

Analysis of China's 9-Dash Line Claim in the South China Sea Under International Law

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Abstract

The South China Sea area is an area that has a lot of potential. Its very strategic role in various fields such as politics, economics, and security makes it the largest water area with great potential. It contains 266 trillion cubic feet of gas reserves and 7.7 billion barrels of oil reserves. This is the cause of the dispute that occurred in the South China Sea (Luh Gede, et al 2022). There is a clash of diplomacy cultures between ASEAN with the "ASEAN Way" which upholds the principles of non-intervention and consensus and China with direct diplomacy efforts to related countries. (Ali Maksum 2017) The need for a large role from the government to make new, firmer policies to increase the strength of the sovereignty of the Republic of Indonesia. (Atikah, et al 2021) The importance of peace diplomacy efforts at the bilateral, regional level can be focused on efforts to resolve the South China Sea dispute. (Yuli, et al 2021) The need for China to respect the decision of the Permanent Court of Arbitration (PCA) so that it can be resolved in a peaceful manner. (Dessy, et al 2018). This research will focus on (1) What types of violations of state sovereignty committed by China over the South China Sea claims and (2) How dispute resolution efforts can be taken by the South China Sea region countries and the UN according to UNCLOS 1982. This research method adopts quantitative and qualitative research methods from various social sciences and sees legal issues as a social event. The results in this study show that the dispute over the South China Sea region between China and the country sliced by the Nine Dash Line map still does not show a bright spot and the existing disputes will continue to recur and develop over time due to differences in principles between the parties to the dispute. On the one hand, China sticks to historical theory, while other countries that are sliced also use historical theory which is also accompanied by the determination of territorial boundaries contained in UNCLOS 1982. In this case, good faith between countries is needed by making mediation efforts in order to reach a peaceful agreement. However, if this is still deemed unable to resolve the existing dispute, then another step that can be used is through the decision of the International Court of Justice (ICJ).

Keywords: South China Sea, International Law, UNCLOS 1982

I. INTRODUCTION

The backwaters of a country are a vital thing for that country. The vast potential of a body of water can be a profitable commodity in the economy and in tourism. A country's waterfront area can also be a powerful bulwark for the country ruling it. The power of naval defenses can also be one factor in how good and strong state security can be. Each country also has an obligation to preserve and maintain the security and sovereignty of the region. On the other hand, every state has no right to violate the sovereignty of another, such as by depriving it of its natural resources.

The southern China sea region is one of the world's million potentials and is a highly strategic body of water from all areas, such as economics, politics, and security to the surrounding region as the sea lines of trade and the sea lines of communication (sloc), which are stretched out to connect the Pasik and Indian oceans, making it one of the most fertile waterways in the world (Sulistiyani, Ari, Pertiwi, and Sari, 2017). In fact, nearly half the world's trade traffic accounted for the area (Utomo, Prihantoro, dan Adriana, 2017). Geographically, it borders directly with several countries in ASEAN. The west side is Vietnam, then the Philippines, Brunei, and Malaysia on the east side, and to the south are Indonesia and Malaysia. The South China Sea is also a vast body of water. It has a total width of up to 550–650 nautical miles and a length of up to 1200 nautical miles (Beckman, 2013). According to the United

States Energy Information Administration (EIA), the natural potential contained in the South China Sea is very large. 11 billion barrels of petroleum reserves are one of the many riches contained in these waters (https://www.eia.gov/international/analysis/regions-of-interest/South_China_Sea). Therefore, the government of the People's Republic of China made a claim to this region. The appearance of the nine-dash line map or Nine Dash Line created by China states that the status of the islands in these waters is within its territory. Based on the map, China admits that all islands and water areas and marine content in the area are absolutely owned by China (Maksum, 2017). This is what makes countries in the South China Sea region that have ZEE around it give quite strong reactions because they believe that what China is doing is an act of violation of state security and sovereignty which could cause huge material and security losses.

The conflict over the South China Sea grew over time until in 2010 Indonesia, which has a ZEE in the North Natuna Sea area, Riau Islands, was also involved. China makes claims to the North Natuna Sea on the pretext that China has rights to the Indonesian ZEE waters based on traditional fishing zones (Dugis, 2016). The rise of the issues is due to a difference in views and opinions between the Chinese and the other countries that inhabit the south China sea region.

In research conducted by Luh Gede, et al, it was stated that the conflict in the struggle for the South China Sea was due to the struggle for territory for the sake of economic, political and security interests for the countries involved. There are conflicts triggered by civil or non-government actors who exploit natural resources in the South China Sea (Laksmi, Sundari, Mangku, and Yuliantini, 2022)

Then, in the research conducted by Atikah, et al, they explained the importance of the role and firmness of the government regarding conflicts over violations of its territorial sovereignty and especially for the Indonesian government to make firmer policies for state security so that the sovereignty of the Republic of Indonesia is not easily disturbed by other countries that want to usurp it (Firdaus, Atikah, 2021). This is the case as researched by Yuli, et al who stated that the importance of peace diplomacy efforts at bilateral and regional levels such as meetings between foreign ministers and international forums can be focused on efforts to resolve the South China Sea dispute (Sulistiyani, Ari, Pertiwi, and Sari, 2021).

And what is contained in Ali Maksun's research states that the dispute that occurred in the South China Sea is because there is a clash of diplomatic cultures between ASEAN and the "Asean Way" which firmly adheres to the principles of non-intervention and consensus and China with direct diplomatic efforts towards the relevant countries. resulting in all forms of bilateral impacts between the two being irreversible. However, ASEAN continues to strive to maintain the continuity and stability of peace and this is a challenge for ASEAN itself as a large multinational organization in the world (Maksum, 2017).

II. PROBLEM FORMULATION

1. What types of violations of state sovereignty are committed by China over its South China Sea claims?
2. What dispute resolution efforts can be taken by countries in the South China Sea region and the UN according to UNCLOS 1982?

III. RESEARCH METHODS

In this writing, we use legal research methods with a socio-legal approach. In this method, quantitative and qualitative research is adopted from various social sciences and analyzes legal issues as social events. Socio-legal research methods also cover various disciplinary contexts,

from various social sciences to law, which will then link law with sociological, political and economic sciences from daily human practices (Hakim, 2017). The materials used in preparing this research are also based on secondary legal materials obtained by understanding and exploring various existing concepts and theories from experts and legal experts who are competent in their fields (Deramayati, Yahya, and Wicaksana, 2021). This can be in the form of books, journals and related articles, as well as using primary legal materials that regulate the topic of international maritime law disputes, especially in this case China's claim to the South China Sea as stated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

A. RESULTS AND DISCUSSIONS

1. **Violations of state sovereignty and security committed by the People's Republic of China over claims to the South China Sea**
 - a. **The basis of China's claims to the South China Sea is based on historical factors of the kingdom's past**

The Nine Dash Line consists of nine hypothetical points that form the basis of China's historical claims to China's southern territories. These points were put forward by China without following the UN International Convention on the Law of the Sea or the 1982 UN Convention on the Law of the Sea. In the Natuna Sea dispute itself, China has historically felt that it has rights and interests in Natuna waters. China claims Natuna waters are included in the nine-dash line area. UNCLOS regulates how zoning or water bodies are determined. The maritime boundaries of a coastal country, both the territorial sea and the Exclusive Economic Zone (EEZ), are determined by drawing reference lines. UNCLOS 1982 only regulates three types of reference lines for measuring a country's territorial waters, namely normal reference lines, straight reference lines and archipelagic reference lines. The nine-dash line can be said to represent China's unilateral claim to sovereignty and control over land, sea and air areas (Firdaus, Atikah, 2021)

China's unilateral claim is in accordance with the historical background of the ancient Chinese imperial region. According to them, the area was discovered by the Han Dynasty in the 2nd century AD. In the 12th century, the Yuan Dynasty included the South China Sea on its regional map, but it was re-consolidated by the Ming and Qing Dynasties in the 13th century. In 1947, China created a regional map consisting of nine U-shaped dotted lines covering the entire South China Sea. All areas within the dotted line are claimed by China as its own territory (Laksmi, Mangku, and Yuliantini, 2022).



Figure 1. Map of the South China Sea. (Source: InsightIAS)

Border issues have become important now since China released a claim map called the "Nine Dash Line" in mid-2009. Because borders, including the determination of borders, are the most important expression of a country's sovereignty. Territory, utilization of natural resources, security and territorial integrity. The importance of monitoring Indonesia's borders regarding the Indonesia-China border in the South China Sea. As mentioned above, in 2009, China unilaterally withdrew nine points from Spati Island in the central South China Sea, including parts of Natuna waters. This area was later claimed as Chinese territory.

a. Actions taken by China in claiming the waters of the South China Sea

The South China Sea dispute began when the government of the People's Republic of China stated that it had rights to all territorial waters in the South China Sea. The People's Republic of China government's claim to the region is based on the nine-dash line principle. The nine-dash line principle consists of nine hypothetical points indicating China's claim to almost the entire South China Sea. Based on this principle, China declares the islands in the South China Sea as its territory. This is considered to weaken the interests of countries that claim parts of the South China Sea as part of their exclusive territory, and has sparked strong opposition in regional countries such as the Philippines, Vietnam, Taiwan, Brunei Darussalam and Malaysia. The Parcel Islands and Spratly Islands are among the areas involved in land and sea conflicts in the South China Sea. Regional countries involved in the South China Sea dispute generally use historical and geographical reasons in the dispute over ownership of maritime areas and two islands in the South China Sea region.

China claims the disputed territory in this case, because China has owned the waters and the two groups of Parcel and Spratly Islands since 2000 years ago. The Chinese government later claimed that in 1947 it published a map detailing China's sovereignty over the South China Sea, the so-called nine-dash line. Meanwhile, other countries in conflict with China, namely the Philippines, Vietnam, Taiwan, Brunei Darussalam and Malaysia, also claim parts of the South China Sea as part of their exclusive economic zone based on a geographical approach recognized in 1982. International conflicts often escalate into a physical confrontation involving military force. There are even concerns that these confrontational efforts could have an impact not only on the countries in dispute but also on countries that are not in dispute around the South China Sea.

2. Dispute resolution efforts that can be taken by countries in the South China Sea region and the UN according to UNCLOS 1982

a. Steps taken by countries in the South China Sea region to maintain their sovereignty and wealth of natural resources

With a free and active foreign policy, Indonesia is aware that Indonesia is not a neutral country that must face the South China Sea dispute. Indonesia's view is that if Indonesia and China have territorial claims to the South China Sea, then there should be no water dispute because water rights are granted through the land rights of the disputed claimants. The foundation of the UN Convention on the Law of the Sea in 1982 reminds us of the important role of the sea from a security, economic and political perspective (Darajati & Adolf, 2018).

Likewise, the Philippines, Vietnam, Taiwan, Brunei Darussalam and Malaysia recognize that parts of the South China Sea are part of their Exclusive Economic Zone (EEZ) based on the geographical area approach determined and adopted by the 1982 UN Convention on UNCLOS. Physical confrontation between countries conflicting countries in the South China Sea are often carried out by their respective military forces. The conflict between countries involved in the South China Sea dispute to claim ownership of the South China Sea region is becoming increasingly disruptive to regional stability, potentially leading to violence in the South China Sea dispute. There is a reason that the countries involved in the South China Sea dispute, such as China, Taiwan, Vietnam, Brunei, the Philippines and Malaysia, each have a common interest in protecting the maritime and land areas of the countries in dispute. In the Natuna Sea dispute itself, China feels it has rights and interests in the Natuna Sea for historical reasons. China claims that

Natuna waters are included in the nine-dash line area where there is no strong legal basis behind China's claim (Prihandono, 2020). UNCLOS has regulated methods for determining the zoning or territorial waters of a coastal state. Both the territorial sea and the exclusive economic zone (ZEE) are determined by drawing reference lines. UNCLOS 1982 only regulates three ways of drawing baselines to measure a country's territorial waters, the normal baseline, the straight baseline and the archipelagic baseline. Meanwhile, the Nine Dash Line is not in UNCLOS (MUBIINA, 2017).

3. Law Enforcement Efforts In Handling The South China Sea Dispute

a. A Resolution That Can Be Used By Law Enforcement To Handle Disputes Between Countries

Conflict between subjects of international law is certainly unavoidable. Legal and political solutions are options for all public and private actors to resolve problems. In general, international dispute resolution is divided into two categories, namely judicial disputes and non-judicial disputes. Legal disputes can be resolved through the International Court of Justice (ICJ), the International Criminal Court (ICC), the International Tribunal for the Law of the Sea (ITLOS), and other courts whose decisions provide legal clarity. Out-of-court pathways currently include negotiation, mediation, conciliation, and arbitration. Various disputes based on international law can be resolved using this method. In fact, some treaties state arbitration as the preferred method of dispute resolution, including in international commercial disputes and some other public law matters (Silviani, 2019)

4. Legal Protection Of The UN Convention On The Law Of The Sea (UNCLOS 1982) For Countries With Sovereign Rights Over Exclusive Economic Zones

a. UNCLOS 1982 Policy Which Protects a Country's Exclusive Economic Zone

The UN Convention on the Law of the Sea, commonly called the International Convention on the Law of the Sea 1982 (UNCLOS 1982), is an international agreement that grew out of the Third Conference on the Law of the Sea (UNCLOS III), which was held from 1973 to 1982. The Convention on the Law of the Sea defines the rights and obligations of states in the use of the world's oceans and provides guidelines for the economy, environment, and management of marine natural resources. As an international legal document, the 1982 UN Convention on the Law of the Sea can be the legal basis for any country to establish maritime boundaries. Therefore, UNCLOS 1982 is the basis for resolving international disputes related to a country's maritime territory (Novianto, Firmansyah & Pratama, 2020). Even though the 1982 UN Convention on the Law of the Sea contains regulations regarding the division of national sea boundaries and maritime areas, disputes between two or more countries regarding territorial boundaries still often occur. If there is a difference of opinion, the 1982 Law of the Sea Convention sets out three different procedures that must be followed. Part I stipulates that dispute resolution must be carried out based on a peaceful agreement between the parties. Part II regulates coercive dispute resolution procedures to produce binding decisions that apply. If the procedures are not followed, I will not provide a solution to the dispute. So Part III can be used as a reference to regulate several limitations and exceptions in jurisdiction for the procedures regulated in Part II (Harini, 2011).

IV. CONCLUSION

The decades-long dispute over the South China Sea region still has no clear conclusion, and the conflicting countries continue to be in endless conflict. This problem arises because of differences in views and principles regarding the definition of territorial boundaries between countries. Although China relies heavily on historical theory in this dispute, the other five disputing countries, in addition to historical aspects, also rely on the 1982 UN Convention on the Law of the Sea as the basis for determining maritime boundaries. In the context of international law, countries that ratify the 1982 Law of the Sea Convention have an obligation to respect and comply with the Convention as an agreement of the international community. It is the obligation of all countries to determine maritime boundaries and resolve maritime disputes based on relevant agreements. In this case, the goodwill of the disputing countries is an important element in the South China Sea dispute resolution process as stipulated in the 1982 UN Convention on the Law of the Sea, and dispute resolution is achieved through a process of peaceful agreement between the parties involved. If this does not resolve the existing problem, you can take proceedings at the International Court of Justice. Apart from that, regional diplomacy can also be utilized

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