THE SOLUTION OF THE CROSS COUNTRY COMMUNITY LAND CONFLICT: THE CASE OF INDONESIA AND TIMOR LESTE TRADITIONAL LAW IMPLEMENTATION MECHANISM

Karolus Kopong Medan[1)] and Dhesy Arisandi Kase[2)]
Law Science, Nusa Cendana University, Kupang, Indonesia
[1)]kkopongmedan1962@gmail.com
[2)] dhesykase@yahoo.co.id

ABSTRACT

Since Timor Timur, now called Timor Leste, got its independence (1999), the country still has problems of community land status between the people of both countries in their border area. The fact shows that a member of the community land in the border area has multiple jurisdictions, where a part of the area obey Indonesia jurisdiction and the other obey Timor Leste jurisdiction. So the owners of the community land (citizen) in the border area also grouped into two different jurisdiction of two different countries. Such community land, will make a continuous problem that leads to molest the stability of the two countries as well as the peace of the society in the border. Such conflict will be difficult to be effectively solved by applying the international law mechanism. Therefore, it is necessary to be solved by applying the traditional law mechanism of the society in the border area, since they are at the relatively the same or similar social background. Realizing the importance of such traditional law mechanism to solve such conflict in the border area, it is suggested that both countries, Indonesia and Timor Leste, must maximize the traditional law mechanism available in the society in border area.

Keyword: community land, cross country, international law, traditional law

PRELIMINARY

The border areas between countries in fact have many problems that are directly or indirectly related to issues of defense and security between countries, both in a broad scope and specifically concerning the lives of citizens who live on the border. One of the border problems of the country that has not been completely resolved until now is between Indonesia and Timor Leste. Since East Timor separated from the Unitary State of the Republic of Indonesia (NKRI) and became independent to become the Democratic Republic of Timor Leste (RDTL) in 1999, it turns out that it still leaves a crucial issue that does not only concern the agreement on state boundaries which shows the sovereignty of each country. Because the discussion is more focused on the issue of state sovereignty with its jurisdictional boundaries

which are laden with political interests, sometimes it makes people forget to seriously discuss issues related to traditional jurisdictional boundaries related to the existence of ulayat lands controlled by indigenous peoples.

It must be fully realized that the boundaries of state jurisdiction are not in line with the boundaries of traditional jurisdictions, so it is not surprising that there are customary land rights that are subject to traditional jurisdiction within two or more territorial borders of the state. The reality shows that a number of ulayat lands on the border of Indonesia-Timor Leste have dual jurisdiction where part of the territory is subject to the jurisdiction of the Republic of Indonesia and the rest is subject to the jurisdiction of the RDTL state. Likewise, indigenous peoples as holders of communal customary rights are also divided into two groups of citizenship who are subject to different jurisdictions.

The existence of such transnational ulayat lands will continue to be a problem that disrupts the stability of the state and the security of citizens in the border areas of the two countries. Sormin (2013) notes that the border dispute between Indonesia and Timor Leste, which has not been resolved until now, is in five points, namely Inbate, Sunkaen, Homeniana, Ninglat, and Tunbanat. The issue of boundaries has not been resolved, because there is still no agreement on how to determine the boundaries and there is still a problem of dividing customary land which according to residents at the border should not be divided.

Responding to various international deals on the border between Indonesia and Timor Leste, there is a strong tendency to take advantage of international legal mechanisms as the most dominant means and place more hopes on the United Nations (UN) and other international institutions as world bodies that protect the whole. countries in the world. Meanwhile, the customary law mechanism that is actually the most relied on to help resolve international disputes at inter-state borders quickly and peacefully tends to be ignored because it is considered an outdated traditional mechanism.

It is noteworthy that the official documents of international law, especially in Article 38 Paragraph (1) of the Statute of the International Court of Justice (IJC) have placed "international custom" as one of the most important and oldest sources of law (Thontowi & Iskandar, 2006 : 53-71; also Kusumaatmadja & Agoes, 2003: 113-160). That means, customary law, which is customary law, should be optimized in the handling and settlement of international disputes at the border between countries, especially with regard to issues of cross-border customary land.

Starting from the understanding that custom (in this case customary law) is also a source of international law, it is not surprising that Indonesia and Timor Leste then agreed to make a Provisional Agreement on 8 May 2005, which explicitly recommended that customary law should be considered as part of the settlement mechanism. international disputes on the border of Indonesia and Timor Leste (Batubara, 2012; also in Kase, 2013: 2). The agreement certainly has adequate sociological basis, because the Timorese people living in the territory of Timor Leste and in the territory of Indonesia (in this case West Timor) are of one ethnicity who use the same language, and come from one ancestor and the same origin. .

It is assumed that this mechanism of international dispute resolution based on customary law can be an interesting example for regional areas as well as for the wider and more complex regions of the international world. Therefore, this research becomes very urgent to be carried out in the context of developing an international legal order that allows the arrangement of an international dispute resolution mechanism based on the customary law system adhered to by communities at national borders.

STUDY FOCUS

Starting from the background of problems related to the existence of transnational customary land which has implications for the emergence of disputes between states and citizens on the border between Indonesia and Timor Leste, this paper will attempt to elaborate on how to optimize customary law mechanisms in dispute resolution in general at the border, especially transnational ulayat land dispute issues. For this reason, there are four important aspects that need to be discussed in this paper, namely (1) traditional jurisdiction based on customary law in the sphere of life between countries; (2) customary communities and customary land tenure in the international legal system; (3) the use of customary law in the settlement of international disputes; and (4) settlement of ulayat land disputes across the country between Indonesia and Timor Leste based on customary law.

DISCUSSION

1. Traditional Jurisdiction Based on Customary Law in the Scope of Life Between Countries

In general, the term "jurisdiction" (Indonesian) or "jurisdiction" comes from the Latin "Jurisdictio", which consists of two syllables: juris which means belonging to the law, and diction which means speech, word, designation, word., So , the term jurisdiction means: property as determined by law, rights according to law, power according to law, and authority according to law. Thus, the term jurisdiction actually contains “rights”, “powers” and “authority” according to law (Freedem, 2012).

The jurisdiction referred to here is the right, power and authority based on law, both national law in effect in a country and international law relating to rights, powers and authorities in the legislative, executive and judicial fields (Freedem, 2012). In the context of modern law, according to Adolf (2006: 183) jurisdiction causes a country to have rights to persons, objects, and legal events that exist within a country or outside the country.

Through jurisdiction according to modern law, it has provided adequate authority or legality to the state to control various dimensions of the life of society, nation and state. Even in this increasingly globalized modern life, it has placed the position of international law as a general legal instrument to provide authority and legality to international institutions in controlling and controlling the lives of people, nations and countries in this world.

However, from a different perspective, Wigjosoebroto (2008: 237-252) emphasizes that the process of nationalization and internationalization which seeks to unite the various dimensions of society, nation and state in one unit under the control of a strong legal leadership, is now appearing like an illusion. . Now, the development of life no longer stops at the process of integration of local communities into national and even international units, but now there is a global paradox in which local forces (traditions) are getting stronger in this increasingly globalized life.

Quoting Naisbit (1990), Wigjosoebroto (2008: 237-252) reiterates that with the global paradox concept, Naisbit actually wants to emphasize that even though life is increasingly global, but it is significant or implied that local-based lives are also. That is why, Robertson (1994) in Wigjosoebroto (2008: 237-252) mentions the phenomenon of such life development with the term glocalization.

Starting from the concept of global paradox or glocalization, it can be assumed that the life of this society, nation and state is no longer framed by a national and international legal order that is unified and has the power of central powers. Life that is increasingly globalized is also determined by human choices both individually and collectively (groups).

Thus, it is not surprising that in this increasingly globalized life the dynamics of indigenous peoples' lives have also emerged framed in traditional jurisdiction or customary law. The authority of indigenous peoples is also increasingly showing its form in people's lives today, especially in terms of control and utilization of ulayat lands. Various references

that describe the increasing strengthening of demands relating to the authority of indigenous peoples, control and management of ulayat land, and the like.

That means, when the natural resources under control are managed for a larger interest, or when conflicts occur over the natural resources (ulayat land) they control, then the customary community must be given space to play a role. This means that the customary law order which is the source of the authority of the customary community must also become a reference in the management, utilization and handling of their natural resources. Some of them can be read in journal articles written by Tanya (2000, 2002), Kopong Medan (2001, 2002a, 2002b, 2003, 2006, 2007, 2008a, 2008b, and 2012), Wignyana (1998), Rajagukguk (2000), Suparlan (2000), Yulianti & Maharani (2012), Choesin (2002), Guruh (2009), Robertson (1994), Sumartono (2002), and so on.

2. Indigenous Peoples and Customary Land in the International Legal System

The following will explain the existence of indigenous peoples in the trajectory of the international legal system. It must be admitted that indigenous peoples are not only discussed in the stage of customary law and national law, but also in the stage of international legal law. - the rights of indigenous peoples. The term indigenous peoples was later used by the ILO (2014) in international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples.

In 2007, the General Assembly of the United Nations (UN) adopted the United Nations Declaration on the Rights of Indigenous Peoples (A / RES / 61/295). This adoption is the culmination of years of discussion and negotiation between governments and indigenous peoples. This is arguably a significant achievement, as it provides the international community with a common framework for fulfilling indigenous peoples' rights.

The United Nations Declaration on the Rights of Indigenous Peoples identifies "indigenous peoples" as those who receive the rights contained in the Declaration, without defining them. However, the Preamble of the Declaration points to certain characteristics that are generally characteristic of indigenous peoples, such as the distinctive nature, without ownership of land, territories and natural resources, historical and pre-colonial presence in certain areas, cultural and linguistic characteristics, and political and political marginalization. law. Also, Article 33 paragraph (1) states that indigenous peoples have the right to determine their own identity or membership according to their customs and traditions. This will not hamper the rights of citizens of indigenous peoples to obtain citizenship of the country in which they live.

Indigenous peoples comprise at least 5,000 people, totaling 370 million people and are present in 70 countries. This diversity is certainly not easily interpreted in a universal definition, and because of this there is an agreement that the official definition of "indigenous peoples" is neither necessary nor desirable. Likewise there is no international agreement on the definition of the term "minority groups" or the term "society". This convention does not specifically define who is meant by indigenous peoples, but rather focuses on how to protect them (Article 1). Elements of indigenous peoples: Culture, social organization, economic conditions and ways of life that are different from other segments of the population in the same country, such as the way they make a living, speak their language, and so on.

Their own traditions and customs and/or distinctive legal understanding. Elements of indigenous peoples: (a) Historical continuity, that they are a community subject to conquest and colonization. (B) Territorial relations (their ancestors inhabited the country or territory) . (c) Distinctive social, economic, cultural and political institutions (they retain some or all of their institutions).

The elements referred to in Article 1 paragraph (1) are objective criteria regarding the scope of Convention No. 169. Objectively, it can also be determined whether an indigenous community meets the requirements in Article 1 paragraph (1) and recognizes and accepts someone as part of this community. Article 1 paragraph (2) recognizes the self-identification of indigenous peoples as a fundamental criterion. This is the subjective criterion of Convention No. 169, which includes the essential importance of whether certain peoples identify themselves as indigenous peoples in the Convention and whether a person also identifies himself as belonging to these communities. Convention No. 169 is the first international instrument to recognize the importance of this self-identification. The scope of the Convention is based on a combination of objective and subjective criteria. Self-identification also complements the objective criteria, and vice versa.

This Convention uses an inclusive approach so that it can be applied to indigenous peoples. The Convention thus focuses on the situation of indigenous peoples, even though their historical continuity and territorial relations are important elements in identifying indigenous peoples.

The criteria set out in Article 1 paragraph (1) b of Convention No. 169 has been applied widely to identifying indigenous peoples in political processes as well as international and national law, far beyond those of countries that have ratified the Convention. Therefore this instrument can be used as a definition of international work to identify indigenous peoples, including their application

The United Nations Declaration on the Rights of Indigenous Peoples and has provided the basis for various UN specialized agencies to develop their own operational definitions of the term indigenous peoples, including the World Bank and the United Nations Development Program (UNDP).

With the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007, the international community has recognized the rights of indigenous peoples to self-determination. The declaration recognizes that indigenous peoples have the right to self-determination, the right to freely develop their economic, social and cultural progress. These rights can only be realized if all their activities, customs, priorities and institutions are fully recognized. James Anaya (2008; mentioned in Henriksen 2008), UN Special Rapporteur on human rights and fundamental freedoms of indigenous peoples, noted that this Declaration also stops historical rejection of the right of indigenous peoples to self-determination, and asks states to provide discretion for them.

The following articles of the Declaration outline the elements of self-determination of indigenous peoples based on common characteristics and provide parameters for various steps to prepare for a future so that self-determination for them can be carried out safely. The Declaration calls for states, through consultation and cooperation with indigenous peoples, to take appropriate steps, including legislative measures, to achieve the objectives of the Declaration (art. 38); including "autonomy or self-government" for indigenous peoples over their internal and local problems (Article 4) in accordance with their institutions, methods and habits. The Swedish government has recently on two occasions (UN Documents E / C. 12 / SWR / 5 2006 and CCPR / C / SWE 6 2007) firmly recognizing that indigenous peoples, including the Sami people in Sweden, have the right to self-determination according to with Article 1 of the ICCPR and ICESCR, namely: "The Swedish government is of the opinion that indigenous peoples have the right to self-determination as long as they are a community as defined in Article 1 of the 1966 International Agreement on Civil and Political Rights and the Agreement on Economic, Social Rights. and Kultur 1966 "(UN CCPR / C / SWE / 6.2007 Document: paragraph 5).

In addition, the Danish Law on the Governance of Greenland 2008 (see section 4.2) was drafted specifically to recognize the right to self-determination of the people of Greenland in accordance with international law. Another example in this connection is the draft Sami People Convention formulated by the Norwegian expert group November 2005 (Nordisk Samekonvensjon 2005), which recognized the rights of the Sami people as a society with the right to self-determination.

Most indigenous peoples have a special relationship with the lands and territories they occupy. Both are the places where their ancestors lived and where history, knowledge, livelihoods and beliefs were developed. For most indigenous peoples, the territory has a sacred and spiritual meaning that reaches into the productive and economic aspects of the land. According to UN Special Rapporteur Martinez Cobo: “It is important to know and understand the spiritual relationship between indigenous peoples and their lands as the basis for their existence and with their beliefs, customs and culture. For this community, land is not only a possession and means of production and also not a commodity that can be obtained, but a material element that can be managed freely.

The concentration of the concept of land and territory is strongly reflected in Convention No. 169 which contains a series of provisions describing the concepts of land and territory; Indigenous peoples' rights to tenure and ownership; requirements for identifying land; protect the rights of indigenous peoples; and settle land-related claims. This is emphasized in Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples have the right to maintain and strengthen their unique spiritual relationships with land, territorial waters and seas and other resources that are owned, occupied and used in an appropriate manner. hereditary to pass on their responsibility to the next generation.

Likewise, ILO Convention 169 Article 14 states: (1) Ownership and control by communities of land they traditionally occupy must be recognized. In addition, it is necessary to take appropriate measures to protect the rights of the communities concerned to use land which they do not expressly occupy, but which have traditionally been accessed for their traditional fulfillment of life needs. In this connection, special attention also needs to be paid to nomadic communities and cultivators who are always on the move; (2) The government needs to take various steps to identify traditional lands inhabited by the communities concerned, and to guarantee effective protection of their property rights and tenure rights; (3) It is necessary to establish adequate procedures in the national legal system to seek solutions to land claims by the community concerned.

Furthermore, ILO Convention 169 Article 17 further emphasizes: (1) Ensuring that there are procedures established by the community concerned for the occurrence of land transfers among community members; and (2) Those who do not belong to this community must be prevented from exploiting the custom or ignorance of the customary community about the law to guarantee ownership, control or use of land to which they are entitled.

Territory forms the basis of most of the economic strategies and livelihoods of indigenous peoples, customary institutions, spiritual continuity and distinctive cultural identity. Thus, the loss of their ancestral lands will threaten their lives as indigenous peoples. Therefore, it must be understood that when the Convention talks about land, the concept will cover all the areas they use, including forests, rivers, mountains, beaches, land surface and assets contained under the ground as confirmed in the following ILO Convention 169:

(1) Article 26: (a) Indigenous peoples have the right to the lands, territories and resources which they traditionally own or occupy or otherwise the lands, territories and resources which they have used or which have been acquired; (b) Indigenous peoples have the right to own, use, develop and control their lands, territories and resources on the basis of

traditional ownership or other traditional placement and use, including land, territories and resources owned by other means; and (c) The State provides legal recognition and protection for these lands, territories and resources. Such recognition must be carried out in line with respect for the customs, traditions and land tenure systems of the indigenous peoples concerned.

(2) Article 27: The State establishes and implements a fair, independent, impartial, open and transparent process in recognizing indigenous peoples' laws, traditions, customs, land tenure systems, and recognizing the rights of indigenous peoples to land their territories and other resources, including those traditionally owned.

Likewise, Article 25 paragraph (3) of the United Nations Declaration on the Rights of Indigenous Peoples, states that the state provides recognition and protection to the lands, territories and resources of indigenous peoples. Such recognition must be carried out in line with respect for the customs, traditions and land tenure systems of the indigenous peoples concerned. Thus, the identification of lands, territories, resources and scope of rights relating to these lands and resources is not only based on legal concepts and traditions respected by the state which often clash directly with the legal concepts and traditions of indigenous peoples. The Supreme Court of Belize is of the opinion that Article 6 of the United Nations Declaration on the Rights of Indigenous Peoples reflects the general principles of international law regarding the rights of indigenous peoples to land and resources (Belize Supreme Court, 2008).

3. Utilization of Customary Law in International Dispute Resolution

Discussions about the use of law in general, including in this case customary law, will certainly not be separated from the issue of jurisdiction and implication, because jurisdiction will determine the enforceability of a legal system. Adolf (2006: 183) suggests that in the

context of modern law, jurisdiction will cause a country to have rights to persons, objects and legal events that exist within a country or outside the country. Through jurisdiction according to modern law, it has provided adequate authority or legality to the state to control various dimensions of the life of society, nation and state. Even in this increasingly globalized modern life, it has placed the position of international law as a general legal instrument to provide authority and legality to international institutions in controlling and controlling the lives of people, nations and countries in this world.

Even so, from a different perspective, Wigjosoebroto (2008: 237-252) emphasizes that the process of nationalization and internationalization which seeks to unite the various dimensions of society, nation and state in one unit under the control of a strong legal leadership, is now appearing like an illusion. . The development of life today does not stop with the process of integration of local communities into national and even international units, but now local forces (traditions) are getting stronger in this increasingly globalized life. Even though this life is increasingly global, but the significance or implies of local-based life.

Robertson in Wigjosoebroto (2008: 237-252) mentions a symptom in which this local dimension of life is getting stronger with the term glocalization. The concept of glocalization or global paradox assumes that the life of the people, nation and state is no longer framed by a national or international legal order that is unified and has the power of central powers. Life that is increasingly globalized is also determined by human choices both individually and collectively (groups). It is not surprising that in this increasingly globalized life the dynamics of indigenous peoples' lives have also emerged framed in traditional jurisdictions or customary law jurisdictions. The authority of indigenous peoples is also increasingly showing its form in people's lives today, especially in terms of control and utilization of customary rights in the field of religion.

There have been quite a number of references describing the growing demands related to the authority of indigenous peoples, tenure and management of customary rights, and the like. This means, when the controlled natural resources are managed for a larger interest, or when conflicts occur over the natural resources (ulayat land) that are controlled, then the customary community must be given space to play a role. The customary law order which is the source of the authority of the customary community should also be a reference in the management, utilization and handling of natural resources owned and or controlled by indigenous peoples. Some of them can be read in journal articles written by Tanya (1994, 2002), Kopong Medan (2008), Wignyana (1998), and so on.

Starting from this logic of thinking, it can be said that customary law can be raised to a broader level to resolve more complex disputes, including international (cross-country) disputes. This means that the customary law order can be continuously optimized in the resolution of international disputes, so that it develops and becomes an international custom.

The optimization of such a customary law order is in line with the provisions of Article 1 of the Convention signed at The Hague on 18 October 1907 which requires that the settlement of international disputes (disputes between countries) needs to be carried out in a peaceful manner in such a way that peace, international security and justice are not disturbed. . The Convention on Peaceful Settlement of Disputes was later confirmed as Articles 2 and 3 of the UN Charter, and subsequently by the Declaration of Principles of International Law on Friendly Relations and Cooperation was subsequently accepted by the UN General Assembly on 24 October 1970 (Boer Mauna, 2008: 193) .

The peaceful international dispute resolution is actually also very well known and is the main orientation of the international dispute resolution mechanism based on customary law. International dispute resolution through customary law mechanisms is increasingly being used, because as stated by Irawan, the court is not the only appropriate dispute

resolution institution for the disputing parties. In fact, the court has many weaknesses and causes disappointment for the community, which in turn triggers a prolonged conflict between the disputing parties (Candra Irawan, 2010).

This customary law-based international dispute resolution mechanism is very urgent to develop, because quite a number of countries in the world share borders with almost the same socio-cultural background. The state of Indonesia, for example, directly borders several countries with the same socio-cultural background, namely Timor Leste, Papua New Guinea, Malaysia and the Philippines. On the basis of these considerations, it is not surprising that the states of Indonesia and Timor Leste later agreed and made a Provisional Agreement signed on May 8, 2005, which contains the importance of customary law to be considered as a mechanism for settling international disputes on the border of Indonesia and Timor Leste.

If traced far back before the emergence of modern states as we know them today, it can be seen that customary law has colored various international policies in international-regional relations between traditional countries (kingdoms) in Indonesia in the era before and after the Dutch colonial entry. One of the interesting notes from Utrecht (1962: 259-260), is that the oldest Border Agreement was published on January 8, 1884, namely Cotract met Bangli (Regeling van de Grenzen met Boeleleng).

The interesting thing about the Border Agreement is that in order to determine the boundary between the two kingdoms, a "Paritaire Commissie" was formed, consisting of representatives of the Kingdom and the Deputy Governor of the Republic of Indonesia to carefully investigate the location of the boundary line between the Bangli and Boeleleng Kingdoms. This composition of the commission allowed the use of customary law or customary law (volkenrechtlijk) as the basis for determining the boundaries of the two kingdoms. Thus, it can be said that the Border Agreement dated January 8, 1884 was based on customary law or local customary law (Utrecht (1962: 260).

4. Settlement of Transnational Indonesia-East Timor Customary Land Disputes Based on Customary Law

When the territory of Timor Leste was still part of Indonesia under the name East Timor Province (1976-1999), the issue of the border between West Timor and East Timor became irrelevant. In retrospect, when Timor Leste was still a Portuguese colony, there was a prolonged dispute between the Portuguese and the Dutch which later went through the Permanent Court of Arbitration in Paris on 26 July 1914 which won the Dutch over areas that were still in dispute. . Starting from this decision, the entire territory of West Timor minus Oeccuse became a Dutch colony. Meanwhile, the territory of East Timor plus the enclave area of Oeccuse became a Portuguese colony (Slamet Sp, 2011).

The Oeccuse District, which is located on the west coast of Timor Island and is surrounded by the land areas of North Central Timor (TTU) and Kupang Regencies, East Nusa Tenggara Province (Indonesia) and also the Savu Sea in the north, is one of the most important areas in the discussion of regional borders. Republic of Indonesia and neighboring Timor Leste. The enclave area which is also known as Oeccuse-Ambeno is politically a special autonomous region from the East Timor region which since the 1999 referendum and finally independence in 2002 became Timor Leste.

The geographic condition of this District, which is separate from the main territory of the Republic of Timor Leste and isolated by the sovereign territory of the Unitary State of the Republic of Indonesia, has caused various problems, especially concerning the sensitive issue of the sovereignty of the Unitary State of the Republic of Indonesia. The issue of sensitivity is a serious problem on the border between Indonesia and Timor Leste, because in order to reach the enclave of Oeccuse District from the main territory of Timor Leste, it must go through the sovereign territory of the Unitary State of the Republic of Indonesia, whether by land, sea or air. Therefore, various discourses have emerged regarding the status of the

Oeccuse District which is like a "fire in the husks" in an effort to maintain the integrity of the Unitary State of the Republic of Indonesia.

Oeccuse District, which is an enclaved area on the west coast of Timor Island and surrounded by the province of East Nusa Tenggara, is in fact an area of Timor Leste. This can be seen based on history where in the beginning the enclave area of Oeccuse District was an independent kingdom separate from the influence of Kupang and Dili and was known as the Kingdom of Oeccuse-Ambeno. Then the Pante Makassar area which is now the capital of this district is the place where for the first time the Portuguese colonizers landed on the island of Timor before finally moving the center of the Portuguese Timor government to Dili. Since then the enclave area of Oeccuse District has very close ties with the Portuguese even though it is located separate from the territory of Portuguese Timor and isolated by the territory of Dutch Timor which has a seat of government in Kupang.

This was based on an agreement made by the Dutch and Portuguese to divide the island of Timor into two territories and the Oeccuse District area was still granted to Portuguese Timor. This continued until finally the Dutch East Indies territory which also included the territory of independent Dutch Timor and became the Unitary State of the Republic of Indonesia, the enclave area of the Oeccuse District was still under the administration of Dili, which can be seen from the time when the Portuguese Timor region entered as one of the province in Indonesia and became East Timor, the Oeccuse District area still remained under the Province of East Timor with the name Oeccuse District.

Over time, it turns out that the status and location of districts which are basically within the territory of the Indonesian State have increasingly created problems for Indonesian sovereignty. After the independence of Timor Leste in 2002, the boundary between the Oeccuse District and the East Nusa Tenggara region that surrounds it is no longer just an administrative boundary but has become an international boundary. With the conditions that

are flanked by the North Central Timor Regency (TTU) and the Kupang Regency, in essence the Oeccuse enclave area has a relationship that is no less close to the surrounding areas than the historical relationship with the territory of Timor Leste which is about 80 km apart.

The people of Oeccuse District have sociological, anthropological and economic relationships with the residents of the North Central Timor and Kupang Regencies that surround their territory. Kinship and kinship based on patrilineal principles between the people of Oeccuse District and the people in the North Central Timor (TTU) region is very close, where many families, relatives of residents of the Oeccuse enclave area live in the East Nusa Tenggara region and become Indonesian citizens. In addition, in terms of the language used by the people of the Oeccuse region, it has more in common with the language spoken by the people of Timor Tengah Utara Regency when compared to the language spoken by the people in the main region of Timor Leste. Indonesian is even still one of the languages widely spoken by people in the enclave of Oeccuse.

This condition of the Indonesia-Oeccuse Timor Leste border has the potential for conflict or dispute between residents on the border of the two countries. The problem that often occurs is related to the seizure of natural resources by local communities around the border caused by residents' claims to several border areas due to historical, economic and socio-cultural factors (Slamet Sp, 2011).

The results of field studies show that almost all disputes that occur on the border between Indonesia and the Oeccuse District of Timor Leste are resolved through customary and / or social institutions with the support of the government and security forces of both parties. Even if there are cases of international disputes involving citizens from two or several countries, there is a very strong tendency to resolve the disputes faced by Indonesians and Timorese citizens through customary institutions and / or other social institutions. A study

conducted by Dhesy Kase (2015: 66-95) found a number of cases of land disputes (ulayat) at state borders which were resolved through customary law mechanisms, namely:

1. Handling of disputes over agricultural land in the free zone of Sunkaen and Nenaban Villages, and cases of disputes over burial areas across countries, for example, have been pursued through customary law mechanisms. Especially for the dispute over agricultural land in the Free Zone of Sunkaen and Nenaban Villages, it was carried out through traditional peace rituals marked by slaughtering sacrificial animals so that both parties were obliged to comply with the customary agreement.
2. Similarly, cases of disputes over burial areas across countries are also pursued through customary law mechanisms, although until now it has not yet reached the final stage of dispute resolution. Communication between the two parties has been running harmoniously and smoothly in a family atmosphere, with the result that each party continues to secure the location and its citizens in the territory of the disputed country. Apart from holding meetings, each state security party also agreed to immediately hold a meeting of community leaders and traditional leaders from the two countries at the border of the country to become peace pioneers among their respective citizens. The leaders' meeting will be held in the near future, so that the existing peace will be maintained.
3. In the Subina area to the Oben area, Kupang - Oecuse Regency, Timor Leste cannot currently be surveyed to determine the boundaries because there are still claims from residents on the border of the two countries regarding customary land rights. When this study was conducted, efforts were being made to resolve it through customary law mechanisms.

This customary law-based international dispute resolution mechanism is very urgent to develop, because quite a number of countries in the world share borders with almost the same socio-cultural background. The state of Indonesia is directly adjacent to several countries that have the same socio-cultural background, namely Timor Leste, Papua New Guinea, Malaysia, and the Philippines. Based on these considerations, if Indonesia and Timor Leste then agree and make a Provisional Agreement between the Republic of Indonesia and Republic Democratic Timor Leste (RDTL) on the Land Boundary which was signed on May 8, 2005, which contains the importance of considering the peaceful settlement of state border disputes between Indonesia and Timor Leste, including through customary law mechanisms (Herman Batubara, 2012). This agreement has a fundamental reason, because the Timorese people who live in the territory of Timor Leste and those in the territory of Indonesia (in this case West Timor) are one ethnic group who use the language. the same ancestry, and come from one ancestor and the same origin (Non-name, 2011).

Fox in Freitas (2012) explains that Timor Leste, which was once part of the territory of the Indonesian state, has actually had a long historical relationship with Indonesia before the country gained independence. The people in the regions of these two countries actually come from the same family. Historical records explain that Timor Island, which covers only about 30,777 km2, is inhabited by at least five major tribes as one indigenous Timorese community, namely (Erna Suminar, 2017):

1. Helong Tribe: Occupies the islands of Semau and West Kupang;
2. The Dawan tribe (Atoni Pah Meto): Occupies the Kupang region and mostly in South Central Timor (TTS) and partly in North Central Timor (TTU), Malacca and Belu.
3. Tetun tribe: Occupying parts of North Central Timor (TTU), Malacca, Belu, and partly in Timor Leste;

4. The Kemak tribe: Some live in the Belu region and some are in the territory of Timor Leste.
5. The Marae (Benak) tribe: Some of them live in the Belu region and some are in the territory of Timor Leste.

The mapping of the residential areas of the major tribes in Timor shows that there are a number of tribes that share the same territory of West Timor in Indonesia and the territory of Timor Leste, namely the Tetun, the Kemak and the Marae (Benak) tribes. Thus, from a socio-cultural point of view, the people of West Timor and Timor Leste are actually still siblings in one generation and share the same cultural values. The brotherly relations of the people in these two regions have been well-established for a long time, but since the arrival of the Portuguese and the Dutch, which eventually divided the brotherhood between them.

As a community of indigenous peoples, the tribes who inhabit Timor Indonesia and in Timor Leste certainly have the same characteristics as required by Ter Haar in Hajati (2016, p. 230):

> *"Groups of constant and organized society that have its own power, both tangible and intangible". World bank prepared a number of criteria for adat groups: first, have close relations with the region descentants and natural resources in the region; second, determine the identified by others as members of a distinct cultural group; third, have a native language that is often different from the national language; fourth, have the adat structures in the social and political; and fifth, production is mainly oriented subsystem.*

As an indigenous community, people in West Timor and Timor Leste also fulfill a number of elements put forward by Jawahir Thontowi (2015, p.3-4), namely: (1) a group of people who have the same ancestry (geneological), (2) living in a place (geographically), (3) having the same purpose of life to maintain and preserve values and norms, (4) a customary law system which is obeyed and binding, (5) led by customary chiefs (6)) the availability of

a place where the administration of power can be coordinated, (7) there are institutions for resolving disputes both between indigenous peoples and tribes of different nationalities. Customary law communities, a group of people who are bound by their customary law order as citizens with a legal partnership because of the same place of residence or on the basis of descent even though they have different nationalities.

CLOSING NOTE

Customary law as an unwritten legal order created by customary authorities is a constant habit or that is carried out continuously by an indigenous community, can be placed and positioned as part of a source of law at any level, and it is possible to resolve international disputes (transnational). If customary law is used continuously and then followed by other countries in dispute, the existence of customary law will increase to a higher level and can be compared with other international customs.

International dispute resolution mechanisms based on customary law as practiced by indigenous peoples on state borders can be an attractive model for regional areas as well as for the wider and more complex regions of the international world. That means, it can be an alternative model in the resolution of international disputes at the borders of countries that have the same socio-cultural background.

Therefore, in the future, it is necessary to develop an international law policy that allows the customary law adhered to by communities at State borders to become the basis for settling international disputes. More specifically, it is necessary to build a mutual agreement and understanding between Indonesia and Timor Leste to optimize customary law and the participation of traditional leaders at national borders in settling international senegketa, including state border disputes, peacefully.

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