

The Violation of Sovereign Rights by Foreign Research Vessels: A Case Study of the Chinese Research Vessel Hai Yang Di Zhi 10

Aidir Amin Daud & Marthen Napang & Marcel Hendrapati*

The United Nations Convention on the Law of the Sea (UNCLOS) has been ratified by 168 countries. Among these countries, Indonesia is one of the most notable states concerning compliance with the provisions of the UNCLOS. However, the aggressive actions exhibited by countries seeking to become world hegemonies have resulted in the violation of the Convention. Therefore, this research aims to critically analyse the problems associated with any violations of sovereignty and sovereign rights by foreign research vessels which are conducting commercial and military navigation in Indonesian waters (territorial sea with the archipelagic waters and the inland waters). This research shows that the spirit of the Djuanda Declaration constituting the main principle of the Indonesian Republic is a legal ground for defending the national interest of Indonesia as an archipelagic state. This is the key to maintaining the integrity of sovereignty and national interest.

Keywords

Hai Yang Di Zhi 10, UNCLOS, Sovereignty, Archipelagic State, Nine-dash Line, Foreign Research Vessels

* Lecturers at Law Faculty of Hasanuddin University, Makassar, Indonesia. The corresponding author is Marcel Hendrapati. He may be contacted at: mhendrapati@yahoo.com/Address: Jl. Perintis Kemerdekaan Km.10 Makassar, 90245. Sulawesi Selatan, Indonesia.

All the websites cited in this article were last visited on April 20, 2022.

1. Introduction

Indonesia, the Bahamas, Fiji, Papua New Guinea, and the Philippines are the five archipelagic states which initiated the archipelagic state concept during the Third United Nations Conference on the Law of the Sea (1973-82). These five states were merged into a group of archipelagic states due to their geographical archipelagos characteristics. As the archipelagic state principle was approved by the United Nations Convention on the Law of the Sea 1982 (UNCLOS), those countries could have a status of archipelagic states under international law.¹

Among these countries, Indonesia has the largest sea areas connecting the islands without interference from foreign states. Indonesia is the greatest maritime state having full sovereignty over its territorial seas and archipelagic waters and the exclusive economic zone (EEZ), but these sovereign rights given and recognized by the UNCLOS are sometimes vulnerable. Although Indonesia has the jurisdiction to protecting the marine environment and the marine scientific research, it has to recognize that the EEZ is international water zone where the freedom of the seas principle can be enjoyed.² Hugo Grotius stated that “the sea is an international area and all states are free to use it for their interests.”³ He upheld the freedom of the seas intending to vindicate the right of the Dutch East India Company to trade in the Far East against the exclusive claim of Portugal upon the Bull of Pope Alexander IV. Spain supporting Portugal’s position persistently denied Dutch participation in the commerce with India, which was, however, unacceptable to the Dutch East India Company. This motivated Grotius to write a book titled “Mare Liberum” which aimed to advocate for the freedom of the seas.⁴ The doctrine of Mare Liberum was aligned with that of Mare Clausum as proposed by various publicists, such as William Welwood and John Selden, but the former has been consolidated into State practices,

¹ UNCLOS art. 46, ¶¶ a & b. According to Article 46, “archipelagic state” means a state constituted wholly by one or more archipelagos and may include other islands. Furthermore, ‘archipelago’ means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such. Following the definition, those five states are included or classified into Archipelagic States, since their respective territory is constituted wholly by one or more archipelagos and may include other islands.

² The principle of the freedom of the sea aims to ensure the freedom of various uses of the oceans, such as navigation, overflight, laying submarine cables and pipelines, the construction of artificial islands, fishing and marine scientific research. This principle was primarily aimed to ensure the freedom of navigation in order to advance international trade and commerce across the oceans. See YOSHIFUMI TANAKA, *THE INTERNATIONAL LAW OF THE SEA* 16-7 (2012).

³ *Id.* at 16.

⁴ *Id.* at 17.

particularly by England who established maritime supremacy and encouraged free commerce and trade across the oceans. In essence, the freedom of the seas was a result of the freedom of commerce required to expand capitalism and the European domination over the rest of the world.⁵

The archipelagic state and *Mare Liberum* doctrines would be often inconsistent because each carries contradictory ideas. Under international law, each state has sovereignty over its land territory, territorial seas, and archipelagic waters (when the state is the archipelagic state), seabed and subsoil, and the natural resources therein.⁶ Nevertheless, the sovereignty of the archipelagic state is limited by the rights of foreign vessels implementing the navigational rights such as innocent passage, transit passage, and archipelagic sea lane passage, as regulated in Part IV (Articles 46-54) of the UNCLOS.⁷

According to the Directorate General of Marine Spatial Management of the Ministry of Marine Affairs and Fisheries, Indonesia has internal (inland) and archipelagic waters, territorial seas subject to the state sovereignty. Actually, Indonesia has contiguous zones, EEZ, and the continental shelf with 3,110,000 km² (total land territory), 290,000 km² (inland waters), 6,070,000 km² (archipelagic waters), 270,000 km² (territorial seas), 3,000,000 km² (EEZ) and 2,800,000 km² (continental shelf), respectively.⁸ Indonesia has been trying to defend its sovereign rights in its national waters under the UNCLOS,⁹ but its EEZ used to be intruded by the foreign vessels from China, Thailand, and Vietnam conducting research activities therein from the North Natuna Sea nearby the South China Sea.¹⁰ According to the Maritime Security Agency of Indonesia (Bakamla), foreign warships, fishing and research vessels have not been detected with radar equipment, but viewed by an eyewitness of the aircraft.¹¹ The Maritime Security Agency (Bakamla)¹² recommended that the Ministry Coordinator for Politics, Law,

⁵ *Id.* See also Alison Reppy, *The Grotian Doctrine of the Freedom of the Seas Reappraised*, 9 *FORDHAM L. REV.* 244 (1950), <https://core.ac.uk/download/pdf/144224634.pdf>.

⁶ UNCLOS art. 49. See H. DJALAL, *THE STRUGGLE OF INDONESIAN REPUBLIC IN FIELD OF THE LAW OF THE SEA* 15 (1979).

⁷ *Id.*

⁸ MSP Roadmap, Indonesia, <https://www.mspsglobal2030.org/msp-roadmap/msp-around-the-world/asia/indonesia>.

⁹ Fitriadi, *Thousands of Chinese Ships Paddling in the North Natuna Sea, Indonesian Fishermen are Frightened* [Ribuan Kapal China Mondar-Mandir di Laut Natuna Utara, Nelayan Indonesia Ketakutan], *BANGKAPOS.COM*, Sept. 23, 2021, <https://bangka.tribunnews.com/2021/09/23/ribuan-kapal-china-mondak-mandir-di-laut-natuna-utara-bikin-nelayan-indonesia-ketakutan>.

¹⁰ *Id.*

¹¹ Linda Hasibuan, *Thousands of Chinese Ships Invade Natuna, This is the Explanation of the Indonesian Bakamla*, *CNBC INDONESIA*, Sept. 18, 2021, <https://www.cnbcindonesia.com/news/20210918192046-4-277362/ribuan-kapal-china-serbu-natuna-begini-penjelasan-bakamla-ri>.

¹² The Maritime Security Agency is translated from a phrase Badan Keamanan Laut (Bakamla) which functions to guard the security of any parts of Indonesian national waters towards any violations of international and national laws.

and Security Affairs should guard the border area in the South China Sea to prevent the violations of Indonesia's national regulations regarding the sovereign rights.¹³ When the foreign vessels, including fishing vessels being disguised as research vessels violated these regulations, the relevant authorities should then respond to defend the national interest of Indonesia in conformity with international and national laws.

A researcher at the Indonesia Ocean Justice Initiative (IOJI) pronounced that a Chinese vessel, the HYDZ10 had been surveying the Northern Natuna Sea since the end of August 2021.¹⁴ This vessel which flew the Chinese flag was affiliated with the China Geological Survey of the Ministry of Natural Resources. Different from the other types of vessels, the Chinese survey vessel is equipped with a biological oceanographic instrument which can conduct special research to lift a sample rock and biota on the seabed.¹⁵ Indonesian authorities have deployed several naval vessels to the area, but nevertheless played down the presence of the 3,400-ton Chinese ship, the HYDZ 10. They faced a dilemma on how to respond to China's assertion of its sweeping claims in the South China Sea.¹⁶ He updated daily the Chinese ship's operation in the area within Indonesia's EEZ overlapping the so-called "nine-dash line" that China used to claim for most of the South China Sea.¹⁷

¹³ Editorial team, *Coordinating Minister for Political, Legal And Security Affairs Asks Bakamla to Strengthen Capacity to Improve Performance*, VOR, Mar 7, 2022, at A1, <https://voi.id/en/news/142480/coordinating-minister-for-political-legal-and-security-affairs-asks-bakamla-to-strengthen-capacity-to-improve-performance>.

¹⁴ Kimberly Carbonell, *Chinese Prospecting Vessel Lingering in Indonesian Eez Poses Dilemma for Jakarta*, BENARNEWS, Sept. 21, 2021, A1, <https://www.seldik.com/chinese-prospecting-vessel-lingering-in-indonesian-eez-poses-dilemma-for-jakarta-benarnews>.

¹⁵ *Id.*

¹⁶ *See China Survey Ship Lingering in EEZ Poses Dilemma for Indonesia*, RADIO FREE ASIA, Sept. 9, 2021, <https://www.google.com/search?q=Some+cases+of+the+foreign+research+vessel+in+the+Natuna+Sea&aq=Some+cases+of+the+foreign+research+vessel+in+the+Natuna+Sea&aqs=chrome..69i57j33i160.61716j0j15&sourceid=chrome&ie=UTF-8>.

¹⁷ *Id.*

Figure 1: China's Nine-Dash Line and Indonesia's North Natuna Sea¹⁸

Source: Compiled by the authors.

Article 246 of the UNCLOS requires governments to seek permission in advance for marine scientific research in another state's EEZ, but China has often ignored it. Whenever the HYDZ 10 and Chinese Coast Guard vessels entered the North Natuna Sea, Indonesian naval ships were sent to the area for maritime patrol, because foreign scientific research activities should be permitted by the coastal state.¹⁹

According to Admiral Yudo Margono, the Chief Staff of the Indonesian Navy, the Indonesian Navy can propose strict regulations for foreign research vessels operating in Indonesian waters, because these regulations are used to arrange and straighten up platforms for unmanned underwater vehicles (UUVs) launched by any foreign research vessel, including the HYDZ 10 to collect various types of data.²⁰ Admiral Yudo stated that there is no regulation arranging the utilisation of UUVs either internationally or nationally.²¹

This manuscript will examine the HYDZ 10 case and criticize the violations of sovereign rights of Indonesia as an archipelagic state by foreign research vessels under the UNCLOS.

¹⁸ For details, see *Monitoring the 21st Century Asian Arms Race, Indonesia Joins the South China Sea Fray* (July 18, 2017), <https://21stcenturyasianarmsrace.com/2017/07/18/indonesia-joins-the-south-china-sea-fray>.

¹⁹ UNCLOS art. 246, ¶¶1-3.

²⁰ Novan Iman Santosa & Dian Septiari, *Indonesian Navy to Propose Stricter Regulations for Research Vessel*, JAKARTA POST, Apr. 1, 2021, <https://www.thejakartapost.com/news/2021/01/04/navy-to-propose-stricter-regulations-for-research-vessels-uuv.html>.

²¹ *Id.*

2. Legal Status of Indonesia as an Archipelagic State

Indonesia was not originally recognized as an archipelagic state. Until the mid-1950s, as nearly all the waters lying between the islands of Indonesia belonged to no state, none claimed any form of jurisdiction over the maritime areas. On December 13, 1957, however, the then Prime Minister Djuanda Kartawidjaja declared that the Indonesian government should have “absolute sovereignty” over all the waters within straight baselines connecting the outermost islands of the country.²² The Declaration, confirmed by Act No. 4 Prp. of 1960 on Indonesian Waters fundamentally changed the territorial structure of Indonesia. As a result, the sea is no longer separated area from islands, but rather united as integral unity with all the islands. The Declaration was delivered by a variety of factors. Firstly, Indonesia is geographically composed of thousands of islands which have their own characteristics and features with separate arrangements. Secondly, for the state’s territorial unity, all the islands and seas connected with each other should be considered as a unit circle. Thirdly, the original territorial sea boundaries were determined by the Dutch colonial government with Article 1, paragraph (1) of the *Territoriale Zee en Maritieme Kringen Ordonnantie 1939*, but was no longer in line with the Indonesian interest for safety and security. Fourthly, every sovereign state has the right and obligation to take necessary measures to protect its national integrity and safety.²³ Certainly, the Declaration was highlighted and even challenged by the world, especially the maritime hegemonies. After making several trials from 1973 onwards, however, this idea was accepted as a legal principle of the UNCLOS. Then, Indonesia developed national maritime strategy for the achievement of national progress and welfare.²⁴ Accordingly, the Law Number 6 Year 1996 concerning Indonesian Waters provides:

All waters around, between, and connecting islands belonging to the State of Indonesian Republic regardless of size or width are reasonable parts of the Indonesia land area; therefore they are all under the country’s sovereignty. An innocent passage through these inland waters for foreign vessels is guaranteed as long as they do not interfere with the sovereignty and safety of the state of Indonesian Republic. The boundaries determining the territorial sea, the width of which is 12 nautical miles are measured from the baselines connecting the

²² J. BUTCHER & R. ELSON, *SOVEREIGNTY AND THE SEA: HOW INDONESIA BECAME AN ARCHIPELAGIC STATE* 20 (2017).

²³ MOCHTAR KUSUMAATMADJA, *VARIOUS KINDS OF THE LAW OF THE SEA [Bunga Rampai Hukum Laut]* 26 (1978).

²⁴ UNTUNG SUROPATI ET AL., *INDONESIA INC.: ROADMAP DIRECTED TO WORLD MARITIME FULCRUM [Peta Jalan Menuju Poros Maritim Dunia]* xxii (Jakarta: Pt Alex Media Komputindo, 2018).

outermost points of the Indonesian outermost islands. The above provisions will be regulated by national laws as soon as possible.²⁵

3. Sovereign Rights of Indonesia as an Archipelagic States

A. Sovereign Rights of Archipelagic States under the UNCLOS

The UNCLOS is often considered as a framework treaty controlling the institutions and mechanisms for all ocean development of the world.²⁶ Article 2 of the UNCLOS provides the sovereignty of a coastal state not only over its land and inland waters and the archipelagic waters in the case of archipelagic states, but also over the sea routes adjacent to the territorial sea.²⁷ The archipelagic state's sovereignty embraces not only the water column of the zones such as internal, territorial and archipelagic waters, but also the seabed and subsoil and the living and nonliving natural resources therein.²⁸ The sovereignty of the archipelagic state also embraces the air space above such zones subject to territorial sovereignty and jurisdiction.²⁹ Sovereign rights of the archipelagic or coastal state are exclusively given to the state to exercise the exploration, exploitation, utilization, and conservation and management of the living and non-living natural resources existing in the water column, seabed, and subsoil.³⁰ The sovereign rights are also associated with the economic activities in the EEZ, such as energy production from the water, current, wave, and wind.³¹

²⁵ See the general explanation of the Laws Number 6 Year 1996 concerning Indonesian Waters, a commentary of the author to generally clarify and explain the Laws of Indonesian Republic Number 6 Year 1996 regarding the Indonesian Waters [Undang-Undang Republik Indonesia Nomor 6 Tahun 1996 tentang Perairan Indonesia], <http://bphn.go.id/data/documents/96uu006.pdf>. See also Act No. 6 of 8 August 1996 regarding Indonesian Waters, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IDN_1996_Act.pdf.

²⁶ S. Williams, *Law of the Sea Mechanisms: Examining UNCLOS Maritime Zones*, MAR. EXECUTIVE 1-2 (Jan. 1, 2014), <https://maritime-executive.com/article/law-of-the-sea-mechanisms-examining-unclos-maritime-zones-2014-12-01>. See UNCTAD, *The United Nations Convention on the Law of the Sea and the Legal and Institutional Framework for Ocean Affairs in Belize: Sustainable Marine Fisheries, Marine Aquaculture, Seafood Processing, Marine and Coastal Tourism* (2019), at 1, https://unctad.org/system/files/official-document/ditctedinf2019d11_en.pdf.

²⁷ UNCLOS art. 2 (1).

²⁸ *Id.* art. 49 (2).

²⁹ *Id.*

³⁰ *Id.* art. 56 (1).

³¹ *Id.*

B. Violations of the Sovereign Rights of Archipelagic State

On August 31, 2021 a Chinese survey ship the HYDZ 10 began its criss-crossing in a small stretch of the North Natuna Sea in a lawn-mowing pattern typical for maritime survey vessels.³² Indonesian authorities deployed several naval vessels to the area, but they faced a dilemma on how to respond to China's assertion. In the morning of August 31, its AIS (automatic identification system) signals showed the HYDZ 10 was moving slowly southwards into Indonesian waters and entered the Tuna Mining Block, nearby Noble Clyde Boudreaux rig commissioned to drill two wells there until mid-November. A Vietnamese researcher whose name was Duan Dang said that the Tuna Mining Block was just 10 nautical miles from the rig. He started updating almost daily on the Chinese ship's operation in the area, which lies within Indonesia's EEZ but overlaps with the so-called "nine-dash line."³³

According to Greg Poling, director of the Asia Maritime Transparency Initiative at the Center for Strategic and International Studies in Washington, D.C., referring to past incidents that Chinese survey vessels loitered the EEZs of neighboring countries, where oil and gas exploration was underway, Beijing clearly played a kind of drama against Vietnam in late 2019 and Malaysia in early 2020.³⁴

Duan Dang was monitoring the Chinese vessel approaching the Vietnamese EEZ on August 29, 2019, nearby an installation in the Dai Nguyet oil field.³⁵ The AIS signals showed that the HYDZ 10 was moving slowly southwards into Indonesian waters and entered the Tuna Block, around the Noble Clyde Boudreaux rig.³⁶ The rig was commissioned to bore and drill two wells there until mid-November, according to energy industry sources.³⁷ At one point, it was just 10 nautical miles from the rig.³⁸ A maritime air patrol was also conducted. A spokesman of the Indonesian Maritime Security Agency (Bakamla) brushed aside the concerns about the HYDZ 10, however, saying that the vessel did not violate any shipping rules. Nevertheless, some analysts said the Chinese vessel's movement in a grid pattern was clearly engaged in research

³² Kimberly Carbonell, *Chinese Prospecting Vessel Lingering in Indonesian Eez Poses Dilemma For Jakarta*, BENARNEWS, Sept. 21, 2021, A1, <https://www.seldik.com/chinese-prospecting-vessel-lingering-in-indonesian-eez-poses-dilemma-for-jakarta-benarnews>.

³³ *See China Survey Ship Lingering in EEZ Poses Dilemma for Indonesia*, RADIO FREE ASIA, Sept. 9, 2021, <https://www.google.com/search?q=Some+cases+of+the+foreign+research+vessel+in+the+Natuna+Sea&oq=Some+cases+of+the+foreign+research+vessel+in+the+Natuna+Sea&aqs=chrome..69i57j33i160.61716j0j15&sourceid=chrome&ie=UTF-8>.

³⁴ *Id.* at 2.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

activities without any permission of the Indonesian authority. For example, H.I. Sutton, a defense analyst, said that the HYDZ 10 appeared to be conducting a detailed survey of the sea floor which violated the Indonesian sovereign rights in the EEZ of the North Natuna Sea.³⁹

Regarding the Chinese survey vessel found in the North Natuna Sea from August 29 to September 2021, however, there were some different views. Hikmahanto Juwana opined that although the EEZ was not territorial water under the sovereignty of the coastal state, the foreign vessel was prohibited not only to make exploration and exploitation of the natural resources, but also to conduct the marine research activities without any permission of the coastal state's authority.⁴⁰

Conversely, the Indonesian Navy stated that the Chinese Research Vessel exercised the normal passage in the EEZ of the North Natuna Sea, since these maritime areas were international waters, which ensured the freedom of navigation or navigational operation. It means such a research vessel moving back and forth (or walking up and down) in the North Natuna Sea from August 31 to September 29, 2021 did not conduct any violation of the sovereign rights of Indonesia as an archipelagic state. However, the authors do not agree with the statement proposed by the spokesman of Bakamla and Indonesian navy, because the HYDZ 10 was conducting a detailed survey of the sea floor based on a seismic survey data using a special sonar to see beneath the sea floor. The most likely use for this would be in relation to hydrocarbon exploitation.⁴¹

It was necessary to acknowledge that the Tuna Mining Block being located about 90 nautical miles north of Indonesia's Natuna Islands, where the HYDZ 10 was operating, is an important oil and gas field with two appraisal wells being drilled by two corporations, namely the UK-based Harbour Energy and its partner, Russia's Zarubezhneft using the semi-submersible rig in Noble Clyde Boudreaux.⁴²

China pretended to do scientific research, but actually conducted resource exploration in disputed waters.⁴³ China claimed that its activities did not violate the

³⁹ *Id.*

⁴⁰ *See Expert: Chinese Ships Must Permit If Research in the North Natuna Sea* [Pakar: Kapal China Harus izin Jika Riset di Laut Natuna Utara], CNN INDONESIA, Oct. 7, 2021, A1-2, <https://www.cnnindonesia.com/nasional/20211007090547-20-704497/pakar-kapal-china-harus-izin-jika-riset-di-laut-natuna-utara>.

⁴¹ *Supra* note 33, at 4.

⁴² *Id.* The Indonesian government awarded Premier Oil, which merged into Harbour Energy Plc earlier in 2021, the right to explore the block in 2007. The Russian operator joined the exploration. Tuna has estimated reserves of 100 million barrels of oil, as Zarubezhneft officials told the Russian news agency Interfax. *See* BenarNews Staff, *Chinese Survey Ship Lingering in Indonesia's EEZ Poses Dilemma for Jakarta*, BENARNEWS, Sept. 21, 2021, at A1, <https://www.benarnews.org/english/news/indonesian/indonesia-chinese-ship-dilemma-09212021172746.html>.

⁴³ *Id.* at 5.

law because the South China Sea was a part of the China maritime area.⁴⁴ However, the Chinese Coast Guard (CCG) disturbed foreign oil and gas operations to coerce the neighboring state to halt the work. If the disturbance failed, China would then deploy a state-owned survey vessel protected by CCG and militia boats to conduct illegal surveys.⁴⁵ In this course, the HYDZ 10 surveyed right up to the edge of the nine-dash line. Beijing evidently views the line as a kind of national boundary.⁴⁶ However, such a unilateral position has been severely challenged by the international community. It indicates that the HYDZ 10 clearly violated the sovereign rights of Indonesia in its EEZ of the North Natuna Sea.

4. Conclusion

As an archipelagic state, Indonesia has the full sovereignty and jurisdiction over its waters embracing internal seas, territorial seas and archipelagic waters under the UNCLOS. As a result, Indonesia should have the right to enjoy and exercise the sovereign rights and jurisdiction in the EEZ of the north Natuna Sea. In addition to the sovereign rights to arrange and manage the natural resources, Indonesia can exercise the jurisdiction over marine scientific research in the that area where the outer boundary lines of Indonesia's EEZ is overlapping and piling up on a part of the nine dash lines.

Even though there is a strong public pressure to maintain and protect the national interests, the Indonesian government has not officially responded to the activities of the HYDZ 10 yet because it gives priority to a diplomatic manner to the dispute settlement with political considerations. However, it is necessary for the Indonesian government to defend its sovereign rights in the maritime areas under the UNCLOS.

Received: February 1, 2022

Modified: April 1, 2022

Accepted: May 1, 2022

⁴⁴ Editorial Team, *The Riches of the Natuna Sea: The Reasons Behind China's Lust And Many Disputes*, VOI, Sept. 21, 2021, at A4, <https://voi.id/en/bernas/86854/the-riches-of-the-natuna-sea-the-reasons-behind-chinas-lust-and-many-disputes>.

⁴⁵ *Id.*

⁴⁶ *Id.*