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# State responsibility for the economic, social and cultural human rights of the people living in the Indonesian border region

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**Abstract**
Human rights are basic rights of all humans that must be respected and protected. The importance of human rights causes it to be the right of all people (universal) without exception. The Universal Declaration of Human Rights in 1948 was born on the basis of this awareness which eventually brought the concept of order in the new regimes involved in the development of institutions and the construction of democracy in a country. These rights cannot be seized or eliminated by anyone, including the state or the government. On the contrary, the state or government has the obligation and responsibility to fulfill the basic human rights of every citizen, including economic, social, cultural rights, regardless of the background of differences, such as ethnicity, religion, race, skin color and customary differences and even geography as a form of respect and protection of human dignity. The ontology aspect shows that in essence human rights must be respected and protected because it is related to the value of its existence as a human being. While the epistemology aspect in this article is related to the binding power of the work of the law in protecting human rights and aspects of axiology or the usefulness in upholding human rights related to the system of protection of human rights for individuals, community groups and even states/countries. Through a juridical normative research method with a statute approach, abstraction of legal material is obtained through a process of deduction from applicable legal norms, both national and international laws to find and evaluate legislation relevant to the state's responsibility for human rights and social rights living in the Indonesian border region with description techniques, systematization, analysis and interpretation of the law. The legal aspects of state responsibility are aimed at ensuring the implementation of the principles mandated through the *Limburg Principles* and *Maastricht Principles* on economic and socio-cultural Human Rights of people living in Indonesia's border areas while preventing human rights violations, both violations by omission and violations by commission carried out by the state or government.

**Keywords:** state responsibility, human rights, community living, Indonesian border, region

## 1. Introduction
The existence of human rights must be respected and upheld because the existence of the protection of human rights has bound the member countries of the United Nations, including Indonesia. The meaning of existence is always associated with the position and function of law or the function of a particular legal institution [1]. Sjachran Basah argues that the notion of existence is related to the position, function, power or authority of the court in the environment of administrative justice in Indonesia [2]. The state is responsible for protecting and respecting human rights and implementing them in the law enforcement system. Human rights are not only related to protection for individuals in the face of the implementation of state or government authority in certain areas of their lives, but also lead to the creation of conditions in society by the state in which individuals can develop their full potential [3]. Through the 1993 World Conference on Human Rights in Vienna, it was reiterated that human rights are rights that cling to humans since birth and the protection of these rights is the responsibility of the government [4].

The uprightness of human rights greatly depends on the system of protection and the regulatory system that is applied. According to Shorde and Voich, the system has two meanings, the first is the understanding of the system as a type of unit that has a certain order. The particular order here refers to a structure composed of sections. Second, the system has a plan, method or procedure for doing something [5].

The United Nations as the organization where the nations of the world have gathered has succeeded in triggering the Universal Declaration of Human Rights on 10th December 1948 through resolution 217 A (III) which is a common standard for the success for all nations and all countries, with the aim that every person and every agency in the community, by always remembering this declaration, will endeavor by teaching and providing education to promote respect for these rights and freedoms, and in the way of nationally and internationally progressive actions, guarantees universal and effective recognition and respect,

[1] Sukamto Satoto, 2004, Pengaturan Eksistensi dan Fungsi Badan Kepegawaian Negara, Offset, Yogyakarta, p. 4.
[2] Sjachran Basah dalam Sukamto Satoto, Ibid.
[3] Scott Davidson, 1994, Hak Asasi Manusia, Sejarah, Teori dan Praktek dalam Pergaulan Internasional, Terjemahan, Pustaka Utama Grafiti, Jakarta, p. 32.
[4] Flora Kalalo, Hukum dan Hak Asasi Manusia, Unsrat Press, Manado, 2017, p. 5.
[5] Shorde dan Voich dalam Satjipto Raharjo, 2000, Ilmu Hukum, Cetakan ke V, Citra Aditya Bakti, Bandung, p., 48.

both by nations of their own member countries as well as by nations of the territories under their legal authority [6]. Even in the preamble to the Universal Declaration of Human Rights it has been stated that human rights needs to be protected by legal regulations so that people will not be forced to choose rebellion in an effort to oppose tyranny [7].

The birth of the United Nations Universal Declaration of Human Rights sparked the publication of various international agreements. One of the sources of standard international agreements is the result of the United Nations General Assembly on 16th December 1966 which gave birth to two covenants and one protocol, namely: The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. Indonesia has ratified the regulations on human rights in the national regulations, such as People's Colsultative Assambly Decree No. XVII Year 1998 which contains regulations on the implementation of laws governing human rights and the attitude of the Indonesian Nation towards human rights and the international human rights charter, Act No. 5 Year 1998 which contains the ratification of anti-cruelty, torture, cruel punishment or treatment, inhuman and degrading human dignity, Act No. 9 Year 1998 which contains the freedom of expression, Act No. 11 Year 1998 which regulates labor rights and obligations in Indonesia, Act No. 8 Year 1999 which regulates the rights and the protection of consumers, Act No. 19, 20, and 21 Year 1999 which contains about labor, wherein the law regulates the abolition of forced labor, the minimum wage of workers and discretion in employment, Act No. 26 Year 1999 which contains the revocation of the law of subversion which is considered to limit the right of opinion, Act No. 39 Year 1999 concerning Human Rights which in Chapter IX Article 104 Paragraph (1) then mandates the birth of Act No. 26 Year 2000 concerning the Human Rights Court. With the birth of the Human Rights Court Act, the resolution of gross human rights cases is carried out the General Court. This is a manifestation of the country's concern for its own people. The state realizes that there needs to be an institution to guarantee one's personal rights. In addition, the spirit of upholding human rights has also led to the National Human Rights Commission being brought out, ratifying of the International Covenant on Civil and Political Rights through Act No. 12 Year 2005 and the International Covenant on Economic, Social and Cultural Rights through Act No. 11 Year 2005. Even in the Amendment to 1945 Constitution of the Republic of Indonesia, Chapter XA in particular has also stipulated regarding Human Rights from Article 28A to 28J even though it has not been specifically explained about economic, social and cultural rights.

The logical consequence of the existence of the acts on human rights requires Indonesia as a sovereign county to respect and protect the economic, social and cultural rights of every citizen without distinguishing backgrounds of ethnicity, religion, race, customs and geography, including citizens in the Indonesian border region. This is very reasonable because the State of Indonesia borders on land with three neighboring countries and borders on sea with ten neighboring countries which has the potential to neglect state responsibility in terms of fulfilling human rights in the region which can affect the threat of state sovereignty. Because when the state fails to fulfill the intended human rights, the action indicates that there has been a violation of economic, social and cultural rights. In this case individuals or communities have the right to demand fulfillment of economic, social and cultural rights through advocating for the absence of forms of state presence.

## 2. Literature Review and Framework

### 2.1 Legal State Theory

When speaking of the rule of law, one must first understand the background of the birth of the rule of law which is a translation of *rechtstaat* [8]. The legal state is a state where the government and all legal officials starting from the president, judges, prosecutors, legislative members, in carrying out their duties within and outside of their office hours are obeying the law. Obeying the law means upholding the law, in making office decisions according to one's conscience, in accordance with the law [9]. The legal state is a state whose entire action is based on and regulated by the Act that was originally set up with the assistance of the voting body of the people [10]. Indonesia is one of the countries in the world that adheres to the notion of the rule of law which is enshrined in Article 1 paragraph (3) of the 4th amendment to 1945 Constitution of the Republic of Indonesia which states that "Indonesia is a legal state (*rechtstaat*)" [11]. With this affirmation, the mechanism of the life of individuals, communities, and the state is regulated by law (both written and unwritten). This means that both members of the public and the government must obey the law. The legal state adopted by the State of Indonesia is not in a formal sense, but a state of law in the sense of material which is also termed the welfare state or "the state of prosperity". In a welfare state, the state is not only tasked with maintaining public order, but is also required to actively participate in all aspects of life and people's livelihoods. This obligation is the mandate of the founding fathers of Indonesia, as stated in the fourth paragraph of the Preamble of 1945 Constitution of the Republic of Indonesia [12].

Embryonically it was argued that the idea of the legal state was put forward by Plato, when he introduced the concept of Nomoi. In Nomoi, Plato argued that the administration of a good state was based on good (legal) arrangements. Plato's idea of the legal state was even more assertive when it was supported by his student, Aristotle, who wrote it in the book *Politicia*. According to Aristotle, a good country is a country that is governed by the constitution and has legal authority. There are three elements of the constitutional

[6] Yosep Adi Prasetyo, Hak Ekosob dan Kewajiban Negara, Makalah Seminar Hak Asasi Manusia: Pemerkuatan Pemahaman Hak Asasi Manusia Untuk Hakim Seluruh Indonesia, KOMNAS HAM, Holiday Resort, Lombok, 28 - 31 May 2012.

[7] Flora Kalalo, Op.Cit. p. 9.

[8] Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat di Indonesia, Sebuah Studi tentang Prinsip-prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi, Peradaban, Surabaya, 2007, p. 66.

[9] O. Notohamidjojo, Makna Negara Hukum, Badan Penerbit Kristen, Jakarta, 1970, p 36.

[10] Sudargo Gautama, Pengertian Tentang Negara Hukum, Alumni, Bandung, 1973, p 13.

[11] Majelis Permusyawaratan Rakyat Republik Indonesia, Panduan Pemasyarakatan Undang-Undang Dasar Republik Indonesia Tahun 1945 (Sesuai dengan Urutan Bab, Pasal dan ayat), Sekertaris Jenderal MPR RI, Jakarta, 2010, p 46.

[12] Baharudin Lopa, Permasalahan Pembinaan Dan Penegakan Hukum Di Indonesia, Bulan Bintang, Jakarta, 1987, p.101.

government, namely, first, the government is carried out in the public interest, secondly, the government is carried out according to law that is based on general provisions, not arbitrarily made laws which exclude conventions and constitutions, third, constitutional government means that the government has carried out the will of the people, is not a form of coercion carried out by a despotic government [13].

The following are elements of the legal state according to Freidrich Julius Stahl, inspired by Immanuel Kant [14].

a. Based on and uphold human rights.
b. To be able to properly protect human rights, the state administration must be based on *trias politica*.
c. Government based on the Law.
d. If the government based on the Law is still perceived as violating human rights, then it must be tried by an administrative court.

Based on the description above, the meaning of the Legal State is that it stands on the law that guarantees justice to its citizens. Justice is a condition for the creation of happiness for the lives of its citizens, and as a basis for justice it is necessary to teach morality to every human being so that they become good citizens. Likewise, the actual legal regulations only exist if the legal regulations reflect justice for the interaction between their citizens [15].

### 2.2 Theory of Justice

a. Theory of Justice according to Aristotle

In his book *Ethics*, Aristotle divides justice into two groups, namely [16].

1) Distributive Justice, namely the balance between what one gets with what one deserves.
2) Corrective Justice, namely justice that aims to correct unjust events, as a form of equality between what is given and what is received. Corrective justice as a form of justice is enforced through a legal process with the aim of correcting an unfair situation that has occurred. The definition of justice can be understood as a value that is used to create a balanced relationship between humans by giving a person their rights to procedures and if there are violations related to justice, then someone (including the state) needs to be punished.

Justice is the fulfillment of individual desires at a certain level. The greatest justice is the fulfillment of as many people as possible. Fulfillment of justice to reach a condition worth of being called fair is difficult. This cannot be answered based on rational knowledge. The answer to that question is value justification [17].

Justice can only appear based on positive legal provisions in the form of laws that are objectively determined. This rule is positive law. This can be the object of knowledge, not metaphysical law. This theory is called the pure theory of law which represents the law as it is without maintaining it by calling it fair, or rejecting it by calling it unfair. This theory seeks real and tangible law, not the correct law [18].

b. Theory of Justice according to John Rawls

John Rawls proposes the principles of justice as follows [19].

1) Maximizing independence. The limitation on independence is only for the sake of independence itself.
2) Equality for all people, both equality in social life and equality in the form of the utilization of natural resources ("social goods"). Restrictions in this case can only be allowed if there is a possibility of greater profits.
3) Equality of opportunity for honesty, and elimination of inequalities based on birth and wealth.

To provide an answer to this, Rawls brought forth 3 (three) principles of justice, which are often used as references by several experts, namely [20].

1) Equal Liberty Principle
2) Differences Principle
3) Equal Opportunity Principle

Rawls believes that if there is a conflict, then the Equal Liberty Principle must be prioritized over the other principles. And, the Equal Opportunity Principle must be prioritized from the Differences Principle.

### 2.3 Theory of State Responsibility

According to international law, a state is responsible if an action or negligence can be linked to them breaches an international obligation, whether it is brought forth from an international agreement or from another international legal source. The law regarding state responsibility is a law regarding state obligations that arise when the state has been wrong or mistaken in carrying out its obligations or does not carry out an act that is its obligation [21].

The regulation on state responsibility was formulated by the International Law Commission which began in 1949 through a lengthy debate so that it could be completed in 1996 through an instrument entitled "Draft Article on the Responsibility of State for International Wrongful Acts" ("Draft Articles 1996"). This draft was finally passed through the United Nations General Assembly Resolution Number 56/83 in 2001. The article contains 59 articles consisting of four parts, namely [22].

1. The Internationally Wrongful Act of a State (the actions of a country that are considered wrong under international law) (articles 1-27).
2. The Content of the International Responsibility of a State (the charge of international responsibility of a state) (articles 28-41).
3. The Implementation of the International Responsibility of a State (implementation of the international responsibility of a state) (articles 42-54).
4. General Provisions (general rules) (articles 55-59).

Rosalyn Higgins gives the opinion that the law on state responsibility is nothing but a law that regulates accountability for a violation of international law. Higgins

[13] Ridwan HR, Hukum Administrasi Negara, PT Raja Grafindo Persada, Jakarta, 2006, p. 2-3.
[14] Astim Riyanto, Teori Konstitusi, Penerbit Yapemdo, Bandung, 2006, p. 274.
[15] Munir Fuady, Teori Negara Hukum Modern (Rehctstaat), Refika Aditama, Bandung 2009, p.207.
[16] Munir Fuady, Dinamika Teori Hukum, Ghalia Indonesia, Bogor, 2010, p. 109.
[17] Jimly Asshiddiqie, Teori Hans Kelsen tentang Hukum, Sekretariat Jenderal Mahkamah Konstitusi, Jakarta, 2006, p. 18.
[18] Ibid p. 22.
[19] John Rawls, A Theory of Justice, Cambridge, Mass: Harvard University Press, 1971.
[20] Ibid.
[21] Cf., Rosalyn Higgins, Problem and Process: International Law and How We Use It, Oxford: Clarendon Press, 1994, p.146.
[22] Huala Adolf, Aspek-Aspek Negara Dalam Hukum Internasional, Cetakan ke-5, CV. Keni Media, Bandung, 2015, p. 202-203.

further said that if a country violates an international obligation, the state is responsible for the violation it committed. The use of the term accountability by Higgins provides two meanings, firstly, that the state has the desire to carry out and/or mental capacity to realize what it is doing. Secondly, there is a liability for the actions of countries that violate the internationally wrongful behavior and that these responsibilities must be carried out [23].

Thus, in general, the elements of state responsibility include [24].

1) There is an act or omission that can be linked/that is imputable to a country.
2) The act or negligence is a violation of an international obligation, either that the obligation was born from the agreement or from other international legal sources.

Basically, there are two kinds of state accountability theories, namely [25].

1) Risk Theory, which then gives birth to the principles of absolute liability or strict liability or objective liability, namely that a state is absolutely responsible for any activities that cause harmful effects of ultra-hazardous activities even though the activity itself is a legal activity.
2) Fault Theory, which then gives birth to the principle of subjective responsibility or liability based on fault, namely that the state's responsibility for its actions is said to exist if it can be proven that there is an element of error in the act.

The growing trend recently has been the abandonment of the fault theory in various cases. In other words, in developments in various fields of international law, there is a tendency to adhere to the principle of absolute responsibility.

## 3. Research Methodology

### 3.1 Sources of legal research.

In legal research, the term data is not known and also does not require a hypothesis because legal research is an activity of know-how to solve legal issues that are faced and not just know-about. What is needed is the ability to identify legal problems, to provide legal reasoning, to analyze problems that are faced and then provide solutions to those problems [26]. To solve legal issues, legal research is needed which can be divided into primary legal material and secondary legal material. Primary legal material is an authoritative legal material consisting of legislation, official records or minutes/treatise in the making of legislation and decisions of judges. Secondary legal material is in the form of all publications about the law which are not official documents, such as textbooks, legal dictionaries, legal journals, and comments on court decisions [27].

In addition to sources in the form of legal material, legal research can also use non-legal materials in the form of books on political science, economics, sociology, philosophy or reports and non-legal research journals as long as they have relevance to the research topic in order to enrich and broaden the horizons of researchers [28].

One legal source for finding law is an international convention, in addition to national legislation. This source of law is a source of binding power and a source that determines or limits issues [29]. Some international conventions relevant to this study include the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, the 1969 Vienna Convention on the Law of Treaties.

The related sources of law or national legislation include 1945 Constitution of the Republic of Indonesia, Act No.39 of 1999 concerning Human Rights, Act No.26 of 2000 concerning the Human Rights Court, Act No.26 of 2007 concerning Spatial Planning, Act No.43 of 2008 concerning State Territory, Act No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands amended by Act No.1 of 2014, Act No.17 of 2007 concerning the National Long Term Development Plan, Presidential Regulation No.12 of 2010 concerning the National Border Management Agency which has been updated with Presidential Regulation No.44 of 2017. In addition, there are several government regulations issued that relate to this research, including Government Regulation No.38 of 2002 concerning the List of Geographical Coordinates of the Baseline Points of Indonesia, Government Regulation No.37 of 2008 concerning Amendments to Government Regulation No.38 of 2002 concerning the List of Geographical Coordinates of the Baseline Points of Indonesia, Government Regulation No.26 of 2008 concerning National Regional Spatial Planning as an elaboration of Act No.26 of 2007 concerning Spatial Planning and various other regulations.

### 3.2 Research Methods

In the academic field of law there are two types of research, namely normative legal research and sociological or empirical legal research. The research method used in this study is a normative legal research method with a statute approach that is carried out by examining legal materials and/or written data in the form of statutory books, library materials in the form of books, magazines, journals and other written materials related to research material [30].

Viewed from the type, this research is a normative juridical legal research or a library legal research. In normative legal research, library materials are basic data which in scientific research are classified as secondary data [31].

Soerjono Soekanto argues that normative legal research is done by examining library materials or secondary data, which includes research on legal principles, legal systematics, legal synchronization, legal history, legal comparison [32].

In normative law research or study, activities to explain the law do not require the support of social facts, which are known only as legal material. Therefore, to explain the law

[23] Ibid p. 198-199.
[24] Quoted from the International Law lecture Series, C:\Palguna\Kampus\TANGGUNG JAWAB NEGARA.doc. p. 1.
[25] Ibid p. 2-3.
[26] Peter Mahmud Marzuki, Penelitian Hukum, Edisi Revisi Cetakan ke- 10, Kencana Prenadamedia Group, Jakarta, 2015, p. 60.
[27] Ibid p. 181.
[28] Ibid p. 183-184.
[29] A. Wishnu Situni, Identifikasi dan Reformulasi Sumber-Sumber Hukum Internasional, Penerbit C.V Mandar Maju, Bandung.1989. p.3.
[30] H. Zainuddin Ali, Metode Penelitian Hukum, Sinar Grafika, Jakarta, 2013, p. 12.
[31] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif. Suatu Tinjauan Singkat. Raja Grafindo Persada, Jakarta, 2001, p. 24.
[32] Soerjono Soekanto, Pengantar Penelitian Hukum¸UI Press, Jakarta, 1986, p. 50.

or to seek meaning and give value to the law, only the legal concept is used and the steps taken are normative steps. In order to carry out normative legal studies an interpretation method is used to explain the law [33].

The process of finding the law or what can become the law through various means of legal interpretation and construction has long been known in the field of international law, specifically various ways of interpreting the implementation of international agreements, whether regulated by conventions, expert opinions, or various decisions of national or international courts [34].

This research was carried out through systematic and direct work methods using primary, secondary and non-juridical legal materials as well as guidelines for analysis. The steps taken in this legal study are as follows [35].

a. Identify legal facts and eliminate irrelevant matters to determine the legal issues to be resolved.
b. Collection of legal materials and if deemed to have relevance also with non-juridical materials.
c. Conduct a review of the legal issues submitted based on the materials that have been collected.
d. Draw conclusions in the form of arguments that answer the legal issues, and
e. Give prescriptions based on arguments that have been built in the conclusions.

### 3.3 Research Design

The design of research in law is carried out with several approaches, namely the Statute Approach, the Comparative Approach, the Case Approach, the Historical Approach and the Conceptual Approach. In the Statute Approach, an approach is carried out by examining all laws and regulations relating to the legal issues being addressed. The Comparative Approach is carried out by comparing on object of research to another such as the comparison of legal systems with the justice system in Indonesia, the comparison of legal principles with the principle of justice in Indonesia, the comparison between legal theories and judicial theories in Indonesia, and so on. In the Case Approach some cases are examined for reference to a legal issue. The Historical Approach is carried out by examining the background of what is learned and the development of regulations regarding the legal issues faced. The Conceptual Approach studies the doctrines and views that develop in law [36].

The design used in this study is the statute approach through reviewing all regulations related to state responsibility for economic, social and cultural human rights of people living in Indonesia's border areas, specifically the aspect of fulfilling the full rights of the people.

## 4. Discussion

### 4.1 Overview of the Indonesian Border Area

In speaking of the territory of the state in the context of the border, then according to Act No.43 of 2008 concerning State Territory in Article 1 Number 1, it is known that there are land boundaries, sea boundaries and aerial boundaries. Land boundaries and aerial boundaries are considered full sovereignty, whereas sea boundaries, not only the territorial seas, but also including the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf boundaries. Because the sea boundaries are not only consisted of the territorial sea boundaries/borders, the correct terminology for the sea is the maritime boundaries/borders, which contain the sovereign rights. From the results of a field survey, there are 139 sub-districts that are directly adjacent to neighboring countries, consisting of 56 sub-districts bordering by sea, 79 sub-districts bordering by land and 4 sub-districts bordering by both land and sea. All sub-districts are located in 41 districts and cities [37].

#### a) Land Border Regions of Indonesia

Indonesia borders on land with 3 neighboring countries, namely Malaysia, Papua New Guinea and Timor Leste [38]. The Indonesian-Malaysian delimitation of land boundaries, which is mostly in the form of watershed (mountain/hill ridge, or water dividing line) has been completed, but in the demarcation, there are still 9 (nine) outstanding boundary problems. The completion of the Indonesian-Malaysian land border problems has been handled through three institutions, namely: (1) Indonesian-Malaysian General Border Committee (CBG), coordinated by the Ministry of Defense; (2) Indonesian-Malaysian Joint Commission Meeting (JCM), coordinated by the Ministry of Foreign Affairs; and (3) the Technical Sub-Commission for Survey and Demarcation, coordinated by the Ministry of Internal Affairs. As for the handling the Outstanding Border Problems (OBP), a Joint Working Group has been formed between the two countries [39].

The land border between Indonesia and Papua New Guinea (PNG) has an 820 Km long stretch from Skouw, Jayapura to the north of the Bensbach river mouth, Merauke in the south. The line crosses 5 (five) districts in the Province of Papua, namely the Districts of Keerom, Merauke, Boven Digoel, Pegunungan Bintang, and the City of Jayapura. The delimitation of the Indonesian border with Papua New Guinea on the island of Papua refers to the agreement between Indonesia and Australia regarding certain boundaries between Indonesia and Papua New Guinea on 12th February 1973, which were ratified by Act No.6 of 1973, as well as joint declarations between Indonesia and Papua New Guinea in 1989-1994. The coordinates and locations of pillars of land boundaries with Papua New Guinea are spread over 52 pillar points agreed upon in the Indonesian-PNG agreement of 12th February 1973. The management of the Indonesian-PNG border is currently handled by two institutions, namely the Indonesian-PNG Joint Border Committee (JBC) which is coordinated by the Ministry of Internal Affairs, as well as the Technical Sub-Commission of the Indonesian-PNG Affirmation Survey and Determination of Boundaries coordinated by the Ministry of Defense [40].

The land border between the Republic of Indonesia and Timor Leste has a length of 268.8 Km, traversing 3 districts in the Province of Nusa Tengga Timur, namely the Districts of Belu, Timor Tengah Utara and Kupang. The Indonesian

[33] Bahder Johan Nasution, Metode Penelitian Ilmu Hukum, Penerbit CV. Mandar Maju, Bandung. 2008. p. 87.
[34] Yudha Bakti Ardhiwisastra, Penafsiran dan Konstruksi Hukum, Penerbit PT. Alumni, Bandung, 2008. p. 55.
[35] Peter Mahmud Marzuki. Op.Cit. p. 213.
[36] Ibid p. 133-135.
[37] Pushidrosal, Bunga Rampai Penetapan Batas Maritim RI-Negara Tetangga, Jakarta, Edisi 201, p. 7.
[38] BNPP, Rencana Induk Pengelolaan Batas Wilayah Negara dan Kawasan Perbatasan Tahun 2015-2019, Jakarta, March 2015, Bab 2. 1-5.
[39] Ibid.
[40] Ibid.

land border with Timor Leste is divided into two sectors, namely: (1) East Sector (main sector) in the District of Belu which is directly adjacent to the District of Covalima and the District of Bobonar in Timor Leste throughout 149.1 Km, and (2) West Sector (District of Kupang and District of Timor Tengah Utara) which is directly adjacent to the District of Oecussi, which is a 119.7 Km Timor Leste enclave. Most (99%) of the land boundaries of the two countries are natural boundaries, namely watershed and thalweg (the deepest parts of the river). The delegation of the Indonesian border with Timor Leste on the island of Timor refers to the agreement between the Government of the Dutch East Indies and the Portugal in 1904 and the Permanent Court Award (PCA) 1914, and the Interim Agreement between Indonesia and Timor Leste on 8th April 2005 [41].

**b) Sea Border Regions of Indonesia**

According to Presidential Decree No.6 of 2017, Indonesia has 111 outermost (small) islands in 22 provinces with the bases bordering 10 neighboring countries, namely the Philippines, Malaysia, Singapore, Thailand, Vietnam, Papua New Guinea, Australia, India, Palau and Timor Leste.

As for the strategic issues in the border region, which concerns the management of national borders, cross-border management issues, border area development issues, institutional issues. The management of state borders and border regions is currently facing complex problems, both in terms of delimitation, demarcation and delineation, defense and security, law enforcement issues, and regional development. The mandate of the Proclamation of Independence, since 74 years ago has states that "the transfer of power and others is carried out in a careful manner and in the shortest possible time". Similarly, in the Preamble of 1945 Constitution of the Republic of Indonesia it was stated that: (1) the state protects all of the nation and all of the bloodshed [of the nation]; (2) to promote public welfare and educate the [lives of the] nation. That mean maintaining the sovereignty of the Republic of Indonesia, in land, sea and air territories, including the citizens, the maritime boundaries, islands and natural resources is an absolute thing to do.

However, until now there are still several segments of boundaries that have not yet been agreed upon with neighboring countries; therefore, they can threaten the sovereignty and the territorial integrity of the Republic of Indonesia. The border areas are also characterized by various cross-border law violations such as illegal trading, illegal mining, illegal dredging/sand, illegal migration, illegal logging, human trafficking, people smuggling, goods smuggling, illegal fishing, sea piracy, etc. These cases are very detrimental to the state because they damage the environment, violate human rights and cause economic losses to the state. While viewed from the point of view of regional development, there are still many regions along the border region whose development is slow with low accessibility and are dominated by disadvantaged areas with limited social and economic facilities and infrastructure. These areas are generally less touched by the dynamics of development; therefore, most of the living conditions of the people are that of poverty, even in some areas bordering neighboring countries (Malaysia for example) people tend to be oriented towards neighboring countries in terms of social and economic services.

Responding to these problems, the paradigm of border area development in the past that prioritized a security approach rather than a welfare approach began to change. Act No. 17 of 2007 concerning the National Long-Term Development Plan 2005-2025 has set the direction of the development of national border areas, namely by changing the direction of development policies which have tended to be oriented "inward looking", becoming "outward looking" so that the area can be utilized as a gateway to economic and trade activities with neighboring countries. Under the Act, in addition to a security approach, efforts to manage state borders and the development of border areas use a welfare approach. Aside from that, special attention is directed to the development of the outermost small islands on the border which have, so far, escaped attention.

As a manifestation of the government's seriousness in optimizing the management and utilization of state borders and border areas, a National Agency for Border Management was formed, which was tasked with establishing border development program policies, establishing plans for budget needs, coordinating the implementation and implementing evaluation and supervision. The implementation of the acceleration of management of state borders and the development of border areas as mandated for the construction of the 2005-2025 National Long-Term Development Plan (NLTDP) has been started since NLTDP I (2004-2009) by placing the management of state borders and border areas as a national priority, but to date, there have been no significant results.

2. Principles of state responsibility for the economic, social and cultural human rights of people living in Indonesia's border areas.

Economic, social and cultural rights are types of human rights related to material, social and cultural welfare. The regulation of the types of economic, social and cultural rights was initially regulated in Articles 16, 22 to Article 29 of the Universal Declaration of Human Rights, and further regulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. The rights included in this category of economic, social and cultural rights include the right to work, including the right to safe and healthy working conditions, fair wages, equal pay for the same work, the right to ownership, the right to establish and join trade unions, including the right to strike, the right to social security, the right to an adequate standard of living, the right to education, compulsory and free basic education for all, the right to health services, the right to participate in cultural life and the enjoyment of scientific advances [42].

Now, more than a hundred countries have ratified this covenant. The high levels of the ratification of this covenant has a very strong character of universality. Some international human rights law experts consider that this agreement with such character has a position as part of international customary law, therefore this covenant will apply and bind every country with or without ratifying it.

Therefore, international law experts meet and formulate the principles of state responsibility known as the Limburg Principles and the Maastricht Principles. In part I, the general principles relating to human rights are made,

[41] Ibid.

[42] Pengantar Memahami Hak Ekosob, Pusat Telaah dan Informasi Regional (PATTIRO), Cetakan Pertama, Jakarta, Desember 2006, p. 5.

specifically the economic, social and cultural rights are as follows:

1) All humans in various places are born free and equal in dignity and are entitled to human rights and freedom without discrimination.
2) States must, at all times, fulfill the principles of non-discrimination, equality, including gender equality, transparency and accountability.
3) Every state has obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within and outside of their territory.
4) Every state has an obligation to realize economic, political and cultural rights, for every person in its territory, as much as it can. All states also have extraterritorial obligations to respect, protect and fulfill economic, social and cultural rights as stated in the following Principles.
5) All human rights are universal, inseparable, interrelated, interconnected and equally important. These principles outline extraterritorial obligations relating to economic, social and cultural rights, without excluding their application to other human rights, including civil and political rights.
6) The economic, social and cultural rights and related territorial and extraterritorial obligations are listed in the sources of international human rights laws, including the Charter of the United Nations; the Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; and other universal and regional instruments.

**4.2 The responsibility of the state for the fulfillment of economic, social and cultural rights of the people living in the Indonesian border region**

Human rights are not a foreign discourse in political and constitutional discourse in Indonesia. The discussion on human rights in the Indonesian constitution was marked by a very intensive debate in three periods of the constitutional history, starting from1945, as the initial period of the human rights debate, followed by the Constituent period (1957-1959) and the early period of the rise of the New Order (1966-1968). In these three periods, the struggle to make human rights as the center of the life of the nation and the state took place very seriously. Even so, in these golden periods, the human rights discourse failed to be contained in the state's basic law or constitution. In searching the literature, it has been found that economic human rights are rights relating to economic activity, labor, the right to obtain employment, the acquisition of wages and the right to participate in trade unions. Some of these rights can be described as follows:

1) Right to get a Job. The United Nations Universal Declaration of Human Rights, Article 23 paragraph (1) determines that "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."
2) Right of equal salary. In order to create justice, the acquisition of wages between men and women is expected not to differ in terms of gender and the quality of the same work. The Universal Declaration of Human Rights 1948, Article 23 paragraph (2) determines that "Everyone, without any discrimination, has the right to equal pay for equal work."
3) Right to participate in trade unions. The United Nations Universal Declaration of Human Rights 1948, Article 23 paragraph (4) determines that "Everyone has the right to form and to join trade unions for the protection of his interests."

Speaking of human rights in the social field, there are human rights relating to the right to social security, the right to housing and the right to education. In the Amendment to the 1945 Constitution of the Republic of Indonesia, it is determined as follows:

1) Article 28H paragraph (1) of the Amendment to the 1945 Constitution determines that: "Every person has the right to live in physical and spiritual prosperity, to live in, and to have a good and healthy environment and the right to obtain health services."
2) Article 28H paragraph (3) of the Amendment to the 1945 Constitution determines that: "Every person has the right to social security which enables their full development as a dignified human being."
3) Article 31 of the Amendment to the 1945 Constitution determines about education and culture.

Likewise, with human rights in the cultural field can be identified in Article 28C of the Amendment of the 1945 Constitution, Article 28I paragraph (3) of the Amendment of the 1945 Constitution, Article 32 of the Amendment to the 1945 Constitution.

In the Maastricht Guide, starting from the general principles and section V listed the state's obligations to fulfill economic, social and cultural rights for all its people where the obligation is formulated as:

**a) General obligations**

All states must take action, separately and jointly, through international cooperation, to fulfill the economic, social and cultural rights of people who are in their territory and extraterritorial territory, as listed in Principles 27 to 33.

**b) Obligation to create an enabling international environment**

States must take careful, tangible and achievable steps, separately, and jointly, through international cooperation, to create an international environment that enables the conductive to the universal fulfillment of economic, social and cultural rights, including matters related to bilateral and multilateral trade, investment, tax collection, finance, environmental protection, and development cooperation.

**c) Coordination and allocation of responsibilities**

States must coordinate with each other, including in the allocation of responsibilities, in order to work together effectively in the fulfillment of universal economic, social and cultural rights. Lack of coordination does not release the responsibility of the state from fulfilling the obligations of its extraterritorial individuals.

**d) Capacity and resources**

A state has an obligation to fulfill economic, social, and cultural rights in its territory to the maximum of its ability. Each state must separately and, when needed, jointly contribute to the fulfillment of its extraterritorial economic, social and cultural rights, commensurate with, among other things, its economic, technical and technological capacity,

existing resources, and influence in the international decision-making process. States must cooperate to maximally mobilize existing resources to fulfill universal economic, social and cultural rights.

**e) Principles and priorities in cooperation**

In fulfilling extraterritorial economic, social and cultural rights, states must:

1) Prioritize the fulfillment of the rights of disadvantages, marginalized and vulnerable groups;
2) Prioritize the main obligation to realize the basic minimum level of economic, social and cultural rights, and move as efficiently and effectively as possible towards the complete fulfillment of economic, social and cultural rights;
3) Observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principle of non-discrimination and equality, including gender equality, transparency and accountability; and,
4) Avoid backward steps or otherwise releasing their burden to show that these steps should be justified by referring to a full range of human rights obligation, and only carried out after a thorough alternative examination.

**f) Obligation to provide international assistance**

As part of a border obligation of international cooperation, states, acting separately and jointly, who are in a position to provide international assistance, they must provide this to contribute to the fulfillment of the country's economic, social and cultural rights of other states, in this case must be consistent with the principles above.

**g) Obligation to seen international assistance and cooperation**

A state has an obligation to seek international assistance and cooperation on the basis of mutual agreement when the state is unable, even though it has given its best effort, to guarantee economic, social and cultural rights in its territory. The state has an obligation to guarantee that the assistance provided is used to fulfill economic, social and cultural rights.

**h) Response to requests for international assistance or cooperation**

States that receive requests for assistance or cooperation and are in a position to do so, must consider these requests with good faith, and respond in line with the obligation to fulfill economic, social and cultural rights.

**4.3 Forms of implementing state responsibility for the economic, social and cultural human rights of people living in the Indonesian border region.**

In line with the new policy reorientation, the government together with the legislature then issued Act No.43 of 2008 concerning State Territory which gives a mandate for the establishment of a Border Management Agency at the central and regional levels as stipulated in article 14 paragraph 1 which states that to manage the State Territory Borders and the Border Regions at the central and regional levels, the Government and regional governments form a National Management Agency and Regional Management Bodies which were then followed by the issuance of Presidential Regulation No.12 of 2010 concerning the National Border Management Agency and updated with Presidential Regulation No.44 of 2017 concerning Amendments to Presidential Regulation No.12 of 2010 concerning the National Border Management Agency. The National Border Management Agency is a government agency or organization formed with the task of establishing plans of budget needs, coordinating implementation, and carrying out evaluations and supervision of management of state borders and border areas (Presidential Regulation No.12/2010, Article 3). In order to carry out this task, one of the functions carried out by the National Border Management Agency is the preparation and stipulation of the Master Plan and Action Plan for the Management of State Territory Borders and Border Areas (Presidential Regulation No.12/2010, Article 4 point a) [43].

In fact, the National Border Management Agency has set a vision, namely the realization of a national border area as a competitive front page towards a sovereign, independent personality based on mutual cooperation with the following mission:

a. To resolve the stipulation and affirmation of state borders, as well as enhance defense, security and law enforcement efforts in border areas.
b. To establish an integrated system for managing cross-border activities.
c. To increase efforts to develop national border areas through the utilization of potential border areas and the provision of infrastructure in border areas.
d. To increase the capacity and quality of national border governance through institutional structuring and strengthening [44].

The reorientation of the paradigm of managing state territory borders and border areas become outward looking, also manifested in national spatial policies. Act No.26 of 2007 concerning Spatial Planning stipulates the border area as a National Strategic Area in the field of defense and security while still taking into account the welfare of the community. In Government Regulation No.26 of 2008 concerning the National Regional Spatial Planning, it is targeted that in 2019 all of the country's border areas can be developed and improved in terms of welfare, defense-security, and environment. To encourage the growth of the border region, 26 cities in the border region are directed to become the National Strategic Activity Centers so that they can be used as a service center or gateway to economic and trade activities with neighboring countries. In the Nawa City Program, President of the Republic of Indonesia, Mr. Ir. Joko Widodo clearly mentioned in the third ideal, which is to build Indonesia from the periphery by strengthening the regions and villages within the framework of the unitary state which is described in 3 superior activities, namely:

a. Laying the foundations of asymmetric decentralization, which consists of [45].
    1) Development of Border Areas
    2) Development of Disadvantaged Areas
    3) Development of Villages and Rural Areas

[43] Rahman Ibrahim, Pengelolaan Perbatasan Negara Dalam Konteks Pengamanan Wilayah Perbatasan Laut, Presented at the Seminar of Safeguarding Sea Border Areas, Jakarta, 11 December 2017.
[44] Ibid. p. 8.
[45] Ibid.

4) Strengthening Governance and Improving the Quality of Regional Governments
5) Structuring the New Autonomous Regions for the Welfare of the People

b. Equitable development between regions, especially in eastern Indonesia
c. Reducing inequality between community economic groups

However, the government realizes that the commitment through the policies mentioned above cannot be implemented optimally due to various constraints in terms of development concepts, policies, and systems and procedures for managing border areas. This is reflected in the still strong sectoral approach, the weak synergy between sectors, between the central and regional governments, and the weak affirmative action of the related sectors.

## 5. Closing

### 5.1 Conclusion

a) The implementation of the principles of state responsibility for economic, social and cultural human rights of the people living in the Indonesian border region contained in the Limburg Principles and the Maastricht Guidelines have not been fully implemented by the Indonesian government as an implementing element in accordance with the spirit and rules of international law.
b) The responsibility of the state in fulfilling economic, social and cultural human rights in the border areas of Indonesia has not been optimally implemented, where there are still many people living in rural areas of Indonesia that have not enjoyed economic and social rights such as those living in big cities close to the center of the government.
c) The form of state responsibility for economic, social and cultural human rights for those living in the Indonesian border region carried out by the National Border Management Agency has not been significant, because of the wide scope of coordination from the National Border Management Agency which coordinates 28 government agencies/institutions. In addition to non-light workloads, the sectoral ego factor has also become an obstacle for accelerating the fulfillment of economic, social and cultural human rights of the people living in Indonesia's border areas.
d) Through this study, it can be concluded that people living in the border areas are included in the community groups that are vulnerable to human rights violations, especially the economic, social and cultural human rights.

### 5.2 Suggestions

a) In order to fulfill the economic, social and cultural rights of the people in the Indonesian border region, it is necessary to change the development paradigm from "inward looking" to "outward looking" while respecting the universal principles of human rights itself.
b) There needs to be a common understanding to encourage the participation of people in Indonesia's border areas which are vulnerable to human rights violations to actively participate in efforts to promote the nation's welfare and dignity.
c) Development in Indonesia's border areas must be carried out with a security approach, a prosperity approach and a sustainable approach as a form of state responsibility for economic, social and cultural rights.
d) All components of the nation, especially the stake-holders (Executive, Legislative and Judiciary as well as the private sector) need to think about the special treatment of the people living in Indonesia's border areas so that they can enjoy their human rights to the full extent of their siblings living in the cities or close to the government center, especially the economic, social and cultural human rights.

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