

The Existence Of Leading Islands Securing And The Border Areas Unitary State Of Indonesia (An Analysis In Law Perspective)

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Abstract: The research was carried with the aim to discover the existence of securing the foremost islands and state border region of the Republic of Indonesia reviewed from a legal perspective, which is directly related to the existence of security and dispute resolution methods as well as the governance of the foremost islands and border region in Kalimantan which bordering Malaysia. This study was conducted in Nunukan district and the surrounding provinces of Kalimantan, in this research method that used is normative legal analysis data with juridical and qualitative descriptive approach. The results showed that the security of foremost islands and border region of law perspective in accordance with the Law No. 34 of 2004 regarding the Indonesian National Army has not been implemented to the fullest to realize the security of foremost islands and border region as the frontline of the Republic of Indonesia. The existence of leading islands securing and the border region of the Republic of Indonesia still contain many weaknesses in terms of both governance and security.

Index Terms: Border Areas, International Law, Leading Island, Territorial

1 INTRODUCTION

The era of globalization is impact on the necessity for each country to be able to compete with the world competition that tends indefinitely. It is synonymous with the concept of state sovereignty reduction, technological sophistication, and world space narrowing and trade transactions development as a thinking the implementation of free trade. Globalization has had an impact on the escalation of the nation's defense and security threats in border region. As awareness for the perception of border region between countries to encourage policy makers to develop an assessment about the arrangement of border region equipped with the formulation of security system. As an archipelagic country, Indonesia has more than 17.504. islands with a coastline of more than 80.290 km, and borders with 10 neighboring countries. On land areas, Indonesia borders with 3 (three) countries, i.e Malaysia, Papua Nugini and Timor Leste, while on sea areas, border with 10 (ten) countries, i.e India, Thailand, Malaysia, Singapore, Vietnam, Philippines, Palau, Papua Nugini, Australia and Timor Leste. The area of this border has strategic value, in both aspects of defense and security; the border region is the territorial limits of the Republic of Indonesia are very influential on national's defense and security.

While the political aspect, the border region is classified as vulnerable to political conflicts with neighboring countries due to the intersection of territorial and jurisdictional boundaries, especially in the segment of border that have not been agreed. The issue of border actually starts to rise along with the emergence of waters and fisheries department in 2000 as it continued to release the border policy through the Decree of President (Perpres) No. 78 of 2005 concern the Management of the Outermost Small Islands. As we know there are 11 (eleven) cases in both borders sea and land, as follow: *First*, the case of Sipadan and Ligitan islands (two our leading islands) by the International Court has decided to belong to Malaysia since 2002. *Secondly*, the case of Ambalat as an effort of Malaysia to claim the waters territory called Ambalat block occur vagueness in maritime boundary so that this neighboring country tries to take advantage of this vagueness and at last Indonesia set a new *base point* from Karang Ungaran, until now negotiation has not been completed. *Third*, Jemur island in Riau province were ever claimed by Malaysia but actually the island is behind our leading island in the area. *Fourth*, the hostage of supervisory personnel of marine and fishery resources of our borders by Malaysia in response to the arrest of Malaysian fishermen that entering Indonesian waters illegally. These facts indicate that almost each year occur borderline cases experienced by Indonesia. Certainly, it has been a restriction on the importance of the Indonesia sovereignty as a maritime country to be developed and considered as one of the forms of the sovereignty of the Republic of Indonesia relating to the international sea, archipelagic and deepness waters as well as the air space over the territorial sea, archipelagic waters and inland as well seabed and land including natural resources contained therein. Given the importance of maritime areas handling related to the waters, islands and fisheries, it is necessary for specially the management of area with regard to the coastal areas and small islands which are also regulated in Act No. 1 of 2014 concern the Amendment of Act No. 27 of 2007 concern the Management of Coastal Areas and Small Islands. In the Act is understood that the coastal areas and small islands are vulnerable damaged by the activities of people in the use of resources or due to natural disasters and exploitation, so that the need for security measures in the area. Based on this case, it is needed a strategic policies that

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can support the management of coastal areas, so it can be arranged on the setting, management, utilization, preservation and protection and security of marine areas and determination of Indonesia's borders area. To be comprehend the existence of territory of a country that called as maritime country in which it consists of securing a territorial waters, leading islands and natural resources outcomes such as fishing become rights and obligations of all government and relevant agencies to handle the management of coastal areas and leading small islands of various foreign ships or parties that violate a cross-border waters the other party's interests that can threaten the state's sovereignty.

2 IDENTIFICATION OF THE ISSUE

Starting from the phenomena of law which outlined above, it is conceptually the issue of this research is how the existence of leading islands securing and the border region in the Unity of the Republic of Indonesia.

3 METHOD OF RESEARCH

Based on the objectives to be achieved and problems that have been formulated, the method used is *juridical-sociological*. The *juridical* approach is intended to explore and study the legislation as a basis for a research, while the *sociological* approach is intended to explore the factors and impacts incurred from the occurrence of border-area dispute and solution by the government. The specifications of this research are *normative law* called also as *doctrinal research*. A site was chosen by researcher to conduct a research is a government agency that includes the Navy (Department of Hydro-Oceanographic) related to the sea boundaries of the Republic of Indonesia and neighboring countries, local governments, especially in the leading islands border to the Republic of Indonesia related to culture, security, politics and thinking about the area/island they occupy, as a part of the Unitary of the Republic of Indonesia. The population is all research objects to be researched. In this research, the population is Navy and the relevant agencies involved in the security of sea area. The samples were chosen to be a material of research is the bearer of the security function in marine areas through the *random system* and interviews with relevant parties, such as Bakorkamla and community.

4 RESULTS AND DISCUSSION

4.1 The Condition of Leading Islands and the Border Region

The Unitary of the Republic of Indonesia is an island country directly border with 10 (ten) countries. On land, Indonesia borders with 3 (three) countries: a) Malaysia; b) Papua Nugini; and c) Timor Leste. While on sea areas, Indonesia borders with 10 (ten) countries : a) India; b) Malaysia; c) Singapore; d) Thailand; e) Vietnam; f) Philippines; g) Republic of Palau; h) Australia; i) Timor Leste; j) Papua Nugini. Under the agreement of sea border is marked by the presence of 92 outer islands as a basic point which determines the area's sea border. The majority of border region in Indonesia is still an underdeveloped area with facilities and social and economic infrastructure is still very limited. In the past, that the border region is an area which needs to be closely monitored because it is an area that is vulnerable and makes the paradigm of border development is more emphasis on security than welfare. This leads to the border region in some areas be

untouched by the dynamics of development. The development of border regions have a very close relationship with the mission of national development, especially to guarantee the unity and territorial integrity, national security and defense, as well as improving the welfare of the people in the border region. The new paradigm, the development of border region is to change the course of development policies that have tended "*inward looking-oriented*" into "*outward looking-oriented*" so that the region could become the gateway of economic activity and trade with neighboring countries. The development approach of border region today is to use a *prosperity approach* by not leaving the *security approach*.

4.2 The Authority of Security

The Indonesian archipelago is unique in addition consists of large islands (such as Java, Sumatra, Kalimantan, Sulawesi and Papua), Indonesia also has thousands of small islands. Based on the count of Department of Hydro-Oceanographic Navy, Island in Indonesia as many as 17.508 islands. The amount is obtained by using sea map of Indonesia with varying scale since 1982 until 1987. From this amount, there were 5.707 islands that already have names and 11.807 islands were not named. The result of DISHIDROS's count has been studied and evaluated in RAPIM Armed Forces in 1987 and approved by Minister of Defense and Security through a letter No. B/858/M/IX/1987 dated 9 November 1987 is stated as a result of RAPIM Armed Forces in 1987. According to Rais Jacob, Indonesian claims over the ownership of island as much as 17.508 actually never supported by the official documentation published about these names. The publications as stated by Rais Jacob is not clearly indicate the methodology and standard procedures that are used to inventory the names of island and its geographic on earth that is not measured in the field, but read on the map. In addition to these figures, the Department of Domestic Affairs in 2006 as well, re-publish the amount of islands in Indonesia as many as 17.504 islands, where previously used figure is 17.508 (**Table 1**). Changes in the amount, because four islands to enter the territory of Timor Leste and Malaysia then reduced 4 (four) islands. Two islands that are in the territory of Timor Leste when Timor Leste became independent state on 20 May 1999 are Kambing and Yako Islands. Two other island that are in the territory of Malaysia are Sipadan and Ligitan islands based on the decision of the International Court in Den Haaq Netherlands on 17 December 2002. The amount of islands that so many turned out mostly not yet has a name that is 8.853 islands while named is 8.651 islands. According to Alex S.W. Retraubun, many islands that do not have name become problems, especially in the management of small islands. Naming the island is very important in order to reflect the affordability of the functions of government in every island as state territory without having regarded its size as the provision of identity for every small island, especially those in the border region. In addition, as a state archipelago, the existence of small islands has a strategic role as a determinant of volume of territory the Republic of Indonesia. Internationally, the naming of geographical elements (toponyms) began to be developed by the United Nations (UN) through the UNGEGN (*United Nations Group of Experts on Geographical Names*), which was established in 1959 through a resolution of the *UN-Economic and Social Council* (UN-ECOSOC) dated 23 April 1959 recommending to its state to promote the standardization of geographical names both at

national and international levels. The UN's recommendations are then responded by the Indonesian's by formed a team that is stipulated on decree of president the Republic of Indonesia No. 112 of 2006 concern the National Team for Standardization of Topographic Name. Presidential Decree was issued on the basis that most of topographic that are part of natural physical of Indonesia's island topographical or artificial topographic element that spread throughout the territory of the Republic of Indonesia is still not named, while the already named though still require standardization. Theoretically, from a law perspective of National Agrarian, the criteria of *continuous presence* on the island, which became a major assessment of the International Court, won Malaysia over the ownership of Sipadan and Ligitan islands disputed can be equated with the implementation of agency *rechtsverwerking* that adopted in customary law as a basis for National Agrarian Law. The implementation of agency *rechtsverwerking* that the right to one's land will be lost if the person concerned within a specified period to abandon their land and let it not be done, then owned by the other party in good intend, the rights to the land in question is deemed to have released and reenter in the customary rights, so that the individual rights on the land to be lost. An institution of *Rechtsverwerking* requires *continuous presence*, in the sense that the land should be worked or used continuously or should not be abandoned, meaning that the owner of land had to put a real connection with the land continuously. The Conditions of Defense, Security, and Law Enforcement. Illegal activities still characterize border population mobility between Indonesia and Timor Leste. Until now believed there are many cross-border mobility of people committed by border population who are not registered officially (*illegal entry*). Limitations of government in both countries to facilitate cross-border activities of traditional trigger propensity for border-crosser illegal, such as the enactment of international regulations (passports and visas) for all border-crosser and has not yet implemented cross-border fit for traditional border-crossers.

4.3 Law Enforcement

The task of Law Enforcement for Navy, when assessed on the principal task of Navy, as expressly stated that distinguish between tasks of sovereignty suppressor by its law enforcement. In terms of sovereignty enforcement the first things that is concern is the provision of Article 7 paragraph (1) of Act No. 34 of 2004 concern the Indonesian National Armed Force that the principal task is to enforce state sovereignty, defend the territorial integrity of the Unitary of the Republic of Indonesia based on Pancasila and Constitution the Republic of Indonesia 1945, as well as to protect the people and the country of Indonesia from threats and harassment against the integrity of the nation and the State. Based on the provisions of Article 9 of Constitution the Republic of Indonesia No. 34 of 2004 concern the Indonesian National Armed Force stated that the Navy is tasked to:

- a. Enforce the law and maintain security in sea areas of national jurisdiction in accordance with the provisions of national law, international law that have been ratified.
- b. Implement *Naval Diplomacy* in order to support the foreign policy set by the government.
- c. Implement military tasks in the construction and development of naval force.
- d. Implement empowerment of sea defense area.

In the elucidation of Article 9 Law No. 34 of 2004 concern the Indonesian National Armed Force, stated that it intended to enforce law and to maintain security are all kinds of activities related to the law enforcement at sea in accordance with the authority of Navy (*Constabulary Function*) applicable universally and statutory provisions to overcome the threat of action, violence, threats of navigation, as well as violations of the law of the sea region of national jurisdiction. Law enforcement conducted by the Navy at sea, are limited in the scope of pursuit, arrest, investigation, and investigation of cases and then submitted to the prosecutor, the Navy does not hold court. While the definition of *Naval Diplomacy* is a function of diplomacy in accordance with the foreign policy attached to the role of the Navy universally as the international practice, and has become the nature of any warship of a country that is in another country has diplomatic immunity and sovereignty. Sovereignty enforcement at sea, has two dimensions of understanding, *sovereignty* and *sovereign rights* in the sea area of a country that has been universally regulated in UNCLOS'82. Indonesia as one of countries that have ratified the convention into its domestic law through the Constitution of the Republic of Indonesia No. 17 of 1985. Thus, this understanding has been accommodated in Act No. 3 of 2002 concern National Defense and Act No. 34 of 2004 concern the Indonesian National Armed Force. This is further emphasized in Article 7 and 9 points a and b of Act No. 34 of 2004 concern the Indonesian National Armed Force, that Navy as a main component of naval defense to uphold the country's sovereignty, defend the territorial integrity of the Republic of Indonesia based on Pancasila and Constitution 1945, as well as to protect the people and the country of Indonesia from threats and harassment against the integrity of the nation. As for the handling of criminal acts at sea, the authorities of Navy as an investigator are as follows:

- a. Criminal act included in *Territoriale Zee en Maritime Kringen Ordinance* (TZMKO).
- b. Criminal act of piracy/hijacking at sea.
- c. Criminal act of *Exclusive Economic Zone* (EEZ).
- d. Criminal act of conservation and ecosystem.
- e. Criminal act of fishery
- f. Criminal act of navigation.

Navy as law enforcer at sea (non-investigators) are as follows:

- a. Criminal act of firearms and explosives.
- b. Criminal act of cultural heritage.
- c. Criminal act of immigration.
- d. Criminal act of trafficking
- e. Criminal act of Narcotics and Psychotropic
- f. Criminal act of Environmental
- g. Criminal act of forest
- h. Criminal act of terrorism
- i. Criminal act of customs
- j. Illegal sand mining
- k. Criminal act of mineral and coal (conduct mining).
- l. Criminal act of oil and gases
- m. Criminal act of employment
- n. General crime at sea.

5 CONCLUSION

The existence of leading islands securing and the border region of the Republic of Indonesia still contain many weaknesses in terms of both governance and security. In law enforcement is still not optimal because they overlap the

authority of law enforcement officers in the sea that should the implementation of maritime area securing must always be held in a planned, coordinated and integrated under a single command using the approach of balanced-security and well-being. To improve the existence of leading islands securing and the border region of the Republic of Indonesia and neighboring countries is needed a commitment of all stakeholders to formulate security more comprehensive and concrete, such: immediately establish a Military Base for Navy equivalent with Lantamal and Fleet led by a Senior Officer Star One and Two in leading Islands which is vulnerable to the dispute led to the conflict. In addition, the validation of Bakorkamla organization as Coast Security Institution be abbreviated COAST GUARD as an institution that has full authority under the law enforcement at the sea which is a command under the direct control of the President of the Republic of Indonesia.

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Table 1. The amount of island in Indonesia by Province **Source:** Department of Domestic Affairs, 2006

No	Provinces	Named	Not Named	Amount
1.	Nanggroe Aceh Darusslam	205	458	663
2.	Sumatera Utara	250	169	419
3.	Sumatera Barat	210	181	391
4.	Riau	73	66	139
5.	Jambi	16	3	19
6.	Sumatera Selatan	43	10	53
7.	Bengkulu	23	24	47
8.	Lampung	87	101	188
9.	Kep. Bangka Belitung	311	639	950
10.	Kepulauan Riau	1.436	972	2.408
11.	DKI Jakarta	111	107	218
12.	Jawa Barat	22	109	131
13.	Jaw Tengah	74	222	296
14.	D.I. Yogyakarta	22	1	23
15.	Jawa Timur	236	51	287
16.	Banten	48	83	131
17.	Bali	25	60	85
18.	Nusa Tenggara Barat	461	403	864
19.	Nusa Tenggara Timur	481	711	1.192
20.	Kalimantan Barat	257	82	339
21.	Kalimantan Tengah	27	5	32
22.	Kalimantan Selatan	164	156	320
23.	Kalimantan Timur	232	138	370
24.	Sulawesi Utara	311	358	669
25.	Sulawesi Tengah	170	580	750
26.	Sulawesi Selatan	196	37	233¹
27.	Sulawesi Tenggara	360	290	650
28.	Gorontalo	126	10	136
29.	Sulawesi Barat	49	13	62
30.	Maluku	768	831	1.399
31.	Maluku Utara	628	897	1.525
32.	Papua	301	297	598
33.	Irian Jaya Barat	928	989	1.917
Total		8.651	8.853	17.504