Impacts of the Implementation of Border Crossing Area Agreement between Indonesia and the Philippines at the Border of Miangas Island of North Celebes

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The existence of Border Crossing Area Agreement (BCA) in 1975 regulating the border agreement between Miangas Island of North Celebes and the Philippines created positive and negative impacts on border people in Miangas Island. The legal aspects, BCA is a legal regulation regulating the border crossing and commerce in that area; economic aspects; BCA has not accommodated border people's interests maximally yet and it has a limiting impression rather than facilitating people's interests, thus, illegal trades occur at the border of Miangas Island; social aspects, BCA is hard to implement in this area because it has limited the tradition practicing from generations to generations; political aspects, BCA causes frequent migrations by border people of Miangas Island to the Philippines because of the strong historical and kinship factors, economic factors, to get better education, facilities and infrastructures in health, and communication and transportation that in the Philippines are considered better. These situations made the regional government to use its authority in Act No. 22 of 1999 concerning International Covenant and Act 32 of 2004 concerning Regional Government to empower the Border Crossing Area Agreement in Miangas Island by revising that agreement. The efforts conducted by the government were by issuing the Regional Ordinance No. 1 of 2001 concerning the development of Sangihe and Talaud Islands area and Regional Ordinance No. 2 of 2001 concerning the Spatial Arrangement of Sangihe and Talaud Mainstay Area. It is expected that the Border Trade Area (BTA) will pay attention to the Declaration of Liberal Democration Principles concerning Ethnoculture and National Minority and Native Tribes suggesting the local government to accept, with domestic laws and with the covenant legalized internationally concerning the principles of minority rights implementation, equal in its interests with the classical Human Rights.

Keywords: impacts, Border Crossing Area Agreement

I. Introduction

The border agreement between Indonesia and the Philippines was created in 1975 with the name of *"Border Crossing Area Agreement"*, having the objectives of minimizing disputes in the border area of Miangas

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Island and regulating the border crossing and commerce in that area. Based on that agreement, the Philippines people may and are allowed to enter the Indonesian territory, especially to eight island in the territory of North Celebes, which are, Miangas, Marore, Kawio, Matutuang, Lipang, Tinanareng Kawaluso, and Bukide; meanwhile, Indonesian people may enter several islands in the Southernmost area of Mindanao, among them are Saranggani Island and Balut. In its implementation, *Border Crossing Area Agreement* still has several weaknesses because it is viewed as less adequate especially in regulating the commerce in the border area of Miangas Island in recent days.

Up to now, it is known that there are about 25,000 Indonesian citizens live in Mindanao area. There are three main reasons why there are many Indonesians are interested in living in the territory of the Philippines, which are the strong historical and kinship factors, economic factors, to get better education, facilities and infrastructures in health, and communication and transportation that in the Philippines are considered better. The frequent number of migration of Indonesians to the Philippines is triggered by the policy of the Philippines Government providing special priority to build Mindanao by allocating 40% of its national budget to that area.

This is different to the policy of Indonesian Government in implementing the *Border Crossing Area Agreement*; that agreement has not accommodated border people's interests maximally yet, and it has a limiting impression rather than facilitating people's interests. Therefore, illegal trades occur frequently at the border of Miangas Island. Because they are conducted illegally, they violate the stipulations in the *Border Crossing Area Agreement*.

Several kinds of products traded illegally, among them, are: Coca-Cola, thinner, paint, mats, aloe-vera shampoo, Lifebuoy soaps, Palmolive soaps, Lily sandals, and other various kinds of household needs. In 2005, Philippines ciggarette products entered Miangas in a great number and then to Sangihe-Talaud with the brands of "Mas" and "Durian". Those ciggarettes are sold with the price half of the domestic ciggarette products.[2] Not only household needs, weapons also become frequent smuggled commodities, such as the **illegal trade of SS1/VI automatic gun made by PT. Pindad** in Miangas Island in September 2009.[3]

2 Winsulangi, Daerah Perbatasan, Keterbatasan dan Pembatasan, Fuspad, Jogja, 2007, page 233

3 www.kemenhan.go.id accessed 9 April 2009

If we look at the location, Miangas Island in Talaud County of North Celebes is included in the Indonesian territory, however, in many aspects, the lifestyle of local people working as farmers and anglers orientates more to the Philippines than to Indonesia; on the other hand, in the Philippines, Indonesian citizens are considered as migrant people. Miangas people usually trade fish with Philippines people using Peso currency; they collect the money from fish and coconut trades sold to the nearest territory of the Philippines.[4] Although it is in Indonesia, however, the economic interraction of its people is closer to the area of Balut, Sarranggani Island in the Philippines.

The geographical, cultural, and historical conditions force Miangas people to economically interact (outward looking) to the Philippines naturally. Commercial lines open among islands in the border give an opportunity of economic empowerment to the local people, such as shops and shopping center, although in smaller scales. At the beginning, the trade was conducted by exchanging commodities, however, the exchanges of agricultural products of Miangas people depended on the plantation prices of the international market.

In its development, the free trading activities of border people lasted only in 1975, together with the implementation of *Border Crossing Area Agreement*. This agreement provides limitations to people that are not in accordance with the culture and tradition living among border people so far. Although there is a regulating regulation, as long as the regulation is not adjusted to the socio-economic conditions at the border of the Republic of Indonesia, therefore, illegal trades will continuously be problems.

The implementation of that agreement in this area will be hard to conduct because people are faced to options to fulfill their daily needs or to obey the regulation considered as inflexible to them. The border people see the regulation of *Border Crossing Area Agreement* as limiting traditions, both in commerce and border crossing that they have conducted so far from generations to generations. Seeing that, of course, people tend to choose to continue their traditions to fulfill their daily needs by conducting free trades and crossing the border freely, rather than obeying the regulation that does not accommodate their interests. Temporary reactions by adding the number of military and police personnels at the border indeed add more problems because they are not provided with sufficient budget to live at the border requiring high costs. Therefore, what is required is not only

4 www.sulutlink.com/apr%205b.htm (accessed 25 Oktober 2008)

state apparatus having competency in that particular area, but also societal empowerment at the border area, both in economic and social aspects, by using the regulations adjusted to the situation of border society.

The characteristics of border area, natural resources, and islands conditions are not appropriate to be used as reasons of growing illegal trades at the border of Miangas. Therefore, all of government policies, both the central government and regional government conducting efforts to overcome the problems, should comprehend those conditions well. Various Indonesian public policy formulations to the future, among them, should include the formulations concerning how the fate of that area will be transformed.

Based on the above-mentioned background, a research is conducted, entitled:

> *"Impacts of the Implementation of Border Crossing Area Agreement between Indonesia and the Philippines at the Border of Miangas Island, North Celebes."*

II. Discussion

A. Relation between Indonesia and the Philippines

For Indonesia, the land area of islands of Dutch colonialism era is used as the reference used for drawing the border convention today. On the other hand, the Philippines tend to stick to its historical border convention, referring to the border convention of Spanish-United States in the 1898 *Paris Treaty* document.

By that regulation, in the matter of territory, Indonesia follows the *uti possidentis juris* or just continuing the regulation concerning jurisdiction territory of the previous Dutch Indies state.

The state of Indonesia bases its sovereignty at sea and its sovereign rights referring to the *United Nations Convention on the Law of the Sea* (UNCLOS) of 1982. Indonesia has ratified that convention into a national legal product (Act No. 17 of 1985). Then, based on that reference, Indonesia has issued the Act of Indonesian Waters Territory (Act No. 6 of 1996), which then followed by the establishment of its outermost points (Government Ordinance No. 38/2002); meanwhile, the Philippines did not ratify the 1982 UNCLOS, although in the history of the international oceanic

law, especially the regulation of archipelago state in UNCLOS I, II, and even III.

The sea border of the Philippines is clearly established following the agreement of border points established by two countries that have invaded it, Spain and United States, which is in Article III of 1898 *Paris Treaty*. That past time border convention has ever been included strongly in the first article of its constitution. Luckily, today, in the newest constitution of 1987, it is not as strong as previous, although it does not mention that the traditional reference of national territory has been abolished. That kind of position clearly makes difficulties to the political decision makers in the Philippines to boldly agree with the state border agreement going beyond its national territory claim. Except in the case of the international legal verdict with permanent effects. The Philippines has ever established the baseline of its sea territory, as written in Act No. 46 of 1961.

Indonesia, as an archipelago state according to 1982 UNCLOS, has established the outermost points and from those points, the territorial sea borders has been established, then half of the EEZ (Economic Exclusive Zone) borders and some parts of the COB (Continental Oceanic Border). The comprehension of an *archipelago state* can be understood that the sea borders with the Philippines that have not been settled are the bilateral sea borders of EEZ and COB.[5]

Especially for the Indonesia-Philippines sea border convention, a bilateral discussion is held now. This discussion has lasted long enough, although so far it has not given any outcome yet. Maybe it is better to take judicature measures in the future.

Taking the reference from the 1898 *Paris Treaty*, it is hard for the Philippines to acquire the islands that have been in the Dutch Indies territory and Indonesia today peacefully. For example, taking Marampit Island, that also in the claim of that *Treaty*.

This also hapens in acquiring other islands in Indonesia located further to the South at Nusa Utara. An official site of the Philippines Government now uses a geographical formula that even goes further to the South compared to the formula in the 1898 *Paris Treaty*, which is, establishing the territory of the Philippines between 4°23' - 21°25' N and 112° - 127° E, although it includes the word *'approx'* (*approximately*).[6]

5 Loc.cit
6 Loc.cit

This is hard to do by the Philippines because Indonesia, (as the continuity of the colonial state of Dutch Indies) has executed its sovereignty effectively and peacefully in those islands in the period of three hundred years (since 1677) in all islands having the potency to be claimed by the Philippines.

This is also caused by the decision of the case of Dutch Indies sovereignty claim and the United States upon Miangas Island has been created by Max Huber in PCA in 1928, becoming the strong jurisprudence supporting Indonesian ownership upon the islands claimed by the Philippines. However, it needs to be anticipated that the claim of the Philippines upon the sea territory of the 1898 *Paris Treaty* for the sea territory claimed by the 1898 *Paris Treaty* because Huber did not decide specifically the matters concerning the sea border.

Exactly in this matter, problems arise in the efforts of establishing bilateral sea borders between Indonesia and the Philippines. The Philippines may stick to its historical sea borders unilaterally, therefore, Indonesia has to be ready in connection to the establishment of sea borders with the Philippines, because it should not only focus on the matters of bilateral establishment of EEZ sea border and COB, however, it should also be ready for the worst possibilities, for example, the oceanic status of Indonesian island.

As long as it has not gone to the international law-court yet, the Philippines will clearly exploit the richness of sea fishery claimed by its party. That fish catching operation may bring double profits to the Philippines, which are, besides it gets richness in fish, it maybe also be used as a proof of the establishment of Philippines's sovereignty upon the sea if it is needed.

B. Miangas Island as the Border Area

In the world map, the Sangihe and Talaud islands are located between the equator, the main part of Celebes peninsula, exactly at 2°11' - 5° 46' N and 124° 58' - 127° 22' E. Its administrative area is as much as 44,000 km²; with the land area of 2,263.95 km².[7] It means that the majority of its area (41,736.5 km²) is open sea. The two largest islands, which are Sangihe, have the area of about 700 km² and Karakelang Island with the area of 976.55 km². To the North East of Karakelang Island, there are clusters of Nanusa Islands, each of them from the North are Malo, Kakorota,

7 Ulaen Alex, SANGIHE Talaud dalam Angka, Jakarta: Pustaka Sinar Harapan, 1996, page 8

Intata, Mangupung, Marampit, Karatung, and Miangas, which is located at the Northernmost as the outermost of the Northern part of Indonesia. This Miangas Island, which we will discuss further.

The islands located at the Southern part of the administrative area of this islands county are about 60 nautical miles from Manado and 78 nautical miles from Tahuna, the capital city. The distance between Manado and Tahuna is 146 nautical miles, meanwhile the distance between Manado and the Northernmost island, which is Miangas Island, is about 275 nautical miles. The distance from Tahuna to this island used as the border of Indonesia and the Philippines (Miangas) is 139.5 nautical miles; on the other hand, the distance of Miangas Island to the nearest island in the Philippines territory is relatively closer if it is compared to the distance to the capital city of the county. The distance of Miangas Island to San Agustin cape (the Philippines) at the South-Eastern part of Mindanao Island is 50 nautical miles.[8]

In the literature and tradition of the local people, Miangas Island is known to have three names, which are "Las Palmas", "Miangas", and "Tinonda". The name "Las Palmas" came from the Spanish sailor, it is said that it was because the palm forest in that island was so dense. Up to now, the Philippines still uses the name "Las Palmas" for Miangas Island. Meanwhile, the names "Miangas" (came from the word "mangiasa", means "poor") and "Tinonda" (means "taken accross") are the names given by the Talaud people. While "Tinonda" explains the origin of the inhabitants, which, at the beginning, they were people "taken accross" from other islands in Talaud Islands.

In local geopolitical context, Miangas Island has become the North border point of Talaud Kingdom territory since a long time ago. Miangas Island is always paired with Napombalu (coral) Island as the Soth border point. The expression of "ta taalle Tinonda ta tiwade Napombalo", which is very popular among Talaud society, may explain that the local geopolitical format has also become the sociological phenomenon, which is the awareness that the Talaud people are united in a community with their various traditional characteristics. After Indonesia had its independence and the kingdom administration system was abolished, Miangas Island became the part of the Territory of Sangihe Talaud County and after the

8 Ulaen Alex, Nusa Utara dari Lintasan Niaga ke Daerah Perbatasan, Jakarta: Pustaka Sinar Harapan, 2003, page 18

territorial development, it is in the territory of Talaud County of North Celebes Province. Also, the administration status in Miangas Island is very unique. This is because there is a District Government that has only one Village Administration. The inhabitants are so few. The unique thing of this island is that there are military members having officer ranks from different countries, which are, from the Indonesian National Army and from the Philippines Armed Forces, with their own subordinates. The existence of military forces from two different countries in this island is not because they are involved in a dispute; it is because of a joint cooperation to maintain security of border crossing at the border area.[9]

The area of Sangihe Talaud orientates not only to the production life, but it has a strong cultural background. Many centuries since the arrival of men at least in 3,000 BC, the maritime culture had ruled the lifestyle and habits of those Asian men. Although the supporting evidences in specific in this area cannot be shown, however, the drawings of boats in the rock cave in Muna, Seram, and Arguni Islands clearly show that the maritime culture had ruled the Asian men inhabiting the Indonesian territory today.

A lot of sea richness found in the area of Sangihe Talaud. Since a long time ago, that various natural richness had been exploited to support life neccesities, also to be traded. Now, the natural resource that is frequently exploited from that area is fish. This area has 1,020 fish species. Many of them are included in the fish with high economic values, such as the school of pelagic fish (sea surface fish) such sailfish and selar. Ther are also very high economic value fish such as school of migratory tuna, which are the fish that their lifetimes are spent by wandering accross the oceans. Tuna fish has a very high economic value because it may be processed to frozen tuna or canned tuna to other countries, such as Japan, European and American countries.

So far, the richness of fish in this area becomes the catching area from other regions, such as, Manado, North Minahasa, Bitung, and even the aggressive catching armada from the neighboring country of the Philippines having its harbor at the biggest fishery harbor in South East Asia in General Santos.

Since the ruler of Dutch Indies controlled the territory of Nusantara and Spanish established rule in the Philippines, it opens the new stage in the commercial system at the sea of Celebes and Molucca.

9 www.tni.mil.id Pulau Miangas Awas Terlepas. (diakses 25 Oktober 2008)

The Dutch colonial ruler in Nusantara and Spain in the Philippines had created the border references in their own colonies. This continued when the United States occupied the Philippines. The Netherlands and the United States had a chance to dispute over Miangas Island - the island considered as the part of each territory. The disputes brought to the International Law-Court ended with the victory of the Netherlands. This island then became the part of Indonesian territory when Indonesia had its independence.

C. Impacts of the Implementation of Border Crossing Area Agreement at Miangas Island

1. Legal Impact

This border crossing agreement undergoes developments from time to time. Several documents of border crossing agreement illustrate those developments,[10] among them are summarized in four documents below:

a. July 4, 1956 Agreement. This agreement was signed in a meeting in Jakarta entitled, "Agreement on Immigration between the Republic of the Philippines and the Republic of Indonesia."
b. September 16, 1965 Agreement. The agreement of two destination countries that the outcome document was entitled, "Joint Directives and Guidelines on the Implementation of the Immigration Agreement on Repatriation and Border Crossing Agreement Between the Republic of Indonesia and the Republic of the Philippines."
c. The agreement of the summit meeting outcomes of Indonesia-the Philippines in Manado, May 29-30, 1974 between President Soeharto and President Marcos. In this bilateral meeting, it was further agreed the matters concerning Border Crossing between the Indonesian and the Philippines Governments that the original manuscript was named, "Revised Agreement on Border Crossing between the Republic of Indonesia and the Republic of the Philippines."
d. An agreement on March 11, 1975 agreed in the meeting between Indonesia and the Philippines, which was, "Joint Implementation of the Border Patrol Agreement and Border Crossing Agreement between the Government of Indonesia and the Government of the Philippines."

10 Four documents used as references are the compilation of Drs. J. Makasangkil in Sitaro County

Commerce was indeed facilitated in several documents, but both countries applied various limitations. This reality does not change in the Border Trade Agreement between the Government of the Republic of Indonesia and the Republic of the Philippines dated July 29, 1971.

Then, also in the Agreement on Border Trade between the Government of the Republic of Indonesia and the Republic of the Philippines dated August 8, 1974, that on Indonesian side was legalized through the Decree of President Number 6 of 1975 that actually had a characteristic of a limitation of border crossing trade.

Below are several international agreements, which then ratified by Indonesia:

a. Agreement on Immigration between the Republic of the Philippines (RP) and the Republic of Indonesia (RI).

This document was composed on July 4, 1956 in Jakarta. According to its name, this document regulated the repatriation of citizens of both parties existing illegally in each other's territory (Article I-V) and border crossing agreement of border people. That agreement was legalized by the Philippines in Senate Resolution No. 94, 'Resolution Expressing the Concurrence to and Approval of the Senate of the Philippines of the Agreement between the Republic of the Philippines and the Republic of Indonesia on Immigration on May 23, 1957. The Indonesian party ratified it into Act No. 77 of 1957, which was the "Act of Agreement Concerning Citizens Existing Illegally in the Territory of the Republic of Indonesia and the Republic of the Philippines." That agreement occured in the 127th open Legislative Assembly plenary meeting dated November 25, 1957 and legislated on the date of December 19, 1957. That Act was included in the Government Gazette No. 167/1957, and its explanation memory in the Supplementary Government Gazette of the Republic of Indonesia No. 1489/1957. This agreement was effective and valid from February 1, 1961, after the exchange of ratification between both countries. The border area regulated in its agreement were:

1) Indonesian Territory, included:
   a) Talaud Sangi Island Group
   b) Miangas Island Group
   c) Kawio Island Group
   d) Nunukan Island Group
2) The Philippines Territory, included:
   a) Balut Sarranggani Island Group

b) Sibutu Island Group
c) Simanul Island Group
d) Manuk Manka Island

In this agreement, especially Article IV, it included business (commerce) interest purposes and/or visiting relatives and/or visits to conduct religious services and/or tourism.

b. Joint Directives and Guidelines on the Implementation of the Immigration Agreement on Repatriation and Border Crossing Agreement between the Republic of the Philippines (RP) and the Republic of Indonesia (RI).

This agreement was signed on September 16, 1965. This agreement was viewed as the implementation of July 4, 1956 agreement reformulated based on survey and joint conferrence between Indonesia and the Philippines in Manado, and after that, a joint memorandum was signed in Jolo, May 30, 1964. Referring to the previous agreement (Agreement on Immigration between the Republic of the Philippines (RP) and the Republic of Indonesia (RI)), therefore, the regulated areas were the matter of repatriation and border crossing. The difference in this document was the beginning of the regulation of commodity entrance and exit procedures carried by people crossing the border or by their boats crossing the border. The communication system at the border area and state was also regulated in this agreement. Concerning bagages, a border crossing was allowed only to bring objects of primary needs for living that did not surpass the value of 500 Philippines Pesos, or bagages of boats or kumpits no more than 5000 Philippines Pesos. In this agreement, Miangas Island and Marore Island became the border crossing posts for Indonesia, meanwhile, Mabila Island and Balut became the border crossing posts for the Philippines.

c. Revised Agreement on Border Crossing between the Republic of the Philippines (RP) and the Republic of Indonesia (RI).

This document was agreed in the summit meeting on May 29-30, 1974 between President Soeharto and President Marcos. This agreement was a revision of the border of the Republic of Indonesia and the Philippines. This agreement regulated the border crossing of people and (limited) commodities at the border area. The entrance-exit procedures of the commodities were also regulated. The bagage that was allowed to be brought by the border crossing was still the same as the previous regulation, which was no more than 500 Philippines Pesos from the kind of daily needs objects.

About the cargo for boats, it was not mentioned in detail, except the size of boat cargo was no more than 200 cubic meters. The communication system between the posts was also regulated in detail in this agreement. In this agreement, Miangas still became one of border crosing posts for Indonesia.

d. Revised BCA (among them including Joint Implementation of the Border Patrol Agreement and Border Crossing Agreement between the Government of the Republic of the Philippines (RP) the Government of the Republic of Indonesia (RI)).

This BCA Revision was signed on March 11, 1975 in Jakarta, meanwhile, the Joint Implementation of the Border Patrol Agreement and Border Crossing Agreement between the Government of the Republic of the Philippines (RP) the Government of the Republic of Indonesia (RI) was signed on July 1, 1975. The revision on this border crossing regulation was added with various procedures of Border Patrol. Technically, this agreement was, by the Government of Indonesia, then elaborated through the Decree of the Department of Justice of the Immigration General Directorate of the Republic of Indonesia No. 399/I-DIR/1975. This agreement regulated patrol and border crossing. In this document, a Border Committee was established, having the tasks to monitor the implementation of Border Patrol Agreement and Border Crossing Agreement, also it had a function as a consulting machine to identify emerging problems in the implementation and suggest changes. The bagage brought by the border crossing only in form of personal need objects having value no more than 500 Pesos. In this agreement, Miangas still became one of border crossing posts for Indonesia.

With the existence of limitations, illegal border crossings emerge. These actions are conducted by people to avoid various bureaucracies at the Border Crossing Area post. This is possible because the people crossing the border have mastered the shorter route that has been used from generations to generations. These illegal border crossings use the traditional shipping route using Sangihe Island as the crossing. The Peta harbour still be used as the departure point, for both the merchants bringing commodities from Manado and local people. According to the Border Crossing Area Agreement, the counterpart of Miangas BCA post is the Tnbanban[11] post. However, the illegal traders directly go to Miangas and straight to the

11 "Tinbanban" is an area around Miangas Island

commercial center in Davao, the Philippines. This action is conducted to reduce journey time and collections in every BCA post.

2. Economic Impacts

a. Illegal Trade

Illegal trade or smuggling is a process, measure, action of smuggling or bringing in objects illegally to avoid entrance fees or because of smuggling illegal objects.[12]

Smuggling or illegal trade is:[13]

1) An activity of bringing in objects illegally to avoid entrance fees
2) Bringing in objects illegally because those objects are included in forbidden objects.

In Black's Law Dictionary, smuggling is described as:[14]

"The offense of importing or exporting the prohibited articles without paying the duties chargeable upon them. The fraudulent taking into a country, or out of it, merchandise which is lawfully prohibited. Smuggle has well understood meaning at common law, signifying bringing on shore, or carrying from shore, of goods, wares, and merchandise for which duty has not been paid, or goods the importation or exportation whereof is prohibited."

Illegal trade is all forms of processes of acquiring objects that are prohibited/limited using measures that break the law; therefore, the objects in black market are usually smuggled objects.[15] The objects obtained illegally may get 1 or 2 levels of price. It maybe less expensive than the market price (legal) because the suppliers do not provide regular prices from the production or pay regular taxes. Another possibility, the products supplied illegally may be more expensive than the normal prices because the discussed products are difficult to get and maybe they are not available legally.[16]

12 Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, Kamus Besar Bahasa Indonesia, Balai Pustaka, Jakarta, 1994, page 633

13 Sudarsono, S.H., Kamus Hukum, Rinela Cipta, Jakarta, 1999, page 486

14 Henry Campbell Black, Black Law Dictionary, West Publishing Co., St. Paul, 1979, page 703

15 Hamzah. A. Delik Penyelundupan. Disesuaikan dengan INPRES No. 4 Tahun 1985, page 1

16 www.wikipedia.com (pasar gelap.htm) downloaded 10 April 2010

b. Illegal Trade in Miangas Island

Four border crosssing documents above influence greatly in forming the bilateral relationship.

When Indonesia and the Philippines would sign the Border Crossing Agreement July 4, 1956, Indonesia had just initiated a great international meeting named the *Asia-Africa Conference* in Bandung.

In the agreement with the Philippines, Indonesia was represented officially by Soekardjo Wirjopranoto (a Fully Charged Ambassador), meanwhile, the government of the Philippines was represented by Jose Fuentebella. Before the signing, in May 1954 in Manila, an intensive discussion was held, discussing the problems of Indonesia-the Philippines border. Discussion panel was led by Mauro Calingo, attended by the delegations from the Department of Foreign Affairs of Indonesia and the Philippines.

The agreement of two countries officially took place in 1961, which was after the exchange of documents of ratification of that joint agreement. The implementation of this agreement took place in 1965 because the executive guidance of the joint agreement was composed and agreed in 1965, which was the *"Joint Directives and Guidelines on the Implementation of the Immigration Agreement on Repatriation and Border Crossing Agreement Between the Republic of Indonesia and the Republic of the Philippines."*

The 1956 initial agreement document containing 14 articles generally contained two main problems. First, the matter of repatriation of Indonesian people in the Philippines and the Philippines people in Indonesia. Second, it regulated in general the special policy for traditional crossing of people and commodities in the area of SaTaS and Southern Mindanao. Article I to V regulated repatriation, while article VI to XII regulated the matters concerning crossing of people and commodities. These two main regulated matters may be interpreted as initial steps of two countries in the consolidation of the still young countries. These two countries that had just had their independences had the intention to regulate the citizens of each country living in the neighboring country. It also regulated special procedures (traditional route) of exit-entrance of the citizens of each country to the neighboring country.

Border Crossing was regulated in the *Border Crossing Area*. Besides that, it also established the reasons of visits facilitated by this agreement.

It the contents of the initial agreement are viewed and compared carefully to the subsequent document - which is the *Revised Agreement on*

Border Crossing between the Republic of Indonesia and the Republic of the Philippines and the *Joint Implementation of the Border Patrol Agreement and Border Crossing Agreement between the Government of Indonesia and the Government of the Philippines*, there is a reduction of border crossing area on Indonesian side, and reasons of visits.

This is rather strange, because the initial document of agreement on Indonesian side was reinforced in a legal product equal to an Act (Act No. 77/1957), however, the following document revising it and it was contained in a regulating product equal to a Decree of President No. 6 of 1975 and the Decree of the General Directorate of Immigration No. 399/I-DIR/1975. This Presidential Decree actually put limitations by reducing the border area as regulated in the previous agreement. About the reduction of border area that dropped Sangihe Island and big islands of Talaud, made the initiative of local trades of Nusa Utara people taking place at Tahuna harbor, from 1965-1971, limited. In 1965-1971, there were border trades that were very intensive at the border area of Sangihe Talaud, especially at Miangas. However, after the new border agreement, these trading activities could not be continued anymore. This means, the opportunity of SaTaS local people to obtain advantages from the border crossing relationships could not be realized because of the limitation policy from the government. This was caused by the existence of Border Area Trade Agreement between the Government of Indonesia and the Government of the Philippines dated August 8, 1974. This agreement caused the emergence of smuggling due to so many limitations. The volume of Border Crossing trades was limited, as seen in the conditions of transporting goods at the border area of two countries in several border crossing documents. The border crossing people could only bring personal need objects having value of no more than 500 Pesos that day, or if they used boats, they were not allowed to exceed 5000 Pesos with the loading capacity limited to 200 cubic meters. The limitation of volume that had existed from the beginning eventually caused difficulties to border people. These activities forced the smuggling activities among people to fulfill their daily needs and people's economic level. The trading activities that were not facilitated by the clear legal agreement increased in the aspects of goods, volume, and transaction values. The marketing of trading goods of border people illegally had emerged so far to other areas such as Tahuna, Manado, Bitung, and Gorontalo.[17]

17 Salindeho op.cit

The kinds of goods brought by illegal merchants or smugglers are relatively the same as what have been brought by the legal border crossings. The difference between two of them are, they bring goods in a greater number and they are not equipped with papers. Those goods, among them, are: many kinds of detergent (powder, cream), leather sandals, cosmetics and instant foods brought from the Philippines, meanwhile, various harvest in form of agricultural harvest and forestry products are taken from Sangihe Talaud area. Some koni traders, according to the Head Service of Tahuna (2004-2007) sell copra from the Sangihe Talaud area directly to the Philippines without any complicated processes regulated in the Border Crossing Area Agreement.[18]

3. Social Impacts

If we see the location, Miangas Island in Talaud County of North Celebes is included in Indonesian territory; however, in many things, the lifestyle of its people that the majority of them work as farmers and anglers, orientate more to the Philippines than to Indonesia. On the other hand, in the Philippines, Indonesian citizens are considered as migrant people. Miangas people usually trade fish with the Philippines people by selling fish to the nearest territory of the Philippines. Although it is in Indonesian territory, however, its economic interraction of its people is closer to Balut area, Sarranggani Island in the Philippines.

The geographical, cultural, and historical conditions force Miangas people to economically interact (outward looking) to the Philippines naturally. Commercial lines open among islands in the border give an opportunity of economic empowerment to the local people, such as shops and shopping center, although in smaller scales. At the beginning, the trade was conducted by exchanging commodities, however, the exchanges of agricultural products of Miangas people depended on the plantation prices of the international market.

In its development, the free trading activities of border people lasted only in 1975, together with the implementation of *Border Crossing Area Agreement*. This agreement provides limitations to people that is not in accordance with the culture and tradition living among border people so far. Although there is a regulating regulation, as long as the regulation is not

18 Bahan Laporan Bupati Sangihe Talaud soal perkembangan BCA Marore dan NCA Miangas Kabupaten Daerah Tingkat II Kepulauan Sangihe Talaud, 1994

adjusted to the socio-economic conditions at the border of the Republic of Indonesia, therefore, illegal trades will continuously be problems.

The implementation of that agreement in this area will be hard to conduct because people are faced to options to fulfill their daily needs or to obey the regulation considered as inflexible to them. The border people see the regulation of *Border Crossing Area Agreement* as limiting traditions, both in commerce and border crossing that they have conducted so far from generations to generations. Seeing that, of course, people tend to choose to continue their traditions to fulfill their daily needs by conducting free trades and crossing the border freely, rather than obeying the regulation that does not accommodate their interests.

Therefore, it can be said that there are three main reasons why there are many Indonesians are interested in living in the territory of the Philippines, which are the strong historical and kinship factors, economic factors, to get better education, facilities and infrastructures in health, and communication and transportation that in the Philippines are considered better. The frequent number of migration of Indonesians to the Philippines is triggered by the policy of the Philippines Government providing special priority to build Mindanao by allocating 40% of its national budget to that area.

This is different to the policy of Indonesian Government in implementing the *Border Crossing Area Agreement*; that agreement has not accommodated border people's interests maximally yet, and it has a limiting impression rather than facilitating people's interests. Therefore, illegal trades occur frequently at the border of Miangas Island. Because they are conducted illegally, they violate the stipulations in the *Border Crossing Area Agreement*.

4. Political Impacts

In its implementation, the *Border Crossing Area Agreement* actually still has several weaknesses because it is viewed as less adequate, especially in regulating the trades in the border area of Miangas Island in recent days.

Up to now, it is known that there are about 25,000 Indonesian citizens live in Mindanao area. There are three main reasons why there are many Indonesians are interested in living in the territory of the Philippines, which are the strong historical and kinship factors, economic factors, to get better education, facilities and infrastructures in health, and communication and transportation that in the Philippines are considered better. The frequent

number of migration of Indonesians to the Philippines is triggered by the policy of the Philippines Government providing special priority to build Mindanao by allocating 40% of its national budget to that area.

The difference of treatment in which the policy of the Indonesian Government in implementing the *Border Crossing Area Agreement*; that agreement has not accommodated border people's interests maximally yet, and it has a limiting impression rather than facilitating people's interests. Therefore, illegal trades occur frequently at the border of Miangas Island. Because they are conducted illegally, they violate the stipulations in the *Border Crossing Area Agreement*.

This reality surely causes concerns if there is any alteration of local people desire that are more interested in staying in the territory of the Philippines. This will surely repeat the history of East Timor that is more comfortable with another country rather than the United State of the Republic of Indonesia (Negara Kesatuan Republik Indonesia). The impacts of the negligence of the government to the rights of the minority will cause upheavals that will harm the Republic of Indonesia itself.

Addressing to this problem, a government policy to pay attention to the rights of the minority of people living in the border of Miangas Island is required because the rights of the native tribe upon their own land include the rights to utilize their land and resources fully and to conduct all kinds of economic activities, traditional or on the other hand, in their own territory. This especially includes:

a. Native tribe has the rights to construct and maintain their own economic and social order in their own territory.
b. They have rights to control, use, build, and exploit their land, area, waters and other resources, establish the regulation concerning how these rights will be implemented, and refuse any interference, especially the exploitation of resources from outsiders. Only if the various activities substantially pollute or destroy the area, airs, waters, and so on, or endanger people outside of this area, therefore, the judicature of environment constructed at the central level for all nations may also be implemented to the native tribe.
c. If the native tribe has been taken away from the land and it is impossible to bring it back to them, or from their living or development, they have rights to receive equal compensations, if possible, just compensation.

Up to now, minority rights have not been codified in the standard context of Human Rights. Minority rights are still supplementary to the traditional Human Rights, designed to ensure that men and women living in the specific minority situations may be able to enjoy their human rights peacefully and fully. For most minorities, without additional protections and reinforcement of minority rights.

With that reason, codification in approving the international law and implementation of minority rights are equal in their importance to the classical Human Rights. Therefore, all governments are urged to accept, with domestic judicatures and with the covenant legalized internationally, principles detailed in this Declaration. Exactly as the classical Human Rights cases, national sovereignty is unacceptable as the reason to deny this principles, even, if there is no international instrument binding to it.

Although the legal norms should exist, the attitude adopted by the government and majority people is at least equally important. They are urged to see the existence of minority not as a disturbance or abnormality, but as normal expressions of natural diversity constructing the characters of our world.

The government should comprehend that loyality cannot emerge by controlling minority as tight as possible, but by providing them with the chance to determine their own fates as they can. Putting trust on the people, existing in the center of liberal democration, do not stop at where people different to us in one aspect and another. Only if this diversity is considered as richness, and not as threat, therefore, different people or groups may live peacefully and harmoniously in a country.

The commitment of Sangihe Talaud County Government in pioneering cooperation and utilizing the opportunity of the firts Border Crossing economic development was written in several Regional Ordinances of the Sangihe Talaud County (Central County of Miangas Island), among them were the Regional Ordinance No. 1 of 2001 concerning the development of Sangihe and Talaud Islands area, in which, the outwardlooking cooperation developed extensively with the potency and utilization of geographical position of Sangihe Talaud County, in connection to Miangas Island in it, was explained in it. This was also written in the Regional Ordinance No. 2 of 2001 concerning the Spatial Arrangement of Sangihe and Talaud Mainstay Area, among them, it emphasized "... as the area located at the Northernmost of Indonesia, therefore, the 'outwardlooking' orientation should be more dominant than the 'inwardlooking' orientation..."

In 2001, seeing the open opportunity in the neighboring country, both in the Philippines and also in Indonesia, the regional government at the border area of both countries, which are the Sangihe Talaud Islands County on Indonesian side and General Santos City on the Philippines side, pioneered a local cooperation. The efforts were started by conducting the signing of the Letter of Intent (LOI) on April 17, 2001 to the stage of the signing of Sister City-Regency Cooperation MOU between both regional governments. In that MOU, several cooperation areas were summarized, regulated in Article II. The cooperation, among them, are in the area of trading and commercial, which is, both governments will organize to guarantee the extensification of the service role of *Border Crossing Area Agreement (BCA)* to *Border Trade Area (BTA)*. At this effort, the opening of transportation service, provision of information, and assurance for business and investment opportunity are regulated in this agreement. It is expected that the Border Trade Area that will be offered by the Regional Government may be able to improve the lacks of the *Border Crossing Area Agreement* that was still inflexible to the potency and situation of people living at the border area.

IV. Closing

The Indonesian and the Philippines governments created a border agreement between Indonesia and the Philippines in 1975, which was the *Border Crossing Area Agreement* with the objective of minimizing disputes in the border area of Miangas Island and regulating the border crossing and commerce in that area. However, in its implementation, it had not been maximal yet in accommodating border people's interests and it limited more rather than facilitated people's interests. In that agreement, there were several limitations of several stipulations regulating the number, kinds, and prices of border crossing goods that were not suited to the situation of people prevailing from generations to generations. The stipulations were not effective in their implementation because the route that should be taken in the stipulations of the *Border Crossing Area Agreement* was further than the traditional route that so far was taken by people. Therefore, the illegal trading activities occured frequently at the border area of Miangas Island because if they were conducted legally, those actions violate the regulation if the *Border Crossing Area Agreement*.

The situations in the border society made the regional government to use its authority in Act 22 of 1999 concerning International Covenant and Act 32 of 2004 concerning Regional Government to empower the *Border Crossing Area Agreement* in Miangas Island by revising that agreement. One of the efforts conducted by the government was by issuing the Regional Ordinance No. 1 of 2001 concerning the development of Sangihe and Talaud Islands area and Regional Ordinance No. 2 of 2001 concerning the Spatial Arrangement of Sangihe and Talaud Mainstay Area. Its geopolitical location as the border area is expressed by the Regional Government to develop Miangas Island, so that it will be equal to other islands. Miangas Island is put into discourse as another door for Indonesian trading activities. The revision of *Border Crossing Area Agreement* offered by the Regional Government through the *Border Trade Area* between Indonesia and the Philippines.

Through the *Border Trade Area*, the trading activities between Miangas Island (especially Indonesia) and the Philippines will improve with legal routes. *Border Trade Area* will surely improve economic and welfare rates of people living in Miangas Island because there will be many investments both from the foreign party and the regional government. Indirectly, this will be followed by the development of facilities in vaious areas. Therefore, this region will be one of International Trading areas in Indonesia because of its very strategic location.

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