonesia, 2019).

In April 2019, the Philippines lodged a complaint against Xi Jinping with the International Criminal Court (ICC) in The Hague as an attempt to use international law to check China's impunity in the South China Sea (Guardian, 2019). Rodrigo Duterte has criticized China for its airspace claims on artificial islands in the South China Sea, and continues to consider the airspace on the artificial islands to be international territory. Duterte's criticism was motivated by the warning of the Chinese army to expel any aircraft that crossed the airspace of the South China Sea islands (Prime, 2019). In February 2019, Vietnam deployed a fishing fleet on the front lines around the North Natuna Sea to safeguard its claim to the South China Sea. In addition, Vietnam is also carrying out construction on the Spratly Islands, including extend the runway from 2,500 feet to 3,300 feet (Sevastopulo, 2016).

Status of the State of Indonesia in the South China Sea Conflict Indonesia is not a claimant country in the South China Sea, but can act as a third party, because Indonesia is a member of ASEAN where the majority of claimant countries in the South China Sea are 339 ASEAN countries, and have good bilateral relations with China. However, Indonesia has a dispute with China and Vietnam regarding the North Natuna Sea which is claimed by China, which is included in the nine dashed lines. Between Indonesia and China, this dispute resulted in the collision of a patrol boat from the Indonesian Ministry of Maritime Affairs and Fisheries by a Chinese coast guard vessel in the North Natuna Sea. This problem was not prolonged and the two countries managed to find a middle ground so that bilateral relations continue to run well to date (Ferguson, 2019).

Meanwhile, between Indonesia and Vietnam, this dispute is caused by the absence of an agreement regarding the Exclusive Economic Zones of the two countries. The most recent case occurred in April 2019, when two Vietnamese surveillance vessels crashed into the hull of the Indonesian Navy ship (KRITjiptadi-381) in the North Natuna Sea, when a Navy ship tried to drive off a Vietnamese fishing vessel taking fish in these waters (Wijaya, 2019). The Indonesian government strengthens the TNI's presence in the North Natuna Sea and plans to implement the Swiss-made Skyshield air defense system in the Natuna Islands to counter China's claims to the wealth of oil and gas reserves in the waters of the North Natuna Sea.

### **The Role of Indonesia and ASEAN in Efforts to Settle the South China Sea Issue and the Development of the South China Sea CoC**

In an effort to resolve the South China Sea issue, Indonesia and ASEAN want tensions in the South China Sea to immediately subside and appeal to all parties involved to refrain from worsening the situation and not increasing tensions in the South China Sea. Historically, on November 4, 2002, Indonesia together with ASEAN and China made a Declaration of Conduct (DoC).

The declaration became the basis for the Government of Indonesia, especially the Minister of Foreign Affairs of the Republic of Indonesia together with the Ministers of Foreign Affairs of other ASEAN member countries to agree on ASEAN's Six Point Principles on the South China Sea on July 20, 2012 in order to avoid differences in attitudes and opinions. Then, the active role of Indonesia and other ASEAN in the South China Sea is to hold workshops every year with the theme "Managing Potential Conflicts in the South China Sea" since 1990. The workshop is part of preventive diplomacy in order to create trust between countries involved in conflicts and prevent conflicts from occurring in a sustainable manner. ASEAN and China have discussed the CoC for more than a decade, and China's latest developments have stated that they want to complete the CoC negotiations within three years. ASEAN welcomes China's intention and wants to immediately conclude negotiations regarding the CoC with China. There have been positive developments regarding the negotiation of the South China Sea Code of Conduct (COC), that on July 24, 2019 in Penang, Malaysia, ASEAN and China have just completed the first round of reading the negotiations on the South China Sea CoC draft (Dante, 2019). This is a good progress and if the CoC has been fully agreed, it will be able to help resolve the situation and regulate behavior in the South China Sea, especially for claimant countries.

After the first round of reading the South China Sea CoC draft is completed, then the second and third rounds of negotiations will be carried out in the following

years. One of the things that is still being negotiated is the nature of the CoC itself, whether it will be legally binding or not. The COC is considered important to be agreed upon by China, ASEAN and other stakeholders in the South China Sea region to get an understanding, an agreement in building trust among claimant countries. The COC does not address territorial disputes, but rather agreements on how to manage or prevent potential conflicts and crises in the South China Sea. The CoC focuses on building trust through various collaborations and collaborations between ASEAN and China.

Meanwhile, the Philippines had proposed resolving the South China Sea issue through the ASEAN-X scheme, which meant that the dispute resolution was only carried out between China and the ASEAN countries involved as claimant states. However, the proposal was opposed by Vietnam and several other ASEAN countries because it was not in accordance with the principles of the ASEAN jointcommunique (Discussion of representatives of ASEAN countries discussing the issue of the South China Sea, 2019)

In international law there are several principles that can be used by a country related to the way of acquiring territory. Quoting what was stated by Hans Kelsen, these principles are:

1. The Principle of effectiveness or the principle of effectiveness or effectiveness over ownership of an area. It means that state ownership of an area is determined by the effective enactment of legal regulations national in the region.
2. The principle of *Uti Possidetis* is a principle related to the boundaries of a region. According to this principle, in principle, the boundaries of the territory of a new country will follow the boundaries of the territory of the country that occupies it. This principle was born from the practice of countries in Latin America when these countries gained their independence soon after the collapse of the Spanish empire.

Apart from being put forward by Hans Kelsen, there are also Martin Dixon's opinions on how to acquire territory, including: There is control or supervision from the state over a territory (the control of the territory), and

1. There is a peaceful exercise of the functions of a state in the region.

Then the acquisition of territory proposed by ST Bernandez, the three principles are:

1. The principle of the prohibition of resort to force, where this principle prohibits a country from acquiring a territory by using force



of arms. This principle is also contained in the UN Charter, the results of the 1955 Asian-African Conference and various instruments issued by ASEAN;

2. The principle of peaceful dispute resolution. According to Bernandez, all disputes that arise because of territory, in this case the claim to the status of ownership of the territory, must be resolved peacefully. These methods are outlined in international law as contained in the United Nations Charter Article 3(1);
3. Principle of Self Determination (Self Determination). This principle emphasizes that the will of the people must be respected in determining the ownership status of their territory

There are 3 (three) basic things that become the material for consideration of the existence of historical rights, namely:

1. The discovery of the South China Sea Area claimed by China does not prove that the area was discovered by China for the first time considering that several countries also carry out their activities in the South China Sea area. According to the author, it is difficult to determine who discovered the South China Sea area for the first time because many countries around the South China Sea area also cross it
2. Effective control Regarding effective control by China is also not proven because it is not only China that carries out its activities in the South China Sea area but there are other countries that also carry out activities in the South China Sea area.
3. There is a long crossing tradition that has been passed down from generation to generation in China. It's true to carry out the old crossing for generations, but then again that there are other countries that also cross the South China Sea area, although not as long as China.

From the theory described above, China's claim of historic rights cannot make the South China Sea territory China's territory. Although China has a White Paper which proves that the South China Sea is its territory through historic rights, but according to existing theory and the rules contained in UNCLOS, the South China Sea area is not China's territory. So, according to the author, the reasons presented by China according to the PCA's decision and existing theories are not justified.

## **CLOSING**

### **Conclusion**

The current situation in the South China Sea can be seen from the development of competition and rivalry strategies between China and the US. The South China Sea

issue seems to have evolved from a confrontation between claimant states and China to a direct confrontation between China and the US. If the rivalry between China and the US is still ongoing, security challenges and threats are a major concern in the region, thus having an impact on the centralization and unity of ASEAN.

The application of historical rights in territorial claims by China is not appropriate because these claims have not fulfilled the elements in granting historical rights. The claims made by China have resulted in misunderstandings among the surrounding coastal countries. The future situation in the South China Sea may be worse if anyone tries to bring other major powers into the matter. Major powers outside the region, such as the US are increasingly involved and play an important role in maintaining maritime stability, and countries around the waters of the South China Sea are also increasingly strengthening their sovereign security, thereby potentially triggering regional conflicts.

Looking at the situation and condition of the South China Sea, China continues to dominate the territorial waters of the South China Sea (including its airspace) for now and indefinitely by continuing to build civilian and military facilities on each of its islands. US warships and their allies will continue to carry out freedom of navigation operations in the South China Sea region, which will further increase tensions between China and the US and its allies in the region. China's aggressive actions and activities in the South China Sea will further reduce the possibility of a peaceful settlement of the South China Sea through the CoC.

Regarding the development of the CoC, which is currently only a draft that has to go through several rounds over the years, it is estimated that China will tend to prolong the process of completing the CoC, so that even if the CoC has been completed, by then China has succeeded in fully controlling the South China Sea area and is likely to reject all agreements contained in the CoC. The situation in the South China Sea will force claimant countries and countries with interests in the South China Sea to increase their military capabilities, so that it will lead to an arms race in the region.

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