

INDONESIAN GOVERNMENT AUTHORITY IN TERMS OF BORDER MANAGEMENT WITH OTHER COUNTRIES

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ABSTRACT

Border management is the most important thing for the Indonesian nation in maintaining the sovereignty of its territory. Determination of the limits in every area of the country authorizes each state to exercise its jurisdiction. Border management policy for Indonesia is the authority between the central government and local governments, this authority given aims to resolve all the problems of the border and make the border region into the front yard of Indonesia. In this article will discuss about the Indonesian government's authority in managing both land and sea borders between Indonesia and the countries bordering with it.

Keywords: borders, authority, sovereignty, jurisdiction

Background

The International Law respecting an important part of the country as reflected in the principle of respect for the integrity and sovereignty of a territory (territorial integrity and sovereignty) is contained in various products of international law. The recognition of the sovereignty and territorial integrity of a country among others is shown by the prohibition on intervention in the internal matters of a country. Changes in the territorial status of a country affect the country's sovereignty over the territory, particularly towards jurisdiction over state sovereignty including the problems of citizenship population residing in the region. Thus, it appears that the firmness and clarity of state borders are manifested into legal guidelines for upholding the integrity and sovereignty of a State (Sakti, 2011;1).

Based on the conception of international law, territory coverage of Unitary Republic of Indonesia (NKRI) is the entire region inherited from Dutch colonizer, in accordance with the legal principles *Uti Possidetis Juris* which says that a newly independent country inherits its region from the previous colonial ruler. In the national law, the coverage area Indonesia is listed in the various legislations. Article 25A of the 1945 Constitution states that "the State Unitary Republic of Indonesia is an archipelagic country, characterized by the archipelago with area boundaries and rights set by Law." The provisions of the 1945 Constitution is in line with the UNCLOS 1982 (in force since 16 November 1994) that has been ratified by Indonesia through Law No. 17 of 1985. The conception emphasizes the archipelago (archipelagic state) championed by Indonesia since Juanda Declaration 1957, which later gained the international recognition. As an archipelago, Indonesia is geographically located in a strategic location between two continents, namely Asia Continent and Australia, and two oceans, the Pacific Ocean and Indian Ocean. With this kind of layout, Indonesia has a position in the geopolitical and geo strategic regional and global economies. In one hand, this strategic position provides a great opportunity for Indonesia. While in the other hand, it poses a variety of challenges and threats towards Indonesia ((Regulatory Agency National Border Management Number 1 2015).

Problem management and defense in the border regions are closely linked to the basic conception of the state as an entity that has sovereignty, population and territory as well as the interpretation or perception of threats. Thus, the management and defense of the borders are concluded as all efforts to emphasize the existence of a state characterized by protection of sovereignty, population and territory from various types of threats. Discourse about threat in the border regions so far tends to be dominated by issues and problems in the border area, especially on land borders. The shifting border markers, the economic activity, illegal crossings, smuggling, and theft still become prominent problems at the border. Border problems have complex dimensions because there are a number of crucial factors related to them such as jurisdiction and sovereignty of the state, political, social, economic, defense and security factors.

For Indonesia, which has both sea and land border areas with ten neighboring countries (Ganewati Wuryandari, 2009; Ludiro Madu, *et. al.*, 2009), the border issue is, indeed, a serious matter that has not yet been entirely resolved. The issue of the border between Indonesia and Timor Leste, particularly in the land, for example, can be classified as an issue that is very unique; it is because the land border between the two countries consists of two parts. First, the border around the enclave of Oecussi is an enclave (Cambridge Advanced Learner's Dictionary) which is part of the sovereign territory of East Timor that is located in West Timor (which is part of the Unitary State of the Republic of Indonesia in East Nusa Tenggara) and separated about 60 kilometers from its parent region (Barry Wain, 2012). Second, there is a 149,9 km long of land border that divides the island into

West Timor in the west and East Timor in the east. Up until now, the two countries still face the problems concerning land borders from both aspects of socio-economic development and defense and security (Ganewati Wuryandari, 2009).

Broadly speaking, the border management handling scope includes two strategic objects, namely the management of boundaries between the state and area management. Management boundaries basically comprises various strategic steps to establish and assert the territorial boundaries of the country with neighboring countries, to secure borders on land and at sea, as well as to reform the management of trans-boundary, while the management of border areas is basically associated with various strategic steps to improve the welfare of local communities through regional development in a balanced and sustainable manner.

To manage the border area, the Government of Indonesia has established the National Agency for Border Management (BNPP) on January 28, 2010 through Presidential Decree No. 12 of 2010, followed up by the Ministry of Home Affairs (Regulation) No. 31 Year 2010 concerning Organization and Work Procedure. BNPP in this case acts as the follow up of the Act No. 43 of 2008 on the territory of which mandates that in order to manage the state borders and border areas both in national and regional level, the central government and the local government work together to set up the National Management Board and Management Agency. BNPP's tasks according to the legislation consist of a set policy of border development program, set budget requirement plan, coordinate and evaluate the implementation and supervision of the management of state borders and border areas (Lutfi Muta'ali, *et al.*, 2014). This article will discuss about the authority of the Indonesian government in border management premises other countries.

Understanding Border

Definition of the general border is a line of demarcation between the two sovereign states. Before the borders of a country or border between states were established with other countries, people living in a particular area did not feel the difference. It is not an uncommon experience; even they were from the same ethnic. But with the advent of their country's separation from the mentor of the country, they would have a different nationality (Rizal Darmaputera, 2009). Said border or the border according to Guo (Rongxing Guo, 1996; Victor Presscott and Gillian D. Triggs, 2008), implies a restriction of a political area and the area of movement, while the border region implies as an area that plays an important role in the political competition between two different countries, which is an area that limits between two interests of different jurisdictions (J. G. Starke, 2007; Huala Adolf, 2002).

Areas of the country ideally have borders that the state can implement its sovereignty in accordance with the rights and obligations as a subject of international law. Sometimes a permanent state border agreed upon through agreements is not necessarily adhered to, and often violated. Things like this happen due to a shift in the structure and system of political life that could trigger a war with the intention of questioning the existing state borders (Tadeus, 2011). The war could trigger new agreements to split up from a preexisting country to form a new country or even to merge regions. As the geographical space from the beginning is a region of a power struggle between countries, mainly characterized by their fight to expand the boundaries of the state as part of the history and existence of the state, a history of the border region cannot be separated from the history of the birth and the end of countries (Pusat Pengelolaan Pendapat Umum Badan Informasi Publik, 2008).

Thus, the task of monitoring borders and territorial integrity is a primary duty for states to protect their citizens in the territory autonomy while protecting society. The role of the state border is the duty of protection so that outsiders who try to enter into a state-owned land should be stopped and that it should not be appropriated by foreign parties who are not authorized. A country's border shows the complexity of its own which shows that it does not only divide the state border of different entities. But it also, somewhat, divides people with same ethnicity, because of their history of different nationalities by the same ethnicity (Tadeus, 2011).

Regional Authority in the Management of Borders with Other Countries

The Preamble of the Constitution of the Republic of Indonesia 1945 expressly and explicitly interprets independence as the right of all nations, and colonialism is in conflict with humanity and justice. Post-independence Indonesia declared itself as an independent nation, united, sovereign, just and prosperous. Indonesian's ideals of freedom through the rule aims to protect the entire Indonesian nation, promote the general welfare, educate the nation, and opt to implement a world order based on freedom, peace, and social justice.

State law is based on the guarantee of legal protection on the power of government. Legal protection is the principle of the legality of the exercise of government, the protection of human rights (*grondrechten*- classical right and social), the division of power in the government sector (*machtverdeling*), and the supervision by the court (*rechterlijke controle*). Meanwhile, the democratic foundations are associated with the procedure and substance of governance, both decision-making and real acts. The principle of democracy is the presence of people's representatives and the principle that there are no positions for life (*afzetbaarheid van bestuur*), the implementation of government openness (*openbaarheid*), and participation (*inspraak*). *Rechtmatig bestuur* is a principle of government that rests on the principle of state of law, namely the principle of legality, and based on the principle of legality. By this principle, then, any government action should be based on the legitimate authority, done with the right procedure and the substance of the right. *Rechtmatigheid* means the legality or validity.

Democratic law state of Indonesia is a unitary state taken form of a republic. Indonesia is divided into provinces, and the provinces are further divided into districts or cities, each of which has a local government that is regulated by law. The provincial government, counties, and cities set up and manage their own affairs in accordance with the principle of autonomy and duty of assistance. The local government runs the widest possible autonomy, except in the matters of government that are defined by law as the affairs of the central government, such as the military and law enforcement matter, defense and state security matter,

monetary policy, and so forth. Based on the law, the power of the military in terms of defense and security of the country are under the authority of the central government, while local governments are only given limited authority in terms of the regional administration, and population internally.

Relations between the authority of the central government and the authority of the provinces, counties, and cities in the concept of unitary state of Indonesia which is regulated in the state basic norms are set by taking into account the specificity and diversity of the area. Specificity and diversity here deal with culture, customs, and certain characteristics that obviously still exist and are still maintained by the region concerned. Authority to regulate is either based on a relationship of authority within the meaning of de-concentration, co-administration (*medebewind*), or decentralization with respect to the duties and functions of government (state administration) in a unitary state (Muchsan, 1982). Meanwhile, the constitutional authority of international relations remains in the centralized authority of the central government. Governmental power is the power to exercise the state's political objectives as outlined by the Indonesian constitution. The Indonesian Constitution gives authority to the President of Indonesia as the holder of the power of government according to the constitution (Marbun, 2012; Sjahrhan Basah, 1989).

As a concretization of the implementation of the country's political objectives based on the constitution, the president is given the right to submit a bill to the House of Representatives (DPR) to achieve the political goals of the Indonesian state as intended. As the follow-up of the organic regulations (laws), the implementation of these regulations is still common; organic and abstract. The president as the head of government sets rules for the government in implementing the legislation. As the executor of the government in the executive branch, the President has a constitutional right in declaring war, peace, and agreements with other countries with the approval of Parliament. However, in the case of International agreements arising from widespread matter that are fundamental to the lives of people related to the financial burden borne by the state, and / or require changes or creation of legislation should be subject to parliamentary approval (Mustafa, 2001).

The president's authority is the owned rights to make decisions and / or actions in the governance, while the president's governmental authority is the authority to act in the public sphere. The authority of the president can be obtained through the attribution of NRI 1945 Constitution or the law. This authority may be delegated to the delegation of authority of the government in the regions taken with responsibility and accountability. The authority is switched entirely to the government in the area. However, this delegation is limited to local government authority in terms of internal governance. It is not intended to regulate external relations with other countries. Included in the mandate as the agency delegated authority and / or the higher government officials to lower the responsibilities and accountability remains with the mandate giver. This authority is limited to the actions of public administration for the duties and functions of running the action in the conduct and / or do not do anything concrete in the framework of governance in the region.

Border Management Based on Law No. 43 Year 2008

Border management is an indication of a country's seriousness in managing its borders. It is one of which is indicated by the presence of a set of rules in the form of formal legal rules that mark and comprehensive. The seriousness is shown by Indonesian Government by issuing Law No. 43 of 2008 on the territory of the State. However, the legislation does not define the boundaries of the country, accompanied by the coordinates of the border, because international law cannot justify the established state borders unilaterally, but it must go through the agreements set forth in the form of border treaty among corresponding countries. Nevertheless, the legislation describes every country Indonesia bordered with both in land and sea borders. It also includes border management settings in both countries in central and local government that happens to be the country's borders.

The authorities of the Central Government in the management of territory and border areas according to this law are as follows:

- 1) Establishing policies management and utilization of the country and the border region;
- 2) Conducting negotiations with other countries regarding the establishment of state borders in accordance with the provisions of legislation and international law;
- 3) Establishing or making the sign of state borders;
- 4) Collecting data and naming the island or islands and other geographical elements;
- 5) Giving permission for international flights to cross the territorial airspace on a path that has been specified in the legislation;
- 6) Giving permission to the innocent passage of foreign ships to traverse the territorial sea and archipelagic waters on a track that has been specified in the legislation;
- 7) Carrying out surveillance in additional zones needed to prevent violations and punishing violators of legislation in the field of customs, fiscal, immigration or sanitary laws within the territory or territorial sea;
- 8) Establishing prohibited airspace crossed by international flights to defense and security;
- 9) Creating and updating maps of the country that will be delivered to the Parliament at least every five (5) years; and
- 10) Maintaining the integrity, sovereignty and security of the country and the border region.

In Article 11 (1) states that in the management of border areas of the country, provincial government authorities are as follows:

- a) Implementing government policies and other policies in order to establish autonomy;
- b) Coordinating development in the border region;
- c) Developing the border areas between regional governments and / or between local governments and third parties; and
- d) Supervising the implementation of the development of border areas of the government district / city.

Stated in Article 12, regency / city government is responsible in the management of the country and the border region authorities, which includes implementing government policies and other policies in order to establish regional autonomy and duty of assistance; keeping and maintaining the boundary markers; coordinating in the implementation of development tasks in the

border region in its territory; and constructing the border region between regional governments and / or between local governments and third parties. State borders and border areas are managed at the level of central and local government and local government formed a national management agencies and regional management bodies. The management board led by a head of the body is directly responsible to the President or the head of the region in accordance with an arbitrary.

Institutional element membership is derived from the government and local authorities in the view of the strategic position of the border regions involved in things like national sovereignty, territorial integrity, rule of law, and the welfare of the people. Border management agency is tasked to establish border development program policies, establish a budget plan requirements, coordinate the implementation, and carry out the evaluation and supervision. In the Act No. 43 In 2008 a commitment to take over management of the country, especially in the border line, feels stronger. This law clearly defines that goal setting area of the country is to ensure the territorial integrity, sovereignty and order for the welfare of the entire nation. The legislation also underlines authority of both central and local governments in the border regions to achieve the development and coordination in the border region. Even this law has set the establishment of a special agency that handles management of border areas.

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