

Legal Status of MoU Determining The Limits of The Territory Area Between Indonesia and Malaysia

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ABSTRACT

The border region is the front territory of the country jurisdiction and posses an important role in the matter of enforcement of national law sovereignty. Sebatik Island owned by two countries, Indonesia and Malaysia. Demarcation of territorial boundaries in Sebatik Island refers to Memorandum of Understanding between the Government of Malaysia and the Government of the Republic of Indonesia regarding Surveys and Demarcation of the Border Line of 1973 which is followed up with the results of a joint Surveys and Demarcation on the island of Borneo poured in the form of an advanced Memorandum of Understanding containing each boundary point which has been agreed upon. From 1973 to 2017 there are 9 (nine) points of Outstanding Boundary Problem (OBP) on Sebatik Island that have not been agreed by both countries. The boundary disputes have led to unclear legal status of Sebatik Island's land border territory within the framework of international treaty law and also led to the uncertainty of the status of the MoU as the legal basis for the determination of state borders between Indonesia and Malaysia on Sebatik Island. This law research questioning two issue. First, what factors make the border region not yet regulated by international agreements on borders. Second, how the legal status of the 1973 Memorandum of Understanding in stipulate the point of demarcation between Indonesia and Malaysia in the perspective of international treaty law. Based on the research, the factor that caused the border area not yet been regulated by a definitive border agreement is the disparity of reference between Indonesia and Malaysia to determining the land boundary in Sebatik Island. Indonesia uses the provisions of 4o 10 'LU degree while Malaysia uses existing pillar references. This dispute involve the overlap of the Sebatik Island border area from both countries. Thus, the legal status of the 1973 Memorandum of Understanding has not been binding as law either in national law or as an agreement in international law.

Keywords: Legal Status, Border Area, International Agreement.

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INTRODUCTION

Within the scope of international law, international recognition of the state based on requirement's compliance. One of it is state territory, especially in the context of the land area, and therefore no recognition will be given without the territorial aspect. With this condition, the state always has areas with certain limits that are

internationally recognized.¹ The process of state activity is indeed represented by the government but must be based on accountability and accountability.² Generally, border is a line of demarcation between two sovereign countries. In the opinion of political geography experts, the definition of borders can be divided into two part, namely boundaries and frontiers. The border is called the frontier because of its position in front or behind (hinterland). Therefore, the frontier can also be referred as foreland, borderland, or march. While the term boundary is used because its function to binding and bound, or limiting political unit, in this case the state. Every sigle thing existed within the boundary is bound as unified element and mutually integrated with one another. Boundaries are best used if a state is seen as a sovereign spatial unit.³ The border region is a frontier area of state sovereignty and has an important role in providing legal certainty for the implementation of community activities and for maintaining the security and integrity of the Unitary Republic of Indonesia (NKRI). Kalimantan Island has the longest land border in Indonesia with neighboring Malaysia. One of the outermost small islands of Kalimantan Island which is turn into the border region is Sebatik Island.

Sharing land with Malaysia, Sebatik Island emerging various kinds of border issues between the two countries such as: mutual claims of territories, violations on the border lines, and illegal trade. A billateral meeting that is routinely carried out by the two countries to resolve territorial disputes on Sebatik Island until now has not been able to find meet of mind regarding pillar's point of the boundaries. This happened because the absence of agreement concerning Conventions of 1891 and 1915 in determining the boundary between Indonesia and Malaysia.

Determination of the boundary in Sebatik Island refers to The Boundary Convention 1891 and The Boundary Convention 1915, agreed by Netherlands and Britain while still colonizing Indonesia and Malaysia. In 1973 a joint demarcation and common land boundary agreement was signed between the Republic of Indonesia and Malaysia (Memorandum of Understanding between the Government of Malaysia and the Government of the Republic of Indonesia concerning Survey and Demarcation of Border Lines), and the results of joint Surveys and Demarcation on the island of Kalimantan is poured in the form of an advanced Memorandum of Understanding containing every boundary line point that was agreed from 1978 to 2017.

The application of Memorandum of Understanding as a basis for determining the country's borders shows uncertainty in determining the land border points of Indonesia and Malaysia. Since the signing of the 1973 Memorandum of Understanding until now, there are still nine Outstanding Boundary Problems (OBP) between Indonesia and Malaysia namely Sebatik Island, Sinapad River, Simantipal River, point B.2700-B.3100, point C.500-C.600, Batu Aum, Gunung Raya, point D400 and Buan

¹ Hadiwijoyo, SS. (2011) *Perbatasan Negara Dalam Dimensi Hukum Internasional*, Graha Ilmu. p. 2.

² Sirait, Y. H., & Ai Permanasari. (2020). Marine Litter Management Policy: State Responsibilities and The Role of Local Wisdom. *Mulawarman Law Review*, 5(1), 18-28. <https://doi.org/10.30872/mulrev.v5i1.307>

³ *Ibid*, p. 63.

River. This article examines about the legal status of the area in Sebatik Island that has no definitive border agreement and the legal position of Memorandum of Understanding 1973 and Memorandum of Understanding of Survey and Demarcation in determining the boundary between Indonesia and Malaysia.

The aim of this study intended to answer two questions: First, to analyze and find out the legal status of the border region that is still being disputed by Indonesia and Malaysia on Sebatik Island and the consequences arising from unclear land boundaries between the two countries. Second, to find out the legal strength of a Memorandum of Understanding that use as a procedural framework in resolving state territorial boundary disputes between Indonesia and Malaysia, especially on Sebatik Island which still has not found any clarity at some boundary points of the two countries and a Memorandum of Understanding used as a second agreement countries related to state border points and identify legal compliance of Memorandums of Understanding in national border agreements.

METHOD

Doctrinal studies with the basis of black letter law is the method of this research. The construction of legal theories and principles within state delimitation as well as land demarcation of neighboring countries is the approaching method to support doctrinal studies. Doctrinal methodology basically has normative character. In addition, historical approach of Kalimantan Island, particularly Sebatik Island will be presented as momentum separation of the land.

Such principle and the legal theory of international law inter alia : Theory of Territory Sovereignty; b. State territorial theory; c. The theory of determining national boundaries; d. International Covenant Theory; e. Principle of *Uti Possidetis* and effectiveness; f. Principle of *Rebus Sic Stantibus*; g. *Pacta Tertiis Nec Nocent Nes Prosunt*, as well as other legal bases used in resolving the territorial boundaries dispute between Indonesia and Malaysia.

DISCUSSION

The Legal Status of The Sebatik Island as A Boundary Problem Outstanding

The state border dispute with allied countries namely Malaysia has become a separate historical record by Indonesia since independence. Based on the history of the Indonesian conflict with Malaysia, it has been started since the 1960's and since then the second relationship has experienced ups and downs. In particular, the border area of the Republic of Indonesia is essentially the limit on the full sovereignty of the Government of Indonesia over its territory and all the contents above, the surface and below it. This means that legally (nationally and internationally) the full sovereignty of the Government of the Republic of Indonesia only reaches the predetermined areas of the Republic of Indonesia. In carrying out its sovereignty, the Government of Indonesia has the right to do everything (to govern it self) on the content and space of its border areas in accordance with the goals and objectives of the Indonesian state and the

direction of the development of the country of Indonesia as outlined in the short, medium and long term development plans.⁴

Basically the territorial division of Indonesia and Malaysia on the island of Kalimantan is based on the principle of *Uti Possidetis*, where based on these principles Indonesia and Malaysia inherit the territory of the former colonial countries namely the Netherlands and the United Kingdom. Determination of the state border area between Indonesia and Malaysia on the island of Kalimantan was carried out by the Dutch and British in the span of the years 1891-1930. As a colonial state, the Dutch and British of their time were two major countries, so it was believed that their technology and mapping ability at that time was the best mapping of its time. For affirmation of the national borders on the island of Kalimantan, the Netherlands and Britain make the most of the natural signs in the field. Therefore, they did the boundaries of the two countries on Kalimantan Island by utilizing natural boundaries in the form of ridges that follow watershed lines, right sides of rivers and straight lines.⁵ The boundary line starts from Sebatik Island on the East coast to the West up to Tanjung Datu on the West coast, as specified in article 1 of the 1891 Convention which reads: "The boundary between the Netherlands possessions in Kalimantan and those of the British protected States in the same island shall start from 4o 10 'north latitude on the east coast of Kalimantan'.⁶ The two former colonial countries, namely the Netherlands and Britain, divided colonies with the Conventions of 1891, the Treaty of 1915 and 1928. Under the colonial agreement the former British colonies belonged to Malaysia, and the former Dutch colonies belonged to Indonesia. This has also become an international practice that has been applied in many former colonies.

In 1973, Indonesia and Malaysia agreed to conduct a joint survey and re-demarcation along the landline on the island of Kalimantan, the determination of the boundary between Indonesia and Malaysia at the stage of determining the location limit and delimitation carried out by referring to the *Uti Possidetis* principle can be said to be successful. This is indicated by the formation of a Memorandum of Understanding (MoU) between Indonesia and Malaysia which uses the agreement between the Netherlands and the United Kingdom as its reference. However, at the demarcation stage which was shown through several activities such as surveys and mapping, it still showed problems.

Joint surveys and demarcations in the Kalimantan border region have created new problems related to the setting of the Indonesian and Malaysian boundaries, namely the emergence of Outstanding Boundary Problems (OBP). Outstanding Boundary Problem (OBP) is an area or segment that has not been resolved by Indonesia and Malaysia. There are 2 (two) things that give rise to Outstanding Boundary Problems

⁴ Kurnia, MP. (2011). *Hukum Kewilayahan Indonesia: Harmonisasi Hukum Pengembangan Kawasan Perbatasan Berbasis Teknologi Geospasial*. UB Press, p. 83.

⁵ Batubara, H. (2017). *Penetapan Dan Penegasan Batas Negara, Wilayah Perbatasan*, Bandung, p. 97

⁶ <http://treaties.fco.gov.uk/treaties/treaty.html> 1891 Dutch-British Convention, accessed last on Monday, 5 February 2018. (Boundaries between regions owned by the Dutch in Kalimantan and territories of the protectorate The British on the same island must start from 4o 10 'north latitude on the east coast of Kalimantan Island).

(OBP), namely the interpretation of the Dutch and British agreements 1891 and 1915 Conventions for the East Sector and the 1928 Treaty for the West Sector, as well as the problems in procedural surveys in demarcation activities in the field 1974-1989. Outstanding Boundary Problem (OBP) was discovered by both survey teams from Indonesia and Malaysia around 1977 to 1989.⁷

Outstanding Boundary Problem (OBP) is divided into two sectors, East and West sectors. The East sector is on the northern Kalimantan border, there are Sebatik Island, Sinapad River, Simantipal River, Point B.2700-B3100, and the C500-C600 Point and the West sector are on the western Kalimantan border namely Gunung Raya, Buan River, Point D400 and Batu Aum. The land border line that has been made in two places, on the island of Borneo and on a small island in the east of the island of Borneo, which is Sebatik Island. The land border line on Kalimantan Island extends to + 970 miles, dividing Kalimantan Island into West Kalimantan, East Kalimantan, and North Kalimantan provinces of the Republic of Indonesia and Sarawak and Sabah countries in the Malaysian Federation.⁸ Sebatik Island is one of the outermost small islands of Indonesia which is at the forefront of the Indonesian state which is directly adjacent to Malaysia. The border line on Sebatik Island divides the island into 2 (two) parts, some of it is the territory of North Kalimantan Province and the other part is Tawau Residency being the Sabah region.

Sebatik Island is an island located on the northern tip of Borneo Island, Sebatik is an island in the northeast of Borneo which is the outermost and leading island of Indonesia. Administratively Sebatik is divided into 5 (five) sub-districts namely, Sebatik District, Sebatik Tengah District, North Sebatik District, Sebatik Timur District, and West Sebatik District. Of the 18 stakes that became Outstanding Boundary Problems (OBP), only 3 (three) districts that entered the administrative area included the Sebatik Tengah District, the North Sebatik District and the West Sebatik District. On Sebatik Island there are still areas that have not been agreed upon by the two countries. Outstanding Boundary Problem (OBP) on Sebatik Island was first re-measured in 1982 and was become more problematic in 1983 by the Indonesian and Malaysian survey teams. In 1987 Indonesia proposed Sebatik Island as Outstanding Boundary Problem. The two survey teams from Indonesia and Malaysia found the fact that the boundary pillar on the west of Sebatik Island was to the south of the supposed position, the shifting point was in the coordinate 4o10 'North Latitude. The survey results in the field found that 17 of the 18 pillars were not in their position and were not in accordance with the Dutch and British agreements. As explained earlier, that the pillars are south of 4o10 'North Latitude. Some of these pillars, indented into the

⁷ The Boundary Convention 1891, The Boundary Agreement 1915, and The Boundary Convention 1928 was an international agreement between the Netherlands and the United Kingdom concerning the division of territories and the establishment and confirmation of land boundaries on the island of Kalimantan, and the agreement made by the Netherlands and the UK contained technical limits land on Kalimantan Island which mostly uses watershed, and other methods of measurement such as straight lines, right side of the river, and river flow.

⁸ Arifin, S. (2009). Pelaksanaan Asas Uti Possidetis Dalam Penentuan Titik Patok Perbatasan Darat Indonesia dengan Malaysia, *Jurnal Hukum* Vol. 16, No.1, April 2009, p. 183-204.

territory of Indonesia, and Malaysia do not accept these conditions. So that is the problem on Sebatik Island to date.

Both countries, Indonesia and Malaysia, have their respective arguments related to the territorial boundaries on Sebatik Island. Indonesia argues that from the results of repeated measurements carried out in 1982 the boundary pillars of the Dutch and British surveys were not in accordance with the provisions of the 1891 Dutch-British agreement, its the state border on Sebatik Island at 4o10 'North Latitude, a re-survey was needed to place all boundary pillar at position 4o10 'North Latitude. But the Malaysian confirm the assumption that in lie on the 1915 British and Dutch agreement paragraph 3 (1) concerning the boundary of North Borneo with the Netherlands, which also stated the border of Sebatik Island. Thus the agreement is sufficient in determining the boundary on Sebatik Island.⁹ When referring to the Dutch and British agreements, Convention 1891 divides the area on Sebatik Island can be found in article IV.¹⁰ The division of territories and the establishment of boundaries on Sebatik Island are also contained in article 2 and 3 of the 1915 London Treaty which states¹¹

The problem of the state boundary on Sebatik Island, started when the team conducted a field survey and did not use the same country border agreements made by the Netherlands and the United Kingdom of Conventions 1891 and 1915. Until now the problems on Sebatik Island have not been resolved due to basic agreement differences used in determining the boundary line, Indonesia is holding on to the 4o10 system by drawing a straight line according to article 4 of the 1891 Dutch-British Convention and Malaysia holding on to existing pillars based on article 2 and 3 of the London Treaty of 1915. Both countries form a joint forum that aims to negotiate the completion of Outstanding Boundary Problems (OBP). A forum formed by Indonesia and Malaysia called the Joint Working Group Outstanding Boundary Problem (JWG-

⁹ Presentation by Mr. Irman Irawan (2018). The Strategic Steps to Completion of the OBP presented at the OBP Completion Policy Preparation Evaluation event, Bogor.

¹⁰ <http://treaties.fco.gov.uk/treaties/treaty.htm>, (1891) Dutch-British Convention, accessed last Monday, 5 February 2018. (From 4o 10 'north latitude on the east coast, the boundary line should continue eastward along the parallel line, across the Sebatik Island: the part of the island which lies north of the parallel line, becomes the indispensable property of The British North Borneo Company and the part to the south of the parallel line belongs to the Dutch).

¹¹<http://treaties.fco.gov.uk/treaties/treaty.html> (1915) Dutch-British Convention, accessed last Monday, 5 February 2018. *Where physical features did not present natural boundaries conformable with the provisions of the Boundary Treaty of the 20th June, 1891, we have erected the following pillars: a) Two pillars on the opposite banks of the Pentjiangan River, both marked "G.P.1.". b) One pillar on the right bank of the Agisan River, marked "G.P.3.". c) One pillar on the left bank of the Seboeda River, marked "G.P.2." All being on the parallel 4o 20' north latitude. 3. We have determinde the boundary between the Netherland territory and the State of British North Borneo, as described on the Boundary Treaty supplemented by the interpretation of Article 2 of the Treaty mutually accepted by the Netherlands and British Goverment in 1905 as taking the following course: (1) Treversing the island of Sibetik, the frontier line follows the parallel of 4o 10' north latitude, as already fixed by Article 4 of the Boundary Treaty and marked on the east and west coasts by boundary pillars. (2) Starting from the boundary pillar on the west coasts of the island of Sibetik, the boundary follows the parallel of 4o 10' north latitude westward until it reaches the middle of the channel, thence keeping a mid-channel course until it reaches the middle of the mouth of Troesan Tamboe.*

OBP), this forum was formed in 2002 and the Joint Working Group Outstanding Boundary Problem (JWG-OBP) activities only began in 2012.¹²

However, until now the meetings held by JWG-OBP are still technical, there is no such thing as a benchmark for the negotiating team,¹³ such as the results of the 8 (eight) Joint Working Group Forum (JWG-OBP) meeting, Malaysia has agreed to no longer discuss the 1891 Treaty. In addition Malaysia also agreed with the sector and Standart Operating Procedure (SOP) offered by Indonesia.¹⁴

The Indonesian JWG-OBP Internal Team itself consists of several institutions or agencies such as the Ministry of Home Affairs, Ministry of Foreign Affairs, Army Topography Directorate, Geospatial Information Agency (BIG), Indonesian National Army Headquarters (MABES TNI), Ministry of Defense and National Management Agency Border (BNPP). The number of institutions or agencies that involved in state borders often face their own problems in the formulation of internal policies, this is due to differences in the background of the institution or agency that influences the problem of Outstanding Boundary Problems (OBP).

Some of the pillars on Sebatik Island, namely Pillar I, VIII, and XVI are still a state border point that has not been resolved and become one of the 9 (nine) Outstanding Boundary Problems (OBP), it is caused by still the absence of an agreement between Indonesia and Malaysia regarding the use of the old agreement, namely the Conventions of 1891 and 1915 in determining the boundaries of the two countries.

Legal Standing of The Memorandum of Understanding Determining the Territory of The Region of The Sebatik Island Between The Republic of Indonesia And Malaysia

The border agreements are one form of international agreement, which of course in its implementation follows the principles and rules that are common in international law. International legal doctrine teaches that agreements on national boundaries are final, so they cannot be changed. In regarding with this matter, one party state cannot demand a change in the boundary line after the limit is mutually agreed upon. Treaty between countries is in the form of treaty which is then ratified by the Law.¹⁵ In determining and drafting international border agreements, maps are very important. In each border agreement is usually equipped with a map as an attachment which serves to simplify and clarify the location and location of each of the border and border area points that have been agreed upon by the bordering countries.

On the land border in Kalimantan Island agreements regarding the establishment of border lines can be identified based on The Boundary Convention between the Dutch and British governments signed in London on June 20, 1891, then re-stipulated based on The Boundary Agreement signed in London on September 28, 1915 and

¹² <https://tniad.mil.id/2014/01/joint-working-group-for-outstanding-boundary-problems-ke-6-batas-darat-ri-malaysia/>, accessed 23 April 2018.

¹³ Presentation of Irman Irawan, *Op.cit*

¹⁴ <http://www.kemendagri.go.id/news/2016/08/02/selesaikan-titik-batas-indonesia-malaysia-kembali-gelar-pertemuan-di-manado>, accessed on 14 May 2018.

¹⁵ Suryo Sakti Hadiwijaya, *Op.Cit.*, p. 119.

subsequently revised with The Boundary Convention signed in The Hague on March 28, 1928. After the two countries, the Republic of Indonesia and Malaysia obtained their independence, the Government of the Republic of Indonesia and Malaysia considered that it was necessary to re-affirm the borderline of the two countries on Kalimantan Island. The Government of the Republic of Indonesia and Malaysia redefined the border lines of the two countries in a Memorandum of Understanding Relating to the Joint Demarcation and Survey of the Common Land Boundary signed in Jakarta, 26 November 1973, and based on the Minute of the First Meeting of the Joint Indonesia-Malaysia Boundary The Convention was signed in Sabah on November 16, 1974.

Based on the agreement document, the border convention was conducted between the United Kingdom (England) and the Netherlands consisting of three conventions which outlined the coordinate points of the agreed border from the east of Kalimantan Island, precisely on Sebatik Island to West Kalimantan in Tanjung Datu can be applied to countries that inherit former British and Dutch colonies. This was also reinforced by the principle of *pacta tertiis nex nocent nec prosunt* which meant that, the agreement could not generate obligations and give rights to the third country. So a country cannot claim the rights of the provisions of an agreement if the country is not a party to the international agreement. But there are some exceptions to these principles, there are:¹⁶

- 1) Agreements that can have consequences for the third country with their consent.
- 2) An agreement that grants rights to a third country.
- 3) Agreements that can have consequences for third countries without their consent.

Form the perspective of the principle of *pacta tertiis nex nocent nec prosunt*, it can be said that the border agreements made by the Netherlands and Britain, namely the 1891, 1915 and 1928 Conventions bind Indonesia and Malaysia as countries that inherited the former colonial powers.

Conceptually, the formulation of the pillars of the state boundary at that time can be said to be final and approved by both parties, the government of Great Britain (England) and Dutch Colonialism. Substantially, in some reforms the border convention was not intended to change the historical fact regarding the border agreement that was made during the Colonial period. In several negotiations carried out by both parties, it was intended to establish a technical mechanism in determining the border lines already in the 1891 Convention, including among them border institutions.¹⁷ Therefore, in accordance with international legal doctrine, Article 12 of the 1969 Vienna Convention concerning International Agreements states that agreements upon national borders are final, irreversible and that one party cannot demand a change in boundary line after the agreement is mutually agreed. In addition, Article 62 paragraph (2) of the Vienna 1969 Convention states that the *rebus sic stantibus* clause cannot be applied to international treaties governing national borders. This statement is reaffirmed in the provisions of Article 62 paragraph (2) of the 1986 Vienna Convention

¹⁶ Suryo Sakti Hadiwijoyo. *Op. Cit.* p. 118

¹⁷ Arifin, S. *Op.Cit.*, p. 102

concerning Agreement Laws between countries with International Organizations or Between International Organizations. In the field of International Law, the state border is the treaty ratified by the Law.¹⁸

The 1973 Memorandum of Understanding (MoU) signed by the Indonesian government and the Malaysian government on November 26 in Jakarta concerning Joint Demarcation and the Indonesian and Malaysian State Boundary Survey is the agreement between the two countries concerning the procedural or technical conduct of the survey to re-affirm the boundaries of the two countries and the implementation of earlier Dutch and British treaties, namely the Conventions of 1891, 1915 and 1928. With the basis of the Memorandum of Understanding and Minuta The Meeting, the two countries agreed to form a National Committee for the Confirmation of Boundaries of the Republic of Indonesia and Malaysia by determining several cooperation policies which included: ¹⁹ Establishing assignments Joint technical committee assignments, determine priorities for joint confirmation and surveys, determine survey procedures used, review and negotiate issues arising, joint surveys that have been or will be carried out, determine budgets, determine safeguards, determine logistics and communication used, coordination of immigration issues and customs.

Related to the results of the mapping survey or re-measurement conducted by the two countries which inherited the former Dutch and British colonies, namely Indonesia and Malaysia, which was stated in a Memorandum of Understanding was carried out to make it easier. Because, the Memorandum of Understanding (MoU) is an instrument with a simple form, making it the easiest and quickest compared to other international treaty instruments. A Memorandum of Understanding (MoU) is basically a preliminary agreement, which regulates and provides opportunities for parties to conduct feasibility studies before making a more detailed and binding agreement with the parties later. Substantially, the 1973 Memorandum of Understanding to the Joint Demarcation and Survey of the Common Land Boundary between Malaysia and the Republic of Indonesia is a border demarcation agreement that discusses the technical and procedural continuation surveys of a determination of border stakes from a completed delimitation agreement made by Dutch and English first. In the 1973 Memorandum of Understanding (MoU) the two countries agreed that technically using the watershed in the process of demarcation and joint surveys on Kalimantan Island, because this Memorandum of Understanding (MoU) had been signed by both parties it was already binding (consent to be bound). If both parties have expressed consent to be bound, the parties comply with all obligations resulting from the Memorandum of Understanding (MoU).

Memorandum of Understanding (MoU) 1973 produced a work team to demarcate and joint surveys, and the results of the demarcation and survey were set forth in an advanced Memorandum of Understanding (MoU) from each boundary point agreed by

¹⁸ Sumardiman, A. (1992). *Seri Hukum Internasional Wilayah Indonesia dan Dasar Hukumnya Buku I Perbatasan Indonesia-Papua New Guinea (Disertai Implementasi Konvensi Hukum Laut 1982)*, Pradya Paramita, Jakarta, p.3.

¹⁹ Batubara, H. *Op.Cit.*, p 137

both parties. What is contained in the Memorandum of Understanding (MoU) of the Results of Joint Demarcation and State Boundary Survey signed by the Indonesian and Malaysian governments only concerns the results of surveys and mapping at certain points in accordance with the agreement rather than the entire border reaching around 2004 kilometer from West Kalimantan to North Kalimantan.

Until now, the number of Memorandum of Understanding containing the confirmation of the boundary line on the island of Kalimantan are 20 (twenty) Memoranda of Understanding (MoU), in which each Memorandum of Understanding (MoU) confirms different points from the west to the east of the Island Kalimantan.²⁰ The nature of the Memorandum of Understanding (MoU) in the border agreement is non-legally binding because there is no agreement from the House of Representatives and the use of the nomenclature of the Memorandum of Understanding (MoU) is deemed not to have binding power in the validity of international agreements.²¹ Based on the international legal conception affirming that treaty agreements between countries are treaty that are final and cannot be changed, it can be said that 20 (twenty) Memoranda of Understanding of the existing joint survey and demarcation results are temporary, in the case that the Memorandum of Understanding is made as a written document that shows the agreement of the survey work committee and the demarcation with Indonesia and Malaysia and the Memorandum of Understanding can be said to be an interim agreement between Indonesia and Malaysia regarding the confirmation of land boundaries on the island of Borneo as long as there is agreement between the two countries.

Establishment of the boundary line in Sebatik Island until now has not been set forth in the form of an advanced Memorandum of Understanding like some of the previous Memoranda of Understanding. This is because the demarcation team and a joint survey between Indonesia and Malaysia still have differences of opinion regarding the basic use of the previous agreement that had existed before. Determination of the Indonesian and Malaysian land boundary lines has not yet become a complete whole border agreement in the form of treaty, because there are still 9 (nine) Outstanding Boundary Problems along the Indonesian and Malaysian land border lines on Kalimantan Island. If the demarcation and joint survey have been completed and all territorial disputes or better known as OBP (Outstanding Boundary Problems) can find a clear boundary line and an agreement has been reached between 2 (two) countries, namely Indonesia and Malaysia. The Memorandum of Understanding (MoU) will be upgraded to a border agreement (treaty) that can be submitted to the United Nations (United Nations) and for the use of the name or term of the agreement to be used, return to the agreement of the two countries that consent to it.

²⁰ Hasil wawancara dengan Bapak Ali Mutardo, *Op.cit.*

²¹ *Ibid*

CONCLUSION

Outstanding boundary problem in Sebatik Island between Indonesia and Malaysia caused by the difference interpretation and utilization of Boundaries Agreement made by the Colonial (Netherlands and Great Britain). In determining the point of the border area on Sebatik Island, Indonesia uses the provisions of Convention 1891 and Malaysia uses the provisions of Convention 1915. Sebatik Island is a point in of border state that have not been agreed and one of Outstanding Boundary Problem (OBP), the problem of the point or segment in Sebatik Island between Indonesia and Malaysia is at the 17 of 18 pillar that are not in the position and not suitable with the Treaty of the Netherlands and Great Britain/United Kingdom.

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