



Legality of the Use of Armed Forces Against Foreign Parties Obstructing Efforts to Eradicate Illegal, Unregulated, Unreported Fishing in the Exclusive Economic Zone

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Abstract: The purpose of this research is to find out the legality of the entry of Chinese coastguards into Indonesia's EEZ to protect the Kway Fei 10078 Fishing Boat and to find out the legality of using armed forces against foreign parties who obstruct efforts to eradicate Illegal, Unregulated, Unreported Fishing in EEZ and to find out what actions Indonesia should take against China's actions. This study uses normative juridical research methods, namely looking for applicable provisions and library materials. Based on the analysis and research conducted, it was concluded that the entry of the Chinese coastguard into Indonesia's EEZ which protects the Kway Fei 10078 ship is illegal because other countries' ships are only given the right to sail, not protect other ships that violate other countries' EEZ areas according to Article 58 UNCLOS 1982. Retaliation for armed attacks against foreign parties that hinder the eradication of IUU Fishing can be carried out because the right of self-defense is granted by Article 51 of the UN Charter can be realized by a state that is harassed by foreign parties. The actions of disruptive foreign parties are usually in the form of bringing in warships or coastguards to carry out security.

Keywords: Legality, Illegal Eradication Efforts, Unreported, Exclusive Economic Zone.

INTRODUCTION

The sea is a whole series of salt water that inundates the earth's surface. Geographically, of the earth's surface which covers 200 million square miles, 70% or 140 million square miles consists of water. Of this, 97% is salt water or sea with a figure of 135,800 square miles. Of these oceans, among the largest oceans, it can be said that the Pacific Ocean inundates the earth's surface covering an area of 63,855,000 square miles, the Atlantic Ocean 31,744,000, the Arctic Sea 5,427,000, and the Mediterranean Sea covering 967,000 square miles.

Besides that, the sea has a commercial and strategic meaning, the sea is also a source of food for mankind because the fish are rich in protein. From the sea, around 65 million tons of

fish species are caught every year. Even the seabed is also rich with oil and natural gas and other mineral resources. About 60% of petroleum comes from the seabed. The sea is also rich in nodules, at the bottom of the Pacific Ocean alone there are an estimated 1,500 billion tons of nodules containing nickel, manganese, copper and cobalt.

Due to the importance of the sea and the rich resources in it, humans take actions that violate the provisions or ways to use the resources in the sea. Such as entering the territory of another country without the permission of the coastal state to carry out *illegal, unregulated, unreported fishing (IUU)* into the *EEZ* of another country without permission from the coastal state.

IUU fishing has recently been in the world's attention, especially in various forums such as FAO, CCSBT (The Commission on Conservation of Southern Bluefin Tuna), IOTC (Indian Ocean Tuna Commission) and so on. Indonesia has suffered greatly from this *IUU* activity, both in terms of state losses which are estimated at 1.3 - 4 billion USD per year. These are very worrying numbers at the moment.

biological and non-biological resources. The location of Indonesia is flanked by the Pacific Ocean and the Indian Ocean which are international shipping traffic lanes. The biological resources in the sea contained therein are very potential, both for industrial raw materials, food needs or for other needs.

With a coastline of 81,000 km, and a sea area including Indonesia's *Exclusive Economic Zone (EEZ)* of 5,866 million km², it is very possible that this sector is expected to become the backbone of Indonesia's development. The Indonesian state suffered huge losses from this *IUU* fishing practice.

Indonesia's losses as a result of *Illegal Fishing actions* per year reach USD 20 billion or equivalent to Rp. 3,600 trillion. Taking into account the huge losses to the state, efforts to sink ships that carry out illegal fishing are the main choice for the Indonesian state at this time. This policy is intended as a stern warning to *illegal fishing actors* as well as a form of Indonesia's commitment to monitoring and law enforcement in Indonesia's maritime territory⁶.

The rise of *IUU fishing* in Indonesia's *EEZ* requires Indonesia to take firm steps to protect natural wealth in Indonesia's *EEZ*. So that efforts to monitor and implement law enforcement using military force in collaboration with ships from the Ministry of Maritime Affairs and Fisheries are the main choice for Indonesia at this time in anticipation of *IUU* fishing actors in Indonesia's *EEZ*.

Basically, according to UNCLOS 1982 which has been ratified by Indonesia through Law no. 17 of 1985, in Article 73 explains that the coastal state in exercising its sovereign rights to explore, exploit, conserve and manage living resources in the *EEZ* take such actions, including boarding ships, inspecting, arresting and carrying out court proceedings, as necessary to ensure compliance laws and regulations, meaning that internationally the coastal state, namely Indonesia, is authorized as a party entitled to carry out law enforcement against violations in the *EEZ*.

If we return to the actions of *IUU Fishing*, this includes acts that violate the provisions of international law of the sea. The coastal state has the right to enforce the law to take action in accordance with the provisions of article 73 UNCLOS 1982. However, law enforcement efforts by the coastal state encounter resistance from foreign parties who commit violations in the *EEZ* of the coastal state, thus triggering conflicts that *lead* to efforts to use armed force as a last resort against perpetrators of *IUU* fishing in order to maintain stability, security and defense of the coastal state.

IUU Fishing problem culminated in an incident, on Saturday March 19 2016, an incident occurred, namely the Kway Fey 10078 motorized boat with the Chinese flag while carrying out fishing activities in Natuna waters. The process of arresting ships entering Indonesian territory, in

The illegal Natuna waters did not run smoothly. None other than because, during the operation process of escorting KM Kway Fey 10078, a coast guard ship belonging to the Chinese Navy appeared at the same time. Desperately, participating in breaking through the border of Indonesian waters, in order to hinder the arrest process.

With this form of repressive action from the Chinese *Coastguard ship*, it could trigger a conflict in the Indonesian sea territory. Basically according to article 73 UNCLOS 1982 expressly states that law enforcers in the EEZ are state ships and warships of coastal states, it means that China's *Coastguard actions pose a threat to the security and defense of the Indonesian state*. Based on the reasons disclosed by the Chinese Government, the actions taken by *the coastguard* were part of the *nine dash line area*, as well as the place where the incident occurred including *the Traditional Fishing Ground area* belonging to China.

The location of the incident is in the Natuna region of Indonesia which is one of the sea areas with a lot of potential. Indonesia has a great interest in the existence of the Natuna Sea, because the Natuna Sea is rich in biological and non-biological wealth. Indonesia is very interested in exploiting the natural wealth in the Natuna Sea.

Based on international law, in article 51 of the UN Charter which in essence is *Self Defense*, which allows a state to use armed force only in order to defend itself from attacks carried out by other countries that disturb international peace and security. In Article 2 Paragraph 4 of the UN Charter it is explained that every UN member state in terms of resolving conflicts using armed force is not the main choice.

The position of the conflict is in the *Exclusive Economic Zone*, where the concept of ownership is only in the form of sovereign rights area, so that retaliation with armed attacks on the grounds of *self-defense* will cause other effects that will harm Indonesia, besides that the rights of other countries are highly considered in the EEZ area. Pursuant to article 58 paragraph 1 is the freedom to sail in *the Exclusive Economic Zone*, and fly over it and lay cables and pipelines below sea level. In relation to this provision, what is being questioned is whether this freedom also includes the freedom for foreign ships to carry out military activities.

This problem arises because the provisions of the 1982 Law of the Sea Convention relating to the legality of military activities in *the Exclusive Economic Zone* by other countries still have multiple interpretations. According to the views of several countries, especially maritime countries, the provisions of the convention do not prohibit such activities. The reason is that such activities include freedoms at sea, especially the freedom to sail in the *Exclusive Economic Zone* recognized by *the Convention*.

On the other hand, for developing countries, such as Indonesia, the view that the use of armed force is an act that can disrupt their national security, therefore, the repressive actions of the Chinese *Coastguard provoke an action that is not peaceful*. Therefore, based on the problems above, the researcher wants to research "**The Legality of the Use of Armed Forces Against Foreign Parties Obstructing Efforts to Eradicate Illegal, Unregulated, Unreported Fishing in the Exclusive Economic Zone (EEZ)**"

LITERATURE REVIEWS

Use of Armed Forces (War)

In the Big Indonesian Dictionary (KBBI), is hostility between two countries, nations, religions, tribes and so on, in addition to war, it is an armed battle between two troops. According to Francois, it is a legal condition between countries that are warring with each other by using force. military. According to Oppenheim, namely a dispute between two countries with the intention of controlling the opponent and establishing conditions of peace as desired by the victor.

Based on Macchiavelli's understanding of principles, war is considered as the main way to achieve the national interests of a country. According to Carl Von Clausewitz, briefly and

simply Carl Von Clausewitz provides several definitions of the nature of war. First, war is nothing but a duel on a larger scale. War is a fight between two opponents on a large scale. Large scale means that the parties dealing are generally between countries and not one group of people dealing with other groups of people within one country. Second, war is thus an act of force to compel our enemy to do our will. War is an act of violence to force the enemy to submit to the will of the opposing party. As long as the enemy has the strength to survive, so long as we must try to destroy him.

IUU Fishing

IUU Fishing is fishing activity carried out by irresponsible fishermen and contrary to the code of ethics for responsible fishing. IUU fishing includes malpractice activities in the utilization of fishery resources which are illegal activities.

The definition of IUU Fishing refers to the definition issued by the 2001 International Plan of Action (IPOA) initiated by the Food Agriculture Organization (FAO) in the context of implementing the Code of Conduct for Responsible Fisheries (CCRF).

Exclusive Economic Zone (EEZ)

Developing countries with seashores have long felt that freedom at sea, which is always touted by major maritime countries, is only to defend the interests of these countries. If all this time, under the pretext of freedom at sea, the fishing vessels of the major maritime countries sailed all the seas and oceans and carried out activities in the sea close to the national waters of the coastal countries, then these coastal countries, because they felt they had more rights than other countries have decided to reserve the marine resources adjacent to their waters for the welfare of their people.

The encouragement of developing countries with coasts to be able to meet the needs of their people has been realized by these countries in various unilateral statements both in the form of widening the territorial sea and in the form of controlling other sea zones. The concept of sovereignty over marine resources outside the territorial sea was originally developed in Latin American countries. *The Montevideo Declaration* of 8 May 1970 began containing principles for extending the sovereignty of signatory states or their exclusive jurisdictional rights over the zone adjacent to the coast, seabed and subsoil to a distance of 200 miles.

An Overview of Chinese Claims Regarding *Traditional Fishing Ground* According to UNCLOS 1982

Traditional Fishing Ground area is stated as a reason to intervene in the utilization of resources in Indonesia's *EEZ*. In the case of the entry of the Kway Fei 10078 into Natuna and accompanied by the Chinese *Coastguard ship*, this is proof that China unilaterally considers the Natuna Sea as its *Traditional Fishing Ground*.

As a norm in international law, the definition of China's claim regarding *the Traditional Fishing Ground* has yet to be found in any form or anywhere, so that various objections to this claim have emerged from various parties. Indonesian marine law expert Prof. Hasyim Djalal stated that "the term traditional fishing ground does not appear in the UN Convention on the law of the sea, but traditional fishing rights.

Basically what China is doing is inseparable from its unilateral claims related to the "*Nine Dash Line*", where the Natuna Sea enters Indonesia's jurisdiction. One of the important legal regimes in the use of the sea to date, namely UNCLOS 1982, only explains *traditional fishing rights*.

METHODS

This research is normative legal research, namely research by examining existing literature which is secondary data and is also referred to as library research. The author uses a normative juridical approach, which is an approach by looking at the applicable provisions by examining library materials and studying other supporting materials with the material discussed in this writing.

The data obtained will be presented in the form of a systematically arranged description. The point is that between one data and another data must be relevant to the problem as a whole, sequential, and closely related, so that the data presented can be easily understood. Data obtained from research results, processed and analyzed normatively qualitatively, namely by showing legal data facts analyzed with qualitative descriptions to determine the legality of the use of armed force against foreign parties who obstruct efforts to eradicate Illegal, Unregulated, Unreported Fishing in EEZ, the author will make the analysis into a written work in the form of a thesis. By analyzing the primary data and secondary data obtained from the research, it has been arranged regularly and systematically, then analyzed to obtain a conclusion.

RESULTS AND DISCUSSION

The Legality of the Actions of the Chinese *Coastguard* Entering Indonesia's EEZ in an Effort to Protect the Kway Fei 10078 Ship

1. Overview About Coastguard

Coastguard is an organization within a country that is responsible for various tasks at sea. The implications of the term *coastguard* can vary according to responsibilities in different countries. Among the tasks entrusted to *the coastguard* are law enforcement at sea, maintenance of sea signs, border surveillance, search for help and others.

In some countries, *the coastguard* is part of the armed forces, and in a small number of countries may also be represented by civilians or even from the private sector organizations. As in England and Ireland *the coastguard* does not have a duty as law enforcement, they are only a maritime rescue organization, while the rescue equipment comes from ships of other organizations.

2. General Description of Natuna Waters

Natuna waters are the Indonesian sea area which consists of the territorial sea area and the Indonesian EEZ sea area. Since the State of Indonesia adheres to the concept of an Archipelagic State, it was announced by the government on December 13, 1957 known as *the Djuanda Declaration*.

This archipelagic country that is sovereign by Indonesia is called the Archipelago Concept, so that the width of Indonesia's territorial sea is 12 miles as measured from the baselines *connecting* the outermost points of the outermost Indonesian islands.

The Djuanda Declaration also states that for the sake of territorial integrity and to protect the wealth of the State within it, the islands and seas that exist must be considered as a unified and unified whole, as stipulated in Law No. 6 of 1996 concerning Indonesian Waters.

3. Chronology of the Entry of the Chinese Coastguard into Indonesia's EEZ

The chronology of the incident when the Chinese *coastguard* entered KM Kway Fey 10078 on Saturday (19/3) at around 14.15 WIB was seen in Indonesian territory. Kp.Hiu 11, which at that time was in the closest position to the ship, then chased KM Kway Fey 10078.

However, the ship did not want to stop, the ship's supervisor gave a warning shot. However, the KM Kway Fey 10078 ship kept trying to escape in a zig zag manner, so KP Hiu 11 approached and could not avoid a collision with the Chinese-flagged ship.

After that, 3 Shark KP personnel jumped into the captured ship and managed to paralyze it. The eight crew members of the captured boat were transferred to KP Hiu 11. When 3 personnel from KP Hiu 11 who were on board the Kway Fey 10078 and were about to take the ship, suddenly a Chinese *coastguard ship appeared*. KP Hiu tried to radio to the Chinese *coastguard* but there was no answer, then KP Hiu contacted Lanal to inform him about the incident

coastguard ship approached and then they shone a spotlight and hit the captured ship so it couldn't be towed. After that the fishing boat stopped and saw that there were three members of the Shark 11 ship on board, so they did not board, but only carried out surveillance.

The Kway Fey 10078 ship was damaged in a crash and to avoid unwanted things from happening, three KP Hiu personnel left the Kway Fey 10078 ship, causing only the crew members to be taken to Tiga Natuna Island for further processing according to applicable law.

Legality of the Use of Armed Forces Against Foreign Parties Obstructing Efforts to Eradicate IUU Fishing in the EEZ

1. Limits on the Use of Armed Forces Against Foreign Parties

The use of armed force is actually not the main solution in resolving conflicts between countries. Article 2 paragraph (4) of the UN Charter prohibits each of its members from using threats or force against the territorial integrity or political independence of any country⁵³. Article 2 paragraph 4 of the UN Charter is a general arrangement for the prohibition of the use of armed force. The regulation provides an explanation that prohibits the use of force or threats to use force against the territorial integrity or independence of other countries.

Article 2 paragraph 4 of the UN Charter has 5 important points related to the use of force. First, war is a violation of peace, which is the responsibility of international law. Second, countries may not use threats or force to cross other national borders and to cross other national borders and to resolve existing disputes. The three countries have an obligation to withdraw from an act of revenge using force. Fourth, states must not use force against their people who vote for the right to self-determination. Fifth, states must withdraw from any action that supports the formation of other armed bodies.

2. Immunity of Warships Under International Law

As has been explained, that a *coastguard ship* is a warship from a country, this is based on the fact that *the coastguard* is carried out by military personnel from a country and some are armed. Therefore, in international arrangements, warships actually have immunity *in* carrying out their activities.

Based on the developing theory, there are 2 theories regarding jurisdiction over foreign government ships:

- a. *Floating* island theory, according to this theory a government/state ship is considered as part of the territory of the country that owns it. According to this theory, the jurisdiction of the territorial courts of other countries is waived for all purposes when an act is committed on board a ship, or against a party originating on board that ship.
- b. The territorial court of a State, gives to the ship and the crew and the contents of the said ship certain immunity which does not depend on an objective theory which states that a state ship is the territory of a foreign country, but on an implication given by local territorial law. These immunities recognized by local law are exceptional and can otherwise be waived by the ship-owning State concerned.

One of the multilateral treaties in which there are provisions governing the immunity of warships is the 1926 Brussels Convention which was signed on April 10, 1926, in Brussels, Belgium.

3. Rights and Obligations of the Coastal State in the Exclusive Economic Zone According to UNCLOS 1982

Based on the 1982 UNLCOS, coastal states have several rights and obligations to utilize the EEZ under international law. In article 56 of UNCLOS 1982, the coastal state has the following rights:

- a. Sovereign rights for the purposes of exploring and exploiting, conserving and managing natural resources, both living and non-living, from the waters above the seabed and the seabed and the land beneath it and with respect to other activities for the purposes of exploration and exploitation of the economic zone , such as energy production from water, currents, and wind;
- b. The jurisdiction as defined in the relevant provisions of this convention relates to the creation and use of artificial islands, installation and construction, marine scientific research, protection and preservation of the marine environment;
- c. Other rights and obligations as specified in this convention .

Every right owned by the coastal State, must always be accompanied by the obligation of the coastal State towards the management of the EEZ. In article 61 UNCLOS 1982 explains:

- a. The coastal State must determine the amount of catch of living resources that can be allowed in the Exclusive Economic Zone
- b. The coastal state, having regard to the best scientific evidence available to it, must ensure, by implementing appropriate conservation and management measures, that the maintenance of the living resources in the Exclusive Economic Zone is not jeopardized by over-exploitation.

From these arrangements, it is clear that in the context of resource conservation the coastal State is obliged to guarantee a maximum sustainable harvest limit (maximum *sustainable yield*) of living natural resources in the EEZ. With due observance of these sustainable harvest limits, the coastal State is also obliged to determine the allowable catch of living natural resources.

4. Legality of the Use of Armed Forces Against Foreign Parties Obstructing the Eradication of IUU Fishing

EEZ is a sea area that has an area of 200 miles measured from each baseline of a country. That way, based on articles 56, 60 and 61 the coastal state has an exclusive right authority regulated in UNCLOS 1982 to be able to use the sea for exploration and exploitation of both living and non-biological resources. Apart from that, as a form of guaranteeing the upholding of the exclusive rights of the coastal state, the coastal state also has the authority to carry out law enforcement on any violations committed by foreign parties in the EEZ. One of the violations that is the responsibility of the coastal state is to prevent and eradicate the perpetrators of *IUU* fishing.

What Actions Should Be Taken by Indonesia Against China's Actions

1. Indonesian Prohibition To Retaliate With Armed Attacks

The use of armed force is not the main solution in resolving conflicts or disputes between countries. Article 2 Paragraph (4) of the UN Charter prohibits any member of the UN from using force to disrupt the territorial integrity or political independence of other countries. Article 2 Paragraph (4) of the UN Charter is a general regulation on the prohibition of the use of armed force. The regulation provides an explanation that prohibits the use of force or threats to use force against the territorial integrity or independence of other countries.

The conflict that occurred between Indonesia and China regarding the security of the Kway Fei 10078 Ship in the Natuna Sea is a form of conflict that does not have to be resolved by retaliating with armed attacks. At the time of the incident, Indonesia, which

was going to enforce the law against the Kway Fei 10078 ship which was carrying out *IUU fishing*, was disturbed by the Chinese *coastguard* by crashing into the Kway Fei 10078 ship, with that incident Indonesia chose to back off and release the Chinese fishing boat.

The actions taken by *the coast guard* are indeed actions that violate and do not respect Indonesia as a *coastal state*. However, as a member of the United Nations and highly upholding world peace, retaliating with an armed attack is not the first choice. In accordance with the mandate of the Indonesian Constitution, at the Preamble to the 1945 Constitution, Indonesia highly upholds order and peace in the world.

2. Legality of Indonesia Using Armed Forces Against Chinese Parties

The incident in the Natuna Sea involved the Chinese *coastguard* trying to protect the Kway Fei 10078 Ship to be processed and given punishment according to applicable international rules and national law. The scene of the incident was in the Natuna Sea, part of Indonesia's *EEZ*, where according to UNCLOS 1982 Articles 56, 60 and 61, Indonesia as a coastal state has exclusive authority to utilize the exploration and exploitation of both living and non-living resources. As the owner of *the EEZ* to maintain Indonesia's exclusive rights, Article 73 UNCLOS 1982 stipulates that international rules authorize the Indonesian state to carry out law enforcement against violations that occur in the *EEZ*.

Apart from that, in Law no. 5 of 1983 Article 7 says "that every activity carried out in Indonesian territorial waters must obtain approval from the state of Indonesia". Apart from that, Indonesia's position as a party entitled to enforce the law in *the EEZ*, including *IUU Fishing* violations, has been promulgated in Law no. 31 of 2004 and changed to Law Number 45 of 2009 concerning Fisheries.

CONCLUSION

1. *Coastguard* is an organization within a country that is responsible for law enforcement at sea, maintenance of sea signs, border control, search for help at sea. China's *coastguard* that enters and intervenes in the implementation of law enforcement in Indonesia's *EEZ* is illegal according to international law.
2. The eradication of *IUU Fishing* is the authority of the coastal state in accordance with article 73 UNCLOS 1982. Disruption of law enforcement of *IUU Fishing* perpetrators by foreign parties such as warships can be retaliated by the use of armed force, even though warships have immunity, but carry out actions outside the authority and as an extraterritoriality of a country warships carry out actions that violate the integrity of the national security of the state so that they can be retaliated with armed attacks. In article 2 paragraph (4) of the UN Charter the use of armed force is not the main solution in resolving cases between countries.
3. Indonesia is the party that is disadvantaged because the implementation of law enforcement is disrupted by the Chinese *coastguard* to protect the Kway Fei 10078 Ship in the Natuna Sea. Therefore, China's actions do not respect and disrupt the integrity of Indonesia's territorial security. As a member of the United Nations and adhering to the constitutional understanding that Indonesia is a peaceful country and adhering to Article 2 Paragraph (4) of the UN Charter and Article 59 of UNCLOS 1982, retaliating with armed attacks is not the main option.

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