

Law Protection to Nature Resources Through Indonesian Positive Laws Concerning on Dispute of Water Border

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ABSTRACT—Through this research, author wants to examine how far the protections to nature resources especially that placed in a place that has a water border's dispute to other country. Also, author wants to explain another possibilities for Indonesian government to prevent nature resources from negative impact of water border's dispute. This research will used a description analytical of Law Fact based on positive law in Indonesia and the anomalies in society through Nature Resource protection. This Method will be used to find a solution for promoting the nature resources protection. This research is a simple study on law's protection of nature resources in a Indonesian border lines. This research will help the reader to knowing what problems in protecting nature resources especially in a water borders lines that usually has a debatable dispute. This study will explore all of the possibility of protection that can be applied to Nature Resources in disputable water border lines places. This study will also discuss how to reduce as much as possible the negative impact that experienced by Indonesian Government in International Sea Court. This study aims to restore full protection for Indonesian Nature Resources in disputable water border lines places. This will be associated with the culture of legal protection for every part of Indonesian jurisdiction. It is also aims to promote restructuring of the Indonesian legal system.

Keywords: border lines, protection, law, sea, jurisdiction

I. INTRODUCTION

State borders are the "main way" of the territorial sovereignty of a country or. Border of a country has an important role in determining the boundaries of sovereignty areas, utilization of natural resources, maintaining security and territorial integrity. The determination of national borders is in many ways determined by historical, political, national and international law. In the constitution of a country often also includes the determination of territorial boundaries. Border disputes are conflicts caused by the unclear boundaries of an autonomous region between two regions. Some provinces in Indonesia are regions that have the potential to cause border conflicts in their regions. This is due to the lack of clarity relating to the boundaries of the region and the overlap regarding the development of boundaries.

Development of border areas is the essence of national development integration. Border areas have a strategic value in supporting the success of national development, this is indicated by the characteristics of activities including: having an important impact on national sovereignty, a driving factor for improving the socio-economic well-being of the surrounding

community, having interrelated relationships with activities carried out in other regions which borders the territory and between countries, has an impact on defense and security conditions, both regional and national scale. This research will trying to solving some problems that occurs in border area and its protections to nature resource surround

Identification of Problems

There are 2 main problems that will be delivering in this research. The problems are:

1. How the law of the sea in Indonesia could provide the protection to the nature resource, especially in border area?
2. How the Indonesian Government should put all the potential of border area?

II. RESEARCH METHOD

A sociological juridical approach is needed to look at social phenomena related to the condition and improvement of infrastructure in the border region, as well as normative provisions that are actually realized in the community. While the normative juridical method is applied in the use of secondary data as an additional source, in the form of it, including all sources of wealth contained therein. Law No. 26 of 2007 concerning Spatial Planning refers to Article 1 number 28 classifying border areas into national strategic areas, namely as the area whose spatial planning is prioritized because it has a very important influence nationally against national sovereignty, national defense and security, the economy, social, cultural and environmental.

The border area still needs a lot of attention, especially in terms of community welfare which has a gap with other regions in Indonesia. The concept of community welfare used in academic terminology is social welfare, experiencing a shift in understanding and use. Midgley conceptualizes in the three categories of achievement of welfare, namely first, the extent to which social problems can be managed. Second, the extent to which needs can be met and third, the extent to which opportunities to improve living standards can be obtained. All of this can be created in a life together, both at the family, community and community level.

While social welfare in the sense of Article 1 number 1 of Law No. 11 of 2009 concerning Social Welfare is a condition of meeting the material, spiritual, and social needs of citizens in order to be able to live properly and be able to develop themselves, so that they can carry out their social functions.² In reality, life has many indicators of success that can be measured, so many ways and approaches are used today in measuring the level of community welfare. There are various developments in measuring the level of welfare from the physical side, such as the Index. Human Development, Quality of Life Index, Basic Needs, and Per capita Income. In this case Todaro believes that to measure the level of welfare of the middle to lower community groups used indicators such as: health, nutrition, education, and income.

Measurement of community welfare is considered to be measured by how much the community is able to access and obtain services from social facilities in the vicinity to support their lives. Mochtar Kusumaatmadja argues that law is a tool to maintain order in society. Considering the function of the nature of the law, basically it is conservative meaning, the law is to maintain and maintain what has been achieved. Such a function is needed in every community, including those who are developing, because here too there are results that must be maintained, protected and secured. However, a developing society, which in our definition means a society that is changing rapidly, the law does not have enough to have such a function. He also must be able to help the process of community change. An old-fashioned view of law that emphasizes the function of maintaining order in a static sense, and emphasizes the conservative nature of law, considers that law cannot play a meaningful role in the renewal process.

In subsequent developments, the concept of development law was named "Theory of Development Law". Furthermore, Mochtar Kusumaatmadja is of the view that the law is expected to function more, not only guaranteeing certainty and order but also as a "means of public renewal" / "law as a tool of social engineering" or "means of development" with the following main points: the law is "Means of community renewal" are based on the assumption that there is order or order in the development effort and the renewal is something that is desirable or deemed (absolutely) necessary. Another assumption contained in the conception of law as a means of renewal is that law in the sense of rules or legal regulations can indeed function as a tool (regulator) or a means of development in the sense of channeling the direction of human activity in the direction desired by development and renewal. The core Theory of Development Law created by Mochtar Kusumaatmadja, is: (a) Order or regularity in the context of renewal or development is something desirable, even considered absolute; (b) Law in the sense of rules or legal regulations can indeed function as a regulator or a means of development in the sense of channeling the desired direction of human activity toward renewal.

Thus, one of the legal roles in development is law as a development control tool.⁴ Development carried out by a country is a must, because with the development of people's welfare can be achieved. Because the development that is currently and will be implemented in Indonesia covers a very wide range, it is necessary to legally cover all development activities that are being and will be carried out. The role of law as a development tool is very necessary, both at the planning, implementation and when carried out control and supervision.

In connection with this description, in realizing the welfare of the community at least need to be supported by at least 3 pillars, namely the state, in casu government, law, and law enforcement officials. Furthermore, for public welfare to be truly realized, the government has established legislation in favor of the wider community, in the sense that the material (substance) of the law must contain the values of justice for the realization of people's welfare, and adhere to the Legal Theory of Development of Mochtar Kusumaatmadja that law in the sense of rules or legal regulations can indeed function as a regulator or means of development in the sense of channeling the desired direction of human activity towards renewal, or "law as a tool of social engineering", the regulation of legal products and policies supporting the infrastructure of the border region still needs improvement, especially the revision of the State Territory Law.

Border areas are regulated in several laws in Indonesia. These laws include: laws regarding regional autonomy, regional laws and agrarian laws. The border area as regulated in Law No. 32 of 2004 concerning Regional Autonomy is interpreted as a special area. Article 1 number 19 of the Law on Regional Autonomy states: A special area is a part of a territory in a province and / or district / city determined by the Government to carry out government functions that are specific to the national interest.

Further, in Regional Autonomy Law CHAPTER II ESTABLISHMENT OF REGIONS AND SPECIAL AREAS Part Two Special Areas, Article 19 paragraph state that:

- (1) To carry out certain government functions that are specific to the national interest, the Government can establish special areas within the province and/or district /city.
- (2) Certain government functions as referred to in paragraph (1) for free trade and / or free ports are determined by law.
- (3) Certain government functions other than those referred to in paragraph (2) shall be regulated by Government Regulation.
- (4) To form a special area as referred to in paragraph (2) and paragraph (3), the Government shall include the relevant area.
- (5) Regions can propose the formation of special zones as referred to in paragraph (1) to the Government.
- (6) The procedure for determining the special area as referred to in paragraph (1), paragraph (2), paragraph

(3), paragraph (4), and paragraph (5) shall be regulated in a Government Regulation.

In the land border area there is a sub- district area, so villages in the border area are stressing the development policy of the border area management. Approach Law No. 32/2004 CHAPTER XI DESA Part One General Article 206; government affairs which are under the authority of the village include: a. existing government affairs based on village origin rights; b. government affairs which are the authority of regencies / cities whose regulations are submitted to villages; c. co-administration tasks from the Government, provincial government, and/or district / city government; d other governmental affairs which, by the laws and regulations, are handed over to the village. Based on Article 206 of the Regional Autonomy Law, the village only receives delegate authority from the Regency or Provincial Government in the form of assistance tasks. The government carries out the assistance task in the village area by referring to the Regional Autonomy Law in Article 207 stating: "The assistance task from the Government, the provincial government, and /or the government, regency/city to the village is accompanied by financing, facilities and infrastructure, and human resources.

Only what if the villages are used as a border zone development policy and based on Article 214 (1) the village can enter into cooperation for the interests of the village which is regulated by joint decree and reported to the regent/mayor through the Camat. (2) Cooperation between villages and village with a third party, Article 215 paragraph (1) Rural area development carried out by the district / city and or third party includes the village government and the village consultative body. (2) The implementation of the provisions referred to in paragraph (1) shall be regulated by a Regional Regulation, taking into account: a. the interests of the village community; b. village authority c. smooth investment implementation; d. environmental sustainability; d. harmony of interests between regions and public interests.

Meanwhile, in Article 1 number 6 of Law No. 43 Year 2008 concerning Territories states: "Border Areas are parts of the State Territories that are located on the inside along the boundaries of Indonesia with other countries, in the case of State Territories on land, the Border Regions are located in sub-district. Password: The Border Area is in the district. This means "the principle of Top Down Planing" or waiting for policies from the Provincial or District government related to the policy of developing border areas for villages in the land border area by referring to Article 1 number 6UU of the Region which states: "in the case of the State Border on land, the Border Area is in the sub- district.

Article 11 of the territory law states: paragraph (1) In the management of State Territories and Border Regions, the Provincial Government has the authority to: a. implement Government policies and stipulate other policies in the context of regional autonomy and assistance tasks; b. coordinate development in Border

Areas; c. carry out development of inter-regional Border Areas and / or between regional governments and third parties; and D. supervising the implementation of the Border Area development carried out by the Regency / City Government. Paragraph (2) In the framework of implementing the provisions referred to in paragraph (1), the Provincial Government is obliged to determine the costs of developing the Border Zone.

III. FINDINGS AND DISCUSSION

Article 12 paragraph (1) of the Regional Law in the management of State Regions and Border Regions, Regency / City Governments are authorized: a. implement Government policies and stipulate other policies in the context of regional autonomy and assistance tasks; b. maintain and maintain boundary marks; c. coordinate in the framework of carrying out development tasks in the Border Zone in its area; and D. carry out development of inter-regional Border Areas and / or between regional governments and third parties. (2) In the framework of implementing the provisions referred to in paragraph (1), the Regency/City Government is obliged to determine the cost of developing the Border Zone. Institutionally, the Regional Government is given the authority to form institutions that handle border areas, regulated in Article 13 of Law No. 43/2008: The exercise of authority as referred to in Article 10, Article 11, and Article 12 is further regulated by Government Regulation.

In another part of Law in Indonesia, there is Agrarian law. Agrarian Law was a main part of regulation that regulated all of surface of Indonesia Country. In agrarian law, on Article 12 paragraph (1) of the Regional Law in the management of State Regions and Border Regions, Regency / City Governments are authorized: a. implement Government policies and stipulate other policies in the context of regional autonomy and assistance tasks; b. maintain and maintain boundary marks; c. coordinate in the framework of carrying out development tasks in the Border Zone in its area; and d. carry out development of inter-regional Border Areas and / or between regional governments and third parties. (2) In the framework of implementing the provisions referred to in paragraph (1), the Regency / City Government is obliged to determine the cost of developing the Border Zone. Institutionally, the Regional Government is given the authority to form institutions that handle border areas, regulated in Article 13 of Law No. 43/2008: The exercise of authority as referred to in Article 10, Article 11, and Article 12 is further regulated by Government Regulation.

IV. CONCLUSION

Based on all of that descriptions, there can be concluded that:

1. *The Protection Law of The Sea of Indonesia Could Give Weak Security Systems That Protect Indonesia's*

Marine Territories Are A Major Factor In This Problem.

Evidence of the weakness of Indonesia's marine security system is that until now Indonesia does not have a ship sensing system that is managed independently. As an illustration, if a ship crosses the Strait of Malacca, which partly enters the sea lanes of the western Indonesian archipelago, the radar control that oversees is in Changi, Singapore and can automatically be accessed in Tokyo to San Francisco. This problem is compounded by law enforcement and security in Indonesia which is still poor and a lack of coordination between institutions that have a stake in the maritime sector. Not to mention the overlapping (overlapping) tasks that intersect between agencies such as the Water Police, Airud, Navy, Sea and Coast Guard Unit (KPLP), Customs and Excise, to the Port Adimnistrator (Adpel). Commercial vessel inspection and capture activities are mushrooming, and can even disrupt national shipping operations. It is undeniable that even this can increase the risk of extortion.

The Navy has the largest share in maintaining Indonesian maritime territories. They must ensure that not even one foreign ship passes through every inch of the border. As a service responsibility, especially in this case farmers. The Navy must carry out a transformation in saving the domestic maritime territory.

Responding to this the Indonesian Navy can begin by arming and optimizing border surveillance with the latest navigation tools and satellites.⁶ Sea patrol officers must always be on guard to guard the border and ensure fishing activities in accordance with applicable regulations.

The government must also maximize air patrol operations has a wider range. The use of aircraft can increase efficiency in data retrieval throughout Indonesia with a time of 51, 4 hours (in 7 days). Especially to do the details in areas with high levels of illegal activities such as Natuna and Arafuru. In addition, the Indonesian Navy has to increase its patrol coverage area, which until now has only reached 70 nautical miles from the exclusive economic zone of 200 nautical miles.

The Navy must also improve coordination with marine agencies. The division of tasks must be done clearly without reducing the functions of each institution in order to avoid overlapping institutional interests. This can be done by dividing patrol areas or integrating security with all institutions under one coordination roof. In addition it is important to reform the sea bureaucracy so that there is no security leakage through bribery and illegal levies. This will also be effective if accompanied by an increase in the welfare of marine patrol officers.

Sometimes efforts to defend the border of a state can create tension between countries. But Indonesia should not hesitate and succumb to matters of defending the welfare of the people, in this case the fishermen. The government must have the courage to take a firm stand so as not to be debased in the eyes of foreign countries. Looking

back at the defense efforts of the territorial waters in 1965, even Indonesia had once severed ties with China. This courage was decided because many legal rules were

detrimental to the country's sovereignty. Moreover, in the determination of two Natuna points as the border of China which makes many foreign-flagged ships passing by so easily in the Indonesian sea.

The sea should not be an obstacle for Indonesia which consists of thousands of islands and its inhabitants are united by sea waters. Thus the economic policies adopted by Indonesia should use a marine base approach. With controlled security, indigenous fishermen do not need to worry about foreign fishermen who want to take over the waters where they sail. So that fishermen can focus on pursuing their livelihoods. But in the future this also needs to be supported by efforts to develop fishermen empowerment. It is time for them to navigate the ocean in a modern way. In addition to improving fishing facilities, the government also needs to train its human resources to be ready to compete with foreign fishermen.

Indonesia is one of the countries that signed the convention and as a form of Indonesia's attention to the marine legal regime and to strengthen sovereignty over the sea territory, then 3 (three) years after the signing of the United Nations Convention on the Law of the Sea (UNCLOS III) Indonesia also ratified or ratified the convention by enacting Law Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (Convention of the United Nations Concerning the Law of the Sea). This Indonesian action raises the rights and obligations inherent in Indonesia itself in the international arena, especially in the maritime field, where Indonesia must respect, obey, and implement the rules in accordance with the provisions in the United Nations Convention On The Law Of The Sea (UNCLOS III).

Law Number 17 of 1985 was passed in Jakarta on December 31, 1985, which was signed by President Soeharto directly. The law consists of 2 Articles, namely:

1. To approve the United Nations Convention the Law of the Sea, the copy of the original text in the English language attached to this Act (Article 1).
2. This law shall come into force on the date of promulgation (Article 2).

Similar to the aim of the 1982 United Nations Sea

Law Convention, Indonesia ratified the United Nations Convention On The Law Of The Sea (UNCLOS III) is of a strong desire and determination to strengthen peace, security, cooperation and friendly relations between all nations in accordance with the principles justice and equal rights and will advance economic and social improvement of all the people of the world, in accordance with the goals and principles of the United Nations as established. Then than that specifically Indonesia ratified UNCLOS III is as a form of effort to strengthen, clarify, maintain Indonesia's power over the sovereignty of its maritime territory.

2. *The Potential of Border Area that had to Be Protected by Government.*

Natural resource management has not been coordinated between actors so as to enable the exploitation of natural resources that are not good for regional and community development. There are problems or disruptions of bilateral relations between bordering countries due to events both related to security and Political aspects, as well as violations and exploitation of natural resources that cross national borders, both land and sea natural resources.

Based on the strategic issues in the management of the country's border regions, several prominent issues in the border area that can often be raised to the surface are as follows:

There is no complete certainty of sea or land boundaries.

- a) The condition of the people in the border region is still lagging behind, both in terms of human, economic and community resources.
- b) Some violations of law in border areas such as timber smuggling / illegal lodging, labor and others.
- c) Border management is not optimal, covering institutions, authorities and programs.
- d) Illegal exploitation of natural resources, especially forest products and marine resources.
- e) The emergence of illegal cross border posts that increase illegal migration, "economic assets".
- f) Mental and professional officials (stake holders at the central and regional levels as well as security personnel at border posts).

The solution to this problem, is the need to immediately draw up a border area development plan with a comprehensive, integrative and participatory approach that promotes the principles of justice, democracy, and sustainability based on spatial plans that are prepared using a combination of regional and sectoral approaches - prepared from the lowest level (village). The accumulation of plans compiled from below will be the design that is expected to produce and become a clear work plan (framework), starting from what will be built, when it is built, who will implement it, until the source of the funds. In connection with the question of who, then the following points must be clarified, namely:

- a) Who has access to natural resources and what types of rules apply.
- b) Who holds the rights to natural resources - and what it means for others who have an interest in using them.
- c) Who has a role in the utilization of natural resources.
- d) Who is the manager of the SDA. e. Etc

REFERENCES

- [1]. Lilik M., 2016, *Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, SH., LL.M.*, Sebuah Kajian Deskriptif Analitis, Badan Peradilan Umum Mahkamah Agung. (Badilum), http://badilum.info/upload_file/img/article/doc/kajian_deskriptif_analitis_teor_i_hukum_pembangunan.pdf (diakses 3 Oktober 2016), hlm. 3-4.
- [2]. M. Yogie S., 2015, *Strategi Pengembangan Kawasan Perbatasan dan Lintas Batas Antarnegara di Kabupaten*

Kapuas Hulu, Provinsi Kalimantan Barat, Tesis Program Studi Ilmu Perencanaan Wilayah Institut Pertanian Bogor (2015):7.

- [3]. Imas S., 2016, *Kebijakan Hukum Pembangunan Kawasan Perbatasan melalui Infrastruktur Berbasis Teknologi* Volume 5, Nomor 3, Desember 2016
- [4]. Dwi R. H.; Arvian Z., *Pemetaan Tingkat Kesejahteraan Masyarakat Wilayah Kawasan Kaki Jembatan Suramadu (KKJS) Dengan Model Indeks Indikator Non-Income*, Jurnal Sosek Pekerjaan Umum, Vol.4 No.1, Edisi April (2012): 34.
- [5]. Susetiawan, 2010, *Pembangunan Dan Kesejahteraan Masyarakat: Sebuah Ketidakberdayaan Para Pihak Melawan Konstruksi Neoliberalisme*, Working Paper Studi Pembangunan Sosial dan Kesejahteraan, Fakultas Ilmu Sosial dan Ilmu Politik Universitas Gadjah Mada dan Pusat Studi Pedesaan dan Kawasan, 8 Desember (2010), hlm. 26-27.
- [6]. Firdaus Y., *Tingkat Kesejahteraan Masyarakat Lokal Setelah Diberikan Upaya Pemberdayaan Masyarakat Pada Kawasan Wisata Istana Siak Kabupaten Siak Propinsi Riau*, Makalah dalam Seminar Nasional Politik, Birokrasi, & Perubahan Sosial Dalam Upaya Membangun Karakter Bangsa Tahun 2013 Universitas Riau, Perpustakaan Universitas Riau, <http://repository.unri.ac.id/xmlui/handle/123456789/6256> (diakses 12 Desember 2019, jam 18.00), hlm. 8.
- [7]. Undang-Undang Nomor 32 Tahun 2004 tentang Otonomi Daerah Undang-Undang Nomor 43 tahun 2008 tentang wilayah
- [8]. United Nation Conference on the Laws Of The Sea (UnCLOS)