

# LAW ENFORCEMENT OF ILLEGAL BUSINESS TRANSACTION ON THE BORDER AREA BETWEEN INDONESIA AND TIMOR LESTE IN A DILEMMA

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## Abstract

This study is a type of empirical legal study conducted based on the discrepancy between the existing provisions and theories and the legal facts occurring among the society, that is, the transaction of goods carried out by crossing the border between two countries.

Any hindering obstacles and barricades to the law enforcement over illegal businesses can be settled through social and cultural, economic, political, and security approaches. Alternative solutions that should be applied in dealing with such legal issues can be establishing

buildings in the border area, which are specifically directed to help accelerate the handling of three fundamental problems faced in the scope of the development of the border area in question, one of which is delimitation and delineation aspects of the state's boundaries, the aspect of affirming national borders on watershed areas between Indonesia and Timor Leste, the aspect of development discrepancy in the form of fulfilling infrastructure needs in the economic field to foster opportunities for the border areas to participate and compete amid both global and regional markets.

### **Abstrak**

*Penelitian ini merupakan penelitian hukum empiris karena adanya kesenjangan antara ketentuan dan teori – teori yang ada dengan fakta hukum yang terjadi dalam masyarakat, tentang transaksi barang yang melewati lintas batas sebuah Negara.*

*Adapun hambatan dan solusi atas penegakan hukum terhadap illegal bisnis dapat diselesaikan melalui sosial dan budaya, ekonomi, politik dan keamanan. Solusi yang dijadikan alternative adalah pembangunan wilayah perbatasan khususnya diarahkan untuk mempercepat penanganan 3 permasalahan mendasar yang dihadapi oleh pengembangan wilayah perbatasan yaitu Aspek delimitasi dan Deliniasi batas, Aspek penegasan batas-batas Negara wilayah daerah aliran sungai wilayah RI dengan Negara Timor Leste, Aspek kesenjangan pembangunan berupa pemenuhan kebutuhan infrastruktur ekonomi untuk menumbuhkan peluang wilayah perbatasan turut berpartisipasi dan bersaing dalam pasar global dan pasar regional.*

**Keywords:** Law Enforcement, Illegal Business, Border Area

### **Introduction**

Commerce is a term that refers to the scope of all matters relating to the work of selling and buying goods for profit; a sell-purchase activity. Selling and purchasing activities (transactions) are included in the scope of business terms.<sup>1</sup> Hence, business also covers the activities of buying and selling goods between one party and another. The involvement of the parties in the trade transaction is related to certain

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<sup>1</sup> Dendy Sugono. 2008, kamus besar bahasa indonesia, pusat bahasa, jakarta, p. 303

legal aspect is the discourse of international trade / business law always provides a place for national law and international law as two interrelated things.

National law is synonymous with the sovereignty of a country. Sovereignty is defined by Jean Bodin (*Six liveries de la Republique*) in Atmadja as "supreme power" that determines the strength and legitimacy of the state in determining and implementing various policies and will also be a typical discussion if the legal subject who conducts the transaction (business relationship) is in a different country or is in the border area between two different countries. The pace of technological growth in the world encourages every country to take a role in international business activities in order to maintain its existence as a country. The principle of freedom of making contract in the business law dimension results in liberalization in business relations. Every international law subject or international civil law subject has the right to contribute to business relation between countries.<sup>2</sup>

The growing flow of distribution of goods, capital and labor among countries highlights the attention of the business world in international business context. Trade or business involving legal subjects who are domiciled in between different countries has implications for the rule of law that governs it, given that each country has sovereignty over its own country. It is expected that international relations in the primacy of business law become an interesting discussion in the midst of the efforts of each country to maintain its legal and political sovereignty.

International business activities, without exception, are also carried out by the Indonesian state. International business relation is performed with various countries within the framework of international trade relation as stated in the GATT and WTO principles. International law that regulates trade between countries is known as international trade law (International Trade of Law). as an international instrument in the field of trade in services, several countries then formed an association of international trade activities in the form of trade and tariff agreements (General Agreement on Tariff and Trade / GATT) which developed into the World Trade Organization (WTO). GATT and WTO adhere to several principles, including: The Non-Discrimination Principle, the Reciprocity Principle, the Prohibition of Quantitative

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<sup>2</sup> Atmadja, 2012, *Ilmu Negara: Sejarah, Konsep dan Kajian Kenegaraan*, Setara Press, Malang, p.84

Restriction, the Fairness Principle and the binding tariff principle (Binding Tariff Principle).<sup>3</sup>

The GATT and WTO regulations automatically bind Indonesia as a member. Considering the GATT and WTO provisions are binding only on members, the dilemma often occurs when countries of its members do business with countries that are not its members. The most concrete evidence can be found in international business relation between the state of Indonesia and the country of Timor Leste. As it is known that historically the country of Timor Leste had been part of the unitary state of the Republic of Indonesia until before choosing to separate and declared itself independent in 1999 through a poll conducted on 30 August 1999.<sup>4</sup> Related to that, geographically it can also be noted that Timor Leste, which had once been a part of the Unitary State of the Republic of Indonesia, certainly has proximity to the territory of Indonesia today. With the formation of the Democratic Republic of Timor Leste, the form of business in the public and private spheres between the state of Indonesia and the Timor Leste itself is very likely to occur. Transactions of goods that cross the borders of a country have been regulated nationally by each country. Of course, these business transactions must go through certain procedures as regulated by the laws of each country. In practice, in the border areas of the Republic of Indonesia and the Democratic Republic of Timor Leste, business transactions often occur without documents or procedures that should be carried out.<sup>5</sup>

The consequence of the rate of economic growth in the dimension of international business relation is the potential for legal violations that have a high probability of occurring. Moreover, business violation in the form of illegal business can transpire in the border area between the country of Indonesia and the Republic of Timor Leste.<sup>6</sup> The purpose of law is to create social order, and thus the order is seen as something that

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<sup>3</sup> Muhamad Sood, 2011, *Hukum Perdagangan Internasional*, Rajagrafindo Persada, p.41

<sup>4</sup> Forbes, V. L. (2014). Indonesia's delimited maritime boundaries. In *Indonesia's Delimited Maritime Boundaries*. <https://doi.org/10.1007/978-3-642-54395-1>

<sup>5</sup> Abdul Halim Barkatullah. 2016. *Jurnal Hukum IUS QUIA IUSTUM* No. 1 Vol. 23 Januari 2016. p.1-22

<sup>6</sup> Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, p.128

is absolutely created by law. Order is also likely to cover the field of international business. Indonesian National Law, Timor Leste and International Law become legal instruments that play a crucial role in creating orderliness within the illegal business transactions between the two countries' border areas.

An ideal view puts the law as the basis of necessity to be orderly; the consequence in the event of disorder due to violations is that the law plays its role again. The role of law in that such a matter can be found in law enforcement. Law enforcement is disclosed as a duty carried out by law enforcement officials. Hence, it can be clarified that law enforcement efforts by law enforcers are a series of efforts to harmonize concrete actualization with applicable law.<sup>7</sup>

In this research, several issues are raised to be discussed, namely How is law enforcement against illegal business in the Border Area of the Republic of Indonesia and the Democratic Republic of Timor Leste? , and What are the forms of barriers and solutions to law enforcement against illegal business in the Border Area of the Republic of Indonesia and the Democratic Republic of Timor Leste?

The research objective is to study and analyze the enforcement of illegal business law in the Border Area of the Republic of Indonesia and the Democratic Republic of Timor Leste. And to find out the obstacles and solutions of law enforcement against illegal business in the Border Area of the Republic of Indonesia and the Democratic Republic of Timor Leste

## **Method**

This study is an empirical legal study, in which the motivation in conducting it starts from the recognition of the discrepancy between *das solen* and *das sein*, namely the discrepancy between the theoretical state and legal facts that occur in society.<sup>8</sup> Transactions of goods that cross the borders of a country have been regulated nationally by each country. Of course, these business transactions must go through certain procedures as regulated by the laws of each country. In practice, in the border areas of the Republic of Indonesia and the Democratic Republic

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<sup>7</sup> Tanya, B. (2006). *Hukum dalam Ruang sosial*.

<sup>8</sup> Philipus M. Hadjon dkk, 2005, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, h. 2.

of Timor Leste, business transactions often occur without documents or procedures that should be carried out. So this research will examine empirically the facts of illegal business in the border area of the Republic of Indonesia and the Democratic Republic of Timor Leste.

The research process that will be carried out will use several approaches in order to obtain comprehensive and valid answers to the problems being studied. Some of the approaches used in this research are to use a social legal approach that wants to see and understand the reality of law from the perspective of social sciences, especially sociology of law. Salman, Otje and F. Susanto, 2004, define sociology of law as a science which studies the interrelationship between law and other social phenomena in an analytical empirical manner. In the study of legal sociology, this approach seeks to understand the real law (*quid facta*), not what it should be (*quid jury*).

In this study, data were collected using several techniques, namely:

1. Document Study

Document study is the initial technique used in every legal study. The study of document was carried out based on legal materials related to research problems by utilizing the laws of the Republic of Indonesia or the laws of the state of the Democratic Republic of East Timor.

2. Interview

An interview is a technique of collecting data by asking questions related to law enforcement on illegal business transactions in the border area between the Republic of Indonesia and the Democratic Republic of East Timor to predetermined informants.

Overall data obtained and has been collected either through literature study or by interview, then process and analyze qualitatively, namely by connecting the existing data related to the discussion and then presented descriptively analysis. back through the editing process. The data collected is processed and analyzed with qualitatively relevant theories to describe the incident, the state of law enforcement of illegal business in the border area of the Republic of Indonesia and the Democratic Republic of Timor Leste.

## **Results And Discussion**

### **1. Illegal Business in the Border Area between the Republic of Indonesia and the Democratic Republic of Timor Leste**

A diplomatic relationship between the Republic of Indonesia and the Democratic Republic has officially taken place since East Timor legally announced its independence on May 20, 2002.<sup>9</sup> Since then, approximately 24 years after becoming part of the Republic of Indonesia, East Timor stands as an independent country and renames it to the Democratic Republic of East Timor (the abbreviated term in East Timor is RD'TL).<sup>10</sup> The commencement of the diplomatic relation between Indonesia and East Timor since then has been marked by the presence of mutual visits between high officials from both countries and a number of cooperation agreements signed by the two governments in Jakarta and Dili, which are a real reflection of the spirit of reconciliation and the commitment of new relation between the two countries.<sup>11</sup>

Since the beginning of the diplomatic relations between the two countries, the relationship has experienced ups and downs that often lead to conflict and often causes violence in the border area.

Some strategic issues concerning the relation between the two neighboring countries are, among others, the incomplete demarcation of the border point as a whole, the problem of human rights crimes before and after the referendum was held, the unilateral claim regarding land ownership and the area between the border population, the problem regarding the ex-refugee population of East Timor and various other sensitive issues which often lead to conflict between inhabitants at the border or differences of opinion among the conflicting stakeholders regarding this border issue. That is, it can be seen from the rampant illegal trade activities and traditional border crossers on the border of Indonesia - Timor Leste due to the social and cultural conditions of the communities around the border, as well as limited

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<sup>9</sup> Handoyo, S. (2011). *The State 's Geopolitics versus the Local 's Concern , a Case Study on the Land Border between Indonesia and Timor-Leste in West Sector.* (August 1999), p.315-316

<sup>10</sup> Wallis, J. (2013). *Victors, Villains and Victims: Capitalizing on Memory in Timor-Leste.* *Ethnopolitics*, 12(2), 133–160.  
<https://doi.org/10.1080/17449057.2011.632958>

infrastructure facilities and infrastructure and the government's lack of attention, especially in enforcing the rule of law.

The development of the economic conditions of the people at the border is closely related to the availability of infrastructure for regional economic infrastructure, the provision of manpower and technical assistance, and the provision of finalization support. This economic problem is the phenomenon of migration from illegal trading activities (illegal business and illegal trading) which eventually creates socio-economic vulnerability in the border area of Indonesia - Timor Leste. These conflicts consequently resulting from the existence of strategic issues on the border between the two countries have direct implications for the relationship between the government and the population at the border both in terms of economic, socio-cultural, economic, political, and security.<sup>11</sup>

Relations between Timor Leste and Indonesia are bilateral relations abroad. Since the independence of Timor Leste until now, these two countries continued to share the island of Timor. Indonesia controlled the western part of Timor, while Timor Leste had control over the eastern part of Timor. Indonesia invaded the former Portuguese colony in 1975 and annexed East Timor in 1976, defending East Timor as the 27th province until a referendum sponsored by the United Nations in 1999, where the East Timorese chose independence. After the interim administration of the United Nations, since the Reformation Era, there have been many disputes in East Timor gaining independence in 2002.

Although their past was indeed traumatic, the relationship between Timor Leste and Indonesia was very good. Indonesia, by far, is East Timor's largest trading partner (around 50% of imports, 2005) and shares continued to increase.<sup>12</sup> The problems that must be addressed between Timor Leste and Indonesia are the limits of committee meetings for surveys and land boundaries; and also Indonesia is looking for a refugee settlement of the East Timorese people in Indonesia.

The border is an area that connects between two sovereign countries. Each country has different national interests including the

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<sup>11</sup> Wuryandari, Ganewati, 2009, *Keamanan di Perbatasan Timor Leste*; Sumber Ancaman dan Kebijakan Pengelolaannya, Yogyakarta: Pustaka Pelajar dan P2P-LIPI

<sup>12</sup>[https://en.wikipedia.org/wiki/Foreign\\_relations\\_of\\_Indonesia#:~:text=Following%20a%20United%20Nations%20interim,is%20steadily%20increasing%20its%20share](https://en.wikipedia.org/wiki/Foreign_relations_of_Indonesia#:~:text=Following%20a%20United%20Nations%20interim,is%20steadily%20increasing%20its%20share).



management of border areas. The border between the Republic of Indonesia and the Democratic Republic of East Timor is the border that arises as a result of the separation of the territory of East Timor which is the 27th Province of the Unitary Republic of Indonesia which later became an independent country after the 1999 referendum and officially became an independent country since 20 May 2002.

Differences in interests also occur in the relationship between the management of the border between Indonesia and East Timor. Differences in interests between the governments of the two countries have given rise to a variety of strategic issues which will later affect bilateral relation between the two countries that are neighboring and have social and cultural closeness. This is because the population on the border between the two countries is a tribe that has the same customs that are only separated due to political decisions alone.

East Nusa Tenggara, hereinafter is referred to NTT, is one of the provinces of Indonesia which is directly adjacent to two neighboring countries that are close one to another, namely the Democratic Republic of East Timor and Australia. The border between NTT, East Timor and Australia covers land and sea areas, namely:

- a. Land border between NTT and Timor Leste covers 3 regency areas, namely Beli Regency, North Central Timor Regency and Kupang Regency.
- b. Sea borders between NTT and Timor Leste include marine waters in the four regencies, namely Belu Regency, North Central Timor Regency, Kupang Regency, and Alor Regency.
- c. Sea borders between NTT and Australia include waters at two, e.g. Kupang Regency (especially Sabu Island) and Rote Ndao Regency.

The land border area between Indonesia and Timor Leste in NTT Province as a whole has a length, which is 268.8 km. The land border area covers three districts and ten sub-districts. The regency in NTT that has a land border with RD/TL is Kupang Regency with a borderline length of 15.2 km. North Central Timor Regency with a long border line, which is 114.9 km. Through the length of this border, there is no permanent boundary and there is also the Malibaka river as a border.

The process of demarcation of border points between NTT and the State of Timor Leste has not been fully completed. This demarcation process has only reached about 96% of all the total border points, of

which 907 points were agreed upon through a Provisional Agreement between the Government of the Republic of Indonesia and the Government of the Democratic Republic of East Timor on the land boundary signed by the Minister of Foreign Affairs The State of the Republic of Indonesia N. Hasan Wirayuda and the Minister of Foreign Affairs of Timor Leste Jose Ramos Horta on April 8, 2005. Furthermore, there are still three unresolved segments and a border point that has not been surveyed (unsurveyed segment) due to several factors. According to the Center for Political Research in 2010, that there are four territories that still have problems include:<sup>13</sup>

1. Noel Besi territory
2. Manusasi/Noel Miu Mavo territory
3. Merno/Malibaka city area, and
4. Subina territory which has not completed its survey process.

The potential for the emergence of conflict between the state of Indonesia and the country of Timor Leste begins with the competition between the two countries in obtaining resources - natural resources - both on land and at sea at the border points.<sup>14</sup> This occurs as a result of overlapping claims over land and sea territorial border around the border area.

The still rampant illegal trade activities and traditional border crossers on the border between Indonesia and Timor Leste are caused by the social and cultural conditions of the inhabitants around the border and the limited facilities and infrastructure and the government's lack of attention, (Handoyo, 2014) especially in upholding the rule of law. The development of the economic condition of the inhabitants at the border is closely related to the availability of economic infrastructure and facilities in the area, the provision of labor and technical assistance, as well as the provision of financial support. This economic problem is the phenomenon of migration on illegal trade activities (illegal business and illegal trading) which eventually cause social economic insecurity in the border areas of Indonesia - Timor Leste.

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<sup>13</sup> <http://www.politik.lipi.go.id/kolom/politik-internasional/280-mencari-solusi-damai-sengketa-perbatasan-di-timor.html>

<sup>14</sup> <http://www.politik.lipi.go.id/m/kolom/politik-internasional/899-konflik-komunal-di-perbatasan-indonesia-timor-leste-dan-upaya-penyelesaiannya.html>

## **The Aspects of National Law on Illegal Business in the Border Area of the Republic of Indonesia and the Democratic Republic of Timor Leste**

Based on observation and several stages of the present research that have been conducted, it is found that various business activities carried out across national border between Indonesia and Timor Leste result in new problems, that is, in the form of legal violations or irregularities in the rules that apply in their respective countries. Of the various violations of law in the economic and business fields, there have been cases of motorbike and livestock theft in Indonesia.<sup>15</sup> This is even the most common legal problem that is handled by the Indonesian police. Basically, cases of theft of motorbikes and livestock are criminal cases in business activities.

When viewed from the aspect of criminal law, theft of motorbikes and livestock is a social dimension violation. The perpetrators of theft can commit criminal acts in order to get money to survive, as a result of unemployment. There were also perpetrators who claimed that they stole to get the cost of operating or treating family members. Some perpetrators who are still in their young age even commit theft only because they want to own a motorbike. In essence there are many subjective reasons put forward by perpetrators of the theft. The result of the theft of motorbike and livestock is certainly selling these items. Various ways are done to sell the stolen objects. If a stolen object is a vehicle, it can be sold after the vehicle is broken into small parts or changes have been made on its figure so that its identity cannot be identified. Also, the stolen motorbikes are sold to pickers. Further sequence of acts of fencing against stolen property is the falsification of various motorbike documents. Thus, apart from having a criminal dimension, this theft case also involves several violations which can be examined with the illegal dimension of business.

The problem of theft of motorbikes and livestock (cattle), if it involves only citizens from the same country, it will certainly be easier to settle after the perpetrator is caught. Conversely, if the perpetrator is a citizen of another country, of course it will not be easy to catch the perpetrator, and if caught, the legal process against the perpetrators will

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<sup>15</sup> Romli Atmasasmitha. (2005). HUKUM PIDANA INTERNASIONAL DAN HUKUM HAK ASASI MANUSIA 1. Pelatihan Hukum HAM.

also have complex access to the relation between countries. As a result, the problem is becoming more complicated when thieves cross national boundary in an illegal manner. Meanwhile, the "illegitimate" aspect of the cross border cannot be dealt with as a result of a change in order which is still new in the process of relation between the nationalities of Indonesia and Timor Leste.

The problem of legality and illegality of the existence of East Timorese citizens in Indonesia or vice versa, if reviewed based on formal law also has very many weaknesses. Formal laws that apply are still a product before the popular consultation in East Timor. One of the things related to this case is the Immigration Act and various regulations relating to immigration. For example, the Immigration Law regulated in Law No. 9 of 1992 concerning Immigration which is currently in force was made in a condition where Timor is still the territory of the Republic of Indonesia. Of course, it will be very difficult to use a control framework for the migration problem of the Timorese and Indonesian people through this regulation.

The border area as the sovereign limit of a country has a strategic function in determining government policy, both for internal and external interests. Internal interests relate directly to national interests as an independent and sovereign state. For Indonesia, this interest is closely related to the realization of the archipelago's insight to improve the welfare of the nation. Furthermore, external interests are related to relations between countries on a regional and international scale. It is inevitable that as a country whose sovereignty is recognizable, it is certainly related to other countries at the international scale. A clear border on a country provides an opportunity for the country to maintain its sovereignty and existence to develop at the international level.

The geographical position of the Republic of Indonesia is closely related to regional borders between countries that are very vulnerable. The geographical position of Indonesia is flanked by two continents and has international borders with 10 neighboring countries. Many factors that cause the handling of state borders are not easy to solve. If there is no firmness and clarity regarding the problems that occur related to territorial boundaries, then various violations will occur and be detrimental. However, considering that the outer regions of the state are always bordered by territories or waters of sovereignty (jurisdiction)

and other state authorities, the determination must pay attention to the authority of authorities from other countries so that there needs to be cooperation.

Regional cooperation in the field of survey and land boundary affirmation between the Republic of Indonesia and neighboring countries has usually been contained in the form of a Memorandum of Understanding (MoU) and agreement on the determination of maritime boundaries and land boundaries.<sup>16</sup> The collaboration can indeed be carried out but not infrequently in its progress it also experiences clashes. Another condition that complicates Indonesia's position is that, although the MoU and the agreement have been agreed and issued, the legal force through its regulation with the law is sometimes not executed.

The big threat to the country of Indonesia is the shifting of boundaries between countries that have been made and agreed along land boundaries from several regions, for example between Indonesia - Malaysia in West Kalimantan and Papua with Papua New Guinea. There are still many segments (discrepancys) along the border between countries. At present, with the existence of Timor Leste, of course the segment is increasing and is an additional task for the government that treats the border problem.

The issue of border areas is not just about affirming territorial lines or national borders. This determination needs to be followed up with clear legal procedures and mechanisms. Good faith in implementing the MoU, agreement, and also the laws made also need to underlie good relations between countries. Equally important, the management of the national borders and all accompanying policies must also include citizens, especially those who are actively in the border areas.

Cases that have so far happened on the border can basically be categorized into:

1. Immigration procedure violation, namely illegal border crossers. This problem also has access to the large number of Indonesian migrant workers problems in Malaysia and the smuggling of criminals/terrorists.

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<sup>16</sup> CORRESPONDENTS REPORTS. (2006). *Yearbook of International Humanitarian Law*, 9, 421–640. <https://doi.org/10.1017/S1389135906004211>

2. Illegal smuggling of goods or people. At present the case is developing in the form of trafficking (against women and children) and trading of "illegal" goods (narcotics and illegal drugs).
3. Theft of natural resources in areas that are difficult or far from the scope of supervision, for example illegal logging, theft of fish and other marine resources.
4. Transfer of signs (stakes) very simple regional boundaries by irresponsible people.
5. Increased crime; theft of crops, livestock, motorized vehicles which are then smuggled through shortcuts to both the outside and the territory of the Republic of Indonesia.

These cases are inseparable from our inadequate border security system. As part of the international community, of course, clear boundaries need to get juridical recognition both regionally and internationally. Equally important, the recognition also needs to be understood and understood by the community and law enforcement officials, especially those who are or who interact with communities in the border area.

Land ownership, control of mining goods, maritime boundaries, management of marine products, and security in business are some aspects of business that need to be accommodated in handling border issues related to legal certainty. In addition, what is not less important is the handling of the problem of the "Timor discrepancy" which seems to have been drowned from attention since the referendum in Timor.

There is a need for legal certainty in the form of statutory regulations in the enforcement of territorial boundaries at the international level to resolve disputes or disputes between countries. Indeed, this is not expected, but anticipatory steps need to be taken, because there is a possibility for such problems to occur in developments in the present, where economic and political interests between countries can be very easily subject to conflict.

## **2. Aspect of International Law in the Enforcement of Illegal Business Law in the Border Area between the Republic of Indonesia and the Democratic Republic of East Timor**

It has been mentioned in the previous section that on the border between the Republic of Indonesia and East Timor business activities

that are classified as illegal (illegal business) often occur to the detriment of one or both of the State. In such cases, the difficulty in the law enforcement will happen given the occurred crimes are classified as transnational crimes. Based on observation, the settlement of illegal business in the border area between the Republic of Indonesia and the Democratic Republic of East Timor has not been carried out optimally. Considering the territory that is a territory of two different countries that are bordered, each has its own law.

If observed historically, of course the settlement with idealistic legal aspects will have difficulties to find effective solutions to these problems. Therefore, Proactive steps are required considering that law enforcement for illegal business transaction actions can actually worsen relations between the two countries. The chaotic law enforcement that adheres to the laws of each country must, of course, be based on an understanding that the activities in question are equally prohibited by law, without regard to the social or economic considerations of the population in the border area.

In the modern era marked by the technological development, especially those that lead to cross-border trade, in fact business activities carried out by crossing the national borders between Timor Leste and Indonesia are legally valid. That is true considering, regarding this matter also, discussion discourse has expanded to international aspects, namely international trade law. This also happens because business activities that cover aspects of the international law are also subject to several principles that must be met by individuals and the state.

Following the principle of international trade, there is a principle that sticks out in terms of business activities in the border area between the Republic of Indonesia and the Democratic Republic of East Timor, namely the fair principle. This principle is intended for a condition where the state receives certain benefits by carrying out certain policies, while on the other hand it will not occur. The policy actually causes losses to other countries. Reviewing the situation in the border area between the Republic of Indonesia and the Democratic Republic of Timor Leste, a policy agreement between the government of the Republic of Indonesia and the government of East Timor needs to be established.

International agreements in this research are included in the scope of public law. There are many different opinions that try to provide

views on the existence of international relations, but in this study, the view that international agreements are in the form of a private is realized in the form of an MoU, is applied. The MoU contains the interests of public institutions or private institutions so that it does not necessarily give rise to the obligations and rights of the country where the institution/private originates. In this paper, the intended agreement is an agreement made by the head of state in his capacity to bring the name of the country to form foreign relations with other countries. As a result, the rights and obligations of the countries involved in the agreement immediately grow.

Therefore, in casuistic about the borders between the Republic of Indonesia and the Democratic Republic of East Timor, relations between countries in the form of agreements that are subject to international law are needed to agree to do follow-up in the form of law enforcement or using persuasive methods through social or the economy in tackling the occurrence of illegal business activities in the border area between the Republic of Indonesia and the Democratic Republic of Timor Leste.

## **BARRIERS AND SOLUTIONS TO THE LAW ENFORCEMENT FOR ILLEGAL BUSINESS TRANSACTIONS IN THE BORDER AREAS BETWEEN THE REPUBLIC OF INDONESIA AND THE DEMOCRATIC REPUBLIC OF TIMOR LESTE**

### **1. Barriers to Law Enforcement of Illegal Businesses in the Border Area between the Republic of Indonesia and the Democratic Republic of Timor Leste**

Various issues and problems occurred in the border area between Indonesia and Timor Leste, both between citizens and between the governments of Indonesia and Timor Leste itself, had caused various implications for the bilateral relations between the two countries. The emerging implications as a result of issues and conflicts in the border area itself have had an impact on various aspects of the lives of people around the border. Some implications of the issue are:

#### **a. Social and Culture**

With the establishment of traditional cross-country markets, residents in the border hope to meet again with their families in Timor



Leste now. This market is used as an economic activity but can also serve as an opportunity to make friends with a separate family due to the separation of East Timor from the Republic of Indonesia in 1999. This happens because if the residents want to meet the family officially, official documents are needed and the costs must be paid absolutely necessary. Meanwhile, more than the average condition and ability of the economy of the population at the border is below the standard of living. With the existence of cross-country and free-market markets, ex-refugees and other border residents really hope to meet with their families without spending money.

### **b. Economy**

As a result of the lack of agreement on the cross-border implementation between Indonesia and Timor Leste, there was a disruption to the economic activities of the people in the border region. As a result of the absence of agreement on cross-border implementation between Indonesia and Timor Leste, it has disrupted economic activity in the border area. The Indonesian government has made efforts to build cooperation in the economic sector, but it has not yet been implemented like a common market between Indonesia and Timor Leste. Access that is far from the city and development that has never touched areas on the border has also brought negative implications to the economic sector and to residents around the border. Very bad road access has resulted in difficulties in getting goods, needs, easily and quickly. Residents living on the border sometimes have to smuggle both sales and to purchase their basic necessities.

The case of goods smuggling that occur in the border region also has a negative impact on the economic situation of the population in the area. Imported and exported goods, either to Indonesia or to Timor Leste, illegally influence the economic instability of residents around the border.

### **c. Politic**

Implications as a result of various strategic and urgent issues in the border area between Indonesia and East Timor also affect the political relations between the governments of the two countries. Representatives of both the countries cooperating with committees to resolve problems in the border area seek to negotiate for the sake of. By using the method of border diplomacy, the Indonesian government

expects that the implementation of border diplomacy through the Joint Border Committee (JBC) is able to touch all aspects of people's lives on the border. The resolution of the problem must also involve leaders/stakeholders of the community around the border area because the two population groups on this border have close family ties but also have personal interests.

#### **d. Security**

The strategic issues and conflicts that occur on the border between Indonesia and East Timor have implications on handling security in the border area. (Kingsbury, 2009) The security forces and the Indonesian National Armed Forces in the Indonesia-Timor Leste border region were forced to carry out security in a strict manner to maintain their respective sovereignty areas. This is evident from the rigorous safeguards at each Transboundary which is the place to examine official documents from visitors, both in and out of Indonesia and Timor Leste. The security forces are also more aware of the citizens who come out and enter illegally through forest lines or rivers. One of them is the existence of former East Timorese refugees is also considered a source of threat to security and stability on the Indonesian border.

## **2. Solution to the Barriers in Law Enforcement on Illegal Businesses in the Border Region between the Republic of Indonesia and the Democratic Republic of East Timor**

Development of border areas requires a strategic and comprehensive procedure. The border area, including small islands that are outside, has considerable natural resource potential and is a very strategic area for national defense and security. However, development in several border regions is still very far behind compared to development in neighboring countries. The socio-economic conditions of the people living in this area are generally much lower compared to the socio-economic conditions of the neighbors. This has resulted in the emergence of various illegal activities in the border area which in the long run is feared to lead to various social vulnerabilities. The main problem of underdevelopment in the border region is the direction of regional development policies that have tended to be "inward looking" so far, as if the border area is only a backyard of the country's development. As a result, border areas are considered not to be areas of

development priority by the central and regional governments. The development of border areas must change the direction of development policies that have tended to be oriented to "inward looking" to be "outward looking". That way, the area can be used as a gateway for economic and trade activities with neighboring countries. The Border Area is a vast coaching area with an uneven pattern of population distribution, so that it causes a range of government control and territorial supervision and guidance that are difficult to carry out firmly and efficiently. All forms of activities or activities that exist in the border area, if not managed properly, will have a negative impact on the conditions of defense and security at the regional and international levels, both directly and indirectly. Regional Implementation of Defense Sector Development Policy in the State Border Region in the Context of Regional Autonomy (Case Study in the Indonesian Border Area with Timor Leste) shows that the border is very vulnerable to hiding groups of Security Dissolution Movement, smuggling and other crimes including terrorism, so that cooperation is needed integrated between relevant agencies in handling it. Development in the border region must be directed specifically to accelerate the handling of three fundamental problems faced, namely those related problems in aspects of delimitation and delineation of boundaries, and development discrepancy's, as well as political, legal and security aspects.

#### 1. Delimitation and Delineation Limits Aspects

- a. The acceleration of delimitation and delineation of boundaries must be a strategy aimed at accelerating the process of establishing baseline points and drawing lines and seeking agreement on land and sea boundaries between Indonesia and Timor Leste. After East Timor's independence, there are several land and sea boundary segments that need to be determined and mutually agreed upon. Delimitation and delineation of boundaries is very urgent to be done to prevent the occurrence of territorial sovereignty disputes between the two countries. In addition, with clear land and sea boundaries, the two countries can exercise their jurisdiction in the utilization of natural resources, such as in the field of fisheries and mining. The goal to be achieved by this strategy is to guarantee the sovereignty

and jurisdiction of the Republic of Indonesia in the border region with East Nusa Tenggara.

- b. Affirmation of national boundaries in watershed areas. Reaffirmation of the territorial boundaries between the Republic of Indonesia and Timor Leste is one of the government's policies in permanently arranging and establishing boundary lines and stakes, especially those involving cross-country watersheds. Government policies relating to the boundary concerning the watershed are very important to do, given the typology and characteristics of the river found in Belu Regency generally have a unique topographic form. The watershed can only be irrigated during the rainy season, whereas in the dry season, the river can dry and not function at all. The character of the flowing water is not fixed or always moves from one lane to the other every season, so that if the river is a benchmark for the country's borders, the borders can move, and as a result the limit has moved so far to the Republic of Indonesia. The goal to be achieved is the Implementation of Defense Sector Development Policy in the Border Area between countries in the Context of Regional Autonomy (Case Study in the Indonesian Border Area with Timor Leste), namely the existence of a clear national border in the watershed.

## 2. Development Discrepancy Aspects

- a. Fulfillment of economic infrastructure needs. This strategy is directed to foster opportunities for the border region to participate and compete in global markets and regional markets. This needs to be done through the provision of economic infrastructure (markets, roads, transportation, etc.); business support institutions (cooperatives, banks, and microfinance institutions), the development of conducive climate of investment, and the development of a high entrepreneurial spirit in the community. The goal to be achieved is to increase competitiveness in the border region and increase the welfare of the local community.
- b. Acceleration of the development of regional accessibility. This strategy is directed to facilitate the flow and movement of people and goods entering and leaving between regions and intra-regions.

- c. Preparation and designation of spatial planning for border areas. This strategy is directed to produce a concept of Regional Spatial Planning as a planning concept that must be possessed by the border region as an effort to carry out sustainable development and development.
- d. Improvement of health facilities and infrastructure. This strategy is directed at improving the quality of health services to society in the border areas through activating the services of Maternal and Child Health Services, promoting maternal and child health, family planning, improving nutrition, environmental health, eradicating infectious diseases, basic medicine and optimizing the functioning of hospitals. The targets to be achieved are improving the quality of health which is reflected in the behavior of healthy living, decreasing the infant mortality rate, improving nutrition, and reducing the spread of diseases so that the community is able to play an active role in the development process of the border region.
- e. Improvement of educational facilities and infrastructure. This strategy is aimed at improving the quality of education services for people in the border areas by increasing the reach of education services and providing facilities and infrastructure more evenly, of quality, and precisely located, especially in regions, whose education enrollment rates are still very low compared to the average national average. The targets to be achieved are increasing public accessibility to education services and increasing the achievement of the 9-year compulsory education principle.
- f. Improvement of basic facilities and infrastructure in the region. This strategy is directed at increasing public accessibility to basic facilities and infrastructure in areas such as electricity, clean water, and settlements. To be able to compete with other regions, the quality of human resources through the provision of good basic facilities and infrastructure is absolutely necessary. The targets to be achieved are the availability of electricity, clean water, and decent settlements for people at the border.
- g. Development of regional superior sectors. This strategy is directed at accelerating the economic development of communities in the border area through the development of

leading sectors. The ability of the business community in the border region is optimized through the development of local economic potential and leading sectors supported by increased community accessibility to production factors, increased capacity of local economic institutions in supporting the process of production and marketing activities, as well as creating climate for investors in regions guarantee the Implementation of Defense Sector Development Policies in the Interstate Border Areas in the Context of Regional Autonomy (Case Study in the Indonesian Border Area with Timor Leste) for the sake of ongoing productivity and effort of the community and increased employment.

For the problem of refugees, the former East Timor needs an appropriate strategy and response, namely repatriation or resettlement. This is important so that the refugees can live properly and do not cause social conflict with the local community. So as to achieve the restoration of economic, social and political stability in the region. This strategy is directed to address the problems of East Timor people ex-refugees through efforts to return or resettlement. This is important to do so that the refugees can live properly and not cause social conflict with the local community. The goal to be achieved is the recovery of economic, social and political stability between the people in the border region through proper handling of refugees.

## **Conclusion**

Law enforcement against illegal business in the Border Area of the Republic of Indonesia and the Democratic Republic of Timor Leste has not yet been maximized. Because there are still many illegal business activities occurring, which is caused by each country to maintain its legal system, so that efforts to enforce the law on illegal business find various obstacles in enforcement efforts.

Law enforcement efforts against illegal business in the border areas of the Republic of Indonesia and the Democratic Republic of Timor Leste are not optimal, there are several factors, including unclear territorial boundaries between Indonesia and Timor Leste, social and historical factors of the population in the border area as well as economic factors and inequality. development. So that it is necessary to identify solutions based on international agreements between the two

countries to agree together to overcome problems in border areas and also their legal aspects.

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