

Claiming Fish in the Disputed Exclusive Economic Zone: Indonesian Practice

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1 Introduction

On 14 July 2017, the Indonesian Government publicly announced its revised national map.¹ It contains new developments, including depicting Indonesia's unilateral exclusive economic zone (EEZ) claim line on the northern Natuna Island. It also gives a new name to this sea area as "Laut Natuna Utara" (North Natuna Sea).² According to Indonesian officials, there are two reasons for renaming this sea area. First, Indonesia tries to clarify the area for those actors who are exploiting the continental shelf below the water column; and second, the new map will provide clearer areas for Indonesian law enforcement agencies to guard the zone.³

This new action by the Indonesian Government has triggered strong opposition from the Chinese Government and creates an EEZ claim that overlaps in some areas with Vietnam's claim.⁴ China's diplomatic protest has

1 Tom Allard, Bernadette Christina Munthe, "Asserting sovereignty, Indonesia renames part of South China Sea", 14 July 2017, The Reuters, *available at* <https://www.reuters.com/article/us-indonesia-politics-map/asserting-sovereignty-indonesia-renames-part-of-south-china-sea-idUSKBN19ZoYQ>.

2 Evan Laksmana, "Why Indonesia's new map is not (all) about the South China Sea", 1 August 2017, The Strategist, *available at* <https://www.aspistrategist.org.au/indonesias-new-map-not-south-china-sea/>.

3 Leo Suryadinata, "What Does Indonesia's Renaming of Part of South China Sea Signify? – Analysis", 18 August 2017, Eurasia Review, *available at* <https://www.eurasiareview.com/18082017-what-does-indonesias-renaming-of-part-of-south-china-sea-signify-analysis/>.

4 Saifulbahri Ismail, "China demands Indonesia rescind decision to rename part of South China Sea", 2 September 2017, Channel News Asia, *available at* <https://www.channelnewsasia.com/news/asia/china-demands-indonesia-rescind-decision-to-rename-part-of-south-9179992>.

been resolved between diplomats of Indonesia and China.⁵ However, tension between Indonesia and Vietnam over the disputed EEZ area has increased.

Prior to the announcement of the new map, the Indonesian Ministry of Ocean and Fishery Affairs enacted a ministerial regulation on the Indonesian Area of Fishery Management/AFM (*Wilayah Pengelolaan Perikanan*). The Minister's Regulation Number 18 Year 2014 divides Indonesian maritime areas (including the Indonesian EEZ) into 11 AFMs.⁶ AFM 711 includes the sea around Karimata Strait, Natuna Sea and some of the South China Sea. Despite the absence of definitive agreed maritime delimitation at the northern part of Natuna Island, AFM 711 reveals a unilateral claim of a maximum EEZ measured from the Natuna Island as seen on the chart below.⁷

Vietnam asserted that the EEZ delimitation should be the same as the continental shelf delimitation that was agreed between the two countries on 26 June 2003.⁸ However, in accordance with UNCLOS 1982, the regime of the EEZ and the continental shelf are distinct, therefore, they maybe delimited differently.⁹ This is the Indonesian position in regards to its claim of the EEZ area in the northern part of Natuna Island.

2 Ongoing Tensions

In the last six months of 2019, there were some incidents between law enforcement officials from Indonesia and Vietnam. Such incidents were mostly on the

5 Wahyudi Soeriaatmadja, "Indonesia to set up fishing grounds off Natuna isles", 22 February 2019, *Strait Times*, available at <https://www.straitstimes.com/asia/se-asia/indonesia-to-set-up-fishing-grounds-off-natuna-isles>.

6 Available at <http://jdih.kkp.go.id/peraturan/18-permen-kp-2014-ttg-wilayah-pengelolaan-perikanan-negara-republik-indonesia.pdf> (only available in Indonesian language).

7 I made Arsana and Clive Schofield, "Indonesia's "invisible" Border with China", in Bruce A. Elleman, Stephen Kotkin, and Clive Schofield (eds), *Beijing's Power and China's Border: Twenty Neighbors in Asia*, (Sharpee: New York, 2013) 61, 63; Vivian Louis Vorbes, *Indonesia's Delimited Maritime Borders*, (Springer: Heidelberg, 2014) 11.

8 Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Indonesia concerning the delimitation of the continental shelf boundary (with map). Hanoi, 26 June 2003. Available at <https://treaties.un.org/doc/publication/unts/no%20volume/part/i-44165.pdf>.

9 Article 56 paragraph 3 UNCLOS states that "The rights set out in this article (EEZ) with respect to the seabed and subsoil shall be exercised in accordance with Part VI." Part VI is the regime of the continental shelf.



FIGURE 2 “New Indonesian Map”, available at <https://portal.ina-sdi.or.id/home/node/134>, accessed on 12 September 2019.

SOURCE: INDONESIA MAP RELEASED 2017

In the past months there have been wide-ranging video recordings showing how a coast guard and/or fisheries surveillance vessels from Vietnam tried to out-manoeuvre and obstructed the arrest of Vietnam’s fishing vessels by the Indonesian fisheries Officials and/or Navy warships in the North Sea region of Natuna.¹¹ Of course this causes a very diverse reaction from the publics of Vietnam and Indonesia.

Given these facts of tension between the two countries, Indonesia has always sought peaceful solution over the disputed EEZ areas with Vietnam. Nevertheless, Vietnam should also control its authorities not to act in a manner that could jeopardize navigational safety and to ensure respect for each other’s governmental vessels including warships. This effort to maintain peace stability requires ongoing commitment from both countries.

11 These videos may be available on YouTube, available at https://www.youtube.com/results?search_query=indonesia+vietnam+EEZ.

3 Maritime Territorial Disputes

The incidents occurred because in parts of the northern region of Natuna there were still EEZ boundaries that had not been agreed upon between Indonesia and Vietnam. Apart from Vietnam, Indonesia still has homework to complete territorial sea borders with Malaysia, Singapore and East Timor EEZ borders with Malaysia, India and Palau, and a continental shelf border with Malaysia and Palau.

It should be noted that according to Article 56 UNCLOS 1982, the authority of the State over the EEZ is not sovereignty but sovereign rights. This means that the State has legal authority that is limited to the utilization of marine and biological resources in the zone's water column. This matter will be different from the territorial waters status that applies all national laws from the coastal State in full. The regulations that apply on the surface of the EEZ are free sea regimes where there are some freedoms for foreign vessels. Therefore, the surface area of water above EEZ is often referred to as a special High Seas (*sui generis*) because there is still the sovereign right of the coastal State in its water column.

In accordance with international law, countries that have border territories are required to negotiate in reaching agreement on their territorial boundaries. UNCLOS 1982 provides the framework on how coastal States can agree on their sea boundaries including EEZ. In completing regional boundary negotiations, there is no time limit given to States in international law. However, the longer the agreement process takes, the more incidents such as those that have occurred between Indonesia and Vietnam will occur.

4 Temporary Arrangements

Article 74 UNCLOS determines how the delimitation of EEZ boundaries between countries should be carried out. It mandates that countries that are negotiating to make an agreement or temporary arrangement should not take actions that are mutually harmful and hinder the process of achieving agreement on the boundaries of the region. This has actually been exemplified by Indonesia and Malaysia in making temporary arrangements for the EEZ being negotiated in the form of a Memorandum of Understanding Common Guidelines concerning the Treatment of Fishermen by the Maritime Law Enforcement Agencies of Malaysia and The Republic of Indonesia (MoU) 2012 in Bali.¹²

12 Apriadi Gunawan, "RI, Malaysia commit to protect fishermen in disputed areas", 27 November 2015, *The JakartaPost*, available at <https://www.thejakartapost.com/news/2015/11/27/ri-malaysia-commit-protect-fishermen-disputed-areas.html>.

This MoU contains general instructions for law enforcement officials in the sea of the two countries in response to fishermen from both Indonesia and Malaysia who have lost their way or are fishing in disputed zones. Especially for fishing vessels of less than 10 GT, the legal apparatus helps them to return to their respective waters without carrying out legal proceedings except fishermen who use explosives and / or chemicals. This arrangement proved effective: at least since 2012, there was no report of any conflict surrounding the disputed border between sea law enforcement officers between Indonesia and Malaysia.

5 Use of Force

In the use of force in the sea, attention must also be given to Article 301 UNCLOS, where States must refrain from threatening or using violence against the territorial integrity of any country in exercising the rights and obligations of the State. In the context of the incidents of Indonesia and Vietnam, it was clear that the Vietnam Fisheries Surveillance vessel had violated this provision by deliberately crashing its ship against the KRI Tjijptadi 381. If Indonesian warships were damaged, it was clear that the State of Vietnam was responsible for the losses. This is as confirmed in Article 31 UNCLOS.

From the Indonesian side, it is noteworthy that the Indonesian Navy's soldiers have refrained from using military violence. Although in the case of such collisions, the KRI can respond to these actions as acts of threats or attacks on the integrity of the Indonesian State. This gives the KRI the right to carry out the applicable procedures in providing warning shots until the ships are crippled to avoid the incident of the collision.

This attitude of restraint provoking shows the attitude of the Indonesian nation which is not easily provoked by incidents that might fuel tensions in the region. But it also needs to be underlined that Indonesia should not be too passive in addressing the actions of Vietnam. Indonesia needs to strongly protest over the collision by the Vietnamese fisheries surveillance vessel.

6 Closing

Anticipating that tensions will be repeated, for Indonesia and Vietnam can be expected to sit together to continue negotiating maritime boundaries that have not been resolved, especially EEZ in the north of Natuna Island. Both of the States' leaders have agreed principally to accelerate this process for

conclusion.¹³ In the spirit of zero conflict, the two countries should carry out the mandate of Article 74 UNCLOS 1982 to make joint arrangements. This can be agreed upon and set forth in the form of the same MoU of Common Guidelines as Indonesia did with Malaysia. Finally, in general, the settlement of Indonesia's maritime borders with all neighbouring countries will be a challenge for the Indonesian Government for quite some time in the future.¹⁴

13 Dian Septiari, "Indonesia, Vietnam speed up EEZ delimitation", 24 June 2019, The Jakarta Post, *available at* <https://www.thejakartapost.com/seasia/2019/06/24/indonesia-vietnam-speed-up-eez-delimitation.html>.

14 Damos Dumoli Agusman and Gulardi Nurbintoro, "Hard work continues to settle maritime borders", 13 December 2019, The JakartaPost, *available at* <https://www.thejakartapost.com/academia/2018/12/13/hard-work-continues-to-settle-maritime-borders.html>.