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## The Legality of Intervention for Protection of National Abroad In Order To Solve Piracy and Hostage (A Study of Law Concerning the Possible Use of Armed Force to Release Hostages Detained by Abu Sayyaf Armed Group)

Syofirman Syofyan

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## URGENCY OF BOUNDARY MARITIME MANAGEMENT, STRATEGIES PREVENT CONFLICTS

Josina Augustina Yvonne Wattimena\*

\* Faculty of Law, Pattimura University

Correspondence: yvonne wattimena@yahoo.com

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### Abstract

*The boundary of maritime between countries is a very important issue for coastal States as well as archipelagic countries such as Indonesia. Indonesia is adjacent to the sea with ten neighboring countries. Until now, Indonesia has not completely resolved the sea border issues with neighboring countries. This is due to the determination of the sea boundary is not easy, very closely with various considerations such as; Political, legal, strategic, historical, economic, environmental, geographical, geological and geomorphological. With the enactment of the 1982 Sea Law Convention as a new constitution for the regulation of the law of the sea, consequently Indonesian as an archipelago country undergoes many changes that directly or indirectly affect the determination of the territorial sea border, exclusive economic zone as well as the continental shelf with neighboring countries. However, the establishment of Indonesia's maritime boundaries with neighboring countries should be speeded up in its settlement. The basis of the argument is that the frequent border conflicts do not seem to be very potential to threaten the principle of good neighborly life as it is acknowledged in international law. Therefore, government functions can be maximized through integrated marine management. The integration of the management undertaken will clarify and reinforce the certainty and jurisdiction of Indonesia. Given this certainty and jurisdiction it is of great advantage to dimentionally access and manage biodiversity sources of marine biological mnon. This becomes an effective means of affirming the sovereignty and sovereign rights and legitimacy of the State.*

**Keywords:** *Boundary Maritime, Management, strategies, conflict*

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## I. INTRODUCTION

The poem by Marya Mannes cited by the author describes how very potential the border as a conflict arena between neighboring countries, which is not impossible will turn into a war that caused disaster and victim. This is of course very worrying and even gives a frightening feeling, considering the imaginary boundary lines set by the jurists as a form of control over a territory, will not be able to provide a sense of justice for those who want to control the same territory.<sup>1</sup>

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<sup>1</sup> Aktiefa Tri Tjitrawati, Strategi Pemilihan Forum Sengketa Perbatasan Wilayah Per-

Border conflicts often color the lives of countries<sup>2</sup>. Holsti defines border conflicts as conflicts that occur due to a mismatch of state views with other states on the ownership of a territory or on rights acquired near the territory of another country. Border conflicts can also be understood as disputes concerning the border rights of a party and are often reacted with armed conflict or reaction that leads to the use of hardpower<sup>3</sup>. Since the enactment of the post-Westphalia sovereign system of sovereignty, the states have begun to lay down the state sovereign system. The system emphasizes a sovereign system free from foreign interference by establishing a real regional border system. From the Westphalia system, finally all countries in the world began to impose strict restrictions on the territory of the state, and when the agreement is not reached arise conflict that ends with violence and war.

Contextual border becomes a very crucial issue and impact on various issues of good political, economic, social, law, defense and security and so forth. Contextual borders of Indonesia, if drawn from geographical facts, then Indonesia has a border of land and sea. Indonesia's land border with three countries namely Malaysia, Timor Leste, and Papua New Guinea. As for the Sea Border with ten neighboring countries such as Malaysia, Papua New Guinea, Singapore, Philippines, Palau, Australia, India, Thailand, Vietnam and Timor Leste. The existence of the Indonesian marine border is closely related to the enactment of the 1982 Sea Law Convention or the so-called United Nation Convention On the Law of the Sea (UNCLOS).

The 1982 Sea Law Convention is the result of a renewal effort and is a very comprehensive regulatory framework and covers virtually all marine activity so it is considered a «constitution for the ocean».<sup>4</sup>

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airan, Lokakarya Hukum Laut Internasional, Satu Dasawarsa Pemberlakuan Konvensi Hukum Laut 1982: Evaluasi Implementasi Nasional dan Tantangan Ke Depan (International Law of the Sea Workshop, A Decade of Enforcement of the 1982 Law of the Sea: Evaluation of National Implementation and Challenges in the Future), Ministry of Foreign Affairs, 10-13 December 2004, Yogyakarta, p. 1.

<sup>2</sup> Holsti K.J., *Politik Internasional: Kerangka Untuk Analisis*, Ed. 4, Translated by M Tahir Azhary, Erlangga' Publisher, Jakarta, 1983, p. 170.

<sup>3</sup> Malik, Ichsan, *et. al*, *Buku Sumber Menyeimbangkan Kekuatan Pilihan Strategi Menyelesaikan Konflik Atas Sumber Daya Alam*, Kemala Foundation, Jakarta, 2003.

<sup>4</sup> Etty R. Agoes, *Implementasi Nasional Hukum Laut 1982, Dalam Lokakarya Hukum Laut Nasional, Satu Dasawarsa pemberlakuan Konvensi Hukum Laut 1982,*

Such renewal efforts include the recognition and arrangement of the «archipelago state concept». One of the consequences of the «Archipelago State Concept» is the existence of a new principle of the archipelagic straight line. Consequently the territory of the Republic of Indonesia must be reformatted, from the territorial sea, the boundary of the continental shelf, the exclusive economic zone. When these boundaries are about to be set up will be intersect even tends to overlap with neighboring neighbors both side-by-side. This fact is closely linked to the sovereignty of the state, and the existence of sovereign rights, as prescribed by Prescott and Schofield, «with such boundary conditions is certainly not an easy question to resolve. Whereas on the other side of the boundary shows the existence of the state that must be emphasized because it is very important to ensure the clarity and certainty of jurisdiction (jurisdictional clarity and certainty) «.<sup>5</sup>

In line with the above opinion Tri Poetranto convey his opinion that the border area has a strategic value such as; a) border areas have an important influence on the sovereignty of the state; b) the border areas have interrelated ties with activities carried on in other territories adjacent to territories within the state and between countries; c) the border area has an influence on the condition of defense and security, both regional and national scale<sup>6</sup>. Thus, the management of border areas is a demand to eliminate potential conflicts and to prevent the “disappearance” of border areas. This is related to Bernard Kent Sondakh’s<sup>7</sup> explanation that the “loss” of the border region is determined by four factors :a) is lost physically as a geological impact such as abrasion, and engineering or human activities; b) loss of ownership for switching through the process

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Evaluasi, Implementasi Nasional Dan Tantangan Ke Depan ((International Law of the Sea Workshop, A Decade of Enforcement of the 1982 Law of the Sea: Evaluation of National Implementation and Challenges in the Future), Ministry of Foreign Affairs, Yogyakarta, 2004, p. 1.

<sup>5</sup> Prescott and Schofield C, *The Maritime Political Boundaries of the World*, Second Edition, Martinus Nijhoff Publishers, 2005, p. 216-218.

<sup>6</sup> Tri Poetranto, *Bagaimana mengatasi Permasalahan Di Daerah Perbatasan*, Buletin Litbang Departemen Pertahanan (The Research and Development, Ministry of Defense Bulletin), STT, No. 2289, Vol. VIII No. 14 Year 2005, p. 32.

<sup>7</sup> Bernard Kent Sondakh, *Peran TNI AL Dalam Pengamanan Pulau-Pulau Terluar ROI*, dalam *Buku Sengketa Sipadan-Ligitan, Mengapa Kita Kalah*, O.C. Kaligis and Associates, Jakarta, pp. 78-79.

of military force and legal process; c) disappeared under surveillance, Indonesia with a large number of islands can, of course, be escaped from surveillance and exploited by persons or governments of neighboring countries, and; d) socioeconomic and political disappearance, due to social interactions, economic societies followed by changes in economic and political structures.

Based on the considerations outlined above, this paper is intended to examine how the urgency of border area management is played through state functions in a framework to prevent conflict.

## II. TERRITORY IN INTERNATIONAL LEGAL PERSPECTIVES AND NATIONAL LAWS

In the Montevideo Convention on the Rights and Duties of States 1933, the State must have four qualifications: population, territory, government and capacity to relate to others. Furthermore.<sup>8</sup> J.L Brierly asserted that; “Basically for international law there is the understanding that a State occupies a certain area on the surface of the earth, and in that area it usually exercises jurisdiction over people and goods. Affirmed that:

*‘a new states comes into existence, when a community acquires not momentarily, but with reasonable probability of permanence, the essentials Characteristically of a state, namely an organized government, a defined territory, and such degree of independence of control by any other state as to be capable of conducting its own international relation ’’<sup>9</sup>*

Based on the above description, it may be stated that for the existence of a State by international law requires the existence of a certain area on the surface of this earth inhabited by a permanent resident nation. Thus the territory is defined as the space where human beings who become

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<sup>8</sup> Montevideo Convention (1933) stipulated that: “ *the state as person of international Law Should Posses the Following qualifications;(a) a permanent population (b) defined territory, (c) government and(d) a capacity to enter int. relation with the other states*”

<sup>9</sup> J.L Brierly, *The Law of Nations, An Introduction to the International La of Peace*, 5<sup>th</sup>ed Oxford University Press, p. 126 and 129.

citizens or residents of the State concerned live and run its activities

Based on the facts and geographical conditions of a State, the territory of the State will surely be adjacent to the territory of the other State. By him arise aspects that affect each other, especially related to the problem of the situation and conditions of the border concerned. The state border is often defined as an imaginary line on the surface of the earth that separates the territory of a country from another. To the extent that this boundary is expressly recognized in an international agreement or publicly acknowledged without express assertion, the frontier is part of a State's right to its territory. On the basis of that also then every State has authority to set its outer border area<sup>10</sup>.

The existence of the territory of the State becomes so important because this element strongly indicates the existence of a State. In the international legal system the region becomes one of the important characteristics of a State. The argument is very clear that a State to be internationally recognized must have clear physical boundaries of the State. In this case that the State concerned can exercise sovereignty and all the powers attached to it.

Inu K Syafie states, "the region is a location or a certain area with all the potential content of the region and the power that can be utilized starting from sea, land and air both physical and non physical. It is complex about all the natural resources contained in it"<sup>11</sup>. Even Oppenheim reinforces it by saying in the absence of a territory with certain limits a State can not be regarded as the subject of international law<sup>12</sup>. So the understanding of the State here can not be separated from the basic concept of a geographical union accompanied by the sovereignty and jurisdiction of each State. Thus the territory of the State becomes a substantive and fundamental concept in international law to show the existence of the supreme and exclusive powers of a State within its territorial boundaries<sup>13</sup>.

<sup>10</sup> Sobar Sutisna, Tri Patmasari dan Sora Lokita, "Peta Negara Kesatuan Republik Indonesia", available at <http://www.bakorsurtanal.go.id>, accessed on 22 August 2017.

<sup>11</sup> Inu Kencana Syafie, *Pengantar Ilmu Pemerintahan* (Edisi Revisi), Bandung, Refika Aditama, 2001, p. 98.

<sup>12</sup> Oppenheim L., *International Law, A Treatise*, Vol I, Edited by H Lauterpacht, English Language Books Society, Longmans, London, 1996, p. 121.

<sup>13</sup> Mochtar Kusumaatmadja and Ety R Agoes, *Pengantar Hukum Internasional*,

I Wayan Parthiana argues by saying that the territory is a space where people who become citizens or residents of the country concerned live and run all its activities. While the definition of territory according to Rebecca M. Wallace is a tangible attribute of the state and within a certain geographical region in place, a country enjoys and carries out its activities.

In the provisions of national law in this matter In Government Regulation Number 26 of 2008 on National Spatial Planning on the point of weighing states that the territory of the Republic of Indonesia is an archipelago-characterized archipelago state, both

as a unified container that includes; land space, space of sea and air space including space in the earth, as well as resources, need to be wisely improved, wise and efficient management efforts based on spatial rules so that the national territory's quality can be sustained for the sake of the realization of the general welfare and social justice in accordance with the constitutional basis of the 1945 Constitution of the Republic of Indonesia.

Meanwhile, Article 1 point (1) of Law Number 43 Year 2008 regarding State Territory is said to be the of the state as one of the territorial elements of the land, inland waters, archipelagic waters and territorial sea along with the seabed and subsoil, and air space above it, including all sources of wealth contained therein.

Listening to the various concepts of territory described above, it can be drawn red thread that the territory is the most important element in the formation and even the survival of a country, including land, sea and air space. Territory is not solely the space where the citizens of these countries perform activities only. More than that is very closely related, intertwine with geopolitical dynamics, geostrategis and geoekonomi both on a regional scale and global scale.

From the real geographical aspect of Indonesia occupies a vast area of the sea almost about 64.85%<sup>14</sup> and the rest is the land area. On the land territory Indonesia hatch 3 neighboring countries namely; PNG,

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Alumni Press, Bandung, 2003, p. 162.

<sup>14</sup> Indonesia, "berapa-luas –sebenarnya-laut-indonesia," available at: <http://www.indonesia.go.id>, accessed on 18 September 2017.

Timor Leste and Malaysia, while the Indonesian maritime territories border on 10 neighboring countries: Malaysia, Singapore, Vietnam, Thailand, India, the Republic of Palau, Philippines, Timor Leste, Australia and PNG. The borders of Indonesia's marine territories with these neighboring countries include the Territorial Sea, ZEE and the Continental Shelf. If listened to the border includes sovereign rights and absolute sovereignty.

Indonesia's maritime border with this neighboring country is limited by the existence of the outermost small islands. Based on Presidential Decree No. 16 of 2017 there are 111 small outer islands<sup>15</sup>

The outermost islands bordering the neighboring country are usually abundant with natural resources, but have not been managed optimally. If this has not been effectively handled, then the sovereignty of the state is at stake.

### **III. THE EXISTENCE AND CHARACTERISTICS THE OUTERMOST ISLANDS IN BORDER AREAS**

In essence the boundary area is the end of the sovereignty of a country and the beginning of the sovereignty of another country. Within the borders of this country a country has complete and exclusive sovereignty (sovereign right exercised in full). Therefore, the existence of this border becomes very important for a country.

In general, the border is defined as a demarcation line between two sovereign states<sup>16</sup>. On the other hand, the border is often defined as an imaginary line above the surface of the earth, which separates the territory of a country from another country. But Jones's border expert says that a border is not merely a line on a frontier<sup>17</sup>. In the literature, the use of the term frontier is often equated between frontiers and

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<sup>15</sup> Fajar Pratama, "Pemerintah Tetapkan 111 Pulau Terluar, Mana Saja?" available at <http://news.detik.com/berita/d-3444761/pemerintah-tetapkan-111-pulau-terluar-mana-saja>, accessed on 18 September 2017.

<sup>16</sup> Rizal Darmaputra, *Manajemen Perbatasan Dan Reformasi Sektor Keamanan*, ID-SPS Press, Jakarta, 2009, p. 3.

<sup>17</sup> J.G. Starke, *Pengantar Hukum Internasional (Introduction to International Law)*, PT Sinar Grafika, Jakarta, 2007

boundary, where as in fact both terms are very different meanings. The border is called a frontier due to its position which lies in front (front) or behind (hinterland) of a State. While the term boundary is used because of its binding or limiting function (bound or limit) of a political unit, in this case the State is intended. Boundary refers more to the State as a sovereign spatial unit, and is a unified, integral whole and is integrated with each other<sup>18</sup>. In addition, D. Whittersley discloses that the Boundary is the border of the state or border where the demarcation of the state lies in the predetermined rotation of the world, and binds together its people under a sovereign law and government. Frontier is a border area within a country with limited space but because its location is adjacent to other countries, so that external influence can enter the country which resulted in problems in the local economic, political and socio-cultural sector which then also affect the stability and security and integrity of a country<sup>19</sup>.

Based on the definition and function of the border, O. J. Martinez, grouping the border into various types, namely:

1. Alinated Borderland; namely a border region that does not occur cross-border activities, as a result of raging wars, conflicts, domination of nationalism, hatred, ideology, religious animosity, cultural differences and ethnic rivalry
2. Coexistent borderland: This is a border area where cross-border conflicts can be pushed to a manageable level even though problems still arise relating to strategic resource ownership issues at the border.
3. Interdependent borderland namely: a border region whose two sides are symbolically connected by relatively stable international relations. Residents in both parts of the border region, as well as in the two countries are engaged in mutually beneficial economic activities and at roughly equivalent levels, for example, one party has production facilities while the other has cheap labor.
4. Integrated borderland namely: a border region whose economic

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<sup>18</sup> Suryo Sakti Hadiwijoyo, *Perbatasan dalam Dimensi hukum Internasional*, Graha Ilmu, Yogyakarta, 2011, pp. 63-64.

<sup>19</sup> D. Whittersley, *Political Geography: a Contemporary Perspective*, New Delhi, 1982, p. 101.

activity is a unity, nationalism is much receded in both countries and both are incorporated in a close alliance.

Back to the geographical context of Indonesia which in addition has land border but also sea border, with the outermost islands as the “front porch” of NKRI territory. These outer most islands are so important their existence as border areas with neighboring countries. The outermost islands in their existence as border areas, are still very far from the touch of development. The lack of infrastructure and the disparity of social, economic, and cultural disparities resulted in the erosion of nationalism from those in the region. From a social perspective, the people who live on these small islands, their social construction is different from those who live on the center of economic growth and government. Its socio-political gradation is not as strong, the marginalized feelings of the national development process can change their thinking rather than being treated unfairly and more extreme, preferably joining the more prosperous and economically strong neighboring country. This is what to watch out for in the fact that economic, socio-cultural transactions have taken place with a neighboring country that is feared to be a political transaction that results in the diminishing sense of patriotism towards its own homeland.

This picture suggests that the development paradigm on the outermost small islands must be changed by every stakeholder. It has been 12 years since the Presidential Decree No. 78 of 2005, as the instrument of border area management, but this condition has not shown significant development process. Problems of poverty, social disparity, economy continue to occur in the region. Physical development in the outermost islands of the outer border region is still considered to be far from its development. Whereas President Joko Widodo, has set the “program nawacita” and promised to carry out the development of coastal areas. The government’s commitment to accelerate the development of the outer islands that are the “front porches” are still constrained due to infrastructure constraints and high poverty rates, which reach 35 percent<sup>20</sup>. This figure is still far above the national poverty rate which

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<sup>20</sup> Anon, “Kenapa Pembangunan di Kawasan Pesisir dan Pulau Kecil Masih Tertinggal,” available at <http://www.mongabay.co.id/2017/08/23/kenapa-pembangunan-di-kawasan-pesisir-dan-pulau-pulau-kecil-masih-tertinggal/html>, accessed on 21 August 2017.

now live 10, 64 percent.

Considering the importance of the outermost islands that are “the front porch, the government has issued Presidential Decree No. 16 of 2017 stipulating that Indonesia has 111 outermost islands. 42 populated islands and 69 uninhabited islands. These small outer most islands are spread over 18 provinces, 27 districts, 57 sub-districts and around 530 villages. Previously the government had enacted the Presidential Regulation No. 12 of 2010 on the National Agency for Border Management there were about 14 ministries with 4 non-ministry leaders and governors who were given the task of coordinating, intervening the development of small outer most islands.

Indeed, if observed there are efforts and steps that have been done by the government, but has not shown optimal results. Which should be considered that the outer islands located in the border area generally have the same problem, but there are typical problems that are not necessarily the same so penangannyannya also different. Consequently, the management of border areas consistently and consistently with respect to all sovereignty and sovereign rights must be demonstrated by the state’s ability to manage integrally and comprehensively the boundaries of the multidimensional territory.

#### **IV. FUNCTIONS AND ROLES OF THE GOVERNMENT IN THE MANAGEMENT OF BORDER AREAS AS AN EFFORT TO PREVENT CONFLICT**

Stephen B. Jones<sup>21</sup> suggests there are generally 4 (four) criteria in the management of border areas. These four criteria are interconnected with each other and constitute a set of interrelated sets of decision-making in their implementation. The four criteria are allocation, delimitation, demarcation and administration. Briefly step by step the explanation :

. The basis of this principle all the colonies of former colonies will be inherited by the new state (as you possess, you shall continue to possess). The application of this principle can be found in the use of a straight

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<sup>21</sup> Stephen B Jones, *Boundary Making: a Handbook For Statemen, Treaty Editor and Boundary Commissioners*, Carnegie Endowment For International Peace, Washington DC.

line in the occupied territory. For example; The island of **Allocated**: refers to political decisions on territorial coverage but the end result is always arbitrarily imposed and by it consistently the territory is divided into two types<sup>22</sup>: the first; using a straight line connecting the coordinate points of the identified natural landscape such as waterfalls, villages, streams, rapids placed on the map. Second; boundaries allocated by applying the principle in the sense that there is a statement on the basis of the division of territories and the desired results. If it refers to principles in international law it has long been known the principle of *uti possidetis juris* Timor is divided into two with the boundary of a line across the waist of the island of Timor

**Delimitation**: delimitation is understood as a determination of boundaries and is used for land and sea borders. Implementation is considered an effective way of asserting sovereignty, legitimacy and rule of law and to avoid overlapping areas, as prescott and schofield have suggested and for guarantee the clarity and certainty of jurisdiction (jurisdictional clarity and certainty. The 1982, maritime law convention became one of the legal sources used in regulating maritime delimitation. The recognition of Indonesia as an archipelagic country provides an advantage in claiming a complete maritime zone such as; a 12-mile-long territorial sea, an additional zone of 24 nautical miles, an exclusive economic zone of 200 miles and a continental shelf may exceed 200 nautical miles. Thus the outer islands greatly affect the vast maritime territory that can be claimed. This is the island arguing why Presidential Regulation No. 78 of 2005 was established which was subsequently replaced by Presidential Decree No. 16 of 2017 which there in stipulates the existence of 111 small outer islands.

**Demarcation**; more directed to the efforts of the state to reinforce the boundary line along the border of the two countries. Associated with the affirmation of boundaries on land becomes something that is not too difficult considering the boundary marks to be made are usually monuments, pillars, taking into account the features and landscapes of nature and the inherent physical signs such as rivers, mountains, lakes and other. Unlike the case with affirmation in the sea refers only to the 1982 Sea Law Convention, given the opportunity for both countries

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<sup>22</sup> Prescott and Triggs, op. cit., p. 61

to conduct a joint boundary mapping survey. The mapping will be conducted jointly by through collective bargaining and agreement. The maps that will be used continue to refer to TALOS published by the International Hydrographic Bureau that was refined in 2006 with a scale range for ZEE and 1: 100,000 to 1; 1000,000 continental shelf. intermediate for territorial sea scales between 1, 50,000 to 1, 100,000.

The use of different maps can lead to calculation of area or different distances. The existence of the same extent and distance will be equal to the unattached agreement. This is because one of the parties feels that their rights are being ignored and this is certainly unfair and away from one of the principles of “equitable” delimitation.

**Administration:** referring to the management stages put forward by Lapradelle and Jones in the writings of Prescott and Triggs it is said that the administrative stage as; is concerned with the maintenance of those boundary marks for the long as the boundary exists (related to the maintenance of boundary markers as long as the border exists). This understanding when viewed from the phrase that must be extended its meaning not only to how to maintain, keeping,, and supervise the boundary marks so as not to shift or even change according to the agreement that has been made in the agreement. The actions of the state must go further than the meaningful meaning. The state as authority organized must show its role and function to protect and to give community state welfare.

With opinion adoption W. Friedman<sup>23</sup> a econom in discription state role and function the state as the regulator, the state as the provider, , the state as the enrepreneur and the state as a umpire with the aims the management of land and sea borders (include the outermost islands). Function and the role of the state as the regulator to establish various regulations directly concerned with the management of small outer islands. Establishment and enactment of legislation relating to maritime boundary management can be said in terms of volume or quantity is more than enough. However, the problem is not in terms of quantity but on the other hand whether materially the substance of the existing legislation has a degree of harmonization and synchronization in the management

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<sup>23</sup> Wofgang Friedman, *The State and the Rule of law in a mix Economi*, Steven and son, London, 1971, p. 3.

of border areas. The question arises as a reflection of the various legal provisions that have overlapped both vertically and horizontally. Not to mention the many laws and regulations correlate closely with the authority carried by each ministry, the relevant institutions.

The next function of the state as a provider in the assignment of duties and responsibilities is closely related to the concept of the welfare state (welfare state). In this concept the capacity of the state as the fulfillment of responsibilities is to provide and provide social services and provide a reasonable standard of living. This should be implemented by the state with various policies, programs and the provision of maximum development budget, especially in the implementation of programs on the border areas and outermost islands.

The function of the state as umpire is substantially not limited to organizing, or regulating and providing protection, but the follow-up is the extent to which the state exercises “controlling”). If the controlling function can not be done well, then the achievement of the goals to be achieved in the management of the outermost islands will not be realized. Thus the importance of controlling functions in the implementation of an activity or government-managed worker so that Saiful Anwar<sup>24</sup> stressed that the control over the actions of the government apparatus is intended for the implementation of tasks that have been set to the purpose and to avoid deviations. The true meaning of monitoring is the process of execution, assessment and correction, evaluation and comparison of all actual work outcomes achieved and outcomes that should be achieved in accordance with predetermined plans or desired outcomes. By that it can be said that the function of controlling is an effective advice or media so that it can be used as guidance in determining the appropriate and effective policies to achieve the goal of managing the outermost islands located in the border region.

## **V. ANALYSIS PROBLEMATIC MANAGEMENT OF BOUNDARY MARITIME**

In general, the analysis of the problem of maritime boundary management between Indonesia and neighboring countries concerns

<sup>24</sup> Saiful Anwar, *Sendi-Sendi Hukum Administarsi Negara*, Gelora Madani Press, 2004, p. 127.

several main issues, namely; a) the establishment / delimitation of the maritime boundary with neighboring countries; b) safeguards : c) law enforcement of various crimes committed and taking place in border areas such as illegal fishing, illegal trading, human trafficking, illegal logging, people smuggling, and other; d) development gaps with very wide coverage as they relate to the population and supporting infrastructure. For these mentioned issues, if they are parsed it will usually lead to and lead to several aspects; such as security issues, access to manage marine natural resources, rights and obligations of coastal states in the geostrategic, geopolitical and geo-economic dynamics constellation. State integrity and sovereignty are at stake in the management of maritime boundaries. The delimitation of the maritime boundary is regarded as an effective way to uphold sovereignty, sovereign rights and legitimacy of state law. Indeed, in UNCLOS 1982, there are provided legal provisions which can be used as reference to address the maritime boundary issues between two opposing and adjacent countries for both territorial sea and ZEE and Continental Shelf. However, it is not explained in detail only the steps that can be used in the delimitation that is like the center line or equidistance principle and equitable principle. For territorial sea delimitation under the 1982 Sea Law Convention other than the centerline principle but also there are considerations of special conditions and historical considerations. As for the delimitation of ZEE and the boundary of the continental shelf line equidistance is not the final is still a “starting point” to take further action in the form of negotiation by considering the special conditions as a justifiable step with the principles of justice<sup>25</sup>. With such a context the maritime boundary of the result can be a modified equidistance line based on relevant considerations.

The explanations described here in after the parties to which the bordering States may be brought to the negotiating table. The issue is not easy to invite these countries to the negotiating forum. The facts found to date have not been completed and the completion of maritime boundary delimitation can be expected many factors that also influence. These factors can come from within and from outside; such as the goodwill of both parties to negotiate as a manifestation of the principle of sovereignty of two states; this maritime boundary

<sup>25</sup> Prescott dan Schofield, *The Maritime..*, p. 240.

delimitation agreement must also be carried out with all my heart, without any doubt because this covenant boundary is very urgent but also very sensitive, once set unlikely to be amended, in accordance with the Vienna Convention of 1969 which regulates international treaties. Thus, border stability remains a priority if it does not create the potential for conflict; the existence of various economic factors, the juridical politics that contributed to the technicality of the negotiations; the absence of standard norms that can be used to guide the state to create a fair border and accepted by both parties. This problem is based more on the discretion of countries that are coincidental 'sovereign, rigid, and inflexible, will automatically generate ego and the interests of their respective countries; the public pressure from within the country to quickly resolve the border issues. Apart from the above-mentioned factors of influence, it should be justified that the management of the outer most islands of the border areas is always based on the advantage and disadvantage and more incidental, if there is an event carried out by the other party then indicates the aggressive nature to deal with as stated by Alex Retraubun<sup>26</sup>. The fact that the management of the outer most islands in the marine border areas is not necessarily dependent on the small and large islands, whether there are advantages or disadvantages in managing the islands, whether there are residents or just empty islands, but that must be enjoyed that the management of the island the island reflects the country's capabilities and intelligence in maintaining the country's sovereignty and integrity in the eyes of the international community. Geostrategically, geopolitically, and geo-economically, it is greatly benefited because only an island can claim the various maritime zones that surround it. Here is the presence of a caring country and give full attention to the rights which it possesses and the dignity of a nation in the international eyes. Moreover, there is no chance of conflict between neighboring countries.

Reflecting on the contemporary reality in which Indonesia's maritime boundary agreements that have not been resolved with neighboring countries strongly influence state policy to manage maritime boundaries. Not yet clear and without definite position provisions,

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<sup>26</sup> Alex S. W. Retraubun, Belajarlah dari Kasus Sipadan-Ligitan, Kompas, Kamis 19 Desember 2002, p. 1.

the management of maritime boundaries will be difficult even tendency will incur losses. These disadvantages are highly multi-faceted, such as, juridical, economic, social, political, defense and security. This is even more widespread to the disadvantage of good neighboring, at any time can be an open conflict between countries.

## **VI. CONCLUSION**

This paper concludes that the urgency of maritime boundary management is mandatory and urgent to be implemented by the state as a manifestation of sovereignty and sovereign rights held by the state. Although to implement and achieve it a lot of factors that greatly affect. This is a necessity that must be played by the state through its functions; such as state as regulator, provider, or umpire. The presence and alignment of the state through the effective management of maritime boundaries will have implications both internally through changes in the welfare improvement of boundary communities which will, by itself, encourage them to safeguard their country's sovereign and sovereign rights. This will certainly minimize potential conflicts that may occur. Externally with the management of maritime boundaries will show the ability and responsibility of the state to the existence of its territory that must be maintained in the eyes of the world and good relations with neighboring countries. Therefore, the management of the outermost islands in the border area requires synergy and coordination spirit, integrated cooperation from each ministry, related institutions to achieve the expected management objectives; the territorial integrity of the Unitary Republic of Indonesia along with all aspects of national defense and defense and create regional stability; utilization of natural resources in the framework of sustainable development; and empower communities in order to improve welfare. This whole aspect if it can be implemented by the state will prevent conflict both inside and out

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