

# Yordan Gunawan\_Fishing Rights in the South China Sea: Vietnam vs. China

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# Fishing Rights in the South China Sea: Vietnam vs. China

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**Abstract**—Fishing rights become one of the critical disputes that happened in the South China Sea. It is occurred due to most countries bordering the South China Sea affirm their exclusive rights to fish in that part of the territory. Vietnam and China are two countries that actively fight for their fishing rights in the South China Sea. Some actions done by China are intensely rejected by Vietnam. For instance, the Fishing Ban Policy announced by China is protested by Vietnam by objecting to the policy. This research is normative legal research by using a statutory approach in conducting this research. The method used in this research is using library research by accessing some data and information through journals, books, and the internet. This research aims to understand the international law perspective on the issue of fishing rights fight in the South China Sea between Vietnam and China.

**Keywords**—Fishing Rights, International Law, The South China Sea, Vietnam, China.

## I. INTRODUCTION

### A. Research Backgrounds

The South China Sea, as disputed water, has a variety of disputes due to overlapping claims made by the countries around it. Most of the claims are based on historical reasons for their countries. It causes uncertainty in the control and ownership of the South China Sea (abbreviated as TSCS). Each contested country claims for their historical reasons, which cause an overlap claiming in TSCS. Thus, some conflicts in TSCS arose.<sup>1</sup>

Fishing rights become one of the disputes that happened around TSCS, it is happened due to some countries which are neighbored by TSCS affirm the exclusive rights to fish in TSCS. For instance, Vietnam claims that their exclusive right is within 200 nautical miles of their coasts.<sup>2</sup> On the other hand, the right over fisheries in TSCS also asserted by The People's Republic of China (hereafter abbreviated as China) for more than 200 nautical miles from its coast by using the "U-shaped line".<sup>3</sup>

China and Vietnam are two countries that have uneasy bilateral relations. Tensions between the two countries occur because both are equally active in claiming the two islands, which are the main targets of the conflict in the region, namely the Spratly and Paracel islands. The huge energy resources as it is speculated located in TSCS has sparked tensions between Vietnam and China. In addition, the two respective islands are used as markers of the territorial limits of the claiming country, free navigation access around the island, and many potential fish in the waters around the island.<sup>4</sup>

China recently issued a regulation, namely China Fishing Ban, in TSCS. Vietnam has firmly rejected a fishing ban made by China, or it is called China's unilateral decision regarding banning some fishing activities in TSCS, which took effect from 1 May to 16 August, 2020. The Vietnamese government allows Vietnamese fishers to continue operating around the disputed Paracel Islands, even though China unilaterally enforces a ban on fishing in TSCS Sea and directs the provincial government to support Vietnamese fishers at sea.<sup>5</sup> Some actions conducted by China in banning the fishing activities in TSCS is always reacted by Vietnam. Thus, this paper tries to elaborate on the fishing rights fight between Vietnam and China under the perspectives on international law.

## II. MATERIALS AND METHOD

### A. Types of Research

This research is normative legal research. Using an international law perspective in relation to the case of fishing rights fight in disputed water, TSCS. There are several approaches to writing legal research in order to get information from various aspects of the issue being tried to find the answer. In this research, the authors use a statutory approach, especially in dealing with the issue of fishing rights in TSCS.<sup>6</sup>

<sup>1</sup> Malik, M. (2013). "Historical Fiction: China's South China Sea Claims", *World Affairs*, 176(1): 87.

<sup>2</sup> Poling GB. (2013). *The South China Sea in focus: Clarifying the Limits of Maritime Dispute*, London: Rowman & Littlefield, p.12.

<sup>3</sup> Keyuan Zou & Xinchang Liu. (2015). "The Legal Status of the U-shaped Line in the South China Sea and Its Legal Implications for Sovereignty, Sovereign Rights and Maritime Jurisdiction", *Chinese Journal of International Law*, 14(1): 73.

<sup>4</sup> Emmers R. (2011). *ASEAN and the Institutionalization of East Asia Vol. 17*, London: Routledge, p. 10.

<sup>5</sup> Bloomberg Quint. "Vietnam Rejects China's South China Sea Fishing Ban". Available from <https://www.bloomberquint.com/global-economics/vietnam-rejects-china-s-south-china-sea-fishing-ban> [ Accessed on June 5, 2020 ].

<sup>6</sup> Peter Mahmud Marzuki. (2008). *Penelitian Hukum Vol. 2*. Jakarta: Kencana, p. 29.

## B. Research Approaches

The research approach used in this study is the statute approach and the conceptual approach.

## C. Data Collection

The method of data collection in this research will be done through library research by literature learning. The data will be collected from reading, analyzing, and try to make a summary from related documents such as a convention, laws books, legal journals, and others associated with the main issue of this research.

## D. Data Analysis

The data will be analyzed by using international law perspectives, as the legal basis of this research, especially the issue of fishing rights in disputed water. Furthermore, the data will also be connected with the principle of law, some conventions, and other related rules, or it is called as juridical thinking.

# III. RESULTS AND DISCUSSION

## A. Fishing Dispute in the South China Sea

Some disputes between China and some other countries is happening around the South China Sea (TSCS). The most substantial dispute is the right to catch fish because most countries bordering TSCS confirm that they have exclusive rights to fish in that part of the region.

In this case, China also stated that they also have the right to use or exploit fishery resources around TSCS. But not only in waters within 200 M from the mainland coast and from the Paracel Islands. By using a 'U-shape' line, it is known that China has reached the boundary of an exclusive economic zone (EEZ), which might potentially be generated from its land and also on any island around TSCS that asserts its sovereignty.<sup>7</sup>

In TSCS, aside from tensions arising from interrelating assertions between disputed countries that cannot be stopped, until now, there have also been unsatisfactory developments, especially regarding relations between Vietnam and China.<sup>8</sup>

Moreover, some Chinese behaviors, such as increasing number and fishing activities carried out by Chinese ships in Vietnamese waters finally made all the results of the bilateral meeting useless. In contrast, four bilateral meetings were already done by Vietnam and China in the beginning of 2011, which has a purpose to discuss their different perspective regarding the conflict in TSCS. However, some incidents still happened, which worsen the bilateral situation. Wires cutting to the Vietnam oil exploration, which is done by China, create

<sup>7</sup> China's Exclusive Economic Zone and Continental Shelf Act 1998.

<sup>8</sup> Leszek Buszynski. (2012). "The South China Sea: Oil, Maritime Slaims, and U.S. – China Strategic Rivalry", *The Washington Quarterly*, pp.139-156.

<sup>9</sup> Sudira, I Nyoman, (2014), "The South China Sea Conflict and Indonesia's Foreign Policy to America and Europe". *International Relations Scientific Journal*, 10(2). p.143.

<sup>10</sup> P.P, Nainggolan. (2013), "*South China Sea Conflict and Its Implications for Regions*". Jakarta: P3DI Secretariat General of the Republic of Indonesia Parliament.

<sup>11</sup> *Ibid*, p.17.

tension between China and Vietnam. Furthermore, Vietnam decides to improve their military in TSCS.<sup>9</sup>

Furthermore, some countries joined into the conflicts of TSCS by using their historical basis and geographical basis in fighting the right to ownership of the land and sea area in TSCS. For example, China used its historical basis to claims some island in the TSCS. China claimed that for 2000 years ago, the two Paracel and Sparty island in the disputed area was China's own, then in 1947, the "Nine-Dashed Line" was made. The Chinese government decided to create a map of China's sovereignty in TSCS to show that China has ownership in that territory. The dispute in TSCS regarding the issue of territoriality has meaning that disputes are referring to the land area and territorial sea in the two Paracel and Spratly islands.<sup>10</sup>

Additionally, TSCS has potential sources of mineral wealth. Chinese officials estimate that oil reserves, specifically around the Paracel and Sparty islands are 213 billion barrels, or 10 times the U.S. reserves. While U.S. scientists estimate the amount of oil is only 28 billion barrels.<sup>11</sup> TSCS is also one of the richest fishing regions in the world, which provides nearly 10% of global fish consumption and is an essential part of global food security. Therefore, many countries fight over this region.<sup>12</sup>

In recent years, economic pressure as it is impacted by willingness to expand the fishing area lead to the process of a coastal guarding conducted in TSCS.<sup>13</sup> China enforce their maritime law enforcement agencies and their fisherman as a tool to strengthen their claim. It is part of their strategy to show that China has right to own the area. Not only by using traditional fisherman asked by government, fishing vessels from any part of China are also being asked to go to the disputed water which is TSCS. Overlapping law enforcements area and lack of cooperative management in TSCS effects the marine environment and fisheries health in TSCS.<sup>14</sup>

In addition, many fishermen or boats that often meet in the sea. This encounter at sea makes the intensification of minor incidents more likely consistent, and humanitarian treatment of fishermen is more perplexing. When behavior at sea becomes gradually lobbied and unpredictable, maritime actors are faced with more significant uncertainty in their own assessment making when they discover fishing vessels or maritime law enforcement vessels from other countries.<sup>15</sup>

In recent years, the role of frontline maritime law enforcement vessels in the contention of sovereign assertions in TSCS dispute has augmented. As a result, law enforcement and the conduct of fishing vessels in TSCS are becoming progressively politicized and volatile. Incidents at sea

<sup>12</sup> *Ibid*, p.19.

<sup>13</sup> Zhang, H., & Bateman, S. (2017). "Fishing Militia, the Securitization of fishery and the South China Sea Dispute", *Contemporary Southeast Asia*, pp. 288–314.

<sup>14</sup> Sumaila U.R & Cheung W (2015). Boom or Bust: The Future of Fish in the South China Sea. *Vancouver, BC: University of British Columbia*. [Available online at: [https://drive.google.com/file/d/0B\\_oUJE4kCTZrbVI4N2tTVjlpYTA/view](https://drive.google.com/file/d/0B_oUJE4kCTZrbVI4N2tTVjlpYTA/view). [Accessed on June 15 2020].

<sup>15</sup> Hsiao, A. (2019). "Opportunities for fisheries enforcement cooperation in the South China Sea". *Marine Policy*, . p.2

encompassing maritime law enforcement and fishing vessels from various claimant countries are common manifestations and sometimes produce severe magnitudes.<sup>16</sup>

### 5 B. China's Fishing Ban in the South China Sea

emerged as an alternative mechanism for resolving construction disputes outside the court.<sup>17</sup> The issue of banning fishing activities conducted by China was actually started in 1999. Imposing an annual fishing ban one-sidedly by China is getting international attention. China creating the policy in the disputed area between China and Vietnam without the consent of Vietnam. The policy is applied in the territorial claims areas that overlapped with Vietnam in the northern part of TSCS, at around 128,000 square km. Primarily, the ban was arranged for two months. But since 2009, the Chinese authorities made a movement which has aims to preserve the marine reserves. The ban has been prolonged to 2.5 months, from 16 May to 1 August every year. Nevertheless, some international scholars believed that actions done by China are part of a strategy to claim sovereignty over the area.<sup>18</sup>

This situation makes Vietnam's government in a difficult condition. It also endangers the fisherman condition. The reason is Vietnam has to protect their sea stock to maintain their industry. If the fishermen are in danger and have the possibility to be caught or to be seized, Vietnam's government is in worry about their people, despite their sustainable industry.<sup>19</sup>

Furthermore, Vietnamese fishermen are in a dilemma. Because they have to choose to stay at the port or continue to fish normally in TSCS. There are still many of them are deciding to continue their activities to preserve their life. It is not because forced by Vietnam government as a political activity, but it is purely as a human activity that needs to fulfill their needs. Because they depend a lot on the sea to fulfill their needs but, may of fisherman also choose to stay not to fish because they avoid being caught and confiscated. As a solution for Vietnamese fishermen, they decide to fish in the nearest waters and try to avoid the disputed area. However, their fishing is not much as they fish in TSCS. China's fishing ban policy not only affect the bilateral relation between China and Vietnam, but it is also directly impacting the life of Vietnamese fisherman who depends their life on fishing.

However, to prevent environmental and ecological stability caused by Illegal, Unreported, Unregulated fishing (IUU Fishing) and overfishing and to prevent fishing conflicts due to increased competition for limited fish stocks from regional countries, fishing efforts need to be

limited and even reduced. The fundamental challenge facing by TSCS fisheries is that there are too many people who depend on limited fish stocks for food and primary sources of income, which are further complicated by unresolved areas and sea boundary disputes.<sup>20</sup>

TSCS conflict by China against the ASEAN countries the coast is a threat to the ASEAN Security community. In accordance with Karl Deutch's theory that states there are three things that need to be considered in shaping a security society, namely (1) policymakers and the public stop contemplating the possibility of war, (2) the state stops allocating resources, and (3) there is strict acceptance and compliance with certain rules and agreements if the collective goals of the units are not aligned.<sup>21</sup>

China's foreign policy towards the conflict in TSCS that does not threaten other countries and only becomes an assertive policy. Furthermore, since the beginning of 2011, escalation of tensions in TSCS has increased due to competition over marine resources, claims of increasingly sovereignty, and increasingly aggressive Chinese tactics.<sup>22</sup>

Although China has committed to supporting peace and stability in the region, in reality, this Chinese rhetoric is not in accordance with its actions in TSCS, which shows an increasingly aggressive tendency in 2011. Anxieties from some claiming countries have also increased due to increased Chinese nationalism, increased military capabilities China and China's assertive attitude in TSCS. There are three things which illustrate China's insistent strategies in TSCS are:

- a. The expulsion of an energy company ship which explored in the EEZ region and a Philippine ship near Reed Bank by a Chinese ship and the cable cutting of seismic equipment for the Vietnam Petro ship and Viking 2 in the EEZ Vietnam region by a Chinese ship.
- b. China has tightened the implementation of the unilateral annual fishing ban in the north of TSCS and has captured more than a dozen Vietnamese fishing vessels and fired warning shots on Philippine fishing vessels.
- c. Chinese ships unload construction materials on Amy Douglas Reef which is the Philippines EEZ area and place markers on the Reed Bank and Boxall Reef.<sup>23</sup>

China claims its sovereignty over the four island groups in TSCS and surrounding seas based on three things:

<sup>16</sup> Ibid, p. 9.

<sup>17</sup> X. Song, et al, "Determining the optimal premium for ADR implementation insurance in construction dispute resolution", *Journal of Management in Engineering*, Vol. 30, No. 4, 2014, p. 1.

<sup>18</sup> Torode, G. (2010, May 16). "China ban on fishing as tension runs high. *South China Morning Post*". Available Online from <http://www.scmp.com> [ Accessed on June 5, 2020 ]

<sup>19</sup> Tuan, H. A. (2013). "The Tragedy of Vietnamese Fishermen: The Forgotten Faces of Territorial Disputes in the South China Sea". *Asia Journal of Global Studies*, 5(1-2), p. 94.

<sup>20</sup> Zhang, H. (2018). Fisheries cooperation in the South China Sea: Evaluating the options. *Marine Policy*, 89; pp. 67-76.

<sup>21</sup> Haryanto, A., & Darmawan, A. B. (2015). "Sengketa Laut Tiongkok Selatan: Ancaman Bagi Komunitas Keamanan ASEAN?", *Global Strategis*, 9(2): 277-296.

<sup>22</sup> Storey, I. (2011, June). Hardening Positions over Dangerous Grounds: Recent Developments in the South China Sea Dispute. In *CSIS Conference on Maritime Security in the South China Sea, Washington DC June* (pp. 20-21).

<sup>23</sup> Ibid.

- a. historical rights which include discovery, naming, sustainable use of names, and actions of protest and resistance to foreign invasion,
- b. administration ongoing administrative authority, and
- c. recognition of the sovereignty of China from the international community and even from some other claiming countries.

Meanwhile, in the effort to resolve this dispute, it is recommended that all parties work together in finding a peaceful resolution based on four principles:

- a. peaceful management of the sea,
- b. step-by-step efforts,
- c. fair and balanced distribution of profits, and (4) environment-friendly exploration.<sup>24</sup>

### C. China-Vietnam's Tension in the South China Sea

The tension between China and Vietnam can be seen from the action done by China towards Vietnam regarding the issue of fishing rights in TSCS. Both countries are actively struggling with their rights towards the Paracel and Spratly islands, which both are located in TSCS. This issue is very complex to be solved, as it has become an issue that involves some claims by many countries. The disputed area has a strategic location due to the richness of fishing ground, and also it is believed by many experts that TSCS is hosting a hydrocarbon reserve here.<sup>25</sup>

Furthermore, China and Vietnam are claiming the two islands. But, according to China's theory or the 9-dash line theory, Paracel is owned by China. Because of the whole area of TSCS is possessed by China. Furthermore, military equipment is increased, which in line with the increasing number of patrol activities in that area. And also, the islands are expanded and built some artificial buildings and infrastructures.<sup>26</sup>

However, in December 2008, China and Vietnam agreed to start the discussion of marine issues bilaterally, the main topic to be discussed is about "fundamental guiding principles" as an outline for resolving specific problems.

The confidential meeting in discussing the issue was actually started in early 2010. According to sources from the Ministry of Foreign Affairs of Vietnam, the disputed parties agreed to resolve their disparities "through peaceful

negotiations" also "refrain from any actions to complicate the situation, violence or threat of using force".<sup>27</sup>

Recently, tensions are expected to increase in TSCS. The reason, China imposed an annual summer ban on fishing in disputed waters in TSCS. The policy invited protests from neighboring countries.

The latest news says it will ban fishing activities in waters claimed by China above the 12th parallel - including areas near Scarborough Shoal, Paracel Islands, and Tonkin Bay - to conserve reserves. The ban will take effect from noon on 1 May to 16 August 2020. China even insisted their coast guard would take "strict measures" to stop "illegal fishing activities".<sup>28</sup>

In response, fishing communities in Vietnam and the Philippines have urged their governments to take a firm stand. On 8 May 2020, Vietnamese foreign ministry rejected "unilateral decisions". Vietnam asks China not to complicate the situation in TSCS. According to the Vietnamese government, Vietnamese fishermen have full rights to catch fish in the waters under their sovereignty.

### D. International Law Perspective on the Fishing Rights

The international law of the sea regulates significant matters related to the application of state sovereignty in the sea area. Such as the rights and obligations of the state in territorial sea territories, exclusive economic zones, and in international waters, traffic and conservation of marine and oceanic ecosystems are regulated in international sea law.

Thus, the country's sovereignty over its territorial waters is followed by norms that contain rights and obligations. One of the rights that is closely related to the sovereignty of the state in the territorial waters is the right of the state to explore and exploit natural resources in the sea area. This right includes territorial sea territory and/or island waters. In addition, the concept of exclusive economic zones and continental shelf areas in territorial waters regulated in international maritime law enables a country to exercise its right to exploit natural resources in these areas.<sup>29</sup>

Furthermore, regarding the international law perspective on the issue of fishing rights fight between Vietnam and China, there are several points that could be discussed further those points are:

#### 1. Traditional Fishing Ground Based on UNCLOS 1982

As a comprehensive legal basis on international sea law, UNCLOS (United Nations Convention on The Law of

Questions by Greg Torode – South China Morning Post”, see: Greg Torode and Minnie Chan, “China Refuses to Yield on Paracels”.

<sup>28</sup> Tribunjogja.com, “South China Sea Tension Raised, China Triggers Anger in Vietnam and the Philippines”. Available from <https://jogja.tribunnews.com/2020/05/10/tensi-laut-china-selatan-meninggi-china-trigger-anger-vietnam-and-philippines>. [Accessed on June 14,2020].

<sup>29</sup> I Brownlie. (1980). “Principles of Public International Law”, *VRÜ Verfassung und Recht in Übersee*, 14(1), 92-93., p. 214.

<sup>24</sup> Farhana, F. (2016). Memahami Perspektif Tiongkok Dalam Upaya Penyelesaian Sengketa Laut Cina Selatan. *Jurnal Penelitian Politik*, 11(1), 14. p. 167-180.

<sup>25</sup> Ramkumar, M., Santosh, M., Mathew, M. J., Menier, D., Nagarajan, R., & Sautter, B. (2020). “Hydrocarbon Reserves of the South China Sea: Implications for Regional Energy Security”, *Energy Geoscience*. p.6

<sup>26</sup> Gao, Z., & Jia, B. B. (2013). “The Nine-dash Line in the South China Sea: History, Status, and Implications”, *Am. J. Int'l L.*, 107: 98.

<sup>27</sup> Sunday Morning Post. “Answer from Vietnam Ministry of Foreign Affairs Spokesperson Nguyen Phuoc Nga to

The Sea) 1982 can accommodate the interests of the participating States and non-participating countries in determining the law of the sea that is used along with other principles concerning international sea law. An international agreement was agreed in Montego Bay, Jamaica on 10 December 1982. This convention was signed by 119 Countries consisting of 17 parts, 320 articles and 9 Annexes, up to 2004 have been ratified by 145 countries.<sup>30</sup>

UNCLOS 1982 is an international rule which focuses on the law of the sea, which focuses on regulating the seabed area and the ocean floor and the land beneath it and the rights of States to manage and utilize all marine resources for all humanity in a responsible manner.

In the provisions of this convention consists of provisions concerning the limits of the jurisdiction of a State at sea and air or Exclusive Economic Zone (EEZ), the conception of the Archipelagic State, navigation, protection and maintenance of the marine environment, scientific research, seabed mining and exploitation other from non-biological sources, as well as provisions relating to the settlement of disputes resulting from disputes over sea areas. In addition to the discussion that is no less important, also includes provisions on Traditional Fishing Ground. With this broad scope it is not wrong that many scholars are of the opinion that the 1982 UNCLOS is the most complete international convention and is adhered to in the international sea law.

Related to EEZ, which is an exclusive zone of a coastal country to enjoy the territorial waters included in its jurisdiction with the provisions of 200 mill as stated in Article 57 of UNCLOS which has several provisions that can be analyzed in that article are:<sup>31</sup>

- a. EEZ is the special rights of the coastal States which include rights and jurisdiction and other immunities that are subject to the sovereignty of the coastal States through certain agreements.
- b. Sovereign rights to explore and exploit, conserve and manage all-natural resources of the seabed and the waters. The same applies to all activities aimed at the economic exploitation of the zone (such as energy, current and wind production).
- c. Jurisdiction, as determined in this convention, for the establishment and use of artificial islands, scientific research and the protection of the marine environment.
- d. Rights and obligations as stipulated in the convention.

Although stated in EEZ there are rights enjoyed by coastal and non-coastal countries around EEZ, but in the international interest there are exceptions to rights from other countries that

are not included in EEZ territory, as stated in Article 58 namely in aspect:<sup>32</sup>

- a) Freedom of shipping and flight
- b) Freedom to lay cables under the sea and pipes and sea use others that are justified internationally, such as those relating to the linkage and operation of ships, aircraft, marine cables and pipes.

Related to historical traditional fishing rights, based on Article 51 (1) UNCLOS 1982 stipulates that the archipelagic country must respect existing agreements with other countries and must recognize traditional fishing rights and other legitimate activities of neighboring countries which directly side by side in certain areas within the waters Island. Where the terms and conditions for the exercise of such rights and activities include their nature, scope and area shall be governed by bilateral agreements between the two countries concerned.

According to Jose Manuel Sobrino & Marta Sobrido, et.al. explain more specifically about the concept of traditional fishing ground is to provide flexibility/permission between the coastal state and the recipient country to determine the place and area of fishing, the flexibility of fishing without being blocked by coastal state authorities, and other opportunities that are permitted between the two countries. Thus, exclusive rights that were previously absolutely in the hands of the coastal State will be delegated to the State that enjoys rights in the traditional fishing ground.<sup>33</sup>

In addition to UNCLOS 1982, other more technical legal provisions govern IUU Fishing as international legal instrumentation for violating the historical traditional fishing right claim. Based on the provisions of Agenda-21 Johannesburg, especially in section 17.3 states that the Countries on the face of the earth are strived to safeguard the EEZ region in the framework of regulation and the development of marine aquaculture in order to avoid misuse of marine resource management, one of which relates to the anticipation of violations of IUU Fishing as well the provision becomes a guideline for States to make national regulations regarding the management and utilization of marine products.<sup>34</sup>

## 2. Traditional Fishing Rights Under UNCLOS 1982

The international law of the sea has not comprehensively governed traditional fishing rights. The right to fishing is traditionally implicitly mentioned in Article 47(6) of UNCLOS 1982 stated that the rights and interests that have traditionally been exercised by a state bordering one of the archipelagic waters of an archipelagic state had been determined.

In addition, Article 51 (1) of UNCLOS 1982 further stipulates the traditional fishing rights. Article 51 (1) of 1982 UNCLOS explains that island nations must respect agreements

<sup>30</sup> Ishak, N., & Fatimah, S. (2019). Pengawasan penangkapan ikan di zona ekonomi eksklusif Indonesia dalam membangun poros maritim Indonesia. *Wacana Hukum*, 25(2), 59-77. p. 304.

<sup>31</sup> Sohn, L. B., Noyes, J., Franckx, E., & Juras, K. (2014). *Cases and Materials on the Law of the Sea*. Martinus Nijhoff Publishers., p. 52-53.

<sup>32</sup> Koers, A. W., Rizki, R. M., & Bahar, W. (1991). *Konvensi Perserikatan bangsa-bangsa tentang hukum laut: suai ringkasan*. Gajah mada University Press. p. 47.

<sup>33</sup> Andreone, G. (2017). "The Future of the Law of the Sea: Bridging Gaps Between National, Individual and Common Interests", *Springer Nature*, p. 38-39.

<sup>34</sup> Natalie Klein. (2010). *Maritime Security and the Law of the Sea*. Oxfordshire: Oxford University Press. p. 90

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with other countries and must recognize traditional fishing rights from countries bordering directly within convinced zones within archipelagic waters. Whereas the terms and conditions in carrying out these rights and activities must be based on the request of the state which is related and regulated through bilateral agreements

Traditional fishing rights based on UNCLOS 1982, it is stated that the recognition of the Right to Fishing is contained in Article 51 (1) of UNCLOS 1982, which states that there are some important things to be noted. *First*, it must be distinguished between traditional rights to fish and traditional fishing rights. *Second*, fishing activities must have been carried out traditionally for a long time. So, this right cannot be given to those who have not been fishing for a long time in these waters.

The term "traditional" refers to the equipment used, the types of fish caught, and the water areas visited. *Third*, the concept of "immediately adjacent" refers to the understanding of geographical closeness. *Fourth*, the term "certain areas falling within archipelagic waters" means that the right of fishing from a neighboring country cannot be exercised in all territorial waters of the islands, but only in certain parts agreed upon in the waters of the islands.

*Fifth*, the exercise of fishing rights must be regulated further in a bilateral agreement. This means that fishing rights cannot be exercised without a bilateral agreement with the island nation. Regarding the terms and conditions of how fishing rights can be implemented must be negotiated by the two countries.

Sixth, the existence of fishing rights must be proven by neighboring countries that make claims to these rights. Therefore, the continuation of the Fishing Right must be negotiated and agreed upon by the two countries concerned through a bilateral agreement.<sup>35</sup>

After UNCLOS 1982 was adopted, there were only three countries, namely Cape Verde, Indonesia, and Trinidad and Tobago which stipulated that existing agreements would be respected. Other countries did not include guarantees for the rights of other countries based on agreement.<sup>36</sup>

UNCLOS 1982 has regulated fisheries or fishing in the exclusive economic zone, which is regulated by the provisions of Article 56 which states that each country has sovereign rights to explore, exploit, conserve, and manage natural resources both natural and biological resources (living resources) and non-living resources (non-living resources).<sup>17</sup> Biological natural resource is where the fisheries sector has an important role in the economic development of each country because it can be used as employment for the people of a country and also bring in the country's foreign exchange by exporting fish abroad.

Furthermore, Article 61 Paragraph (1) of the UNCLOS 1982 states that coastal states must determine the allowable catch of the living resources in exclusive economic zones,

while in paragraph (2) it warns that coastal countries to pay attention to the best scientific evidence in order to ensure proper conservation and management, so that biological resources in exclusive economic zones are not over-exploited.

The conservation and management are intended to use it at maximum sustainable yields for the economy of fishing communities and developing countries where coastal countries must pay attention to things like:

- a. Fishing patterns,
- b. Fish stocks,
- c. Collaborate with international organizations sub-regional, regional, or global; and
- d. Coastal countries must pay attention to the types of fish that can be caught, have scientific information, fishing statistics, fisheries business, international cooperation whose purpose is to conserve fisheries.

The recognition of traditional fishing activities is clearly the basis of the rights of other legal protections for traditional fishermen over their traditional fishing activities. According to Ellen Hey, the state has the right to all the benefits generated from the management of fisheries in its territorial waters without ignoring the existence of fishing rights.<sup>37</sup>

Conventionally, exclusive rights to fisheries only happen in waters that edging directly with a country's land area. It is needed to embrace the sovereignty of a coastal state into territorial sea, because it has the aim to defend the welfares of local fishermen. Moreover, by using technology, some fisherman can indicate which one is their area to fish, and which one is not if the sovereignty already embraced by the government; with the help of technology, fisherman will not be mistaken to understand their state's territory, rather than they use the historical basis to catch the fish which is able to lead some tensions with other countries. Despite the fact that historical claim-based is not governed as exceptions to EEZ by UNCLOS but ruled under customary international law.

Fishing rights claims by China seem to be grounded on EEZ rights and historical claims. The EEZ conception is a fairly new concept, so asserting 'rights like EEZ' under the historical title concept will not be accepted by the global community. If the remarkable title is against the EEZ provisions, and no exclusions are stipulated in that provision to guard the historic title, EEZ provisions must affect between the parties to UNCLOS.

Likewise, Article 62 of UNCLOS implementation looks like surpassing previous traditional fishing rights if it is now comprised in other countries' EEZ. Also, many people also debate that EEZ is part of new legal knowledge, cannot instinctively eliminate existing rights. Because the concept of historical claims with respect to EEZ is not compacted by the UNCLOS, those historical claims are not impacted by the Convention. Acknowledgment is the most essential aspect in continuance the rights of countries to fish in other countries'

<sup>35</sup> Djalal, H. (1995). *Indonesia and the Law of the Sea* (p. 259). Jakarta: Centre for Strategic and International Studies.

<sup>36</sup> Agoes, E. R. (2003). *Praktik Negara-Negara Atas Konsepsi Negara Kepulauan*. *Indonesian J. Int'l L.*, 1, 441., p. 462.

<sup>37</sup> Henriksen, T. (2012). "Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing", *Ocean Yearbook Online*, 26(1): 712-720

EEZ, not by overturned whether those rights are based on history or not.<sup>38</sup>

#### IV. CONCLUSIONS AND SUGGESTION

The dispute of TSCS occurs because countries bordering TSCS justify having exclusive rights to fish in their territory. The most important dispute is fishing, as the Philippines and Vietnam claim these rights. Although there have been four bilateral meetings between Vietnam and China, in fact the meeting was useless. From 1999 China one-sidedly imposed an annual fishing ban in territorial claims areas that overlapped with Vietnam and was extended in 2009. As a result, the decision left Vietnamese fishermen threatened. Even though the fishermen are threatened, still that fishing makes them dependent on TSCS which has limited stocks. After that, China issued several tactics and rules to regulate TSCS so that the dispute with Vietnam could be resolved. Among them China has tightened the ban on fishing in TSCS.

Meanwhile, to resolve the dispute that occurred, China proposed a peaceful resolution. Among them are sharing benefits with fair and peaceful sea management. Both China and Vietnam filed claims for rights to TSCS. However, we must admit that China has military in the area and has practically recognized TSCS as belonging to China. Both of the countries discussed not to complicate each other over the dispute that occurred because of claiming rights from TSCS, which began in 2010 through peace negotiations and promised not to complicate matters. After various disputes had passed between China and Vietnam, China again made a one-sided decision that was rejected by various neighboring countries, including Vietnam. The unilateral decision was for China to ban fishermen from fishing in the summer. Because Vietnam has the right to TSCS as agreed, Vietnam strongly rejects unilateral decisions made by China and says that their fishermen have full rights to catch fish even in the summer.

Based on the description in the previous section, it can be suggested to readers to understand how does the perspective of international law on the case of Vietnam rejection on China's Fishing Ban in TSCS. The author also hopes that the Government of China does not merely make unilateral decisions, because it is known that Vietnam also has the right to TSCS with its fishermen who also have full rights to catch fish even during the summer.

It is hoped that the dispute between Vietnam and China over TSCS be resolved peacefully, heed the negotiation steps to negotiate compensation for the effects of the dispute and have seriousness in resolving the conflict between the States. In using the provisions of the legal regime for fisheries under international law, Vietnam and China must complete with the provisions of their respective countries so that the national interests of one country are protected.

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