

Conflict of Maritime Delimitation in Exclusive Economic Zone (EEZ) between Indonesia and Vietnam

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DOI: <https://doi.org/10.14710/jmsni.v6i2.13635>

Abstract

The recent incident in the Natuna waters involving the Vietnamese coast guard and the Indonesian naval patrol has reignited tensions. Both parties claim that their activities were conducted within their respective Exclusive Economic Zones (EEZ). This boundary dispute is likely to persist unless Indonesia and Vietnam reach a mutual agreement regarding their EEZ limits. This article aims to analyze the existing agreement between Indonesia and Vietnam and explore the factors contributing to the prolonged nature of this issue. The delimitation of the border between Indonesia and Vietnam has been prompted by the increasing threats of illegal fishing within Indonesia's sovereign territory in Natuna. Despite being neighboring countries, Indonesia and Vietnam have yet to reach a conclusive decision regarding their EEZ boundaries. This issue persists even after the signing of the continental shelf agreement based on the United Nations Convention on the Law of the Sea (UNCLOS 1982). The EEZ problem in the Indonesia-Vietnam boundaries is compounded by various factors, including economic, diplomatic, and environmental concerns. Resolving this issue requires careful consideration and cooperation between the two nations.

Received:

February 9, 2022

Revised:

June 8, 2022

Accepted:

May 13, 2024

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Keywords: Conflict of Delimitation; Delimitation Agreement; EEZ; UNCLOS 1982.

Introduction

Indonesia faces significant challenges from foreign vessel intrusions in the area disputed by both Vietnam and China due to overlapping Exclusive Economic Zone (EEZ) and continental shelf claims, is frequently occupied by maritime paramilitary agencies, foreign fishing fleets, and other intruders (Putra 2023). Conflicts in the Natuna waters have the potential to persist until Indonesia and Vietnam reach an agreement regarding the boundaries of their EEZ. The ongoing territorial boundary issues between the two countries have led to rampant acts of sovereignty violations, such as illegal fishing, in the Natuna waters. These border disputes pose a threat to Indonesia's sovereignty, citizens, and territory, necessitating a strategic response from the Indonesian government. For Indonesia, security threats in the border area with Vietnam are highly detrimental and must be prioritized for resolution. This includes collaborative efforts in the defense sector and diplomatic negotiations to address territorial boundary issues with Vietnam.

There are various border issues experiencing by neighbouring countries, namely smuggling, terrorism, and resource extraction. A study in examining about the contraband issues and its relationship between borders and contraband in Southeast Asia has been conducted by Tagliacozzo (2001). He emphasizes on the connecting mechanism between frontier regions and undermined by a range of countervailing forces. The study of border areas that are internationally influential in the global political economy has become a topic that is still hotly discussed in recent years.

Ironically, some border areas have become less important because of the lack of welfare and the availability of infrastructure. Another study is conducted by Arsyad (2020) that clearly analyse the development of negotiations on maritime boundaries between Indonesia and neighbouring countries and the prospects for solving the maritime boundary problem between Indonesia and Vietnam. Meanwhile, the study from Amer and Thao (2005) examines Vietnam's border disputes and the impact of Vietnam's border disputes on Vietnam's sovereignty. Moreover, it analyse the impact of the border disputes on Vietnam's regional integration from two main perspectives: the first relates to how unresolved border disputes affect the Vietnam's capability in efficiently exercising its sovereignty; the second deals with the impact of the agreements reached on border disputes on Vietnam's sovereignty.

In addition, there are also many fishermen who were arrested for violating other countries' border areas due to unclear State borders. This is due to the lack of attention of the government to border control so that many problems arise in border areas that threaten the disintegration of the nation, an issue which has been heaped up between Indonesia and Vietnam.

An incident involving the Vietnam ese fishing vessels and Indonesian naval vessels happen on 27 April near the Indonesian Natuna Islands. As the headline news in some media (*BBC News, ABC News Australia, Tempo Indonesia, Asia Times*, 2019) an Indonesian patrol vessel was rammed by two Vietnamese coast guard ships after it intercepted an illegal Vietnamese fishing boat in its waters in the South China Sea, according to the Indonesian Navy. The Vietnamese fishing boat was intercepted in waters off Indonesia's Natuna island chain, which is in the southernmost reaches of the South China Sea. This location still in dispute because both of Indonesia and Vietnam agreement in their border territorial, not finished yet in which both of them claim that the area was their territorial.

After ramming incident, as report of Wijaya (2019) in BBC News Indonesia, Indonesia Foreign Affairs Ministry Spokesman; Arrmanatha Nasir said that the Indonesian government had requested protests from the Vietnamese government over the ship's wreckage to officials and the Minister of Maritime Affairs and Fisheries of Indonesia at that time, Susi Pudjiastuti said the government would sink 51 Foreign Fish Vessels, most of them are from Vietnam. This ramming incident highlighted the risk of conflict between Indonesia and Vietnam and this conflict in Natuna waters has the potential to continue over and over as long as Indonesia and Vietnam do not reach an agreement regarding the limits of the Exclusive Economic Zone (EEZ).

This article argues that the agreement between Indonesia and Vietnam regarding their Exclusive Economic Zones (EEZ) contributed to the prolonged nature of the boundary dispute between them in the Natuna waters. There are at least four objectives in this study (1) examine the existing agreement between Indonesia and Vietnam regarding their EEZ boundaries; (2) To identify the factors influencing the prolonged nature of the boundary dispute between Indonesia and Vietnam in the Natuna waters; (3) To assess the implications of the boundary dispute on economic, diplomatic, and environmental aspects for both Indonesia and Vietnam; (4) To propose recommendations for resolving the boundary dispute and promoting cooperation between Indonesia and Vietnam in managing their maritime territories effectively.

Determination of maritime boundaries is needed to obtain legal certainty that can support a variety of marine activities, such as the enforcement of sovereignty and law in the sea, fisheries, marine tourism, offshore exploration, sea transportation, and others. The absence of a Vietnam - Indonesian maritime delimitation agreement will raise problems with mutual claims in management areas, especially the management and utilization of fisheries resources. The ramming incident case that happens in last April is the reflection of the vulnerability of those countries' delimitation. Please clearly mention the research questions.

Negotiation of Delimitation between Indonesia and Vietnam

The process of the negotiation of delimitation Vietnam and Indonesia had a long journey as the mention of Patmasari, Artanto, & Rimayanti (2016) from Indonesia agency of center for regional

mapping boundaries - geospatial information in their report (Geospatial Information Agency 2016) about last development of Indonesia maritime delimitation with their neighboring countries. First meeting mention about Indonesia and Vietnam overlapped continental shelf. The overlap was created by South Vietnam's 1971 claim and Indonesia's 1968 claim. The area totals almost 37,000 km² to the South-East of China Sea. Rounds of negotiations were initiated in 1972, yet rendered any settlement. After national reunification, Vietnam officially opened the floor for negotiations (Dong 2009). During the process of negotiation, two sides countries gradually merged their differences in view of delimitation and figured out an appropriate and reasonable settlement to their overlapping claims.

By 26 June 2003, an agreement on continental shelf delimitation was signed. Entering into force on 29 May 2007, it identifies a boundary line which is a defined dotted line as shown in Figure 1 and makes the clear view about continental shelf between Indonesia and Vietnam. After this agreement, the two countries agreed to enter into negotiations on a settlement of their EEZ in the near future.



Figure 1. Attachment agreement concerning the delimitation of continental shelf boundary Indonesia and Vietnam (Frei 2018).

The series of maritime conflicts between Indonesia and Vietnam culminated in a significant incident involving the Indonesian Navy ship KRI Tjiptadi in the North Natuna Sea. This underscores a pattern of repeated violations of maritime sovereignty. From October 2014 to May 2019, there were at least 294 recorded instances of maritime violations, with nearly 57 percent attributed to vessels originating from Vietnam. The situation escalated critically when Vietnam's chief fisheries supervisors reportedly struck the Indonesian warship in the Natuna waters in April, exacerbating tensions and highlighting the severity of the maritime disputes (Tyas 2022).

The last (9th) meeting was held in Ha Noi, Vietnam on November 28-29, 2016, and same year with the 8th meeting. During this negotiation, the Indonesian delegation was led by Bebeb A.K.N. Djunjunan as Director of the Political, Security and Regional Agreement, Ministry of Foreign Affairs of the Republic of Indonesia. While the Vietnamese delegation was led by Mr. Nguyen Duy Chien as Director of the Political, Security and Regional Agreement, Ministry of Foreign Affairs of the Republic of Indonesia. The Indonesian delegation which participated in the negotiation activities consisted of several government institutions, including Indonesian Ministry of Foreign Affairs, Indonesian Ministry of Defense, Indonesian Ministry of Transportation, Ministry of Marine Affairs and Fisheries Republic of Indonesia (KKP), Indonesian Navy Headquarters, and Indonesian hydrographic institution.

In the discussion of the first agenda, the Indonesian delegation again submitted an illustrative map proposal regarding the division of the delimitation segment to be completed into three segments. The first segment, Area A (is the boundary from point 20 in the west to point 25 in the east which is the boundary point of the Indonesian Continental Shelf - Malaysia 1969); Second, Area B (is the limit of 25 points to the maximum claim limit of 200 nautical miles, in the east); and Third, Area C (is the limit from point 20 to the limit that is possible for trijunction between Indonesia, Vietnam and Malaysia). Discussion on the second agenda, carried out in paragraph 7, The Consolidated Text of the Principle and Guidelines. The Indonesian delegation proposes to merge between Indonesia and Vietnam scheme. The merged is still taking into account the relevant circumstances of the two countries to obtain equidistance lines in order to obtain equitable EEZ limits, but it was not approved by Vietnam. Subsequently, in the informal intersessional meeting, the Vietnamese delegation did not approve of the note of discussion as a result of negotiations. Finally, in last meeting, those two countries still discussing and not find the agreement related to the area of delimitation and the potential line of the two countries' EEZ boundaries (Figure 2).

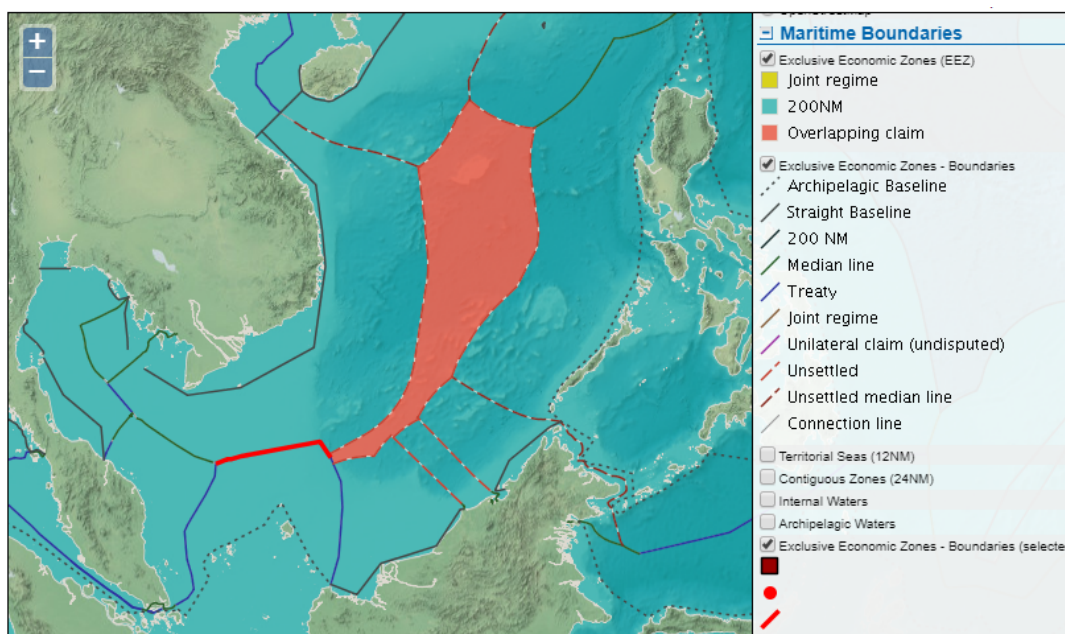


Figure 2. The overlapping claim of Exclusive Economic Zone between Indonesia and Vietnam (“Marine Regions” 2019)

Delimitation on EEZ Boundaries

Indonesia and Vietnam not yet finish their agreement regarding the determination of EEZ delimitation. However, in 2003, Indonesia and Vietnam managed to agree and sign the Continental Shelf agreement between the two countries (United Nations, n.d.). The boundary of

the Continental Shelf was set after about three decades of negotiations as said in last this paper discussion.

Regarding maritime claims and delimitation, Vietnam established an official baseline in the form of a straight baseline. This baseline is placed in the United Nations through the Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the Territorial Sea Baseline of Vietnam. The baseline of Vietnam has caused various reactions from academic and government circles (Arsana dan Susilo 2018). One reaction appears from the United States Department of State. The Vietnamese baseline is analyzed in "Limit in the Seas No. 99 Straight Baseline" issued by the United States Department of State Bureau of Intelligence and Research (Limit in the Seas No. 99 Straight Baseline, 3-8). In the document, there are 11 Vietnam base points scattered along the coast and the island of Vietnam. Vietnam unilaterally claims the baseline by connecting its outer islands.

The claim of Vietnam's straight line is a claim originating from the interpretation of article 7, which tends to be controversial. The straight baseline refers to article 7 of Law of the Sea Convention (LOSC 1982) which explains that, if the physical form of the beach is completely indented or deeply indented and cut into, or if there are fringing islands along the coast that are spread right in the vicinity (immediate vicinity) coastline. The straight line of Vietnam is not in accordance with the principles in article 7 of LOSC 1982.

Geographically, Vietnam does not fulfill the requirements as a country that has diffuse islands or indented beaches. Vietnam is a coastal country that crosses from north to south with the mainland and only a small portion of the island on some side of the coastal country (Dong 2009). Determination of the straight baseline of Vietnam has invited dissent. Some opinions state that Vietnam should use a normal baseline as the base of the country (Arsana dan Susilo 2018). Vietnam is a coastal country with only a few islands or corals in the area that surrounds it so that normal baselines must be determined based on the withdrawal of Vietnam's lowest low water area (Dong 2009). Determination of Vietnam's straight baseline will have implications for the EEZ boundary for Indonesia.

Delimitation of the EEZ boundary between countries refers to article 74 LOSC 1982; Article 74 does not explain in detail about EEZ delimitation, especially from a technical point of view. Negotiations on EEZ delimitation either in terms of methods or influential factors are based on the agreement of the two countries in dispute. The emphasis in regulating the delimitation of EEZ is to achieve an equitable solution as stated in article 74 of LOSC. In general, countries in the world set their maritime boundaries with equidistant or equal distances, or at least, lines of distance are used as the starting line when maritime boundary delimitation is carried out. Delimitation of the maritime boundaries of the two countries opposite or adjacent is done through an agreement (Kapoor 1977; Arsana dan Susilo 2018).

Based on the provisions of applicable international law, in making claims on the maritime territory/jurisdiction of a coastal country that is not an archipelagic country it should use a normal baseline (Churchill 2016, 2017, 2018). Thus, Vietnam should reconsider the use of the excessively straight baseline. Please give a further explanation on what defines as "straight baseline". Since the configuration is not an archipelago and the distance of small islands far from the main baseline, it is more appropriate if Vietnam uses a normal baseline for its country. For the diversity of geospatial analysis of EEZ boundary options between Indonesia and Vietnam, the Vietnam baseline will also be simulated as a normal baseline. The normal baseline referred to in article 5 LOSC 1982, which explains that, the lowest water line along the coast as seen on large scale map that is recognized by the coastal country concerned.

Some point lines can be shown from the case of delimitation Indonesia and Vietnam. The hard of delimitation boundary reached because of some several issues that can be the point as this mention. First is the boundary line must be agreed upon by the two sovereign countries. The agreement has to finish immediately with the willingness of both countries. If the two countries are in the same mood and deal, then the negotiations will be faster. But if the priorities are different, as like this both countries, then starting negotiations will be teetering.

Second, the delimitation boundary is a matter of sovereignty. This made, the two countries became very careful to solve the problem. Moreover, there are 'frightening' legal principles about the border, namely once the boundary is set, it can no longer be disrupted (Vienna Convention on the Law of Treaties 1969). The stability of the delimitation agreement is absolute. Unstable boundaries will trigger a war between those countries. Therefore, Indonesia and Vietnam must be careful to assign this delimitation boundary.

Third, the problem of delimitation become more complicated if the two negotiators have a different understanding of the basic concepts of the maritime border. Negotiations will be more colored by the principle of trading without escorting legal rules. Indonesia cannot avoid this dilemma and often struggles to convince neighboring country negotiators about the principle of an archipelago state. In this particular case, Vietnam pretended not to understand (certainly in the context of negotiating tactics) that Indonesia has the right to draw the baseline of the archipelago as a basis for drawing boundaries. This is taking a long-winded part of the discussion to reach the agreement.

Based on that, a deeper study about straight baselines or islands in the delimitation of maritime boundaries for both countries are necessary to finish the agreement. Indonesia, as an archipelagic country, by all means, has the right to use the archipelagic baselines in carrying out maritime claims and also carry out maritime boundary delimitation. However, it should be borne in mind that this was not specifically regulated in LOSC 1982. Therefore, an additional legal reference which is also important to note is jurisprudence, namely the decision of the judge at the International Court of Justice (ITLOS). It is necessary to conduct a comprehensive study of the use of straight baselines or islands by referring to jurisprudence so that positions and arguments become scientifically and legally stronger.

Conclusion

The problems that occurred between Indonesia-Vietnam regarding the different viewpoints of the exclusive economic zones and other sea boundaries should be immediately resolved. Indonesia and Vietnam must reaffirm the instruments used to measure sea boundaries so no more misunderstandings regarding the problem of EEZ between the two countries in the next future. For this reason, a meeting between Indonesia-Vietnam is still needed regarding the agreement and the measuring instruments used based on the sovereignty of each country. Once the agreement is ratified internationally, it cannot be contested under international law. This agreement was made in the hope of not harming both parties.

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