

DISPUTE SETTLEMENT BORDER REGIONAL FOR KEDIRI REGENCY WITH BLITAR REGENCY OF EAST JAVA

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ABSTRACT

Border is one of the elements that formed the basis for the existence of a region. Border than as a determinant of administrative work area also serves to determine the boundaries of the management of regional business activity. Determination and demarcation area is very important because it has a goal: to minimize the occurrence of boundary conflicts, as a reference work, orderly administration, calculation of the fiscal area, the rule of law and the jurisdiction of the local government, the spatial plan on target, giving confidence to investors, and the implementation of good and clean governance. Emphasis of land boundaries include several steps, namely the study of documents, tracking the limits, installation of boundary pillars, measurement and positioning the boundary pillars, and the making of the map boundary. Basically the border of potential conflicts arise because of the exploitation of resources without proper planning and control. It also poses a potential conflict in the border dispute Kelud mountain between the Kediri Regency and Blitar Regency. The assertion border Kelud mountain is still pose a boundary dispute. Various efforts dispute settlement has been made, both litigation and non-litigation track, but the effort was not providing a solution that can satisfy both parties. Therefore, there should be other ways to resolve the dispute with community participation.

Keywords; Settlement of disputes, border, Kelud mountain, participation of the society

INTRODUCTION

Indonesian state has a basic principle in the life of the nation is the Republic of Indonesia (NKRI) ¹ organized in a decentralized. State form NKRI, according Asshiddiqie asserted that the unitary state, the power of the original that it was in government, not in the area, which is given to the area is not the power of the original without attributes but authority that has been formalized commonly referred to as authority.² This means that the regional autonomy was granted by the government, while the area just received a submission from the Government.

Powers were formalized it in line with the Constitution of the Republic of Indonesia, namely the Constitution of the Republic of Indonesia 1945 (hereinafter referred to as the Constitution NRI 1945) in Article 18 and Article 18A of the Constitution NRI 1945. Article 18 paragraph (1) Constitution NRI 1945 determines Homeland is a composition that country divided over

¹ The term NKRI in addition to having position as identity, also theoretically based on the background of the philosophy of the state is the concept of state and governing, because the term Homeland is moved from the provisions of Chapter I Article 1 (1) Constitution of Republic of Indonesia Year 1945, which stated: "Indonesia is a country unitary Republic ". The provision is clear that the form of the state for Indonesia is a unitary state, with a choice of form of government is a republic. For all unitary state government affairs is basically the affairs of Government (Central and Local), and applies the principle of "no state within a state". This thinking is based on the principle that sovereignty remains on the State. H.M. Arief Muljadi, *Landasan dan Prinsip Hukum Otonomi Daerah Dalam Negara Kesatuan RI*, Prestasi Pustaka, Jakarta, 2005, p.70.

² Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press, 2005, p. 282.

the province and then the province is divided over the district and the city, which each province, district and city that has the Regional Government, which is regulated by Law.

Establishment of a system of regional autonomy in principle directed to accelerate the realization of public welfare through service improvement, empowerment and community participation. Basically through broad autonomy, the region is expected to improve competitiveness with due regard to the principles of democracy, equality, justice, privilege and specificity and the potential diversity of the region are realized in a system of the Republic of Indonesia.

Development of an area closely related to the potential of the area and how to manage this potential optimally naturally if found differences in turn will bring the differences from one region to another region. The difference is not only happening in the national and international territory but can occur also at the level of administration and spatial lower, such as provincial, district and city. Lack of understanding of the limits of the area and led to the emergence of egocentric regional differences in the interpretation of laws and regulations concerning the boundary between regions. Unclear boundaries of this region, also often impact on the emergence of social conflicts in society.

Border is one of the elements that formed the basis for the existence of an area, be it in the sphere of state and local administration level lower. Boundaries between regions both provincial, district / city and district as well as the village is basically a unified whole of the area of the region in which implies the existence of a territorial area.

Border disputes over the implications of the enactment of Law No. 23 of 2014 Jo Act No. 1 of 2015, Jo Act No. 9 of 2015 on Regional Government. Under the legislation, the authority on the delimitation of the area there is the Minister of the Interior. Boundary area must meet the juridical and technical aspects stipulated by the Regulation of the Minister of the Interior.

Post-expansion area, the border conflict is an issue of crucial areas, it can even become a social conflict for the region. Conflict border regions, also due to the sectoral ego local government regency // city / province of the importance of the area and feel entitled, and shelter to improve the welfare of the community. For that conflict border district / city / province there should be arrangements, solutions and dispute resolution models that can put the interests of local governments in conflict over the border region.

Affirmation of the importance of the border of the district in order to carry out their respective authorities within the scope of the limits specified area. If the district boundaries are not clear of course led to two (2) due to the law: first, a part of the territory may be disregarded by each region because they feel it is not their area. Secondly, one area can be considered beyond the authority of the other areas, so the potential conflict between regions. Therefore, in the administration of government, demarcation area becomes important to be implemented.³

Related to limit conflicts of local government in the dispute Kelud mountain between the Regional Government of Blitar and Kediri district government of each claim over the territory. Kelud mountain as objects related fought over local government boundary lies between 3 (three) districts, Blitar, Malang and Kediri.⁴ Boundaries between autonomous

³ In the delimitation of the area physically and certainly in the field is not an easy thing, even though the administration of local government has been running and growing since the inception of the Homeland and juridical boundaries have been set by the laws of each region formation.

⁴ Kelud mountain is an active volcano and is located three (3) Regency, but claimed only by Blitar regency and Kediri regency, that their rightful owners. Blitar government considers Kelud mountain to be fought as borders, while government of Kediri Regency fight Kelud mountain Kelud Blitar government

regions particularly land boundary, as Kelud Mountain be prone contested objects. Kelud Mountain dispute over the conflict between the Government of the district become a threat to the implementation of decentralization and greater autonomy.

This study departs from the dispute settlement area boundary conflict between the Kediri Regency with Blitar Regency related objects Kelud mountain, which in the development of post-eruption has changed the boundaries of the area of the district.

Changes to the layout of the area boundary on Kelud mountain the beginning of the conflict into the region boundary by Kediri and Blitar district, which continues to grow by involving the community and local community leaders.

The second area of dispute resolution limit of the district has been done either through dispute resolution outside the court as consultation, mediation, negotiation at third party facilities both East Java Province Government and the Central Government. Efforts to resolve the dispute through the courts also performed at the State Administrative Court, but the conflict area boundary has not been given maximum effort for both parties.

For that attempt alternative dispute resolution be a solution for Kediri regency and Blitar regency to promote the process through non-litigation efforts for the benefit of all parties. Disagreements in determining the border region of the border will lead to conflict.

METHODOLOGY

This study belongs to the type of normative legal research. According Hadjon, as quoted by Sukardi⁵, normative legal research is a study to examine the provisions of positive law and legal principles systematically, explain and predict the future development of the law.

While the approach used is the approach of legislation, the conceptual approach, the historical approach, and approach cases. Sources of legal materials used in this study consisted of primary legal materials and secondary law. The primary legal materials are materials that are authoritative law that consists of legislation, official records or minutes in the legislation and the decisions of the judges⁶ on the ratio legis of legislation.

Secondary law in the form of all publications which are not official documents such as textbooks, dictionaries law, legal journals and commentaries on court⁷ decisions and outcomes research, scientific journals and expert opinion and the law graduate of the local government boundary dispute settlement.

The technique of collecting legal material is literature study, then analyzed to solve legal problems. Researchers do this step to obtain the materials necessary law, both primary and secondary. The collection of legal materials made through the snowball method (snowball method) and identification procedures as well as the inventory of materials primary and secondary law. Against legal materials collected systematically conducted in accordance with the classification of the formulation of the problem and research objectives.

considers to be fought as borders, while Kediri district government fight Kelud mountain because of the construction of infrastructures in Kelud mountain done by him. The second conflict disputes district government has lasted 2001-2002. See Nida Zidny Paradhisa, Conflicts of Interest Areas: The case studies dispute over Kelud mountain between Government of Kediri regency and the Government of Blitar regency, Young Political Journal, vol 2, No.1, January-March 2012, pp 136-146, Faculty of Social and Political Airlangga University Surabaya.

⁵ Sukardi, 2009. *Op. Cit.* p. 46.

⁶ Peter Mahmud Marzuki, 2006. *Ibid.*, p. 141.

⁷ *Ibid*

RESULTS AND DISCUSSION

The potential conflict arises the border dispute between Kediri and Blitar regency.

Based on the sources of problems, disputes concerning the boundary region can be classified as follows:

1. Ownership Problem Areas, Regions, or the island;
2. Islands Regional Issues;
3. Problems Regional Establishment Act;
4. Withdrawal Issues Boundary Line;
5. Issues Map Boundaries; and
6. Problems Due to the formation of Regional Expansion Delta.

In the case of the border dispute between Kediri Regency and Blitar Regency potential conflicts is generally related to the issue and withdrawal Boundary Map Boundary Problems with Kelud mountain objects. Problems of delineation and boundary map issues on Kelud mountain is very essential before the limits of the regional authority established and confirmed between Kediri Regency and Blitar Regency. In essence, it is highly unlikely a district to the dispute may set limits before the lack of clarity regarding the existence Kelud mountain.

Disagreements within the set limits for certain areas in Kelud mountain give rise to border disputes. Settlement of disputes and demarcation area that has been, is and will be implemented basically always driven by the desire to set up a work area in every strata of government administration in an integrated, mutually supportive and running symmetrically with the development of science and technology. Thus between technical and non technical aspects can support each other in order to provide certainty and clarity of the border in accordance with the rules applicable.

Basically potential conflicts develop in the region limit the need for life issues, the implementation of development often in carrying out activities aimed at the welfare of the community to do the exploitation of resources without proper planning and controlled due to meet development targets. It also creates the potential for conflict in the region boundary disputes Kelud mountain in Kediri regency and Blitar regency. Potential boundary disputes that occur between Kediri Regency and Blitar Regency, among others:

Ownership Problems region in the area of Kelud mountain

Prior to the eruption has been no problems related to the coordinates of the border after the eruption of Kelud mountain. As a result of the eruption of Kelud mountain occur puddle formation of new craters, so the point coordinates are not in place before. In this condition there is potential conflict Kelud mountain border region for both districts.

Withdrawal Issues Boundary Line

Drawing boundaries is done when the ownership of a disputed is clear, so the lines are delineated boundary will actually show boundary lines representative for the two regions that border. Post erupted Kelud mountain change at points in the coordinates of the border Kelud mountain. Towing outline on Kelud mountain object is one of potential dispute.

Map the working area of the regency

Activity area demarcation between Kediri regency and Blitar regency referring to Law No. 23 of 2014 on Regional Government and Regulation of the interior minister No. 76 of 2012. The

map can be made in full limit of an autonomous region within each local establishment or made partially, which is part of the existing boundary line with other areas. Map-making activities that are part of the boundary demarcation.

1. Problems regional expansion with the formation of the crater of Kelud mountain naturally. The dynamics change when the mountain erupted Kelud mountain and the formation of the crater of Kelud mountain naturally has given the significance of the change in the boundary change areas. Amendments to the new crater formed Kelud mountain is not a serious concern for both regency, but in the development of the formation of the crater that resulted in a change Kelud mountain area. Changes that occur naturally will also lead to confusion on the issue of ownership in the border districts.
2. The interests of local authorities in determining the General Allocation Fund (DAU). In an era in which the autonomy of the area into one of the indicators in the calculation of General Allocation Fund (DAU), the border becomes very important. Without a clear boundary, area may not be calculated. Therefore, the determination and demarcation is an important agenda in implementing regional autonomy.
3. Publication of the Law No. 6 on 2014 about the village.
The problems that can be related to a potential conflict with the working boundary of the village is related to the amount of their Village Allocation Fund (ADD) received the village. Determination of AAD is associated with extensive village-owned.
4. Local Government Interests in increased local revenue.

Both districts have a strategic interest in managing Kelud mountain region as a tourist attraction. This has led to a potential conflict area boundary. Kediri regency and Blitar regency concerned to undertake the development of the region Kelud mountain as a natural resource that can be utilized for both districts, so that indecision in the delimitation area becomes a potential conflict.

Resolving Disputes Through Mediation Regional Limits For Kediri and Blitar regency

The assertion border Kelud mountain until now still give rise to border disputes, mediation efforts facilitated by the Governor of East Java, on September 11, 2008 and several times mediation through coordination meetings between Kediri regency and Blitar regency which was facilitated by the Ministry of the Interior and the Governor of Java East, has resulted in East Java Governor Decree No. 188/113/KPTS/013/2012 dated 28 February 2012 on Dispute Settlement Regional Boundary Between Kediri regency and Blitar regency which is located in the area Kelud mountain in East Java province. Basic Law of the border dispute resolution are used:

1. Pursuant to Article 198 paragraph (1) and paragraph (3) of Law No. 32 of 2004 about Regional Government states that the event of a dispute in the implementation of governmental functions between districts / cities in the province, the governor intended to settle disputes and decision referred to are final.
2. Pursuant to Article 22 paragraph (1) and (2) of Law No. 4 of 2011 about Geospatial Information stated that the IG (Geospatial Information) based IGD (Geospatial Information Base) is only held by the Government and carried out by the IGD implementation of the Agency called Geospatial Information Agency as a substitute for

Coordination Agency for Surveys and Mapping Agency in accordance with the mandate of this Act.

3. Map Work (IGD) is used Map RBI (Topographic Indonesia). Topographic Map of Indonesia is a base map that provides information specifically for the area of land that is agreed upon by the Government of Blitar regency with Kediri Regency Government as stated in the Minutes of March 30, 2011.
4. pursuant to Article 9 paragraph (1) letter (c) and Article 10 paragraph (1) and (2) a Government Regulation No. 19 of 2010 about the Implementation of Duties and Powers of Financial Position As well as the governor. East Java Governor capacity in issuing Decree No. 188/113/KPTS/013/2012 dated 28 February 2012 on Dispute Settlement Regional Boundary Between Kediri regency and Blitar regency which is located in the area of Kelud mountain in East Java province.

Efforts to resolve the border dispute has been done in non-litigation both good district Kediri regency and Blitar regency by the local government of East Java Province and the Ministry of Interior as the representative of the Central Government.

Through the Local Boundary Dispute Settlement Court For Kediri Regency and Blitar Regency

In the expansion of the resulting verdict non-litigation dispute resolution process has not been given a solution in resolving the border dispute between the two districts. Efforts made Government of Blitar Regency has filed a lawsuit through the courts filed a lawsuit in State Administrative Court Surabaya. State Administrative Court's decision essentially states that a lawsuit Government of Blitar Regency can't be accepted (Niet ontvankelijk verklaard).

After the stage of court proceedings finaly and binding (inkrah) got the verdict by a judge, with no receipt of the Administrative Court lawsuit. Local governments in the facilitation of the provincial government tried to mediate again. There were several times mediation to settlement of the boundary dispute Kediri regency with Blitar Regency in region of Kelud mountain.

The process of non-litigation resulted in the Governor's decision No. 188/828 / KPTS / 013/2014 regarding the revocation of the Decree of East Java Governor No. 188/113 / KPTS / 013/2012 on Dispute Settlement Boundary Region between Kediri regency with Blitar Regency does not give a positive response in the process of settlement of the border dispute two districts. Furthermore, the Government of Kediri Regency sued the East Java Governor and Regent of Blitar Regency with the object of the suit is Decree No. 188/828 / KPTS / 013/2014 regarding the revocation of the Decree of East Java Governor No. 188/113 / KPTS / 013/2012 on Dispute Settlement Boundary Regions Among Kediri regency with Blitar Regency.

Basically what the plaintiff unilaterally issuing the disputed contrary to the general principles of good governance, in particular the principle of legal certainty and the principles of accuracy, because in issuing the disputed legal certainty on settlement of disputes region Kelud mountain be crude back and did not respect the process PTUN justice done. From these considerations stated plaintiff did not receive. Then the judges also consider the law on the capacity of the East Java governor as a defendant in issuing the Government Decision 188/113/ KPTS/013/2012 dated 28 February 2012 is currently in carrying out the functions of government affairs and not in the capacity of carrying out the function of the establishment of legislation and a hearing function.

Alternative Process Model In Non Litigation Settlement In Dispute Regional Limits For Kediri regency and Blitar regency.

From the above analysis of both the administrative court decision, this shows that the decisions taken by the governor in accordance with the authority in legislation. In settling the governor through non-litigation mediation in the form of a coordination meeting is an administrative effort as a form of settlement is done within the government itself. In the case of boundary disputes in the autonomous region in the district resolved by the Governor. However, in practice the governor has no authority to determine the status of the disputed area because the authority is in the hands of the central government through the Ministry of the Interior and the Governor position merely as a facilitator to resolve the dispute between the autonomous region.⁸ Efforts made by the Governor based on the rule of law in resolving the border dispute between the autonomous region is the provision of Article 198 of Law No. 32 of 2004 which states that:⁹

- (1) If there is a dispute in the implementation of governmental functions between district / city in the province, the governor intended to settle disputes.
- (2) In the event of a dispute between provinces, between provinces and districts / cities in the region, as well as between the provincial and regency / municipal territory, the Minister of the Interior to resolve the dispute in question.
- (3) The decision referred to in paragraph (1) and (2) shall be final.

The provisions of Article 25 Regulation of the Minister of Interior No. 76 of 2012 on Guidelines of Region Emphasis, stated that:¹⁰

- (1) In the event of a dispute in the affirmation of the border made the border dispute resolution.
- (2) Settlement of border disputes between district / city in the province conducted by the governor.
- (3) Settlement of border disputes between provinces, between provinces with district / city in the region, as well as inter-provincial and regency / city outside its territory, by the Minister of the Interior.

Aspects relating to border disputes in Kediri regency and Blitar regency district can be seen at:

1. Juridical aspects:
 - a. No clear boundary areas within the map attached to the Act formation of the areas concerned, which is compounded by the attachment of a map that does not comply with the rules cartographical;
 - b. Discrepancies between chapters in the body of the Act forming regions within the limits outlined in the map are very simple;
 - c. Discrepancies between the law on the formation of regions with each other.

⁸Author interview with Sri Wahyuningrum (Head of Region Sub Region I, the Directorate General of Public Administration of the Ministry of Interior, dated February 26, 2012. Also by Heru Santoso (Deputy Director of Region Region II, Directorate General of Public Administration of the Ministry of Interior, dated February 27 2012. the Office of the Directorate General of Public Administration, Ministry of Interior, Jalan Kebon Sirih No. 31 Jakarta. this is in line with the provisions of Article 29 of the Regulation Minister of Interior No. 76 of 2012.

⁹See the provisions of Article 198 of Law No. 32 of 2004.

¹⁰See Article 25 Minister Regulation of Home Affairs No. 76 of 2012.

2. Economic Aspects: relating to the seizure of economic resources, both related to the presence of existing natural resources in the disputed territory and involve economic potential in the area concerned.
3. Cultural aspects: relating to the separation of ethnic or sub-ethnic with the expansion.
4. Political Aspects: related to political resources in the areas concerned, such as the number of voters and the vote for legislators provincial / district / city, and also the elections.
5. Social aspects: relating to social envy, the issue of immigrants and natives, potential / history of conflict, which is closely related to the economic, political, and cultural.
6. Aspects of Government: relates to the duplication of government services, the distance to the center of government services, or a desire to join a territory / served by an adjacent local governments.

Non-litigation efforts actually emphasizes the authority of the minister of interior to establish and affirm the border, because it contains the strategic value concerning state defense and security. However, in practice remain to be coordinated with the governments of provinces, districts and cities, because who understand the limits for certain areas in the field is the provincial government, district and even village heads and community.

Based on the above opinion the disputed border of the picture area two districts should be pressing natural resource management factor both districts involving local communities where the Kelud mountain. There are some community participation in the resolution of the border dispute that is growing and developing in communities around the Kelud mountain. Culture, traditions and local knowledge in the communities around the Kelud mountain of both districts to the dispute in the mediation process facilitated the Governor of East Java.

The rationale with the involvement of the community is the community around the Kelud mountain live, thrive, and live in the area around the Kelud mountain. They were obviously know about the change in the boundary area of change for the formation of craters in the post Kelud mountain erupted. This is the starting point in the process of completion of non-litigation dispute over the border between the two districts namely Kediri regency and Blitar regency facilitated the Governor of East Java Province.

Model alternative dispute resolution limit of the area around Kelud mountain community involvement can reduce egosenteris of each local government in the conflict and realize that the purpose of the conflict of the border dispute is essentially for the purpose of public welfare around Kelud mountain.

The alternative in the process of resolving disputes over the border of the two districts is required to put his soul non-litigation dispute settlement process (mediation) on a basic philosophy which is to reconcile the two parties to the dispute. The purpose of non-litigation resolution process to reconcile the two parties to the dispute, so it does not need to make efforts through the courts.

CONCLUSION

From the discussion above it can be concluded that efforts to increase local revenues by Kediri regency and Blitar regency on the object Kelud mountain pose a potential conflict area boundary. The potential for conflict and the border was generally caused by the development area Kelud mountain as tourist areas by the two districts to increase revenue, while the

potential for conflict of boundary regions also include: Problems Ownership region in the area of Kelud mountain. Problems Towing Limit Line, Map of the working area of the district , Expansion of regional problems with the formation of the crater of Kelud mountain naturally, Potential Conflicts of Interest as a result of the local authorities in determining the General Allocation Fund, Local Government Interests in increased local revenue.

Various efforts to resolve border disputes between Kediri regency and Blitar regency has done for litigation and non-litigation but have not provided a solution for both sides, therefore it is necessary to consider the sociological aspect to include the participation of the village, community, community leaders, religious leaders in formulate policy. Therefore the recommendation in this research is the need to create an alternative model of the dispute settlement area boundaries conflict with the mediation process that involves the participation of the community around the disputed, in mediation there are parties, the mediator and community participation around the object.

REFERANCE

- [1] Asshiddiqie, J. (2005). *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press.
- [2] Black, H.C. (1990). *Black Law Dictionary*, Sixth Edition, West Publishing, St.Paul Minn, 1990.
- [3] Gadjong, A. A. (2007). *Pemerintahan Daerah, Kajian Politik dan Hukum*, Bogor :Ghalia Indonesia, 2007.
- [4] Harahap, Z. (2007). *Hukum Acara Peradilan Tata Usaha Negara (Edisi Revisi)*, Jakarta:PT. Raja Grafindo Persada, 2007.
- [5] Juanda, (2008). *Hukum Pemerintahan Daerah Pasang Surut Hubungan Kewenangan Antara DPRD Dan Kepala Daerah*, cetakan kedua edisi kesatu. Bandung: PT. Alumni, 2008.
- [6] Manan, B. (1994). *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*, Jakarta: Pustaka Sinar Harapan,1994.
- [7] Muljadi, H. M. (2005). Arief, *Landasan dan Prinsip Hukum Otonomi Daerah Dalam Negara Kesatuan RI*, Prestasi Pustaka, Jakarta, 2005.
- [8] Peter, M. M.(2006). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- [9] Rawls, J. (1999). *A Theory of justice, Revised Edition*, Oxford, 1999.
- [10] Undang-Undang No 23 tahun 2014 Tentang Pemerintahan Daerah
- [11] Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 76 Tahun 2012 tentang Pedoman Penegasan Batas Daerah (Berita Negara Republik Indonesia Tahun 2012 Nomor 1252).
- [12] Peraturan Daerah Provinsi Jawa Timur Nomor 6 Tahun 2012 tentang Rencana Tata Ruang Wilayah Provinsi Jawa Timur (Lembaran Daerah Tahun 2012 Nomor 3 seri D, Tambahan Lembaran Daerah Nomor 5).