

**THE POTENTIAL CONFLICT OF CHINESE SHIPS
ENTERING THE NATUNA WATERS
(AN OBSERVATION BASED ON THE HOURGLASS MODEL OF CONFLICT)**

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ABSTRACT

It was on Saturday, January 11, 2020, when three Indonesian warships (KRI), respectively KRI Karel Satsuit Tubun-356, KRI Usman Harun-359, and KRI Jhon Lie-358 were doing a joint patrol in the Natuna waters. The patrol aims at driving out foreign fishing boats out of the Indonesian Exclusive Economic Zone (ZEE) when they were attempting to spread their fishing nets in the waters. The three warships detected the presence of about 49 foreign fishing boats, guarded by six Chinese Coast Guard ships and one Chinese Fishery Boat from Chinese Maritime Surveillance Agency. A very tense moment occurred when the Chinese Coast Guard Ship cut off the prow of one of the Indonesian warships at a distance of about 55 meters. But, then the expulsion processes run smoothly after the KRI Commander tried to communicate with the foreign crew members regarding the rules that must be obeyed. The commander delivered a message at the end of his explanation, “Do not let the relations between Indonesia and China to be disrupted by your illegal activities in Indonesian waters.” The Commander added, “If you still remain in Indonesia EEZ, you will be apprehended and tried in court!” Indonesian Presidents, Jokowi has instructed the Indonesian authorities to act sternly against those violating the Indonesian EEZ. They are will be arrested and processed based on the existing laws. Then, the question is why they are not immediately arrested or drowned? Are there any recommendations as a solution?

Keywords: *conflicts, ships, natuna waters, hourglass model*

1. INTRODUCTION

1.1 History of Republic of Indonesia-China Conflict in Natuna Waters

In 1957, the Natuna Islands were still part of the Pattani Kingdom and Johor Kingdom in Malaysia. But, in the 19th century, the Natuna Islands became the

territory of the Riau Sultanate, which later handed over its sovereignty to the Republic of Indonesia after Indonesia's independence, by the delegation of the Riau Sultanate. Then, on May 18, 1956, the Indonesian government officially registered the Natuna Islands as the

sovereign territory of the Republic of Indonesia to the United Nations.¹

Malaysia had ever claimed that Natuna should belong to Malaysia. But, in order to avoid the emergence a new conflict with Indonesia during the confrontation era of 1962-1966, Malaysia did not challenge Natuna's status any longer. Apart from the conflict, Indonesia continuously built various infrastructures in the archipelago of 3,420 square kilometers. Ethnic Malays make up the majority of the population in Natuna, reaching around 85 percent. Meanwhile, the Javanese are about 6.34 percent and the Chinese ethnics are around 2.52 percent.²

Once the Indonesia-Malaysia confrontation ended, anti-Chinese sentiment in the Natuna region emerged. At that time, there were about 1,000 Chinese people from about 6,000 people still lived on the islands. Various rumours emerged and one of the biggest one is that citizens of Chinese descent had contacted the President of China at that time, Deng Xiaoping to support Natuna's independence. Although many parties from the country and out of the country had forced the Chinese government to take over Natuna, however, according to international law the arguments developed by China had not been proven.³

The available historical records show that the origin of China's conflict with its neighbouring countries in the Chinese sea area has been triggered by the Kuomintang Party's policy (the party is now the ruling party in Taiwan) which stated that China's territory reached 90 percent of the South China Sea. Although China has never

raised the Natuna issue to the United Nations, Indonesia has deployed more than 20,000 personnel of the Indonesian Armed Forces (TNI) since 1996 in order to guard the Natuna Islands, which has the largest gas reserves in Asia. Entering the era of President Jokowi's administration, Indonesia has reiterated that the Nine Points policy claimed by China has no legal reasons that are recognized by international law, especially 1982 UNCLOS.⁴

Until now, foreign fishing boats frequently commit illegal fishing activities in the Natuna waters. Indonesia authority has arrested these foreign ships several times. However, the most annoying problem is the presence of Chinese fishing boats escorted by the Chinese Coast Guard vessels. They are not only violating the Exclusive Economic Zone of the Natuna waters, but they are also committing the practice of illegal, unreported and unregulated (IUU) fishing in the Indonesian territory.⁵ How could this happen? And the worst thing is the foreign fishing boats committing the IUU fishing even drive the local fishing boats out of the Natuna waters. Such incidents are reported in mass media. A narrative on the violation of the sovereignty of Indonesia is viral in both mass media and social media immediately. Once again, why does China let its fishermen commit the IUU fishing in the Natuna waters? It seem that the country close their eyes and keep silent on the disturbing problems which lead to a big conflict between the two countries

The Chinese government argues that the Natuna Sea is a traditional fishing area, known as the nine dash-line (nine dotted

lines). If we look back, the traces of the nine dash-line can be traced back to 1947. At that time, the Chinese government, which was controlled by the Kuomintang Party, created a demarcation line called the eleven dash-line. Furthermore, in 1957, the Chinese government simplified the eleven dash-line to become a nine dash-line. Even this simplification does not have much impact. The Natuna Sea is still considered as a part of China's territory. This is based also on the historical claim that the Natuna Sea belonged to China since the Ming Dynasty (1368-1644).⁶

Until now, China government has not recognized the name 'Natuna Sea.' China government insists that the waters there are called the South China Sea. Meanwhile, the change of the name of the South China Sea located in the Natuna region into the Natuna Sea (in full: North Natuna Sea) is inaugurated by the Indonesian government in 2017, and at the same time the Indonesian government declares the completing the latest and the newest edition of the map of the Republic of Indonesia.⁷

Furthermore, based on the nine dash-line claim, Chinese government argues that its fishermen have the right to fish in areas that are included in the Indonesian EEZ (Exclusive Economic Zone). According to UNCLOS, the EEZ is a marine area as far as 200 miles from the outer islands at low tide. The total area of Indonesia's EEZ is 2,936,345 square kilometers. Indonesia has also ratified the UNCLOS and has passed Law Number 5/ 1983 concerning Indonesian EEZ. In this law, it is stated that Indonesia has sovereign rights to

explore, exploit, manage and conserve natural resources and has the rights to conduct research, protections and marine preservations in its EEZ area. However, what needs to be underlined as a key word is that in the viewpoint of international law, sovereign rights are different from sovereignty itself.⁸

Due to the fact that Indonesia is sovereign as well an archipelago country, it has the rights to explore the Natuna Sea. If there are other countries exploring the Natuna Sea, it is certain that this country has violated Indonesia's sovereign rights. However, it does not violate Indonesia's sovereignty. The Indonesia's sovereignty can only be truly violated if another country enters the Indonesia's territorial waters. Territorial waters are maritime boundaries drawn from the outer islands with a distance of 12 miles to the open sea. Indonesia has a territorial sea covering an area of 282,583 km².⁹

Regarding the sovereign rights, even though the Natuna waters is an EEZ territorial waters that belong to Indonesia and is recognized by the United Nations, UNCLOS still allows other countries to take advantage of the EEZ as stipulated in article 58 (1). The article states that countries wishing to take advantage of the EEZ must request permission from the countries entitled to the territory. The Article 58 (1) UNCLOS says, "*In the exclusive economic zone, all states, whether coastal or land-locked, enjoy—subject to the relevant provisions of this Convention—the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful*

uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.”

In Article 104 paragraph (1) of the 2009 Fisheries Law, it is stated that the government can ask for an adequate amount of guarantee money against ZEE violators. The decision is made by the court and the money will later go into non-tax state revenue (PNBP). However, there is no single law that can imprison someone from another country who illegally catches fish in Indonesia waters, unless there has been an agreement between the Indonesian government and the government of the country concerned. This is the rule contained in Article 73 paragraph (3) of UNCLOS, stating “Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other forms of corporal punishment.”¹⁰

Back to the problem of the Chinese fishing boats illegally entering the Natuna waters, what should Indonesia do? When it comes to maritime disputes, the Indonesian government continues to make several diplomatic efforts with China, so that the South China Sea dispute does not extend to Natuna. Both parties have agreed to prioritize diplomatic steps by implementing the Declaration on the Conduct of Parties in the South China Sea (DOC). In addition, Indonesia has also proposed a zero draft code of conduct for the South China Sea which can be used as a weapon for Indonesian diplomacy. The code of conduct comprises of three main

things: (1) an intention to create mutual trust; (2) an intention to prevent incidents from occurring; and (3) an agreement related to a good faith to manage incidents if indeed an incident occurs and cannot be avoided.¹¹

The next step after having an agreement on the code of conduct is to use the perspective of the hourglass model of conflict in order to examine disputes and problems related to maritime that may arise, especially in the Natuna waters. The examination aims at finding out their correlation with the stages of potential conflicts that must be anticipated. This must be done in order to avoid Indonesia from being trapped in the escalating conflicts which can actually harm Indonesia's national interests. In this case, it is necessary to have a deep, thorough and comprehensive perspective on the context.

1.2 Purposes and Objectives

The purpose of this paper is to describe the potential for conflicts related to the handling of the Indonesia-China dispute in the Natuna waters in the frame of a strategic study on border security conflict based on the perspective of hourglass model of conflict. Meanwhile, objective of the paper is to obtain a more comprehensive picture in viewing the context of the problem as a whole and comprehensively so that it enables the author to provide answers to the research questions. As a follow-up, critical thinking should be obtained in responding to what suggestions are best in anticipating China's claims in the Natuna waters, along with several tips on how to prevent the violation committed by foreign fishing boats,

especially Chinese fishing boats in the Natuna waters, in a measured and logical manner.

2. LITERATURE REVIEW

According to the hourglass model of conflict (Pirmah Rimdani, 2019), war is a step-by-step situation that has the character of escalating tension which begins with differences (first stage) in looking at problems so that they are prone to have conflicts (second stage) that is closely related to national interests. In essence, this conflict of national interests is prone to being politicized, which encourages polarization (third stage) which is dichotomous by opponents or friends. Furthermore, due to the climate of hostility that exists, this condition is prone to violent acts (stage four) which at times become uncontrollable so that it is feared that they will be trapped in conditions that trigger mutual acts of violence, followed by the declaration of war by the parties involved as the final stage of the conflict or dispute.¹²

Based on the above theory, a war must also be ended in a gradual or step-by-step manner which is also called conflict de-escalation. De-escalation process begins with enacting ceasefire (step I), negotiating agreements (stage II) related to conflict resolution intentions which must be followed up with normalization of relations (stage III), and realized in concrete actions of reconciliation (Stage IV), and then back together to develop and organize the broken relationships which is based on good intentions and will.

3. METHOD

The author employs the qualitative methods in the form of matching activities between empirical reality and the selected theory which is significantly used to describe the problem. The data collection comes from secondary data taken from the internet. Fact finding process is arranged based on the chronology of time in order to obtain a causal pattern of relationships to be used as a basis for predicting the future trends.¹³

4. DISCUSSION

4.1 Differences (first phase of tension/conflict)

What is something really interesting about the Natuna Sea? The Natuna Sea spans about 3.5 million square km. In addition to its abundant fish reserves, Douglas Johnson states that Natuna Sea has the largest gas reserves in the world, estimated at 210 trillion cubic feet. This fact really needs to be considered; that what underlies maritime disputes is not just a border issue. There are achievements that are aimed at and are closely related to national interests of the parties involved. This reality should actually be the standard of judgment that:

a. The Chinese Ships in the Natuna Sea is not a Territorial Issue but an EEZ Dispute

Hikmahanto Juwana, an expert on International Law of University of Indonesia, states, "We must be very careful in deploying the armed forces. The enforcer of sovereignty there is TNI, but the problems is the EEZ disputes. We should have mobilized our law enforcement authorities in the EEZ territory. There are three of them: Bakamla (Indonesian Sea Security Agency), KKP

(Ministry of Sea and Fishery) and TNI,” during the dialogue of *Sapa Indonesia Malam* in Kompas TV on Saturday (4/1/2020).¹⁴

Based on Juwana’s opinion, it can be understood that China does realize that the Natuna waters are not its sovereignty. Then the country does not send its armed forces instead of its coast guard vessels. Therefore, in order not to be provoked by any provocations, even though the Indonesian Navy is the law enforcement authority in the EEZ, strategically it is better if Bakamla and KKP do the enforcement supported by adequate equipment (at least it can match the quality of the Chinese coast guard ships). The presence of TNI in the Natuna waters indicates the presence of the state as a message of sovereignty. Physical presence is mandatory because in the concept of international law, a claim on an area is not limited to a claim on a map or a diplomatic protest but there must be an effective control in the area. The presence of the TNI is in-charged of territorial cases, Bakamla and KKP will be in-charged of the EEZ territorial disputes with the following objectives:

- 1) taking legal actions in forms of catching Chinese fishermen who commit illegal fishing in Indonesian EEZ territory; and
- 2) accompanying and guarding Indonesian fishing boats in Indonesian EEZ territory to do fishing.

b. Chinese Fishing Boats in the Natuna Sea are not just Committing Ordinary Fishing (IUU Fishing); They are Related to a Positive Occupation

Admiral Surya Wiranto, an expert staff of the Indonesian Ministry of Politics, Law and Security Affairs states that the presence of Chinese fishing boats in Indonesia's EEZ in the Natuna waters is not just a problem of illegal fishing. Wiranto says, “This is part of state practice efforts to show the world about China's positive occupation of maritime areas in the South China Sea” to CNNIndonesia.com, Tuesday (28/6/2016).¹⁵

Natuna, both the islands and the waters are an integral part of the Republic of Indonesia. It can't be bothered by anyone, including China. Based on the international maritime law or the United Nations Convention on the Law of the Sea (UNCLOS) 1982, other countries are not entitled to explore without permission of Natuna Sea resources that are in Indonesia's EEZ as had been done by the Chinese fishermen.

Indonesia must counter the China’s efforts by strengthening the international law, among others by submitting a map of the Republic of Indonesia completed with its coordinate points to the United Nations Oceans and Law of the Sea, adding the coordinates of zoning points for Indonesian waters, and revising Law Number 5/ 1983 on the Indonesian Exclusive Economic Zone and Law Number 1/ 1973 on the Indonesia's Continental Shelf.

Military deployment is not recommended because it is prone to be provoked into the presence of Chinese military power that is stronger than Indonesia. There is another problem, that is, an expansion. The presence of the Chinese fishing boats is a state practice

effort to show the world about the positive occupation that Natuna waters are part of China's maritime territory. If the status quo is allowed, and Indonesia is still silent, China will occupy the Natuna waters.

c. Chinas' Claim on Natuna is not just a legal case, it is China's 'political ego'

"I see this situation in a fairly simple frame. China will not deploy its naval vessels. It sends hundreds of fishing boats followed by coast guard vessels," explains Miyake, a Japanese geopolitical expert in response to a question from ANTARA regarding the Chinese unilateral claim action on Natuna.¹⁶

The aforementioned statement by the Japanese expert is a sign that the case of illegal fishing in the Natuna waters committed by Chinese fishermen will definitely occur again because China says that they have the rights and interests in the Natuna waters based on a historical basis, called the Nine Dash Line area.

Iman Prihandono, the head of Law Department of Airlangga University, argues that the claim made by China does not have a strong legal basis. The 1982 United Nation Convention on the Law of the Sea (UNCLOS) has set the method for determining zoning or territorial waters. The maritime boundary (delimitation) of a coastal country, either the territorial sea or the Exclusive Economic Zone (EEZ), is determined by drawing a Baseline. "The 1982 UNCLOS only recognizes three baselines to measure water areas: normal baseline, straight baseline, and archipelagic baseline. In fact, the Nine Dash Line is not included in 1982

UNCLOS. Therefore, what China is doing has no legal basis," says Prihandono.¹⁷

Such disputes should not be resolved with an attitude of rivalry that will increase the China's ego. Indonesia should raise this case as an issue in the region and not solely in the context of bilateral two countries. If Indonesia raises this issue bilaterally with China, it is likely that Indonesia will be in a position to negotiate the claims on the traditional fishing ground and Nine Dash Line. This is tantamount to reducing the Indonesia's sovereign rights in the Natuna EEZ as determined by the 1982 UNCLOS. The best way to resolve the disputes is to invite regional countries having common interests to encourage China to act in accordance with the provisions contained in the 1982 UNCLOS.

d. Disputes arise due to the application of different legal principles¹⁸

The Chinese government should be wiser in sounding the zone that is claimed as its territory because this has never been recognized in international law, both maritime law in the United Nations Convention and other international treaties. But the problem is, in the perspective of institutional liberalism, the state as a rational actor will be more selfish in prioritizing the achievement of its national interest rather than obeying international law even though China is a part of it.

Institutional liberalism assumes that when a state does not see the benefits of a cooperation. Then the cooperation will not occur and the international organizations that facilitate the cooperation

will not develop (Dugis, 2018). The dispute that occurs in the Natuna Islands can be resolved if the two parties also cooperate in order to create an agreement that will benefit both parties. The cooperation carried out can take the form of negotiations from both parties to find a solution.

e. Disputes arise because of the China's 'ego national interests'¹⁹

In achieving a national interest, logical reasons are needed as a theory of justification to be used as a legal basis for such attitudes and actions. The China's reason for this claim is the nine dash lines. The line is not continuous and there is no map that can strengthen the explanation of what it will look like if it is made connected. Some experts say that China's nine dash line cannot be legalized as territorial borders because it is inconsistent with the international law which states that territorial borders must be stable and well-defined.

Due to the fact that China still insists on the claim and the law is not a solution, then diplomacy is needed to reduce the conflict. China and Indonesia agree to prioritize diplomacy in the form of fully and effectively implementing the Declaration on the Conduct of Parties in the South China Sea (DOC) which is building mutual trust, enhancing cooperation, maintaining peace and stability in the South China Sea.

Indonesian government has already had an adequate draft of conflict resolution instrument, called 'zero draft code of conduct of the South China Sea.' This draft can become a powerful weapon for Indonesian diplomacy. There are three

important points which are the objectives of the zero draft code of conduct:

- 1) creating mutual trust;
- 2) preventing incidents from happening; and
- 3) managing incidents, if they occur and cannot be avoided.

At the three points above, we can see that there are regulations in order to prevent the presence of military power in a conflict resolution. There are several important points of the declaration, as follows:

- 1) parties involved in the South China Sea conflict must apply the principles contained in the ASEAN Treaty of Amity and Cooperation as the basis for an international code of ethics in the South China Sea region;
- 2) parties involved in the declaration must have a commitment to reaffirm the UN Charter and the 1982 UNCLOS, and other various international laws that accommodate the relations between the States; and
- 3) the declaration provides conditions for the States that are involved in it to resolve the South China Sea issue with good habits of upholding peace.

The parties or states involved in the declaration are committed to exploring various ways to build trust based on equality and mutual respect and up to now. ASEAN countries and China are making more concrete efforts to resolve the South China Sea conflict by applying and implementing the 'code of conduct' consistently as one of several alternative ways of resolving the conflicts.

4.2 Controversy (Second phase tension/ conflict)

It is a fact that the Permanent Court of Arbitration (PCA) in The Hague has ruled

in favour of the Philippines in the South China Sea dispute. Referring to the results of the Arbitration Court, it is stated that none of the marine features claimed by China are capable of producing the so-called exclusive economic zone that gives a country maritime rights to cultivate resources, such as fish and oil, and gas within 200 nautical miles of the mass soil. The court states that China has no legal basis in claiming historic rights to large parts of the South China Sea. The court also declares that China has no rights to claim the resources stretching hundreds of miles to the south and east of the island from Hainan, which covers about 90 percent of the disputed waters.

Despite the international court's binding decision, Chinese President, Xi Jinping unilaterally rejects the above decision. The President says, "China will never accept any claims or actions based on these awards," as reported by CNN, Tuesday (12/7 / 2016).²⁰

Referring to the empirical facts above, the Indonesia-China dispute regarding the Natuna Sea is unlikely to be resolved legally as long as China focuses more on justifying its claims rather than the objective awareness to focus on the search for the real truth.

4.3 Polarization (third stage tension/ conflict)

Polarization, according to the Indonesian Great Dictionary (KBBI) is dividing something into two opposing parts (groups of interested people, etc.).²¹ For example, the west block and the eastern block are two opposing camps.

Polarization is a logical consequence of the choice to build strength as part of the balance of power. In the context of the balance of power, if it is head to head, China's military power is far stronger than Indonesia's military power. China's power is supported by four pillars of national strength: economy, military, geography and culture. Even, if all the strengths of ASEAN countries are combined together, it is still not balanced to compare with what China has.

China's economic, military, geographic, and cultural power is immense. Even culturally, China exists as a nation and state. As a country, China refers to the national flag, while as a nation it refers to the racial lineage that spreads almost all over the world. This is a real power that is very difficult to match. Therefore, it is better to take wiser measures when conflicting with the country in order to avoid it.

Referring to the perspective of the hourglass model of conflict, the choice to fight or compromise in dispute resolution is not recommended. The most important thing is to avoid the escalating tensions that can trigger violence that can lead to the declaration of war without sacrificing the dignity of the nation.

4.4 Violence (fourth stage of tension/ conflict)

China protests to the Indonesian government on Monday, 20 June 2016 over the shooting of a Chinese fishing boat in the Natuna waters. Although acknowledging the Indonesia's sovereignty over the Natuna waters, the Bamboo Curtain country argues that the incident occurs in a water area that has overlapping claims. The incident begins when the KRI Imam Bonjol-383 which was on patrol on

- 2) Legal arguments related to China's claim on the Natuna waters can indeed be broken when referring to the 1982 UNCLOS, but what cannot be broken is the hidden ego in the form of positive occupation. The wealth and strategic position of the Natuna waters is a charm for the country to an occupation.
- 3) CoC is the key to solve the South China Sea conflict! CoC is a Code of Conduct or code of attitude to respect the principles of international law including the 1982 UNCLOS.

6. IMPLICATIONS

Based on the above conclusions, the following four principles are recommended as follows:

- 1) There is no negotiation with China. The status of Indonesia's territorial sovereignty in the Natuna waters is clear and final. There should be no negotiations because it will integrate Indonesia's position in international eyes.
- 2) Do not be provoked by things that will cause the Chinese military to the position of head-to-head with the Indonesian military. The presence of the Indonesian military in the Natuna waters is sufficient as a sign of the existence of Indonesian sovereignty in the area. If an IUU fishing occurs in the area, Bakamla and KKP will handle it as a message of a law enforcement in the area. This is a pure criminal problem, not a defence issue.
- 3) Diplomatic actions carried out by Indonesia in the ASEAN forum for the time being are the most effective ways in preventing wars. It is highly expected that through the Indonesia-China agreement to fully and effectively implement the Declaration on the

Conduct of Parties in the South China Sea (DOC) that can be a logical and ethical sign in solving problems in the area.

- 4) Do firm and consistent diplomacy with the help of creating opinions from non-state international actors such as influential individuals/ leaders, international organizations, and multinational corporations and academics to voice their support for Indonesia.
- 5) Strengthen the supervision and law enforcement in the area. Each authorised agency must enforce the law in the marine and fisheries sector and must work together to carry out the coordinated patrols, and exchange data and information, especially regarding the detection of foreign fishing vessels in the form of satellite images, detection of AIS/ VMS transmitters and radar detection in supporting the law enforcement activities.²²
- 6) Intensify fishing activities in the North Natuna Sea! Train fishermen to become more professional in their work and become part of defending the country.

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