



# INTERNATIONAL MARITIME LAW REVIEW OF UNAUTHORIZED MARINE SCIENTIFIC RESEARCH IN THE EXCLUSIVE ECONOMIC ZONE OF INDONESIA

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**Abstract:** The purposes of this research are to analyze the legal review of unauthorized marine scientific research activities in the Indonesian Exclusive Economic Zone based on 1982 Convention on the Law of the Sea and Indonesian national laws. The research method used by the author is normative juridical research, because the research is referring to the applicable regulations that is related to topics of the research. The type of data used in this research is secondary data that are related to the subject of the research. The data collection method used is library research using qualitative data analysis method with a prescriptive approach in order to get suggestions on what to do to solve the related problems. Based on the analysis of international maritime laws in the UNCLOS and Indonesian national laws, the unauthorized marine scientific research activities cannot be justified in any ways. Therefore, such activities violates the applicable regulations in the UNCLOS and Indonesian national laws. The unauthorized marine research activity also violates Indonesia's jurisdiction and sovereign rights in the Exclusive Economic Zone, which are generally regulated in the UNCLOS.

**Keywords:** International Maritime Law; Marine Scientific Research; Exclusive Economic Zone

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## I. INTRODUCTION

Nowadays, scientific research in the marine sector is important for a country and has massive benefits in human life. According to Sodik, the implementation of marine scientific research has several benefits including as a prerequisite for exploiting marine natural resources, to obtain data and information on safer sailing, and is very useful as an effort to preserve the marine environment.<sup>1</sup>

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<sup>1</sup> Dikdik Mohamad Sodik, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, Bandung: Refika Aditama, 2014.

Marine scientific research in international law is generally regulated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Indonesia is one of the countries that has ratified the 1982 International Convention on the Law of the Sea through The 1985 Law Number 17 concerning Ratification of the United Nations Convention on the Law of the Sea, so that since then Indonesia has officially been subject to the 1982 UNCLOS regime. Article 238 of UNCLOS regulates that all States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention. This article means that there is freedom for a country or international organization to conduct marine scientific research without exception.<sup>2</sup> However, the conduct of such marine scientific research must be carried out with a license issued by the coastal state.<sup>3</sup>

In practice, marine scientific research often encounters problems, such as research activities carried out by foreign parties who do not ask permission from the Indonesian government to conduct marine scientific research in the Indonesian sea area. For example, In the period between 2021 and 2023, based on data obtained from the Indonesia Ocean Justice Initiative (IOJI), there were several allegations of unauthorized marine scientific research activities conducted by Chinese-flagged foreign research vessels in Indonesia's Exclusive Economic Zona in North Natuna Sea.

The existence of research activities carried out without the permission of the Indonesian Government can harm the Indonesian state because not only is the activity a violation of Indonesia's sovereign rights as a coastal state, but also because the natural resources contained in Indonesian seas can be utilized irresponsibly by foreign parties. Thus, this research aimed at analyzing unauthorized scientific research in the Indonesian EEZ based on of the 1982 Convention on the Law of the Sea.

In this research, the author uses normative juridical research because this research will refer to legal principles, laws and regulations, as well as legal literature related to the topic to be researched. The type of data from this normative research uses secondary research data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data sources are in the form of laws and regulations, books, documents and other relevant supporting materials. The collecting data technique for this research uses a library research legal material collection model or literature study which is carried out by collecting and examining

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<sup>2</sup> Muhammad Rafi Darajati, *Hukum Laut Internasional*, Pontianak: UNTAN Press, 2022, p71.

<sup>3</sup> *Ibid.*, p72.

secondary data in the form of legal materials such as laws and regulations, books, papers, journals and articles related to the problem being studied.

## II. DISCUSSION

### **The 1982 United Nations Convention on the Law of the Sea**

The 1982 UN Convention on the Law of the Sea (UNCLOS) is the general provision governing the international law of the sea. It consists of 320 articles and nine annexes. It defines the rights and obligations that states have in the oceans and sets guidelines for business, the environment and the management of marine natural resources.

The 1982 United Nations Convention on the Law of the Sea is an international agreement born out of the third United Nations Conference on the Law of the Sea which took place from 1973 to 1982. The Convention was signed by 117 countries in Montego Bay, Jamaica, on December 10, 1982. Indonesia has ratified the 1982 Convention on the Law of the Sea through The 1985 Law Number 17 concerning Ratification of the United Nations Convention on the Law of the Sea.

The preamble states that the convention aims to create “a legal order for the seas and oceans which will facilitate international communications and will promote the peaceful use of the seas and oceans, the equitable and efficient utilization of resources, the conservation of biological resources, and the assessment, protection and preservation of the marine environment.” In other words, the 1982 Convention on the Law of the Sea regulates almost every possible activity in the oceans.

The 1982 UN Convention on the Law of the Sea regulates various marine zones with different legal status. Broadly speaking, the sea is divided into two parts: zones under and beyond national jurisdiction. Marine zones under national jurisdiction are further divided into those under full sovereignty and those over which the state has special powers and rights. Marine zones according to international law are divided into several parts, including:<sup>4</sup>

- a). Seas that are under the full sovereignty of the coastal state, including internal waters, archipelagic waters and territorial sea.
- b). Seas which the coastal state has special authority and rights, including the contiguous zone, exclusive economic zone, and continental shelf.

The sea that is beyond national jurisdiction, namely the high sea and the international seabed area.

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<sup>4</sup> Atje Misbach Muhjiddin, *Status Hukum Perairan Kepulauan Indonesia dan Hak Lintas Kapal Asing*, Bandung: Alumni, 1989, p85.

## **Exclusive Economic Zone Review According to UNCLOS and Indonesian National Law**

The concept of exclusive economic zones is a manifestation of efforts by coastal states to control the resources contained in the sea zone located outside and adjacent to their territorial sea.<sup>5</sup> Thus, the exclusive economic zone regime is intended to protect the interests of coastal states, both in the field of marine environmental conservation and marine scientific research in order to support the utilization of natural resources in the exclusive economic zone.

Article 55 of the UNCLOS stipulates that the Exclusive Economic Zone is an area outside and adjacent to the territorial sea. The Convention has also specifically regulated the width of the Exclusive Economic Zone, which shall not exceed 200 nautical miles from the base line from which the width of the territorial sea is measured.<sup>6</sup> This means that the exclusive economic zone is a sea zone that is outside the territory of a country.<sup>7</sup> However, coastal states have jurisdiction and sovereign rights in the exclusive economic zone. Article 56 of the UNCLOS states that the jurisdiction of coastal states includes the creation and use of artificial islands, installations and buildings, marine scientific research, and the protection and preservation of the marine environment. Meanwhile, the sovereign rights of coastal states in the exclusive economic zone include for the purposes of exploration and exploitation, conservation and management of biological and non-biological natural resources from the waters above the sea and from the seabed to the land below it and with regard to other activities for the purposes of exploration and exploitation of the zone's economy, such as energy production from water, currents, and wind.<sup>8</sup> In addition, coastal states must also take into account the rights and obligations of other states and must act in the manner specified in the convention.

The Exclusive Economic Zone in national laws and regulations is regulated through The 1983 Law Number 5 concerning the Indonesian Exclusive Economic Zone. The EEZ Law explains that the Indonesian Exclusive Economic Zone is a line outside and adjacent to the Indonesian territorial sea as determined based on applicable laws concerning Indonesian waters which includes the seabed, the land beneath it and the water above it with an outer limit of 200 (two hundred) nautical miles measured from the base line of the Indonesian territorial sea.<sup>9</sup>

With all the rights and authorities owned by Indonesia as a coastal state. The Indonesian state has the right to every activity, creation, and determination of rules relating to Indonesia's exclusive economic zone. So that if there are foreign parties

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<sup>5</sup> Muhammad Rafi Darajati, *op.cit*, p23.

<sup>6</sup> UNCLOS Article 57

<sup>7</sup> Muhammad Rafi Darajati, *loc.cit*.

<sup>8</sup> UNCLOS Article 56

<sup>9</sup> The 1983 Law No. 39 Article 2

who damage or violates the applicable rules, Indonesia as a coastal state has the right to enforce the law against these violations.<sup>10</sup>

### **Marine Scientific Research**

Marine scientific research is a general term often used to describe activities conducted in the ocean with the aim of increasing scientific knowledge about the marine environment and its processes. Marine scientific research in international law generally regulated in the 1982 Convention on the Law of the Sea in Chapter XIII with 28 Articles consisting of Article 238 to Article 265. All States, irrespective of their geographical location, and competent international organizations shall have the right to conduct marine scientific research with due regard to the rights and obligations of other States as provided in this Convention.<sup>11</sup> However, the following principles must apply in the conduct of marine scientific research, such as:<sup>12</sup>

- a). marine scientific research shall be conducted exclusively for peaceful purposes;
- b). marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention;
- c). marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses;
- d). marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.

In national law, marine scientific research practice, especially in the Indonesian Exclusive Economic Zone, is regulated in Article 1 letter c of The 1983 Law Number 5 concerning the Indonesian Exclusive Economic Zone, which states:

“Scientific research is all activities related to research on all aspects of marine life on the surface of the water, water space, seabed, and the land beneath it in the Indonesian Exclusive Economic Zone.”

The EEZ Law stipulates that all marine scientific research activities in waters under Indonesian sovereignty and jurisdiction must be organized and carried out for and in accordance with Indonesia's interests. Any scientific research activities to be conducted in Indonesia's exclusive economic zone must first obtain approval from

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<sup>10</sup> Parihutantua Simarmata, 2017, “Hukum Zona Ekonomi Eksklusif dan Hak Indonesia Menurut Undang-Undang RI Nomor 5 Tahun 1983,” *Syntax Literate: Jurnal Ilmiah Indonesia* 2 (2), p121.

<sup>11</sup> UNCLOS Article 238

<sup>12</sup> UNCLOS Article 240

the government and be carried out under conditions set by the government of the Republic of Indonesia. Thus, anyone who commits acts contrary to the laws and regulations of the Republic of Indonesia and applicable international law regarding marine scientific research in Indonesia's exclusive economic zone and causes losses shall be liable and pay compensation to the government of the Republic of Indonesia.

Marine scientific research may be conducted by foreign science and technology institutions and/or foreigners on the condition of obtaining a written permit from the central government. The matter of permission regarding research activities for foreigners is generally regulated in The 2006 Republic of Indonesia Government Regulation Number 41 concerning Licensing to Conduct Research and Development Activities for Foreign Universities, Foreign Research and Development Institutions, Foreign Business Entities and Foreign Persons.

Article 246 paragraph (2) of UNCLOS states that marine scientific research in the exclusive economic zone and on the continental shelf must be carried out with the permission of the coastal state. This is in line with Article 7 of The 1983 Law Number 5 concerning Indonesia's Exclusive Economic Zone which states that anyone conducting scientific research activities in Indonesia's exclusive economic zone must obtain prior approval and be carried out under the conditions set by the government of the Republic of Indonesia.

Rules regarding the granting of permits and obligations for foreign researchers are very important, this is because with the ease foreign researchers has to conduct marine scientific research in Indonesian waters is often misused to monitor natural resources in Indonesian waters, both biological and non-biological.<sup>13</sup> In addition, research that is not carried out based on predetermined requirements or carried out without a permit can result in biological and non-biological wealth, artifacts, and treasures owned by the Indonesian state being used irresponsibly by foreign parties.

### **3. CONCLUSION**

Based on the analysis that has been described according to the regulations concerning marine scientific research that has been regulated in UNCLOS and Indonesian national law, it can be said that there is no article or regulation to justify marine scientific research practices without the permission from the Indonesian government, because in the UNCLOS and Indonesian national law regulates that in order to conduct marine scientific research in Indonesian EEZ, the parties need to

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<sup>13</sup>Dikdik Mohamad Sodik, *op.cit*, p277.

obtain a legal permit issued by the central government. Thus, such activities violates the applicable regulations in the UNCLOS and Indonesian national law. The unauthorized marine research also violates Indonesia's sovereign rights and jurisdiction in the exclusive economic zone as a coastal state as stipulated in the 1982 Convention on the Law of the Sea.

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The 1982 United Nations Convention on the Law of the Sea

The 1983 Law Number 5 Concerning Indonesian Exclusive Economic Zone