



The Role of the National Agency for Border Management in Maintaining the Territorial Sovereignty in the Land Bord between Indonessia and Timor Leste

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ABSTRACT

Keywords

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Border management is an indication of a country's seriousness in managing its borders, one of which is indicated by the existence of a set of rules of the game in the form of legal-formal rules that are marked and comprehensive. The seriousness shown by the Government of Indonesia by issuing Law Number 43 of 2008 concerning the territory of the country, this law does not determine state boundaries along with border coordinate points because in international law it is not justified to determine state boundaries unilaterally, but must go through an agreement set forth in the form of a border agreement between countries. Nevertheless, this law explains that in which countries Indonesia borders both land and sea, it is included in the management of state borders, both at the central and regional government levels, which happen to be state borders. Indonesia has land borders with 3 countries, namely Malaysia, Papua New Guinea and Timor Leste. This research will discuss the role of the national border management agency in maintaining territorial sovereignty on the land border between Indonesia and Timor Leste. The Methods use normative legal research. the results showed that the scenario of border management in the territory of Indonesia and Timor Leste by emphasizing the welfare aspect in an effort to raise the standard of living of the people living on the border of the two countries. This is in line with the direction of development and development of the border area between Indonesia and Timor Leste to be allocated and utilized for the welfare of its people.



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Introduction

The principle of respect for the integrity and sovereignty of a country's territory (territorial integrity and sovereignty), which is found in several international legal instruments, reflects the importance of the state's territory. The restriction of intervening in a country's

internal problems, among other things, indicates recognition of a country's sovereignty and territorial integrity. Changes in a country's territorial status have an impact on the state's sovereignty over the territory, particularly the legal impact on state sovereignty, which includes the problem of citizenship for the local population.

As a result, it appears that the firmness and clarity of a state's borders are legal guidelines for maintaining a country's integrity and sovereignty. The certainty and clarity of the sovereign boundaries of a country is very fundamental, as a necessity for the administration of the state and the Indonesian people in their activities and relations with other countries, so as to guarantee the protection and legal certainty of the state regarding the boundaries of its sovereign territory (Hadiwijoyo, 2011).

Maintaining sovereignty, security, and prosperity for Indonesia's whole territory and people, including the land border area between Indonesia and Timor Leste (Figure 1), is a key component of the major endeavor to achieve national objectives. The government protects the entire nation and all of Indonesia's bloodshed, promotes public welfare, teaches the nation's life, and contributes in carrying out international order, as stated in paragraph IV of the Preamble to the 1945 Constitution. The border area has a strategic significance as the front line in the construction of security in the border area, which will contribute positively to regional and national defense and security. The enactment of state sovereignty over the community and the enactment of a specific government are both determined by territory. As a result, territorial boundaries are critical because they are an early indicator of the validity and end of a country's sovereignty function, as well as an early indicator of the validity and end of the sovereignty functions of other countries. As a result, border regulations must exist and be implemented properly, or else a problem may arise.



Figure 1. Map of Timor Leste

Source: www.smarttraveller.gov.au

For Indonesia, which has maritime and land border areas with ten countries (Madu, 2010), border issues are also a critical matter that has yet to be resolved completely. The border dispute between Indonesia and Timor Leste, particularly on land, is a one-of-a-kind situation (Djalal, 2002). It is due to the land border of the two countries contain of two parts. First, the border around the Oecussi enclave is an enclave area which is part of the sovereignty of Timor Leste which is located in West Timor (which is part of the territory of the Unitary State of the Republic of Indonesia (NKRI) in East Nusa Tenggara Province)

(Deeley, 2001). /NTT) and is about 60 kilometers apart from its parent area. Second, the 149.9 km long border that divides the island of Timor into West Timor in the west and Timor Leste in the east, until now both countries are still faced with problems related to land borders, both from the aspect of socio-economic development and defense-security.

The history of the border between Indonesia and Timor Leste (Figure 2) cannot be separated from the history of the entry of the Dutch into the territory of Timor which then divided the territory into two parts, namely Portuguese Timor which was centered in Dili and West Timor which had its capital in Kupang and this division actually lasted since the end of the 17th century and set out in a clause A Convention for the Demarcation of Portuguese and Dutch Dominions on the Island of Timor 1904 (1904 Treaty). In the 1904 Treaty signed by both parties in The Hague, Article 1 stated that the Netherlands handed over its sovereignty in the Maucatar (East Timor) area to the Portuguese, while Article II stated that in return the Portuguese handed over the central part of Timor to the Dutch (Wuryandari et al., 2009).

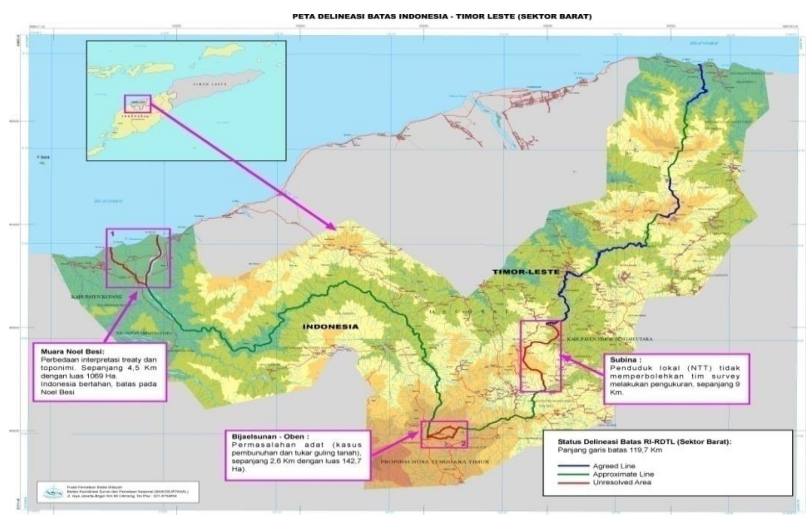


Figure 2. Indonesia-Timor Leste border in Kupang and TTU regions

Source: BNPP NTT Province, 2016

The conflict between the Dutch and the Portuguese in fighting over the dominance of trade in Timor did not end, when both signed the Contract of Paravicini which divided the island of Timor into two parts, namely the western part (centered in Kupang) belonged to the Dutch and the eastern part (centered in Dili) belonged to the Dutch. Portugal and in the contract did not mention the details of the existing boundaries. It was only in 1914 that the two countries agreed to determine the existing boundaries where the Permanent Court of Arbitration 1914 (PCA 1914) determined West Timor and East Timor as separate regions, in Article I of the agreement it was stated that the kingdoms in West Timor belongs to the Netherlands and the kingdoms in East Timor belong to the Portuguese, Article II stipulates that the Dutch still control the Maucator area and the Portuguese control the Oecussi enclave area in the western border region.

The problem of border management and defense is intimately connected to the basic conception of the state as an entity with sovereignty, population, and territory, as well as the interpretation or perception of the threats it faces. As a result, border management and defense is defined as all efforts to realize the existence of a country, which is characterized

by the protection of sovereignty, population, and territory from various types of threats. The discourse on border threats has been dominated by difficulties and challenges in border areas, particularly in land boundaries, such as national borders, shifting border stakes, economic activity, illegal crossing and smuggling, and theft, which are still a problem in border areas. Border issues are multi-faceted, involving a variety of important variables such as state jurisdiction and sovereignty, politics, social and economic factors, and defense and security. The National Border Management Agency's role in maintaining the sovereignty of the Unitary State of the Republic of Indonesia on the land border between Indonesia and Timor Leste will be discussed in this article.

Methodology

Research is a methodologically, systematically, and consistently carried out scientific activity involving analysis and construction. Methodological refers to the use of a specific method or approach, systematic refers to the use of a system, and consistent refers to the absence of inconsistencies within a given framework (Soekanto & Mamudji, 2010). As a result, research is carried out by analyzing and constructing existing data. Research is an effort to learn more about something that isn't clear, unclear, or even unknown. Methodology is a rational and systematic study of the concepts that guide scientific investigation. It is a basic principle, not a method (way or design for conducting research) (Sumardjono, 2008). There are two forms of legal research based on the objective of the research itself: normative research (library) and empirical research (field). Normative research (library) is legal research that examines secondary data or library resources, whereas empirical research (field) is legal research that examines original data (Soekanto & Mamudji, 2003). Based on the division of the types of research, based on the nature of this research is descriptive research, namely research that intends to provide data that is as accurate as possible regarding the role of the national agency for land border management between Indonesia and Timor Leste. Based on its form, this research is evaluative and prescriptive research, evaluative research because this research intends to provide an in-depth analysis of border management, especially land borders, while prescriptive research because this research will also provide appropriate solutions based on the principles of international law to overcome obstacles. obstacles in managing land borders, especially Indonesia and Timor Leste, and the purpose of this legal research is normative legal research and literature.

Results and Discussion

Border Management Based on Law Number 43 Year 2008 concerning State Territory

Border management is an indication of the critical concerns of a country in managing its borders, one of which is indicated by the existence of a set of rules in the form of legal-formal rules that are marked and comprehensive. Seriousness is shown by the Government of Indonesia by issuing Law Number 43 of 2008 concerning State Territories, this law does not stipulate state boundaries accompanied by border coordinate points because

international law is not justified in setting state boundaries unilaterally, but must go through agreement as outlined in the form of a border agreement between countries. However, in this law, it is explained in which countries Indonesia has borders, both land and sea, including in the regulation of state border management, both at the central and local government levels, which happen to be state borders.

The authority of the Central Government in managing the country's territory and border areas according to this law is as follows:

- a. Establish policies for the management and utilization of the country's territory and border areas;
- b. Hold negotiations with other countries regarding the determination of state boundaries in accordance with the provisions of laws and regulations and international law;
- c. Build or make a sign of the country's territorial boundaries;
- d. Collecting data and naming islands or islands as well as other geographical elements;
- e. Give permission to international flights to cross the territorial airspace on the paths that have been determined in the laws and regulations;
- f. Granting permits for innocent passage to foreign ships to traverse the territorial sea and archipelagic waters on the paths that have been determined in the laws and regulations;
- g. Carry out surveillance in the additional zones needed to prevent violations and punish violators of laws and regulations in the customs, fiscal, immigration, or sanitary fields within the territory of the country or the territorial sea;
- h. Establishing airspace that is prohibited to be crossed by international flights for defense and security;
- i. Make and update a map of the country's territory and submit it to the House of Representatives (DPR) at least once every 5 (five) years; and
- j. Maintain the integrity, sovereignty and security of the country's territory and border areas.

Article 11 paragraph (1) states that in the management of state territory and border areas, the provincial government is authorized to:

- a. Implement government policies and establish other policies in the context of autonomy;
- b. Coordinate development in border areas;
- c. To develop border areas between regional governments and/or between regional governments and third parties; and
- d. Supervise the implementation of border area development carried out by the district/city government.

In Article 12, it is stated that the Regency/City Government in the management of state territory and border areas has the authority to: implement government policies and establish other policies in the context of regional autonomy and assistance tasks; guard and maintain boundary markings; coordinate in the framework of implementing development

tasks in border areas within its territory; and develop border areas between regional governments and/or between regional governments and third parties. To manage state boundaries and manage border areas at the central and regional levels, the government and local governments establish national management agencies and regional management agencies. The management body is led by a head of agency who is responsible to the President or regional head in accordance with his authority.

Elements of this institutional membership come from elements of the government and local governments considering the strategic position of the border areas related to matters such as state sovereignty, territorial integrity, law enforcement and people's welfare. The border management agency is tasked with: determining the policy of the border development program; determine budget requirements plan; coordinating implementation; and carry out evaluation and monitoring. In Law No. 43 of 2008 the commitment to manage the territory of the state, especially the borders between countries, is getting stronger, this law clearly emphasizes that the purpose of regulating the territory of the state is to guarantee territorial integrity, sovereignty and order for the welfare of the whole nation, as well as in this law underline the authority of the government both centrally and regionally in border areas is to carry out development and coordination to make it happen, even this law has stipulated the establishment of an institution that specifically handles border area management.

Definition of Borders in the Perspective of International Law

A border is defined as a demarcation line between two sovereign countries in general. When a country's or state's borders were first constructed with other countries, citizens in particular places did not notice the difference, despite the fact that they were typically of the same ethnicity (Darmaputera, 2009). The word border or border according to Guo (1996), implies a limitation of a political area and a movement area, while the border area implies an area that plays an important role in political competition between two different countries, which is an area that limits two interests. different jurisdictions (Starke, 2007). International Land Borders of Indonesia - Timor Leste is as follows Figure 3 below:

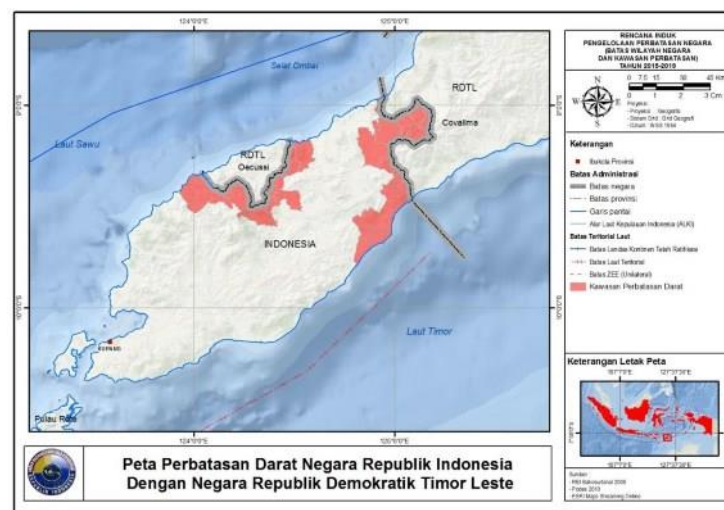


Figure 2. International Land Borders of Indonesia - Timor Leste
Source: National Agency for Border Management, 2013

An ideal state territory has state boundaries so that the state can apply its sovereignty in accordance with its rights and obligations as a subject of international law. Permanent state borders, which are agreed upon through treaties, are not always respected and are frequently breached. This occurs as a result of a change in the structure and order of political life that prompts the desire to go to war by disputing current state borders; new agreements to separate to establish a new state or the merger of regions may also arise as a result of the war. Border areas, as a geographical location that has always been a site of power struggles between countries, particularly highlighted by the effort to increase state borders, are inextricably linked to the formation and demise of states.

The state's territory is defined as the area in which humans who are citizens or inhabitants of the country in question live and carry out all of their activities. National boundaries are frequently defined as an imaginary line drawn above the earth's surface that divides one country's territory from that of another. The border is part of a state's right to territory to the extent that it is officially acknowledged by treaties and commonly recognized without a statement. Each country has the authority to decide the outermost frontier of its jurisdiction on this basis (Andi, 2013).

Thus, the task of border control and territorial integrity is the main task of the state to protect its citizens within its territory while at the same time protecting the autonomy of its people. For this reason, the role of the state at the border is the duty of protection so that outsiders who will enter a country must be stopped and existing lands should not be seized by unauthorized foreign parties. The border of a country shows its own complexity which shows that national borders do not only divide different entities. It even divides the same ethnicity, because of the history of different nationalities by the same ethnicity.

According to political geographers, borders can be divided into two types: boundaries and frontiers. The two definitions have different meanings and implications, despite the fact that they are complementary and have strategic importance for a country's territorial sovereignty. Because of its location in front (front) or behind (hinterland) of a country, the border is called a frontier. As a result, a frontier is also known as a foreland, borderland, or march, whereas the term boundary refers to the binding or limiting role of a political unit, in this case the state. Everything in it is connected and interconnected to form a coherent whole. When a country is viewed as a sovereign spatial unit, boundaries are most appropriate to utilize.

According to Carlson, boundaries are defined as "an international boundary marks the outer limit of the area over which government has sovereignty", which can be interpreted as a sign that limits the outermost part of the territory controlled by the state. From this understanding, it appears that the elements that can be learned are:

- a. There is a sign;
- b. Serves as a regional delimiter;
- c. Controlled by the state, not others; and
- d. Located at the outermost point.

In other words, it can be defined that the sign which is a territorial boundary is an expression of the sovereignty of a country which is where the sovereignty ends because it is in the outermost part of the country.

The Role of the National Border Management Agency (BNPP) in Maintaining the Sovereignty of the Land Border Area between Indonesia and Timor Leste

Since the Proclamation of Independence of the Republic of Indonesia on August 17, 1945, the Government of the Republic of Indonesia is obliged to manage state borders properly and correctly, so that state sovereignty in border areas is well maintained and the welfare of people in border areas can be fulfilled. Indonesia as an archipelagic country with thousands of islands spread over a wide area of marine waters and a long coastline, illustrates that 2/3 of Indonesia's territory is the sea, with all the consequences and implications for the management of the country's territorial borders. With this position, geopolitically, Indonesia can also be said to be a stabilizer for the Southeast Asia region considering its large area and population. Although Indonesia does not face serious border conflicts, armed clashes with neighboring countries, but a number of Indonesian territories bordering neighboring countries there are still a number of border area claims issues, which each party feels has the force of law (Badan Nasional Pengelolaan Perbatasan, 2012).

The management of national border areas still faces various problems, including:

- a. The condition of the people in the border areas is still isolated and the socio-economic conditions are still lagging behind, even though the potential resources are quite large;
- b. The condition of infrastructure is minimal and the posts in the border areas are not adequate, so that the supervision of the border areas is still weak;
- c. There have been cases of cross-border violations committed by Indonesian citizens to neighboring countries and vice versa;
- d. There are socio-economic disparities in the community in the border areas that can cause jealousy; and
- e. Some land and sea boundaries with several neighboring countries have not been completed.

Because of the complexity of the problems and implications of national boundaries, because of the vast territory of Indonesia as an archipelagic country bordering a number of countries, both on land and sea, a comprehensive and effective border management is needed. Management of state boundaries is necessary and very important to provide legal certainty regarding the scope of state territory, authority to manage state territory, and sovereign rights. In addition to managing state boundaries, it is also necessary to take sides and special attention to efforts to develop areas along the inside of the boundary line, or border areas, to ensure the continued election of state sovereignty, regional security, and the welfare of local communities.

Border management is an important aspect of state management, and it is an activity that involves handling or managing regional boundaries and border territories. In keeping with

the reorientation of development plans in border areas, the government was mandated to establish a Border Management Agency at the central and regional levels to manage border areas by Law Number 43 of 2008 respecting State Territory (Mangku, 2017). Based on the mandate of the law, the Government through Presidential Regulation Number 12 of 2010 established BNPP, but later changed it with Presidential Regulation Number 44 of 2017. In the context of managing state boundaries and border areas, BNPP prioritizes synergy of policies and programs, so that weaknesses and limitations So far, namely the ad-hoc and partial and ego-sectoral handling of state borders, which have resulted in overlapping and redundancy as well as mistargeting and inefficiency in border management, it is hoped that these can be improved.

BNPP membership consists of 32 Ministries/Non-Ministerial Government Agencies and 12 Governors in border areas. Thus, it is hoped that it will be able to become a leverage to strengthen and streamline the tasks carried out by Ministries and/or Institutions as well as Regional Governments in realizing the border area as the front porch of the Unitary State of the Republic of Indonesia. Through coordination with Ministries and Institutions that are directly related to the handling of state borders, BNPP is expected to encourage and facilitate the creation of policies and programs for managing state boundaries and developing integrated and integrated border areas.

The scope of the main task of BNPP is to manage state boundaries and improve the welfare of people in border areas which is a crystallization of the mandate of Article 15 of Law Number 43 of 2008 and Article 3 of Presidential Regulation Number 12 of 2010, as follows:

- a. Establish policy on border development programs;
- b. Determine the budget requirement plan;
- c. Coordinate implementation; and
- d. Carry out evaluation and supervision of the management of state boundaries and border areas.

Management of regional boundaries and border areas requires Coordination, Integration, Synchronization, and Simplification (KISS). For all this, it is related to several documents of national legislation, which include: Law Number 17 of 2005 concerning the National Long-Term Development Plan (RPJPN) of 2004-2025, Presidential Regulation Number 5 of 2010 concerning the National Medium-Term Development Plan (RPJMN) of 2010-2014, Law Number 43 of 2008 concerning State Territory, Law Number 26 of 2007 concerning Spatial Planning, Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, Presidential Regulation Number 78 of 2005 concerning the Management of Outermost Small Islands, and Presidential Regulation Number 12 of 2010 concerning the National Border Management Agency.

Such legislation has a close relationship with efforts to accelerate the settlement of state boundaries, and reflects a paradigm shift and policy direction for border area development from which so far tends to be "inward looking" to "outward looking" as a gateway for economic and trade activities with neighboring countries. In addition, the approach to managing state borders is reflected in a shift by prioritizing a combination of a prosperity

approach which is carried out in harmony with a security approach and an environmental approach.

The welfare-centered method is used to manage state boundaries and border areas, and it works in conjunction with the other two approaches, which are focused toward security and the environment. The welfare approach is essentially an endeavor to improve the wellbeing of people in border areas based on the development of economic and trade activity. Economic and trade development is focused on the superior commodities of each border area and its environs, which differ in terms of superior traits and potential.

The welfare method is a logical result of the new border area development paradigm, which shifts development policies from "inward looking" to "outward looking," allowing border areas to serve as a hub for economic activity and trade with adjacent countries (Kausar, 2009). The welfare concept is spatially expressed in the development of major cities near national boundaries, which will serve as growth engines for the surrounding territories. The resolve to make the border a center for regional and national economic development is referred to as building growth centers in border areas. The establishment of key activity centers in border areas necessitates multi-sectoral support as well as government policies that are friendly to business, including incentives that can actually attract investors. Other measures are also required, particularly the rapid construction of basic facilities and infrastructure to enable the growth of regional economic potential and commerce, as well as acceptable public services in border communities.

The border area is viewed as a zone directly next to neighboring countries in the security approach. Furthermore, border waters play an important role in the economies of many countries because they serve as the path of global trade while also storing vast amounts of natural resources. Efforts to secure and protect measures to achieve the state of the national jurisdiction's waterways, which are controlled and can be used as much as feasible for national interests. As a result, in addition to considering the border area as a strategic value for territorial integrity, the security strategy also serves to preserve the interests of national maritime development.

The notion of a defense and security space structure established in the land border area is to form a "belt of command" along the state border. As a monitoring area, this state border command belt takes the shape of a buffer region or security zone that extends up to 4 kilometers from the border line. Physical constraints, such as topographical heights, soil slopes, and the presence of rivers, are also taken into account. The installation of control posts along the command belt, which serve to monitor state resource assets as well as the front line of defense, is one example of this surveillance. Meanwhile, security measures are being implemented in the sea border area, specifically around the outermost small islands, the Indonesian archipelagic sea lanes, and the outer boundaries of the jurisdictional waters.

An important perspective in maintaining environmental sustainability is to take an environmental strategy, which involves perceiving and paying attention to environmental concerns as a significant factor in border management. This environmental strategy is operationalized through the necessary development phases, including maintaining environmental balance in the development process, particularly in the control of space use

in land border areas. The ban of agriculture activities in protected areas and other conservation areas is under control.

Conclusion

The role of BNPP in managing the land border between Indonesia and Timor Leste includes three approaches. The scenario of border management in the territory of Indonesia and Timor Leste by emphasizing the welfare aspect in an effort to raise the standard of living of the people living on the border of the two countries. This is in line with the direction of development and development of the border area between Indonesia and Timor Leste to be allocated and utilized for the welfare of its people. The two countries have focused on the approved people-oriented development program activities and through steps, for example accelerating the completion of the regional delimitation problem which until now the two countries are trying through negotiations to resolve existing problems, fulfilling regional economic infrastructure needs, accelerating the development of regional accessibility, improvement of education and health facilities and infrastructure in the context of improving the quality of human resources, as well as the development of a people-based economic sector, the welfare approach used by Indonesia by looking at the natural physical and socio-economic conditions of the local community which aims to provide a decent life in the border area.

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