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STATE BORDER MANAGEMENT COOPERATION AND THE FULFILLMENT OF ECONOMIC RIGHTS OF BORDER COMMUNITIES OF WEST KALIMANTAN-SARAWAK

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Abstract

One of state's border management cooperation between West Kalimantan and Sarawak is done through socio-economic cooperation, which has the goals to improve the border community's prosperity. Although people in the border have a socio-cultural similarities, there are differences in the level of welfare because infirmity of state presence in fulfilling their economic rights. This condition causes the border communities have tendency to depend on neighboring countries and maintain transnational economic relations, even though they have to breaking the national law. These facts show that in essence, the bilateral cooperation agreement between Indonesia and Malaysia has not provided optimal fulfillment of the economic rights of border communities of West Kalimantan with Sarawak.

Keywords: border communities, border management, economic rights.

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I. INTRODUCTION

West Kalimantan is one of the provinces in Indonesia which has a direct land border with other countries namely Sarawak, East Malaysia. The border area of West Kalimantan-Sarawak stretches for about 966 kilometers. Administratively, the area covers 5 districts, 15 sub districts and 98 villages.

As a border area which also as the "front-yard" of the Republic of Indonesia, it is fitting, that good management should be done by prioritizing the welfare of society in the field of economy, social, culture, politics and defense and security. In relation to human rights, welfare is closely linked to the fulfillment of economic rights[1] because

[1] Economic rights are part of the "Second Generation of Human Rights" along with social and cultural rights (better known as economic, social and cultural rights/ECOSOC). The birth of the second generation of human rights can not be separated from the socialist opposition to the bourgeois-capitalist groups embodied in the revolution and other forms of class struggle such as the welfare movement. This second

economic rights are the foundation that ensures a decent standard of living as well as a basis for freedom for every individual.[2] It can be said that with the fulfillment of economic rights, it is fulfilled also basic human necessities and thus the human has reached one of the way to prosperity.[3]

In several studies on border management in West Kalimantan, the socio-economic life of people at the border is generally influenced by socio-economic activities in the Sarawak region. The tendency shows that Kuching (Sarawak, Malaysia) has become a growth industry center area, while the border area of West Kalimantan is only a less favorable Malaysian hinterland, whereas economically, the region is not only specific but also has strategic value, which takes place in this region basically: (a) have potential resources that impact economic and spatial use significantly, (b) as an impetus for the improvement of socio-economic welfare of the community inside or outside the region, (c) have a strong connection with activities in other adjacent areas both nationally and regionally and, (d) have political impact and security defense functions.[4]

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generation is based on the principle of egalite which deals with rights concerning the economic, social and cultural aspects naturally. The second generation ensures that there is no difference to the whole society to get the same attention and conditions by the state.

[2] Asborjn Eide, "Economic, Social and Cultural Rights as Human Rights", in Asborjn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook,* Martinus Nijhoff, Dordrecht, 1995, p. 31.

[3] Another opinion that aligns the rights of the ecosystem with social welfare is the opinion of David Trubek. In one of his writings he says: "I shall refer this set of rights collectively (economic, social and cultural rights), as 'social welfare rights'…That is, the idea of protecting these rights rests on the belief that individual welfare results in part from the economic, social, and cultural conditions in which all of us live, and the view that government has an obligation to adequacy of such conditions for all citizens." Read more David M. Trubek, "Economic, Social, and Cultural Rights in The Third World: Human Rights Law and Human Needs Program", in Theodor Meron (ed.), *Human Rights in International Law: Legal and Policy Issues, Vol. I,* Clarendon Press, Oxford, 1984, p. 205.

[4] See Agung Djojosoekarto, et. al., (eds.), *Rumusan Rekomendasi Kebijakan Pengelolaan Perbatasan di Kalimantan Barat,* Kemitraan Bagi Pembaruan Tata Pemerintahan, Jakarta, 2011. See also Husnadi, *Menuju Model Pengembangan Kawasan Perbatasan Darat Antar Negara (Studi Kasus: Kecamatan Paloh dan Sajingan Besar Kabupaten Sambas, Kalimantan Barat),* Thesis at Regional and Urban Development

Under such conditions it raises the question of whether the cooperation agreement on border management between Indonesia and Malaysia has any effect or benefit in improving the welfare (or in other words, fulfilling the economic rights) of people in the border area? This article will examine the existence of cooperation agreements for the management of state borders in order to fulfill the economic rights of the people in the border areas.

The discussion of this article will begin from briefly describing the historical aspects of border management of West Kalimantan-Sarawak, then explaining the similarities in socio-cultural aspects and differences in the level of welfare of border communities in the two countries and finally analyzing the lacks of the state's presence and its implications for the fulfillment of the economic rights.

II. DISCUSSION

A. BRIEF HISTORY OF WEST KALIMANTAN-SARAWAK BORDER MANAGEMENT

The border of West Kalimantan-Sarawak is actually separated by the political sovereignty of both countries (Indonesia and Malaysia), but socio-historically the inhabitants of this border region have interconnected relationships that take place from generation to generation. Therefore, among the residents in both areas even have a familial relationship, either because of heredity or because of marriage.

Historically and legally, the border-line determination of these two countries had been adopted by the previous colonial rulers of the Kingdom of the Netherlands and the United Kingdom in the Treaty of London on June 20, 1891.[5] The London Treaty was subsequently followed up with The Boundary Agreement signed in London on 28 September 1915 and The Boundary Convention signed at The Hague on March 26, 1928. The treaties resulted in the division of territory over Borneo Island by drawing a line from east to west so that the territory

Engineering Master Program, Universitas Diponegoro, Semarang, 2004.

[5] Triana Wulandari, et. al., *Satu Ruang Dua Tuan: Sejarah Wilayah Perbatasan Entikong-Malaysia 1845-2009,* Gramata Publishing, Depok, 2009, p. 44.

of the island is divided into two areas of power, namely to the north which is the power of British Protectorates (now known as Sarawak and Sabah which are part of Malaysia and Brunei Darussalam) and in the south which is the power of Dutch Borneo (now more known as Borneo which is part of the Republic of Indonesia).

Following the end of Indonesia's confrontation with Malaysia, the two countries agreed to follow the borders established by the colonial government, or in international law known as the principle of "uti possidetis juris". This is stated in the Memorandum of Understanding (MoU) signed on 11 August 1966 in Jakarta which affirms the international boundary of the two countries with the following formula: "The Joint Survey Teams are now carried out of redefinition of international boundary at priority area EF in accordance with the Treaty Series No. 32 (1930) signed between the British and the Dutch on 26th March, 1928."

Furthermore, the demands of the people along the border to be able to visit each other and related are facilitated by the governments of both countries through the Basic Cross-Boundary Agreement commonly called "Basic Arrangement on Border Crossing" on May 26, 1967. The Agreement also provides that the goods traffic into and out on each border area shall be channeled through the Border Controller Posts. This provision is the basis of the Agreement on Border Trade between the Government of the Republic of Indonesia and the Government of Malaysia in 1970. In Article II sub 3 of this agreement stipulated that: "The value of goods carried or conveyed for purpose of overland border trade by any person specified in section 3 of Article I shall not exceed six hundred Malaysian Dollars (M.600) per month."

B. SOCIO-CULTURAL SIMILARITIES AND DIFFERENCES IN WELFARE LEVELS

In reality, many abuses in the implementation of the Trans-border Agreement of 1970 are shown by the rampant illegal trade. Illegal trading is usually done by exploiting the local community by a third party by giving a certain amount of money to then spend goods from Malaysia by the local community. The goods purchased by the community are collected in a certain amount further by the third party being taken to

other areas for resale both within and outside West Kalimantan. This items are usually traded illegally in general in the form of snacks, biscuits, canned drinks and sugar. In fact, if it refers to the Agreement of 1970, it is stated that what is allowed to trade is only the border community with a maximum trade value of M $. 600 per month per person.

In the international law perspective, Indonesia and Malaysia are the countries that inherited the region (successor) from previous colonial rulers. The birth of Indonesia (August 17, 1945) and Malaysia (31 August 1957) as a sovereign state or a modern state (according to the concept after the Treaty of Westphalia in 1648) demanded a demarcation or border-line between the two countries. The problem is, before Indonesia and Malaysia became a modern state, there were almost no socio-cultural boundaries between the peoples of the two countries.

In Kalimantan (Borneo), socio-cultural life of society even influence each other and is bound in the bonds of kinship very closely, especially the Malay[6] and Dayak tribes.[7] This causes even though the physical boundaries have established, the socio-cultural boundaries between Indonesia and Malaysia are never clear.[8]

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[6] For example is the Sambas Sultanate which has a long history, from the time of the Old Sambas Kingdom to the Hindu period (14th century) and the era of the Sambas Islam Sultanate (17th Century), with a history related to a number of other kingdoms, including those in Malaysia (Johor and Sarawak) and the Sultanate of Brunei Darussalam. For details see Pabali Musa, *Sejarah Kesultanan Sambas Kalimantan Barat: Kajian Naskah Asal Raja-Raja dan Silsilah Raja Sambas,* STAIN Pontianak Press and Ford Foundation, Pontianak, 2003. See also Mary Somers Heidhues, *Penambang Emas, Petani dan Pedagang di "Distrik Tionghoa" Kalimantan Barat,* Nabil Foundation, Jakarta, 2008, p. 15.

[7] "Dayak" is a common name for indigenous Kalimantan (Borneo) non-Muslim and non-Malay. See Mary Somers Heidhues, *ibid.,* p. 8. The etymology of this title is still disputed, but Dutch scientist, August Kaderland, believed to use the term "Dayak" in the above sense in 1895. Today "Dayak" is defined as a tribe consisting of six major tribes (Apokayah/Kenyah/Kayan/Bahau, Ot Danum/Ngaju, Iban, Murut, Klemantan, dan Punan) as well as 405 small sub tribes that spread throughout the island of Kalimantan (Borneo). See also J.U. Lontaan, *Sejarah, Hukum Adat dan Adat Istiadat Kalimantan Barat,* Local Government of West Kalimantan, 1975.

[8] Some of the older generation on the Indonesia-Malaysia border admitted they only knew the status of citizenship they had different from their relatives in the Sarawak region of Malaysia when President Soekarno launched the "Ganyang Malaysia" cam-

At a time when Indonesia and Malaysia were still under colonial rule, there was hardly any strong political and economic touch in the border region because the role of the colonial government dominated the center of power. If anything then the touch is just about determining the demarcation line, especially between Dutch and British.[9]

Along with the formation of Indonesia and Malaysia as a modern state, the socio-cultural similarity of the people in the border region is not directly proportional to the similarities in the economic field. What actually happens is a significant economic gap. This is due to the differences between the Indonesian and Malaysian governments in looking at the border areas of the country, which then affect the policies that are decided and the development undertaken. Indonesia, which prioritizes the security approach, has resulted in the neglect of economic, social and cultural development at the border. Almost all border areas in Indonesia are even categorized as underdeveloped areas. Malaysia, on the other hand, viewed the border as the front-yard of its country carrying out various developments that have succeeded in improving the welfare of its people in the border areas.[10]

In similarities of the socio-cultural situations and differences in welfare levels, people on the Indonesian side of the border live and

paign on 27 July 1963 which was followed by a confrontation with Malaysia.

[9] At least until the early nineteenth century, the colonial rulers in Batavia showed little interest in exploiting the inland areas of Borneo. The island's reputation as *terra incognita* and as a wild area coupled with an understanding of the Dayak's inland people as "primitive" and "wild" caused Batavia's control over the region to be based only on the mandatory surrender system *(verplichte leverantie)* by indigenous rulers under the contracts they made earlier. See Triana Wulandari, et. al., *op. cit.,* p. 23-24 and Mary Somers Heidhues, *op. cit.,* p. 31-33. The division of the influence of colonial powers, especially in Borneo, began only when James Brooke established his authority in Sarawak. To protect his power, Brooke tried to get British protection by submitting Borneo to England. The attempt was successful with the recognition of Brooke's existence as "Rajah of Sarawak" and the granting of British knighthood (Sir) to Brooke and his offspring (1847). This, in turn, stirred the Dutch government, not only in Batavia but also in The Hague until it finally sparked a conflict between England and the Netherlands until the Treaty of London (1891) was reached. A complete overview of this can be seen in chapter II of Triana Wulandari, *op. cit.,* p. 17-57.

[10] Robert Siburian, "Kondisi Perekonomian Masyarakat Perbatasan: Entikong dan Nunukan", *Masyarakat Indonesia: Majalah Ilmu-ilmu Sosial Indonesia*, Vol. XXX, No. 2, 2004, pp. 114-115.

interacts with their relatives on the Malaysian side of the border. This of course raises their sense of dissatisfaction with the state and government of Indonesia. In general, border communities feel themselves neglected in the development process implemented by the government.[11] The lack of infrastructure and services of basic needs rights is the reason the border community feels "marginalized" by the Indonesian government. Whereas in historical tracks, the border community has a contribution that can not be underestimated, especially during the Indonesia-Malaysia confrontation.

On the other hand, Malaysia who managed to transform its borders as the "front-yard" of the country has not only succeeded in prospering its people. Infrastructure and basic service needs prepared and provided by the Malaysian government even enjoyed by some Indonesian citizens who are in the border region.

C. THE LACKS OF STATE PRESENCE TO FULFILLMENT OF THE ECONOMIC RIGHTS AND ITS IMPLICATION

The lacks of State presence in the border region in terms of the art of governing the society dependency cause border against not only the neighboring countries, but also the actors other than the State.

In connection with the existence of the Cross-Border Trade Agreement of 1970, it is a formalization of socio-economic relations, especially trade, carried out by a society now separated by an imaginary line called the state border. Therefore, the agreement only regulates trades traditionally and on a small scale (amounting to RM 600 per person per month). Maximum quota value of RM. 600 which is perceived as inadequate at present condition. In general, the border community wants the maximum value is added up to RM. 1,500.

Deeply studied, the desire of the border community to increase the

[11] The accumulated disappointment of border communities are reflected in a phrase: "Only the angel who haven't come to the border". This expression originally from Entikong border community. Currently the expression became popular in almost all regions of Indonesia-Malaysia land border. Other reactions showed disappointment society for example are: (the threat) to replaced their citizenship and in the case of the most recent is a village in the Regency Sintang who refused to participate in West Kalimantan's Governor Elections on the 20 September 2012 by reason of disillusionment with the Government (central and local).

maximum quota value of cross-border trade shows that people at the border are still highly dependent on products or commodities from Malaysia. This desire is not found in the border community on the Malaysian side. Because it can be interpreted that with the increase of the maximum quota value of cross-border trade then more and more products or commodities can be purchased in Sarawak and taken home by people on the border of West Kalimantan. But this logic can also be reversed that, with the increase in the maximum quota value of cross-border trade, the more commodities they can sell to the Sarawak region with the advantage, the amount of Ringgit, which increases as well.[12] The second reason is more profound. For the border community, the use of the Ringgit currency can also be interpreted as a symbol that some of their subjective and collective stances are "Malaysia", in the sense that there is a psychological awareness that they are more familiar with and more powered by Ringgit than Rupiah. Thus Ringgit is not only seen as a tool of transactions but as a symbol of fulfillment in the facilitation (service) of the state to its citizens.[13]

The implications of the various socio-economic problems occurring in the border region make the people on the border feel neglected of their economic rights by the state. This makes the people have weak loyalty to their own country. This is because of the view that they have a closer socioeconomic relationship with people in the border region than the center of their perceived distant government. This view then creates a feeling of weakness in terms of sense of belonging (feel of belonging) and the appreciation of national identity (internalization of national identity).

Communities in the border region have a tendency to maintain transnational economic relations even though they must violate national law. In many cases this happens because they have little choice because the government fails to integrate border areas into a larger national

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[12] Robert Siburian, "Entikong: Daerah Tanpa Krisis Ekonomi di Perbatasan Kalimantan Barat-Sarawak", *Antropologi Indonesia,* Vol. XXVI, No. 67, 2002, p. 92.

[13] Adri, "Kontestasi Politik Identitas dalam Fenomena *Illegal Logging* di Perbatasan Indonesia-Malaysia: Studi di Kecamatan Badau dan Lanjak, Kabupaten Kapuas Hulu, Provinsi Kalimantan Barat", *Journal Communication Spectrum*, Vol. 1 No. 1, 2011, p. 83.

economy.[14] Border societies also exhibit a tendency to avoid, circumvent or violate the laws they see as interfering with their interests and their unique and unique way of life. In a situation like this, as Martinez's opinion[15], if the laws governing interactions on these borders are carried out rigidly will result in widespread conflict and legal disregard.

The phenomenon of "evading" and "against" the national law perpetrated by society at the border shows the failure of the work of law in society. In a social perspective, the successful implementation of a rule of law is largely determined by several factors. According to William J. Chambliss and Robert B. Seidman, the work of law in society involves several interrelated elements or aspects as a system. Some aspects are: law making institutions, law enforcement agencies, role occupants and personal societal force, legal culture and feed back elements of the ongoing process of working the law.[16]

Chambliss and Seidman argue that the personal societal forces existing within the society of its existence suppress direct law-making institutions and institutional law enforcers indirectly, whereas law enforcement agencies also experience direct pressure from personal societal forces. Lawmakers work by creating rules aimed at governing society. The law enforcement agencies are tasked with ensuring that the regulation is upheld by the community and sanctioning any violation of the rule, while the community is the ultimate goal of legal action.[17]

In the phenomenon of "evasion" and "rejection" of national law by people in border areas, there is a symptom that law-making as part of legal politics is the result of "political decisions" or public policies that are not, or at least lack, supported by an adequate social basis. These laws, particularly those related to border management, show tendencies to be merely expressions of the creator's wishes.

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[14] Michiel Baud and Willem van Schendel, "Toward a Comparative History of Borderlands" *Journal of World History,* Vol. 8, No. 2, 1997, p. 229.

[15] Oscar J. Martinez, "The Dynamics of Border Interaction: New Approaches to Border Analysis", in Clive H. Schofield (ed.), *Global Boundaries, World Boundaries, Vol.1,* Routledge, London, 1994, p. 12.

[16] William J. Chambliss and Robert B. Seidman, *Law, Power and Order,* Addison-Wesley Publishing Co., Philipine, 1971, p. 12,

[17] *Ibid.*

The tendency that border communities are placed in positions as the object of development policy and border management, there has been a separation between the law and the society that became its *"adressat"*. This is a condition that is not ideal, because according to Satjipto Rahardjo, the law can not be separated from society. Society according to it is a resource that gives life (to nature) and move the law, that is, among others with the values, ideas, and concepts derived from society[18] In relation to the legal process of work, Satjipto also said that the work done by law is by no means autonomous, but interlinked-related to the processes that occur in society.[19] This means that between the law and the processes that occur in the community there is a relationship to control each other. This means that between the law and the processes that occur in the community there is a relationship to control each other. These facts show that in essence, the bilateral cooperation agreement between Indonesia and Malaysia has not provided optimal fulfillment of the economic rights of the people on the border of West Kalimantan with Sarawak.

III.CONCLUSION

The bilateral cooperation agreements between Indonesia and Malaysia have not provided optimal fulfillment of the economic rights of communities on the border of West Kalimantan with Sarawak. The implications of the various problems occurring in the border region make the people of the border have a weak loyalty to their own country and have a tendency to maintain transnational economic relations even though they must violate national law. This shows the phenomenon of the failure of legal work in society. This failure occurs because law making in relation to the management of the border of the border country is only placed as an object only, so that the legal rules relating to the management of state borders, whether made within the framework of bilateral cooperation between Indonesia and Malaysia and at the national level, has been separated from the society which became the *"adressat"* of the law itself.

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[18] Satjipto Rahardjo, *Biarkan Hukum Mengalir,* Kompas Gramedia, 2007, Jakarta, p. 133.

[19] *Ibid.*

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