

The Urgency of Regulating Maritime Boundaries Between the Republic of Indonesia and the Democratic Republic of Timor Leste in Relation to the Determination of Indonesian Archipelagic Sea Lanes

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ABSTRACT

The Democratic Republic of East Timor, known as Timor Leste, used to be part of Indonesia before deciding independence through a referendum in 1999. After independence, Indonesia and Timor-Leste need to set the borders of each country. Because if not regulated then there is no legal certainty, law enforcement for the problem of theft of natural resources, and others become weak. The method used in this research is normative with approach of law and concept. The collection of legal materials was done by literature study and analyzed by descriptive analysis technique. As a result, the territory of Indonesia experienced a change after the independence of East Timor. On land related to the enclave Oecussi area located in Indonesia while in sea cover Timor Sea, Wetar sea and Ombai strait, including Leti strait in connection with Indonesian archipelagic sea lanes. Indonesia and Timor-Leste must immediately resolve the border issue by making a treaty which will be the legal basis, in addition to the 1982 Sea Law Convention which has been the guideline in determining the marine zone boundary.

KEYWORDS: Indonesia, Timor-Leste, sea boundary, archipelagic sea lanes.

1. INTRODUCTION

East Timor was previously part of Indonesia, but in 1999 declared its decision to separate and become an independent state through a referendum. In response to this situation, the MPR Decree No. V/MPR/1999 at the MPR session in October 1999 which revoked MPR Decree No. IV/1978 concerning the Integration of East Timor and officially established as the state of the Democratic Republic of Timor Leste (RDTL). The impact of the independence of East Timor was, among others, the reduction in the area of Indonesia, such as the number of islands in Indonesia to 17,506 islands after deducting 2 islands, namely: Kambing Island and Jaco Island. Land area decreased by 14,605 km² to 2,012,402 km², water area decreased by 29,490 km² to 5,877,879 km², coastline length from 720 km to 80,570 km.

Another logical consequence of the independence of East Timor is that the Government of Indonesia and the Government of Timor Leste must determine national boundaries that include land, sea and air areas as an effort to demonstrate and defend the sovereignty of each independent country. When East Timor was still under Portuguese rule, its territory consisted of Oecusse, East Timor, Kambing Island (Atauro) and Jaco Island. After independence, the Democratic Republic of Timor Leste and Indonesia have three maritime border segments that must be resolved, namely:

1. the southern segment of the island of Timor which is located in the Timor sea area;
2. the northern segment of the island of Timor which is located in the Wetar Sea and the Ombai Strait;
3. The Middle Segment is in the Ombai Strait (enclave).

New negotiations also need to be carried out, considering that after independence, the agreement between Indonesia and Australia regarding the Timor Gap Treaty is considered no longer valid and needs to be replaced with a trilateral agreement between Indonesia, Australia and Timor Leste.

Negotiations on maritime boundaries that must be resolved by Indonesia and Timor Leste are not only about maritime boundaries in a narrow sense, but also matters relating to maritime boundaries, such as the determination of the width of the territorial sea, continental shelf, additional zones and exclusive economic zones as regulated in the 1982 Law of the Sea Convention. Timor Leste after separating from Indonesia and

becoming an independent country has the right to determine the width of the territorial sea and others. For this purpose, boundary issues need to be resolved immediately so that there is no overlapping of areas. Including establishing archipelagic sea lanes.

The existing archipelagic sea lanes, which were proposed by Indonesia to the International Maritime Organization (IMO) since 1996 and have been in effect since June 28, 2002. ALKI passing through the RI-RDTL border waters are ALKI III-A passing through the Ombai Strait and ALKI III -B passes through the Leti Strait. Because the changes in the territory of Indonesia as a consequence of the results of the popular consultation directly affect the determination of one of the ALKI, namely ALKI III, especially in sections III-A and III-B. The ALKI-III-A and III-B lines, because the separation no longer crosses the territory of Indonesia but is expected to pass through the territory and the EEZ of Timor Leste. If the maritime boundary between Indonesia and Timor Leste is not resolved and legal arrangements are not immediately established, then the determination of the new ALKI will also be hampered because the determination of the ALKI depends on the clarity of Indonesia's territorial boundaries, especially maritime boundaries. Not to mention the potential threats to ALKI III such as territorial violations, smuggling, theft of fish and theft of other natural resources, which if the new ALKI III has not been established, then action if there is a violation of ALKI III in the Ombai Strait and in the Leti Strait by foreign ships, both ships war and merchant ships, will be ambiguous.

2. METHOD

This research is a normative legal research, which is a legal research that examines written law. Peter Mahmud Marzuki explained that normative legal research is "... a process to find a rule of law, legal principles, or legal doctrine to answer the legal problems faced". This research focuses on the study of existing written law, both national law and international law. Peter Mahmud Marzuki also stated that in legal research there are several approaches. With this approach, researchers will get information from various aspects regarding the issue that is being tried to answer. The approaches used in legal research are the statute approach, the case approach,

Referring to this opinion, the approaches used in this research are the statutory approach and the concept approach. The legal approach used includes the 1945 Constitution of the Republic of Indonesia as the basis and other laws relating to the regulation of territories, waters, seas and so on. In fact, there are also international conventions used, namely the 1982 Law of the Sea Convention which Indonesia has ratified by law. While the conceptual approach in this paper refers to the basic concepts in international law regarding state sovereignty (sovereignty),

The types of legal materials used in this research include:

1. Primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, the 1982 Law of the Sea Convention (UNCLOS), Law no. 6 of 1996 concerning Indonesian Waters, Law no. 43 of 2008 concerning the Territory of the State, PP No. 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising the Right of Archipelagic Sea Lane Passage through the Stipulated Archipelagic Sea Lanes;
2. Secondary legal materials, namely all legal materials that provide explanations for primary legal materials, such as journals, reference books, reports from the National Border Management Agency (BNPP), scholarly scientific works, dictionaries, encyclopedias and scientific writings on the internet.

The data obtained from the literature study will be analyzed using descriptive analysis techniques, meaning that they provide an overview or explanation of the subject and object of research, namely by describing the urgency of setting boundaries that must be resolved between Indonesia and Timor Leste, especially in relation to the determination of the archipelagic sea lanes.

3. RESULTS AND DISCUSSION

1. The Effect of RDTL Independence on the Republic of Indonesia

The Democratic Republic of Timor Leste or known as Timor Leste was once part of the Unitary State of the Republic of Indonesia. Timor Leste then declared its independence in the 1999 Referendum and has since become an independent country. As an independent country, Timor Leste must determine territory as one of the conditions for the establishment of a state according to Article 1 of the 1939 Montevideo Convention. The determination of the territory of post-independence Timor Leste follows the *Uti Possidetis* principle which states that territory and other assets follow the original owner at the end of the conflict between the new state and the ruler. previously presented in an agreement. Determination of territory to show jurisdictional coverage must be accompanied by determination of territorial boundaries.

Timor Leste and Indonesia are still struggling with the discussion of land boundaries because previously Timor Leste was part of Indonesia and one of its territories, namely the Oecusi district, is still within Indonesian territory. Apart from Oecusi, there are many other land boundary issues that have not been resolved, because there has been a shift in the boundaries by each resident due to the loss of border markers, swapping of local communities, shifting of boundaries due to changing river flows and agreements that have not been reached between Indonesia and Indonesia. Timor Leste.

The land border between Indonesia and Timor Leste has a length of 268.8 km, crossing 3 districts in East Nusa Tenggara Province, namely Belu Regency, North Central Timor and Kupang. Indonesia's land border with Timor Leste is divided into two sectors, namely: (1) the East Sector (main sector) in Belu Regency which is directly adjacent to Covalima District and Bobonaro District in Timor Leste along 149.1 kilometers; and (2) the West Sector (Kupang Regency and North Central Timor Regency) which is directly adjacent to the Oecussi District which is an enclave of Timor Leste with a length of 119.7 km. Most (99%) of the land borders of the two countries are natural boundaries in the form of watersheds and thalweg (the deepest part of the river).

The delimitation of Indonesia's borders with Timor-Leste on Timor Island refers to the agreement between the Governments of the Dutch East Indies and the Portuguese in 1904 and the Permanent Court Award (PCA) 1914, as well as the Temporary Agreement between Indonesia and Timor Leste on April 8, 2005. Border negotiations between Indonesia and Timor-Leste Timor Leste has been implemented since 2001 with the first meeting of the Technical Sub-Committee on Border Demarcation and Regulation (TSCBDR) RI-UNTAET (United Nations Transitional Administration for East Timor). The national boundary between Indonesia and Timor Leste as many as 907 coordinate points has been determined in the agreement on the Land Border (Provisional Agreement) signed by the Indonesian Foreign Minister and the Timor Leste Foreign Minister on 8 June 2005 in Dili but there are still unresolved and unfinished segments. surveyed/measured by the Survey Teams of the two countries.

In addition to the land segment, the territorial boundaries that also need to be determined by RI and RDTL are related to maritime boundaries and air boundaries. Maritime borders that must be resolved are related to the determination of the territorial sea, continental shelf and exclusive economic zone. When Timor Leste was still part of Indonesia, there was an agreement between Indonesia and Australia in the Timor Sea. However, after the independence of Timor Leste, the existing agreement must be canceled, before Indonesia and Timor Leste establish a permanent boundary line for the territorial waters of the two countries. To determine the boundary line, there are several principles that can be used, namely equal distance and equal distance or equitable and equidistance solution. In principle, these two lines are determined based on the agreement of each country. Maritime boundaries that need to be established include the territorial sea and the exclusive economic zone. The determination of the territorial sea is regulated in Article 15, the exclusive economic zone in Article 74 and the continental shelf in Article 83 of the 1982 Law of the Sea Convention (KHL), which has been ratified in the Law of the Republic of Indonesia No. 17 of 1985. The elements in those articles are almost the same, namely the existence of an agreement (according to Article 38 paragraph (1) of the UN Charter) in order to be fair, it must be in accordance with Chapter XV of the 1982 KHL concerning Dispute Settlement and may be cooperated or with a temporary agreement between the two countries (RI-RDTL) permitted by the convention.

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After the independence of Timor Leste, in addition to land and sea boundaries, Timor Leste is also authorized to determine air boundaries over its territory to show its territorial sovereignty. Before independence, of course there was no problem with air borders, because Timor Leste was part of Indonesia, but after independence, Timor Leste had to determine its air boundaries. However, just as the sea boundary cannot be determined before the land boundary is completed, so also the air boundary cannot be determined if the sea boundary has not been

agreed between the two countries.

2. The Urgency of Setting Maritime Boundaries in relation to ALKI

The separation of Timor Leste from the Republic of Indonesia resulted in the need for negotiations both between RI and RDTL as well as RI, RDTL and Australia. If Indonesia does not cancel the agreement in the Timor Sea with Australia first, it will make Indonesia lose in border diplomacy with Timor Leste, which is only half the size of the island of Timor. There are 3 (three) locations that have the potential to become problems, namely the Ombai Strait, Wetar Strait and the Timor Sea. Maritime boundaries that require delimitation include the territorial sea, continental shelf and exclusive economic zone and so far, the determination is still waiting for the completion of the land boundary which has only been completed around 97%.

Table 1
Status of Indonesia's Maritime Boundary with Neighboring Countries

No.	Sea Boundary	Status	Information
I. Zone Exclusive Economy			
1	RI-Malaysia	Not yet agreed	No limit agreement yet
2	RI-Vietnam	Agreed	No limit agreement yet
3	RI-Philippines	Not yet agreed	No limit agreement yet
4	RI-Palau	Not yet agreed	No limit agreement yet
5	RI-PNG	Not yet agreed	No sea limit
6	RI-Timor Leste	Not yet agreed	No limit agreement yet
7	RI-India	Not yet agreed	No limit agreement yet
8	RI-Singapore	Not yet agreed	No limit agreement yet
9	RI-Thailand	Not yet agreed	No limit agreement yet
10	RI-Australia	Agreed	EEZ in Indian Ocean, Sea Arafura and the Timor Sea
II. Limit Territorial Sea			
1	RI-Malaysia	Agreed	Agreed in Agreement Indonesia-Malaysia 1970
2	RI-Singapore (in parts of the Singapore strait)	Agreed (partially)	Agreed in Agreement Indonesia-Singapore 1973 and 2009
3	RI-PNG	Agreed	Agreed in Agreement Indonesia – Papua New Guinea 1980
4	RI-Timor Leste	Not yet agreed	It is necessary to determine the baselines of the islands on Leti Island, Kisar, Wetar, Liran, Alor, Pantar, to Vatek Island and the base point of the allies on the Timor island.
5	RI-Malaysia-Singapore	Not yet agreed	Negotiation together (tri-partid)
III. Limit Continental Shelf			

1	RI-India	Agreed	The 10 BLK points in the Andaman Sea and their coordinates were agreed based on the agreement on 1974 and 1977
2	RI-Thailand	Agreed	BLK points in the Straits of Malacca and Andaman Sea are agreed based on agreement in 1977
3	RI-Malaysia	Agreed	10 BLK points in the Straits of Malacca and 15 points in the Natuna Sea agreed based on agreement in 1969
4	RI-Australia	Agreed	BLK points in the Arafura Sea and Timor Sea were determined through Presidential Decrees in 1971 and 1972 BLK points in the Indian Ocean and around Christmas Island have been agreed based on the agreement in 1997
5	RI-Philippines	Not agreed yet	In the process of negotiation
6	RI-Palau	Not agreed yet	No negotiation process yet
7	RI-Timor Leste	Not agreed yet	No negotiation process yet
8	RI-Vietnam	Agreed	Through the 2003 agreement

Source: Master Plan for Management of State Borders and Border Areas 2011-2014.

Several other things to be considered regarding the determination of maritime boundaries, namely:

1. Geographical conditions between RI and RDTL which are next to each other as well as opposites. Adjacent to, for example, the eastern part of Timor Leste with the land area of East Nusa Tenggara while the opposite is the eastern part of Timor Leste with Wetar Island;
2. The determination on the south side is lateral with a north to south line taking into account the existing boundary between Indonesia and Australia and the oil management area between Timor Leste and Australia in the Timor Sea;
3. There is a land area of Timor Leste that is 'tucked away' in Indonesian territory, namely Oecussi. The determination of the maritime line will make Timor Leste have a separate maritime area. Both need to find a solution so that the movement of Timor Leste from the sea in the west and in the east goes well without harming Indonesia.
4. Timor Leste and Indonesia both have the status of countries that have ratified the 1982 KHL so that the legal basis is clear to guide the determination of boundaries.

The locations that require the delimitation are also related to the Indonesian archipelagic sea lanes. Indonesian Archipelagic Sea Lanes (ALKI) are sea lanes traversed by foreign ships or aircraft over these sea lanes to carry out shipping and flights in a normal manner solely for continuous, direct and fast transit as well as unobstructed through or at the sea level. over the adjacent archipelagic and territorial waters between one part of the high seas or Indonesian EEZ and another part of the high seas or Indonesian EEZ. Indonesia has established ALKI since 1998 after going through several negotiations both at the national and international levels. The ALKI determined by Indonesia consists of ALKI I in the Sunda Strait in the north and branches to Singapore (A1) and towards the South China Sea, ALKI II in the Lombok Strait to the Sulawesi Sea, while ALKI III in the south branched off into ALKI IIIA (around the waters of the Savu Sea), ALKI IIIB and ALKI IIIC (east of Timor Leste). The determination of this ALKI was carried out before Timor Leste's independence, namely in 1998 and was promulgated in Law Number 37 of 2002 after going through several discussions both nationally and internationally. Until now there has been no information about Timor Leste's complaints about the existing

ALKI route, even though this route then passed through its country after separating from Indonesia. namely in 1998 and enacted in Law Number 37 of 2002 after going through several discussions both nationally and internationally. Until now there has been no information about Timor Leste's complaints about the existing ALKI route, even though this route then passed through its country after separating from Indonesia. namely in 1998 and enacted in Law Number 37 of 2002 after going through several discussions both nationally and internationally. Until now there has been no information about Timor Leste's complaints about the existing ALKI route, even though this route then passed through its country after separating from Indonesia.

The urgency of setting boundaries between the two countries is actually not only because of territorial or sovereignty issues that must be enforced, but also the potential for existing and future conflicts because of the independence of Timor Leste as an independent country. These problems include, on land: illegal entry (cross-border population mobility that is not officially recorded), oil smuggling, and others. While at sea, it is known that the parts of the sea area of Belu Regency (NTT) to the Ombai Strait in Alor Regency have also never been discussed by Indonesia-Australia. The Ombai Strait has been designated nationally as one of the economic sea lanes in eastern Indonesia. So far, ships belonging to Timor Leste, including fishermen, have carried out a number of activities at sea between Belu Regency, North Central Timor and Alor District. It is suspected that Timor Leste has claimed the territorial waters as their own. The existence of the Oecusi district in the enclave (between Belu Regency, North Central Timor and Kupang Regency) is considered to be quite difficult in determining the boundaries of the Indonesian and Timor Leste sea areas, because the activities of Timor Leste fishermen reach the Atapupu (Belu) and Wini (TTU) waters, shows that Timor Leste claims the territory as their own.

In addition, currently the border area between RI-RDTL is patrolled by the TNI-AL and the BPU (Border Patrol Unit = Border Patrol Unit) from the Timor Leste police force in the Timor Leste part. BPU is limited in its role only to maintain order in border crossings, deter and chase smugglers and cattle thieves and if possible prevent cross-border clashes between villages. Nevertheless, there are several obstacles in the law enforcement process of violating the RI-RDTL maritime boundaries, namely:

- The natural limitation is the land of Timor Leste which is 'tucked away' in Indonesian territory, namely Oecusi. This causes the water patrol area to be unclear;
- The lack of number and quality of patrol boats owned by the TNI-AL Post, most of which are unfit for use in patrolling the country's maritime boundaries;
- The minimum number of border security personnel in the sea area creates threats in terms of defense and security.

4. CONCLUSION

1. The independence of the Democratic Republic of Timor Leste (RDTL) had an impact on the territory of the Republic of Indonesia (RI). Post-independence, Timor Leste must determine land boundaries, sea boundaries and air boundaries to enforce sovereignty over its territorial territory as an independent country. On land the completion is only around 97%, at sea and in the air we are still waiting for the settlement of the land boundary because there is the Oecusi area which is part of Timor Leste but is in Indonesian territory.
2. The urgency of regulating maritime boundaries between RI and RDTL lies in efforts to resolve current problems and prevent new problems from illegally crossing borders, smuggling, fishing in Indonesian territory and so on so that law enforcement can run as it should.

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