



Illegal Entering and Anchoring in Malaysia's Territorial Waters

Masuk dan berlabuh secara haram di perairan wilayah Malaysia

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Abstract

This document contains the original English-language version and a Malay translation of CNA's case study examining a 2020 incident in which Malaysia's Maritime Enforcement Agency detained six PRC-flagged fishing vessels for entering and anchoring in its territorial waters without permission.

Abstrak

Dokumen ini mengandungi versi asal bahasa Inggeris dan terjemahan bahasa Melayu bagi kajian kes CNA yang meneliti insiden tahun 2020 bahawa Agensi Penguatkuasaan Maritim Malaysia menahan enam kapal nelayan berbendera PRC kerana memasuki dan berlabuh di perairan wilayahnya tanpa kebenaran.

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Introduction

In recent years, persons, vessels, and corporations based in or tied to the People's Republic of China (PRC) have reportedly engaged in illicit maritime activities around the globe. The reported illicit maritime activities of PRC actors are often at odds with Beijing's rhetoric expressing support for international maritime laws (including the United Nations Convention on the Law of the Sea, or UNCLOS), rules, and norms. Unless it is addressed, this gap between Beijing's rhetoric and the behavior of PRC actors has the potential to undermine the global system of international laws, norms, and conventions that govern the maritime domain.

To examine possible contradictions between the PRC's official rhetoric and the illicit transnational maritime activities reportedly carried out by PRC-based actors, CNA examined 15 cases in which PRC actors have been accused of illegal behavior in the maritime domain between 2018 and 2021. For each case, we examined the following:

- The alleged illegal PRC activity and the types of PRC actors involved
- PRC official policies and narratives about that type of activity (e.g., illegal, unregulated, and unreported (IUU) fishing or human trafficking)
- International, local, and PRC laws, policies, and norms at risk of subversion by the alleged activity
- PRC officials' and media responses to these incidents

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Pengenalan

Beberapa tahun kebelakangan ini, orang, kapal, dan perbadanan yang berpangkalan atau terikat dengan Republik Rakyat China (PRC) telah dilaporkan terlibat dalam aktiviti maritim haram di seluruh dunia. Aktiviti maritim haram yang dilaporkan oleh aktor PRC sering bertentangan dengan retorik Beijing yang menyatakan sokongan terhadap undang-undang maritim antarabangsa (termasuk Konvensyen Pertubuhan Bangsa-Bangsa Bersatu mengenai Undang-undang Laut, atau UNCLOS), peraturan dan norma. Melainkan perkara itu sudah ditangani, jurang antara retorik Beijing dan tingkah laku aktor PRC berpotensi melemahkan sistem global undang-undang, norma dan konvensyen antarabangsa yang mengawal domain maritim.

Untuk mengkaji kemungkinan percanggahan antara retorik rasmi PRC dan aktiviti maritim transnasional haram yang dilaporkan dilakukan oleh aktor berasaskan PRC, CNA meneliti 15 kes aktor PRC telah dituduh melakukan kelakuan menyalahi undang-undang dalam domain maritim antara tahun 2018 dan 2021. Untuk setiap kes, kami memeriksa yang berikut:

- Aktiviti haram PRC yang didakwa dan jenis aktor PRC terlibat
- Dasar dan naratif rasmi PRC tentang jenis aktiviti tersebut (mis., pemancingan atau pemerdagangan manusia yang menyalahi undang-undang, tidak dikawal dan tidak dilaporkan (IUU))
- Undang-undang, dasar dan norma antarabangsa, tempatan dan PRC yang berisiko subversi oleh aktiviti yang didakwa
- Respons pegawai dan media PRC terhadap insiden ini

Dokumen ini mengandungi versi asal bahasa Inggeris dan terjemahan bahasa Melayu bagi kajian kes CNA yang meneliti insiden tahun 2020 bahawa Agensi Penguatkuasaan Maritim Malaysia menahan enam kapal nelayan berbendera PRC kerana memasuki dan berlabuh di perairan wilayahnya tanpa kebenaran.

English: Illegal entering and anchoring in Malaysia’s territorial waters



Image source: Malaysian Maritime Enforcement Agency.

Malaysia’s Maritime Enforcement Agency (MMEA) detained six PRC-flagged fishing vessels in October 2020 for entering and anchoring in its territorial waters without permission. The PRC vessels, approximately 2 miles from the Malaysian coast, had failed to request both access to Malaysia’s territorial fisheries and permission to anchor.

Alleged PRC activity	What the PRC says about the activity
<p>On October 9, 2020, Malaysian and international news media reported that the MMEA had detained six PRC-flagged fishing vessels and their crews for entering and anchoring in Malaysia’s territorial waters without the legally required permissions. ¹ The vessels’ crewmembers reportedly told authorities they were en route from China to Mauritania and stopped to anchor because of unspecified “malfunctions.”² At the time of the detention, Malaysian and international media reports noted that Malaysian authorities were investigating the case under sections of Malaysian law that carry fines and jail time upon conviction. ³ However, Malaysian authorities released the crew two weeks after they were detained without making any public statement regarding their release or the status of the investigation.⁴</p>	<ul style="list-style-type: none"> • The PRC MFA acknowledged that the vessels were detained in “Malaysia’s waters.” Both the MFA and the PRC embassy called on Malaysian authorities to carry out a “fair investigation, ensuring the rights and interests of the Chinese citizens involved.”⁵ • During the detention, the PRC foreign minister and his Malaysian counterpart issued a joint statement “underscoring the importance of maintaining peace, security and stability”; the statement did not directly address this case.⁶ • Malay, English, and Chinese-language PRC media reports reiterated remarks by the PRC embassy and the MFA without providing additional detail or commentary.⁷ • English-language PRC media characterized the detained PRC crews and vessels as being held for “alleged illegal fishing,” and described Malaysia as “claiming the vessels were trespassing.”⁸

Laws, rules, and norms at risk

Based on these reports, the following laws and conventions may be at risk of subversion by PRC-based actors:

International Conventions

- UNCLOS, Part II, Articles 18 and 19⁹

Malaysian Laws

- Merchant Shipping Ordinance (OPS) 1952 – Section 449¹⁰
- Fisheries Act 1985 – Part V: Foreign Fishing Vessels¹¹

PRC Laws, Policy¹²

- 2020 White Paper on Compliance of China’s DWF¹³

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Sumber imej: Agensi Penguatkuasaan Maritim Malaysia.

Agensi Penguatkuasaan Maritim Malaysia (APMM) telah menahan enam buah kapal nelayan berbendera Republik Rakyat China (RRC) pada bulan Oktober 2020 kerana memasuki dan berlabuh di perairan wilayahnya tanpa kebenaran. Kapal-kapal RRC berkenaan, kira-kira 2 batu dari pesisiran pantai Malaysia, telah gagal untuk meminta kedua-dua akses untuk memasuki kawasan perikanan Malaysia dan kebenaran untuk berlabuh.

Aktiviti RRC yang didakwa	Apa yang dikatakan oleh RRC tentang aktiviti tersebut
<p>Pada 9 Oktober 2020, media berita Malaysia dan antarabangsa melaporkan bahawa APMM telah menahan enam buah kapal nelayan berbendera Republik Rakyat China (RRC) dan anak kapalnya kerana memasuki dan berlabuh di perairan Malaysia tanpa kebenaran yang diperlukan dari segi undang-undang.¹ Anak kapal dilaporkan mamaklumkan kepada pihak berkuasa bahawa mereka sedang dalam perjalanan dari China ke Mauritania dan berhenti untuk berlabuh kerana "kerosakan" yang tidak dinyatakan.² Pada masa penahanan, laporan media Malaysia dan antarabangsa menyatakan bahawa pihak berkuasa Malaysia sedang menyiasat kes itu di bawah seksyen undang-undang Malaysia yang membawa hukuman denda dan penjara jika sabit kesalahan.³ Walau bagaimanapun, pihak berkuasa Malaysia telah membebaskan anak kapal tersebut dua minggu selepas mereka ditahan tanpa membuat sebarang kenyataan terbuka berhubung dengan pembebasan mereka atau status siasatan.⁴</p>	<ul style="list-style-type: none"> • MFA RRC mengakui bahawa kapal-kapal itu telah ditahan di "perairan Malaysia." Kedua-dua MFA dan kedutaan RRC menggesa pihak berkuasa Malaysia untuk menjalankan "penyiasatan yang adil, memastikan hak dan kepentingan warga China yang terlibat."⁵ • Semasa penahanan tersebut, menteri luar negeri RRC dan rakan sejawatnya dari Malaysia telah mengeluarkan kenyataan bersama "menjelaskan kepentingan mengekalkan keamanan, keselamatan dan kestabilan"; kenyataan tersebut tidak langsung menyentuh berkenaan dengan kes ini.⁶ • Media RRC berbahasa Melayu, Inggeris dan Cina mengulangi kenyataan oleh kedutaan RRC dan MFA tanpa memberikan butiran atau ulasan tambahan.⁷ • Media RRC berbahasa Inggeris menyifatkan anak kapal dan kapal RRC yang ditahan itu sebagai ditahan kerana "dakwaan menangkap ikan secara haram," dan menerangkan Malaysia sebagai "mendakwa kapal-kapal tersebut telah menceroboh."⁸

Undang-undang, peraturan dan norma yang berisiko

Berdasarkan laporan ini, undang-undang dan konvensyen berikut mungkin berisiko disubversi oleh pelaku yang berpangkalan di RRC:

<i>Konvensyen Antarabangsa</i>	<ul style="list-style-type: none">• UNCLOS, Bahagian II, Artikel 18 dan 19⁹
<i>Undang-Undang Malaysia</i>	<ul style="list-style-type: none">• Ordinan Perkapalan Saudagar (OPS) 1952 – Seksyen 449¹⁰• Akta Perikanan 1985 – Bahagian V: Kapal Nelayan Asing¹¹
<i>Undang-Undang RRC, Dasar¹²</i>	<ul style="list-style-type: none">• Kertas Putih 2020 mengenai Pematuhan DWF oleh China¹³

Endnotes

¹ See, for example, Joseph Sipalan, “Malaysia Detains 60 Chinese Nationals, 6 Vessels for Trespassing,” Reuters, Oct. 10, 2020, <https://www.reuters.com/article/us-malaysia-china-boats-idUSKBN26V0FX>; “Malaysia Seizes Six Illegal Chinese Fishing Vessels, Arrests 60 Men,” Business Standard, Oct. 11, 2020, https://www.business-standard.com/article/international/malaysia-seizes-six-illegal-chinese-fishing-vessels-arrests-60-men-120101100054_1.html; “Malaysia Detains 6 Chinese Fishing Boats, Dozens of Seamen in Waters off Johor,” South China Morning Post, Oct. 10, 2020, <https://www.scmp.com/news/asia/southeast-asia/article/3104991/malaysia-detains-6-chinese-fishing-boats-dozens-seamen>; Named, “Six Chinese fishing boats were detained in Johor waters ” Enam bot nelayan China ditahan masuk perairan Johor, MalaysiaKini, Oct. 11, 2020.

² “Malaysia Detains 6 Chinese Fishing Boats, Dozens of Seamen in Waters off Johor.”; James Griffiths, “Malaysia detains Chinese vessels for trespassing in territorial waters,” CNN, Oct. 12, 2020, <https://www.cnn.com/2020/10/12/asia/malaysia-china-japan-sea-intl-hnk/index.html>.

³ See, for example, “Malaysia Detains 6 Chinese Fishing Boats, Dozens of Seamen in Waters off Johor.”; Nisha David, “Source: Malaysia Releases Crew of Chinese Boats it Detained for Trespassing,” Benar News, Oct. 22, 2020, <https://www.benarnews.org/english/news/malaysian/my-ch-boats-10222020180624.html>; “Malaysia Seizes Six Illegal Chinese Fishing Vessels, Arrests 60 Men.”

⁴ “Source: Malaysia Releases Crew of Chinese Boats it Detained for Trespassing.”

⁵ “China Urges Malaysia to Investigate Fishing Vessel Detention Case,” China Gesa Malaysia Siasat Kes Penahanan Kapal Nelayan, Malay CRI, Oct. 13, 2020, <http://malay.cri.cn/20201013/26a1b17c-e71a-469c-1eab-4ee65c6bc4eb.html>; “Malaysia Detained 60 Fishermen from 6 Chinese Fishing Boats? Chinese Embassy Response,” (马来西亚扣留中国 6 艘渔船 60 名渔民? 中国使馆回应), Global Times, (环球时报), Oct. 11, 2020, <https://world.huanqiu.com/article/40EumM0Hosn>; Li Dongyao and Cui Fandi, “China Attaches Great Importance to Malaysia’s Detention of 60 Chinese Nationals: Embassy,” Global Times, Oct. 11, 2020, <https://www.globaltimes.cn/content/1203077.shtml>; “China’s Embassy in Malaysia Seeks Protection for Legitimate Rights of Detained Chinese Sailors,” CGTN, Oct. 11, 2020, <https://news.cgtn.com/news/2020-10-11/Chinese-embassy-seeks-info-on-fishing-vessels-crew-held-in-Malaysia--UuNRyT70Io/index.html>; “Foreign Ministry Spokesperson Zhao Lijian’s Regular Press Conference on October 12, 2020,” Ministry of Foreign Affairs of the People’s Republic of China, Oct. 12, 2020, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1823343.shtml.

⁶ “Source: Malaysia Releases Crew of Chinese Boats it Detained for Trespassing.”

⁷ “China Urges Malaysia to Investigate Fishing Vessel Detention Case.”; “Malaysia Detained 60 Fishermen from 6 Chinese Fishing Boats? Chinese Embassy Response.”; “China Attaches Great Importance to Malaysia’s Detention of 60 Chinese Nationals: Embassy.”; “China’s Embassy in Malaysia Seeks Protection for Legitimate Rights of Detained Chinese Sailors.”

⁸ “China’s Embassy in Malaysia Seeks Protection for Legitimate Rights of Detained Chinese Sailors.”; “China Attaches Great Importance to Malaysia’s Detention of 60 Chinese Nationals: Embassy.”

⁹ UNCLOS articles regarding passage through and anchoring in territorial waters, see: *United Nations Convention on Law of the Sea Part II Territorial Sea and Contiguous Zone*, (1982), accessed Sept. 22, 2021, https://www.un.org/depts/los/convention_agreements/texts/unclos/part2.htm.

¹⁰ Ordinance section titled “Master to report arrival,” requiring foreign vessels to obtain approval from Malaysian authorities for anchoring in Malaysia’s territorial waters, see: *Malaysia Merchant Shipping Ordinance 1952 [Ord. 70/1952]*. (1952), accessed Sept. 21, 2021, International Labor Organization NATLEX, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=89550.

¹¹ *Act 317: Fisheries Act 1985*, FAOLEX, (Nov. 1, 2012), accessed Sept. 21, 2021, Food and Agriculture Organization FAOLEX Database, <http://extwprlegs1.fao.org/docs/pdf/mal1869.pdf>.

¹² Including laws, policies, regulations, and proposed regulations that prohibit the alleged activity within the PRC territorial waters and EEZ.

¹³ *White Paper on Compliance of China's Distant-Water Fishing (中国远洋渔业履约白皮书)*, Ministry of Agriculture and Rural Affairs, (Nov. 2020), accessed July 2021, http://www.moa.gov.cn/nybg/2020/202012/202102/t20210201_6360831.htm.

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