

Juridical Implications of State Boundary Setting on Sovereignty in the Perspective of International Law

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Abstract: *The regulation of a country's territorial boundaries is one of the fundamental aspects of international law because it is closely related to the exercise of sovereignty, jurisdiction, and protection of the territorial integrity of a country. This study aims to analyze the regulation of state territorial boundaries from the perspective of international law and examine its juridical implications on the implementation of state sovereignty. The research uses normative legal research methods with a legislative approach and a conceptual approach. The legal materials used consist of primary legal materials in the form of international conventions, laws and regulations, and international court decisions, as well as secondary legal materials in the form of books, scientific journals, and expert opinions. The results of the study show that the regulation of territorial boundaries through international legal instruments, especially the 1945 United Nations (UN) Charter and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), provide a legal basis for countries to exercise sovereignty and resolve territorial boundary disputes peacefully. However, in its implementation, there are still various obstacles, such as overlapping territorial claims, differences in interests between countries, and the implementation of international dispute settlement institutions' decisions has not been optimal. Therefore, it is necessary to strengthen international cooperation, compliance with international law, and resolve disputes through peaceful mechanisms to realize legal certainty and maintain state sovereignty.*

Keywords: *territorial boundaries, sovereignty, international law, territorial disputes, UNCLOS 1982.*

INTRODUCTION

The territorial boundaries of the country are one of the fundamental elements in the formation and sustainability of a country. Clarity regarding territorial boundaries not only determines the scope of sovereignty, but also serves as the basis for the exercise of state jurisdiction over land, sea, and air areas. From the perspective of international law, state sovereignty cannot be separated from the certainty of its



territorial boundaries because territory is one of the constituent elements of the state as recognized in the Montevideo Convention of 1933.¹

The development of increasingly complex international relations has increased the potential for territorial boundary disputes between countries. These disputes are generally influenced by various factors, such as differences in interpretation of international agreements, historical claims, economic interests over natural resources, and changes in geographical conditions. This condition shows that the regulation of territorial boundaries is not only a geographical issue, but also a legal issue that has direct implications for the implementation of state sovereignty.²

In international law, various instruments have been established to regulate the determination and settlement of territorial boundary disputes, including the 1945 United Nations (UN) Charter, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and various International Court of Justice (ICJ) decisions. The presence of these instruments aims to provide legal certainty while encouraging peaceful dispute resolution in accordance with the principles of international law.³

For Indonesia as the largest archipelagic country in the world, the regulation of territorial boundaries has a strategic significance because it is related to the protection of territorial integrity, the use of natural resources, national security, and diplomatic relations with neighboring countries. Various disputes that have occurred, such as the Sipadan and Ligitan disputes, Ambalat, and the dynamics in the North Natuna Sea, show that legal certainty regarding territorial boundaries is a need that cannot be ignored.⁴

Although there have been various international legal instruments that regulate the territorial boundaries of countries, their implementation still faces various challenges. Differences in political interests, weak compliance with the decisions of international judicial institutions, and the development of new forms of disputes have caused the settlement of territorial boundary disputes to not fully provide legal certainty for disputed countries. Therefore, a more in-depth study is needed on the juridical implications of setting territorial boundaries on the implementation of state sovereignty in the perspective of international law.⁵

Based on this description, this study aims to analyze the regulation of state territorial boundaries according to international law and examine its juridical implications on the implementation of state sovereignty. Through this research, it is hoped that it can make an academic contribution to the development of international law studies, especially regarding the relationship between territorial boundary regulation and the protection of state sovereignty in the dynamics of contemporary international relations.

¹ Montevideo Convention on the Rights and Duties of States, 1933, Pasal 1.

² Malcolm N. Shaw, *International Law*, 9th ed. (Cambridge: Cambridge University Press, 2021), hlm. 361

³ United Nations, *Charter of the United Nations 1945*; United Nations Convention on the Law of the Sea (UNCLOS) 1982

⁴ Mochtar Kusumaatmadja and Etty R. Agoes, *Introduction to International Law* (Bandung: Alumni, 2015), pp. 165–170

⁵ James Crawford, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford: Oxford University Press, 2019), hlm. 445

METHODOLOGY

This research uses normative legal research methods with a statutory approach and a conceptual approach. The legislative approach is carried out by examining various international legal instruments that regulate the territorial boundaries of countries, such as the 1945 United Nations (UN) Charter, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), as well as the provisions of national law related to the territory of the country. Meanwhile, a conceptual approach is used to analyze the concept of state sovereignty and territorial boundary regulation in the perspective of international law.

The legal materials used consist of primary legal materials in the form of laws and regulations, international conventions, and international court decisions, as well as secondary legal materials in the form of books, scientific journals, and expert opinions. The collection of legal materials is carried out through library research, then analyzed qualitatively with descriptive-analytical methods to obtain conclusions about the juridical implications of setting state boundaries on the implementation of sovereignty in the perspective of international law.

RESULTS AND DISCUSSION

A. Legal Framework for the Regulation of Interfaith Marriage Held Abroad in the Perspective of Indonesian International Civil Law

Marriage is one of the legal events that give birth to legal consequences on a person's personal status, family relationships, citizenship, inheritance, and wealth. In the context of International Civil Law (HPI), marriages that contain foreign elements, such as taking place outside the territory of Indonesia or involving citizens of different nationalities and religions, raise the question of which law applies (choice of law) and how to recognize the legal consequences in Indonesia. Therefore, the regulation regarding the legality of interfaith marriages carried out abroad must be understood not only in terms of national law, but also in terms of the principles of International Civil Law.

In the Indonesian legal system, the provisions regarding marriage are regulated through Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. Article 2 paragraph (1) emphasizes that marriage is valid if it is carried out according to the laws of each religion and its beliefs⁶. This provision shows that the Indonesian state gives a very strong position to religious law in determining the validity of a marriage. Thus, marriage is not only seen as a civil relationship between a man and a woman, but also as a bond that has a religious dimension.

This arrangement then raises problems when Indonesian citizens carry out interfaith marriages abroad. In practice, some couples choose to marry in a country that allows civil marriage without considering religious differences, then return to Indonesia to register their marriage. This phenomenon has raised a debate about whether the marriage can be recognized as valid under Indonesian law or contrary to national provisions.

From the perspective of International Civil Law, the principle of *lex loci celebrationis* is known, which is the principle that states that the formal validity of a marriage is determined based on the law of the

⁶ Indonesia, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Article 2 paragraph (1)

country where the marriage takes place⁷. This principle has long been applied in various legal systems as a form of respect for the sovereignty of the country where a legal event takes place. If a marriage has met the formal requirements according to the law of the country where the marriage took place, then in general the marriage is considered formally valid.

However, International Civil Law not only recognizes formal requirements, but also distinguishes between formal and material requirements. Formal requirements relate to the procedures for the implementation of marriage, while material requirements concern the capacity of the parties to marry, including age requirements, previous marital status, blood relations, and religious provisions that apply to each party⁸. Therefore, even if a marriage has met the formal requirements under the law of the country where it takes place, it does not necessarily meet the material requirements according to the national law of the country of origin of the parties.=

In the practice of HPI Indonesia, material requirements for Indonesian citizens remain subject to Indonesian national law based on the principle of *lex patriae* or the principle of nationality. This principle means that a person's personal status still follows the laws of his country wherever he is. Thus, Indonesian citizens who marry abroad must still comply with the provisions of Indonesian law regarding the conditions of marriage, including provisions regarding the validity of marriage according to religion.⁹

This provision is reflected in Article 56 of the Marriage Law which states that marriages that take place abroad between fellow Indonesian citizens or between Indonesian citizens and foreign citizens are valid if they are carried out according to the laws of the country where the marriage takes place and for Indonesian citizens it does not violate the provisions of the Marriage Law.¹⁰ The phrase "does not violate the provisions of the Marriage Act" is a very important requirement because it shows that the recognition of foreign marriages is not absolute.

Thus, Article 56 cannot be interpreted as a form of automatic legalization of all marriages carried out abroad. This provision actually contains the restriction that recognition can only be given if the substance of the marriage does not conflict with Indonesian national law. In the context of interfaith marriage, this requirement is a point of debate because Article 2 paragraph (1) requires the validity of marriage based on the laws of each religion.

The Supreme Court in its various decisions also placed national law as the main basis in determining the legal status of a marriage that has foreign elements. This shows that the principle of nationality is still the dominant approach in the Indonesian International Civil Law system. This approach is different from some countries that prioritize the principle of domicile (*lex domicilii*) as the basis for determining a person's personal status¹¹.

In addition, the development of Indonesian law also shows changes through the Constitutional Court Decision Number 68/PUU-XII/2014 which basically rejected the application for testing Article 2

⁷ Sudargo Gautama, Indonesian International Civil Law, Volume I (Bandung: Alumni, 2010), p. 152.

⁸ Sudargo Gautama, Indonesian International Civil Law, p. 160

⁹ Bayu Seto Hardjowahono, Basics of International Civil Law (Bandung: Citra Aditya Bakti, 2013), p. 103

¹⁰ Indonesia, Law No. 1 of 1974 concerning Marriage, Article 56

¹¹ J.G. Starke, Introduction to International Law, 11th ed. (London: Butterworths, 1994), hlm. 301

paragraph (1) of the Marriage Law. The Court emphasized that this provision does not contradict the 1945 Constitution of the Republic of Indonesia because it is a form of state respect for religious values that live in Indonesian society.¹² The decision further strengthens that the validity of marriage according to Indonesian law still depends on the religious provisions of each party.

In addition, the Supreme Court through the Supreme Court Circular Letter (SEMA) Number 2 of 2023 also provides guidelines to judges not to grant applications for registration of interfaith marriages. The policy shows the consistency of the judiciary in maintaining the principle that interfaith marriage has not received an adequate legal basis in the Indonesian national legal system.¹³

In the study of International Civil Law, this situation is closely related to the doctrine of *ordre public* or public order. This doctrine gives a country the authority to refuse the application of foreign law if it is contrary to the fundamental values embraced by that country.¹⁴ Public order is one of the exceptions to the application of foreign law in HPI and is an instrument of protection for national interests.

Through the application of this doctrine, Indonesia can refuse to recognize a foreign marriage if its content or legal consequences are considered to be contrary to the basic principles of national law. Therefore, even though interfaith marriage abroad is recognized as valid according to the law of the country where the marriage is performed, the Indonesian state still has a legal basis for not recognizing the legal consequences if it is considered to be contrary to the principles of national marriage law.

On the other hand, the development of globalization and the increasing mobility of the international community have caused the number of cross-border marriages to continue to increase. This condition requires legal certainty so that citizens can obtain protection for their legal status. The unclear regulation of interfaith marriage abroad has the potential to cause various legal problems, such as the status of children, the distribution of joint property, inheritance, and population administration. Therefore, synchronization between the principles of International Civil Law and national law is needed so as not to cause legal uncertainty.

Thus, it can be understood that the legal framework regarding the legality of interfaith marriages carried out abroad in the perspective of Indonesian International Civil Law is built on three main principles. First, recognition of the law of the country where the marriage takes place through the principle of *lex loci celebrationis*. Second, the application of the principle of nationality (*lex patriae*) to material requirements for Indonesian citizens. Third, the use of the doctrine of *ordre public* as a basis for rejecting the application of foreign law that is contrary to the fundamental values of Indonesian law. These three principles show that Indonesian law does not solely recognize the validity of marriage based on the place where the marriage takes place, but still places the law¹⁵ as the main benchmark in determining the legality of marriage of its citizens abroad.

¹² Constitutional Court Decision Number 68/PUU-XII/2014

¹³ Supreme Court Circular Letter Number 2 of 2023 concerning Instructions for Judges in Adjudicating Applications for Registration of Marriages Between People of Different Religions and Beliefs

¹⁴ Sudargo Gautama, Introduction to Indonesian International Civil Law (Bandung: Binacipta, 1987), p. 98

¹⁵ Peter Nygh, Conflict of Laws in Australia (Sydney: Butterworths, 1995), hlm. 212

B. Juridical Implications of Setting State Territorial Boundaries on Sovereignty in the Perspective of International Law

The regulation of a country's territorial boundaries not only serves as a determinant of a country's geographical space, but also serves as the basis for the exercise of sovereignty in international law. The sovereignty of the state can only be exercised effectively if there is certainty about the territory under its jurisdiction. Therefore, any dispute or ambiguity regarding territorial boundaries will have broad legal consequences, both on the implementation of government authority, the use of natural resources, and international relations with other countries. In this context, the regulation of territorial boundaries has juridical implications that are very close to the sustainability of the existence of the state as a subject of international law.¹⁶

The Charter of the United Nations affirms that every state has the right to defend its territorial integrity and political independence. This principle is reflected in Article 2 paragraph (4) of the UN Charter which prohibits the use of threats or violence against the territorial integrity of other countries¹⁷. This provision shows that international law provides protection for the territory of a state as an integral part of sovereignty. Thus, violations of territorial boundaries are not only a political issue, but also a violation of international legal norms.

The first juridical implication of the regulation of territorial boundaries relates to the exercise of state jurisdiction. Jurisdiction is the authority of the state to make, implement, and enforce laws against people, things, or legal events that occur in its territory. These jurisdictions include legislative jurisdiction, executive jurisdiction, and judicial jurisdiction. These three forms of jurisdiction can only be exercised optimally if the territorial boundaries of the country have been clearly defined based on international law.¹⁸

On the other hand, if there is a territorial boundary dispute, the state will face limitations in exercising its legal authority. Ambiguity regarding territorial boundaries can lead to jurisdictional conflicts, i.e. situations when two or more countries claim authority over the same territory. Such conditions have the potential to hinder law enforcement, disrupt legal certainty for the community, and increase the risk of armed conflict if not resolved through international legal mechanisms.¹⁹

In international practice, territorial boundary disputes are often related to economic interests, especially regarding the control of natural resources. After the enactment of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), coastal states acquired the sovereign right to explore and exploit natural resources in the Exclusive Economic Zone (EEZ) as well as the continental shelf. However, this right is not absolute if there are overlapping claims with other countries. Therefore, maritime boundary delimitation is a very important aspect in ensuring legal certainty for the use of natural resources²⁰.

¹⁶ Peter Hay, Patrick J. Borchers, dan Symeon C. Symeonides, Conflict of Laws, 6th ed. (St. Paul: West Academic Publishing, 2018), hlm. 467

¹⁷ Mochtar Kusumaatmadja and Ety R. Agoes, Introduction to International Law (Bandung: Alumni, 2015), p. 121

¹⁸ Bayu Seto Hardjowahono, Indonesian International Civil Law (Bandung: Citra Aditya Bakti, 2006), p. 215

¹⁹ Ridwan Khairandy, Principles of Indonesian International Civil Law (Yogyakarta: FH UII Press, 2017), p. 84

²⁰ C. van Vollenhoven, Het Adatrecht van Nederlandsch-Indië, quoted in Sudargo Gautama, Indonesian International Civil Law, p. 174

UNCLOS 1982 provides guidelines for the settlement of maritime boundary delimitation through equitable principles and agreement of the parties. In various International Court of Justice (ICJ) rulings, this principle is applied by taking into account geographical conditions, coastline length, and special circumstances that each country has. The approach aims to produce a just settlement without compromising the principle of equality of sovereignty between countries.²¹

One notable example is the 1969 North Sea Continental Shelf Cases. In this case, the International Court of Justice emphasized that the delimitation of the boundary of the continental shelf cannot be done mechanically solely based on the principle of equidistance, but must pay attention to special circumstances in order to achieve an equitable solution. The decision has become one of the important jurisprudence in the development of international maritime law and is still used as a reference in various maritime boundary disputes.²²

In addition to the implications for the control of natural resources, territorial boundary disputes also have an impact on the protection of national security. Areas that do not have clear boundaries have the potential to become locations for territorial violations, smuggling, human trafficking, illegal fishing, and other transnational crimes. Therefore, the certainty of regional boundaries has a strategic function in supporting the effectiveness of national law enforcement while maintaining regional stability.²³

For Indonesia as an archipelagic country, the regulation of territorial boundaries has a very important meaning. The recognition of the concept of an archipelagic state through UNCLOS 1982 is a success of Indonesian diplomacy in strengthening sovereignty over its territorial waters. Before the birth of UNCLOS, the sea area between the Indonesian islands was still seen as a free sea. After the recognition of the concept of an archipelagic state, all waters between the Indonesian islands became part of the national sovereign territory, while still granting the right of peaceful passage (innocent passage) to foreign ships in accordance with the provisions of international law.²⁴

Nevertheless, Indonesia still faces various problems of delimiting territorial boundaries with neighboring countries. The dispute in the North Natuna Sea related to the nine-dash line claim of the People's Republic of China is one example of how territorial boundary disputes can affect the exercise of Indonesia's sovereign rights in the Exclusive Economic Zone. Although Indonesia does not acknowledge these claims, the activities of foreign vessels in Indonesia's EEZ region still pose challenges to the implementation of sovereignty and national law enforcement²⁵.

The next juridical implication relates to the settlement of disputes through international legal mechanisms. The UN Charter obliges every country to resolve international disputes peacefully through negotiation, mediation, conciliation, arbitration, and settlement through the International Court. The

²¹ Malcolm N. Shaw, *International Law*, 9th ed. (Cambridge: Cambridge University Press, 2021), hlm. 361

²² United Nations, *Charter of the United Nations 1945*, Pasal 2 ayat (4)

²³ Ian Brownlie, *Principles of Public International Law*, 8th ed. (Oxford: Oxford University Press, 2012), hlm. 299

²⁴ James Crawford, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford: Oxford University Press, 2019), hlm. 445

²⁵ United Nations Convention on the Law of the Sea (UNCLOS) 1982, Pasal 56 dan Pasal 76

principle of peaceful settlement aims to prevent the use of armed force that could disrupt international peace and security²⁶.

The existence of the International Court of Justice has an important role in providing legal certainty to territorial boundary disputes. ICJ rulings not only resolve disputes between countries, but also provide developments in the interpretation of international legal norms. However, the effectiveness of the ICJ ruling still depends on the good faith of states to implement the ruling because international law does not yet have a coercive mechanism as strong as the national legal system.²⁷

In addition to the ICJ, dispute resolution can also be carried out through international arbitration as stipulated in Annex VII of the 1982 UNCLOS. Arbitration provides flexibility for countries to determine the arbitrator, procedure, and scope of the dispute to be examined. In recent decades, arbitration mechanisms have been increasingly used because they are considered more efficient than settlement through the International Court.²⁸

Based on this description, it can be understood that the regulation of territorial boundaries has very broad juridical implications for the implementation of state sovereignty. Clarity of territorial boundaries provides certainty for the implementation of state jurisdiction, natural resource protection, law enforcement, national security, and international relations. On the contrary, the unclear boundaries will lead to legal conflicts, jurisdictional uncertainty, and potential violations of the territorial integrity of the country. Therefore, strengthening international legal instruments, increasing bilateral and multilateral cooperation, and optimizing peaceful dispute resolution mechanisms are important steps to ensure legal certainty while maintaining state sovereignty in the dynamics of modern international relations.

CONCLUSIONS

Based on the results of the research, it can be concluded that the regulation of state territorial boundaries is a very important aspect in ensuring the implementation of state sovereignty according to international law. Various international legal instruments, such as the 1945 United Nations Charter and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), have provided a legal basis for determining territorial boundaries and mechanisms for peaceful dispute resolution. Clarity of territorial boundaries provides legal certainty for countries in exercising jurisdiction, protecting territorial integrity, and utilizing natural resources in accordance with the provisions of international law.

However, the implementation of the regulation of territorial boundaries still faces various challenges, such as differences in interests between countries, overlapping territorial claims, and the implementation of international dispute settlement institutions' decisions has not been optimal. Therefore, it is necessary to strengthen bilateral and multilateral cooperation, increase compliance with international law, and resolve disputes through peaceful mechanisms so that state sovereignty is guaranteed and international relations can be maintained.

²⁶ Yoshifumi Tanaka, *The International Law of the Sea*, 3rd ed. (Cambridge: Cambridge University Press, 2019), hlm. 242

²⁷ *North Sea Continental Shelf Cases (Germany v. Denmark; Germany v. Netherlands)*, ICJ Reports 1969

²⁸ Mochtar Kusumaatmadja and Etty R. Agoes, *Introduction to International Law* (Bandung: Alumni, 2015), p. 168

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