

THE IMPLEMENTATION OF *UTI POSSIDETIS* PRINCIPLE IN DETERMINING LAND BORDER POLE POINT BETWEEN INDONESIA AND MALAYSIA

Saru Arifin

P. Pugeran I no 24. RT 08 RW 10 Maguwoharjo

Depok, Sleman, Yogyakarta

E-mail: sa_riffhuui@yahoo.com/saru.arifin@fh.uii.ac.id

Abstract

In the era of independence, Indonesian territory covered all the former Dutch's colony territory. The new state territory, which was based on the historical fact, is known as the uti possidetis principle. In the practical implementation, this concept is not problematic, especially in the border delimitation process. This article attempts to analyze the border demarcation mechanism between Indonesia and Malaysia land border. Furthermore, this article also attempts to discover the border demarcation impact to the state's sovereignty in general and its impact to the local people mobility. The last, this article also attempts to know the border dispute settlement chosen by both Indonesia and Malaysia.

Keywords: *Border Sign, Sovereignty, The Border Region, Border Dispute, And Border Convention.*

Introduction

The territory of Indonesia after the 1945 Independence covered all the area of Dutch ex-colonies. This is based on the *uti possidetis* principle in the international law. From the Macro aspect, this concept does not cause many problems. The claim of Indonesian territory from Sabang to Merauke and from Miangas Island in the tip of North Celebes up to the Dana Island in the southern part of Rote, Nusa Tenggara Timur is true according to this concept. But the problem is, when the macro problem will be implemented in the micro context, such as the determining of border pole point especially in the land area, there are many problems emerged because the determining of territory border pole point cannot be done by the Indonesian only. This process must involve the neighbor country which is directly abutted with the Indonesia such as with Malaysia in Borneo Island.¹

In this context, it becomes urgent for the Indonesia to do border diplomacy in determining the pole points in the land border with Malaysia in Borneo, Papua New Guinea, and Timor Leste. The process of border diplomacy, according to Jones² in the theory, the boundary making is included in the category of delimitation and demarcation. Delimitation is the process of determining the limitation line of states' boundary while demarcation is the determining of boundary pole points.

¹ Sobar Sutisna, Sora Lokita, and Sumaryo, "Boundary making theory dan pengelolaan perbatasan di Indonesia", A paper presented in the *Workshop of Boundary Area Management*, International Relations/UPN Veteran, Yogyakarta, November 2008, pp. 5

² Stephen B. Jones, 1945, *Theory of Boundary Making: A Handbook for Statesmen, Treaty Editors, and Boundary Commissioners*, quoted in *Ibid*, pp. 10.

For Indonesia, the boundary is the strategic and vital area in the constellation of The State Unity of Republic of Indonesia. It is said as strategic because geographically, the border area has good potential of natural resources and it has more market probability because of its closeness to the neighbor country. In addition, it is considered vital because politically the border area is related to the sovereignty aspect of state, defense and security, sense of nationality, ideology, social, economy, and culture.³

As explained above, boundary is important part of the state defense. Therefore, every state has the authority to decide its own jurisdiction region boundary. However, since the outer border of Indonesia is usually abutted with the sovereignty area of other country, then the boundary determining should also notice the authority of other country through cooperation and treaty. For example, in the field of survey and the determining of land and maritime region boundary between Republic of Indonesia and other country, during the time is reflected in the form of MoU and also treaties on the maritime border line.⁴

The problem of state boundary confirmation becomes more important along with the rapid change in some regions as the impact of global situation. The problem of country border is not only related to the area sovereignty but also the right of every citizen to exploit the natural resource. Since the natural resource is more limited while the The country boundary problem is not only related to external threat but also related with the region sovereignty and the right of every citizen to exploit the natural resources. Since the quantity of the natural resources is more limited and the population keep increasing, the region boundary becomes sensitive and may cause dispute and conflict.⁵

In the practical dimension, the problem of land and maritime boundary between Indonesia and Malaysia is like the “fire in the rice hull ash”. The trigger is always dominated by the aggressiveness of Malaysia who claims certain region as part of its country’s sovereignty. The most crucial problem faced by Indonesia at this present is the sharp debate with Malaysia about determining the point of state boundary pole in the maritime and on the land.⁶

According to Kartiko Purnomo and Department of Domestic Affairs,⁷ the Government of Indonesia has a strong will to resolve its boundary problem with Malaysia gradually started from the point in the east corner to the west.⁸ At this present, at least, there ten points which are still problematic such as the Tanjung Datu border in West Borneo because the measurement result which was conducted together by Indonesia and Malaysia was not suitable. Therefore, re-measurement is needed.

³ Irwan, Lahnisafitra, 2005, *Kajian Pengembangan Wilayah Pada kawasan Perbatasan Kalimantan Barat – Sarawak*, A Master Thesis in the Post Graduate Program, Institut Teknologi Bandung, pp. i

⁴ See Moch. Mahfud, MD, “Tata Kelola Perbatasan Negara Kita”, A Paper presented in the Seminar of Indonesian Rector Forum: *Superiority, Pioneering, Struggle, and Loyalty of Colleges in Building The Competition Sense and Nation Dignity*, in Auditorium Kahar Muzakir, UII, Yogyakarta, 5 August 2008, pp. 5

⁵ Ibid

⁶ See Aju, 2006, “Perbatasan Indonesia-Malaysia bak Api dalam Sekam”, accessed on March 26, 2008 from <http://www.sinarharapan.co.id/berita/0609/19/sh04.html>

⁷ See anonymous, 2007, “Malaysia Klaim Wilayah Perbatasan RI”, accessed on March 26, 2008 from <http://www.malingsia.com/index.php/archives/385>.

⁸ The regional corporation in the field of survey and monitoring of the maritime and land boundary between Indonesia and Malaysia was firstly conducted in 1973.

Meanwhile, in the East Borneo, the state border in the maritime and the land generally is resulted from the difference sources. Indonesia uses the map of Dutch, while Malaysia uses the map of British in determining the border of each country. In this context, intensive negotiation between both parties is absolutely needed to find the way out.⁹

In regard with that, this writing will try to specifically analyze the mechanism of uti possidetis principle implementation as the universal principle in the international law in determining the territory of a new country. As a study case, the pressure of the principle is the determining of land boundary pole point between Indonesia and Malaysia.

The Dynamics of Boundary Study

Boundary is one of the most complex issues in the discipline of international law. However, so far there are only a few literatures that take the topic of boundary as the specific discussion. The limited attention to the issue of country boundary is in contrast with the factual situation being faced by the international law itself. The fact shows that this issue is one of perennial issues that decorate the history of international relation in all ages.¹⁰ This is shown by the fact that The Permanent Court of International Justice frequently settles the boundary disputes in the maritime and the land.¹¹

Besides the lack of books about the boundary, the research on this case is also very limited. Researches and writings related to the problems of boundaries are still not many especially in the field of international relation and also other law disciplines such as administrative law, criminal law, and so on.

⁹ See, DRN, "Seminar Wilayah Perbatasan Kalimantan Timur dan Sarawak", Warta Dewan Riset Nasional, July Edition, 2008. Pp. 6.

¹⁰ In spite of the scarce of literatures discussing exclusively about the country boundary, the books categorized as "the leading text books" aimed to discuss 'all' issue in the study of international relation at this present do not become a specific problem that should be discussed in special chapter. Generally, the discussion about this problem is found spread in the chapters about law of maritime, territory, and subjects of international law. For example, see Malcolm N. Shaw, 2003, *International Law*, Cambridge University Press, Cambridge; and Malcolm D. Evans (ed.), 2003, *International Law*, Cambridge University Press, Cambridge. However, there are four books that specifically discuss about the boundary problem such as Malcolm Shaw, 1986.

¹¹ Some cases that ever happened are: (i) the *Corfu Channel* case (1949) that involved Britain v. Albania; (ii) The *Fisheries Jurisdiction* case (1973) that involved Norway v. Britain; (iii) *The Land and Maritime Boundaries* case (2002) that involved Cameroon v. Nigeria; (iv) *the Sipadan and Ligitan* case (2002) that involved Indonesia v. Malaysia; (v) *the North Sea* case (1969) that involved The Federal Republic of Germany v. Netherlands; (vi) the case of *Land, Island, and Maritime Frontier Dispute* (1992) that involved El Salvador v. Honduras; (vii) the case of *Passage Through the Great Belt* that involved Denmark v. Finland; (viii) the case of *Maritime Delimitation in The Area between Greenland and Jan Mayen* (1992); (ix) *the Continental Shelf* case (1985) that involved Libya v. Malta; (x) the case of *Maritime Delimitation and Territorial Question* (2001) between Qatar and Bahrain. While the non-case is the case of *Western Sahara* (1975) that conflicted about the claim of Morocco to the Western Sahara as ex-Spanish colony. Meanwhile, the problems decided by the arbitrage institution are followings; (i) the case of *Chamizal* (1911) in which the International Boundary Commission settled the boundary dispute between the United States of America v. Mexico; and (ii) the *Island of Palmas* case (1928) in which the arbitrator Huber acted as the only arbitrator for the dispute between the United States of America and Netherlands. See <http://www.pcij.org>. Also see some cases of boundary dispute in JG. Starke, 2007, *Pengantar Hukum International*, (ten edition, Book 1), translated by Bambang Iriana Djajatmadja, PT. Sinar Grafika, Jakarta, pp. 244-245; Martin Dixon, 1990, *Textbook on International Law*, Blackstone Press Limited, London.

Reed Wadley and Alexander Horstmann were some among anthropologists that pay specific attention to the boundary studies.¹² In his writing, Wadley provides a comparative perspective about the study on country boundaries in the world especially in Africa and Northwest America. The objective is to posit the boundary studies in a broader comparison context.

Horstmann gives more emphasizes toward the state of arts from the boundary studies. In his writing, he mentions that more countries becoming more aware about the boundary as the laboratory of social-cultural change especially in the Southeast Asia. This essay tries to discuss a coherent concept about boundary, border area, and frontier area and also identifies the future research questions from boundary studies.¹³

Mladen Klemenic and Anton Gosar¹⁴ are two European authors who wrote about the dispute of three countries after the change of political maps between Italia, Croatia, and Slovenia in the northern part of Adriatic Sea. Those two writers highlight the change of political and geographical map in the Adriatic Sea as the impact of the Yugoslavia disintegration to be Slovenia and Croatia in 1990. The new countries started to conflict about the boundary of each country, especially in the boundary in the northern part of Adriatic Sea.

Based on their analysis, the two authors suggest that to resolve the boundary disputes peacefully and to stop the case going to the international conflict level, the involved parties should attempt to have transboundary cooperation especially in settling the pollution in the sea that became serious threat for the life of sea habitats in Adriatic Sea.¹⁵

Besides, the concerned parties may also attempt diplomacy in resolving the occurring boundary dispute. This step is important to do to prevent armed conflict triggered by boundary problem that may cause negative impact to the stability of Adriatic Sea maritime which is abutted with other surrounding countries.

The other European author, A. Obukhov¹⁶ discusses about the history of negotiation on determining the boundary between Russia and Lithuania after the fall of Soviet. Obukhov's writing is started with unilateral statement from Russia which declared the independence from Soviet and the boundaries of the country. This action triggered dispute with some abutted countries such as Estonia, Latvia, Lithuania, Belarus, Georgia, Azerbaijan, and Kazakhstan.

Special for the boundary dispute between Russia and Lithuania, several negotiations were conducted that include the first phase that took four years (1993-1997), and the second phase that took six years (1997-2003). Both countries then had successfully finished the border agreement in 2005 marked by signing the cross-border agreement of both countries and effectively reinforced since April 2006.¹⁷

¹² Quoted from Riwanto Tirtosudarmo, 2007, *Dinamika Etnisitas dan Hubungan Ekonomi pada Wilayah Perbatasan di Kalimantan Timur – Sabah, Studi kasus di Wilayah Krayan dan Long Pasia*, Research Center for Regional Resource, Indonesian Science Institution, Jakarta, pp. 1

¹³ *Ibid.*

¹⁴ Mladen Klemenic and Anton Gosar, "The problems of the Italo-Croato-Slovene border delimitation in the Northern Adriatic", *Geojournal*; Oct 2000;52 2;ABI/IN-FORM Research, pp. 129.

¹⁵ *Ibid.* pp. 137.

¹⁶ A Obukhov, 2006, "The State Border with Lithuania", *International Affairs Academic Research Library*, 52, 4;pp. 136.

¹⁷ *Ibid.*, page 153-154

Roxning Guo¹⁸ from Beijing University, China, wrote more specifically on the pattern of cross-border economy. According to him, in many cases, the cross-border will always be identified with the security and defense policy. However, this situation should be in line with economic problem regarding the easy access to the neighboring countries that widely open the opportunity for the potential economy.

In this context, the interchangeably influence to economic condition of the two borders is inevitable. Therefore, Guo suggested some approaches to develop the cross-border areas in economic sense which are: Core Periphery Approach (CPA), suggesting urban building as the growth center stimulating the economic developments of the surrounding areas. Cross-Border Approach (CBA), an approach proposing the cooperation between the border regions to gain the advantages from each other to further develop the border areas of each country;¹⁹ and the third approach is the joint of the two approaches (CPA and CBA).

In Indonesia, the study on the border problems are commonly conducted by using the conventional approach which means that it does not use the concepts developed in some centers for border study, both in Europe and America. This approach sees the cross-border problem as the security and defense problem of a country, or the border areas are seen as the frontier which should be economically developed,²⁰. Some studies and papers on the border mostly use anthropologic, sociology, economic and urban planning approach. Nevertheless only a few that used the international law perspective especially on the land border.

Theory of Border-Making

Stephen B. Johnson (1945)²¹ formulates a theory related to the border making. He divides the formation process into four parts, which are: Allocation, Delimitation, Demarcation, and Administration.

Allocation

¹⁸ Rongxing Guo, 1996, *Border Regional...* Op.Cit. Page 116-120

¹⁹ Related to that matter, since Indonesia has done the governance reform from centralization to decentralization, then the local ordinance gives the opportunity to do the cooperation with state government of the neighbouring country as the borders between Kalimantan with Serawak and Sabah. The local authority in doing the international relation is based on the assisting function and maximizing the diplomacy function. See the study result conducted by Sri Asmawati Kusumawardani, 2003, *Pengaturan Penyelenggaraan Kerjasama Pemerintah Daerah dengan Pihak Luar Negeri dalam Era Otonomi Daerah*, Thesis of Postgraduate Program of Parahiyangan Chatolic of University, Bandung. Also see Jawahir Tonthowi and Saru Arifin, 2008, *Kewenangan Daerah Dalam Melakukan Kerjasama Luar Negeri: Studi Kasus di Provinis DIY dan Jawa Barat*, the basic research report, directorate of Research and Social Service (DPPM), Islamic University of Indonesia, Yogyakarta.

²⁰ See Heru Susetyo, *Mengelola Perbatasan Indonesia-Malaysia dengan Pendekatan Keamanan Non Tradisional*, Paper for Scientific Writing Competition of PPI Malaysia, 2008, page 4.

²¹ Cited by Sobar Sutrisna, Sora Lokita and Sumaryo.....Op.Cit. page 4.

Here, allocation deals with the area belongs to a country, including the area in border with neighboring country. The discussion on the area coverage has been regulated by the international law regarding how to gain or lose it.

The certain area is one of the essential elements for the country to be internationally admitted. The traditional standard of certain entity to be called a country is based on the Article 1 of the Montevideo Convention of 1933²²,

On the Article 1 of the convention, it is mentioned that: a state as subject of law should have: (a) permanent resident; (b) internationally recognized boundary; (c) government ; and (d) capacity to make international relations with the other states.

The international law does not determine the limiting number for the resident and the areas. Accordingly, there is not any difference between Singapore which has 278 km with China which has 9,596,961 km as the size of the area is not the issue here, rather it is about the sovereign state.²³

Shaw's understanding is confirmed by the statement of the German Polish Mixed Arbitral Tribunal in the case of *Deutsche Continental Gas gesellschaft v. Polish State* which reveals that the existence of a state can be found out through the area which has the proper consistency, though the border area is not yet confirmed,²⁴ as long as the state has the effective control²⁵

In the latest international law, the borders of the state is determined by the international law process such as : self determination, *uti possidetis* principle, and border treaty/agreement.²⁶ The three models are admitted and accepted by international society as one way to determine an area for the country just following the colonization or those who just did self-determination as in the case of East Timor and Kosovo which declared itself a freedom from Serbia on February 17,2008, through the declaration of independence by Kosovo Parliament²⁷

The determination area which is based on *Uti possidetis* is the principle which has become the international convention law reinforced to determining a new area through claiming declaration of independence or through self determination.

Uti possidetis is latin for "as you possess". This terminology is historically from Roman Law which means that territory and other property remains with its possessor at the end of a conflict as written in an agreement²⁸

²² See David J. Harris, 1983, Cases and Materials on International Law, Sweet and Maxwell, London, page 81-84.

²³ See Malcolm.N.Shaw,2003, International Law.....op.cit. page 141.

²⁴ See Rein Mullerson, 1997, Human Rights Diplomacy, Routledge, London.

²⁵ See the complete discussion in Gregory.H.Fox and Brand.R.Roth (eds),2000, Democratic Governance and International Law, Cambridge University Press, Cambridge.

²⁶ Templeman,L, (Consultan Editor), 1997, Public International Law, Old Bailey Press, London, in Benny Setiono, 2006. Prinsip-prinsip Modern Tentang Kedaulatan Wilayah, accessed on July 11,2008 from <http://bennysetianto.blogspot.com/>

²⁷ Cristopher J.Borgen. Kosovo's Declaration of Independence: Self –Determination, Secession and Recognition, Jurnal ASIL Volume 12, Issue 2, February 29,2008.

²⁸ See Helen Ghebrewebet:2006, Identifying Units of Statehood and Determining International Boundaries: A Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination, Verlag Peter Lang, ISBN 3631550928, as cited by Wikipedia, Uti possidetis, accessed on November 19,2008 from <http://www.answers.com/topic/uti-possidetis>

Basically, in the 19th century, this principle was used by Roman Law of Civil Law. In this context, there were two different terminologies of *Uti Possidetis* translation which etymologically means either “possession or ownership” in Civil Law. The word “possession” means possessing a thing in good faith—that is not by the use of force or any fraudulent means.

In the early 17th century, England’s James I used the term when he refused to recognize Spanish claims to Western Hemisphere. More recently, the term is used to establish the frontiers of newly independent states following decolonization.

In the 19th century, this term was applied in South America during the Spanish Withdrawal. Later, this principle was also applied to Asia and Africa following the withdrawal of European powers from those continents²⁹. In 1986, the principle was applied by ICJ in the case *Burkina Faso vs Mali* :

[*Uti possidetis*] is a general principle, which is logically connected with the phenomenon of obtaining independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles provoked by the changing of frontiers following the withdrawal of the administering power.

This principle is firmly applied to a state following decolonization apart from the case of *Burkina Faso vs Mali* without considering the law status and entity politic of the border line:

“ The territorial boundaries which have to be respected may also derive from international frontiers which previously divided a colony of one State from a colony of another, or indeed a colonial territory from the territory of an Independent State, or one which was under protectorate, but had retained its international personality. There is no doubt that the obligation to respect preexisting international frontiers in the event of State succession derives from a general rule of international law, whether or not the rule is expressed in the formula of *uti possidetis*”.

The use of this principle, according to some international law experts such as Paul R. Hensel, Michael E. Allison, and Ahmed Khanani³⁰, will create stability around the borders compared to the states which are not owned by colonials. The reason is that the colonial had placed the cross-borders firmly so that the states following the decolonization would just have to follow the inherited cross-borders.

The main objective of this principle is to avoid the conflicts based on the power dispute by the new states. It has become the international law convention;³¹. Therefore, claiming a territory based on *terra nullis* could not longer be done.

²⁹ Ibid. also see Jawahir Tonthowi and Pranoto Iskandar, 2006, *Hukum Internasional Kontemporer*. PT. Refika Aditama, Bandung, page.183-184

³⁰ Ibid. also see Jawahir Tonthowi and Pranoto Iskandar, 2006, *Hukum Internasional Kontemporer*. PT. Refika Aditama, Bandung, page.183-184

Paul R. Hensel, Michael E. Allison, and Ahmed Khanani, “The Colonial Legacy and Border Stability: *Uti Possidetis* and Territorial Claims in the Americas,” Paper presented at the Annual Meeting of the International Studies Association, Montreal, March 2004, accessed on November 19, 2008 from http://aaa.allacademic.com/met/p_mla_apa_research_citation/0/7/4/2/9/pages74293/p74293-1.php

³¹ Jawahir T, and Pranoto Iskandar, 2006, *Hukum Internasional*. Op.Cit. page 183-184.

Related to the territory allocation, the making of imaginary lines of the land border between Indonesia and Malaysia in Kalimantan Island is based on the creation of colonials (British and Dutch) during their occupation. In this context, the colonials divided the border lines into two parts: land border lines and maritime border lines (continental border)³²

First, the land border line is found in two places: Kalimantan Island and a small island in the east of Kalimantan, that is Sebatik Island. The border lines is in Kalimantan Island which ranges 970 mile, more or less, dividing the island into West Kalimantan and East Kalimantan, the Republic of Indonesia and Sarawak states, and Sabah in Malaysia Federation.

This is a unique condition for Kalimantan itself as it is occupied by three countries; Indonesia in Kalimantan, Malaysia in Serawak and Sabah, and Brunei Darussalaam in the north province of East Kalimantan, while the rest of the area; Tawau Residency becomes the territory of Sabah.

Second, the maritime-border. There are some maritime-borders and continental borders between Republic of Indonesia and Malaysia Federation, which are: Malaka Strait, South China Ocean and East Kalimantan offshore. The two border lines between Republic of Indonesia with Sarawak and Sabah of the Malaysia Federation are imaginary ones. The time and how the process of the imaginary lines making can be traced on the colonial era of the countries.

Based on the historical facts, the border lines of Indonesian and Malaysian areas is determined by using the colonial 'heritage',³³ which are: the border convention of 1819, 1915 and 1919 between English as Borneo government and Dutch who occupied Kalimantan dealing with the agreement on the land border in each area.

The history of border between Malaysia and Kalimantan before Indonesia's independence is the historic argument that strengthens the area allocation for Indonesia in Kalimantan area that it eventually is very useful in determining the delimitation process and border demarcation for Indonesia border.

Delimitation

Following the area allocation is the identification of area which is overlapping and should be determined the border with the neighboring country. This process is conducted through the border diplomacy between the two neighboring countries. The determination of the border line should refer to the principles of *Uti Possidetis* in determining the land border, and the maritime law regime in determining the maritime border.

If the negotiation runs well, the related states should agree on the cross-border areas, or on the jurisdiction borderline. This agreement will be called an agreement or a

³² See Ratna Indrawasih, et al., 1996. *Dinamika Sosial Budaya Masyarakat di Daerah Perbatasan Indonesia-Malaysia: Studi Kasus Desa Entikong-Kalimantan Barat dan Pulau Nunukan- Kalimantan Timur*, The research report of the Center for Research and Public Development and Culture, Lembaga Ilmu Pengetahuan Indonesia (PMB-LIPI), Jakarta, page 5-14.

³³ See the interview on *warta bea cukai* with Hikmahanto Juwono, "... Since the Beginning, the Government has to identify the potential problem that may turn to a dispute, *Warta Bea Cukai*, Edition 370 year XXXVII, September 2005, page 22-24.

treaty. Commonly, inside the agreement are the border coordinates or the description of the promised border line attached with the general illustration map.

Sometimes, the two countries cannot agree on the delimited border of their areas. If it happens then the countries will find the solution through the third party in accordance with solution mechanism regulated by the international law, such as: Arbitration, Court, and the expert panel.

In practice, the dispute solution is mostly done through International Court considering that the Court decision is final and bound the related parties ³⁴

Based on the principles of *uti possidetis* of international law, the delimitation (confirmation on border lines) between Republic of Indonesia with Malaysia in Kalimantan Island is started from Tanjung Datu in West Kalimantan to Sebatik Island in East Kalimantan for 2004 km. The agreements on the determination of the border lines can be understood based on The Boundary Convention between English and Dutch Government which is signed in London on June 20, 1891 which was determined again based on The Boundary Agreement signed in London on September 28, 1915 which was revised with The Boundary Convention signed in The Hague on March 26, 1918.

The government of Republic of Indonesia and Malaysian Kingdom determine again the cross border of the two countries by releasing the Memorandum of Law signed in Jakarta, November 26, 1973 based on the Minute of The First Meeting of The Joint Indonesia-Malaysia Boundary Committee signed in Sabah on November 16, 1974 ³⁵

Demarcation

Demarcation is the border confirmation which is done following the border determination by the government of neighboring countries. In this context, the border has been defined technically by putting a border pillar, be it natural or artificial border. This is in line with the definition of border itself.

According to Guo, ³⁶border or boundary refers to a definition that delimits a political territory and life space. While the border areas refer to the area which has the important role in the political competition of two different countries.

Meanwhile, according to Strake ³⁷, conceptually, the concept of the state borders is distinguished between the 'natural' border and the 'artificial' one. The natural borders are consisting of mountains, rivers, coasts, forests, lakes which divide the sovereign limits of two or more countries.³⁸ however, what is used in the political meaning is the natural border as it has the more important and firm capability in determining the border, so that the dispute will be easily to resolve.

The natural border shows refers to the natural barriers, to which the state's areas should be widened and limited besides serving as the barriers or protectors from other

³⁴ Sobar Sutrisna, Sora Lokita and Sumaryo.....Op.Cit., page 10

³⁵ Ibid.

³⁶ Rongxing Guo, 1996, Border-Regional..Op.Cit. page 12-13

³⁷ J.G.Starke, 2007, Pengantar Hukum Internasional....Op.Cit. page 244-245

³⁸ In this context, Indonesia is often in dispute with Malaysia in determining the natural land border, as in Tanjung Datu with MoU signing twice between Republic of Indonesia and Malaysia Federation, each of it in Kinabalu City, on August 23, 1976 and in Semarang, on November 18, 1978. Indonesia then refused the MoU as new evidence was found. Therefore, Indonesia refused to have the re measurement on some poles in Tanjung Datu. See Aju.2006, Perbatasan....op.Cit.,

states. Meanwhile, the artificial borders are consisting of the signs utilized to identify the imaginary border line, or parallel with meridian line / *garis bujur* or horizontal line ³⁹.

The jurisdiction basis for the border line confirmation is the convention of border of British and Dutch in 1819 of 1915 and 1919. This basis discusses a matter related to the determination of the border pillar (demarcation) in a more detail way.

The border confirmation was conducted by both Indonesian and Malaysia in 1966, where both parties did several discussions aimed at determining each country's cross-border based on the border convention during the colonization. This is important for both of the countries to confirm each country's sovereignty.

The border convention explains the coordinate borders agreed from East Kalimantan, precisely from Sebatik Island to West Kalimantan in Tanjung Datu. The utilized border line commonly uses the natural watershed. Technically, the adjacent states will determine together the cross-border of each state.

The agreement is begun by establishing the joint forum to discuss any problems related to border disputes. This forum then leads to the formation of General Border Center (GBC). This forum is used as the premier step to start the law making in determining the joint survey and the border pillars of a state as mentioned in the 1891 convention.

Technically, the determination of the border points of the two states is conducted by special unit under the joint GBC, that are: Joint Indonesia Malaysia Boundary Committee (JIMBC). Within the Indonesian GBC itself, some related institutions are Domestic Affairs Department, with the Local Administration and Boundary Directorate as the leading sector ⁴⁰, together with Defense Department, Foreign Affair, and Local Ordinance (Province and Regency).

Periodically, the joint committee holds a meeting, which is conducted alternately in both Indonesia and Malaysia to further discuss the important steps in determining the borderlines. The meeting mostly results in the recommendation on conducting boundary survey in terms of the location. Some technical problems related to implementation in the field are related to weather turbulence and geographical topography which is difficult to pass through as it is full of mountains and jungles. Considering these problems, it is agreed to build helipad by both countries so that they can use the helicopter. ⁴¹

At this moment, the JIMBC has finished surveying 98% of boundary survey. However, this stage is still related to the longest boundary pillars. The longest boundary pillars are Type A; 200 km and Type B : 50 km. to signal the boundary lines on the certain coordinates, 19.328 demarcation pillars are built. ⁴² This is the swift advancement compared to what other states have done.

On the next stage, the Foreign Ministry, according to Adam ⁴³ from International Law and Treaty, will develop the shorter demarcation pillars that it finally reaches the

³⁹ Ibid.

⁴⁰ Interview with David, Staff of Regional and Border Administration Directorate, August 29, 2008 at Depdagri, Jakarta.

⁴¹ Interview with Adam, Law and International Agreement Directorate, Foreign Affair Dept. August 27, 2008 at Foreign Affair Dept

⁴² See Immigration General Director, Keimigrasian di Wilayah Perbatasan, Immigration General Directorate: Cross-Border and Foreign Cooperation Directorate, Jakarta, page 56.

⁴³ Interview on August 27, 2008 at Foreign Affair Department, Jakarta.

demarcation pillar of Type D reaching the distance of 100-200 meters. Should this plan be done, the monitoring and confirmation of the demarcation lines could be done easily and thus it can be transformed into acts, which will be deposited to the United Nations for international publication.

In this context, to maintain the consistency of the survey then both of the countries make a demarcation map and topographical area. Indonesia has *Bakorsutanal* (The Coordinating Survey and National Mapping Body) to do task. This body is established by Kepres (Presidential Decision) No. 83/1969. The product of this body is topographic map and the detail map from the border survey. The map is attached on MOU agreed by both parties during the demarcation process.

The MOU contains documents of the process and history of the land borders between Malaysia and Indonesia. Though the demarcation pillars are broken or damaged, the coordinate points are still known by referring to the treaty. Therefore, if the border problems occur, the solutions are still there.

The use of MOU as the law instrument will put both parties at ease. MoU is the instrument which is easy and quick to make compared to the treaty instrument. Besides, MoU is the treaty instrument which functions as pre-agreement.

Management

A good border management, according to theory of boundary making, can be done in overlapping way with demarcation. This is based on the consideration that practically, the problems occur many often, the problems related to economic, social, culture and politic. Therefore, the management practices go along with demarcation process.

Under the administration and development management, the work volume in handling the border is the largest volume as it involves the multi sectors which need the more integrated planning. Almost all aspects of development starting from politic, economic, social, culture, law, infrastructure, environment, defense and security are in this stage. From the bilateral side, to have such cooperation is very common for the adjacent countries.

In this context, *Malindo* (social-economy of Malaysia-Indonesia) has been established as the cooperation forum concerning economic sector. The idea of social-economy cooperation in the cross-border area has been revealed for the first time by Dato Musa Hitam, the Vice Prime Minister of Malaysia as the General Border Committee (GBC) of Malaysia on the GBC Meeting XII which was held in Kuala Lumpur on Nopember 14,1983. The idea was revealed when opening the meeting and positively responded by General TNI L.B Moerdani as ABRI Commander in chief /*Panglima* and as the chief of Indonesia GBC. After the meeting, the Staff Planning Committee (SPC) of Malindo, as the coordinator of GBC planning, delegates some apparatus to start the efforts reaching the targets of the social-economic cooperation.⁴⁴

Conclusion

Based on the above explanation, it is concluded that the operational mechanism of *uti possidetis* principles regarding the determination of border pillars of Indonesia's land areas and Malaysia's will follow these stages. First, on the preliminary stage, both parties

⁴⁴ Interview on August 27, 2008 at Foreign Affair Department, Jakarta.

agree on using the historical arguments determining the allocation of border areas during the Dutch and English colonialism; Second, after the allocation of border areas is agreed, both parties agree on delimitation by using the border lines based on border convention of British Commonwealth with Netherlands in 1819, 1915, 1918.

Third, after delimitation is agreed based on the convention of British Commonwealth and Dutch, then both parties do the demarcation, confirming the demarcation pillars as mentioned in some conventions. Related to this, both parties agree on formulating the joint institution which function as the forum related to the border problems. The joint forum is named after ad-hoc General Border Committee and there is sub committee known as Joint Indonesia Malaysia Border Committee (JIMBC). The sub committee conducts the survey and the mapping on the state pillar of border.

The result of the joint survey and mapping by JIMBC is revealed on MoU containing everything related to the survey and mapping result. MoU is partial as its content only concerns on the survey and mapping result of the certain points, not covering all borders for 2004 kilometers from West Kalimantan to East Kalimantan. In the context of international law, the MoU is purposefully created for the joint law instrument considering its simplicity and practical making. It is most likely that the result of the MoU will be deposited to United Nation once the survey and mapping have been done.

References

- Borgen, C.J. *Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition*, Jurnal ASIL Volume 12, Issue 2, February 29 2008.
- Departemen Komunikasi dan Informatika, *Menelusuri Batas Wilayah Nusantara*, Depkominfo, Jakarta, 2006.
- Dirjend Imigrasi, *Keimigrasian di Wilayah Perbatasan*, Direktorat Jenderal Imigrasi: Direktorat Lintas Batas dan Kerjasama Luar Negeri, Jakarta 2007.
- Dixon, Martin, *Textbook on International Law*, Blackstone Press Limited, London, 1990.
- DRN, *Seminar Wilayah Perbatasan Kalimantan Timur dan Serawak*, Warta Dewan Riset Nasional, Edisi Juli 2008.
- Evans, Malcolm D. (ed.), *Internasional Law*, Cambridge University Press, Cambridge, 2003.
- _____, (ed.), *Blackstone's International Law Documents*, Blackstone Press, London, 1999.
- Fox, Gregory H. dan Roth, Brand R. (eds), *Democratic Governance and International Law*, Cambridge University Press, Cambridge, 2000.
- Guo, Rongxing, *Border-Regional Economics*, PhysicaVerl Heidelberg, Germany, 1996.
- Harris, D.J., *Cases and Materials on International Law*, Sweet and Maxwell, London, 1986.
- Indrawasih, Ratna, Marzuki, Asfar, Soewarsono, Abdurrachman, Sukri, 1996, *Dinamika Sosial Budaya Masyarakat di Daerah Perbatasan Indonesia-Malaysia: Studi Kasus Desa Entikong-Klaimantan Barat dan Pulau Nunukan-Klaimantan Timur*, Laporan Penelitian Pusat Penelitian dan Pengembangan Kemasyarakatan dan Kebudayaan, Lembaga Ilmu Pengetahuan Indonesia (PMB-LIPI), Jakarta.

- Kahler, Miles dan Walter, Barbara F., *Territoriality and Conflict in an Era of Globalization*, Cambridge University Press, Cambridge, 2006.
- Klemencic, Mladen dan Gosar, Anton, *The problems of the Italo-Croato-Slovene border delimitation in the Northern Adriatic*, *GeoJournal*; Oct 2000; 52, 2; ABI/ INFORM Research, pg. 129.
- Lahnisafitra, Irwan, *Kajian Pengembangan Wilayah Pada Kawasan Perbatasan Kalimantan Barat-Sarawak*, Thesis Master-S2 Pada Program Pasca Sarjana Institute Teknologi Bandung, 2005.
- Mahfud, MD, Moch. "Tata Kelola Perbatasan Negara Kita", Makalah disampaikan dalam acara Seminar Forum Rektor Indonesia: "Keunggulan, Kepeloporan, Kejuangan dan Pengabdian Perguruan Tinggi dalam Membangun Daya Saing dan Martabat Bangsa", di Auditorium Kahar Muzdhakir, UII, Yogyakarta, 5 Agustus 2008.
- Mullerson, Rein, *Human Rights Diplomacy*, Routledge, London, 1997.
- Obukhov, A. *The State Border with Lithuania, International Affairs*; 2006; 52, 4; Academic Research Library, pg. 136.
- Shaw, Malcolm N., *International Law*, Cambridge University Press, Cambridge, 2003.
- _____, *Title to Territory in Africa: International Legal Issue*, Clarendon Press, Oxford, 1986.
- Starke, JG., *Pengantar Hukum Internasional*, (edisi kesepuluh, Buku I), Penerjemah Bambang Iriana Djajaatmadja, PT. Sinar Grafika, Jakarta, 2007.
- Sutisna, Sobar, Lokita, Sora, dan Sumaryo, "Boundary Making Theory dan Pengelolaan Perbatasan di Indonesia", Makalah Dipresentasikan Pada Seminar Pengelolaan Perbatasan, Diselenggarakan Oleh UPN Veteran, Yogyakarta, 16 November 2008.
- Templeman, L, (Consultant editor), *Public International Law*, Old Bailey Press, London, 1997.
- Thontowi, J dan Iskandar, P., *Hukum Internasional Kontemporer*, Refika Aditama, Bandung, 2006.
- Thontowi, J dan Arifin, S., *Kewenangan Daerah Dalam Melakukan Kerjasama Luar Negeri: Studi Kasus di Provinsi DIY dan Jawa Barat*, Laporan Penelitian Unggulan, Direktorat Penelitian dan Pengabdian Masyarakat (DPPM), Universitas Islam Indonesia, Yogyakarta, 2008.
- Tirtosudarmo, Riwanto, *Dinamika Etnisitas dan Hubungan Ekonomi pada Wilayah Perbatasan di Kalimantan Timur – Sabah, Studi Kasus di Wilaya Krayan dan Long Pasia*, Pusat Penelitian Sumber Daya Regional, Lembaga Ilmu Pengetahuan Indonesia, Jakarta, 2007.
- Aju, 2006, *Perbatasan Indonesia–Malaysia bak Api dalam Sekam*, diakses pada tanggal 26 Maret 2008 dari <http://www.sinarharapan.co.id/berita/0609/19/sh04.html>
- Anonim, 2007, *Malaysia Klaim Wilayah Perbatasan RI*, diakses pada tanggal 26 Maret 2008 dari <http://www.malingsia.com/index.php/archives/385>.
- Ghebrewebet, Helen, 2006, "Identifying Units of Statehood and Determining International Boundaries: A Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination", Verlag Peter Lang, ISBN 3631550928,

sebagaimana dikutip oleh Wikipedia, *Uti Possidetis*, diakses pada tanggal 19 November 2008 dari <http://www.answers.com/topic/uti-possidetis>

Hasani, Enver, 2003, "Uti Possideti Juris: From Rome to Kosovo", Paper disampaikan dalam acara Fletcher Forum of World Affairs Summer/ Fall, 2003, diakses pada tanggal 19 November 2008 dari <http://pbosnia.kentlaw.edu/symposium/resources/hasani-fletcher.htm>.

Michael, P.H; Allison, E. dan Khanani, A. "The Colonial Legacy and Border Stability: Uti Possidetis and Territorial Claims in the Americas", Paper presented at the Annual Meeting of the International Studies Association, Montreal, March 2004, diakses tanggal 19 November 2008 dari http://www.allacademic.com/meta/p_mla_apa_research_citation/0/7/4/2/9/pages74293/p74293-1.php

Ghebrewebet, Helen, 2006, "Identifying Units of Statehood and Determining International Boundaries: A Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination", Verlag Peter Lang, ISBN 3631550928, sebagaimana dikutip oleh Wikipedia, *Uti Possidetis*, diakses pada tanggal 19 November 2008 dari <http://www.answers.com/topic/uti-possidetis>

Setiono, Benny, 2006, *Prinsip-Prinsip Modern Tentang Kedaulatan Wilayah*, diakses pada tanggal 11 Juli 2008 dari <http://bennysetianto.blogspot.com/>

Konvensi 1891 Inggris-Belanda Mengenai Perbatasan
 Konvensi 1915 Inggris-Belanda Mengenai Perbatasan
 Konvensi 1918 Inggris-Belanda Mengenai Perbatasan
 Konvensi PBB 1982 Mengenai Hukum Laut.
 Konvensi Wina 1969 Mengenai Perjanjian Internasional.
Vienna Convention on the succession of states in respect of treaties 1978.
 Konvensi Wina 1978.
 Konvensi Montevideo 26 Desember 1933.
 Resolusi MU-PBB 1810 (XVIII) Tahun 1976
 Undang Undang Dasar 1945 Pasca Amandemen
 ICJReports, (1950).
 ICJReports, (1975).
 ICJReports, (1986).
 ICJ Reports, (1994).