

## Reviewed Border Dispute Settlement Through The Implementation of Border Crossing Agreement Between Indonesia-America

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**Abstract.** *The purpose of this study is to determine and analyze the implications of the misdemeanor criminal case process with the conditions of Indonesian criminal justice. In this writing, the author uses a normative juridical method with a research specification in the form of descriptive analysis. The Criminal Justice System in Indonesia currently, when handling criminal acts, mostly ends in prison which is carried out in correctional institutions. Prison is not an appropriate sanction to handle criminal acts, especially in handling minor crimes such as minor theft resulting from criminal acts that can still be restored, so that the situation can be returned to its original state. Handling minor crimes carried out with a retributive paradigm, with repressive actions against perpetrators of minor crimes, causes the number of prisoners in prisons. This can cause the ineffectiveness of the coaching and correctional functions in prisons, the suboptimal function of supervision in prisons and the occurrence of many violations of prisoners' rights in prisons. According to Romli Atmasasmitha, with the overcapacity in prisons, the institution cannot carry out the function of deterrence on prisoners because there are still many cases of recidivism in Indonesia.*

**Keywords:** *Criminalization; Minor Crimes; Problems.*

### 1. Introduction

Indonesia is the largest archipelago state in the world, where Indonesia has a sea area bordering 10 countries, namely India, Malaysia, Singapore, Thailand, Vietnam, America, Australia, Timor Leste, Palau, and Papua New Guinea. The sea border area includes 111 small outer islands spread across 22 provinces (LIPI, 2017). Which sea boundaries must refer to UNCLOS (United Nations Convention

on the Law of the Sea) 82 / HUKLA (Law of the Sea) 82 which was later ratified by Law No. 17 of 1985. Indonesia has around 17,506 islands and 2/3 of its territory is ocean. One of them is Miangas Island, Miangas Island is an archipelago that is geographically located in Nanusa District, Talaud Regency, North Sulawesi Province, Indonesia. with an area of: 3.15 km<sup>2</sup> or 210 Ha and is located at the coordinates: 05° 34' 02" N - 126° 34' 54" E/05° 33' 57" N - 126° 35' 29" E (Ministry of Culture, 2017).

Miangas is the outermost island of Indonesia located near the border between Indonesia and America. To reach Miangas Island, the distance traveled from Bitung City is 493 KM and takes a sea journey (± 2.5 hours) and continues the journey to Tahuna Island (± 1 hour). From Tahuna Island, the journey is made using a pioneer ship that stops every 2 weeks. The journey by pioneer ship to Miangas Island takes about 14 hours. While the distance between Miangas Island and Mindanao Island, America is only 77 km. In terms of travel time, it only takes 30 minutes using a speedboat from America to Miangas. so that Miangas Island is also called Las Palmas (Palmas Island) by the United States and Las Palmas Island is on the American map (CSIS, 2006).

Looking at the history of this small island has been known since the mid-16th century. It can be traced both in shipping records and maps and colonial documents. This island is listed on the map of Southeast Asia drawn by Gerard Mercator in 1569. Listed on the map is a small island named y(slas) de Cocos located at the southeastern tip of Mindanao and north northeast of the islands of Talao alijs Tarrao infule.

The term y(slas) de Cocos with the same location and coordinates is also found in the map of Asia by Abraham Ortelius, 1570. Furthermore, the map published by Antonio de Hera y Tordesillas (1601), *Descripcion de las Indias del Poniente*, shows an island in the southeastern part of Mindanao and the northern part of el Maluco (Halmahera), named ysla de Palmas (Isla de las Palmas).

A similar term that can be found in Dutch documents is Palmas eiland which is used simultaneously with the term Miangas Island. However, long before Indonesia and the Philippines became independent, Miangas Island had indeed been in dispute. This island was once disputed between two large countries, namely the United States (which at that time was still colonizing America) and the Kingdom of the Netherlands (which also colonized the Indonesian archipelago or the Dutch East Indies). Not reaching a consensus, the dispute over the ownership status of Miangas Island ended in the International Court of Arbitration. On April 4, 1928, Judge Dr. Max Hubert, the sole arbitrator of the International Court of Arbitration, stated that Miangas was part of the Dutch East Indies. Therefore, Miangas Island belonged to the Dutch kingdom.

After the independence of each country (the Republic of Indonesia and America), the International Arbitration Decision on Miangas Island was still upheld, both by

Indonesia and America. This recognition was further clarified in the Border Crossing Agreement between Indonesia and America signed in 1956.

In this agreement, both countries acknowledge that Miangas Island is a cross-border post on the Indonesian side. This International Arbitration Decision was strengthened by the research results of 2 international law experts, namely Willem Johan Bernard Versfelt and Daniel-Eramus Khan. (Ministry of Culture, 2017).

Border Crossing Agreement between Indonesia and America was made in 1975 under the name "Border Crossing Agreement", which aims to minimize disputes in the Miangas border area. In the agreement, American citizens may and are permitted to enter Indonesian territory, especially to eight islands in the territory of North Sulawesi, namely, Miangas, Marore, Kawio, Matutuang, Lipang, Tinan-areng Kawaluso, and Bukide while Indonesians can enter several islands in the territory of America, namely Saranggani Island and Balut Island.

However, in implementing the Border Crossing Agreement has not been maximized because it has limits. Therefore, illegal trade often occurs on the border of Miangas Island. Because they are done illegally, they violate the provisions in the Border Crossing. Some types of products that are traded illegally include: Coca-Cola, thinner, paint, mats, aloe- vera shampoo, Lifebuoy soap, Palmolive soap, Lily sandals, and various other needs.

In 2005, Philippine cigarette products entered Miangas in large quantities and then to Sangihe-Talaud with the brands "Mas" and "Durian". Not only household needs, weapons are also often smuggled commodities such as illegal trade on Miangas Island in September 2009. (KEMHAN, 2018)

## **2. Research Methods**

The writing method in this study is a normative legal method, namely an analysis by applying analyzing, describing, and describing the value of the form of the death penalty in the perspective of current and future criminal law by determining secondary data that has been analyzed qualitatively. To meet the data in the current study, the researcher conducted a literature study so that he obtained answers to be described through relevant theories in the researcher's research so that he was expected to obtain the expected results. In this study, a legislative approach was used, this was done by tracing and studying laws that were related to the topic of discussion in this study. The data used in this study were primary data in the form of related laws and also secondary data in the form of written materials that were related to the discussion of the study.

## **3. Results and Discussion**

### **3.1. How is it? Border Dispute Settlement Border Crossing Agreement Between**

## **Indonesia-America**

The importance of Miangas Island for an archipelagic country like Indonesia, the islands on the border have a very vital role. Based on the 1982 United Nations Convention on the Law of the Sea article 47 paragraph 1, an archipelagic country has the right to draw an archipelagic baseline as a basis for measuring its waters from the outermost points of its outermost islands. In other words, these small islands also determine the boundaries of the sovereignty of the Republic of Indonesia. If Miangas Island is released, Indonesia will lose a large sea area along with the resources contained therein.

In addition, Miangas Island is also an important note in the history of the struggle of the Indonesian nation. In ancient times, this island was a defense of the Talaud people against attacks by the Sulu kingdom based in America. On this island also stands the Monument Statue of Santiago, a fighter from Talaud who fought hard against Dutch colonialism.

With the two important roles above, the government, and the Indonesian people in general, should implement policies to support Miangas Island so that it can carry out its vital role well.

Seeing its location, Miangas Island is indeed in Talaud, North Sulawesi, which is part of Indonesia, however, in many aspects, the lifestyle of the local people who work as farmers and fishermen or who are more American than Indonesian; on the other hand, in America, Indonesian citizens are considered migrants. The Miangas people usually trade fish with Americans who use the Peso currency, they collect money from the trade of fish and coconuts sold to nearby areas of America.

Although in Indonesia, however, the economic interaction of its people is closer to the Balut area, Sarranggani Island in America. Geographical, cultural, and historical conditions force the Miangas people to interact with Americans naturally.

Commercial routes that are open between remote areas on the border provide opportunities for economic empowerment for local residents, such as shops and shopping centers, although on a smaller scale.

In the development of the international trade market, free trade activities of border people only took place in 1975, along with the implementation of the Cross-Border Area Agreement. This agreement provides restrictions on people who do not conform to the culture and traditions that live among the border communities so far. Although there are regulations that govern, as long as the regulations are not adjusted to the socio-economic conditions on the border of

the Republic of Indonesia, therefore, illegal trade will continue to be a problem.

Implementation of the agreement in this area will be difficult because people are faced with the choice of meeting their daily needs or complying with regulations that are considered inflexible for them. Border people consider the Cross-Regional Border regulations as a restrictive tradition, both in trade and cross-border that they have done so far from generation to generation. Seeing that, of course, people tend to choose to continue their traditions to meet their daily needs by conducting free trade and crossing the border freely, rather than complying with regulations that do not accommodate their interests. The temporary reaction by adding the number of military and police personnel on the border does add more problems because they are not given enough budget to live on the border which requires high costs. Therefore, what is needed is not only state apparatus who have competence in the field, but also empowerment of communities in border areas, both in economic and social aspects, by using regulations that are adjusted to the situation of border communities. The characteristics of border areas, natural resources, and island conditions are not appropriate to be used as reasons for increasing illegal trade on the Miangas border. Therefore, all government policies, both central and regional governments, must understand these conditions well.

Especially about how the fate of the region will be transformed by the efforts of the central government and regional governments to overcome the formulation of public policies for the future.

Cross-border Prohibition Policy Given its status as the northernmost island of Indonesia, the government has so far implemented many development programs for Miangas. In terms of governance, Miangas Island has become a special sub-district, separate from the Natuna sub-district that used to cover it. This is intended so that the administration of citizen documents can be done more quickly, considering the distance between Miangas and the sub-district town is quite far. In terms of defense and security, there are Polsek, TNI Angkatan Darat posts, and TNI Angkatan Laut posts that have sufficient personnel to maintain the stability of the island. In the economic sector, various buildings such as markets, port offices, and bank offices have also been established.

The unfortunate thing is that the economic infrastructure is only in the form of buildings, there are no officers to manage them so that the buildings do not function. This has an impact on the economy of Miangas residents who do not develop, tending to produce for their own household needs. The fulfillment of basic needs is also disrupted.

The welfare conditions became more difficult after the Miangas-Dafau (America)

shipping route, both formal and traditional, were banned by the government in 2005. In fact, the distance between Miangas and Dafau is only 3 hours by traditional fishing boat, while the distance between Miangas and the capital of Talaud district, Melonguane, requires a minimum of a day and night trip, even with a pioneer boat that is much larger than the fishing boat and stops in Miangas once every two weeks. Miangas residents who used to transact with Americans in the middle of the sea or in Dafau, now have no buyers for the fish they catch.

One possible reason underlying this policy is the bad memory of the Sipadan and Ligitan Islands case. On December 17, 2002, the International Court of Justice ruled that the two islands belonged to Malaysia on the basis of "effectiveness" (Haryono, 2007). Concerns that a similar case might occur in Miangas may also surface.

Considering that Miangas is closer to South America than to the district capital, let alone to the provincial capital of North Sulawesi, then in theory the relationship economy and social will be more intensive with American citizens. This is feared to change the orientation of the Miangas Island residents to join as part of the neighboring country. This concern seems to be proven by the incident of raising the American flag by Miangas residents in 2005.

Moreover, America seems to welcome the aspirations of the Miangas residents with the circulation of the issue of Las Palmas - another name for Miangas - being included in the map of American sovereignty (Madjowa, 2003).

Negative issues about Miangas also developed. Many media on the internet reported that Miangas residents use Tagalog, Peso currency, American products, and even display photos of the American president in their homes. Unfortunately, these rumors spread in articles and seminar papers (Suradi, 2008). In fact, these concerns are mostly contrary to the existing facts. Regarding the bad memory of the Sipadan-Ligitan case, Miangas Island has been decided by the International Court of Justice as belonging to the Netherlands, which won against the United States in the 1920s. Because Indonesia is the heir to the Dutch East Indies, Miangas Island automatically also became part of the sovereign territory of the Republic of Indonesia. Then, the incident of raising the American flag was actually not related to the demands of the Miangas community to separate. The raising of the flag was a form of protest by residents against the actions of certain officers who accidentally killed a local resident. Regarding the map issue, the American government has officially never included Las Palmas in its sovereignty map, but the tourist bureau in America that included Las Palmas as one of its package tour destinations. Finally, Miangas residents also do not use American identity in their daily lives. They use Talaud

language, are fluent in Indonesian, only a few elderly people can speak Tagalog, buy and sell Indonesian products, use rupiah currency, and receive television broadcasts from Indonesia.

This policy of prohibiting cross-border movement based on excessive fear has had an impact on the Miangas residents. It is increasingly difficult for them to obtain basic necessities. The long and long travel distance makes the price of basic necessities supplied from the Bitung or Melonguane areas reach 3 times the price. Pioneer ships also only stop by once every two weeks. Especially in the period from October to March, when the sea waves are unfriendly, pioneer ships cannot dock. Residents said that during these months, they eat Laluga (a type of taro) instead of rice.

#### **4. Conclusion**

The Indonesian and American governments created a border agreement between Indonesia and America in 1975, which is the Border Crossing Agreement with the aim of settling in the border area of Miangas Island and regulating border crossings and trade in that area. However, in the imp that is more than facilitated the interests of the community. In the agreement, there are several limitations of several provisions that regulate the amount, type, and price of goods crossing the border that are not in accordance with the situation of the people who have been in effect from generation to generation. These provisions are not effective in their implementation because the route that must be taken in the provisions of the Border Crossing Area Agreement is further from the traditional route that has been taken by people so far. Therefore, illegal trade activities often occur in the border area of Mian-gas Island because if done legally, the action violates the regulations if the Border Crossing Area Agreement.

The situation in the border community has made the regional government use its authority in Law 22 of 1999 concerning Law 32 of 2004 concerning Regional Government for the Crossing Area Agreement on Miangas Island by revising the agreement. One of the efforts made by the government is to issue Regional Regulation Number 1 of 2001 concerning the Islands area Talaud and Regional Regulation Number 2 of 2001 concerning Spatial political location as a border area declared by the Regional Government - ment to develop Miangas Island, so that it will be the same as other islands. Miangas Island is included in the discourse as another door for Indonesian trade activities. Revision of the Cross-Border Area Agreement offered by the Regional Government through the Border Area between Indonesia and America. empowering the development of the Sangihe Sangihe and Talaud Border Areas. Its geography - Through the Border Trade Area, trade activities between Mi-Pulau Island (especially Indonesia) and

America will improve with legal routes. The Border Trade Area will certainly increase the economic level and welfare of the people living in Miangas Island because there will be a lot of investment from both foreign and local parties directly, this will be followed by the development of facilities in various areas. Therefore, this area will become one of the International Trade areas in Indonesia because of its very strategic location.

The conclusion contains conclusions and suggestions. The conclusion describes the answers to the hypothesis and/or research objectives or findings obtained. The conclusion does not contain a repetition of the results and discussion, but rather a summary of the findings as expected in the objectives or hypotheses. Suggestions present things that will be done related to further ideas from the research.

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