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Available at: https://scholarhub.ui.ac.id/global/vol18/iss2/1

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THE TERRITORIAL TRAP AND THE PROBLEM OF NON-TERRITORIALIZED GROUPS

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Abstract
This article would follow the history of the concept of territoriality as described by Schmitt and Kant which place the appearance of territorial attachment to a context. The author wants to point out the problems that arise when the territory is taken from that context and adopted in a globalized world which has a different context. Taking territory as the undeniable norm of a modern state contributes to create some latent problems: ethnic or religious identity issues that need to subject to national identity, inability to deal with non-territorial political entities, and inability to imagine effective ways to mobilize effective authority regardless of material capacity. This article concludes with a suggestion to reopen the discussion about the importance of territoriality for a country and whether the concept can still serve as an assumption of state security and unity.

Keywords:
Territoriality, Carl Schmitt, Immanuel Kant, Liberalism, Realism, Political Entity, Political Theory, State Theory.
INTRODUCTION

Territory has been a basic assumption in explaining the existence of state and political entities in political science. Max Weber (2004, p. 33) describes state as “the form of human community that (successfully) lays claim to the monopoly of legitimate physical violence within a particular territory-and this idea of ‘territory’ is an essential defining feature.” He continues to emphasize that territory becomes an important of modern state institution as it defines the limit and space where government’s authority and use of force legitimized. Waltz on similar notion also rely heavily on the importance of territory, specifically its boundaries, to explain the different condition of international and domestic realm (Agnew, 1994, p. 68). It is even argued that Durkheim also sees territorial state as the sole guarantor of social order (Agnew, 1994, p. 69). The tendency of these scholars to attach the state with the possession of legitimate territory seem to be taken for granted, as the only way to exercise effective authority in common sense can only be done when the authority has clear boundaries. This paper however, aims to show that the importance of territory in political conception of state and political entities is never being a constant and ahistorical phenomenon. The importance of territory is emerged during the 19th Century, which later being reify by scholars of social sciences as an ahistorical concept (Agnew, 2003, p. 51). This paper will also discuss the impact of this reification in facing the globalization, specifically the emergence of non-state actor which either cannot define its territory or have an overlapping territory with the state.

This paper will start with the explanation of the importance of territory according to classical thinkers, namely Carl Schmitt and Immanuel Kant. These two scholars explain almost explicitly on the genealogy of territory and share similar understanding that state territory plays important role on the making and maintaining social order. However, both share different emphasize on how territory contributes in maintaining the social order. While Schmitt (2003, pp. 127-129) emphasis the role of territory in defining secular state on 16th and 17th which trigger the birth of European International Law to maintain peaceful coexistence of European states, Kant sees territory as a product of social construction which is not only determine the form of interaction and order within the territory, but also creates meaning of events for the members within the territory (Angeli, 2015, p. 41). Furthermore, this paper will elaborate the concept of territoriality and its problem in the era of globalization, which will also describe the existence of territory of non-state actor in private and public sphere. Lastly, it will conclude with the
possibility to have a different reaction against the threat of non-state actor when the notion of territory is not taken for granted anymore.

**DISCUSSIONS**

Schmitt’s Notion on State and Territory

Schmitt (2003, p. 42) starts his assumption on the emergence of law and justice in ensuring order by thinking that it was inherited by nature. The nature itself was depicted by the earth where people live and produce the means of life. In further development of land cultivation, people naturally made boundaries which separate his land from others and mark the birth of human community which needed some sort of law and justice to maintain order in their social life. From this assumption, the idea of territory was created by human drive to possess and later, this drive also created social community where power relations between people needs to be managed to ensure order.

The connection between the territory and order is further elaborated in the notion of *nomos*. The social community needs more than order, but the *nomos* which can be understood as appropriation, distribution, and production (Schmitt, 2003, pp. 326-327). For Schmitt (2003, p. 328), every history of social community will always seek for *nomos* to maintain the political order and the land has always been the subject of *nomos* for centuries since land is the roots of all economic and law foundation. Thus, the *nomos* of the land decide how the land is divided and distributed among the people and, by doing so, ensure the political, social, and religious order within the community.

He further focuses on the creation of *nomos* of the land back on 16th Century through the creation of European International Law which regulated the land-appropriation of Sovereign Continental Europe states and further, determined the land division of the rest of the world. The first territorial-bound sovereign states came to existence by the effort to detach themselves form the religious authority. Thus, they created the basic prerequisite of sovereign state that was a territorial state with centralized authority within the territory. By doing so, the arrangement marked the new political community after The Middle Ages with three main distinctions (Schmitt, 2003, p. 128). First, the legitimization of central authority of state is the highest power to control everything within his territory. This type of territorial-bound authority became the sole type of legitimate sovereign according to the European International Law. Secondly, the sovereign state delegitimizes non-territorial authority, namely the religious authority. Thus, it ends the war between the territorial and non-territorial authority by unrecognizing the non-territorial authority as a sovereign entity. The centralized territorial sovereign
may then, announce the conflict with the non-territorial authority as a criminality, civil disobedience, or other domestic affairs. Third, the fixed territory and boundaries for every sovereign state within the territory is the authority of the sovereign and outside the boundary is the realm of inter-state relations where the European International Law comes into force. He notes that the subject of the inter-state relations refer to the relations between equal territorial sovereign states only and this inter-state relations became the new order of international system.

The new international order, however, was implemented differently beyond the European land. The other land was regarded as the “new world” without any authority and was subject to claim by the sovereign European states (Schmitt, 2003, p. 130). The discovery of the new colonies was termed “occupation” and the occupied land is treated differently from the state’s territorial land. The colonized territory is not part of the state territory, but was available to be legally discovered and exploited according to the European International Law (Schmitt, 2003, p. 131). This “new world” territory was then treated as the land without sovereignty where the local authorities were unrecognized and violent behavior within the land was not a war since the opponent was not a political entity. This condition shows that the link between territory and sovereignty is bound by recognition from other sovereign entities and the recognition is further differentiate between what is called the act of war or other violent non-war behavior. The war can only be waged between sovereign states or otherwise, it is just a violent act in order to establish order or act of occupation.

The exclusive perspective of European states changed by the end of 19th Century and the beginning of 20th Century after the World War I and the rise of United States into power, as well as the independence of other states in American Continent, the European International Law was modified as the International law to include other sovereign states (Schmitt, 2003, p. 230). The prerequisite for the recognition to the law remained European centric, mainly the centralized territorial states and deliberately termed “civilized states” as opposed to uncivilized states which indicate that European version of territorial state has a higher rationality or morality than the other version of political community.

The more problematic recognition however, came from the insurgent groups within the states which aim to undermine and replace state authority. The International law since 18th and 19th Century recognized the insurgents as combatants which contribute to the problem of separation between inter-state and inter-state conflict (Schmitt, 2003, p. 299). The non-intervention policy in international law was certainly undermined by the
recognition of the insurgents. The recognition of such group as political group gave them a leverage against the government since the recognition also gave sort of sovereignty for them. Since the prevailing norms of state were a centralized sovereignty within the given territory, the recognition of the opponent would certainly undermine the legitimacy of current government authority. The government attempted to criminalized any violent group and confined it domestic affairs would certainly failed when other states or international law had recognized the existence of insurgent groups. The breaching of non-intervention policy was possible by the principle of neutrality in international law. Recognizing the insurgents within the state was a way of questioning the legitimacy of existing government and protecting the legitimate political opposition against domestic oppression. In reality, the act of recognizing insurgents by powerful states was part of the effort to change the current territorial distribution of the conflicting state according to the interest of the powerful states (Schmitt, 2003, p. 300). Schmitt (2003, p. 305) adds that the needs to be constantly recognized by the other states in order to become state contained interventionist character. Thus, the non-intervention principle of sovereign state was nullified.

He later elaborates in *The Theory of Partisan* that the recognition and telluric character of a partisan is important to guarantee their status as political entity instead of criminal group. The recognition from other states not only ensure a material assistance for fighting against the government, but also legitimize their existence and may also legitimized the act not as merely random violence, but part of war on liberation or defense against the threat from government (Schmitt, 2007, p. 75). Besides, the telluric character of the partisan becomes important since the territorial defense reason makes the partisan can be addressed as political and define its enemy (Schmitt, 2007, p. 93).

This elaboration on Schmitt’s notion on territory reveals three important points of his thoughts. First, the importance of territory in social community is part of human nature since land is the source of human subsistence. The possession of territory ensures their survival and the distribution of territory is important to ensure an orderly coexistence within community. Second, the legitimization of territorial state as the sole sovereign political entity was dated back in 16th Century as an attempt to exclude the religious non-territorial sovereign in the international system. The territorial states were then adopted as the international norms on 19th and 20th Century to separate the civilized states from the uncivilized states. Third, the recognition also plays an important role in legitimizing a group as a political entity. The recognition comes from other territorial states who give
such recognition according to their norms and interests. Thus, when an insurgents or partisans want to gain recognition from the other states, they first have to comply with the state’s norms, specifically marking their territory, and also serve common interest with the third parties. By doing so, the international system maintains a territorial-bound sovereign entity as the sole legitimized political entity in the system.

Kant’s Notion on State and Territory

In Immanuel Kant’s perspective on territory and land ownership, he starts with the assumption that “Land is product of human imagination and social imaginaries” (Angeli, 2015, p. 41). By saying that, the importance of land possession not only rest on the material thing, but also the relations between people in determining the meaning of land possession and what can be done with such entitlement. Thus, the possession of land, as every other property, is not only determined by the concrete attachment between the owner and the property, but the recognition from other people on the possession so that the owner has the legitimate rights over the property. Kant calls this as the intelligible possession of property (Angeli, 2015, p. 42).

The intelligible possession is a social construct possession which imply that is preceded by the existence of a social community where the owner resides. This possession is constructed with the powers of reasoning which presupposes some degree of intersubjectivity and shared meanings among people in the social community. It means, the community recognize that the property is legitimately belongs to the owner and he has the rights to exclusively enjoy his property (Angeli, 2015, p. 42). However, the rights to possess are not the product of abstract social construction alone since it also has empirical character (Angeli, 2015, p. 43). At some point, the owner has to have a physical or tangible proof on how the property comes to his possession. This proof is part of the power of reasoning and the other members of community will further decide whether the proof is legitimate or not. The form of exclusive rights over the property and to what extent that this rights does not affect negatively to other people’s rights are subject to the shared understanding of the community members. Thus, the intelligible possession may differ from one community to others.

Angeli further explains Kant’s conception on the preceding social community in which the construction of intelligible possession takes place (Angeli, 2015, p. 44). The social community is indeed born from an empirical fact, namely the physical proximity. However, the proximity alone will not bind a group of people as community (Angeli,
2015, p. 45). It is strengthen by the legal membership which creates an exclusive space for the members of community living in certain proximity and exclude other people who may also live in close proximity but does not attain the membership. The concept of space precedes the physical distance and creates an intelligible map where the community makes imaginative boundaries and separates their territory from other territories (Angeli, 2015, p. 46). The intelligible map then creates the meaning of social and natural events for the members within the space. In Angeli’s (2015, p. 48) word “people understand the social or natural relevance of an event only insofar as it can be situated in the proper location, and this involves the preexistence of an intelligible map” and this is where the territory becomes important in a social community. The territory is not just a means to have a property rights or distribution of land, but it determines how the members of community interact with each other, maintain the order within the space, and make sense of the world they are living in. The intelligible map then become the basis of the physical territory and whoever comes inside the territory is expected to obey a certain order and norms of the community (Angeli, 2015, p. 46). Through the interaction and social construction, the outsiders who reside inside the territory is expected to also adopt a common understanding and become part of the community within the territory.

Kant’s thoughts on the importance of territory are arguably more abstract than what Schmitt’s thought. While Schmitt developed his framework of state territory through historical events and the principle of international law which penetrates in every political entity, Kant contends that the basis of territory lies within the social construction within the community. People who live together in certain distance is encouraged to create order among them and on the process, they construct an intelligible possession and intelligible map on the basis of common understanding. The intelligible possession creates exclusive rights over property, while the intelligible map creates a territory where they have common understanding on the meaning of social and natural events. The outsiders who happen to move into the territory are expected to comply with the current understanding of the community. Thus, for Kant, the state territory becomes important because it is a product of social construction among its citizens and the boundaries protects and enables their common understanding about social and natural events.

The Problem of Territoriality

Both Schmitt and Kant represent political thinkers who see territory as an essential character of social and political community, mainly for state as the prominent political
community in international system. The territorial character is attached so closely to the definition of state that modern thinkers derive their theoretical thoughts from the assumption that a legitimate political community always has a recognizable territory. This section will start by defining the concept of territory, continue with the elaboration of territorial problem, and the problem of public and private sphere in territorial claim.

Sack (1983, p. 55) defines territoriality as “the attempt to affect, influence, or control actions and interactions (of people, things, and relationships) by asserting and attempting to enforce control over a geographic area”. Furthermore, he gives further explanation which this paper will deliberately take as four main characteristics of territoriality. First, territoriality as a form of power which is exercised to control subjects in certain area (Sack, 1983, p. 56). In this sense, territoriality makes a state capable to control everyone and everything within his territory. Second, territoriality plays as a restriction or limitation of certain area where the control can be exercised. As a limitation, it has various degrees of territoriality. All states have to control the flows of goods and people to his territory, but some states impose stricter rules than the other. In other example, all states need to monopolize the use of physical violence in their territory. Some states impose it by prohibiting any civilians to have guns, but other states permitting civilians use of gun under certain circumstances. Third, territoriality is used as part of hierarchical organization where the one who exercised territoriality is in the higher, if not highest, strata than his subjects. Sack (1983, p. 57), just as Kant, notes that territoriality is different from a physical distance since it is social constructed by nature. Thus, territoriality is the product of social interaction, specifically a hierarchical interaction between the one who attempt to exercise power and his subjects. Lastly, it is also argued that territoriality plays as the most efficient strategy of enforcing control, as it is also a means to realize power to a physical being (Sack, 1983, pp. 58-59). Just like the state apparatus, territory marks the existence of state which makes it easier to be recognized in international realm.

The elaborate definition on territoriality shows that it is logical for a complex hierarchical order like state to use territoriality as a means to exercise its power to its citizens and anyone in its territory, as well as controlling all properties within. However, the problem arises not when using territoriality as the means to control, but when the territoriality is treated not as the means, but as the norms of state. Agnew (2003, p. 51) termed this tendency as the “territorial trap”.
Agnew (1994, p. 61) starts his assumption by defining state as the only social and political organization which claims itself as the sovereign. In this context, one of the main aspects of state sovereignty is an exclusive territorial claim where state has absolute control within the territory. It distinguish the state form any other social and political organization at present. In many classical political thoughts, state came into being as the result of group of people seeking for security and in order to achieve that, they built a political body by sacrificing their freedom and absolute obedience to the political body so that it becomes the sovereign (Rousseau, 1999, p. 55). Moreover, security is effectively enforced within a certain geographical area and thus, the sovereignty has to define its territory in order to provide an effective security for its citizens. This relation between security and territory has four consequences (1994, p. 62).

First, political identity is solely belongs to the territorial state and any other political identities such as ethnic and religious identities are labelled as threat to security (1994, p. 62). The national identity become the prioritized identity and the other identities are seen as a minor identities which hardly recognized by international system. It becomes problematic in the independence of African countries in the mid-1960s when most of the colonialized world demanded their independence but the international system compelled them to define their territory in order to become an independent state (2003, p. 56). The short period of nationalism diminished as soon as they gained their independence. The various ethnic, religious, or economic identities are soon trapped in one territory while national identity building is failed to penetrate into society. It certainly becomes a constant problem since the international system only recognizes the national identity despite the domestic unrest of intersociety conflicts within the African.

Second, the rigid differentiation between those inside and outside the territory generates the problem of others. The others are those who are not complying with the state’s order and usually be considered as a possible threat. Coercion and conflict become the major tools to settle a clash of interest with the others in anarchic world outside the territory (2003, p. 57). This also becomes problematic since the threat to security should also be defined in territorial term. When an unknown political group which does not have clear claim over territory becomes an imminent threat to security, the state is prone to awkwardly respond by having preventive attack or retaliation to certain areas where the threatening group usually conducts its activities. This response might not be an accurate measure towards the unterritorialized political group since the area may not be the source of the threat.
Third, the homogeneous perspective of all territorial state (1994, p. 63). It happens mostly in neorealism strand of international relations who sees state as the smallest unit of analysis in international system and that every one of them always has similar behavior. This tendency neglect the fact that every state came into being by various historical context which may leads to different values and different perspective on certain circumstances.

Fourth, the sole focus on territorial state as the only possible sovereignty denies the other alternative options. The only alternatives that we have are continuing the current territorial order or integrating to the regional or global super-state (1994, p. 64). This mode of thinking denies the fact that some political groups are capable of exerting an effective authority and order without recognizable territory.

This paper argues that the territorial trap which penetrates both in political and academic realms is rather inevitable as it is already become part of the world culture. Meyer, Boli, Thomas, & Ramirez (1997, p. 152) explains the penetration of external culture to every nation state as isomorphism which despite the different resources, experience, and historical context, every political groups in the end pursue the same recognition, claims over territory, and have the same behavior of the older nation state. However, the emergence of threat for nation state security from some violent entities such as Al-Qaeda or other non-political entities such as trans-organized crimes shows that the world culture may influence these groups differently. Groups like Al-Qaeda operate within transnational network which makes the threat has no apparent territory. On the other hand, some groups like Colombian drug traffickers during 1970s and 1980s operated within the state territory whereas the citizens in the area chose to obey the traffickers rather than the state (Williams, 2004, pp. 167,170).

Although these groups have different goals, values, and activities, they have similar feature, which is private territory. The private territory means that they share a socially constructed space among their members, but the space is not recognized by the other people outside their group. It differs from state public territory which is legitimately recognized by international community. Al-Qaeda and similar violent groups may seek for recognition of their territory but will absolutely be denied by the international community, while trans-organized crime groups enjoy private territory within weak state’s territory which covers their illicit activities. Thus, the missing element from these groups is the recognition of their territorial claim. For Schmitt, the refusal of recognition for this group will delegitimize their authority. However, at the same time, the failure to
recognize them also creates problem for the threatened states which always need to identify the territory of the threat source. Unable to locate the threat within the public territory, the state escort to attack any public territory which is suspected as the safe haven for the groups as we can see in United States retaliation attack against Al-Qaeda to Afghanistan in 2001.

CONCLUSIONS

As this paper shows, the relations between territory and state had strong historical roots in academic thinking. Territoriality plays an important role in maintaining effective security within state and ensures the sovereignty from the citizens, while at the same time is an important requisite to gain recognition from international society of states. Territory also depends on the common understanding of space within the political community which separates the citizens and the outsiders. However in further development, as shown in the case of postcolonial states, the marking of their territory does not depends on the citizens’ social construction of space, but rather as an obligatory requisite for recognition. This tendency to neglect the abstract social construction leads to the territorial trap which not only affects the postcolonial states, but also the whole society of states. One of the significant impacts is the inaccurate respond against threat from non-territorially recognized groups.

While the world culture of territorial state penetrates every aspect of international society, some groups may act differently by defining their territory inside the private realm. These private territorial groups may have some degree of authority and territoriality towards their subjects. The authority of this group over its subjects causes the subjects to obey the group rather than the state where they live in. The shift of obedience is certainly undermines the sovereignty of the state and may lead to civil unrest within the state. However, state’s response to fight this threat is prone to inaccuracy due to the inability to identify the threat’s public territory. Thus, an open-mindedness may be needed in order to identify alternative options other than territoriality action.

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