

INDONESIA AND TIMOR LESTE CLASH OVER SEA BORDER TREATY

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ABSTRACT

East Timor is an independent and sovereign country in the 21st century (twenty-one) with its official name Democratic de Timor-Leste (RDTL) is a country with a category of small countries, located on the continent of Australia and eastern Indonesia. East Timor has a long history of standing alone as an independent country. Before the independence, Timor-Leste was previously called East Timor which was a Portuguese goose colony that later joined the Unitary State of the Republic of Indonesia. It is noted that East Timor officially joined Indonesia on July 17, 1976. Then East Timor officially became the 27th province of the Republic of Indonesia and became the youngest province at that time. Historically, Timor-Leste was colonized by Portuguese geese for 450 years, the Netherlands for 3 years, and Indonesia for 24 years. Under the leadership of the United Nations through the agency. United Nations Transitional Administration in East Timor. The establishment of East Timor into a new state requires territorial boundaries, especially with Indonesia. The boundary between Indonesia and East Timor has not yet been reached. The methods used are normative. Based on UNCLOS 1982 if maritime boundaries enter the sovereign territory of the country, then the principle used is the principle of equidistance. Second, there is no clear authority in the management of Indonesia's borders so the current state of Indonesia's borders, especially in terms of security stability, is not yet conducive. Third, under Article 3 UNCLOS both countries have the right to the width of their territorial sea up to a limit of 12 miles measured from the baseline, if not overlapping with the territorial sea area.

Keywords: Maritime borders, territorial sea, baseline

1. PREFACE

On December 7, 1975, Indonesia conducted an operation known as Operation Seroja, which aimed to invade East Timor to integrate it into the Unitary State of the Republic of Indonesia (NKRI). Operation Seroja was carried out by Indonesia under Suharto's leadership after the Balibo Declaration. After Operation Seroja many East Timorese filled the grounds of the Crown Inn, where European Association diplomats lived. Massa pushed for a mandate for East Timor in the commission of the European Union Meeting. Massa rejected regional autonomy during the process of change and criticized the Government of the Republic of Indonesia for not paying attention to the demands of the people of East Timor. [1]

In the book Little History 'Petite Histoire' Indonesia (2004) by Roshan Anwar, it is mentioned that Ali Moertopo led the troops in Operation Komodo which aims for the integration of East Timor into Indonesia. Operation Komodo is an intelligence mission carried out by TNI officers. After Operation Komodo, Indonesia again launched Operation Seroja in December 1975 The United States also took a role because the United States did not want East Timor to fall into Communist influence. The process of integration of East Timor into Indonesian territory was officially passed through Law No. 7 of 1976 on unification into the Unitary State of the Republic of Indonesia and the Establishment of a Level I Regional Province in East Timor.

The events and problems that occurred continuously in East Timor after integrating with Indonesia triggered the people of East Timor to demand a referendum. East Timorese student groups organize

open forums in Dili and in other east Timorese regions to discuss and debate east Timor's political status. Since June 1998, there have been large pro-independence demonstrations, including one attended by thousands at Santa Cruz cemetery on November 12, 1998, to commemorate the seventh anniversary of the Santa Cruz incident.

The events and problems that occurred continuously in East Timor after integrating with Indonesia triggered the people of East Timor to demand a referendum. East Timorese student groups organize open forums in Dili and in other east Timorese regions to discuss and debate east Timor's political status. Since June 1998, there have been large pro-independence demonstrations, including one attended by thousands at Santa Cruz cemetery on November 12, 1998, to commemorate the seventh anniversary of the Santa Cruz incident. It shows that many East Timorese rejected Indonesia's offer of autonomy and demanded a referendum so they could determine their political future or determine their destiny.

During the reign of President BJ Habibie, exactly 21 years ago, history records the eastern region of Indonesia, which is currently changing its name to Timor Leste which is separate from Indonesia. [2]

Since East Timor is no longer part of the State of Indonesia, the Government of the Republic of Indonesia (RI) together with the Government of Timor Leste have agreed to determine the land boundary of the two parts where there is no clear boundary, especially in Noel Besi, Citrana and Bidjael Sunan Oben. Coordinating Minister for Political, Legal and Security Affairs accompanied by Foreign Minister Retno Marsudi said, with the fulfilment of the two fragments, it will be passed on to the public that all land boundary arrangements between the two countries are at a fundamental level and will continue for maritime boundaries. In addition, this understanding will be discussed in the Senior Authority Meeting which will be outlined in Addendum No. 2 of the 2005 Boundary Arrangements. [3]

There is no clear maritime boundary between Indonesia and Timor Leste, as there is no clear territorial sea boundary, which will then become a guideline and regulation within the next maritime boundary. Second, administratively Indonesia's boundaries have not been established, so the current condition of Indonesia's lines has an impact on security. Article 3 of UNCLOS states that Indonesia and Timor Leste have the right to determine the width of their territorial sea as far as possible not to exceed 12 nautical miles, by the rules regarding measurements specified in UNCLOS 1982.

The Timor Gap is a continental shelf so its maritime delimitation designation must use the principle of the centerline by UNCLOS 1982. Because there are differences of views and given that if there is no agreement on maritime boundaries that will have an impact on the exploration of oil and gas resources in the Timor Gap, the two countries decided to establish a Cooperation Zone in the Timor Gap in 1989 known as the Timor Gap Agreement as a solution to the problem of differences of views. This agreement divides the Timor Gap into three zones with a percentage share by those agreed by the two countries. Furthermore, in 1997, Indonesia and Australia signed the 1997 Perth agreement governing the ZEE delimitation of both countries in the Timor Sea and the Arafura Sea.

After the liberation of East Timor from Indonesia, Indonesia, Timor Leste, and Australia conducted diplomacy to determine maritime boundaries in the Timor Gap which remains unclear. However, there are differences in determining the sea boundary between the two countries (Indonesia and Timor Leste) where Australia believes the East hole is in the East Sea so the

assurance system should be based on sea depth guidelines. Meanwhile, according to Indonesia, Timor's hole is a landform so guaranteed sea restrictions must take advantage of the median line rules by UNCLOS 1982.

There is a counter perspective and considering that if there are no concessions to the sea boundary that will affect the unexplored oil and gas assets in Lubang Timor, the two countries chose to establish a Participation Zone in The Timor Hole in 1989 referred to as the Timor Hole Arrangement as a solution to the counter perspective problem. This arrangement divides the Timor Hole into three zones with a level division as agreed by the two countries. In addition, in 1997, Indonesia and Australia agreed to the 1997 Perth Arrangement that oversaw the two countries' EEZ restrictions on the Timor Sea and the Arafura Sea.

Based on this examination, there are two basic investigations on maritime boundaries after Timor Leste (Republic of Timor Leste / RDTL) seceded from Indonesia, among others: (a) First, there are no guarantees and guidelines regarding territorial boundaries, especially in Oecusse, an East Timor (territory) located on Indonesian territory in East Timor; (b) Second, no expert can explain the boundaries of Indonesia's maritime territory at this time. Especially in the field of security has not been resolved.

Problem Formulation

- (a) What are the obstacles in determining the maritime boundaries of Indonesia and Timor Leste that have not been realized?
- (b) What efforts should Indonesia make to overcome to realize the maritime border agreement?

2. RESEARCH METHOD

This study uses normative research. The type of data used is secondary data, in the form of regulations, both nationally and internationally. In addition, books and articles, as well as a dictionary, mass media, and sources from the internet are also used. To complete the paper, the authors conduct interviews with competent parties and the interviews are limited to supporting secondary data.

The main thing in this paper is the statutory approach, which is done by reviewing all laws and regulations related to legal issues. This legal approach is to examine the consistency and conformity of the substance of the content of the law by studying the ontological basis of the birth of law, the philosophical basis of the law, and the legislative ratio of the provisions of the law. [4]

According to Soerjono Soekanto and Sri Mamudji, in normative legal research, research on legal principles is carried out on the rule of law, which is the standard for According to Soerjono Soekanto and Sri Mamudji, in normative legal research, research on legal principles is carried out on the rule of law, which is a standard of behavior or inappropriate behavior. This research can be conducted (primarily) on primary legal materials and secondary legal materials, as long as the material contains the rule of law. [5]

In normative legal research, the study of the rule of law is not sufficient, so further study is needed on aspects of the legal system. A system is a complete order or unity consisting of parts or elements that are closely related to each other, i.e. rules or statements about what should be, so that the legal system is normative. [6]

In addition to using the legal approach, in the writing of this paper, the legal history approach is also used (historical approach). The legal history approach is carried out to track the history of legal institutions over time. This approach greatly helps the author to understand the philosophy of the rule of law over time. Furthermore, through this approach, it can also be seen changes and developments in the philosophy underlying the rule of law in question. [7]

The conceptual approach using the state territory approach, which is meant by the conceptual approach according to Mochtar Kusumaatmadja is the basic concept of space for the application of sovereignty as the highest power of the state limited by that state, so that the state has the highest power within its territorial boundaries. [8]

3. RESULT AND DISCUSSION

Borders are a very important concept in international relations. From the point of view of peace, without mutually acceptable cross-border relations, good relations between neighboring countries are almost impossible. In its development, both before the merger and after East Timor was separated from Indonesia, the Timor Sea and the Arafura Sea have not progressed in determining maritime boundaries or problems between the two regions.

The territory of East Timor as an autonomous and sovereign state in the 21st century under its authority Republica Democratica de Timor Leste (RDTL) is a small country located north of mainland Australia and located in eastern Indonesia. East Timor was separated from Indonesian rule on May 20, 2002. East Timor has a long history of being an independent country.

The province of East Timor is colonized by 3 (three) countries, in particular:[9] The Portuguese colonized East Timor in 350 years, Japan was colonized for 3 years, and Indonesia for 24 years. After the end of the occupation, East Timor formed a provisional organization called the United Nations Transitional Administration in East Timor (UNTAET) for about 2 years, from 24 October 1999 to 20 May 2002.

East Timor is an area adjacent to the island of Timor in East Nusa Tenggara. This area was once a Portuguese province. Furthermore, after the decision to independence from Indonesia, Timor Leste is not included in the territory of the Republic of Indonesia. This means that it has become an independent country.

On August 30, 1999, that began by heating the political climate in Indonesia until the rejection phase of President Suharto, who was later replaced by BJ Habibie. Furthermore, the State of Timor Leste, which was the 27th region, at that time, experienced interference. An agreement was held in East Timor and the support of the assembled countries. Thus, East Timor was separated from the Unitary State of the Republic of Indonesia.

National borders have an important role because national boundaries in addition to being a connecting line between countries also show clarity of a country's sovereignty, so a clear line indication is needed. If the sovereignty of the country is unclear it will cause problems with neighboring countries.

Clarity on boundaries both on land and at sea is important for the two bordering countries. According to Article 1 paragraph (4) of Law No. 43 of 2008 concerning National Borders. National boundaries are the boundaries that separate a country's sovereignty under international law. This means that the boundaries of the country must be clear because it is the pride of a nation.

By international legal arrangements for situations like this, UNCLOS 1982 has defined state lines. In its implementation, the arrangement of maritime boundaries regarding maritime territorial boundaries and the scope of sovereignty shall be conveyed to all states making treaties.

Clarity on borderlines both on land and at sea is important for both bordering countries. According to article 1 paragraph, 4 of Law No. 43 of 2008, the Border of the State is a boundary line that is a separator of the sovereignty of a state based on international law. This means that the territory of the country must be clear because that's where the state upholds its sovereignty.

By the provisions of international law, UNCLOS 1982 has regulated the maritime borders of countries both facing and adjoining related to the boundaries of sovereign territory and jurisdiction. In its implementation, maritime boundary-setting agreements related to both maritime boundaries of sovereign territory and jurisdiction are fully left to the relevant states to make the treaty. However, it must be remembered that UNCLOS 1982 became the umbrella rule. This agreement contains the determination of the coordinate points of the maritime borders of the two countries and the right of each country to exercise its sovereignty and explore natural wealth located on the seabed that is the territory of the country.

Article 59 of the 1982 Convention on the Law of the Sea, on dispute resolution in the EEZ, requires states to make agreements fairly with relevant considerations. Indonesia and Timor Leste should establish the equidistance line as the boundary of each country's sea area, or use alternatives to the settlement of the sea border dispute between the two countries directed at the application of the principle of *possidetis Juris* in the ownership of territory between the Republic of Indonesia and the RDTL (Oecusse Pocket area).

One of the impacts of the unclear maritime boundary, such as the maritime boundary between Indonesia and Timor Leste, causes fishing both by Indonesian anglers and by RDTL anglers still often enter the sea areas of bordering countries. The lack of Cross-Border Command Posts between the Republic of Indonesia (RI) and the RDTL has resulted in cross-training through the sea of RDTL citizens from Oecusse to Timor Leste or otherwise naturally through Indonesian waters and will be difficult to identify. Such conditions also occur in the trade sector, so illegal trade often occurs, such as illicit trade between Indonesians and RDTL residents.

There are 7 cross-border posts by land, namely: Oipoli Immigration Post, Napan Immigration Post, Metamauk Immigration Post, Wini Immigration Post, Turrican Immigration Post, Builalo/Laksamaras immigration post and Custom Post, Immigration, Quarantine, and Security (CIQS) integrated into Mountain. Of the 7 existing immigration posts, Motaain Cross-border Post located in the Northernmost Belu Regency is the most qualified and most crowded CIQS integrated post with border crossers above 100 people per day.

The strategic value of the border area is determined among others by the activities that take place within the region, namely: (a) It has the potential of resource which has an impact on the economy and the utilization of regional space significantly; (b) It has a strong connection with activities in other bordering regions, both in the national and regional spheres (between countries); (c) Have a political impact and function of national security defense.

The border area development policy covers two Aspects of development, namely prosperity and Security, which has three objectives: (a) Supporting efforts to improve the living conditions of the socio-Economic community, in order to improve the living Standard and welfare of the

community; (b) Supporting efforts to improve the capacity of Managing the potential of existing areas; (c) Supporting the strengthening of security in the framework of coaching and enhancing the resilience of the region and the creation of national resilience.[10]

The handling of state borders has not been able to run optimally because there are still conflicts between various parties (both horizontally, sectorally, or vertically). With the passing of the era of regional autonomy, the border region is a national strategic area. The strategic value of the border area is determined, among other things, by the activities taking place within the area. Diplomacy between Indonesia and Timor Leste needs to be done regarding clarity on maritime boundaries. The Government of Indonesia is based on the constitution and various applicable laws and the government also prepares various policies that are a reference for the implementation of border management. Indonesia conducts various diplomacy in overcoming the border threat between East Nusa Tenggara and Timor Leste. [11]

Furthermore, the requirements for the Establishment of a basic Guard Tact (GTE), Joint Ministerial Commission (JMC), Joint Line Council (JBC), and Specialized Sub-Panel on Line Outline and Guidelines (TSCBDR) are enforced by ten other Special Sub Advisory groups in monitoring boundaries during border confirmation arrangements between the two countries. [12]

The establishment of a Joint Boundary Supervisory Board in a major meeting presented by JBC Indonesia – Timor Leste included: (a) Agreement on the establishment of a border committee and the composition of its membership of each national border committee as well as 5 technical sub-committees, technical sub-committees on border management, people and goods across borders, cross-border police cooperation along with operational procedures and coordination mechanisms; (b) The border intermediary officer for the border committee for Indonesia is chaired by the Deputy Governor of NTT Province consisting of representatives from the central and regional governments, while Timor Leste is represented by a committee of Foreign Ministers and diplomats formed; (c) The joint border committee will meet twice a year and possibly in additional meetings as needed; (d) Agreement on the merger of technical subcommittees of people and goods across borders and technical committees of border crossers into one technical subcommittee. [13]

In addition, Diplomacy is the right policy in addressing this line of issues. Border diplomacy is a vital element for a state to delaminate its sovereignty. The border is the primary aspect for every state enforcing its territory and exclusion. Also, the border is the central feature of a state's architecture in global politics, orienting the convergence of people with a given territory and notions of a common history, nationality, identity, language, and culture.[14] Diplomacy conducted by the two countries considers the timeframe for the size of the boundary guarantee through meetings and arrangements at each meeting. One of the strategies directed by the Indonesian government is to negotiate with Timor Leste. Negotiations are directed by the Indonesian government in determining regional boundaries with Timor Leste through policies led by several relevant agencies to gain clarity on territorial boundaries. The government negotiates based on the constitution and other related laws, then the government develops various policies that are a reference for the application of maritime boundaries. Indonesia adopted different tactics in overcoming the dangerous line between East Nusa Tenggara and East Timor. [15]

Figure 1

Map of Indonesia's Boundary with Timor Leste [13]



4. CONCLUSIONS AND RECOMMENDATIONS

The lack of clarity about each country's maritime boundaries has resulted in fishing carried out by Indonesian fishermen and RDTL fishermen still entering the sea areas of the bordering countries. This has an impact on the management of biological resources, especially fish resources, there is no clarity, whereas in the management of fish resources a balance is needed between utilization and conservation, so that fish resources can be sustainable. Furthermore, the absence of an Integrated Sea Border Post between RI-RDTL that causes the sea crossing of RDTL citizens from Oucusse to Timor Leste or vice versa through Indonesian waters will be difficult and cannot be detected. Handling national borders so far has not been able to run optimally and is less integrated and there are still conflicts between various parties (both sectoral and vertical) that cannot be avoided. The perception is that there is still an assumption that the handling of the border area only belongs to the government (central), it needs to be reviewed, related to the era of regional autonomy, even though the border area is a national strategic area.

For the Indonesian government to sign a maritime boundary agreement with Timor Leste, it is necessary to review the steps it has taken and to look at the obstacles that hinder the achievement of the maritime boundary agreement.

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