

SETTLEMENT OF LAND BOUNDARY DISPUTES BETWEEN INDONESIA WITH MALAYSIA

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Abstract

No country in the world that hasn't boundaries with other country, the boundaries could be on land, air and sea. State boundaries on land is an important boundary, because most of the world's population living on land. Indonesia has a land boundary with Malaysia in Kalimantan island. That land border is located in West Kalimantan and East Kalimantan. Indonesia and Malaysia land borders still have ten areas in disputes, five of which are located in West Kalimantan. This may occur because of the lack of agreement between the two countries. Vagueness of the legal basis between Indonesia and Malaysia regarding the land borders between two countries is one of the factors causing the border disputes can occur. This research attempts to analyze what is the basis of the land borders between Indonesia and Malaysia in Kalimantan Island. The result are., the basic legal of land boundary between Indonesia and Malaysia is MOU 1973, that oriented to London Treaty which artificially Dutch and English while still colonize Indonesia and Malaysia. In addition, this study also analyzes how to resolve land boundary disputes between Malaysia and Indonesia. Then the result obtained that negotiation is the appropriate way to resolve land boundary disputes between Malaysia and Indonesia.

Keyword; Land Boundary, Kalimantan Island, Dispute Resolve.

INTRODUCTION

The territory of the Unitary State of the Republic of Indonesia, hereinafter referred to as the territory of the state, is one of the elements of the State which is one of the unified land territories, waters, archipelagic and territorial waters along with the seabed, as well as the air space above them, including all sources of wealth contained in them. inside it¹.

The Unitary State of the Republic of Indonesia has sovereignty over its territory and has sovereign rights in its territory and certain other powers to be managed and empowered as much as possible for the welfare and prosperity of the Indonesian

people. Regulations concerning the territory of the state are solely to provide legal certainty and clarity to citizens regarding the territory of their country.

Indonesia's strategic location between two continents and two oceans, causes Indonesia to border with several countries both on land and at sea. Here are 10 (ten) border areas with other countries.

1. The sea border area with Thailand, India and Malaysia, with the territories of Aceh, North Sumatra and the two outer small islands.
2. The maritime boundary area with Malaysia Singapore, and Vietnam with the Riau, Riau Islands and 20 (twenty) outer small islands.
3. The sea borders with the Philippines, Malaysia are East Kalimantan, Southeast Sulawesi, North Sulawesi and 18 (eighteen) outermost small islands.

1 Article 1 number 1 RI Law No. 43 of 2008 concerning State Territory.

4. The sea area with Palau is North Maluku, West Papua, Papua and 8 (eight) outermost small islands.
5. The maritime border areas with East Leste and Australia are Papua, Maluku, NTT, and 25 (two five) outermost small islands.
6. The sea boundary area faces the high seas in Aceh, North Sumatra, West Sumatra, Bengkulu, Lampung, Banten, West Java, Central Java, East Java, West Nusa Tenggara and East Nusa Tenggara and 19 (nineteen) outermost small islands.
7. The land border area with Malaysia is West Kalimantan and East Kalimantan.
8. The land area with New Papua New Guinea is Papua.
9. The land area with Timor Leste is East Nusa Tenggara.

Based on the explanation above, we can see that Indonesia has a land border with 3 (three) countries including Malaysia, Papua New Guinea and Timor Leste, while the border with Malaysia is on the island of Kalimantan, with a length of up to 2002 kilometers, which is in the West Kalimantan region. along 857 kilometers and in East Kalimantan along 1,147 kilometers² in West Kalimantan there are 5 (five) regencies that are directly adjacent to Malaysia. The five borders are Entikong (Sanggau), Tebedu, Badau (upstream kapuas), Lubuk Antu, Jaboi Babang (bengkayang), Serikin, Aruk (Sambas), Sajingan, and Upper Katungau Services (Sintang). Of the five borders, only those services do not have PLB (Cross Border Post), because they are included in protected forest areas.

The consequence is that there are many territorial boundaries between Indonesia and other countries, so it does not rule out the possibility of disputes that arise at

the border. Since the 1985 era, there have been five problematic spots between the Indonesian state and Malaysia, namely the boundary markers at Camar ulan point in Sambas Regency, point D 400 in Bengkayang Regency, point

Gunung Raya in Bengkayang Regency, the boundary line of Mount Raya I and II, where the results of the joint survey were not agreed by the two parties, the Buang Bengkayang river, the Indonesian side, was harmed by the Malaysian people, and the Batu Alam point in Bengkayang Regency. The five boundary points above have yet to meet a common ground, and there are different opinions between the two countries.

Although Indonesia and Malaysia are two allied nations, the Dutch and British colonials who colonized Kalimantan have left a border problem that has not been resolved by the two countries, in 2006 in the waters of the Tanjung Datuk Sea, there was a stir about the frequent Indonesian fishermen who caught fish in Gosong. Niger, Tanjung Datuk Village, Paloh Kaaba Sambas District who was evicted by the Malaysian marine police (polis merin), while in land border areas, starting from the borders of West Kalimantan Province to the provinces of East Kalimantan and North Kalimantan Provinces, the issue of shifting frequently arises. and the lifting of boundaries by Malaysian.

As a result of the fact that the 10 boundary markers of the two countries have not been agreed upon, it will result in the potential for Indonesia to lose 6,402 hectares of land in Kalimantan, the border between the two countries in Bukit Mubau, the heart of the Betung Kerihunan National Park (TNBK), and is the area most prone to source theft. natural resources, all of this is due to the unavailability of a permanent Indonesian National Army (TNI) border guard post. Bukit Mubau is an absorption sector for three rivers, namely, the Batang Aik River (Batang Lupa), the Batang Rajang River which flows into the Sarawak area and the Embaloh River which is a tributary of the Kapuas River that

2 Pontianak Tribune news. Com/201216/05/14 *Indonesia – Malaysia - needs-wall boundary* accessed on 7 October 2016 at 20.00 WIB.

flows in the Kapuas Hulu Regency, West Kalimantan Province.

On June 11, 2008, the Ministry of Forestry acknowledged that there was a halipad in the territory of Malaysia about 7 meters from the pinpoints of the two countries at Bukit Mubau, the position of the halipad was around the stake U0921. One year later in 2009 it was reported that an oil palm plantation company belonging to a Malaysian businessman entered two kilometers into Indonesian territory in Bukit Mubau, the heart of the Betung Karihun National Park (TNBK). These cases are some examples of problems that often occur at the land border between Indonesia and Malaysia in Kalimantan.

The land border between Indonesia and Malaysia in Kalimantan stretches for 1,200 kilometers, starting from Tanjung Datuk in West Kalimantan which borders Sarawak to Sibatik Island in East Kalimantan which borders Sabah. In addition to the land border that still has maritime borders in the West and East Coast regions, the resolution of the border between Indonesia and Malaysia is still being pursued by the governments of the two countries through cooperation in the field of socio-economic development.

The conditions along the land border of Indonesia and Malaysia, there is a high potential for land boundary conflicts because the two countries only put boundaries with stakes that often shift or even disappear, for example on the border between West Kalimantan and Sarawak there are 5,760 boundary stakes, as for the types of stakes³. These are Patok A in the form of a monument building that is usually installed within 300 kilometers, Patok B and C in the form of a small 1 meter high monument planted within 5 to 50 kilometers, and stake D in the form of a monument that is only 30 centimeters high and planted.

3 <http://regional.kompas.com/read/2016> in the Pamtas Task Force. 160 Limit Not Found, accessed 18 October 2016 at 20.00 WIB

The border area between Indonesia and Malaysia is largely a protected forest area with minimal supervision. This is what makes the existence of the boundary markers of Indonesia and Malaysia is prone to shift, some even missing, while the efforts to resolve cases as described above by the two countries seem less serious. It has been proven by the recurrence of similar cases and the incomplete handling of disputes at several points. This is inseparable from the normative point of view or the legal basis which is used as the argument of each country, both Indonesia and Malaysia. Differences of opinion regarding the boundaries of the Indonesian state and Malaysia often do not reach agreement

Based on some of the explanations above, the author will examine more deeply the problems regarding the border in West Kalimantan which have not been agreed upon between Indonesia and Malaysia, especially the land border with the title; Land boundary dispute settlement between Indonesia and Malaysia.

PROBLEM FORMULATION

The problems that will be examined by the authors in this study include;

1. What is the legal basis for determining the land boundary between Indonesia and Malaysia?
2. What is the process and mechanism for resolving land boundary disputes between Indonesia and Malaysia?

DISCUSSION

This research is a normative juridical study, which is a scientific study to find the truth based on the logical logic from the normative side of which the objek is the law itself⁴. This research uses the method The statute approach and the case approach, as for the primary and secondary legal materials obtained by the author, will be analyzed using

4 Johny Ibrahim, *Normative Law Theory and*

analysis description techniques, namely a study by linking legal principles based on a legal theory related to existing legal issues.

Legal Basis for Determining Land Boundaries between Indonesia and Malaysia.

The issue of territorial boundaries between the two countries of Indonesia and Malaysia, where the world has entered the 21st century, is a problem that still exists, every boundary between the two countries must be stated in a form of international legal product that binds the two countries so as not to cause disputes. Likewise with Indonesia which borders both land and sea with several countries, but even though it has been supported in a binding international law, there are still territorial disputes between Indonesia and other neighboring countries. One example is the land boundary between Indonesia and Malaysia in Kalimantan.

The determination of territorial boundaries between Indonesia and Malaysia at the stage of location formulation and delimitation carried out by referring to the principle of *uti possidetis juris* can be said to be successful, this is shown by the formation of the MOU with Malaysia, which used an agreement between the Netherlands and the UK, but at the demarcation stage which was shown through several activities such as surveys and mapping, it still showed problems. The problems that occur at the demarcation stage have triggered disputes over land boundaries on the island of Kalimantan. This will also affect the implementation of regional management, because if the location is problematic, the management of the border areas will also be problematic. It should also be noted that the implementation of regional management is very closely related to the doctrine of effectiveness, because the implementation

of area management can be carried out by showing the existence of government administration activities, meaning that it must be shown by an agreement between Indonesia and Malaysia as well as in carrying out surveys and mapping must be in accordance with the agreement and not. there are problems in the field.

The boundaries of Indonesia and Malaysia in Kalimantan still leave 10 points in dispute, because the two countries still do not agree on their territorial boundaries. This is because there are still perceptions about the legal basis used. Previously, Indonesia and Malaysia had made the 1973 MOU which was a product of international law that binds Indonesia with Malaysia as the legal basis for the territorial boundaries of the two countries.

Before Indonesia and Malaysia became independent, the Netherlands and Britain had made a product of international law in the form of a treaty, which was called the London Treaty. The treaty is still used by Indonesia and Malaysia as a basic legal orientation in determining territorial boundaries on the island of Kalimantan, however in international law there is also a principle called the principle of *pacta tertiis nec nocent prosunt*, which states that an agreement does not give rights or impose obligations on parties that are not bound by the agreement. This means that Indonesia and Malaysia cannot have rights and cannot be held accountable for the London Treaty.

The 1973 MOU which was oriented to the London Treaty, also did not work as expected, this is because the tactics in the field are different from what is written in the London Treaty, in the Vienna Convention in 1969, which in article 48 paragraph (1) explains, a The state can make an error which can cancel the country's agreement to be bound by a treaty if the mistake is related to a fact or a situation which was considered by the country at the time the agreement was made and the mistake is the main basis of its agreement to be bound by the agreement.

Research Methods, Malang; PT. Bayumedia, 2011 p. 57.

Furthermore, Article 49 of the 1969 Vienna Convention states “if a country makes an agreement based on fraud by another country, the first country can use the fraud to be able to cancel its agreement to be bound by the agreement”. The difference in fact finding in the field is what will be used as a mistake which can cancel the state’s agreement to be bound by an agreement..

Based on historical facts, from the colonial period to independence, the basis for the agreement on the boundary markers of Indonesia and Malaysia is as follows;

a. The Dutch - British Convention, 1891

This convention was signed by the Netherlands and England on 20 June 1891 in London, in this convention various matters relating to general boundary determination such as watersked determination and special matters relating to the existence of cases in certain areas are regulated.

b. Dutch-British agreement in 1915.

Agreement on the joint report on the confirmation of the border between the Netherlands and the UK in Kalimantan on 28 September 1915. This agreement was signed in Tawao on 17 February 1913 by IRs respectively. J.H.G Schepers is a member of the Triangulation Brigade (now part of the Geodesy

Subdinbin Map of Dittopad in Bandung) and Marine Lieutenant E.A Vreede representing the Dutch Government, while from the British side is represented by H.W.I

Bunbury and G.ST.V. Kaddel, both of them are mapping experts.

The joint affirmation was made by both parties based on the Treaty of 1891. The results of the agreement were made by representatives of the two governments in London on September 28, 1915.

c. Dutch-British Convention 1928

This Convention was signed by the Netherlands and England in The Hague on the 28th Maret 1928, which

was subsequently ratified by the two countries on August 6, 1930, while the essence of this Convention is the methods for determining the boundaries of the territories of the two countries in the Jagoi region between Mount Api and Gunung Raya, which is part of the Treaty of 1891.

d. MOU Indonesia and Malaysia 1973

The agreement document between Indonesia and Mlalaysia is based on the conventions of 1891, 1915 and 1928, this MOU agreed on matters relating to the implementation of surveys and the confirmation of the boundaries between Indonesia and Malaysia, among others;

1. The Joint Technical Committee organization.
2. Determination of priority areas
3. Survey procedures
4. Implementation stages
5. Financing
6. Security unit support
7. Logistics and communication
8. Immigration
9. Provisions for customs and excise

► **Minutes-minutes between Indonesia and Malaysia.**

Minutes contain matters that have been discussed by both delegations, both the progress of the survey implementation and the confirmation of the boundaries of the two countries as well as the agreements on problems that arise during the survey and the confirmation of boundaries.

In Indonesia, the products of national law in the form of laws and regulations regarding territorial boundaries between countries are still not all regulated. This is due to by the absence of a pattern of international legal products that bind Indonesia and its directly bordering countries. So far, most of the international legal products that regulate the existence of territorial boundaries in Indonesia are in the form of MOUs not

international agreements.

Border issues are part of the country's defense and security problems. Therefore, each country has the authority to determine its own jurisdiction, however, the determination of territorial boundaries must also take into account the authorities of other countries through bilateral cooperation and agreements, for example; survey activities and determination of land and sea boundaries between Indonesia and other countries, and as long as it is still contained in the MOU and other agreements regarding land and sea boundaries between countries⁵

In this regard, Article 25A of the 1945 Constitution of the Republic of Indonesia instructs the government to make a law on the determination of state boundaries that can be used as a guideline in defending sovereignty, fighting for national interests, national safety, strengthening resource potential by empowering the prosperity of the entire Indonesian nation. This is realized in the Law of the Republic of Indonesia Number 43 of 2008 concerning the territory of the country, in Article 6 paragraph (1) letter (a), states;

- (1). State boundaries as stipulated in Article 5, include; On land bordering the Territory of Malaysia, Papua New Guinea and Timor Leste. Then continued in Article 6 paragraph (2), which reads;
- (2). The borders of the state as meant in paragraph (1), including coordinate points, are determined based on bilateral and/or trilateral agreements.

From the quotation of the contents of the law above, it is clear that the agreement on

territorial boundaries between Indonesia and Malaysia is very important to be stipulated in a form of international law that is binding and has permanent legal force.

In the elucidation of Law of the Republic of Indonesia Number 43 of 2008 concerning State Territory Article 6 paragraph (1) letter (a) explains that;

The land boundaries of the state in this provision are the boundaries agreed upon by the Dutch East Indies government and the British Government in Kalimantan and Papua, and the Portuguese government on the island of Timor which subsequently became Indonesian territory based on the principle of *uti possidetis juris* which applies in international law. Based on these principles, an independent country inherits the territory of its former colonial state.

The land boundary between Indonesia and Malaysia was determined on the basis of the Dutch and British Indies Conventions in 1891, 1915 and 1928.

The land boundary between Indonesia and Timor Leste was established on the basis of the 1904 convention on the boundaries of the Dutch East Indies and Portugal and the 1914 Permanent Court of Arbitration (PCA) Decree.

The land boundary between Indonesia and Papua New Guinea was established on the basis of the 1895 Netherlands Indies boundary agreement.

The application and principles of *uti possidetis juris* in determining land boundaries between Indonesia and Malaysia need to be reviewed, this is due to the fact that in the field has changed a lot with what was written in the agreement made by the Dutch and British Indies.

The problem of confirming territorial boundaries in a law becomes increasingly important in line with the rapid changes in various regions due to the influence of the global situation. The problem of state boundaries is not only related to threats from outside, but is also related to issues of

5 Moh Mahfud MD, *Management of Our Country Border*; a paper presented at the Seminar of the Indonesian Chancellors Forum; Excellence, Pioneering, Struggle and Higher Education Service in Building National Competitiveness and Dignity, at Kahar Mudzhakir Auditorium UII, Yogyakarta, August 5, 2010, p. 5.

territorial sovereignty and the right of every citizen to exploit their natural resources. Because the sources of wealth are increasingly limited while the population is increasing, the borders are increasingly sensitive to the emergence of disputes and conflicts.

The land border between Indonesia and Malaysia has indeed been stipulated in the agreement, but differences of opinion have not reached an agreement at some point so that problems have arisen several times, both in terms of land territories and seizure of islands.

The boundary measurement in Kalimantan refers to the London Treaty of 17 Maret 1824, between England and the Netherlands regarding the colonies. The London Treaty was signed by Hendrik Fagel and Anton Reinhard Faclk from the Netherlands, as well as George Canning and Charles William Wynn Watkin from England, in the London Treaty on the Malay archipelago, Singapore, controlled by Britain and the southern area controlled by the Netherlands, one of the references to the London Treaty is Indonesian and Malaysian borders which are based on watershed, meaning the separation of river or mountain streams, mountain ranges, natural boundaries in the form of ridges as a sign of separation

The boundary between Indonesia and Malaysia in Sambas, including Camar Wulan refers to the Dutch Van Doorn map of 1906, the Sambas Borneo map (NB 120E 10908/40 Greenwind) and the 1935 Federated Malaysia State Survey map. Based on this agreement, the Indonesian border with Malaysia in Camar Wulan curves like a horseshoe, but changes to a straight line following the MOU in Kota Kinibalu, Sabah State, Malaysian Federation in 1974 and in Semarang, Central Java Province in 1978.

Settlement of Land Boundary Disputes between Indonesia and Malaysia.

Indonesia and Malaysia prioritize diplomacy or peaceful settlement, because Indonesia and Malaysia are allied countries.

Indonesian people who live in border areas such as Jagoi Babang District, Bengkayang Regency, West Kalimantan, and Serikin District. Sarawak also has close kinship, the language used is the same.

An effective method of international dispute resolution for Indonesia and Malaysia in resolving this land boundary case is through negotiation. The efforts to resolve land border disputes through peaceful negotiations carried out by the two countries use the MOU and joint mapping surveys as the basis for dispute resolution.

Negotiations conducted by Indonesia and Malaysia were pursued through the formation of a special team to handle border issues. Indonesia and Malaysia routinely hold meetings of the two parties' delegations at the level, Joint Boundary Committee, Joint Boundary Technical Committee and Co-Project Director.

Negotiations can be seen when at the end of May 2014 the Malaysian government built a lighthouse in the Tanjung Datu area, Paloh District, West Kalimantan, when the construction of the lighthouse was deemed to trigger an international dispute, the Indonesian and Malaysian governments immediately held a meeting to discuss this case. The meeting held by the government through the Ministry of Defense, TNI and the Ministry of Foreign Affairs was a form of negotiation.

CONCLUSION

Based on the description of the research results, conclusions can be drawn about the legal basis for determining land boundaries between Indonesia and Malaysia, along with methods of land boundary dispute resolution, among others;

The legal basis for determining land boundaries between Indonesia and Malaysia.

The legal basis for the peg agreement between Indonesia and Malaysia is;

- a. The Dutch-British Convention, 1891.

This convention was signed by the Netherlands and England on June 20, 1891 in London. This convention regulates various matters relating to the discovery of general boundaries, such as determining watersheds and special matters relating to cases in certain areas.

b. The 1915 Dutch-British Agreement

Agreement on the joint report on the confirmation of the border between the Netherlands and the UK in Kalimantan on September 28, 1915, this agreement was signed in Tawao on February 17, 1913, respectively by IRs. J.H.G Schepers, a member of the Triangulation Brigade (now the geodesy section of the Dittopad Map subdinbin in Bandung), and Marine Lieutenant E.A. Vreede representing the Dutch government. Meanwhile, the British Party was represented by H.W.I. Bunbury and G.ST.V. Keddel, both mapping experts.

The joint affirmation was carried out by both parties under the Treaty of 1891, while the result of the agreement was made by representatives of the two governments in London on September 28, 1915

c. The Dutch-British Convention, 1928

This convention was signed by Belanda and Britain in The Hague on March 28, 1928, then ratified by the two countries on August 6, 1930, while the essence of the convention is regarding the methods of determining the territorial boundaries of the two countries in the Jagoi region between Gunung Api and Gunung Raya , which is part of the Treaty of 1891.

d. MOU Indonesia and Malaysia 1973

This agreement document between Indonesia and Malaysia is based on the conventions of 1891, 1915 and 1928, in this MOU several matters have been agreed regarding the implementation of surveys and the

confirmation of the boundaries of Indonesia and Malaysia.

e. Minutes-minutes between Indonesia and Malaysia.

Minutes contain matters that have been discussed by both delegations, both the progress of the survey implementation and the confirmation of the boundaries of the two countries as well as the agreements on problems that arise during the survey and the confirmation of boundaries.

The 1973 MOU is a product of international law which until now is still used as the legal basis for determining the boundaries by Indonesia and Malaysia. However, these agreements can still be reviewed, because the 1973 MOU was oriented towards the London Treaty (1891 Convention) which was no longer relevant to be applied. This is due to various things, including;

- a. The natural conditions of the cross-country are not in accordance with what is written in the London Treaty, such as the absence of a watershed after a joint measurement by the Indonesian and Malaysian parties.
- b. The principle of *pacta tertiis nec prosunt*, which states that an agreement does not give rights or impose obligations on the parties bound to the agreement. This means that Indonesia and Malaysia cannot have rights and cannot be held accountable for the London Treaty.

The affirmation of land boundaries between Indonesia and Malaysia is only regulated in a legal product in the form of an MOU which is *mudus vivendi* in nature, so this legal product is only temporary and is no longer valid if there are new, more detailed regulations.

Settlement of land boundary disputes between Indonesia and Malaysia

The method of international dispute resolution that has been carried out by

Indonesia and Malaysia in resolving the land border case is by way of negotiation, which is carried out by Indonesia and Malaysia through the formation of a special team to handle the border committee issue. Indonesia and Malaysia routinely hold meetings of the delegations of the two parties at the level of the Joint Boundary Committee, the Joint Boundary Technical community and the Co-Project Director.

SUGGESTIONS

Based on the studies and research results that have been carried out, the authors suggest the following;

1. For the Government of the Republic of Indonesia
 - a. The Government of the Republic of Indonesia should formulate a national legal product that regulates the land boundary between Indonesia and Malaysia on the island of Borneo.
 - b. The Government of the Republic of Indonesia should pay more attention to infrastructure, education, health and economic development in the Kalimantan border area so that Indonesian people who live on the border do not depend on Malaysia.
 - c. The Government of the Republic of Indonesia, through the local Regional Government, must conduct socialization or outreach activities more frequently to the Indonesian people, especially those on the border in order to minimize shifts or eliminate land boundary markers between Indonesia and Malaysia.
2. **For the Ministry of Foreign Affairs of the Republic of Indonesia.**

The Ministry of Foreign Affairs of the Republic of Indonesia must be even more active in diplomatic efforts regarding the confirmation of land boundaries

between Indonesia and Malaysia on the Island of Kalimantan so that disputes are quickly resolved.

3. For the Indonesian people
 - a. The Indonesian people, especially those in the border area, must participate and play an active role in guarding the border area and participate in reporting to the authorized officer if they know that there are boundary markers that have shifted or are missing.
 - b. The Indonesian people, especially those living in border areas, should obey the regulations, by not entering Malaysia illegally and not removing or removing existing boundary markers.

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