

CHAPTER I

INTRODUCTION

This chapter is going to explain about essential things in regard of this undergraduate thesis. It explains briefly about the problem background which causes the appearance of the problem. Then, the writer will also explore about the theory which is used to answer the research question and finally state the hypothesis. This chapter will also explain about the purpose and benefits of research, research method, range of research, and system of writing.

A. Background

South China sea is part of the Pacific Ocean, which covers most areas of the Singapore and Malacca Straits to the Straits of Taiwan with an area of 3.5 Million km².¹ Based on its size, the South China Sea is an area of the largest or second largest water after the five oceans. South China Sea is a water area with a huge potential because it contains petroleum and natural gas and it also played a very important role in the world's oil distribution lines, trade, and international shipping.

Based on geographical situation, the South China Sea bordered with the South East Asia countries, especially ASEAN. The countries and territories which bordering with the South China Sea are People's Republic of China (PRC), including Macau and Hong Kong, the Republic of China (Taiwan), the Philippines, Malaysia, Singapore, Indonesia, Brunei, and Vietnam . The large rivers that empties into the South China Sea include the Pearl

¹ "Laut Cina Selatan" www.annexhira.com/laut-cina-selatan.htm

River (Guangdong), Jiulong, Red, Mekong, Rajang, Pahang, and Pasig.²

In the view of International Ocean Order, South China Sea is an area that has economic, political, and strategic value. That is means this region potentially contains conflicts and cooperation between related countries. On the other hand, the South China Sea region also contains oils and natural gases contained therein, that is makes South China Sea region become very important role as a trade and distribution of the world's oil, also making the South China Sea as an object of regional debate during many years.

This debate is seen from the year 1947 to 2011.³ There is a dispute or claim between the one another countries claiming the limit of ownership based on sea and water areas, such as the People's Republic of China (PRC), Vietnam, the Philippines, Malaysia, Taiwan and Brunei Darussalam. Besides the mutual claims between one another countries which located in the waters of the South China Sea, there are also the interests of major countries such as the United States, Russia, Western Europe countries, Japan, Korea, Taiwan in terms of shipping purposes and the purposes of natural resources such as oil and gas which contained in the South China Sea region.

South China Sea is formed as an archipelagic zone. Many of the dispute in this region caused by the historical background, both in terms of naming the oceans and ownership of boundaries. People's Republic of China (PRC) and Vietnam known as the countries which the most intensively in maintaining the South China Sea region.

The territory of South China Sea has been claimed by several countries in related areas. People's Republic of China (PRC) fought for Spratly islands with Brunei, Philippines, Malaysia, Vietnam, and Taiwan. Meanwhile, the Paracel islands claimed by

² Ibid

the People's Republic of China (PRC), Taiwan, and Vietnam. Traced back from the root of the problem, the real conflict is about the claims in the territorial waters and islands in the South China Sea which started since December 1947 and continues to the year 2011.⁴ In the South China Sea region Spratly and Paracel islands are classified as vulnerable point in terms of territorial claims. Spratly Islands and Paracel Islands are the focus of struggles between the claimants states (claimants). Moreover, Spratly islands is the most highlight which became the dominant International issue.⁵

The territorial disputes and control islands in the South China Sea was begun with the demands of the People's Republic of China (PRC) over all the islands in the South China Sea, which refers to historical records, the discovery of the site, ancient documents, maps and the use of clusters island by fishermen. According to the People's Republic of China (PRC) since 2000 years ago, the South China Sea has become a major shipping area for them. However, Vietnam denies and considers Spratly and Paracel islands are part of its sovereign territory. Vietnam also mentioned that Paracel and Spratly islands effectively has been habited by Vietnamese since the 17th century when both islands are not under control by any countries.

In this case, Malaysia also occupied several parts of Spratly archipelagos which named *Terumbu Layang*. According to Malaysia, those steps were taken based on Malaysia continental shelf boundary map of 1979, which includes several parts of Spartly islands. While Brunei also claimed several parts of Spartly islands since got the independence from Britain on January 1st 1984, however Brunei was only claimed the

⁴ "Mencermati Sengketa Teritorial Laut Cina Selatan"

territory waters without claimed the islands cluster. Until today, the countries which actively occupying this region are Taiwan, Vietnam, Philippines, and Malaysia. In this condition, the problem of territorial disputes in the South China Sea become more complex and requires the more cautious mechanisms managements to settle this problem.⁶

ASEAN as a regional organization has an important role in unify all the ASEAN member states that related to this disputes. ASEAN member countries such as Philippines, Vietnam, Brunei Darussalam, and Malaysia which have problems with China, especially in clusters of the South China Sea region. The South China Sea conflict directly affects the stability of the economic, political, and security in the ASEAN region. The involvement of the ASEAN member countries in the South China Sea conflict has been concerned about the emergence of conflict that will appear such as war and tension between states.

This conflict cause some attention from international and regional perspective. In the conflict of South China Sea, ASEAN as the regional organization in South East Asian region responding and pay more attention toward this conflict. ASEAN as the regional organization has a role and give an effort in order to settle this dispute, and have a responsibility in order to keep the peace for every member states.

The overlapping claimed conflict that occurred in the South China Sea region is still ongoing until now, and become a debate among several countries in the ASEAN region through the diplomatic and negotiations.

The condition in the South China Sea were getting more complicated, ASEAN began

to act and take part in responding the territory claimed disputes that occurred in South China Sea areas. Because if the conflict is not taken seriously, it will lose the capacity to undertake all the forms of cooperation in the South China Sea, also would threaten the security surrounding ASEAN countries and areas.⁷ The ten of ASEAN member states and surrounding ASEAN countries agreed to fix the process of behavior implementation that shall be handle by every states related to the disputes. With the holding of Declaration on the Conduct of Parties (DOC) is the binding law in order to settle the conflict between states. Beside that, ASEAN also showed the willingness to draft and discuss about the Code of Ethics DOC, that will be discussed with the People's Republic of China (PRC) and implemented in South China Sea region.⁸

B. Purpose of Writing

There are several purposes on writing this thesis ;

- As the requirement to fulfill one of subjects in International Relations Studies.
- Explaining the historical background of South China Sea disputes between China and South East Asia countries.
- Looking for the factors which is causing the disputes between China and South East Asian countries in the case of South China Sea.
- To find the role of ASEAN as the important association in the South East Asia Countries toward South China Sea disputes.
- To measure the effectiveness of ASEAN's code of conduct (COD) in the South China Sea.

⁷ KOMPAS edition, Wednesday June 1st 2011, "*Isu Laut Cina Selatan Harus Dituntaskan.*", Accessed on December 19th, 2012.

C. Research Question

From the background part of this paper, the writer likely to stand the research question on :

"How did ASEAN response to the South China Sea dispute ?"

D. Theoretical Framework

There are one concept and one theory that will be explained in order to describe this phenomenon. It called the concept of Mediation / Third Party in Conflict Management and ,the theory of Negotiation.

1. The Concept of Mediation / Third Party in Conflict Management

The tension that happen within People's Republic of China and South East Asia countries in the case of South China Sea disputes during several years decrease the harmony towards each other states relations, in term of bilateral and multilateral corporations. Mediation is a special kind of negotiation designed to promote the response toward the conflict. In this negotiation a distinctive role is played by a third party, that is, one not directly involved in the dispute in question.⁹ The Third party should be impartial in the dispute. Its role is not to be confused with being a 'facilitator' or providing 'good offices'. The third party searches actively for a solution and is sometimes described as a 'full partner' in the negotiations.¹⁰

The experts have various view in define the meaning of Mediation. Lawrence Bolle said :

⁹ Jacob Bercovitch, "From Conflict Management to conflict Resolution: The Problem -- Solving Approach," in Social Conflict and Third Parties Strategies of Conflict Resolution, (USA: Westview Press., 1984), pp.19-35

"Mediation is a decision making process in which the parties are assisted by a mediator; the mediator attempts to improve the process of decision making and to assist parties to reach an outcome to which of them can assent".¹¹

While J.Folberg and A.Taylor defined Mediation as :

".....The process by which participants, together with the assistance of a neutral person, systematically isolate dispute in order to develop options, consider alternatives, and reach consensual settlement that will accommodate their needs."¹²

To summarize this method, Mediation/Third Party is used to explain the trend and possibility in giving solution at the issue as one options to finding solution the long dispute in the South China Sea. The primary means available to the six Spratly Islands contestants to influence the outcome of the dispute are diplomacy and military force—or some combination of the two. Clearly, the claimants do not all possess equal strengths and capabilities, particularly in the area of military power, and have developed their strategies accordingly. As a regional forum, ASEAN can employ its own diplomatic powers to mediate a peaceful solution in the Spratlys; however, its efforts cannot succeed unless the claimant nations themselves are willing to engage in multilateral negotiations.

ASEAN as the mediator shall do some acts in order to reduce the tension of disputes through formal and informal way and also to neutralize the situation between China and Southeast Asia countries to find the way out of the disputes. The mediation by ASEAN aims to create a relations between the disputants. On the other hand, the mediation process

that done by ASEAN is to create the agreement from both conflict parties and create the communication between China and Southeast Asia countries about the conflict that occur between China and ASEAN Member States. The mediation way that dis from ASEAN, the function is to find the solution way in order each disputants could get their rights and equal justice of the territory they claimed.

In the case of South China Sea dispute, the thing that ASEAN can play in relation to the South China Sea situation is a rather complex one since four of its member states have sovereignty claims to all or parts of the Spratly archipelago, i.e. Brunei Darussalam, Malaysia, the Philippines and Vietnam. This creates a situation in which ASEAN play the role of a third-party mediator between China and the other claimants. Through the Declaration of the Code Conduct of Parties (DOC), the claimants ; China and Southeast Asia countries, i.e. Brunei, Malaysia, Philippine, and Vietnam have their conduct and regulations that must be obey from each claimants in order to build a peace condition and in order to find the peace solution of the conflict.

2. Theory of Negotiation

Negotiation is a communication process between one and another states, individual and state which build discussion and consultation in order to get an agreement which beneficial between two parties.¹³ Individuals should make separate, interactive decisions; and negotiation analysis considers how groups of reasonably bright individuals should and could make joint, collaborative decisions.¹⁴ These theories are interleaved and should be approached from the synthetic perspective.

Negotiation is a specialized and formal version of conflict resolution most frequently

employed when important issues must be agreed upon. Negotiation is necessary when one party requires the other party's agreement to achieve its aim. The aim of negotiating is to build a shared environment leading to long-term trust and often involves a third, neutral party to extract the issues from the emotions and keep the individuals concerned focused. It is a powerful method for resolving conflict and requires skill and experience. Negotiation as a process of combining conflicting positions into a common position under a decision rule of unanimity, a phenomenon in which the outcome is determined by the process.¹⁵

Negotiation according to Law Dictionary Black's Law :¹⁶

"A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usu. involves complete autonomy for the parties involved, without the intervention of third parties."

Negotiation according to Jaqueline M. Nolan-Haley :¹⁷

"Negotiation may be generally defined as a consensual bargaining process in which parties attempt to reach agreement on a disputed or potentially disputed matter."

Negotiation according to Suyud Margono :¹⁸

".....Is a consensus process which used by some parties in order to reach agreement among them."

Negotiation as the process where the conflict parties want together to solve the problem, through an agreement and offer in order to reach a certain goal, to solve the problem in win-win solution. Negotiation in International Relations known generally as an alternative way in dispute resolution.

Thus, negotiation is the way between two different parties, who has different interest in argument, mean and purpose, in order to find the similarity of understanding for each parties in the form of agreement and mutual understanding. The main purpose of negotiation in generally is to reach a deal and agreement which positively could be accept by each conflict parties.

E. Hypothesis

As the important association in South East Asia, ASEAN has an important position to act and give the alternative way through negotiations to China and claimant states in the territorial dispute in the South China Sea. ASEAN as the third party have the opportunity to reduce the tension of the dispute, by starting the mediation process through Internal-External ASEAN diplomacy, and the Declaration on the Conduct of Parties (DOC). This indicate that ASEAN positively initiate to negotiate and discuss about the case of South China Sea and trying to find the alternative way and agreement of the dispute.

¹⁸ *"Teori - Teori Tentang Konflik Rekonsiliasi."* [http://www.subscribe.com/Teori Negosiasi for Teori-Teori Tentang](http://www.subscribe.com/Teori%20Negosiasi%20for%20Teori-Teori%20Tentang)

F. Methods of Writing

Methods of writing this thesis is using the qualitative and descriptive method. Which is describe, record, analyze and interpret the conditions or events related to the issues. This research subsequently expected to provide clarity about the conditions relating to the disputes in the South China Sea. However, in this writing, the writer uses several ways to collect the data in order to discuss the problem, there are as follows:

- Library Research, is collecting data and information relating to the examined issues either in the form of books, articles, documents, internet, magazines and newspapers.
- Media research, collecting the data from media likes the internet websites in order to find references and sources to accomplish the explanation of the problem.
- Proving hypothesis, derived from the meaning of the title, the discussion of the problem, and the data analysis.

G. The Research Area

The research area of the issue on this undergraduate thesis is about South China Sea disputes between China and South East Asia countries which generally begins and ends in a particular year, however this writing limit this issue of South China Sea disputes since 1947 to 2011. The writing will talk on several info related to the role of ASEAN as the important association (International Organization) in South East Asia countries to settle the disputes, that will be discussed on the writing of this thesis. This time limitation

H. Systematic of Writing

In his writing, the writer shared the topics into chapters where it involved each other as a united structural topic.

Chapter One : This chapter will be an introduction chapter of the problem. The requirements are the problem background, purpose of writing, research question, theoretical framework, hypothesis, methods of writing, the research area and also the systematic of writing.

Chapter Two : The second chapter will be explain the general profile of ASEAN (Association of South East Asia Nations), and the importance of ASEAN toward of South China Sea disputes.

Chapter Three : The third chapter would discuss about the general description of South China Sea, including its geographical situation and the historical background of the disputes.

Chapter Four : In this chapter will discuss about the response from ASEAN and the way that ASEAN has done as the important association in South East Asia countries, to give the alternatives through negotiation way toward the South China Sea disputes between China and South East Asia countries.

Chapter Five : The fifth chapter or the final chapter of this thesis would be explain

about the result of the data. The answer will be explain for this chapter