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ANALYSING THE SETTLEMENT OF MARITIME SOVEREIGNTY'S DISPUTE CASES BASED ON UNCLOS 1982

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ABSTRACT

This paper was written to describe maritime sovereignty disputes under the United Nations Convention on the Law of the Sea 1982 (UNCLOS). UNCLOS' 1982 role was enormous in resolving the South China Sea dispute, Indonesia's Malaysian dispute, and the Natuna islands dispute. The theoretical framework used in this paper to analyze case studies is the international regime and the theory of compliance with maritime dispute resolution. The results of this paper show that the jurisdiction of UNCLOS 1982 offers several paths in dispute resolution and prevents the occurrence of perpetual sea disputes.

KEYWORDS

Maritime, UNCLOS 1982, South China Sea, Malacca strait, Natuna islands

INTRODUCTION

In the development of world history, maritime areas are the key for countries to be able to rule the world. Some examples of countries that almost rule the world such as Spain, Portugal, and the Netherlands have conducted expeditions in the sea region. In ancient times the sea was the only effective means of relations with other countries. Countries that used to successfully conduct expeditions around the world by sea lanes experience glory even today.

Sir Walter Raleigh, an English poet, said: "Whoever commands the sea, commands the trade. Whoever commands the trade of the world, commands the riches of the world". It is true that the sea is a strategic path in conducting political and economic relations for countries in the world until now1. This quote seems to reinforce assumptions about the importance of maritime to the country. In this case, it can be assumed that if a country can control the sea area then the country can meet the needs of natural resources for its people. Therefore, the status of state sovereignty over maritime areas is a great opportunity and advantage for countries that want to develop strategic relations and even manage the natural potential in the maritime area.

Maritime areas are often problematic for countries due to uncertain sea boundaries. Such problems usually cause disputes for the relevant countries. Disputes in the waters often occur between countries that are located nearby. But it does not rule out the possibility if countries that are geographically not close to the dispute. It cannot be denied that some disputes occur because of illegal actions carried out in the territorial waters of a country. Territorial waters are governed by the jurisdiction of the coastal state and adhere to the principle of extraterritorial2. So that if a crime occurs in the territorial waters then the jurisdiction established can be enforced in accordance with applicable law.

Maritime disputes can be resolved according to jurisdictions governed by the countries involved. The United Nations Convention on the Law of the Sea (UNCLOS) 1982 is considered the highest law governing international sea law. UNCLOS 1982 is one of them regulates the difference in the determination of territorial boundaries of coastal states and island countries. A country's territorial sea is governed by a distance of 12 miles, the additional zone is 24 miles,

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and the exclusive economic zone (EEZ) is 200 miles measured from the baseline3. The question of the status of territory and the vagueness of a country's maritime boundaries is often a source of dispute between states. Disputes arise due to the application of different principles to the establishment of continental shelf boundaries among neighboring countries, giving rise to overlapping areas that can lead to maritime disputes.

The country's motives in disputes are often based on a desire to defend national sovereignty and security. In this regard strategic control of the important position of sea transport routes, fishing areas, exploration, and exploitation of crude oil and natural gas is also an important aspect in maritime security. When discussing sovereignty often leads to sea disputes. This can happen if the country feels its national stability is disrupted due to certain sea disputes.

It cannot be denied that if there is a dispute and impact on the national stability of a country and national security then the affected country can dispute this. An example of the case in Indonesia's attitude that experienced instability in the economy due to the South China Sea dispute. Indonesia's policy was issued to strengthen the EEZ in the Natuna islands adjacent to the South China Sea which then resulted in an arbitration court ruling on June 12, 2016, has expressly stated that the use of the terms nine-dash line, traditional fishing ground, and historical right used by China is indeed unfounded and not in accordance with international sea law.

It is recorded in history that some countries experienced maritime territorial disputes which were then handled by the governing international regime. One of them is the case of maritime disputes in Asia is taking place in the territorial waters of East and Southeast Asia. This is due to disputes over the South China Sea, sea boundary disputes, and illegal fishing. It is true that many maritime disputes involve countries with adjacent geographical locations. The existence of differences in the perspective of formal marine regulations causes these disputes to often occur.

METHOD

This research uses a type of qualitative research with a descriptive approach. The data used in this study are primary data and secondary data. UNCLOS' 1982 role was enormous in resolving the South China Sea dispute, Indonesia's Malaysian dispute, and the Natuna islands dispute. The theoretical framework used in this paper to analyze case studies is the international regime and the theory of compliance with maritime dispute resolution. The results of this paper show that the jurisdiction of UNCLOS 1982 offers several paths in dispute resolution and prevents the occurrence of perpetual sea disputes.

The qualitative research method is a research method based on the philosophy of positivism, used to examine the natural object conditions, where the researcher is as a key instrument, sampling data sources is done purposively and snowball, data collection techniques with triangulation, data analysis is inductive/qualitative and research results emphasize meaning more than generalization (Sugiyono, 2015: 19).

RESULTS AND DISCUSSION

The proximity of the outermost position between Indonesia and Malaysia causes problems in setting each country's sea boundary. The sea boundary between Indonesia and Malaysia overlaps due to the absence of clear jurisdiction. According to the concept of state territory

according to international law in the jurisdiction of each country that has ratified UNCLOS 1982. Disputes over these obscure territorial claims do not only happen once upon a time. Some cases due to the vagueness of the sea boundary between the two countries include the dispute over the islands of Sipadan and Ligitan won by Malaysia and the Malacca Strait issue that occurred due to a misunderstanding of the two countries governing the Exclusive Economic Zone.

The length of the exclusive economic zone boundary is 400 miles in and within this extent the country is allowed to carry out activities. While in the case of the Strait of Malacca can be observed and observed that the length of the Strait of Malacca from Indonesia to the coastal region of Malaysia does not reach 400 miles23. This is what causes both countries to experience the missed conception of each country's EEZ. In the end, the two countries agreed to a legal settlement effort to set legal limits.

The overlap of EEZ of the two countries is due to the very close distance between the two countries. Malaysia's EEZ entered the Indonesian EEZ and vice versa, this led to the need for an international regime to facilitate dispute resolution. This dispute was then interspersed using UNCLOS 1982 which Indonesia and Malaysia both ratified UNCLOS 1982. Thus, article 15 UNCLOS 1982 explains that the EEZ of overlapping countries is limited based on the middle boundary of the two countries. This is an exception if the country has certain historical factors that can strengthen the position to control the EEZ.

The background of the South China Sea dispute departs from the involvement of countries including China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei Darussalam. This conflict heated up again after the former had peaked during the Cold War. Basically, this conflict began because of disputes over ownership of the Paracel and Spratly islands. The islands were initially claimed by the People's Republic of China on historic grounds, but several countries adjacent to the South China Sea protested. China feels it has long taken care of, occupied, and utilized the results of the archipelago so insisted on gaining ownership of the Paracel and Spratly islands. Sovereignty claims have historically been substantiated by China's 2000-year rule by the Chinese dynasty. On September 4, 1958, China issued a declaration that the concerns of island groups in the territorial waters of the South China Sea belong to China or the so-called Declaration of the Government of the People‟"s Republic of China on China's Territorial Sea.

Not only that the island's territorial claims and waters were redeclared by China on February 25, 1992, regarding territorial zones and additional zones. The declaration is called The Law of the People's Republic of China on the Territorial Water and Contiguous Zone. But instead of just China issuing claims, countries that are located nearby both issue claims.

The role of international law here is to provide options in dispute resolution. In unclos regulation in article 33 of the UN Charter explained that dispute resolution efforts can be done through various means. Some ways depend on the disputed country, can negotiate, inquiry, conciliation, mediation, to arbitration.

A legal settlement based on UNCLOS' 1982 analysis of the South China Sea dispute can be made by peaceful settlement between the two sides, as follows; (a) Judicial settlement, (b) arbitration, (c) negotiation, conciliation, mediation, (d) settlement based on the system of the United Nations (UN). Several ways can be done to resolve maritime disputes in the South

China Sea. Dispute resolution under UNCLOS 1982 and DOC 2002, among others, is as follows;

a. Mediation and Negotiation

The countries involved in the dispute are the Philippines, Malaysia, Vietnam and Brunei Darussalam. These countries then agreed to hold a meeting with China as the country that controls a cluster of islands in the South China Sea. Another way is to use a third party or commonly called mediation. Mediators here serve to assist in the resolution of disputes between several Southeast Asian countries along with China.

b. Settlement through International Organizations

The South China Sea dispute can be resolved through southeast Asia's international organization ASEAN. This is because most of the disputed countries are ASEAN member states even though China as a defendant country is not a member of ASEAN. But jurisdictionally UNCLOS 1982 this can be done.

c. Settlement through Arbitration

Until now, the resolution of this dispute is still done through arbitration proceedings. The Philippines as the plaintiff country filed a lawsuit at the international arbitration court, of which China is the defendant. The main lawsuit is on the issue of reclamation carried out by China on a cluster of islands in the South China Sea.

d. Settlement Through Conciliation

Conciliation can also be carried out by disputed countries in the south China Sea case.

e. Settlement through the International Court of Justice

Disputes can also be resolved through the International Court of Justice (ICJ), an international court of justice. The ICJ is also the main judicial body of the United Nations.

f. Settlement through the International Court of The Law of the Sea

This court is different from UNCLOS, but the International Tribunal for the Law of the Sea (ITLOS) is a special judicial body. Disputes over the South China Sea can be resolved through this particular judicial body. Procedures in ITLOS are based on UNCLOS 1982. ITLOS conducts dispute resolution on the basis of the error of countries in interpreting UNCLOS 1982.

CONCLUSION

Maritime disputes are a problem that often occurs in countries that have sea areas. Some countries dispute to get property rights to territorial waters, islands, to access to manage natural resources. The question of the vagueness of a boundary causes different interpretations of each country in understanding the boundaries of a region's continental shelf. Disputes over territorial claims occur due to the vagueness of these boundaries. The author uses the frame of mind of the internationally institutionalized regime that is the United Nations Convention on the Law of the Sea 1982 (UNCLOS). Thus the settlement in dispute claims of this maritime territory author refers to the legal jurisdiction of UNCLOS 1982 and settlement under UNCLOS 1982. It cannot be denied that this maritime sovereignty dispute is based on the desire to obtain official status under the law to manage all natural potentials in a region. In the South China Sea dispute, the role of international law is large but still experiencing obstacles and is still in the process of resolving disputes, while in the case of the Malacca strait and illegal fishing in the Natuna islands the role of international law here is effective until the dispute resolution period.

It can be concluded that the role of international law is very important both based on the adoption of formal legal regulations into the official rule of law of the state and the resolution of disputes that follow the flow of international law. A legal settlement shall make the outcomes set forth in this dispute an official decree. UNCLOS 1982 is considered potent in resolving disputes over maritime sovereignty based on case studies in this article.

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