

Maritime Security and Diplomacy by the Republic of Indonesia and Other ASEAN Member States in Reducing the South China Sea Conflict

Ilhamda Fattah Kaloko^{1,*}, *Mustika Sukma Utari*²

¹Law Lecturer of Raja Ali Haji Maritime University, Indonesia

²Law Lecturer of Mohammad Natsir Yarsi University, Indonesia

Abstract. In the South China Sea conflict (SCS), Indonesia declared itself a Non-Climate State, citing the Minister of Foreign Affairs of the Republic of Indonesia's remark that China's claims to ownership and the right to explore and exploit the SCS are illegitimate. This claim also covers Indonesia's Exclusive Economic Zone in Natuna. This refers to the United Nations Convention on the Law of the Sea 1982 (UNCLOS), which is standardized, explicit, and accepted by the majority of ASEAN countries in dispute with China in the SCS. Given that China is a state that has ratified UNCLOS 1982, it is obligated to abide by the international legal norms that it has accepted. Pacta Sunt Servanda is applicable here. In an effort to reduce China's aggressive actions in the South China Sea, which violate a number of international laws, the disputing ASEAN nations are working with Indonesia to engage in diplomatic relations with China.

1 Introduction

The development of maritime law is one factor in the development of international law in general. Some changes to maritime law originate from special situations. For example, there is marine pollution due to crude oil spills, protection of marine fisheries, or protection of maritime border crossings between countries and continents. This requires the presence of legal regulations that regulate in detail. Moreover, when it comes to maritime borders between countries, it concerns sovereignty and rights to manage marine potential. This can affect security, politics and the economy.

There is so much potential for countries that control it to have and become dignified. Conflicts over ownership and control of the sea are not uncommon between adjacent countries, especially between countries that are merely in the same area. The conflict affected several Southeast Asian countries.

* Corresponding author: ilhamdafattahkaloko@umrah.ac.id

This territorial sea dispute resolution route can only be resolved based on international law, which in this case is based on *United Nation Convention in the Law of The Sea 1982* (UNCLOS 1982). On the other hand, claims based on historical value put forward by China are not recognized in UNCLOS 1982.

Apart from these countries, China also has disputes with Malaysia, the Philippines and Brunei Darussalam. Countries that declare themselves as *claimant state* These are countries that are part of the ASEAN regional organization. The Indonesian Minister of Foreign Affairs claimed that there Indonesia is Non-claimant state in the continuing maritime conflict.in Natuna sea. Indonesia as a huge ASEAN member and the world's largest archipelago, has significant economic potential in the nautical and mining industries. One of the places claimed by China as its property is the Nine Dash Line, which is part of the Indonesian Exclusive Economic Zone in North Natuna.

2 Method

This analysis of the topic of conflict in the South China Sea uses an empirical legal research typology design. In this research, a qualitative approach is used, where the research produces descriptive data in the form of written and spoken words from individuals and observed phenomena [1]. With this research approach design, we are able to present data and facts in accordance with international law more comprehensively.

The data collection technique used is the interview technique (*field Research*) structured with competent parties from the Ministry of Foreign Affairs of the Republic of Indonesia, namely interviews with staff of the Directorate General of Law and International Agreements, in the Directorate of Law and Territorial Agreements, where these sources are competent people who are directly involved in efforts to discuss the CoC which discusses the China Sea conflict South between ASEAN – China. This respondent is *a purpose sample*, which is the main and only purpose of data collection.

Apart from interviews, the data is supported by adequate literature analysis, sourced from relevant books and journals. With the data and analysis carried out, extraction, reduction and presentation of the data are then carried out so that conclusions can be drawn, and then written down in the form of scientific writing, which can be justified academically.

3 Discussion

Control over space is fundamental to the legitimacy of political power, both in practice and in law. Fighting for feature rights is a key issue in the SCS. Geopolitical interests and strategies play an important part in safeguarding each country's rights and sovereignty. ASEAN members eventually led to ASEAN serving as a bridge in conflict resolution efforts.

Since its founding, peaceful dispute resolution has been one of the main focuses of ASEAN's agenda. Dispute resolution for ASEAN members has been regulated in *ASEAN Charter*. *ASEAN Charter* regulates that if an ASEAN instrument has specifically and specifically regulated dispute resolution mechanisms, then every dispute related to the instrument concerned must be resolved based on that mechanism or procedure, as contained in article 24 paragraphs (1) and (2) which states[2] :

"Disputes related to certain ASEAN instruments must be resolved through mechanisms and procedures as regulated in the instrument in question", and Paragraph (2) states that, "Disputes that do not relate to the interpretation or application of any ASEAN instrument must be resolved peacefully in accordance with the Treaty of Friendship and Cooperation in Southeast Asia and its implementing regulations.

In this case, international maritime law plays a large and important role in maintaining stability and security between countries. It is possible that anyone who succeeds in owning or controlling the South China Sea will gain huge profits and a large supply of natural resources for their country. Therefore, *claimant state* continue to strive for a peaceful solution that fulfills a sense of justice, and is able to suppress China's aggressiveness in the South China Sea.

The South China Sea includes valuable natural resources, such as petroleum, natural gas, and minerals found on the surrounding islands. Aside from that, the South China Sea is one of the world's major commercial and communication waterways connecting the Indian and Pacific oceans. This makes the South China Sea one of the world's busiest passageways.

The South China Sea covers around 4,000,000 km² and is made up of various groupings of islands totaling over 170 small islands, corals, and banks, with large gas and oil reserves on the islands of Spratly and Paracel. With all of this potential, the South China Sea is a viable economic area, which encourages conflicts that produce regional and international problems.

Indonesia and other countries in the ASEAN region are countries that have ratified UNCLOS 1982. However, there are still overlapping claims on bordering sea areas. This requires further diplomacy and consensus with neighboring countries. Of course, the legal basis used is the same, namely UNCLOS 1982. Even though it uses the same legal source, discussions on determining the boundaries of opposing areas are still ongoing, due to differences in interpretation of existing law. This is made worse by China's claims, where the *nine dash line*, which does not use a clear legal basis, only uses blind maps based on Chinese history stored in its state museum. On the other hand, countries in conflict insist on maintaining extensive maritime sovereignty areas in accordance with UNCLOS 1982.

On June 22, 2016, Foreign Minister Retno LP Marsudi rejected China's stance that the two countries have overlapping claims in Natuna waters, and even reiterated that Indonesia's maritime claims are consistent and in accordance with international law, and restated that Indonesia's position is as a non-claimant in the South China Sea conflict, so Indonesia rejects any claims of maritime rights that are considered to overlap with China[3]. This is very clear with the deposit of a map with the coordinates of Indonesia's territorial boundaries in Natuna to the UN Secretary General[4]. Thus, Indonesia has a strong legal basis to negotiate under ASEAN to fight for its legitimate territorial rights.

Conversely, in response to the intensifying conflict in the SCS, ASEAN engaged in conflict resolution through the adoption of the ASEAN Declaration of Conduct (DoC) on July 22, 1992, by the ASEAN Foreign Minister. This DoC's content is a call to all parties to use the principles of the Treaty of Amity and Cooperation (TAC) and peaceful dispute resolution. TAC was established in 1976 and serves as a proclamation of amicable cooperation and peace amongst Southeast Asian nations[5].

So far, the formal agreement that ASEAN has succeeded in reaching with China is DoC in 2002, and this has not been successful in preventing provocative activities in the SCS region, and remains a dispute that has the potential to lead to open war, even becoming a threat to the ASEAN security community[6]. China's provocative activities can be proven by the creation of artificial island in the SCS area, and China has more than 45 ships docked at *Whitsun Reef*, which is a disputed area[7]. Apart from that, China also forbids ships from other countries from fishing or sailing around its artificial islands. These activities can provoke and threaten peace in region and could be lead to open war. China should be respecting the UNCLOS 1982 because *Pacta Sun Servanda* is applied to China as a ratifying country.

Claimant states use a variety of strategies to protect their national interests in the area of highly strategic Sea Lines of Trade (SLOT) and Sea Lines of Communication (SLOC). For instance, the Philippines sued China in the UN Permanent Arbitration Court (PCA) for its aggressive construction of artificial islands and the establishment of Chinese military outposts in the SCS[8]. The international legal validity of the reclaimed islands built by China has given rise to different interpretations, for *claimant state*. The articles governing reclamation in UNCLOS 1982 seem to conflict with each other with different interpretations based on the interests of each country.

China is also becoming more aggressive in utilizing these reclaimed islands and hopes that the principle of effective *occupation* can be implemented, so that the country's sovereignty over the island and the sea around the island is recognized internationally. Under international law, the construction of reclaimed islands does not violate the law according to UNCLOS 1982 article 60 paragraphs (1) to (8), international law recognizes the existence of artificial or reclaimed islands, with certain conditions. However, China's reclaimed islands do not meet the requirements to be recognized as fully natural islands. According to Permanent Court of Arbitration's ruling, these "features" would most probably qualify as "rocks which cannot sustain human habitation or economic life"[9]. Politically, China's overlapping claims and aggressive actions could trigger open war.

In reality, China is carrying out repressive measures against traditional Filipino fishermen who catch fish around the sea of China's reclaimed islands in the region. *Scarborough*, which the International Arbitration Institute has declared as belonging to the Philippines[10]. Of course, this violates human rights, a sense of justice and equal rights in exploring and exploiting resources. It is known that traditional Filipino fishermen in the disputed area depend heavily on their catch at sea. Being a fisherman is a source of livelihood for local fishermen *Scarborough*.

On the other side, China expects that by building ports and airstrips on these reclaimed islands, it would be able to persuade the world that these islands belong to China under international law. This further disturbs the Philippines' existence, sovereignty, and national interests. This is the reason why the Philippines has brought the case to the Permanent Court of Arbitration (PCA). China's actions have completely violated international law, as outlined in UNCLOS 1982.

Basically, ASEAN countries adopt the basic principles stated in *Treaty of Amity and Cooperation in Southeast Asia* (TAC) 1976, among others[11] :

- a) Mutual respect for independence, sovereignty, equality, territorial integrity and national identity of all nations
- b) There is the right of every State to lead its existence free from external interference, subversion or coercion
- c) Do not interfere in each other's internal affairs (*non-interference*)
- d) Settlement of differences or disputes by peaceful means.
- e) Rejection of threats or use of violence
- f) Effective cooperation among ASEAN member countries

If the stability of the ASEAN region is good, it will have a positive impact on Indonesia. This will greatly influence the course of all aspects of national and state life. As we saw in the TAC principle above, *Noninterference* is one of the vital principles that also provides a contribution to stability in the ASEAN region.

ASEAN countries are countries that ratified UNCLOS 1982, so that all border issues between countries become something that *legit* with reference to UNCLOS 1982. Through ASEAN, in the end Indonesia succeeded in pushing forward *Claimant States* and China to sign *Declaration of Conduct (DOC) of Parties on the South China Sea* in 2002, even though DoC discussions had actually been initiated since 1999[12].

This DoC is a non-binding *political statement*, which here contains trust and confidence building measures and voluntary cooperation activities[13] In January 2012, the Philippines submitted an informal CoC draft, which sparked long debate among ASEAN countries, called *Philippines Draft Code of Conduct* which consists of 10 articles and several basic things, namely[14] :

- Recognize that a comprehensive and durable settlement of the territorial and jurisdictional disputes in the South China Sea will contribute to regional peace and stability;*
- Emphasize the need to further promote a peaceful, friendly and harmonious environment in the South China Sea for achieving a durable solution to the differences and disputes while maintaining the South China Sea as an area of peace, stability, friendship and co-operation;*
- Commit to resolve differences and disputes by peaceful means without resorting to the threat of use of force or the use of force and in accordance with universally recognized principles of international law, including the 1982 UNCLOS (United Nations Convention on the Law of the Sea);*
- Recall the obligations of states under international law, including UNCLOS, to safeguard the environmental characteristics and biodiversity of the South China Sea; and*
- Stress the commitment by ASEAN-China leaders to develop a COC to maintain peace and stability in the South China Sea.*

It can be concluded that this CoC draft failed to be ratified and reach agreement with China, because it was not profitable for China.

As regulated in ASEAN, that *Chairmanship* ASEAN rotates every year, and in 2012, Cambodia took its turn as ASEAN *Chair*. These talks failed to find common ground and approval, because Cambodia, as ASEAN *Chair*, did not reach an agreement with the Philippines and Vietnam. These ASEAN countries speak based on the interests of their respective countries. We cannot deny that Cambodia and China have an emotional closeness that influences Cambodia's political attitudes and choices. Judging from history, China has made Cambodia a counterforce to Vietnam's domination, and China supports the government of Cambodia's new regime, Prime Minister Hun Sen.

Apart from the main factors above, another factor that caused the CoC in 2012 to fail was the weak enforcement of rules and dispute resolution within ASEAN. In TAC there is no coercive law enforcement mechanism (*no mechanism to force*), there are only mechanisms that are voluntary, and only produce agreements that will not be legally binding law (*non-legally binding result*[14]).

Negotiations took place in between ASEAN and China do not seem to have found any clarity regarding the ownership and overlapping claims of this feature. This is due to China's arrogance which remains in its position that the features in the South China Sea region, as shown on their historical maps, are absolutely theirs, and negotiations with neighboring countries seem not to find a solution, but only to reduce while complying with agreed rules.

The Philippines filed a lawsuit to the PCA, China refused to participate, and only chose the path of negotiation. Since this is an issue of sovereignty in the South China Sea, China avoids having a dispute brought to an international litigation body. China's behavior threatens international law enforcement and could lead to war in the ASEAN region.

ASEAN countries are well aware of how *bargain-positioning* China as a country has *Soft and Hard power* big to achieve its goals. From a different perspective, China is trying to resolve the conflict only bilaterally, because China understands that it will not be easy to defeat the countries that are together in ASEAN just like that, so by dealing bilaterally, the potential to win in the conflict over territorial this is going to be huge. On

the other hand, Indonesia and other ASEAN countries as *claimant states* should established good cooperation with country as economically, or defence sector that could be rival to China, such as USA, and others Europe country.

4 Conclusion

Indonesia is *archipelagic state* with an understanding of the geopolitics of the archipelago, and breathing in the mandate of the 1945 Constitution in its international relations. This is also the basis for Indonesia to oppose China's existence with claims *Nine Dash Line* in the South China Sea. Indonesia from the beginning of the conflict declared itself as *non-claimant state*, but still encourages discussion *Declaration of Conduct* and participate in discussions on its creation *Code of Conduct* between Indonesia, ASEAN – China. *Code of Conduct* from 2017 until now it is still in the discussion stage *confidential*. In addition, China disapproves of and disregards the ruling made by the Permanent Court of Arbitration (PCA) about who owns land in the South China Sea. China expects that by occupying these artificial islands in the South China Sea effectively, they will be able to claim property rights under international law. By establishing an *offshore archipelago*, where it has more territorial seas outside of its continental area, China hopes to achieve international recognition.

References

1. M. A. Prof. DR. Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, 38th, JULI 2 ed. (PT Remaja Rosdakarya, 2018, BANDUNG, 2018)
2. D. Chua and E. Lim, *The ASEAN Charter* (2017)
3. K. H. Raditio, *Indonesia "speaks Chinese" in South China Sea* (2016)
4. A. L. Connelly, J. Lowy Inst. Int. Policy **1**, 1 (2016)
5. D. Chua, E. Lim, R. W. P. I. Kusumah, A. Haryanto, A. Bakhtiar, Y. A. Sulistyani, A. C. Pertiwi, M. I. Sari, S. Vuković, R. Alfieri, E. E. Prabowo, and J. Price, *Asean* **50** **8**, 665 (2018)
6. A. Haryanto and A. Bakhtiar, *J. Glob. Strateg.* **277** (2015)
7. Atikah Ishmah Winahyu, *Tindakan Tiongkok Buat Situasi Memanas Di Laut China Selatan* (2021)
8. Y. A. Sulistyani, A. C. Pertiwi, and M. I. Sari, *J. Polit. Din. Masal. Polit. Dalam Negeri Dan Hub. Int.* **12**, 85 (2021)
9. S. Vuković and R. Alfieri, *Asia Pacific Policy Stud.* **5**, 665 (2018)
10. DW NEWS, *International Court Rules China's Claims in South China Sea Illegal | DW News* (2021)
11. P. R. B. P. Arcelinocent Pangemanan, Azmi Ibrahim, Bundhi Tri Suryanti, Fajar Hermansah, *J. Diplomasi Pertahanan* **Vol. 7 No.**, (2021)
12. E. E. Prabowo, *J. Ketahanan Nas.* **19**, 118 (2013)
13. A. Agung, M. Intenilia, D. A. W. Dharmiasih, A. A. B. Surya, and W. Nugraha, **1** (2012)
14. J. Price, **8**, (1999)