Analysis on traditional fishing grounds in Indonesia`s Natuna waters under International Law

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Abstract. This paper examines the boundary tension between Indonesia and China regarding traditional fishing ground in Natuna. Indonesia’s Natuna island is claimed by the China government as its traditional fishing zone/ground. The inclusion of Natuna territory into China’s traditional fishing zone brings new problems to Indonesia, especially with the Chinese ships docked and entered Indonesia’s exclusive economic zone, as well as several cases of illegal fishing over the territorial waters of Indonesia. Claims on traditional fishing zones have the potential to threaten the sovereignty of the Indonesian territory. This study aims to analyze the claims of the traditional fishing rights of China over the waters of the Natuna Islands under international law, especially UNCLOS 1982. This study revealed that the china’s argument of traditional fishing ground in Natuna to the nine dash line map is a unilateral claim, there is no international legal norm that can be used as the legal basis. Indonesia and some ASEAN countries have Internationally validated bilateral agreement on the continental shelf (i.e. Indonesia-Vietnam and Indonesia-Malaysia) thus the inclusion of Natuna into China’s nine dash line map rejects the legal status of Indonesian water under UNCLOS 1982.

1. Introduction
Indonesia is one of the largest archipelago countries in the world consisting of thousands of islands. The Natuna Islands is a part of Indonesia, with its position protruding to the north and located in the South China Sea. Natuna has many natural resources (minerals and fish - reaching 1 million tons per year with total utilization of only about 36%), and has become an international maritime trajectory for ships coming from the Indian Ocean and heading towards industrialized nations around the Indian and Pacific Oceans. Furthermore, Natuna is one of the areas that is well known to generate income for Indonesia (oil and gas). Based on a study report by the Ministry of Energy and Mineral Resources (ESDM), Natuna's oil reserves amount to 308.30 million barrels. While the largest reserves of gas in Indonesia amounts to 54.78 trillion cubic feet. Oil and gas are the main source of revenue for Natuna.

However, Natuna with its strategic geographically position has been facing some problems such as the illegal fishing, and a boundary conflict with China [1]. The core problem of Natuna lies in the waterfront area around Natuna that has the potential to overlap the imaginary line of the Nine Dash Line [2]. The government of the People's Republic of China (PRC) have claimed Natuna in 2009 and entered the Natuna region into their territory map based on the nine imaginary lines (commonly called the Nine Dash Line). In this case the problem is not in the archipelago claim alone, but in the waters around Natuna as well, which affects the sovereignty of Indonesia's Exclusive Economic Zone (EEZ) area. The area of conflicting maritime claims could be as large as 94,000 square kilometers. China’s traditional fishing grounds are enclosed by the Nine Dash Line and the 200 nautical mile (nm) EEZ...
that Indonesia claims from Natuna in the South China Sea. Surrounding this region lies Indonesia’s East Natuna gas field with 46 trillion cubic feet of proven assets, stressing the potential gamble in China’s claims.

One of the incidents in Natuna waters occurred on June 18th 2016, when the Indonesian Navy seized a Chinese vessel that was operating within Indonesia’s EEZ around Natuna. Similar incidents also occurred in March and May. On June 19th 2016, the Chinese government spokesperson described the incident occurring in Natuna waters as “waters that are Chinese fishermen’s traditional fishing grounds.” Moreover, she stated that it occurred “where China and Indonesia have overlapping claims for maritime rights and interests”. China filed the Nine Dash Line claim based on on the principle of "historic waters" [3]. The claim is not just potentially threatening to Indonesian sovereignty over Natuna, but also the importance of Indonesia as an archipelago country, with the existence of conflict in Natuna between KM Kway Fey 10078 with KP Shark 11. Claims about traditional fishing grounds are potentially a form of Chinese denial of Natuna's legal status as part of Indonesia’s sovereign rights. Based on the provisions of Article 46 UNCLOS 1982: “archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands; As for what is meant by The archipelago is a group of islands, interconnecting waters and other deep scientific characteristics such close ties thus forming a unity geographically, economically, and politically or historically indeed seen as such.

It is debating the incident when the Chinese fishing boat KM Hwai Fey was arrested by the Indonesian law enforcement apparatus in March 19, 2016 and later came a large China Coast Guard ship which seemed to "guard" it; this raises a perception that there is intent from the Government of China to send fishermen to the region to show its presence. From the above description, this study examines the questions: what is meant by “traditional fishing grounds" claimed by PRC in Natuna waters? How is the legal position of the China’s claims in Natuna waters against Indonesian sovereignty according to UNCLOS 1982?

2. Methodology
The approach method used in this study was the normative juridical approach method [4, 5]. The juridical approach means within research, principles that are used for reviewing, viewing and analyzing the problem related to the application between the legal norms of "traditional fishing rights "as provided for in Article 51 UNCLOS 1982 with the norm the Chinese claim is "traditional fishing grounds". The normative approach means that through legal research sources, material is taken from legal material primers that are all related with implications of Chinese claims on traditional fishing grounds to the existence of Indonesian sovereignty as an archipelagic country. Specifications of this study are analytical descriptive, i.e. describes the rules of legislation in effect that is attributed to legal theories and practice implementation of the positive law concerning the above issues. Furthermore, describing the object that is the problem and analyzing the legal material obtained from the research.

3. Concept and Definition Concerning Traditional Fishing Ground
As an internal norm, the international law understanding of claims on traditional fishing grounds has not been found anywhere in any form, time or place until now, so various objections have emerged from various parties including countries in the region of the South China Sea waters, arguing that there is no juridical reference which underlies the claim. Indonesian marine law expert Prof. Hasyim Djalal stated that “The traditional fishing grounds claimed by China in the Indonesia’s EEZ is incorrect, EEZ complies with provisions of international maritime law. There is no Chinese traditional fishing ground in the EEZ of Indonesia". In another context, Hasjim Djalal distinguishes between traditional fishing rights with traditional rights to fish (traditional rights for catching fish) [6]. He explains that traditional rights to fish refers to the right of each country by tradition to catch fish in the open sea without regard, whether they have ever exercised that right or not. While traditional fishing rights is defined as the right to catch fish which arises because in practice they have fished in certain areas for generations and such activities have long been done [6, 7].

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The basic reference that China has been doing activities in the waters is historical evidence that mentions that the Chinese people have long done activities and stayed in the Spratly and Paracel Islands (that used to be named as Xisha and Nansha) since the Tang and Song to Ming and Qing dynasties. At the end of World War II, under the Republic of China government, Chiang Kai Sek published a map with a U Shaped Line. This map was later known as the 11 Dash Line because it contains 11 broken lines which became the basis of claims by the government of China in the South China Sea dated 4 September 1958. China expressed her wishes related to South China Sea claims through the Territorial Sea Declaration. This declaration states ownership of South China Sea waters as part of Chinese territory. However, this declaration does not explain the legal claims on Chinese ownership of the South China Sea. The Chinese government affirmed their claim on the South China Sea in 2009 with controversial official maps which was followed by acts of reclamation on several islands in the Spratly Islands as well as Paracel Island [8].

Furthermore, the traditional fishing ground claim norm is a unilateral norm from the related claims of the Chinese Nine Dash Line which is against the sovereignty of a maritime feature (Spratly archipelago of Spratly and Paracel) in the waters of the South China Sea. Its assumption of emergence has juridical consequences to the rights of additional zones, EEZ and continental land. China’s claim to the territory of the cluster of the Spratly Islands as well as the Paracel Island will impact on the region cover two main issues, namely territorial and maritime sovereignty.

One of the legal regimes that is important from UNCLOS 1982 for Indonesia is the recognition of the archipelago state regime [3]. Under the provisions of Article 121 of UNCLOS 1982, countries with territorial sovereignty over the island have sovereign rights of 12 nautical miles of territory and 200 miles of EEZ around the island. Subject to the provisions of Articles 47 and 49 of UNCLOS 1982 if the state has sovereignty over the entire archipelago and becomes an archipelagic state, it shall have the right to draw a straight line between the outermost islands and shall have sovereignty over the natural resources on the seabed located at in the straight base line. Island countries draw their baseline by using the baseline method of the islands (archipelagic baseline). Consecution line drawdown when based in this way is the change of section status of the sea that was once free sea into the territorial sea.
of an Archipelago state. Recognition of the island states are accompanied by various other settings such as providing guarantees of cross-rights of peace (right of innocent passage) and cross-rights through the archipelagic country lanes (the right of archipelagic sea-lanes passage) for foreign ships in the inland seas of the island country.

In addition, the island countries must also respect the traditional fishing rights of neighboring countries and existing agreements with other countries. Traditional fishing rights is a right which is given to the traditional fishermen to fish in a traditional manner in the waters of certain neighboring island countries under a bilateral agreement. Recognition of rights are accommodated in Chapter IV Article 51 paragraph (1) of UNCLOS 1982 stating that the archipelagic state must respect the agreements that exists with other states and must recognize the rights of traditional fishery and other activities. This applies to a legitimate directly neighboring state in the archipelagic waters. Terms and provisions for the exercise of such rights and activities including the nature, scope and areas of such activities apply, are above the request of one country concerned and should be arranged with bilateral agreements among them. Such rights should not be transferred or shared with a third state or a resident country. As an archipelagic state, Indonesia has an obligation to respect traditional fishing activities that have been carried out for generations in the waters and have changed status into waters of the archipelago. The recognition of island countries shall implement these rights according to UNCLOS 1982.

Furthermore, Indonesia has signed various bilateral agreements with neighboring countries about the recognition of traditional fishing rights, such as Australia, Malaysia and Papua New Guinea. Indonesia had entered into bilateral agreements with Malaysia in 1982 called The 1982 Agreement on the Regime Laws of the State Archipelago and Malaysia’s Rights in the Territorial Sea and Waters. The provisions formulated in this bilateral agreement is in line with the provisions in Article 47 paragraph (6) of UNCLOS which specifies that if a part of an island of archipelagic states lies between two parts of a neighboring state which are directly adjacent, the existing rights and other legitimate importance are implemented traditionally by that state at such waters, as well as all rights specified in the agreement between states will remain in effect and must be respected.

In addition to Malaysia, Indonesia has also made a basic agreement with Papua New Guinea (PNG) about border settings which recognizes traditional rights, including traditional fishing rights. If associated with the terms of Article 51 (1) UNCLOS 1982, the norm becomes the state's obligation to honor and recognize traditional fishing rights of the neighboring country that are directly side by side with the island state in a variety of International law instruments and practice. There is strong legitimacy to give protection to traditional fishermen. There are several international conventions which support the recognition of the rights of traditional fishermen. It can be concluded that in fact recognition of traditional fishing rights is not only an obligation for the island state. Traditional fishing rights are also attached to groups of fishermen of a particular State who have habitually fished over a long period in a certain area. A concrete example is in the intermediate agreement between Indonesia and Australia which provides protection of the traditional fishing rights of Indonesian fishermen in Australia. Australia is not an island state, so granting rights is more based on the historical realities of some groups of traditional fishermen from generation to generation, such as searching for sea cucumbers and fishing in Australian waters, especially on Ashmore Island (Sand Island).

Through the provisions of Article 51 and Article 62 paragraph (3) UNCLOS 1982, the governments of Indonesia and Australia have accommodated the interests of the traditional fishermen in a Memorandum of Understanding, i.e. Memorandum of Understanding between the Government of Australia and the Government of The Republic Of Indonesia regarding the Operation of Indonesian Traditional Fishermen in the Area of the Australian Exclusive Fishing Zone and Continental Shelf in 1974.

5. The Legal Position of Traditional Fishing Ground Claims by China in Natuna Waters

The Indonesian government reacts hard on the intervention of the Chinese authorities during the incident when the Marine and Fisheries Ministry (KKP) tried to catch the ship of the illegal fisherman
from China around Natuna waters, Riau Islands. The Government of China reasoned that the territory is still in the area of traditional fishing grounds. China claims sovereignty on several islands and oceans around the South China Sea based on historical rights, factor of discovery, naming, and organization history of the government that has been going on for more than 2,000 years. Consequently, China's claim on the South China Sea garnered protests and became disputes with a number of ASEAN countries such as Vietnam, Philippines, Brunei, and Malaysia. Subject to the provisions of Article 121 UNCLOS 1982, the country that owns sovereign territory over the island has sovereign rights of 12 nautical miles and 200 miles of ZEE around the island. Subject to the provisions of Article 47 and 49 UNCLOS 1982, if the country has sovereignty over the whole islands and becomes an island country, then the country has the right to draw a baseline straight between the islands outer and will have sovereignty over the natural resources at the seabed lying within the straight baseline.

Indonesia was originally a Non Claimant State in the South China Sea dispute that finally reacted because of its impact on Traditional Fishing Ground claims. This is due to the Chinese statement that they have the right to conduct fishery activities in their traditional territory according to the Nine Dash Line Map which is against the sovereignty of maritime features (Spratly Islands and Paracel cluster) of the waters of the South China Sea with the assumption of the emergence of juridical consequences against the rights of its maritime zone which includes sovereignty and sovereign rights to all resources in it.

Regarding the boundaries with neighboring countries, Indonesia and Vietnam share a continental shelf boundary in the South China Sea. The two countries have agreed through an agreement between the Government of the Republic of Indonesia and Government of the Socialist Republic of Vietnam about the Determination of Continental Shelf Boundary, which was signed in Hanoi on June 26th 2003 and ratified with Law no. 18 of 2007 on the Sea Shelf Boundary Agreement. In addition, it is argued that China’s claim to traditional fishing grounds is inconsistent with UNCLOS 1982. The convention’s cardinal principle is that the land dominates the sea. Claims to maritime jurisdiction must be based on the ownership of land features. As China recognizes Indonesia’s sovereignty over the Natuna Islands, any Chinese claim to maritime rights such as traditional fishing grounds would have to be based on an island in the South China Sea that could generate a 200 nautical miles of EEZ.

6. Conclusion
Based on research and results, the conclusion and suggestions are as follows: China’s claim on traditional fishing grounds is a unilateral claim of China fishery activities in the region of the South China sea. The basic argument is the Nine Dash Line map which up to now has no legal norm (international) that can be made as a legal basis. China’s claim on traditional fishing grounds (inherent in the Nine Dash Line map) has voided valid bilateral agreements between Indonesia-Vietnam and Indonesia-Malaysia as well as denying/violating the legal status of Indonesia as an Archipelago state under UNCLOS 1982.

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