

**PENGARUH PEMBAGIAN WILAYAH KEKUASAAN ATAS PULAU TIMOR
OLEH BELANDA-PORTUGIS TERHADAP PENETAPAN BATAS WILAYAH
INDONESIA-TIMOR LESTE**

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INTISARI

Perjanjian sementara batas darat RI-TL yang diberi nama *Provisional Agreement on the Land Boundary*, 2005 ditetapkan berdasarkan prinsip *uti possidetis juris*, tetapi hanya didasarkan atas batas darat yang ditetapkan oleh Belanda-Portugis dan masih terdapat 4 (empat) segment perbatasan yang tidak dapat disepakati. Sebaliknya penetapan batas laut, tidak dapat diterapkan prinsip *uti possidetis juris* karena Portugis, Belanda dan Indonesia yang menduduki Pulau Timor tidak menetapkan batas laut.

Permasalahan yang dibahas dalam penelitian ini, adalah (1) mengapa penerapan prinsip *uti possidetis juris* sebagai dasar pembentukan *Provisional Agreement on the Land Boundary*, 2005 hanya didasarkan atas perjanjian batas darat Belanda-Portugis, dan implikasi hukum apa yang timbul terhadap wilayah dan batas darat Indonesia-Timor Leste? (2) mengapa penerapan prinsip "*uti possidetis juris*" oleh Indonesia-Timor Leste tidak dapat menyelesaikan batas darat di segment perbatasan Noelbesi-Citrana, Manusasi, Subina dan Mota Malibaka serta prinsip hukum apa yang relevan sebagai dasar penetapan batas di empat segment batas darat yang belum disepakati tersebut?; (3) bagaimanakah penetapan batas laut antara Indonesia sebagai negara kepulauan dan Timor Leste sebagai negara pantai? Metode penelitian yang digunakan untuk menjawab permasalahan 1 menggunakan jenis penelitian normatif yang bersifat preskriptif dan eksplikatif sedangkan permasalahan 2 dan 3 menggunakan jenis penelitian normatif yang bersifat preskriptif.

Hasil penelitian disimpulkan: (1) penetapan perjanjian batas darat RI-TL, hanya didasarkan atas batas darat yang ditetapkan oleh Portugis-Belanda sebab batas darat yang ditetapkan oleh Belanda-Portugis dirumuskan dalam perjanjian dan pendudukan Belanda-Portugis di Pulau Timor sah menurut hukum internasional tradisional, sedangkan penetapan batas propinsi yang ditetapkan oleh Indonesia tidak diterapkan karena batas propinsi yang ditetapkan oleh Indonesia juga didasarkan atas penetapan batas darat Belanda-Portugis dan pendudukan Indonesia atas Timor-Timur dianggap tidak sah menurut hukum internasional serta salah satu implikasi hukum yang timbul dari penerapan prinsip *uti possidetis juris* dalam penetapan batas darat RI-TL adalah masih terdapat 4 segment perbatasan yang belum diselesaikan; (2); Penyebabnya adalah batas negara lama yang menjadi dasar ditetapkannya batas negara baru kabur, tidak terpelihara dan terdokumentasi dengan baik serta diawali kekerasan dan sering menimbulkan sengketa. Prinsip hukum yang relevan diterapkan dalam penetapan batas darat RI-TL yang belum disepakati adalah (i) prinsip *uti possidetis juris* yang dimaknai mencakup batas kerajaan terdahulu; (ii) kesepakatan, (iii) penyelesaian sengketa secara damai dan (iv) hubungan bertetangga yang baik; (3); RI sebagai negara kepulauan dan Timor Leste sebagai negara pantai, dalam penetapan batas laut memiliki perbedaan antara lain RI berhak menerapkan garis pangkal lurus kepulauan dan menentukan Alur Laut Kepulauan, sedangkan Timor Leste tidak memiliki kedua hak tersebut;

Kata kunci: *uti possidetis juris*, *perjanjian internasional*, *wilayah negara*

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INFLUENCE OF DISTRIBUTION OF POWER REGION TO THE TIMOR ISLAND BY THE DUTCH-PORTUGIS ON THE TERRITORY BORDER OF INDONESIA- TIMOR LESTE TERMINATION

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ABSTRACT

Provisional agreement on the national boundary of the Republic of Indonesia and Timor Leste was called "Provisional Agreement on the Land Boundary" and concluded in 2005 on the principle of *uti possidetis juris*, but based only on land boundary established by Dutch-Portuguese, while there were still four boundary segments that were not included in the agreement. On the contrary, the establishment of ocean boundary could not be based on the principle of the *uti possidetis juris* because Portuguese, Dutch and Indonesia that occupied Timor Island did not establish any ocean boundary. The problems discussed in the study were: 1) Why the implementation of the principle of *uti possidetis juris* as the basis of the establishment of the Provisional Agreement on the Land Boundary 2005 was based only on the agreement on the Portuguese-Dutch Land Boundary, and what was the legal implications arose on the territory and land boundary Indonesian-Timor-Leste? 2) Why the implementation of the principle of *uti possidetis juris* by Indonesia and Timor Leste could not settle the land boundary dispute in the boundary segments of Noelbesi-Citrana, Manusasi, Subina and Mota Malibaka and what legal principle was relevant as the basis in the establishment of the four land boundary segments that have not been agreed? 3) How was the ocean boundary between Indonesia and the Islands state of Timor Leste as coastal state? The study used normative and prescriptive and explicative methods to answer the problems 1 while the problem 2, 3 was answered using normative and prescriptive methods.

The results of the study showed that: 1) The conclusion of the land boundary between the Republic of Indonesia and Timor Leste was based only on the land boundary established by Dutch-Portuguese because the land boundary as formulated in the agreement on the occupation of Dutch-Portuguese in Timor Island was valid according to traditional international law, while the establishment of the provincial boundary by Indonesia was not valid according to international law because it was also based on the establishment of the land boundary by Dutch-Portuguese and the occupation of Indonesia over Timor-Timur was considered as illegal and one of the legal implication of the implementation of the principle of *uti possidetis juris* in the establishment of the land boundary of the Republic of Indonesia and Timor Leste was that there were still four land boundary segments that have not been established; 2) The causal factor was that the old national boundary as the basis of the establishment of the new national boundary was not clear, not well-maintained and not well-documented and began with violence that often resulted in disputes. The relevant legal principles in the establishment of the land boundary between the Republic of Indonesia and Timor Leste that has not been agreed were (i) the principle of *uti possidetis juris* that covered the old kingdom boundary, (ii) consent, (iii) the peaceful settlement of the dispute, and (iv) good neighbor relationship; 3) The Republic of Indonesia as archipelago and Timor Leste as coastal state implicated in the difference in the establishment of the ocean boundary between the Republic of Indonesia and Timor Leste in which the Republic of Indonesia had the right to implement straight line of islands and to establish islands ocean plot, while Timor Leste did not have any right to do the same.

Key words: *uti possidetis juris*, international agreement, and national territory

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