

TRANS BORDER COOPERATION BETWEEN INDONESIA-MALAYSIA AND ITS IMPLICATION TO THE BORDER DEVELOPMENT

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ABSTRACT

Since 1983 Indonesia-Malaysia has signed a cooperation in the field of social and economic development of the border between the two countries. The form is called socio-economic Malindo (Sosek malindo). This collaborative activities are annually evaluated by both sides with alternating meeting locations. In every meeting, It is discussed various problems related to the border development such as cross-border trade, border posts and the other issues related to border infrastructure. This paper aims to describe the positive impact of the cross-border cooperation for the development of border areas from the point of view of Indonesia. In this paper will also discuss an overview of the economic and social co-operation from the point of view of history and the progress that has been achieved. Moreover, it would also discuss about the cooperation on social and economic actors from the perspective of international law. This section will analyze the legal position regarding cooperation actors authority and responsibility from the standpoint of international law. It is intended to get an overview of the implications of the authority and responsibilities of the implementing agencies on the implementation of social and economic cooperation.

Keywords: Border, Trans Border Cooperation, Sosek Malindo, West Kalimantan-Sarawak.

INTRODUCTION

The state border is a major manifestation of the sovereignty of the territory of a country, especially its role in determining the boundaries of sovereignty, resource utilization, security and territorial integrity. State Border in many ways is determined by the historical process, political, national and international laws. In the constitution of a country is also included boundary delimitations (Sianturi and Nafsiah, 2008).

State border has a vital and strategic meaning, both in defense and security, as well as the socio-economic point of view. In the perspective of defense and security, the border is associated with the sovereignty of a country and the interests of territorial expansion as the existence of a state that has the potential conflicts between states. While the socio-economic perspective, the adjacent border area (between one country and neighbors) have a chance to build a modern economic activities and socio-cultural relations are traditionally (Lahnisafitra, 2008:1).

In the Indonesian context, the border region is a strategic region, even vital in the constellation of the Unitary Republic of Indonesia. Called strategic, because geographically the border region has the potential of natural resources and market opportunities, because of the proximity distance to neighboring countries. While the so-called vital, because the politically, the border areas related to aspects of national sovereignty, defense and security, a sense of nationalism, ideology, social, economic, and political (Lahnisafitra, 2005:i).

In general, the Indonesian border has not well managed yet. This condition is evident from the lack of infrastructure and the security of the border security forces on the border. This has led to a variety of legal issues and safety such as: changes in the border points of the country, smuggling of goods and services, as well as transnational crime (Lahnisafitra, 2005:i).

In a broader dimension, the problem of land and sea borders between Indonesia and Malaysia are like "fire in the chaff". The trigger is the unfinished delimitation negotiation process (Aju, 2006). Therefore, it is no wonder if there is a statement that the Kalimantan border has much more problems compared to other border areas in Indonesia, especially the land border (BPPN, 2004:4). This is evidenced by the presence of multi-dimensional problems faced by Indonesia itself or together with other countries related.

This reality led to the need for handling of border area development involving both sides, because it's very difficult to establish if only one country are proactive, without the support of its neighbors. Objective conditions currently indicate that many of the problems faced in the development of the border region, especially in Indonesia border in West Kalimantan which require handling together. Therefore, cooperation between countries in order to resolve the problems in the border region becomes a necessity (Lahnisafitra, 2008:2).

This paper will describes a subject matter related to the theme, which is focused on how the impact of social and economic cooperation (Sosek Malindo) between Indonesia and Malaysia on the welfare of the population in the border region.

THE STATE BORDER FUNCTION

The word border, according to Guo (1996), is a limitation of the political and movement areas. While the border region, is defined as an area that plays an important role in the political competition between two different countries. Thus, the border region is not only limited to two or more different countries, but it is also be found in a country, such as the city or village under two different jurisdictions. In essence, the border region is an area (either city or region) and limit between two different jurisdictions interests (Starke, 2007; Adolf, 2004; Director General of Immigration, 2007).

Moreover, the political boundaries were never clearly described, leading to frequent border disputes with neighboring countries, fueled by competition over resources that have strategic advantages, as well as the increase in population and migration from the less to the rich. In relation to disputes with neighboring countries, which is quite often conflict over resources is a strategic, as well as increased and population movement in the border region (Guo, 1996).

The border region is politically can form anywhere, both within the country and with other countries. Therefore, the border region can be described as a splitting factor because of the obstacles the two systems of political power, so, governments in each of these different political regions can regulate themselves, as related to exports and imports, whether tariffs or non-use instrument rates, and related to the use of visa or immigration permit for people who want to enter an area at the border (Lahnisafitra, 2003).

Based on this conceptual framework, it can be concluded, that the border region has several functions. *Firstly*, the legal function, that is the line that serves to affirm the boundary of a region with a standard of jurisdiction and applicable state laws. *Secondly*, a control functions, that is, every movement of people and goods into or out of the border region is monitored. *Third*, fiscal functions, a complement of control functions that entitles a state to implement the fiscal price of the targeted country (Guo, 1996; Starke, 2007; Adolf, 2004; Dirjend Immigration, 2007).

Border region synonymous with a different policy in two or more areas are adjacent to each other, so that the boundaries between the different regions became important in the border region (Kurniadi, 2003). According to Guo (1996) basically limits in the border region can be classified into two approaches. *First* approach is physical, where the limit is natural and artificial boundaries. *Second* approach is geometric, where the limit is divided into the border area within the limits of linear and non-linear.

Martinez as quoted by Tirtosudarmo (2007), classifies the typology of the border into two parts, namely: Coexistent and interdependent Borderland. Coexistent Borderland is a border region where cross-border conflict can be reduced to a manageable level while still emerging issues related to the settlement of ownership issues of strategic natural resources on the border. In this context, it is very closely related to the issue of border demarcation lines. While interdependent Borderland is symbolically linked by stable international relation. Residents on both sides of the border, are also engaged in various economic activities of mutual benefit and in approximately equal levels, where one party has production facilities while others have cheap labor.

Based on these categories, Blanchard (2005) as cited by Wuryandari (2009), said that state border has seven other functions, namely:

1. Military-Strategic Function. In this context the border serves to meet the needs of a country's strategic military, especially naval defense systems, land and air to protect themselves from external threats.
2. Economical Function. Borders serve as specific zoning in which a country can exercise control over capital flows, cross-border trade, foreign investment; the movement of goods between countries. Economic functions of the state border also provide a benchmark for a country to undertake the exploration of natural resources in certain areas legally.
3. Constitutive Function. Based on the concept of modern international law, a sovereign state must have borders clearly defined. That is, the border state establishing a specific constitutive position in the international community. A country has full sovereignty over its territory.
4. National Identity Function. As a carrier of national identity, the border has binding function emotionally to communities in the territories. Common experience and history, directly or indirectly, has an emotional tie to claim the identity and specific area.
5. Functions of National Unity. Through the establishment of a national identity, border care for national unity. To maintain national unity, the country's leaders usually combine symbols and jargon with the concept of territory and borders. Geopolitical concepts like "maritime power" and "ground forces", usually used to encourage people to become national unity and integrity.
6. Nation State Development Function. The border development is very helpful in the development of the nation-state, because it gives the state the power to determine how the history of the nation was formed, to determine what symbols are to be widely accepted, and determine the identity of the shared normative and culturally.
7. Domestic Interest Achievement Function. Border serves to provide geographic boundaries for the state's efforts to achieve national interests in politics, socials, economics, education, infrastructure development, energy conservation, and so on. Border also specifies to what extent the state can make every effort to achieve its national interests.

TRANS-BORDER COOPERATION: SOSEK MALINDO

The idea of the socio-economic cooperation for border development between Malaysia-Indonesia, was first coined by Dato Musa Hitam, Deputy Prime Minister of Malaysia, and was also chairman of the General Border Committee (GBC) Malaysia at the 12th session held in Kuala Lumpur on the 14th November 1983. The idea was made in the opening session of the 12th GBC,

and subsequent positive response by Gen. LB Moerdani as Commander of the Armed Forces, Chairman of the GBC Indonesia (Lahnisafitra, 2008:18).

After a 12th meeting of GBC Malindo, then Staff Planning Committee (SPC) as the coordinator of Malindo planning activities was commissioned officials to pioneer efforts to achieve socio-economic development cooperation. At the 17th session of SPC held in Kuala Lumpur on September 28, 1984, the Working Group has submitted its report on the need to form a special committee which is responsible for cooperation in the field of socio-economic development of the border region between Malaysia and Indonesia. From the results of the discussion papers presented, the first session of 17th SPC Malindo, accept and approve the suggestions submitted to the Working Group which will be presented in the next session of 13th GBC Malindo for approval and ratification. Based on the reports of the Chairman of the Joint SPC Malindo, then Chairman of the Joint GBC Malindo in session of 13th held in Yogyakarta on December 3, 1984 has been decided and instructed as follows:

"SPC to form a Committee / Joint Surgeon in charge of the power to plan and coordinate the development of socio-economic relations between the Kingdom of Malaysia and the Government of the Republic of Indonesia for security / safety related border areas between the two countries".

Based on the decision of the Chairman of the Joint GBC Malindo, then Commander of the Armed Forces, as Chairman of the GBC Indonesia has established a Working Group on Socio-Economic Indonesia. The Indonesian WG's of Socio-Economic by virtue of Decree Commander as Chairman of the GBC Indonesia Number: Dkep/278/V/1985.

Socio-Economic Cooperation Group of West Kalimantan Indonesia was established by the Decree of the Governor of West Kalimantan No. 408 of 1985 on December 21, 1985. Decree was later amended and refined for the first time with the Decree of the Governor of West Kalimantan No.146 of 1988 on May 24, 1988, and then refined again with West Kalimantan Governor Decree No.4 of 1999 on January 11, 1999.

To give a clearer direction of the Socio-Economic Cooperation-Malindo, it was agreed vision of Malindo Socio-Economic cooperation as: "Achieving harmony and sustainable socio-economic development for the mutual benefit, especially in the border between the two countries through socio-economic cooperation Malindo". Socio-Economic Cooperation Malindo vision can be realized through it mission as follow:

1. Improving the socio-economic development cooperation in the border between the two countries to achieve prosperity and harmony among society at the border.
 2. Increasing the arrangement/design and development of border areas/border as a "front page/row before" state with respect to/take about sovereignty of each country as well as considering aspects of prosperity/well-being, security/safety and environment.
 3. Realize the socio-economic and cultural opportunities that are conducive to the welfare of their respective communities in the border.
 4. Enhance economic cooperation in a fair and mutually beneficial to both parties and to give priority to the maintenance environment/nature.
 5. Improving social and cultural cooperation in the effort to improve the quality of human resources as well as building on the two neighbouring countries.
- In order to realize the vision and mission of the Socio-Economic Cooperation Malindo, there are several strategies that can be done include:
- a) Debureaucratization licensing systems and procedures in the management
 - b) Provision of legal capacity, protection and law enforcement
 - c) Harmonization of legislation related to socio-economic activities and social culture in both neighbouring countries.
 - d) Excavation economic potential and investment on the basis of mutually beneficial cooperation and fair.
 - e) Improving the quality and empowerment of human resources through cooperation in education, health, science and technology and culture.
 - f) Improving the quality of the environment through cooperation programs to repair the damage and control the negative impacts of development.

Since the first meeting in 1986 until 1991 or five-year socio-economic cooperation Malindo trip, cooperation forum is still seeking any form or format in the organization of cooperation between countries. Implementation activities are still focused on research related to border crossers, such as assessment of vehicle traffic procedures, immigration, customs and quarantine.

Agenda of the next five years the collaboration was carried out to integrate Postal Inspection in Entikong - Tebedu, serves as the exit and for the traditional border crossers especially for border residents, and in the future will be increased to cross-border checkpoint (PPLB).

While entering year six to year ten, this cooperation forum format has had a partnership with the standard form has the technical team. The most important moments of socio-economic cooperation Malindo at this stage was the inauguration of Cross Border Inspection Post (PPLB) Entikong on February 25, 1991. Not surprisingly, the main focus of this collaboration was still about development of integrated checkpoint Entikong-Tebedu, good roads and infrastructure. Physical progress reports were on Entikong integrated checkpoint-Tebedu and it reported to Regional Socio-Economic Malindo West Kalimantan-Sarawak.

In October 1997, the development plan of PPLB Badau-Lubok Antu has been discussed to be built after PPLB Entikong-Tebedu completely finished. In addition to physical development in an integrated checkpoint Entikong-Tebedu, discussion focused on procedures and terms of cross-border public transport between Sarawak and West Kalimantan use freight transport vehicles.

These areas are the subject of the cooperation discussion between the two regions and stage before more intensive reforms in the field of immigration, customs, quarantine and handlers smuggling. It was based on the open connections to the two countries as they really are PPLB Entikong, the question of cross-border good people, vehicles and goods, taking place at that time.

Year 1997 was the year of the beginning of the economic crisis in Indonesia, and the condition was a bit much influence the activities of Regional Cooperation Malindo. Cooperation related to physical development during this period was delayed for a while. The main concern of this cooperation was directed to how to enhance or restore the region's economy in the border region.

The impact of the economic crisis led to a market shock/stalls around the area PPLB Entikong. Economically, the people on the border are at profitable because they can sell items of daily needs as well as their agricultural products are bought by the people of Sarawak that are relatively inexpensive. But socially, appeared various crimes in the region and led to rundown neighborhood around PPLB Entikong.

Developments of physical checkpoint of the two regions become stagnant at that time. Cooperation in the field of trade and economy is so intensely discussed in the paper as the economic recovery efforts in the border region. Therefore, the operation time PPLB Entikong - Tebedu, to be reassessed with a note that in certain circumstances a second post can be operated over time to permit, also discussed in Session October 13, 1997.

The rise of market tents in the Entikong-stalls, have an impact on the prevalence of smuggling of commodities, especially agricultural products that are sold to Sarawak because the ringgit against the rupiah exchange rate at that time was very high. Then, agricultural produce from the Kalimantan border into Sarawak lot because of relatively high at that time. One of the lessons drawn from the crisis is the increased income residents in West Kalimantan border area, but only a moment's time. To anticipate the cross-border market as a shock increased, the economic cooperation between both parties have agreed to use a special fitting for the local community, as a follow-up session of the 1998 proposal.

Since the decentralization in 2001 rolled out, it turned out to have implications for the development of socio-economic cooperation Malindo, especially for West Kalimantan provincial government more creative in formulating development programs in the border region. So the socio-economic cooperation portrait post-reform showed remarkable development not only economically, socially well fixed (catwalk goodwill, comparative studies, etc.) and Infrastructure (relating to the development of cross-border post on both sides, and transportation).

In the economic field developments occur significantly. It was, for example, is characterized by the expansion of cooperation in the economic sector which includes agriculture, fisheries, forestry, food, container, banking/insurance.

Both sides agreed to inform each other about the export-import regulations and trade opportunities of investment in each area. In addition, both sides agreed to encourage collaborative efforts businessmen of both countries in the advanced industrial development in the border region. Furthermore, the Petronas has conducted an assessment with Pertamina for the LPG trade cooperation. Meanwhile, building permits Tebedu Inland Clearance Depot (Inland Port) has been given by the Government of Malaysia and The West Kalimantan have built training center and Employees Housing Scheme.

Furthermore, both parties agree to use the Smart Card when Tebedu Industrial Estate operates, then form Malindo Socio-Economic Business Council (SMBC) between the two parties. In addition, partnerships were initiated power supplies, the agency director has agreed to the plan Sesco West Borneo Sarawak Rural & Border Interconnection in the Komodo-Sajingan.

Besides, it has also signed MoU between the two parties in the field of economic cooperation between Malaysia BIMP-EAGA Business Council (BEMBC) Sarawak Chapter Malaysia with the Chamber of Commerce and Industry (Kadin) West Kalimantan. Then, both parties agreed to propose the Socio-Economic Malindo Central level to assess the value of goods which are allowed to transport no more than RM 600 per person per month (Border Trade Agreement 1970).

COOPERATION PROGRESS OF SOSEK MALINDO

During the past 22 years running, social and economic trans-border cooperation between Malaysia and Indonesia, have experienced significant progress between the two sides. In this context, at least two parameters of success that can be mentioned here.

First, progress in infrastructure development/transportation land. This process was begun on May 23, 2000. The meeting has been conducted in order to determine the midpoint of passes between victory Badau-Lubok Antu. Following an agreement about the midpoint of the main connecting road between Lubuk Antu-Nanga Badau, has made the preparation of Master Plan Badau Komplek and was followed by the preparation of Site Plan PPLB at Nanga Badau.

Physical development of PPLB Nanga Badau budget starting in 2001-2002. Later, land relations to cooperation Indonesia-Malaysia-Brunei (Session of 17th July 2001), and in 2002, a plan of cooperation between Indonesia-Malaysia-Brunei to be appointed to the forum or BIMP-EAGA meetings triangle between the three countries.

In addition, the agreement also ship service plan / boat Sintete express as a public transport routes - Kuching, International Bus Terminal construction for comfort and safety of bus passengers, and the opening of routes / new passes from Sanggau-Serian. Furthermore, the two sides agreed to discuss border development Aruk- Biawak along with the development of border areas Nanga Badau -Lubok Antu. The Plan of development of CIQS Nanga Badau-Lubok Antu and CIQS Aruk-Biawak can operate

2009. Meanwhile, plans Jagoi Babang PPLB Development of Serikin, Senaning-Kranggas Gayau both sides agreed to form a team to determine the zero point for which the date will be determined later..

Second, the progress of cooperation in the social field. The technical team shared between Indonesia and Malaysia, assessing the potential of tourism in the region along Telok Melano-Temajak Beach and Batang Ai-Bentuang Karimun. It was agreed also about being endemic disease surveillance and monitoring of food and products farmaseutikal. Then also combating trafficking cooperation and collaboration in handling goods sales ban border region.

In addition, the two sides agreed to enhance cooperation to eradicate smuggling on land and sea through a coordinated patrols, cooperation prevention and control of forest and land fires. While the Technical Team of Tourism, emphasis on tourism cooperation, cultural cooperation (historical and cultural values, protection antiques/cultural heritage, museums), as well as regional cooperation ecotourism, and the formation of the twin cities between Singkawang and Serian in implementing the concept of healthy city.

Related to ASEAN constellation, the socio-economic cooperation Malindo very influential in general economic activity in particular countries of Brunei Darussalam. Based on the above developments, it is seen that there are several related agreements with Brunei. As the launch of the bus route between West Kalimantan - Brunei will soon be realized. In Session In 2008, the present plan of Brunei to discuss further related to the opening of bus lines Pontianak-Brunei.

Indirectly be felt by both countries, where many people are coming to Brunei and West Kalimantan, both family and business affairs and traveled. It is very possible because the distance between the three countries is relatively not too far away and accessibility that makes it possible to support such activities. In the field of trade, has conducted trade relations between the three countries. It can be seen from the distribution of food products and other goods in each country. Goods from West Kalimantan highly favored in Sarawak and Brunei are particularly sofa furniture of teak wood. This is because the price is relatively cheap for them.

WEST KALIMANTAN POSITION IN THE CONTEXT OF BILATERAL COOPERATION

Regional Authority in conducting foreign relations cover a wide range of aspects. Ranging from investment, foreign trade, tourism or tourism, education, finance to other areas of the fairly important as the development of a more widespread problem. In short, as long as such cooperation does not come into contact with issues concerning: foreign policy, defense, security, justice, monetary and national fiscal and religion all possible forms of cooperation (Article 10 (3) Act No. 32 year 2004). In addition, the forms of cooperation must meet the criteria of externality, accountability and efficiency.

Furthermore the *Guide Book* confirms position as Coordinator of the State Department has the authority to "provide advice and possible political / judicial co-operation of the program. 'As the terms are as follows: - should the countries that have diplomatic relations and within the framework of the unitary state , - in accordance with the regulations; - the consent of the legislature; - do not disturb political stability and security in the country; - does not violate the principle of non-intervention; - based on equal rights; - based on the principle of equality, and - support governance. Then the Guide added that foreign cooperation must be: do not conflict with politics and foreign policy of the Central Government; does not bragged domestic security; legally there are no possibilities that can lead to losses, and does not conflict with the policy of the relevant technical departments.

From the construction above, then there is a possibility of the occurrence of further developments. Through this framework also, it can be reviewed legal situation related to regional authorities in the conduct of foreign relations, such practices occurred between West Kalimantan and Sarawak, as described above. In the area of contemporary international law is still not seen as a subject of international law. However, this can not be interpreted as a reason to assume that the Local Government does not have the authority to conduct foreign relations, because the current practice of inter-regional cooperation is a common thing.

In that context, the Government of Indonesia through the design of regional autonomy, has given authority to the regions to conduct foreign relations as a way to 'realize a diplomacy that sees substantive issues in an integrated and involves all components of the nation in a synergy that is referred to as Total Diplomacy. To make it happen, the government deal with the weaknesses that exist in international law in the following way.

First, when the District to enter into cooperation with colleagues abroad is required to consultation with the Centre, in this case the Ministry of Foreign Affairs. The involvement of the Ministry of Foreign Affairs can not be released from his role as organizer of the Foreign Relations Coordinator. Furthermore, the Department provides a variety of considerations that are necessary, then the bidding conducted by the Department. The agreement set forth in a Memorandum of Understanding (MoU). Signatory Full Power procuration given by the Minister of Foreign Affairs. Thus, the treaty-making process undertaken by the Region, have binding legal force, as stipulated in an international treaty instruments. Because of the agreement, is done by using the instruments of international treaty law, so the treaty regime set out in the Vienna Convention of 1963 applies.

Second, it is as a result of the establishment procedure. Because the agreement was formed with the involvement of the Central intensively (represented primarily by the State Department), the international agreement on cooperation is not only binding the Local Government but also the Central Government. One factor that reinforces, this is authorized by the issuance of Full Power of Secretary of State. In other words, in this context actually Center has consciously and deliberately to take responsibility. As a consequence, when the Local Government violates the agreement, the Center Government must take responsibility. So in that aspect of international law there are no new problems. Because of this cooperation is just one variant of the cooperation between

the countries. Which in this case is the cooperation between countries carried out by the Regional implementation aspects. While the legal liability in relation to the state (central government) remains burdened responsibilities - not the Local Government.

CONCLUSION

Based on the description above, it can be concluded that the transborder cooperation between Indonesia and Malaysia, in economic and social development, have positive impact for the development of border regions of both parties, and promote mutual understanding. This is in line with the characteristics of the border which has interplay relations each other. In the current context, the strengthening of regional cooperation is supported by the presence of Law No.32 of 2004 on Regional Autonomy and Law 22 Year 2000 on International Treaties, which are substances intended to strengthen the position of Indonesian diplomacy abroad. However, the responsibility remains at the Center Government, so that the position of West Kalimantan province rather than as subjects of international law, but rather an agent or technical representatives of the Central Government as subjects of international law.

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