IMPLEMENTATION OF THE UTI POSSIDETIS PRINCIPAL AS A BASIC CLAIM FOR DETERMINING TERRITORIAL INTEGRITY OF THE UNITARY STATE OF REPUBLIC INDONESIA

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ABSTRACT

The principle of territorial integrity is contained in uti possidetis principle. This principle as one of the principles of general law has been recognized by civilized states which can be used as one of the guidelines for determining the territory or boundaries of a state following the territories or boundaries of colonial powers or their predecessors. The Unitary State of Republic of Indonesia determines its land and sea boundaries based on this principle, as does Papua. This study uses normative research type with a case approach and conceptual approach. Based on the concept of international law, the territory of the Unitary State of Republic of Indonesia is the entire territory inherited from the Dutch colonialist, in accordance with the principle of Uti Possidetis which bases that the state inherits the territory of its colonial.

Keywords: Uti Posidentis, territorial sea, Indonesia

INTRODUCTION

Territorial sovereignty carries the consequence that the state has responsibility for its territory. The disintegration threat for the Unitary State of Republic of Indonesia (hereinafter referred to as Republic of Indonesia) can be seen as one of the processes of democratization in society which does not always end in happiness. The current conflict in Papua began in 2001 with the Special Autonomy. Papua's position as part of the 26th Province of Indonesia's territory is undeniable and cannot be contested. There are at least three main things that make it difficult for Papua to declare its independence, the first thing is related to the involvement of the Papuan people in establishing or participating in the establishment of Indonesia. Second, the historical fact that West Papua is a legacy area from the Dutch Colonial. Third, there is a collective recognition from the United Nations (UN).

Territory disputes within the law can be divided into different categories, debates over the status of the state itself, namely all areas covered by certain states such as the Arab claims against Israel at a certain time and claims that Morocco has made against Mauritania.[1] The other possibility is the dispute can refer to certain areas bordering two or more countries, such as the Somali Claims over northeastern Kenya and southeastern Ethiopia.

Claim over territories are based on a variety of reasons, ranging from traditional methods of occupation or prescription to new concepts such as self-determination as well as various political and legal factors, such as geographical proximity, historical demands and economic elements, which can relevant.

State borders can be determined by international treaties. A state may surrender its territorial portion to another state through an agreement. This agreement gives legal rights to state being surrendered with the surrendering state. Through the referral agreement, the state being surrendered receives the right to occupy the surrender territorial, namely the right to expand the validity and effectiveness of its legal order to the regions.

However, the territorial which surrender is not separate as the territorial portion of the surrendering state and does not become a territory of the state being surrendered before the legal order of this State becomes truly effective in this surrendered territory, before this surrendered State has actually taken over the territorial ownership transferred. The change in legal and territorial status takes place with the principle of effectiveness.

International law has recognized annexation, that is, the conquest of other territories, both in whole and in part, is a territorial acquisition by the conquering State, if the conquest is firmly defended. The determinant factor for annexation, that is, taking over territorial ownership of another State with a view to owning it, is territorial ownership even without the will of the previous owner's State, if ownership is maintained firmly. There is no difference whether annexation occurs after occupation bellica or not. One of the goal of war is doing occupation of enemy territory. It does not in itself contain a territorial change.

The fact that the annexation act is illegal does not prevent the territorial which occupied is being the territory of the occupied State, provided that the annexation is maintained firmly. *Er injuria jus oritur*. This was born and the principle of the effectiveness of the applicable law in international law. The principle of effectiveness also can expand the territory of a state to a territory that was not previously the mainland of any state.

[1] Adi Sumardiman Adi, 1992, *Seri Hukum Internaional-Wilayah Indonesia dan Dasar Hukumnya-Buku 1 Perbatasan Indonesia-Papua New Guine (Disertai Implementasi Hukum Laut 1982)*, Jakarta: Pradnya Pramitha, h. 67

Under international law territorial expansion if there is a state through new formations, ipso facto takes place because accretion without that State takes an action for the purpose of expanding its sovereignty. However, this regulation requires that the new territory be within the scope of effective supervision by the State party that obtained it. Under the provisions of international law, which is considered as a way of obtaining the territory of the state that continuous control without interference results in the rights of the authorities and such control has lasted for a certain period of time. Because there are no regulations regarding this time period, it is almost impossible to distinguish this provision from the general principle of effectiveness in which according to this principle the tenure is maintained by the State that conquers it with a view to retaining the territory as its own property.

Based on the above description, it cannot be denied that since August 17th, 1945 Indonesia has become an independent nation. In the end only relying on people support and the spirit of independence as well as support from international mediation, the war between the Indonesia and Dutch during the 1945-1949 period could be ended with the achievement of the Round Table Conference (Konferensi Meja Bundar / KMB). The Dutch finally recognized the sovereignty of the Republic of Indonesia on December 27, 1949. However, it turned out that the KMB also left new conflict that the Dutch did not recognize the sovereignty of the Republic of Indonesia in West Papua, which caused tensions between the Dutch and the Republic of Indonesia.

In line with the tension between the Dutch and Indonesia, the Government of Indonesia established a legal basis to secure the territorial integrity of the Republic of Indonesia. Then the Government of Indonesia established the concept of the Nusantara. By using the Nusantara Principle as the basis of Indonesian law of sea, Indonesia will become an archipelagic state, which is an implementation of the Nusantara insight.[2] Considerations for the conception of an archipelagic state are: First, the geographic form of the State of Indonesia as an archipelagic state consisting of thousands of islands has its own characteristics and features. Second, territorial integrity and to protect the all natural resources of Indonesia, so that all islands and seas located between them must be considered as a unified whole of all the islands in Indonesia.

Considering the territorial acquisition described above, the customary international legal regime is also applied in full binding to Indonesia. It can be said that the entire territory of the Republic of Indonesia covers the entire territory of the Dutch colony.

The determination of a state's territorial boundaries between the past and recent developments in the field of international law has changed. In the past, the borders of a state were heavily influenced by colonialism with various variants, such as occupation, prescription, cessi, accretion, conquest and acquisition. In its development, state borders are more determined by international legal sources and processes such as self-determination, uti possidetis juris principle, and state boundary agreements. These three ways have been recognized by the international community as a way of determining territory for a newly independent state from collonial and newly established ones through the implementation of the right to self-determination.

Based on the opinion of F. Sugeng Istanto in interpreting territorial sovereignty mentioned that one of the qualifications that must be fulfilled by the state as a subject of international law is a certain region.[3] Certainty and clarity of the boundaries of the state's sovereignty are very fundamental as a necessity for the implementation of the state and the community to carry out activities and make relations with other states, so as to provide guarantees for the protection and legal certainty of the state regarding the boundaries of its sovereignty.[4] In international law the acquisition and loss of national territory will have an impact on the state's sovereignty over territorial boundaries. When there is a change in the status of a country's territoriality it will have a juridical effect on the state's sovereignty, including the issue of citizenship who live in the region.

The existence of a state depends on the right of the State to a territory that belongs to it. Territorial sovereignty from the point of view of the existence of rights over territory not the independence of the state itself or interpersonal relations. This method is to distinguish full rights over a territory that is recognized by law from certain minor territorial rights, such as leases or leases and servitude or restrictions on territorial rights. Territorial sovereignty has both positive and negative aspects. The positive aspect relates to the exclusivity of the state's competence regarding its own territory[5] while the negative aspect refers to the obligation to protect the rights of other state. The essence of territorial sovereignty is contained in the concept of rights. This term relates to both factual and legal conditions in which the territory is considered to belong to one particular authority or other authority. Considering on the above background, this study will analyst the implentation of the Uti Possidentis Principle in determining the territorial boundaries of Indonesia.

RESEARCH METHOD

This research is normative legal research. By analyzing the principles in the ownership of the state territory and the ratio decidendi of the decision of the International Court of Justice and the legis ratio of the Indonesia Constitution 1945. In this study the authors made some problem approaches: First, the Case Approach, namely the case approach carried out by examining several cases for reference to legal issues and examine the legal reasons used by the judge to arrive at his decision. In approaching this case the writer will examine the ratio decidendi or reasoning of the decision of the International Court of Justice on Burkina Faso v. Republic of Mali 1986 and Second, the conceptual approach moves from the views and doctrines that develop in the science of law to build

[2] Djamhur, 1981, *Postur Pertahanan Luar dalam Pranata Luar Nusantara*, Bunga Rampai Wawasan Nusantara 2, Departemen Pertahanan Keamanan Lembaga Pertahanan Nasional, Jakarta, h. 67.

[3] Hans Kelsen, 1971, General Theory of Law and State, New York: Russel and Russel, h. 297.

[4] Yulianto Ahmad, 2001, Eksistensi Perjanjian antara Republik Indonesia dengan Australia tentang Zona Kerjasama di Daerah antara Timor Leste, *Jurnal Media Hukum*, Volume 8 No. 2, h. 70.

[5] James Crawford, 2006, *The Creation of States in International Law second edition*, Oxford: Clarendon Press, h. 48

legal arguments in solving the issues at hand. In this study the author will examine the Uti Possidetis and Investigation Agency for Indonesian Independence Preparatory Treatise (Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia / BPUPKI).

DISCUSSION

Uti Possidetis as a Basis in Determining Territorial Boundaries

The territorial of the State is not a natural geographical unity and the territory of the State does not have to consist of land. State territories may consist of parts, and there are territories which belong to a state not physically integrated but separated from other state's territories or even territories that do not belong to any state. The state can have territorial areas of its colonies separated by oceans, and have borders that are completely surrounded by territorial states. Geographically unrelated regions form a unified territory.

The determination of a state's territorial boundaries between the past and recent developments in the field of international law has changed. Acquisition of territory can be done by among other things occupation, prescription, cessi, accretion, conquest and acquisition.

In its development, state borders are more determined by international legal sources and processes such as self-determination of the uti possidetis juris principle, and state boundary agreements. These three ways have been recognized by the international community as a way of determining territories for newly independent states from the shackles of the invaders and newly established ones through the exercise of the right to self-determination.

The concept of self-determination is the right of self-determination by the nation in practice starting with the American Revolution and the French Revolution in the 18th century. However, the right of self-determination was never recognized as a right in the practice of international law until the adoption of the right in this UN Charter Art. 1 (2) in June 1945 then the doctrine of self-determination was codified or enforced as positive international law.[6]

Even though the UN Charter provides only a few regulations on self-determination, the UN Charter has provided several doctrines regarding right self-determination. The principles regarding self-determination clearly stated are first in Art. 1 paragraph 2 and then Art. 55 of the UN Charter. Art. 1 paragraph 2 of the UN Charter confirms that:[7]

> *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropppriate measures to strengthen universal peace*.
>
> Art. 55 UN Charter state that :
> *With a view to the creation of conditions of stability and weel being which are necessary for peacefull and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.*

The regulation of self-determination in Art. 1 paragraph 2 and Art. 55 UN Charter is then supplemented by Chapter XI of the Declaration on Non-self-governing Territories and Chapter XII of the International Trusteeship System. But none of the articles in these two chapters provide a detailed explanation of self-determination.[8] The UN Charter is the basis of right self-determination and the first time there was a provision of self-determination in international law. With the principle of self-determination in Art. 1 paragraph 2, the forming of the UN Charter identifies self-determination as one of the main objectives, or *raisons d'etre* of UN.

Self-determination is carried out in the context of creating good relations between states by prioritizing the equal rights of every nation in the world. The UN Charter is thought to contribute to contributing the principle that world peace is impossible without self-determination.[9] Self-determination cannot be used to claim wider territorial claims by deviating from the internationally accepted boundaries of sovereign states, but can be used in resolving borderline disputes based on the wishes of the population.[10] There is an evolution of Uti Possidetis Principle from civil law to international law carried out with two objectives. First, it is intended to assert claims over property in a territorial sovereignty. Secondly, it is intended to declare possessions which are factually temporary in civil law to be legally permanent status of ownership rights in a national territory.[11]

The influence of territorial integrity principle can be seen in the uti posidetis ideas of Latin America, where the administrative division of the Spanish empire in South America is seen as the boundary of its newly independent successor states so that it theoretically excludes the possibility of sovereignty that could foster hostility and encourage foreign intervention. This is reflected more accurately in the practice of African states, which were explicitly contained in the resolution of the African Unity in 1964,

[6] G. J. Simpson, 1996, The Diffusion of Sovereignty: Self Determination in the Post Colonial Age, *Stanford Journal of International Law*, h. 255

[7] Suryokusumo Sumaryo, 1997, *Studi Kasus Hukum Organisasi Internasional*, Bandung: Penerbit Alumni, h. 167

[8] Antonio Cassese, 1995, *Self Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, h. 38

[9] P. Thomberry, 1993, *The Democratic or Internal Aspect of Self Determination*, Martinus Nijhoff Publishers. h. 108

[10] Malcolm N Shaw, 2008, *International Law*,Cambridge University Press, h. 486 diterjemahkan oleh Derta Sri Widowati, 2013, *Hukum Internasional*, Bandung: Nusa Media, h. 486

[11] Boer Mauna, 2005, *Hukum Internasional, Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung: Alumni, h. 87

which stated that the colonial boundaries that existed on the date of independence were apparent reality and that all member states promised to respect such boundaries.

Practice in America has reinforced an approach that emphasizes territorial integrity in colonial territory, resulting in an even rejection of efforts to create a separatist state whether in Congo, former Belgian colonies. The Uti Possidetis issue was discussed by the International Court of Justice in the case of Barkina Faso and the Republic of Mali where a compromis (or special agreement) with the names of the parties submitting their case to the International Court stipulates that the resolution of the problem must depart from the consideration of the principle of unclear boundaries inherited during the colonial period. However, it has been mentioned that the principle has actually developed into a general concept of international customary law and is not affected by the emergence of the right of nations to self-determination.

> *Uti Possidetis* is formulated as follows :
> *The core of this principle lies in its main aim to guarantee respect for territorial boundaries when independence is achieved. These territorial boundaries may be nothing more than the establishment of border lines between a number of different colonies or administrative divisions, all of which are subject to the same sovereignty. In this case, the application of uti possidetis principle causes administrative boundaries change into full borders*.

In 1986 the Uti Possidetis Juris principle by the International Court of Justice (ICJ) was applied in the case of Burkina Faso vs. Republic of Mali. The decision was stated as follows:

> *Uti Possidetis is a general principle, which is logically with the nomenon 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.*

The ICJ asserts that the uti possidetis principle can be applied for ex-colonial countries outside the case of Burkina Faso vs. Republic of Mali without regard to the legal and political status of the relevant border-side entities. The use of this principle according to some international law experts such as Paul R. Hensel Michael E. Allison, will create more stability at the border compared to the borders of states that are not inherited by the invaders. The reason is that the colonial rulers have laid the foundations of state borders clearly in an agreement, so that the newly independent states of the colonial rulers will only continue the border inheritance that has been left by the invaders.[12]

In its history, the uti possidetis principle is divided into two, namely uti possidetis juris and uti possidetis de facto. Brazil is the only state that does not want to accept the uti possidetis juris principle. It prefers the principle of uti possidetis de facto than uti possidetis juris principle. The uti possidetis de facto principle asserts that ownership of an area is based on physical occupation than following the territory of a colonial ruler. Brazil uses this doctrine to defend the argument of ownership of the border area of 1810 km before the states of the former Spanish colony, such as Bolivia and Peru. Even though the uti possidetis principle de facto bases the territorial boundaries of a state on the territorial boundaries of the state that once inhabited it, in reality the territorial boundaries of a state (old or new) may change. These changes can occur because of a court ruling (international jurisprudence) which resolves the disputes between the boundaries of the two states or the existence of a boundary agreement between the two states.

The main purpose of using the uti possidetis principle is to prevent conflicts which based on the seizing for borders by new state. At this time the uti possidetis principle has become part of customary international law. This statement is emphasized again in the provisions of Art. 62 paragraph 2 of the Vienna Convention 1986 concerning the Law of Treaties between States with International Organizations or Between International Organizations. Art. 62 paragraph 2 of the 1986 Vienna Convention regulate that:

> *A fundamental change of circumtances may no be invoked as a ground for terminating or withdrawing from treaty between two or more states and one or more international organizations if the treaty establishes a boundary".*

The Chamber of International Court of Justice in Case Concerning the Frontier Dispute emphasizes that the principle of possession is already part of customary international law. If it happens, two former colonial states or a region that will break away from its main state or secession, and want to modify the territorial borders, then a referendum must be carried out to determine the desires of the population in the relevant region, and they cannot decide for themselves the modification of the territorial boundaries.

With this principle of possession, it is possible to reduce the potential for conflict between states and allow for inward consolidation between groups in the region. The doctrine of uti possidetis intended to abolish territorial disputes by accepting the inheritance of new territorial borders, which had been established by the colonial authorities at the time of independence and establishing them as internationally recognized national borders.

Implementation of Uti Possidetis Principle on Indonesia Territorial Border Determination

The issue of the state to acquire territory in international law is classified as a difficult problem and can only be explained from a review of political law. Although in a long-established state, we can set aside the issue based on the recognition and acceptance of new state, which creates a different problem because according to classical international law until the new state is formed, there

[12] Jawahir Thontowi dan Pranoto Iskandar, 2006, *Hukum Internasional Kontemporer*, Bandung:Refika Aditama, h. 183

are no competent legal entities to hold these rights. None of the international bodies related to the acquisition of territorial rights can satisfactorily resolve the dilemmas that were realized, especially in the post-War II period with the onset of decolonization.

According to international customary law, the international community encounters problems with the new state from the point of recognition, not from acquisition of territorial rights. The State has examined relevant or appropriate circumstances and after ensure factual conditions, gives recognition to new entities as subjects of international law.[13] One approach to this issue is that recognition is what produces the state, and that the territory of the state at the time of recognition is accepted as the legal territory of international law regardless of how it was obtained. Although the theory is not universally accepted or evenly distributed, but it underlines how emphasis is placed on recognizing a situation, not the method of acquiring legal rights over a particular area.

One of the main relevant factors is the importance of the value of the domestic jurisdiction doctrine. This is a prohibition not to interfere with the internal mechanism of an entity to assert the supremacy of the state within its own limits. Basically there are two methods used by new entities to get independence as a new state, namely by constitutional means, by agreement with the administration of the previous authorities in the delegation of authority in an orderly manner or by non-constitutional means, usually with violence that is contrary to the previous authority will.

Granting independence in accordance with the provisions of the previous authority's constitution can be realized, either through agreement between the previous authority and the recipient authority of the new state or through the internal elements of the previous authority's legislation. In many cases, a combination of the two procedures is used. However, a different situation may occurs when the new entity gains independence in a way that is contrary to the will of the previous authority, whether through secession or revolution. If it is analyzed carefully about the classical views, juridical views, and sociological views to the elements of the state, it showed that these three views on the elements of the state are same in the principle. The similarities are elements of territory, people, government, and can make international relations.

Polemic on the determination of border lines refers to formal legal issues concerning boundary points in the field that divide the sovereignty of the two states based on international law[14]. Based on Soepomo's opinion in a large meeting of the Investigation Agency for Indonesian Independence Preparatory (Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia / BPUPKI) on May 13rd, 1945 stated that:

> The absolute requirements for establishing a state are viewed from a legal standpoint and from a formal or jurisprudential standpoint namely that there must be a region or territory, people and sovereign government according to international law.

The Independence proclamation of Indonesia on August 17th, 1945 is a statement of the Indonesian people to the International Societies of a new state, namely the Unitary State of the Republic of Indonesia which has the right to self-determination and sovereignty.[15] Muhammad Yamin interpreted this definition of the Proclamation of Independence as follows[16]:

> The Independence Proclamation is an international legal tool to declare to the international societies, that the Indonesian people take their fate into their own hands to hold all the rights of independence which include the nation, the homeland, government, and the happiness of the people.

After the independence proclamation, Indonesian leaders barely had not enough time to discuss the state's boundaries with certainty because the Dutch wanted to re-colonize Indonesia. During the war for independence and subsequently during the conflict over West Papua, Indonesian leaders realized how important it was to set clear boundaries that had not yet been done.

To claim that Indonesian territory was not merely a legacy of the Dutch East Indies, the concept of the homeland and Nusantara was once again invented by Indonesian leaders. Even Soekarno had stated in 1917 that the name Indonesia was actually the same as the Nusantara concept during the Majapahit kingdom. In relation to the issue of national borders, the Nusantara concept is seen to be the same as the concept of the homeland.[17]

On August 18th, 1945, Founding Fathers established the Indonesia Constitution 1945 as a legal media to normatificate the statement of the will of the Indonesian people the day before, the Indonesian independence proclamation on August 17th, 1945 to establish an independent Indonesian state, as well as the Fundamental Law of Indonesia, which contains the basis and outline of law in the administration of the country.

The struggle of the Indonesian people to realize impersonal and peacefull spiritually and materially that based on the Pancasila and the Indonesia Constitution 1945, is a struggle without end. In the struggle to achieve these National ideals, the Indonesian nation

[13] Oppenheim Lauterpacht, 1967, *International Law: A Treatise Vol 1: Peace*, edisi 8 Longmans, h. 677

[14] Sandy Nur Ikfal Raharjo. "Pekerjaan Rumah Perbatasan Indonesia-Malaysia". http://www.politik.lipi.go.id/index.php/in/kolom/politik-internasional/526-pekerjaan-rumah-perbatasan-indonesia-malaysia

[15] Noor Ms Bakry, 2001, Orientasi Filsafat Pancasila, Yogyakarta: Liberti, h. 111

[16] Muhammad Yamin, 1959, *Naskah Persiapan Undang-Llndang Dasar 1945* Jilid I, Jakarta:Yayasan Prapanca, h. 10

[17] Weil, 1989, *The Law of Maritime Delimitation-Reflections*, Inggris, Cambridge University Press, h. 153; dikutip di L.M.D Nelson, 1990, *The Role of Equity in the Delimitation of Maritime Boundaries*, *American Journal of International Law*, h. 84

embraces the Nusantara's Insight which is essentially that the Nusantara Region along with the air above it and the sea that connects it with all of it, constitutes a whole and comprehensive unity.[18]

The statement of the will of the Indonesian people to establish an Indonesian state is contained in the Preamble to the Indonesia Constitution 1945 in the fourth paragraph, which is stated in the objectives of the Indonesian state:

> ... to form an Indonesian government that protects all Indonesian people and all Indonesian bloodshed and to advance public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice, the Indonesian National Independence was compiled in a Constitution of Republic of Indonesia, which was formed in the composition of the Republic of Indonesia...

Observing the sentence from the fourth paragraph of the Preamble of the Indonesia Constitution 1945, it can be sorted into elements of the Indonesian state, as follows:

1. There is the word "to form an Indonesian government" indicating that there is an element of government;
2. There is the word "which protects all Indonesians" indicating that there are elements of the people;
3. There is the word "all Indonesian bloodshed" indicating that there is an element of territory;
4. There is the word "taking part in carrying out world order" indicating the element of ability to conduct international relations.

Thus, it can be said that the formulation of the fourth paragraph of the Preamble of the Indonesia Constitution 1945 is a formal form of the existence of elements of the state (Indonesia) as a political entity as required by the provisions of Article 1 of the Montevideo Convention 1933, namely there are people, territory, there are governments, and the ability to enter into relations with other countries. About the elements of the state Muhammad Yamin stated that:[19]

> The result of the inauguration of the Republic of Indonesia and the independence proclamation was to defend the homeland and the nation which had occupied one hundred percent independence. The sovereignty of the state regarding the independence of the government, regional independence and the independence of the people, all three of which are complete or it can be called as complete independence

Regarding the elements of the people, the drafter and maker of the Indoensia Constitution 1945 uses the terms citizens and residents as contained in Article 26 of the Indonesia Constitution 1945 which emphasizes that:

1. The citizens are Indonesian people or people of other nations who are ratified by law as citizens of Indonesia.
2. Residents are Indonesian citizens and foreigners who live in Indonesia.
3. Matters concerning citizens and residents are regulated by law.

Regarding the territory of the Republic of Indonesia, the fourth paragraph of the Preamble of Indonesia Constitution 1945 confirms that all Inodnesia bloodshed. With the enactment of the Indonesia Constitution 1945, the decision of the Indonesian Independence Preparatory Committee (Panitia Persiapan Kemerdekaan Indonesia / PPKI) regarding the territorial boundaries of the Republic of Indonesia in accordance with Article II of the Transitional Provisions of the Indonesia Constitution 1945 prior to the amendment, which contains provisions concerning the boundaries made by the Dutch government with other countries.

The concept of territoriality is stated in general, that is, all of Indonesia's bloodshed, which are contained in the Preamble of Indonesia Constitution 1945, the fourth paragraph which confirms that:

> Then rather than that to form an Indonesian government that protects all the Indonesian people and all the Indonesian bloodshed.

With this general formulation, the territorial boundaries of the Indonesia are not clearly detailed, and the statement is not a strong basis that can be used as a guideline in the administration of the state and in dealing with claims in the event of a territorial dispute with another state.[20] The statement in the Preamble of Indonesia Constitution 1945 is a political statement, but if it is reviewed from the aspect of international law it can meet the characteristics or conditions for the formation of the state. Because the fourth paragraph of the Preamble of Indonesia Constitution 1945 proves the fulfillment of the requirements for the existence of a state, concerning the Government, namely the Government of the Indonesian, concerning the people, namely all the Indoensian people and the territory is the whole of Indonesian bloodshed. With the enactment of the Indonesia Constitution 1945, the decision of the Indonesian Independence Preparatory Committee (Panitia Persiapan Kemerdekaan Indonesia / PPKI) regarding the territorial boundaries of the Republic of Indonesia in accordance with Article II of the Transitional Provisions of Indonesia Constitution 1945 prior to the amendment, which contains provisions concerning borders made by the Dutch Government with other states.

[18] Hasyim Djalal, 1979, *Perjuangan Indonesia di Bidang Hukum Laut*, Badan Pembinaan Hukum Nasional Departemen Kehakiman, Binacipta, Jakarta, h. 1

[19] Muhammad Yamin, 1959, *Naskah Persiapan Undang-Llndang Dasar 1945* Jilid I, Jakarta: Yayasan Prapanca, h. 109

[20] C. F. Amerasinghe, 1974, The Problem of Archipelagoes in the International Law of the Sea, *The International and Comparative Law Quarterly*, Volume 23, Nomor 3, h. 539-575

Border treaties are referred to in international law as positive agreements and directly binding to the Republic of Indonesia at the time the state was born.[21]National boundaries are one of the most important manifestations of a state's territorial sovereignty. To the extent that these boundaries are explicitly recognized by the agreement or generally recognized, they are part of a state's right to the territory.[22] On August 19th, 1945 Indonesian Independence Preparatory Committee (Panitia Persiapan Kemerdekaan Indonesia / PPKI) established the Indonesian territory for the time being divided into eight provinces. The eight provinces were West Java, Central Java, East Java, Sumatra, Kalimantan, Sulawesi, Lesser Sunda, and Maluku, each headed by a governor. Based on the Round Table Conference (Konferensi Meja bUndar / KMB) Decree, which was signed by the Governments of Indonesia and the Dutch on December 27th, 1949, the territory of the Republic of Indonesia encompassed all areas of the former Dutch East Indies including Irian Jaya. Dutch forcefully surrendered West Papua to the United Nations, and in 1962 the UN gave it to the Indonesian government.

In principle, the legal status both national and international of the position of the region and the people of West Papua is final. The claim that the government takes decisive action against the people of Papua who are deemed to have stepped out of the principles of state sovereignty cannot be denied. Therefore, the position of Papua as part of the 26th province in Indonesia cannot be contested as the full territorial integrity of Indonesia. At least three main things make it difficult for Papua people to come out and declare their independence. First, related to the involvement of the Papua people in establishing the Homeland. Second, the historical facts of West Papua as a Dutch colonial heritage area. Finally, there is a collective recognition from the United Nations of the process of referral Papua to Indonesia.

Since the mid-sixteenth century, Melanesians in the Papua had been colonized by the Portuguese, Spanish, German, British and Dutch. Only then was West Papua definitively claimed by the Dutch in 1828. That was the reason that dutch did not want to let West Papua becoming Indonesia's territory when Indonesia proclaimed its independence.

Irian Jaya had been declared as a part of Indonesia since 1963. First, the Indonesian government held a negotiation namely the Round Table Commission (Konferensi Meja Bundar / KMB) signed in Gravenhagen, Netherlands by Muhammad Hatta with J.H Van Maarseveen. However, the final results did not arrive at a full agreement. Even though since Germany left West Papua, the imaginary boundaries for the power of the Dutch Colonial government have been clear. Secondly, the Soekarno government did nationalization, especially by sending around 50,000 foreign workers to the Netherlands. At the same time Soekarno also took a fairly strategic step.

Both de facto and de jure, the position of West Papua cannot be doubted as a part of Indonesia. Collective recognition by the United Nations is indispensable evidence. In other words, the existence of UN recognition towards Papua can be interpreted as collective recognition or Collective Recognition. Brownlie state that:

> *Indeed, it has been argued that admission to the League and United Nation entailed recognition by the operation of Law by al other members, whether or not they vote against admission.*

Based on this statement, one of the functions of the League of Nations has provided an opportunity for recognition of other state against new state. Then in the course of the history of the Indonesian state up to 1999 there were 27 provinces in Indonesia, and for the territory of East Timor which was not part of the Dutch East Indies but Portuguese. Constitutionally, the regulation of the Republic of Indonesia can be read in the amendment the Indonesia Constitution 1945, Article 25A confirms that:

> The Republic of Indonesia is an archipelagic state characterized by Nusantara concept with territories whose boundaries and rights are stipulated by law.

Considering Article 25A of the Indonesia Constitution 1945 after the amendment that Indonesia is an archipelagic state. Indonesia is often seen as a Dutch colonial legacy whose territorial boundary system is based on an island by island system with an area of territorial sea covering an area of three nautical miles from the coastline at low tide.

Since the Proclamation of Independence on August 17th, 1945, Indonesia's sea area has undergone several changes. At its inception, Indonesia adopted the legal product of the legacy of the Dutch Territoriale Zee en Marietieme Kringen Ordonantie, Staatblad 1939 No. 442 (hereinafter referred to as TZMKO). TZMKO divides Indonesia's marine territories: First, the so-called "de Nederlandsch Indische territoriale exclusive economic zone" (Indonesian Territorial Sea). Second, what is called the Het Nederlandsch-indische Exclusive bied economic zone, namely the Dutch East Indies territorial waters, including the territorial sea section located on the land side of the seashore, the wild areas of bays, inlets, sea recesses, river mouths and canal. Third, de Nederlandsch-Indische Binnen Landsche wateren, namely all waters located on the land side of Indonesia's territorial sea including rivers, canals and lakes, and swamps of Indonesia. Fourth, de Nederlandsch-Indische Wateren, namely territorial sea including internal waters of Indonesia into territorial sea and internal waters.

The condition of the separation of these waters along with the development of time, has been realized to cause economic, security or even political vulnerability. To anticipate the emergence of the vulnerability, the Council of Ministers Session on December 13rd, 1957 delivered the Government's Announcement of the Territory of the State of Indonesia which was read by the Prime Minister Ir. H. Djoeanda, stated as follows:

[21] Sidik Suraputra, 1982, Hak Untuk Menentukan Nasib Sendiri Dalam Hukmn Internasional Publik Hukum dan Pembangunan, No. 4 Tahun ke-XII, h. 40

[22] JG. Starke, 1989, *An Introduction to International Law* Tenth Edition, London: Butterworth & Co., Ltd, h. 188

> All waters around, between, and connecting islands or parts of islands that are part of the Indonesian mainland, without considering the width or breadth are a natural part of the land area of the State of Indonesia. As such, constituting part of the internal waters or national waters under the absolute sovereignty of the Indonesian State, peaceful traffic in these internal waters for foreign vessels is guaranteed as long as and does not conflict with the sovereignty and safety of the Indonesian State. The determination of the 12 nautical mile sea boundary, measured from the lines connecting the outermost points on the islands of the State of Indonesia will be determined by law. Furthermore, the Government Announcement is known as the Djoeanda Declaration. This declaration was issued based on the following considerations.

The core of Djuanda Declaration is a concept of Nusantara and has delivered Act No. 4 Prp of 1960 concerning Indonesian Waters. So, the regulation of Indonesian waters is no longer guided by the legal provisions of the TZMKO, which is a legal product of the Dutch colonialism. Indonesia's waters arrangements have at least been developed based on the concept of Indonesia's national interests. Regarding this, Frans E. Likadja and Daniel F Bessie argued that all of these formulations (the formulation of waters in the TZMKO), especially the first part of the formulation (de Nederlandsch Indische territoriale exclusive economic zone) was completely incompatible with the nature of the nation's struggle and the goals of Indonesia proclamatory. The amendment in question is related to the issuance of the Government Announcement on December 13rd, 1957 concerning the Concept of the Nusantara, and better known as the Declaration of Juanda, which was legitimated into Act No. 4 Prp of 1960 concerning Indonesian Waters.

Since the Djuanda Declaration or the Government's Announcement of the Nusantara Concept, then: First, the width of Indonesia's territorial sea width changed to 12 nautical miles which were previously 3 nautical miles; Second, the determination of the territorial sea width is measured from a straight base line connecting the outermost points of the outer ends of the Indonesian island, and previously measured from the base line using a low water line (tides) that follow the twists and turns of the coast of each island Indonesia; Third, all waters located on the sides of the straight base line change their status from what used to be a territorial sea or high seas into internal waters, state sovereignty over these waters is practically the same as state sovereignty over its land. While before the Declaration of Juanda the waters located on the inner side of the base line were called internal waters.

The rediscovery of the Nuisantara and homeland concept could encompass the entire nusantara that includes both land and sea areas or even the seas and islands. In this concept it is not possible to have an enclave (in the form of international waters) within the nusantara. This ideological process peaked in 1957 when the government announced the Djuanda Declaration. The declaration contains claims to unify the land and sea areas in Indonesia. This was different from the vision of the colonial state regarding the conception of territorial sea boundaries three miles from the baseline at low tide of each island. Internally, the declaration can be used to justify various government policies to act on all sorts of possibilities carried out by separatist movements and externally it is closely related to efforts to rediscover historical and cultural justification to unite the land and sea areas in order to deal with pressures western states which disagree over the claims made by the Indonesian government.

The Djuanda Declaration provided a strong political and legal foundation for Indonesia, which at that time was facing such enormous challenges in fighting for its territory in an international forum. Considering on the opinion of Moh. Mahfud MD, the declaration emphasized three important things. First, as an official attitude of Indonesia, which at that time faced difficulties in uniting Irian Jaya because many of the surrounding seas were considered as international waters that were free to be used by anyone. Second, it emphasizes that the earth, water, and natural resources contained therein and the air space above it must be truly used for the greatest prosperity of the people in accordance with the mandate of Article 33 of the Indonesia Constitution 1945. Third, statements about the real form of Indonesia which are the basis of the Nusantara's insight in national development aimed at realizing Indonesia as a political, social, economic, cultural, defense and security unit.

The concept of Nusantarea as outlined in Act. No. 4 Prp In 1960 was not accepted by other state. The Government of Indonesia after sparking the concept of Nusantara was trying to socialize the concept in order to gain international recognition. The climax of the Government's efforts on the Nusantara Concept was in the United Nations Conference on the Law of the Sea III which ended in 1982. The United Nations Conference on the Law of the Sea III delivered the Uconvention of the Law of the Sea which was named the United Nations Convention on the Law of the Sea 1982 or commonly referred to by other names UNCLOS 1982.

The Nusantara concept that is originated from the Government of Indonesia Announcement dated December 13rd, 1957 was recognized and accepted as an integral part of UNCLOS 1982 and contained in Chapter IV entitled Archipelagic States. The waters located on the inner side of the archipelagic baseline are called archipelagic waters in which it is still possible to draw a cover line at certain places to determine internal waters. Fundamental changes to Indonesian waters beginning with the Government's announcement of the Nusantara Concept and then being accepted as an integral part of UNCLOS 1982, naturally affected the management and utilization of fish resources in Indonesia.

In MPR Decree No. IV / MPR / 1973 on March 22nd, 1973 and restated in MPR Decree No. IV / MPR / 1978 on March 22nd, 1973 concerning the Outlines of State Policy, especially in Chapter II letter E, emphasized that the Republic of Indonesia adheres to the conception of the Nusantara Inisght[23] in achieving the goals of National Development. Thus, it can be said, the internal sovereignty of the Republic of Indonesia manifested in the conception of the Nusantara's insights. Thus, it can be said that the concept of the Nusantara insight was coined for the first time as the principle of the Republic of Indonesia, which is called the Archipelagic State Concept.

[23] lemhanas, 1981, Bunga Rampai Wawasan Nusantara I, Firma Skala Indah dan Lemhanas: Jakarta, h. 64-65

Thus, the effort to understand what is meant by the territorial waters of Indonesia becomes very important for Indonesian fisheries. That said, of course, is inseparable from a number of considerations that have led the Indonesian Government to issue a statement on the territorial waters of Indonesia:

1. That the geographical form of Indonesia, as an archipelagic state consisting of thousands of islands, has its own characteristics and features that require separate regulations.
2. That for the territorial integrity of the State of Indonesia, all islands and seas which are located must be considered as a unified.
3. That the determination of territorial sea boundaries inherited from the colonial government, as stipulated in TZMKO 1939 Article 1 paragraph (1) is no longer in accordance with the interests, safety, and security of the Indonesian state.
4. That every sovereign state has the right and obligation to take actions deemed necessary to protect the integrity and safety of its state.

The basic consideration may not fully reflect its relevance to the problem of managing and exploiting the potential of Indonesian waters or fish resources. But behind of the considerations that encourage the Government regarding the territorial waters of Indonesia, this also determines Indonesian fisheries areas. In this relation of the change in the teriorial sea width that is internationally in accordance with UNCLOS 1982, then there is a guide for coastal state (including Indonesia) to legally be able to exploit the potential of fish resources in accordance with their capabilities and technology.

The obligations of Indonesia as an archipelagic state are already regulated by Article 47-53 of UNCLOS 1982. Article 47 regulate that an archipelagic state can draw a straight line of islands (arhipelagic baselines) and this regulation has been transformed or implemented into Indonesian Act No. 6 of 1996 concerning Waters Indonesia and Government Regulation No. 37 of 2002 concerning the Rights and Obligations of Foreign Vessels and Aircraft in Executing the Rights of the Archipelagic Sea Lines Passage through the determined archipelagic sea lanes, and Government Regulation No. 38 of 2002 concerning the Geographic Coordinate List of Indonesian Archipelagic Base Lines.

To obtain recognition of sovereignty and legal certainty the Government of Indonesia has deposited Government Regulation No. 37 of 2008 concerning the base point of the coordinates of the Indonesian archipelago to the Secretariat General of the United Nations dated March 11st, 2009 with Reference Number: M.Z.N.67.2009.LOS which states that:[24]

> *A list of geographical coordinates of points of the Indonesian Archipelagic Baselines based on the Government Regulation of the Republic of Indonesia Number 38 of 2002 as amended by the Government Regulation of the Republic of Indonesia Number 37 of 2008. The list of geographical coordinates of points is referenced to the World Geodetic System 1984 (WGS84)*

As one of the archipelagic state, the position of the sea between and around the islands of Indonesia is a very important element of the region for the fostering of national unity, political stability, economic progress and people's welfare, as well as Indonesia's defense and security capabilities. Therefore, the attitude of Indonesia which immediately ratified UNCLOS 1982 was appropriate because it was in accordance with national interests.

The state manages the distribution of natural resources as regulated in Article 33 of the Indonesia Constitution 1945. Furthermore, in the same article it is also said that the earth, nature and all its contents that concern the lives of many people are managed by the state and utilized as much as possible for the prosperity of the Indonesian people. So the content of Article 33 of the Indonesia Constitution 1945 is a reflection of the function of the productive state because the article recognizes the ownership rights of individuals, joint ventures and public services provided by the state by managing resources that concern the lives of many people. The normative view above needs to be tested in the reality of Indonesian people who are carrying out development

CONCLUSION AND RECOMMENDATION

Conclusion

The central role of the region in international law can be seen from the development of the rule of law that protects the state that cannot be contested. The exercise of the right to self-determination still must maintain and respect the territorial boundaries that have existed before. This is called the doctrine of uti possidetis in international law, and the boundaries of a new nation take over existing colonial boundaries. The territory of Indonesia after independence in 1945 covered the entire territory of the former Dutch colony. This is based on the principle of Uti Possidetis in international law. For the boundary area boundaries agreed upon by the Dutch Government and the British Government in Kalimantan and Papua.

Recommendation

Indonesia is blessed with an abundance of various fisheries and marine resources. These resources, if managed properly, are the basic capital to improve the welfare of all components of the nation. To achieve this goal, the management of existing resources

[24] Deposit by the Republic of Indonesia of a list of geographical coordinates of points, pursuant to article 47, paragraph 9, of the Convention. Diakses di http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn67.pdf pada tanggal 8 Desember 2018.

must meet conditions such as efficiency, equity based on justice that leads to sustainability. Existing fisheries and marine resources can not only improve the welfare of today's society, but also the generation people who will come continue to enjoy better welfare.

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