Political and Cultural Boundaries in the Conflict between Indonesia and China in the South China Sea

Khoirur Rizal Lutfi

1Universitas Pembangunan Nasional Veteran Jakarta
E-mail: Irul.Rizal@upnvj.ac.id

Submitted: June 08, 2023; Reviewed: July 04, 2023; Accepted: Okt 30, 2023

<table>
<thead>
<tr>
<th>Article Info</th>
<th>Abstract</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Keywords:</strong> China's unilateral claim to an area in the South China Sea, which it calls the nine-dash line, the traditional fishing ground, has triggered boundary conflicts in border countries. In this context, Indonesia calls the area that intersects the North Natuna Sea based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This difference in perception is alarming to the international relations between the two countries. This paper aims to analyze how international law views the position of political and cultural boundaries as the basis for claims to an area. This way, dispute resolution with a win-win solution perspective can be formulated in the South China Sea case. The analysis results show that political and cultural boundaries have justification and legitimacy based on international law. Political boundaries emphasize the State's commitment to translating agreements into international treaties bilaterally, regionally, or universally. In contrast, cultural boundaries still require an inventory of the evidence that China's claim is based on, whose legitimacy process must be based on a decision-making institution. However, any legal process will be challenging if the cultural approach is not completed. Apart from that, the essential thing in resolving the South China Sea conflict is the commitment of the State's compliance to international agreements made, decisions of dispute resolution institutions, and settlement steps through a cultural approach.</td>
<td></td>
</tr>
<tr>
<td><strong>DOI:</strong> 10.25041/lajil.v5i2.3054</td>
<td></td>
</tr>
</tbody>
</table>

A. Introduction
The issue of borders, mainly Indonesia's maritime boundaries with neighboring countries, is still a conflict that continues today. The South China Sea, in particular, has become a complicated area of dispute for border countries. One of them is Indonesia, which has an intersection with an area claimed by China as part of the nine-dash line or what China calls a traditional fishing ground. This issue is critical to deepen because it has involved many countries' borders apart from Indonesia and China. Interestingly, China bases its historical claims on other countries that intersect by basing its claims on normative provisions that the Philippines has even submitted for resolution through the Permanent Court of Arbitration.
(PCA).\textsuperscript{1} With conflicts that always occur, this will undoubtedly disrupt the countries' political conductiveness and relations. Therefore, finding an ideal format for resolving disputes in the South China Sea is essential.

Currently, the study of dispute resolution in border areas is caught in two perspectives. First, a study from a state perspective looks at disputes as a matter of sovereignty that needs to be upheld politically.\textsuperscript{2} Second, studies that focused on a normative perspective.\textsuperscript{3} Disputes are considered legal issues measured based on the norms of the appropriate State boundaries by only national legislation and international law. Existing studies ignore cultural principles that have become the fundamental precedent for several dispute resolution institutions when resolving similar problems. For this reason, this paper is intended to complement the repertoire of studies related to the possibility of justification and legitimacy of border dispute resolution through a cultural approach and an analysis of its normative aspects. Not only is its position justified and legitimate, but a study is also needed to provide a conflict resolution perspective using the approach.

This paper is based on the argument that no legal theory exists to solve all territorial and border disputes. A country will not surrender and sacrifice its national interests because of international law. In this context, legal disputes are a matter of political boundaries and affect cultural boundaries in border areas. Therefore, correct steps are needed as a form of conflict resolution over state border disputes. However, no State does not seek legal justification and legitimacy to strengthen its claims to territories during border conflicts.\textsuperscript{4} The South China Sea conflict involving Indonesia and China is a global issue that has implications for Indonesia's domestic socio-political situation. This problem is considered a problem that has the potential to become a never-ending threat. This case also reflects a latent issue concerning territorial sovereignty in Indonesia. The settlement of disputes between regions in the South China Sea case can be a model for resolving similar conflicts that are vulnerable to Indonesia, given that Indonesia has direct borders with ten foreign countries.

This legal research uses secondary qualitative data. Secondary data is in the form of primary and secondary legal materials. Primary legal materials come from international conventions, while secondary legal materials are expert opinions from several literature sources. Even though it is legal research, this paper also refers to authorities in other relevant science fields to provide a more diverse and objective approach to a problem. Moreover, it

---


involves various countries distinct from political, cultural, and legal views as the central review. Regarding this matter, Eliav Lieblich states that external parameters are needed to assess the law. In other words, a theory is needed about what is considered good so that it can provide conclusions about what the law should be, like several different fields of science, which sometimes also require an understanding of legal theories, contract law, and the dynamics of legal contestation, especially the social sciences.

This paper is intended to offer a perspective on resolving border disputes by specifically answering three questions: First, how are the different perceptions in viewing state boundaries with a cultural approach and state boundaries from a political perspective? Second, what is the position of claims based on Conventions and Cultural claims? Third, what is the principle of dispute resolution in claiming the conflicts? The three issues are expected to provide an objective perspective on the position of the conflict and the basis for the claim. In addition, this paper is also directed at discussing the possibility of conflict resolution while still based on Article 2 (3) of the Charter of the United Nations, which emphasizes that dispute resolution must be pursued by peaceful means.

B. Analysis And Discussion
In border conflicts between countries, cultural claims have been used to "justify" the legality/legitimacy of sovereignty over a region, even beyond the application of existing international conventions. The South China Sea conflict resolution cannot be separated from differences in perceptions and legal action that involve political and cultural dimensions. The step to look at various points of view in international law also aligns with the need for a paradigm shift to avoid dominating values and interests, even politics, in international law. In addition, the scheme that continues to be pursued in settling the South China Sea dispute is cooperation in various sectors. Three things are crucial in solving the problem of relations between countries regarding the South China Sea existence. These three things include differences in perceptions about cultural and political boundaries, justification of claims based on Conventions and Cultural Claims, and the principle of dispute resolution in conflicting claims. These three things are the subject of this paper.

1. Different perceptions about political and cultural boundaries
Boundaries can be understood as boundary line and boundaries. The border as a line is divided into two. First, it is as a line that officially separates two countries or regions or lands on each side crossing the country's borders. Second, borders are understood as land edges or edges of an area. For any country, the border area is an essential barrier to territorial security and a portal to the outside world. The border area becomes a contact zone between the two countries,

---


which increases the accessibility, potential and size of the cross-border market. The border area’s vitality concerns the political, economic, socio-cultural, and historical factors. The border area is an essential gateway for interior openness and vital to developing a reasonably prosperous society and optimizing national urban spatial planning patterns. The border area is strategic in maintaining the country’s territorial integrity, so exceptional management is needed to deal with border areas. This is in line with Afrakhteh and Karimi’s opinion that border areas’ unique characteristics cause border areas to require more special planning in solving problems.

In Indonesia, the border region is a minority and marginalized area, and sometimes, they depend on neighboring countries to meet their daily needs. This area is a national border area that has a vital role in maintaining the integrity of the Republic of Indonesia. However, ironically, the border area has become a pocket of poverty, left behind in all aspects of life due to neglect of socio-economic development. Traditionally, borders and border areas have been considered a barrier to tourism in factual and perceptual aspects related to the war, political instability, regional conflicts, social and economic conflicts, and psychological and administrative barriers. The border area needs more income opportunities because it depends on informal business, mainly trade and illegal activities. In addition, security in border areas still needs to improve. In general, border areas’ development means an increase in cross-border flow and the spatial concentration of economic elements in the border area.

Indonesia has a program to develop regions with three categories: frontier areas, remote areas, and disadvantaged areas as a strategic issue for national development.

From the perspective of international law, several provisions exist to end border conflicts. However, some countries still consider cultural concepts based on historical facts as a form of boundary determination on land and maritime borders. For example, in the land area, Indonesia and Timor Leste still have border problems in the Noel Besi, Bidjael Sunan, and Subina areas, which also involve the interests of indigenous peoples in the border areas.

This problem was followed up by forming a Joint Border Committee (JBC) to accelerate the

17. Yanti, Ibrahim, and Rahman, “Nationalism Study of Primary Students in the Border Area of West Kalimantan-Indonesia and Malaysia.”
20. Afrakhteh and Karimi, “Potentities and Threats of Border Area Development: Case of Aras Areas of Iran.”
22. Rafael et al., “Strategy to Accelerate The Development of Indonesia’s National Border Village in Belu, East Nusa Tenggara Province.”
boundary dispute resolution process, which is still in the negotiation process. 24 Meanwhile, maritime borders, such as China's claim in the South China Sea, which bases the nine-dash line map as a traditional fishing ground based on Chinese society's historical claims, even though China had also ratified the 1982 UNCLOS on May 15, 1996.

These contacts between Indonesia and China in the South China Sea were also reflected in several events. In 2016, there was an unsuccessful attempt to confiscate the KM Kway Fey 10078 ship. An obstruction was carried out by the Chinese Coast Guard when Indonesia wanted to enforce its laws against Chinese fishers who were deemed to have violated the Indonesian Exclusive Economic Zone. This case is a form of the claim that Chinese anglers have been fishing in that area for a long time. 25 Not only that, Indonesia considers violations of sovereignty in the territorial sea. 26 Until now, several similar problems have been repeated, such as the entry of Chinese coast guard vessels in areas claimed by Indonesia as EEZ. 27

In making claims, Indonesia uses the 1982 United Nations Convention on the Law of the Sea, while China uses a historical approach that will never reach a meeting point. The following is data on the differences in claim forms between Indonesia and China:

<table>
<thead>
<tr>
<th>No</th>
<th>Differences</th>
<th>Indonesia</th>
<th>China</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>UNCLOS 1982</td>
<td>Ratification 1985</td>
<td>Ratification 1996</td>
</tr>
<tr>
<td>2</td>
<td>Territory Name Claims</td>
<td>North Natuna Sea</td>
<td>South China Sea</td>
</tr>
<tr>
<td>3</td>
<td>Zoning Claims</td>
<td>Exclusive economic zone</td>
<td>Nine Dash-Line /Traditional Fishing Ground</td>
</tr>
<tr>
<td>4</td>
<td>Sovereignty Claims</td>
<td>Sovereign Rights</td>
<td>Sovereignty / Sovereign Rights</td>
</tr>
<tr>
<td>5</td>
<td>Jurisdiction Claims</td>
<td>Exclusive Jurisdiction</td>
<td>Territorial Jurisdiction / Exclusive Jurisdiction</td>
</tr>
</tbody>
</table>

**Source:** Analysed from several sources

---


To find common ground, several groups gave input and considered that Indonesia could make claims through a historical approach. This is an input on the fundamental differences used between China and Indonesia. If the two countries agree to explore existing cultural aspects and find common ground, it is very possible that border conflicts in the region can be solved.

### 2. Justification of Convention and Cultural Claims in International Law

Cultural boundaries are produced and reproduced through intentions and actions to make meaning out of human culture itself. Quoting a statement from Goldberg et al.,

Meaning is formed to regulate life by providing different symbols and practices so that the responses given by cultural actors create two forms of reaction, namely social tension or order through norms and laws. In Rosaldo’s opinion, cultural boundaries are regulated by a control mechanism that can create intercultural tension to create subordination and authority between communities. In his narrative, Abdullah emphasizes that cultural boundaries can result in subordination and society’s domination. The creation of subordination and tension is influenced by several primary factors, such as 1) the perception of existing values as shared values that continue to prevail in the community so that values that are not found are considered deviations, and 2) the mixing of cultures in various categories into one such as gender and class.

---

resulting in cultural boundaries that allow subordination in the reform of society. Abdullah gave an example that existing boundaries have pushed cultural spaces to individual group identities so that resistance and conflict emerge in interpreting identity.\textsuperscript{33} Several countries have formally objected to China's claim to the nine-dash line area. Not only claimant countries, but non-claimant countries also speak up for their interests.\textsuperscript{34} Such as the Philippines, which officially stated its statement on March 6, 2020, Vietnam on March 30, 2020, the United States on June 1, 2020, Indonesia on June 12, 2020, Australia on July 23, 2020, Malaysia on July 29, 2020, and Germany, France and the United Kingdom on September 16, 2020.\textsuperscript{35} Meanwhile, Indonesia, which claims its EEZ in areas that intersect with the nine-dash line area, has yet to be rejected through a normative approach derived from conventions. Its opinion is supported by various regimes regulating water zones whose conventions have been ratified by the State.

It is often argued that China's claims based on a cultural approach have no basis in international law. The claims made by China are even considered a form of violation of international law. The United Nations Convention on the Law of the Sea is international law. Cultural claims based on history, especially in settling boundary disputes, is considered to have no basis in international law. These opinions then raise the question of whether China, as a civilized country aware of its part in the international community, does not base its claims on international law.

Historical claims are also commonly applied to resolve border disputes if seen in several international legal instruments. This is indicated in various events such as what happened at the Oecussi Enclave, where disputes were resolved through the Uti Posidetis Juris principle, where the determination of the border referred to the agreement between the Netherlands and the Portuguese through the 1904 treaty and the 1914 Permanent Court of Arbitration decision which stated that the Netherlands controlled the Maucator area. The Portuguese controlled the Enclave Oecussi region.\textsuperscript{36} In the Sipadan and Ligitan islands case, although the emphasis is on the principle of effective occupation, the effective occupation is meant to lead to action by the predecessor’s State. This means it remains open to the possibility that historical claims can be based on and recognized under international law.

3. The principle of dispute resolution in case of conflicting claims
International law is a form of expression of the existence of international relations. Apart from that, international law is also a consequence of international relations - a particular way of international communication, reflecting the need for order, stability, and predictability of international relations.\textsuperscript{37} International relations between countries are only sometimes well-established, where sometimes the relationship creates disputes that originate from various potentials. If this happens, international law plays a vital role in its resolution by providing a way for the disputing parties to resolve their disputes according to international law. In

\textsuperscript{35} Tempo, “6 Fakta Kapal Coast Guard Cina Yang Masuk Ke Natuna Lagi.”
\textsuperscript{36} Mangku, “Implementasi Joint Border Committee (Jbc) Untuk Penyelesaian Sengketa Perbatasan Darat Antara Indonesia-Timor Leste.”
implementing international law, interpretations of international law can differ according to the values and interests of actors in the global system.\(^{38}\)

International law influences international relations -international trade, environmental protection, human rights, international criminal justice- so that international law is prescriptive. In contrast, international relations’ primary concern is the cause and effect of international cooperation (international legalization).\(^{39}\) International relations appear in the context of international law, for example, in the case of dispute resolution over the seizure of Dokdo Island between Japan and South Korea. In this case, the two countries mutually claim ownership of Dokdo Island with evidence. This dispute then results from the relationship between the two countries, which aligns with the provisions of International Law. Therefore, this dispute can be resolved peacefully through mediation, joint development agreements, and mandatory procedures through conciliation, arbitration, and the International Court for Law of the Sea (ITLOS).\(^{40}\)

The UNCLOS 1982 is the primary reference for international law of the sea. This convention decides that each State Party participating in the convention must resolve a dispute regarding the interpretation and application of the convention through peaceful means under the provisions of Article 2 Paragraph 3 of the Charter of the United Nations.\(^{41}\) For Indonesia, as stated in Law Number 17 of 1985 concerning the Ratification of UNCLOS 1982, further regulation was made through Law Number 32 of 2014 concerning Maritime Affairs. Indonesia acknowledges that this convention regulates a dispute resolution system where participating countries must comply with institutions such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea, General Arbitration, or Special Arbitration. More specifically, this convention also mandates establishing an International Court of Law of the Sea as a standing tribunal and General Arbitration and Special Arbitration as an ad hoc tribunal. Any dispute regarding the interpretation and application of the convention may be submitted for resolution by one of the four types of dispute resolution institutions except for disputes regarding the interpretation and application of Chapter XI of the Convention on International Seabed Areas and the annexes of the convention relating to the problem of the International Seabed Area, which is absolute jurisdiction of the space for the Seabed Disputes. This convention can also be a reference for China because China also ratified the 1982 UNCLOS in 1996. However, China prefers to base its claims on the 1954 map made long before the 1982 UNCLOS.

When seen from the dynamics and events that occur, this reality reinforces the assumption that there will always be endless contestation of claims between Indonesia and China. There are cultural obstacles in implementing UNCLOS 1982 in the South China Sea, which will certainly not have a common ground. This further reinforces Duong’s\(^{42}\) Opinion that no legal theory can resolve State border disputes. Thus, a cultural perspective is necessary to describe the issue of claims based on China’s historical experience in ownership and determination of unclear maritime boundaries.

---


4. What next?

This study, which aims to find the root of the problem and efforts to resolve border conflicts, indicates that it is hard to focus solely on conflict resolution, echoed through the convention approach alone. The border areas of existing countries are formed over political and cultural boundaries (territorial) (historical and customs), which cannot be ignored in dispute resolution. Solving the problem depends on understanding the two regions’ cultural roots and an agreement that pays attention to each country's identity. This is because culture is essential in determining how to think, behave, and act so that existing perspectives can help describe border conflicts influenced by culture.43

In this context, border conflicts based solely on normative provisions will never end if the cultural process is not completed. Of course, it can also be an option for Indonesia that China’s cultural claims must be balanced with the same claims so that the cultural process can also be completed. On the one hand, border area disputes result from unfulfilled sovereignty requirements and are the beginning of complicated relations between countries, particularly in border areas. For example, the sovereignty requirements based on China's cultural claims can only be considered complete if physical evidence, such as documentary evidence, is fulfilled.

Another explanation that emphasizes why the border conflict in the South China Sea is complex to end can also be seen in the escalation of conflicts involving defense tools between countries.44 The dispute has always directed the State to defense issues with a militaristic approach. In this case, John T. Rourke identifies that military actions carried out by a state are a form of knowledge of several things, one of which is an effort to show power in a relationship between countries, including territorial control.45 William E. Scheurman views the State's military action as an effort to establish its hegemony.46 According to Roy, this event is considered very reasonable because it relates to national interest.47 At the same time, the sea does have high economic potential because of its natural resource content when viewed from an economic aspect. Nevertheless, the steps must still be carried out peacefully.48

The existing studies relating to the South China Sea conflict emphasize the resolutions through a juridical approach from solely the convention. Although some have tried to question the legal status of the traditional fishing ground claim in their research, the method used is still the same, questioning its position from the normative perspective contained in the convention. For this reason, it is necessary to provide a portion of the research that also emphasizes historical justifications, such as the actions of China’s claims. Precedent in resolving similar cases using historical claims has been carried out several times by dispute resolution agencies. So, in this case, at the same time, it confirms Kuntowijoyo’s opinion, which provides a perspective on the position of history as a science so that historical facts can be a reference for exploring facts as long as various procedures are fulfilled.49 And that is what the law needs. This will align with Brian Taylor Sumner's statement that border claim theories in international law could also be based on culture and history.50

---

48 Ibid.
What needs to be done with the results of existing studies? First, explore the history of the region to understand the cultural roots of the South China Sea. This is important to bridge the State's interests, whose opinions have a different ground. Second, exploring cultural diplomacy by paying attention to the two nations' cultural characteristics in finding a solution acceptable to both parties to avoid physical conflict—third, looking for the basics of juridical claims as a form of international legal solutions without limiting the application of conventions alone. In this context, of course, what is meant by international law is not only limited to being universal but can also be more detailed bilaterally—especially those related to managing economic potentials originating from natural resources through a cooperative approach.

C. Conclusion
This study has shown the settlement of disputes over border areas, as seen in the South China Sea dispute study. It has been dominated by a normative perspective on the one hand and the use of a political point of view on the other. The public in both countries is not involved and has no right to speak on the dispute between them, which also has implications for their lives. The territory of the State cannot limit society on kinship and tribal relations whose boundaries are cultural areas. At least, that is what happened and underlies China's claim. Cultural areas or boundaries follow kinship lines where control of territory is based on hereditary inheritance. The presence of the three political lines is emphasized. It also denies cultural boundaries and causes people to lose their cultural identity.

If the dispute settlement is carried out only based on normative provisions, there will still be unresolved potential at the community level. The settlement of border disputes with a cultural approach will provide a complete understanding of the State as a subject of international law and its people as one element of a State's sovereignty. Therefore, settlement through a cultural perspective is essential to overcome border conflicts between Indonesia and China. This paper has described that cultural and political boundaries become an integration that underlies actions and rules. Therefore, in describing the boundary habits, it is necessary to deepen again to see the basis of society.

This study still has limitations and flaws in analyzing the law, especially in one dispute case involving an intersection of claims between Indonesia and China in the South China Sea. Further research is certainly needed for other countries involved in boundary disputes to see a cultural perspective as an approach to seeking conflict resolution efforts so that border disputes in the South China Sea are resolved at the regional level. Therefore, this study suggests the need for studies that involve a cultural perspective in understanding boundaries, especially in describing legal phenomena.
REFERENCES


