

## SOUTH CHINA SEA: CONFLICT, CHALLENGE, AND SOLUTION

**Winanda Kusuma<sup>1</sup>, A. Cery Kurnia<sup>2</sup>, Rio Armanda Agustian<sup>3</sup>**

<sup>1</sup> Faculty of Law, Universitas Bangka Belitung, Indonesia, E-mail:  
 kusuma.winanda@gmail.com

<sup>2</sup> Faculty of Law, Universitas Bangka Belitung, Indonesia, E-mail: andicery@gmail.com

<sup>3</sup> Faculty of Law, Universitas Bangka Belitung, Indonesia, E-mail:  
 rioarmanda.agustian@yahoo.com

*Submitted: March 4, 2021; Reviewed: March 8, 2021; Accepted: March 9, 2021*

| Article Info  | Abstract   |
|---|--|
| <p><b>Keywords:</b><br/>           The South China Sea, International Law of Sea, UNCLOS 1982, Delimitation.</p> <p><b>DOI:</b><br/>           10.25041/lajil.v3i1.2266</p> | <p><i>The South China Sea is a strategic marine area in terms of natural resource potential and international trade routes. For decades, territorial disputes have occurred with peaceful solutions from regional organizations, international courts, and even contributions from outside the claimant state. This paper examines the efforts made to contribute to a peaceful solution to disputed states of claims. The achievement of a peaceful solution, the shortcomings of the peaceful solution to the proposed peaceful solution's chronology. This research is normative juridical research that is historical descriptive in nature. The South China Sea Dispute arises from China's actions regarding its map of its maritime territories that do not comply with international maritime law. Regulations regarding the method of drawing deep-sea boundaries under international maritime law are violated in this act. Negotiation efforts in finding conflict solutions in regional organizations, state leadership meetings, informal meetings of claim state policymakers, and efforts to file claims by the Philippines at permanent court arbitration have been carried out. China's action that does not recognize the Philippine lawsuit decision poses a challenge to international maritime law and its member countries. A complete peaceful solution must be sought immediately when Softlaw and hard law must comply with the claiming state.</i></p> |

### A. Introduction

International law is known as the law that regulates legal subjects across countries. At first international law was only interpreted as regulating the behavior and relations of several countries in international relations, which became increasingly complex. It is making the above meaning and understanding broadened so that international law regulates international organizations' relevant systematics and behaviour by making certain agreed boundaries and companies that have multinational impacts. Individual problems are arranged in it. International

law governs law where the main subject is the nation-state. International law is also used to show customs and legal rules that apply initially regarding the relationship between kings in a particular kingdom or nation.<sup>1</sup> Laws between developing nation-states show the complexity of principles and principles to regulate the relationship between community members, nations, or states and all the complexities to achieve world order.

The territory of a country besides we know the air and land as well as the ocean. However, the problem of maritime affairs or sea territory is not owned by every country. Only certain countries have sea territories, namely countries where the land area borders the sea. The sea is sometimes the boundary of a country with another country with a boundary point determined through bilateral or multilateral means. It means that it is the limit of a country's power as far as the outer line of its territorial boundaries.

In the development of international law, the limit of power, which is the boundary of a country's territory, is very closely held, violations of the territory of a country can have fatal consequences and can even lead to relationship breakdown, and if it drags on, war will result. Territorial boundaries are demanded to maintain good regional security for each country, and border treaties that are created need to be obeyed to harm other countries' interests.

The determination of the territory's boundaries, which includes the sea in its manufacture, always considers the form of consequences and other considerations so that all interests are equally running. For countries whose territory borders another country's territory, the boundaries cannot be determined unilaterally but must pay attention to their history and the agreements made. Based on international constitutional practice experience, if you only pay attention to history, there are still many problems. The regulation of maritime boundaries has also been regulated in the 1982 United Nations Convention on Law of The Sea, which in this paper will be called international maritime law. The regulation of sea areas in international maritime law is regulated by drawing baselines with the coastal state's geographical conditions.<sup>2</sup>

International law is based on free will and the consent of several or all States. This is to dominate the state's common interests or other international legal subjects who claim to be bound in it. By this definition, in general, international law is a part of the law that regulates the activities of international entities.

The condition of the Asia Pacific Ocean Region as a large sea area is facing conflict conditions. The South China Sea, the fulcrum of geopolitics in the Asia Pacific region, is being discussed at the international level because it has sparked conflicts between several major Asian countries and several ASEAN members.<sup>3</sup> Disputed issues regarding the claims of maritime territories between countries. The dispute influences the security conditions of the Asian region, especially ASEAN, even a show of military power has been shown by conflicting countries.

The intersection of sovereignty claims and territorial jurisdiction in the South China Sea region involves six countries: China, Taiwan, the Philippines, Vietnam, Malaysia, and Brunei Darussalam.<sup>4</sup> The characteristics of the conflict in this region are due to each country's interests towards the South China Sea region with the narrative of arguments and the country's legal basis. As one of the countries bordering the South China Sea, Indonesia states that it is not directly involved in the conflict over territories in the South China Sea. Indonesia is a member of Southeast Asia and a strategic value for Indonesia, which has several potentials for our

---

<sup>1</sup> Hasanuddin Hasim, "HUBUNGAN HUKUM INTERNASIONAL DAN HUKUM NASIONAL, PERSPEKTIF TEORI MONOSIME DAN TEORI DUALISME", *Jurnal Perbandingan Mahzab* 1, no. 2 (2019): 166-179, 167, DOI: 10.24252/mh.v1i2.10623

<sup>2</sup> See Article 48 UNCLOS 1982

<sup>3</sup> Ismet Ismaya Saleh, "IMPLEMENTASI GEOSTRATEGI NASIONAL MENGHADAPI PERKEMBANGAN REGIONAL UNTUK MELINDUNGI POLITIK LUAR NEGERI DALAM RANGKA KETAHANAN NASIONAL", *Individual Worksheet, Lembaga Ketahanan Nasional*, (2014), p.18

<sup>4</sup> Asep Setiawan, "KEAMANAN MARITIME DI LAUT CINA SELATAN: TINJAUAN ATAS ANALISA BARRY BUZAN", *Jurnal Keamanan Nasional* 3, no. 1 (2017): 33-62, 34, DOI: 10.31599/jkn.v3i1.8.

country's security in regionality in ASEAN membership. The influence of regional stability within ASEAN is threatened because of disputes in the South China Sea region, so it is correlated with the mismatch of ASEAN security credibility, affecting Indonesia in particular.

Data from the International Hydrographic Bureau, the South China Sea is said to be the waters extending from the southwest to the northeast, bordering on the south with southern latitude between Sumatra and Kalimantan and in the north bordering the Taiwan Strait from the northern tip of Taiwan to the coast of Fukien, China. The water area covers about 4,000,000 km<sup>2</sup>.<sup>5</sup> The sea area consists of hundreds of small surrounding islands, rocky reefs, and small interisland straits. According to information from various seismic surveys of oil and gas reserves based on these data, the vast area and various geographical contours are abundant, especially in China's conflict areas and Spratly and Paracel's islands.

Information regarding the wealth of natural resources in the South China Sea, several aggressive actions have been carried out by countries directly adjacent to this region to legitimize any territories claimed for their ownership. These claims refer to historical factors, economic calculations, and geostrategic considerations of the countries involved.

The territorial dispute in the South China Sea was preceded by China's claim in 1974 to release a map detailing its country's sovereignty claims, including the Spratly, Paracels, and Pratas islands.<sup>6</sup> That same year China maintained a military presence in the islands. Of course, this claim immediately received a response from countries whose borders intersect in the South China Sea, especially ASEAN member countries.

China's claims over the South China Sea are considered part of their sea, which overlap with other countries' sovereignty, especially ASEAN countries. Although on a small scale, even using the military in a settlement pattern could endanger world peace. The huge potential of natural resources around the South China Sea has made friction sharper between the warring countries. It is necessary to make an inventory of what conflicts exist around the South China Sea concerning the countries and the resolution patterns that best resolve them. According to international maritime law, problems related to border conflicts such as what happened in the South China Sea and how to handle and resolve South China Sea conflicts.

## **B. Discussion**

### **1. South China Sea conflict**

Countries want the widening of the territorial sea from an economic point of view. The coastal states feel the need to expand their territorial seas to control and reserve the marine resources to meet their own people's needs. From the point of view of national defence and security, the widening of the territorial sea is also necessary given the development of sea traffic and various types of vessels with all kinds of impacts on the coastal state.

There are two doctrines for determining this problem, namely:

#### **a. The Doctrine Right Reserved**

This doctrine is a doctrine defended in the past, which states that the territorial sea is an integral part of its territory. According to this doctrine, the coastal state has full power or full dominium over its territorial seas, which can be made property due to certain sea sources' possible exhaustion. If accepted, this doctrine will have several consequences:<sup>7</sup>

---

<sup>5</sup> Hasjim Djalal, "POTENTIAL CONFLICT IN THE SOUTH CHINA SEA: IN SEARCH OF COOPERATION", *Indonesian Quarterly* 18, no. 2 (1990): 364-375, 365.

<sup>6</sup> Try Satria Indrawan Putra, et.al, "REKLAMASI PULAU REPUBLIK RAKYAT TIONGKOK DI LAUT CINA SELATAN: SUATU ANALISA TERHADAP PENAMBAHAN WILAYAH DAN DAMPAK TERHADAP JALUR PELAYARAN INTERNASIONAL", *Diponegoro Law Review* 5, no. 2 (2016): 1-14, 2.

<sup>7</sup> Dina Sunyowati dan Enny Narwati, *Hukum Laut* (Surabaya: Airlangga University Press, First Edition 2013), 46.

- 1) The territorial sea can be closed and opened at will by the coastal state;
- 2) Can prohibit the entry of foreign ships;
- 3) State monopoly for shipping and fishing.

At present, this doctrine has been abandoned because it has caused many protests and is also not following the international community's spirit, especially if the dominion theory means the theory of property rights. In contrast, in reality, this is not the case.

#### b. The Doctrine of Sovereignty

The classical doctrine is still used today in the practice of international law. This concept focuses on the coastal state not having full dominance over its sea areas but only the territorial sea's imperial concept. Geneva Convention 1958 Article 1 in that Convention, the term that is always used, is sovereignty for everything related to the coastal state's rights to the sea in its territory. So what is accepted now by the international community is the term sovereignty. International Law of the Sea is consensus agreed on in the 1982 Convention on the Sea Law.<sup>8</sup>

- 1) Can form an archipelago state, guaranteeing the interests of the country.
- 2) Provide the opportunity for the coastal state to treat the expansion of the sea area.
- 3) Extending the responsibility of the coastal state to the oceans.
- 4) The reduction of the open sea area to become a territorial sea.
- 5) Supporting the preservation of the marine environment, which the national laws of a country must protect.
- 6) Reducing the freedoms that previously existed for managers of the oceans.

The South China Sea dispute is closely related to China's interest in expanding its territory with a unilateral map. It cannot be separated from economic, strategic, and political interests. Achieving a fair solution in the delimitation of maritime boundaries requires consideration related to political, strategic, and historical factors.<sup>9</sup> The factors above are problems that conflicted countries must resolve to defend their rights in the South China Sea region. China's claim through the map of the Nine dashes 1974 becomes the basis and, at the same time, is a unilateral implication. The claim is related to the sovereign rights over the potential wealth of the sea historically and geographically. Historically, the Chinese state narrated that the territory had been controlled effectively and utilized by the previous Chinese, so the present Chinese state-controlled a basis as a successor. The South China Sea parties' disputed areas are warm on two main islands, namely the Spratly and Paracels. Many conflicted countries feel entitled and demand ownership of the Spratly islands, such as Brunei, China, Malaysia, the Philippines, Japan, Taiwan, and Vietnam.

Economic factors because the South China Sea area is rich in oil, natural gas, and fisheries. The vast area of the South China Sea also consists of islands scattered so far from each other. It has been described above that the island dispute that has attracted much attention is the Spratly and Paracel Islands. The land area of the island also has the value of international legal conflicts, the requirements for land features to be used as the basis for delimitation of areas are taken into account in international maritime law such as rocks, coral reefs, sand, and several others that are under the sea, even though the island's land standards are not suitable for farming. There is no historical record of these islands being inhabited because they cannot support human life and activities. However, in 1968 there were discovered petroleum reserves dramatically increased the South China Sea value. The Spratly and Paracel Islands' potential oil reserves are estimated to be up to 105 billion barrels and throughout the South China Sea as much as 213

<sup>8</sup> P. Joko Subagyo, *Hukum Laut Indonesia* (Jakarta: Rineka Cipta, 2013), 36.

<sup>9</sup> I Made Andi Arsana, *Batas Maritim Antarnegara* (Yogyakarta Gadjah Mada University Press, First Edition, 2007), 73.

billion barrels.<sup>10</sup> Even though the evidence of these oil reserves' existence is not yet strong, the estimated potential for these oil reserves can certainly be a factor in China's interest and countries in the region towards this region. Hydrocarbon resources are also a special attraction. According to estimates by the United States Geological Survey (USGS), 60-70% of hydrocarbons in the region are natural gas. Meanwhile, the use of natural gas resources is projected to increase by 5% per year for the next two decades. The amount is estimated at 20 trillion cubic feet (Tcf) per year, faster than other fuels.<sup>11</sup>

The interests of Chinese hegemony in the South China Sea area with the Nine-Dotted Line map claim issued in 1974 were strategic to strengthen their global power in Asia. The South China Sea as a historical route in shipping has always meant an important international shipping route that China must control. However, the potential for territorial overlap with other countries follows the 1982 International Law of the Sea. The South China Sea, as the world's main traffic, passed by supertankers sailing from the Asian continent through the Strait of Malacca to Europe. Supertankers sailing through the Malacca Straits and the southwestern part of the South China Sea even exceed the heavy traffic of the Suez Canal and the Panama Canal as bustling routes in world economic shipping in the South China Sea to Asian and Eastern European countries through the Malacca Strait will go through the sea area of the Spratly Islands. Shipping through disputed areas is important because it is dominated by major economic sources such as crude oil, natural gas, other natural resources, coal, iron ore, and even tin. The potential for environmentally friendly fuel electricity is increasing.

Increased control over the South China Sea will strengthen the country's position in terms of the maritime regime, considering that it is a central area of maritime activities. The sovereignty aspect due to the South China Sea issue concerns territorial claims. Losing territories in defending their areas will cause international and domestic legal problems due to the importance of these conflicting countries escalating. It is necessary to find peaceful solutions to prevent potential warfare from defending their territories under their respective interpretations and views for the sake of state sovereignty. The South China Sea region also has an important role in military strategy in manoeuvring its warships to the free sea regime's nuclear submarines. China's presence in this region can create an EEZ if it is recognized as territorial in the vast 1974 marine map of the State of China and wants to control the oceans to achieve a more excellent power projection of the Pacific Ocean and the Indian Ocean. Currently, the Chinese military's main mission is to strengthen strength with international law issues that are in line with the South China Sea region but are not only about territorial disputes.

The actions of the Chinese state in the South China Sea conflict are carrying out reclamation activities. This is one of the arguments of Chinese law because there are no specific rules or articles in the 1982 Law of the Sea Convention governing reclamation.<sup>12</sup> The Permanent Court Arbitration (PCA) decision dated 12 July 2016 ruled that this feature was not used as a reference for measuring marine areas. The features that can generate rights to a maritime zone, namely the existence of objective capacity, good natural conditions, population by the human community, which lives permanently in the features concerned, and economic activities that do not depend on outside parties.<sup>13</sup>

---

<sup>10</sup> Simela Victor Muhammad, "KEPENTINGAN CHINA DAN POSISI ASEAN DALAM SENGKETA LAUT CHINA SELATAN", *Info Singkat Hubungan Internasional* 4, no. 8, (2012): 5-8, 6.

<sup>11</sup> *Ibid*

<sup>12</sup> Try Satria Indrawan Putra, et.al, *Op.Cit.*, 4.

<sup>13</sup> Ana Fatmawati dan Elsa Aprina, "KEABSAHAN ALASAN PENOLAKAN REPUBLIK RAKYAT TIONGKOK TERHADAP PUTUSAN PERMANENT COURT ARBITRATION ATAS SENGKETA KLAIM WILAYAH LAUT CINA SELATAN ANTARA PHILIPINA DAN REPUBLIK RAKYAT TIONGKOK BERDASARKAN HUKUM INTERNASIONAL", *Veritas et Justitia* 5, no. 1, (2019): 105-129, 115, DOI: 10.25123/vej.3289.

International Law of the Sea regulates the substance of the maritime regime's norms concerning the withdrawal of maritime boundaries. The drawing of maritime boundaries is logically correlated with the granting and utilization of land rights of all existing marine resources, which have also been regulated in the 1982 International Convention on the Law of the Sea. When a coastal state with a land area borders the sea, the land area becomes the starting line for delineation so that the sea area becomes part of it. Inseparable from a country, but of course not by going against international law of the sea.

Coastal states under international maritime law enjoy exclusive economic zone (EEZ) territorial regimes calculated to be 200 miles from the baseline.<sup>14</sup> The coastal state exclusively under international maritime law has the right to explore and exploit marine potential in the EEZ regime. The EEZ regime in international maritime law is a new regime from the previous international maritime law. This has a positive impact on the legal position of the coastal state. The South China Sea dispute is focused on two islands which are the source of disputes between several countries that want the South China Sea area, namely the Spratly Islands and Paracel. The sea area and the Spratly and Paracel Islands' territory are archipelagic areas overlapping claims by some countries. There is a series of islands, uninhabited islands, atolls, and corals around the water area. Several islands in the South China Sea area focus on attraction for countries wanting ownership of this area because of their potential natural resources and geographical potential.

China still maintains a unilateral position to have the largest share of the South China Sea territory, with hundreds of kilometres to the south and east of the Hainan Province. The conflict between China and the Philippines in what the Philippines calls the West Philippine Sea, where there are islands that European countries call the Spratly Islands, but China claims the Nansha Islands where there are the Scarborough, Panatag, Bajo de Masinloc, or Karburo reefs which China calls the Huangyan Islands.<sup>15</sup> The Philippines' action on sovereignty in the Scarborough reef area was building a tower on the reef to not be negated by sea abrasion. As a country in conflict, Vietnam also claims the Spratly and Paracels' territories with historical claims from the kingdom that existed in Vietnam to the United States colonial period's succession in the 1951 San Francisco peace treaty.

The Malaysian state has a relatively weak claim because it is based on a marine map where the Spratly group's continental shelf and the Sabah mainland are quite close. A one-sided claim for bargaining power is within the country's borders in territorial delimitation negotiations. Brunei Darussalam is involved in the conflict, which cannot be separated from Malaysia's claim. The EEZ continental shelf of Malaysia's claim will overlap with the EEZ and the continental shelf from British succession to Louise Reef Island. However, the potential for conflict is not too significant.

The escalation of the South China Sea dispute has received mixed responses from conflicting countries. The Philippines, for example, filed a PCA lawsuit over a congested area dispute in 2013 and a decision in 2016. The Philippines in dispute only wants Spratly to be 160 km from the land area of the Philippines' outer islands as a baseline, far from the baseline boundary according to the 1982 international maritime law convention from the mainland. China is about 800 km from the nearest mainland area of china. The Philippines, based on the 1982 Law of the Sea Convention, is the EEZ a maximum of 200 nautical miles when it is converted about 321 km from the territorial sea baseline. Vietnam opposes the claim on China's map by carrying out a diplomatic protest action by claiming not to recognize China's claims and never asserting its sovereignty in the two islands. This puts Vietnam in line with the 1982 International Law of the Sea regarding the Paracel and Spratly Islands' status in its territory. As

---

<sup>14</sup> See Article 57 UNCLOS 1982

<sup>15</sup> Martin Sieff, "SENGKETA NAMA LAUT CHINA SELATAN ATAS KEPULAUAN SPARTLY DAN PARACEL UNGKAP KONFLIK YANG LEBIH DALAM", *Asia Pacific Defense Forum*, 13 September 2012.

a sovereign state, Vietnam has a territory under the principles of international law. It has documents proving that it has been in power *uti possidettis* in the Paracel and Spratly since the 17th century historically.

## 2. Handling the South China Sea Dispute Settlement

### a. Negotiated State Claims in South China Sea Disputes

The South China Sea dispute is very long and complicated. Most of the countries in conflict are members of the ASEAN regional organization, where ASEAN aims to maintain regional peace. Achieving these goals is carried out jointly between member countries. The ASEAN's role and commitment must be positioned as a conflict reducer, especially in the South China Sea region for its members and the Asian region. In 1976 an ASEAN Summit was held in Bali to be ratified by the Treaty of Amity in Southeast Asia (TAC), ratified by all ASEAN countries. A peaceful dispute resolution mechanism was also adopted in the agreement. Underlies the TAC's birth, the matter that underlies the difference or disagreement of interests among members that have started to surface must be regulated rationally, effectively, and with adequate procedures to avoid impacts that will endanger cooperation between member countries.<sup>16</sup> This international agreement must be reminded and enforced for every conflicted country when conflict tensions escalate to seek a peaceful settlement, and respect for ASEAN's goals remains consistently upheld.

Opportunities for resolving regional security problems must be sought and exploited because they will affect all members. All interests must be accommodated by sticking to international legal channels, not just foreign policy. Trust in fellow ASEAN members should never be reduced by establishing diplomatic communication and the role of states that are not part of the conflict more actively in reducing responses or actions against international law. The South China Sea issue has almost always been the subject of ASEAN leaders' meetings, which does not mean that it violates respect for the country's sovereignty but looks for even offers a comprehensive, peaceful solution in the middle of a meeting of leaders to determine state policies.

The further development of ASEAN sees the dynamics of regional security issues that are increasingly complex. It is necessary to strengthen communication to build trust among members of the region. The *ASEAN REGIONAL FORUM* (ARF) was formed in 1993. This forum aims to encourage Asia Pacific countries to discuss common security interests so that all parties can discuss regional security issues directly and openly.<sup>17</sup> Awareness of complex and multilateral regional security disputes moves from simple or traditional territorial disputes to regional territorial disputes requiring trans-regional inter-state settlement mechanisms. Concrete actions by conflicting and regional countries in resolving disputes, especially the delimitation claims of the South China Sea peacefully, include:

#### 1) Managing Potential Conflict in the South China Sea

Indonesia, which is not a country that has a claim to the South China Sea dispute in the 1990s, initiated the Managing Potential Conflict in the South China Sea. This activity is indeed not representative of the state but is attended by individuals who play a role in building a peaceful South China Sea settlement. This activity avoids juridical problems and even questions the sovereignty in disputed areas, but trying to establish and maintain cooperation to find

---

<sup>16</sup> Endah Rantau Itasari, "MEMAKSIMALKAN PERAN TREATY OF AMITY AND COOPERATION SOUTHEAST ASIA 1976 (TAC) DALAM PENYELESAIAN SENGKETA DI ASEAN", *Jurnal Komunikasi Hukum* 1, no. 1 (2015): 14-23, 20, DOI: 10.23887/jkh.v1i1.5010.

<sup>17</sup> M. Ali Busthomi, "MEKANISME ASEAN REGIONAL FORUM DALAM MENANGANI ISU TERORISME REGIONAL, JURNAL REVIEW POLITIK", *Jurnal Review Politik* 2, no. 1 (2012): 80 – 98, 83.

peaceful solutions has not complied with its strategic policies. The fundamental result of this activity is the ASEAN Declaration's planned activities *on the South China Sea*.

## 2) ASEAN Declaration on the South China Sea

After the Managing Potential Conflict in the South China Sea, *it was* agreed that activities that touch more on a peaceful solution need to hold a forum to discuss strategic policies. This activity was held in Manila in 1992, resulting from the Managing Potential Conflict in the South China Sea, which was held in Bandung. This declaration succeeded in agreeing on the Code of Conduct (COC) formula. Although it is not yet binding, the COC principles are steps to build confidence that the South China Sea dispute can be resolved peacefully without military intervention. The COC substance emphasizes direct multilateral solutions such as strengthening cooperation, navigation, and communication around shipping lanes that must be maintained for the whole world, protecting marine environmental ecosystems and transnational crimes around the South China Sea region. Since the beginning, China has always been unsupportive of multilateral solutions, preferring to support a bilateral pattern, making the COC have challenges in its implementation, especially when faced with China. Finally, China agreed to negotiate multilaterally but based on the 1982 International Sea Law, which was more binding.

## 3) Declaration Conduct of Parties in the South China Sea

The Chinese state was so massive in carrying out activities around the South China Sea region in the 2000s that it resulted in an escalation of conflict between claimants. China was initially reluctant to negotiate multilaterally until finally, it agreed to negotiate together to find a peaceful solution to sign the Declaration between ASEAN and China. It needs to be reaffirmed that this agreement consists of ASEAN as a regional organization with China, not a claimant state. ASEAN and China signed this Decree in Vietnam in 2002 to avoid military conflict, emphasize peaceful settlement, fulfil peaceful passage rights, and mutual restraint over the South China Sea territorial conflict. The requirements put forward by China are guidelines in forming a *Code of Conduct which will prioritize based on the 1982 International Law of the Sea*.

## 4) Code of Conduct

The Substantiation of the Declaration in Manila agreed on ASEAN and China to negotiate a COC which was then discussed intensively at the 21st ASEAN Summit in Cambodia. Changes in the dynamics of China's choice of action with the good neighbour policy put forward by the Chinese president. The COC agreement establishes cooperation in disputed areas without reducing the territorial claims in dispute. China also previously agreed that the COC finally discussed the TAC, which ASEAN countries had already agreed upon.

ASEAN's efforts are very intensive in finding a solution to the South China Sea conflict, either independently or by ASEAN as a regional organization. A draft of a peaceful solution has also been proposed by the claimant state to be used as a reference or further discussion in the state leaders' forums. The South China Sea dispute in the 2000s changed dynamics because the development of China's hegemony was extensive. China's economic influence on claimed countries in relations between countries made the escalation temporarily suppressed.

The change in the way China's settlement was initially intended was only so that the method of negotiating the South China Sea conflict was put forward through bilateral forums. The Chinese state's recent negotiation method changes open opportunities and actively participates in finding opportunities and peaceful solutions for the claimants to negotiate and conduct multilateral negotiations jointly. This change makes it easier for ASEAN as a regional organization and a country claiming ASEAN countries to seek peaceful solutions together and formulate more concrete and implementable solutions that all claimants accept. The solutions

offered by ASEAN and the claimants of ASEAN members are still not solid in one agreement. This is the weakness of the multilateral negotiations, which are the last resort chosen by the claimants. This solution benefits China even though it has favoured multilateral negotiations but has remained open from bilateral negotiations.

### 3. International Maritime Law Enforcement Efforts

Multilateral efforts that have not been implemented effectively at its peak, the Philippines filed a lawsuit over China's map claim to permanent court arbitration (PCA) in 2013. This lawsuit filed unilaterally is not an agreement between China and the Philippines. However, the PCA considers it unnecessary because it filed the legality of the map submitted by China as a special agreement and under Appendix VII Article 9 of the 1982 International Law of the Sea. The Philippines is the first claimant country to seek a settlement through the courts. The lawsuit over recognizing the Philippines' sovereign territory as China's sovereign territory against international maritime law. Regulations regarding maritime boundaries have been regulated and agreed upon with the Philippines and China as member states of international maritime law.

The PCA decision generates jurisprudence in the South China Sea conflict. This historical claim is one of the bases for recognizing sovereign territory in the South China Sea Region. According to the PCA, fishing by Chinese fishermen on historical claims is not done exclusively, and there is no prohibition on other countries to catch fish.<sup>18</sup> The PCA states that Mischief Reef, Second Thomas Shoal, and Reed Bank will sink at high tide, and therefore, this feature is part of the Philippines' sovereign rights.<sup>19</sup>

The South China Sea conflict between claimants in the surrounding area is still not over, especially disputes outside the ASEAN regional region. Increased because Negara a claim around the region, each claiming their territory. The claims state's actions could escalate tensions between Japan, China, and Taiwan. As described above, the South China Sea area is strategic in marine traffic and rich in natural resources. That makes all countries claim each other's territories through international maritime law arguments because there is tremendous economic potential in the region.

Some claim states are the island and coastal states. An archipelagic state according to 1982 international maritime law. 1982 international law of the sea defines an archipelago as a State consisting entirely of one or more islands and can include other islands.<sup>20</sup> The archipelago itself is a natural island group inseparable from a geographical, economic, political, and historical unity. A coastal state is a country that has a sea area as a state delimitation.

Another differentiation between archipelagic countries and coastal states can be seen from the method of determining baselines, coastal states based on Article 7 of the 1982 International Law of the Sea, as follows "In places where the coastline protrudes deep and bends inward or if there is a series of islands along the nearby coast, the method of drawing a straight baseline connecting the appropriate points can be used in drawing baselines from which the width of the territorial sea is measured".<sup>21</sup> Archipelagic states that underlie the maritime boundaries refer to Article 47 point 2 regulating the length of the island country baselines connecting the outer points of islands and the outermost dry reefs not to exceed 100 nautical miles and a maximum of 125 nautical miles except for 3% of the number of baselines around each archipelago.<sup>22</sup>

In the 1982 International Law of the Sea Regulations, the author tries to connect with Chinese claims based on historical claims. We already know that Chinese civilization is ancient and could access the oceans thousands of years ago either as fishermen or traders. It should be

---

<sup>18</sup> Ana Fatwati, *Op. Cit.*, 11.

<sup>19</sup> *Ibid.*

<sup>20</sup> Article 46 UNCLOS 1982

<sup>21</sup> Article 7 UNCLOS 1982.

<sup>22</sup> Article 47 UNCLOS 1982.

noted that the historical basis of claim recognition has also been regulated as an archipelago. In the present civilization, China has never claimed to be an archipelago. Claimed states are all coastal states enjoying territorial sea regimes to exclusive economic zones. The arrangement of the EEZ regime shall not be more than 200 miles from the starting line.<sup>23</sup> It has been explained above mainland China's distance to the disputed territory of more than 200 miles. China's current economic growth condition and increasing military capability are the most superior country in Asia, especially in the dispute over the South China Sea area's boundaries. The dispute worries all countries if the issue can not be resolved peacefully. China, which is the method of determining the country's territory is not right and violates international maritime law according to the 2016 PCA decision, will be able to destroy respect for 1982 International Law of the Sea.

#### **4. Challenges of South China Sea Conflict in International Law**

The claiming state, an island nation, will increasingly force international maritime law enforcement. The enforcement of international maritime law must be under the rules agreed upon by the claiming state and a member state of the 1982 international maritime law. Although the South China Sea dispute is China facing a claimant state, some territories exclude China from the dispute. The growth and improvement of China's economic and military capabilities in recent decades have made China increasingly active in activities or actions in disputed areas, such as carrying out reclamation around the Spratly and Paracel islands and conducting military exercises, and deploying aircraft carriers and submarines.

It is important for the South China Sea region's security that the United States participates in finding a peaceful solution to disputes in the South China Sea region. The United States' diplomatic step is taken to ensure that the country claims it has not violated international law, such as weapons. This step is carried out through diplomacy, but, unfortunately, the United States has also participated in peaceful efforts by using military force. The United States seeks to strengthen its military presence in the Asia Pacific region. Another military effort is to locate US mariners in military bases around conflict areas.

Claiming countries continue to contribute to a peaceful solution following the 1982 International Law of the Sea to end disputes peacefully. The state's participation outside of the claim also does not rule out the possibility because it is more objective in formulating a peaceful solution. State participation outside of claims is expected to end conflicts following the International Law of the Sea seriously. The role of regional organizations continues to be offered. This makes it easier for claim states to sit together to handle conflicts. Other relevant international organizations' roles cannot but have a role before these disputes grow increasingly complicated and difficult to resolve.

#### **C. Conclusion**

Conflict South Sea China region with the potential sources of nature's power is great and track important trade internationally. Region positioned due to track cross- the main northwest world is very crowded, bypassed by ships from various countries. From a military point of view, this region is significant to maintain and enhance national security. Countries with a base on the claim area each retain Sea of China Southern ownership of the factors above. China, with the approach historically, makes things such as basic claims of Sea of China Southern. Malaysia, the Philippines, Brunei also have an approach to the base that is strong with the regime of the Law of Sea International 1982 regarding zoning regime region sea. Differences in approach to the base that is different between China with several countries making conflicts that drag on until now.

---

<sup>23</sup> Article 57 UNCLOS 1982.

Conflict South Sea China by state claims of consciousness to maintain peace world contribute to help resolve the problems mentioned. Many solutions of peace that is offered by fellow ASEAN countries or solution unilateral option settlement ranging from ASEAN Managing Potential Conflict in the South China Sea, the Declaration on the South China Sea, the Declaration of Conduct of Parties in the South China Sea Code of Conduct until the last efforts to filing a lawsuit Philippines to the Permanent Court Arbitration is unilateral. State participation outside of claims also seeks to find solutions. Until the time is not also settled, the matter is full, but an attempt to show faith either resolve the problem it continues cultivated the parties to solve is not more complicated. The PCA decision as the South China Sea conflict's latest legal product states that China's territorial claim to sea territory from the nine-dashed map is invalid. It is inconsistent with international maritime law in The Principle of effectiveness or Uti Possidetis.

## REFERENCES

### A. Journal

- Busthomi, M. Ali "MEKANISME ASEAN REGIONAL FORUM DALAM MENANGANI ISU TERORISME REGIONAL, JURNAL REVIEW POLITIK", *Jurnal Review Politik* 2, no. 1, 2012: 80 – 98.
- Djalal, Hasjim. "POTENTIAL CONFLICT IN THE SOUTH CHINA SEA: IN SEARCH OF COOPERATION", *Indonesian Quarterly* 18, no. 2, 1990: 364-375.
- Fatmawati, Ana., Aprina, Elsa. "KEABSAHAN ALASAN PENOLAKAN REPUBLIK RAKYAT TIONGKOK TERHADAP PUTUSAN PERMANENT COURT ARBITRATION ATAS SENGKETA KLAIM WILAYAH LAUT CINA SELATAN ANTARA PHILIPINA DAN REPUBLIK RAKYAT TIONGKOK BERDASARKAN HUKUM INTERNASIONAL", *Veritas et Justitia* 5, no. 1, 2019: 105-129, DOI: 10.25123/vej.3289.
- Hasim, Hasanuddin. "HUBUNGAN HUKUM INTERNASIONAL DAN HUKUM NASIONAL, PERSPEKTIF TEORI MONOSIME DAN TEORI DUALISME", *Jurnal Perbandingan Mahzab* 1, no. 2, 2019: 166-179, DOI: 10.24252/mh.v1i2.10623.
- Ismet Ismaya Saleh, "IMPLEMENTASI GEOSTRATEGO NASIONAL MENGHADAPI PERKEMBANGA REGIONAL UNUTK MELINDUNGI POLITK LUAR NEGERI DALAM RANGKA KETAHANA NASIONAL", *Individual Worksheet, Lembaga Ketahanan Nasional*, 2014.
- Itasari, Endah Rantau. "MEMAKSIMALKAN PERAN TREATY OF AMITY AND COOPERATION SOUTHEAST ASIA 1976 (TAC) DALAM PENYELESAIAN SENGKETA DI ASEAN", *Jurnal Komunikasi Hukum* 1, no. 1, 2015: 14-23, DOI: 10.23887/jkh.v1i1.5010.
- Martin Sieff, "SENGKETA NAMA LAUT CHINA SELATAN ATAS KEPULAUAN SPARTLY DAN PARACEL UNGKAP KONFLIK YANG LEBIH DALAM", *Asia Pacific Defense Forum*, 13 September 2012.
- Muhammad, Simela Victor. "KEPENTINGAN CHINA DAN POSISI ASEAN DALAM SENGKETA LAUT CHINA SELATAN", *Info Singkat Hubungan Internasional* 4, no. 8, 2012: 5-8.
- Putra, Try Satria Indrawan., et.al. "REKLAMASI PULAU REPUBLIK RAKYAT TIONGKOK DI LAUT CINA SELATAN: SUATU ANALISA TERHADAP PENAMBAHAN WILAYAH DAN DAMPAK TERHADAP JALUR PELAYARAN INTERNASIONAL", *Diponegoro Law Review* 5, no. 2, 2016: 1-14.
- Setiawan, Asep. "KEAMANAN MARITIME DI LAUT CINA SELATAN: TINJAUAN ATAS ANALISA BARRY BUZAN", *Jurnal Keamanan Nasional* 3, no. 1, 2017: 33-62, DOI: 10.31599/jkn.v3i1.8.

**B. Book**

Arsana, I Made Andi. *Batas Maritim Antarnegara*. Yogyakarta: Gadjah Mada University Press, 2007.

Sodik, Dikdid Mohammad. *Hukum Laut Internasional dan Pengaturan di Indonesia*. Bandung: T. Refika Aditama, 2011.

Subagyo, P. Joko. *Hukum Laut Indonesia*. Jakarta: Rineka Cipta, 2013.

Sunyawati, Dina., Narwati, Enny. *Hukum Laut*. Surabaya: Airlangga University Press, 2013.

**C. Regulations**

ASEAN Declaration on the South China Sea.

Declaration Conduct of Parties in the South China Sea.

Managing Potential Conflict in the South China Sea.

Treaty of Amity and Cooperation in Southeast Asia 1976.

United Nations Convention on the Law of the Sea 1982.