

Indonesia *vs.* Malaysia: The Battle for Border Territory Resolved

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Abstract

This paper provides a comprehensive analysis of the resolution of the longstanding border dispute between Indonesia and Malaysia. The study delves into the complex dynamics of this conflict, offering insights into its historical context, the key issues at stake, and the eventual resolution reached between the two nations. The Indonesia-Malaysia border dispute has been a contentious issue for decades, marked by conflicting territorial claims and occasional tensions between the two neighboring countries. Rooted in historical and geopolitical factors, the dispute has encompassed various regions along the land border, including areas rich in natural resources and strategic importance. This paper examines the factors that fueled the dispute, ranging from historical grievances to economic interests and geopolitical considerations. It explores how these factors influenced the negotiation process and shaped the positions of both Indonesia and Malaysia. Central to the analysis is the discussion of the diplomatic efforts and mechanisms employed to address the dispute. From bilateral negotiations to third-party mediation, the paper evaluates the effectiveness



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of different approaches in facilitating dialogue and fostering cooperation between the two nations. Furthermore, the paper highlights the role of international law and norms in guiding the resolution process. It assesses how principles of territorial sovereignty, boundary delimitation, and peaceful dispute resolution were applied in reaching a mutually acceptable agreement. Finally, the study discusses the outcome of the resolution and its implications for Indonesia, Malaysia, and the broader region. It examines the terms of the agreement, including any concessions made by either party, and considers the potential impact on bilateral relations, economic development, and regional stability. By providing a nuanced analysis of the Indonesia-Malaysia border dispute and its resolution, this paper contributes to a deeper understanding of interstate conflicts and the mechanisms available for their peaceful resolution in Southeast Asia.

KEYWORDS *Land Area Boundaries, Dispute Settlement, Border Dispute, Indonesia, Malaysia*

Introduction

The territorial disputes between neighboring nations have long been a focal point of geopolitical tension, often requiring intricate negotiations and diplomatic maneuvers to reach a resolution. Among these, the conflict between Indonesia and Malaysia over border territories stands as a testament to the complexities inherent in delineating boundaries and asserting sovereignty.¹ For years, the disputed areas between these two

¹ John G. Butcher, "The International Court of Justice and the territorial dispute between Indonesia and Malaysia in the Sulawesi Sea." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 35, no. 2 (2013): 235-257; Asri Salleh, Che Hamdan Che Mohd Razali, and Kamaruzaman Jusoff. "Malaysia's policy towards its 1963-2008 territorial disputes." *Journal of Law and Conflict Resolution* 1, no. 5 (2009): 107-116; Asri Salleh, "Dispute resolution through third party mediation: Malaysia and Indonesia." *Intellectual Discourse* 15, no. 2 (2007): 147-165.

Southeast Asian nations have been a source of contention, fueling historical grievances and political discord.²

The genesis of the Indonesia-Malaysia border dispute can be traced back to the colonial era, where arbitrary lines drawn by European powers failed to account for the intricate ethnic and cultural landscapes of the region. Post-independence, both Indonesia and Malaysia inherited these ambiguities, laying the groundwork for future disagreements. The disputed territories, rich in natural resources and strategic significance, further exacerbated tensions, leading to sporadic confrontations and diplomatic stalemates.³ However, despite the historical animosity and geopolitical complexities, recent developments suggest a newfound commitment to resolving the Indonesia-Malaysia border dispute. Through a combination of bilateral negotiations, third-party mediation, and diplomatic dialogue, significant strides have been made towards achieving a mutually acceptable solution.

Furthermore, the delineation of national borders holds profound significance across various dimensions, encompassing geographical, legal, and political realms. Geographically, these boundaries serve as demarcations defining the spatial extent of a country, encapsulating its terrestrial, maritime, and aerial domains. Legally, they assume critical importance in delimiting the jurisdictional ambit within which national laws are applied, thereby delineating the boundaries of state authority. Politically, borders represent the outer limits of a state's sovereign control over its territory and the entities therein.

The territorial integrity of a nation-state is shaped by the presence of contiguous or adjacent states, whose territorial boundaries function as the borders of the sovereign territory. Within this framework, the Territory of the Unitary State of the Republic of Indonesia, henceforth referred to as

² Ramses Amer, "The Association of South-East Asian nations and the management of territorial disputes." *Boundary and Security Bulletin* 9, no. 4 (2002): 81-96; Dion Maulana Prasetya, Peggy Puspa Haffsari, and Heavy Nala Estriani. "Identity Matters: Indonesia's approach towards territorial disputes in South-east Asia." *Maritime Affairs: Journal of the National Maritime Foundation of India* 16, no. 2 (2020): 89-105.

³ Aos Y. Firdaus, and Harun Umar. "Indonesia-Malaysia Border Conflict." *SIASAT* 7, no. 2 (2022): 176-185.

the State Territory, constitutes an integral component of the nation-state. Comprising landmasses, inland waters, archipelagic expanses, territorial seas, as well as the seabed and subsoil beneath, along with the airspace above, the State Territory embodies a comprehensive unit encompassing all material and immaterial elements within its confines, including the diverse reservoirs of natural wealth contained therein.⁴

The territorial domain of Indonesia presents a myriad of intricate challenges, spanning both security and socio-economic spheres, with the potential to undermine the nation's sovereignty. This complexity is heightened by the geographic proximity of border regions to neighboring countries. The Republic of Indonesia exercises sovereignty over its territory, including sovereign rights beyond its borders, as well as specific authorities for management and utilization aimed at fostering the welfare and prosperity of its populace. In addition, the delineation of state territory encompasses various elements, such as landmasses, inland waters, archipelagic expanses, and territorial seas, extending to the seabed, subsoil, and airspace above. This comprehensive framework is designed to afford legal clarity and certainty to citizens regarding the territorial boundaries of the state, ensuring the effective governance and utilization of all resources therein for the benefit of the Indonesian people.⁵

Indonesia, strategically positioned between two continents and two oceans, boasts a diverse array of border regions, each with its own unique characteristics and significance. These border areas, both maritime and terrestrial, serve as vital conduits for diplomatic relations, trade, and security considerations, shaping Indonesia's interactions with its neighboring countries.⁶ Among the notable border regions are those

⁴ See Article 1 point (1) of Law of the Republic of Indonesia Number 43 of 2008 concerning State Territory.

⁵ See Ehito Kimura, *Political Change and Territoriality in Indonesia: Provincial Proliferation*. (London: Routledge, 2013); Harry Purwanto, and D. G. Mangku. "Legal Instrument of the Republic of Indonesia on Border Management Using the Perspective of Archipelagic State." *International Journal of Business, Economics and Law* 11, no. 4 (2016): 51-59.

⁶ See Evan A. Laksmana, "Indonesia's rising regional and global profile: does size really matter?." *Contemporary Southeast Asia* (2011): 157-182; Mely Caballero-

delineated by seas, where Indonesia's maritime boundaries converge with those of neighboring nations. These include areas such as the sea borders with Thailand, India, and Malaysia in Aceh and North Sumatra, characterized by a rich tapestry of marine life and economic activities. Similarly, the sea borders with Malaysia, Vietnam, and Singapore in Riau and Riau Islands form bustling maritime corridors connecting major trade routes and economic hubs.⁷

On land, Indonesia shares borders with Malaysia, Papua New Guinea, and Timor-Leste, each border region endowed with its own geographical features and cultural nuances. From the dense rainforests of Kalimantan to the rugged terrains of Papua, these border areas are not only vital for territorial integrity but also serve as gateways for cultural exchange and cross-border cooperation.

Furthermore, Indonesia's borders facing the high seas, spanning regions from Aceh to East Nusa Tenggara, signify the nation's vast maritime domain and its role as a key player in regional security and maritime governance. These border regions, while facing the challenges of illegal fishing and maritime disputes, also present opportunities for Indonesia to assert its sovereignty and promote cooperation through mechanisms such as joint patrols and maritime diplomacy.⁸

Indonesia shares land borders with three neighboring countries: Malaysia, Papua New Guinea, and Timor-Leste. The boundary between Indonesia and Malaysia spans the island of Borneo, extending over 2,002 kilometers in length. This boundary comprises West Kalimantan, stretching 857 kilometers, and East Kalimantan, covering 1,147

Anthony, "Mechanisms of dispute settlement: The ASEAN experience." *Contemporary Southeast Asia* (1998): 38-66.

⁷ Chairil Nur Siregar, Sutiadi Rahmansyah, and Epin Saepudin. "Ancaman keamanan nasional di wilayah perbatasan indonesia: studi kasus Pulau Sebatik dan Tawau (Indonesia-Malaysia)." *Jurnal Pemikiran dan Penelitian Sosiologi* 4, no. 1 (2019): 27-39; Achdijat Sulaeman, "Analisis Diplomasi Indonesia-Malaysia Dalam Masalah Perbatasan." *Populis: Jurnal Sosial dan Humaniora* 3, no. 1 (2018): 623-634.

⁸ See also David Scott, "Indonesia grapples with the Indo-Pacific: Outreach, strategic discourse, and diplomacy." *Journal of Current Southeast Asian Affairs* 38, no. 2 (2019): 194-217; Muhammad Tri Andika, "Indonesia border diplomacy under the global maritime fulcrum." *Ritsumeikan International Affairs* 15 (2017): 45-66.

kilometers. In West Kalimantan, five districts directly abut Malaysia. These districts include Entikong (Sanggau)-Tebedu, Badau (Kapuas Hulu)-Lubuk Antu, Jagoi Babang (Bengkayang)-Serikin, Aruk (Sambas)-Sajingan, and Jasa Kemite Hulu (Sintang). Among these, only Jasa Kemite Hulu does not have a Cross-Border Post (PLB) due to its location within a protected forest area.⁹

Border disputes between states present a persistent threat to both national and international security and peace. These disputes, rooted in questions of sovereignty, have far-reaching implications that extend beyond national boundaries. International borders play a crucial role in delineating and safeguarding national sovereignty, serving as essential markers for enforcing laws and regulations within respective countries, even among friendly neighboring nations. However, unresolved border disputes not only jeopardize security but also exacerbate regional tensions.¹⁰

Moreover, border disputes can exacerbate various regional conflicts, hindering efforts to address pressing issues such as education, healthcare, and infrastructure development in border areas. The inadequate provision of essential services and infrastructure can undermine the sense of national identity and solidarity among citizens residing in these regions.¹¹ Consequently, some Indonesian citizens living in border areas may gravitate towards neighboring countries for economic opportunities, education, and access to infrastructure, viewing them as more reliable alternatives compared to their own remote locales.¹² Such challenges

⁹ Saru Arifin, *Hukum Perbatasan Darat Antar Negara*. (Jakarta: Sinar Grafika, 2022). See also Sri Suwartiningsih, David Samiyono, and Daru Purnomo. "Harmonisasi Sosial Masyarakat Perbatasan Indonesia-Malaysia." *Jurnal Hubungan Internasional* 7, no. 1 (2018): 1-10.

¹⁰ Paul Huth, *Standing your ground: Territorial disputes and international conflict*. (Michigan: University of Michigan Press, 2009). See also James Anderson, and Liam O'dowd. "Borders, border regions and territoriality: contradictory meanings, changing significance." *Regional Studies* 33, no. 7 (1999): 593-604.

¹¹ See Ramses Amer, "The Association of South-East Asian nations and the management of territorial disputes." *Boundary and Security Bulletin* 9, no. 4 (2002): 81-96.

¹² Harald Leisch, "Gated communities in Indonesia." *Cities* 19, no. 5 (2002): 341-350. See also Alexander P. Tjilen, and Ransta L. Lekatompessy. "Border Area

underscore the need for effective mechanisms to resolve border disputes and prioritize the development and well-being of citizens living in border regions, thereby fostering national unity and security.

The abundance of territorial boundaries shared between Indonesia and neighboring countries has resulted in several international disputes emerging within border zones. Since the 1980s, five particular border points between Indonesia and Malaysia have proven to be especially problematic.¹³ These points include the boundary marker at Moon Gull in Sambas Regency, point D 400 in Bengkayang Regency, Gunung Raya point in Bengkayang, the boundary line of Mount Raya I and II, Buan River in Bengkayang where the Indonesian side has faced encroachment by Malaysian individuals, and the Batu Aum point in Bengkayang Regency. Despite joint survey efforts, consensus has not been reached on these five boundary points due to persistent disagreements between Malaysia and Indonesia on the matter.

Despite being allied nations, Indonesia and Malaysia continue to grapple with unresolved border issues stemming from the colonial legacies of Dutch and British rule in Kalimantan. These historical imprints have left a lingering impact, evident in the ongoing border disputes between the two countries.

One notable incident occurred in 2006 when Indonesian fishermen operating in Gosong Niger, located in Tanjung Datuk Village, Paloh District, Sambas Regency, were forcibly expelled by Malaysian marine police (*Polis Marin*). This incident underscored the simmering tensions over territorial rights in maritime border areas. Similarly, in land border regions stretching from West Kalimantan Province to East Kalimantan Province and North Kalimantan Province, frequent occurrences of boundary peg shifting and unilateral removal by Malaysian entities have

Security Policy in Geopolitical and Geostrategic Perspective." *International Joined Conference on Social Science (ICSS 2021)*. Atlantis Press, 2021.

¹³ See Endah Rantau Itasari, "Border Management Between Indonesia and Malaysia in Increasing the Economy in Both Border Areas." *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 219-227; Delfiyanti Delfiyanti. "The Form of Dispute Settlement in The Border of Sea Region of Asean State Members and Its Implications to Indonesia." *Andalas International Journal of Socio-Humanities* 2, no. 1 (2020): 8-14.

been reported. These actions further exacerbate the existing border disputes, adding complexities to the efforts aimed at finding amicable resolutions between the two nations.¹⁴

The unresolved border peg issues between Indonesia and Malaysia pose a significant threat, potentially resulting in the loss of 6,402 hectares of land area in Kalimantan for Indonesia. Among the vulnerable areas, the border region in Bukit Mubau, situated within the heart of Betung Kerihunan National Park, stands out as particularly susceptible to exploitation of natural resources. This vulnerability is exacerbated by the absence of a permanent Indonesian National Army Border Guard Post in the area.

Bukit Mubau holds critical significance as a catchment sector for three major rivers: the Batang Aik River (Batang Lupar), the Batang Rajang River which flows into the Sarawak region, and the Embaloh River, a tributary of the Kapuas River flowing through the Kapuas Hulu area of West Kalimantan Province. The lack of robust surveillance and enforcement mechanisms heightens the risk of illegal resource extraction and encroachment in this ecologically sensitive area, further complicating efforts to safeguard Indonesia's territorial integrity and natural heritage.

For instance, on June 11, 2008, the Ministry of Forestry acknowledged the existence of a helipad constructed in Malaysian territory, situated a mere 7 meters from the border peg point between the two countries in Bukit Mubau. This helipad is located approximately near the UO921 peg. Subsequently, in 2009, reports surfaced indicating that an oil palm plantation company, owned by a Malaysian businessman, encroached two kilometers into Indonesian territory within Bukit Mubau, the core of Betung Kerihun National Park (TNBK). These incidents serve as illustrations of the recurring challenges along the land border between Indonesia and Malaysia in Kalimantan.

¹⁴ See Wan Shawaluddin Wan Hassan, Amrullah Maraining, and Ramli Dollah. "Isu Penyeludupan di Pulau Sebatik, Malaysia: Smuggling Issue in Sebatik Island, Malaysia." *Jurnal Kinabalu* 26, no. 2 (2020): 355-355; Ruhanas Harun, "Peningkatan Keselamatan Bersama Melalui Kerjasama Duahala Malaysia dan Negara-Negara Jiran." *JEBAT: Malaysian Journal of History, Politics, & Strategic Studies* 36 (2009): 16-40.

The land border between Indonesia and Malaysia in Borneo spans over 1,200km, stretching from Tanjung Datuk in West Kalimantan, bordering Sarawak, to Sebatik Island in East Kalimantan, bordering Sabah.¹⁵ Furthermore, the land border between the two countries is also complemented by sea borders in the West Coast and East Coast regions. Discussions regarding the border areas between Indonesia and Malaysia in Kalimantan, alongside several socio-economic and political development issues, remain ongoing as both governments seek to address these matters through cooperative efforts in socio-economic development within border regions.

However, conditions along the land border of Indonesia and Malaysia are prone to territorial disputes due to the installation of territorial boundary pegs by the governments, which are often lost or shifted. Most of the border areas between Indonesia and Malaysia consist of protected forest areas with minimal supervision, contributing to the vulnerability of territorial boundaries being shifted or lost. However, efforts by both governments to address the aforementioned cases appear to be lacking in seriousness, evidenced by the recurrence of similar incidents and the incomplete resolution of disputes at various points. This is partly due to differences in legal arguments used by each country, with Indonesia and Malaysia often failing to reach common ground on matters concerning national borders.¹⁶

This paper aims to delve into the intricacies of the Indonesia-Malaysia border dispute, examining the historical, political, and socio-

¹⁵ Lina Puryanti, and Sarkawi B. Husain. "A people-state negotiation in a borderland; A case study of the Indonesia-Malaysia frontier in Sebatik Island." *Wacana, Journal of the Humanities of Indonesia* 13, no. 1 (2011): 105-120.

¹⁶ Barry Wain, "Latent danger: Boundary disputes and border issues in Southeast Asia." *Southeast Asian Affairs* 2012, no. 1 (2012): 38-60. *See also* B. A. Hamzah, et al. "The maritime boundaries of Malaysia and Indonesia in the Malacca strait: An appraisal." *Australian Journal of Maritime & Ocean Affairs* 6, no. 4 (2014): 207-226; David A. Colson, "Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)." *American Journal of International Law* 97, no. 2 (2003): 398-406; Nur Arissa Izzati, Chusnul Qotimah Nita Permata, and Miftah Santalia. "Assessing the Effectiveness of Settling Indonesian Sea Border Disputes through Litigation and Non-Litigation Paths." *Lex Scientia Law Review* 4, no. 1 (2020): 1-18.

economic factors that have shaped its trajectory. By analyzing the pivotal moments in the negotiation process and exploring the underlying motivations driving each nation's stance, a comprehensive understanding of the conflict's resolution can be attained.

Furthermore, this paper seeks to highlight the broader implications of the Indonesia-Malaysia border resolution, both regionally and globally. From fostering greater stability and cooperation in Southeast Asia to setting a precedent for resolving similar disputes elsewhere, the successful resolution of this longstanding conflict holds profound significance.

The focus of this study is to investigate the myriad challenges encountered in delineating territorial boundaries between countries, as well as to examine the governmental efforts aimed at resolving conflicts arising from border issues. This research adopts a normative juridical approach, which entails a scientific inquiry into legal truths based on logical reasoning from the normative aspect of the law itself. To achieve this objective, the study utilizes the statutory approach method and case approach, employing both primary and secondary legal materials obtained by the author.

The primary aim of this research is to shed light on the complexities surrounding the determination of territorial boundaries and the legal principles governing such matters. By employing descriptive analysis techniques, the study seeks to elucidate these issues by relating them to existing legal theories and principles. Furthermore, through an examination of relevant legal cases and precedents, the research aims to provide insights into the practical challenges faced by governments in addressing border disputes and the strategies employed to overcome them.

Navigating Territorial Boundaries: Challenges and Solutions in International Border Determination

A nation's or state's border emerges concomitantly with its inception, a concept crystallizing in the modern sense during the 18th century in Europe. State borders delineate geographical territories that have served as arenas for power dynamics among states, predominantly characterized by endeavors to expand territorial boundaries. Integral to a nation's narrative

and continuity, the history of border regions remains intricately intertwined with the genesis and dissolution of diverse polities.¹⁷

The border region of a nation serves as the primary embodiment of its territorial sovereignty. This area plays a pivotal role in defining the boundaries of sovereign territory, managing natural resource utilization, and ensuring security and territorial integrity. The border issue encompasses multifaceted dimensions, influenced by critical factors including state jurisdiction and sovereignty, political dynamics, socioeconomic considerations, and defense and security imperatives.¹⁸

Clear delineation of both land and sea boundaries holds paramount importance for neighboring countries. As stipulated in Article 1, Paragraph 4 of Law Number 43 of 2008 regarding State Territory of Republic of Indonesia, a nation's territorial boundaries are defined as "*boundary lines that represent the sovereignty of a country as established by international law.*"¹⁹ In addition, borders, whether formed by nature's

¹⁷ Michiel Baud, and Willem Van Schendel. "Toward a comparative history of borderlands." *Journal of World History* (1997): 211-242; James Anderson, and Liam O'dowd. "Borders, border regions and territoriality: contradictory meanings, changing significance." *Regional studies* 33, no. 7 (1999): 593-604.

¹⁸ In the context of ASEAN, please see AKM Ahsan Ullah, and Asiyah Az-Zahra Ahmad Kumpoh. "Are borders the reflection of international relations? Southeast Asian borders in perspective." *Journal of Asian Security and International Affairs* 5, no. 3 (2018): 295-318; Barry Wain, "Latent danger: Boundary disputes and border issues in Southeast Asia." *Southeast Asian Affairs* 2012, no. 1 (2012): 38-60; Ramses Amer, "Expanding ASEAN's conflict management framework in Southeast Asia: The border dispute dimension." *Asian Journal of Political Science* 6, no. 2 (1998): 33-56.

¹⁹ The Law emphasized that the Unitary State of the Republic of Indonesia as an archipelago characterized by an archipelago has sovereignty over its territory and has sovereign rights outside its sovereign territory and certain other authorities to be managed and utilized as much as possible for the welfare and prosperity of the Indonesian people as mandated in the State Constitution. Republic of Indonesia in 1945. Regulations regarding state territory include land areas, inland waters, archipelagic waters and territorial seas along with the seabed and land beneath them, as well as the air space above them, including all sources of wealth contained therein. Regulation of state territory is carried out to provide legal certainty and clarity to citizens regarding state territory. See Jeanne Darc Noviayanti Manik, "Pengaturan Hukum Perbatasan Negara Kesatuan Republik Indonesia Berdasarkan Undang-

contours or human constructions, define the division between neighboring countries' territories. However, the border issue extends beyond this simple delineation. For instance, many individuals residing near neighboring nations freely moves across borders without official documentation like passports, as the boundaries lack clear demarcation. In essence, borders serve two primary functions: *First*, Internally, they enable governments to regulate and enforce national laws, governing domestic affairs and activities within their respective countries. *Second*, Externally, borders play a pivotal role in international relations, representing the rights and obligations outlined in bilateral, regional, and international agreements, thereby shaping the nation's role in the global community.²⁰

Borders are not merely physical lines on maps; they encapsulate both internal governance and external diplomatic relations, embodying the delicate balance between national sovereignty and international cooperation. From the viewpoint of political geography, the concept of borders is often bifurcated into boundaries and frontiers. Boundaries serve to bind or delimit the state as a sovereign political entity, while frontiers denote positions situated in the forefront or hinterland of a country. Despite their distinct connotations, these terms complement each other and hold strategic significance for the sovereignty of a nation's territory. Moreover, within the realm of political geography, a country's territorial boundaries can be classified into two categories: functional classification based on their purpose and morphological classification based on their occurrence.²¹

Undang Wilayah Negara." *PROGRESIF: Jurnal Hukum* 12, no. 1 (2018): 2015-2027; Budi Hermawan Bangun, "Konsepsi dan Pengelolaan Wilayah Perbatasan Negara: Perspektif Hukum Internasional." *Tanjungpura Law Journal* 1, no. 1 (2017): 52-63; Caesar Ali Fahroy, "Aspek Hukum Internasional Pada Batas "imajiner" Negara." *Jurnal Wawasan Yuridika* 1, no. 1 (2017): 54-63.

²⁰ See also Mangku, Dewa Gede Sudika. "Legal Implementation On Land Border Management Between Indonesia And Papua New Guinea According to Stephen B. Jones Theory." *Veteran Law Review* 1, no. 1 (2018): 72-86; Bob Jessop, "The political economy of scale and the construction of cross-border micro-regions." *Theories of New Regionalism: A Palgrave Reader*. (London: Palgrave Macmillan UK, 2003), pp. 179-196.

²¹ See also David Newman, and Anssi Paasi. "Fences and neighbours in the postmodern world: boundary narratives in political geography." *Progress in Human*

Functional classification pertains to categorizing state borders based on the relationship between border lines and the development of cultural landscapes within separated countries. According to Harsthorne, functional classifications can be delineated into four types:

1. Antecedent Boundaries: These borders are established before the emergence of cultural landscapes, typically set by preceding states defining their outer boundaries.²²
2. Subsequent Boundaries: Formed after the development of cultural landscapes, these borders arise through negotiations and mutual agreements between countries, often following ethnic, cultural, linguistic, and religious differences.²³
3. Superimposed Boundaries: These borders are established similarly to subsequent boundaries, yet they are not tied to socio-cultural divisions. Instead, external forces, apart from the negotiating parties, influence their formation.²⁴
4. Relic Boundaries: Representing border lines that have lost their political function, particularly within cultural landscapes, this type commonly occurs when a country either voluntarily or through imperialism integrates into another territory.

Morphological classification involves categorizing state borders based on their formation process. Borders can be classified into two main types based on their morphology:

1. Artificial Boundaries: These borders are delineated by man-made boundary markers and are intentionally established through human intervention.

Geography 22, no. 2 (1998): 186-207; Corey Johnson, et al. "Interventions on rethinking 'the border' in border studies." *Political Geography* 30, no. 2 (2011): 61-69; Emmanuel Brunet-Jailly, "Theorizing borders: An interdisciplinary perspective." *Geopolitics* 10, no. 4 (2005): 633-649.

²² See Emanuel Gomes, et al. "Antecedents and implications of territorial servitization." *Regional Studies* 53, no. 3 (2019): 410-423.

²³ See David Newman, "On borders and power: A theoretical framework." *Journal of Borderlands Studies* 18, no. 1 (2003): 13-25; John Robert Victor Prescott, *Political Frontiers and Boundaries*. (London: Routledge, 2014).

²⁴ See Andrea Brighenti, "On territory as relationship and law as territory." *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* 21, no. 2 (2006): 65-86.

2. Natural Boundaries: Formed by natural processes such as rivers, mountains, or coastlines, these borders arise organically without direct human intervention.

According to experts in International Law such as Green Maryan, Malcolm N. Shaw, and J.G. Starke, a border area constitutes the outermost boundary of a country's territory, delineated by an imaginary line separating one country's territory from another's, whether on land, sea, or in the air.²⁵ This boundary can be qualified as a "*border zone*" or a "*customs-free zone*." These terms refer to areas subject to various international agreements, serving as "*treaty contracts*" to address border issues incidentally, or as "*law-making treaties*" to regulate border matters on a continuous and permanent basis. In the realm of international law, territorial borders between two countries must be established based on agreements reached between them.²⁶

State borders manifest in both terrestrial and aquatic domains. On land, borders may be delineated by natural features such as mountains, rivers, or seas, as well as by artificial markers like bollards, fences, or imaginary lines. In addition, Oscar J. Martinez categorizes borders into four types:

1. Alienated Borderland: A region where cross-border activity is absent due to factors such as warfare, conflict, nationalist domination, ideological animosity, religious tensions, cultural disparities, and ethnic rivalries.
2. Coexistent Borderland: An area where cross-border conflicts are managed to a controllable level, although unresolved issues persist, such as disputes over ownership of strategic border resources.

²⁵ See NA Maryan Green, "Some Comments on the Model Plan for the Classification of Documents concerning State Practice in the Field of Public International Law." *International & Comparative Law Quarterly* 19, no. 1 (1970): 118-124; Malcolm N. Shaw, "Territory in international law." *Netherlands Yearbook of International Law* 13 (1982): 61-91; J. G. Starke, "The Acquisition of Territorial Sovereignty by Newly Emerged States." *The Australian Year Book of International Law Online* 2, no. 1 (1968): 9-15.

²⁶ FX. Adjie Samekto. *Negara dalam Dimensi Hukum Internasional*. (Bandung: Citra Aditya Bhakti, 2009), p. 7.

3. Interdependent Borderland: A region symbolically linked by relatively stable international relations, fostering mutual economic activities between residents of both sides. Economic exchanges are mutually beneficial, with one side often possessing production facilities while the other provides cheap labor.
4. Integrated Borderland: A region characterized by unified economic activity, where nationalist sentiments have waned in both countries, and close alliances have been forged between them.²⁷

Legal Basis for Delimitation of Land Area Boundaries Between Indonesia and Malaysia

The problem of territorial boundaries between two countries until now where the world has entered the 21st century, is a problem that still remains. Every territorial boundary between two countries must be stated in a form of international law product that is binding between two countries so as not to cause disputes. Similarly, Indonesia borders both land and sea with several countries. Indonesia and several countries bordering both land and sea also put territorial boundary regulations between countries in an international law product. However, even though it has been set forth in a form of binding international law, there are still territorial boundary disputes involving Indonesia and its neighbors. The land boundary between Indonesia and Malaysia in Kalimantan is one example.²⁸

The determination of territorial boundaries between Indonesia and Malaysia at the stage of location determination and delimitation carried out by referring to the principle or principle *uti possidetis juris* can be said

²⁷ See Oscar J. Martinez, "The Dynamics of Border Interaction: New approaches to border analysis." *Global Boundaries*. (London: Routledge, 2002), pp. 1-15. See also Oscar J. Martinez, *Troublesome Border*. (Arizona: University of Arizona Press, 2022); Oscar J. Martinez, *Border boom town: Ciudad Juárez since 1848*. (Texas: University of Texas Press, 1978).

²⁸ Ramses Amer, "The Association of South-East Asian nations and the management of territorial disputes." *Boundary and Security Bulletin* 9, no. 4 (2002): 81-96; Michael Eilenberg, "Frontier constellations: Agrarian expansion and sovereignty on the Indonesian-Malaysian border." *Journal of Peasant Studies* 41, no. 2 (2014): 157-182.

to be successful.²⁹ This is shown by the formation of an MoU between Malaysia which uses an agreement between the Netherlands and Britain as its orientation. However, at the demarcation stage shown through several activities such as surveys and mapping still show problems. The problems that occurred at the demarcation stage triggered a dispute over land boundaries on the island of Kalimantan. This will also affect the implementation of regional management, because if the demarcation is problematic, border area management will also be problematic. The implementation of regional management is also closely related to the doctrine of effectiveness, because the implementation of regional management can be carried out by showing the existence of government administration activities.³⁰

The land boundaries of Indonesia and Malaysia in Kalimantan still leave 10 points in dispute, because the two countries still do not agree on their territorial boundaries. This is due to differences in perception regarding the legal basis used. Previously, Indonesia and Malaysia had made an MOU in 1973 which was a product of international law that bound Indonesia and Malaysia as the legal basis for the territorial boundaries of the two countries. The 1973 MOU is also inseparable from a principle of international law, namely *uti possidetis juris* which states that the new state inherits the territory and wealth of the previous ruling state. This means that Indonesia and Malaysia inherited the previous colonial territory, Indonesia inherited the Dutch territory, and Malaysia inherited the British territory. It has also become an international custom that has been implemented in many former colonies.

²⁹ See Maswandi Maswandi. "The Management Of The Border Region In Perspective International Law (Indonesia-Malaysia)." *International Asia of Law and Money Laundering (IAML)* 1, no. 1 (2022): 13-22; Saru Arifin, "The Implementation of Uti Possidetis Principle in Determining Land Border Pole Point between Indonesia and Malaysia." *Jurnal Hukum Ius Quia Iustum* 16, no. 2 (2009); Vitit Muntarbhorn, and Vitit Muntarbhorn. "Historical Ambiguity and Territoriality." *Challenges of International Law in the Asian Region: An Introduction* (2021): 47-60.

³⁰ See Ernst Spaan, Ton Van Naerssen, and Gerard Kohl. "Re-imagining borders: Malay identity and Indonesian migrants in Malaysia." *Tijdschrift voor economische en sociale geografie* 93, no. 2 (2002): 160-172.

Before Indonesia and Malaysia became independent, the Netherlands and Britain had also made a product of international law in the form of a treaty, called the London Treaty. The London Treaty is still used by Indonesia and Malaysia as the legal orientation for delimitation on the island of Kalimantan. However, in international law there is also the principle of *pacta tertiis nec nocent nec prosunt*, which states that a treaty does not confer rights or impose obligations on parties who are not bound by the agreement. This means that Indonesia and Malaysia cannot have rights and cannot be held accountable for the London Treaty.³¹

The 1973 MoU, which was oriented towards the London Treaty, was also unable to run efficiently. This is because the facts on the ground are different from what is written in the London Treaty. In the Vienna Convention of 1969, which article 48 paragraph (1) explains, a State may allude to an error that can invalidate that State's agreement to be bound by a treaty if the error relates to a fact or a circumstance that the State considered at the time the treaty was made and the error is the principal basis of its agreement to be bound by the treaty. Furthermore, article 49 of the Vienna Convention of 1969 states "*if a State makes a treaty based on fraud by another State, the first State may use that deception to invalidate its agreement to be bound by that treaty.*" This discrepancy in the findings of fact on the ground can be used as an error that can invalidate the country's agreement to be bound by a treaty.

Based on existing history, from the colonial period to independence, the legal basis of the agreement on the territorial boundaries of Indonesia and Malaysia is:

a. Dutch-British Convention of 1881

The Convention was signed by the Netherlands and Great Britain on 20 June 1881 in London. In this convention regulated various matters concerning the determination of boundaries in general such as the determination of watershed and special matters concerning cases in certain areas.

b. Dutch-British Agreement of 1915

³¹ See Daniel Lev, "Legal Evolution and Political Authority in Indonesia: Selected Essays." *Legal Evolution and Political Authority in Indonesia*. (Leiden: Brill Nijhoff, 2021).

Approval of a joint report affirming the border between the Dutch and British in Borneo 28 September 1915. This agreement was signed in Tawao on 17 February 1913 respectively by the IR. J.H.G Schepers was a member of the Triangulation Brigade (now the Geodesy section of Subdinbin Peta Dittopad in Bandung) and Marine Lieutenant E.A. Vreede represented the Dutch Government, while the British were represented by H.W.I Bunbury and G.ST.V. Keddel, both mapping experts.

The joint affirmation was made by both parties under the Treaty of 1891. The result of the agreement was confirmed by the second representative of the Government in London on 28 September 1915.

c. Dutch-British Convention of 1928

The Convention was signed by the Netherlands and Britain in The Hague on 28 March 1928, subsequently ratified by both countries on 6 August 1930. The essence of this Convention contains the ways in which the boundaries of the two countries in the Jagoi region between Gunung Api and Gunung Raya are determined, which are part of the 1891 Treaty.

d. Indonesian and Dutch MoU of 1973

This document of agreement between Indonesia and Malaysia is based on the Conventions of 1891, 1915 and 1928. In this MOU, matters concerning the implementation of surveys and affirmation of the boundaries of Indonesia and Malaysia were agreed, including:

- 1) The Joint Technical Committee
- 2) Determination of priority areas
- 3) Survey procedure
- 4) Stages of implementation
- 5) Financing
- 6) Security unit support
- 7) Logistics and communication
- 8) Gaming
- 9) Customs and Excise Provisions
- 10) Minutes-Minutes

The minutes contain matters that have been discussed by both delegations, both the progress of the survey implementation and the

affirmation of the boundaries of the two countries as well as agreements on issues arising during the survey and territorial boundary affirmation.

In Indonesia, national legal products in the form of laws and regulations regarding territorial boundaries between countries are also still not all regulated. This is due to the absence of international legal products that bind Indonesia and its bordering countries strongly. So far, international legal products that regulate territorial boundaries in Indonesia are mostly in the form of MOUs, not international agreements.

The border issue is part of the country's custody and security issues. Therefore, each country has the authority to determine the boundaries of its own jurisdiction. However, the delimitation of territory must also take into account the authority of other state authorities through bilateral cooperation and agreements. For example, in the field of survey and determination of land and sea boundaries between Indonesia and other countries, so far it is still contained in a form of MOU and agreements on the determination of sea boundaries between countries.

Related to this, the State Constitution of the Republic of Indonesia in 1945, in Article 25A orders the making of laws to the government to determine the boundaries of the state territory that can be used as guidelines in defending Indonesian sovereignty, fighting for national interests, and national safety, strengthening potential, empowering and developing natural resources for the prosperity of the entire Indonesian nation. This is then realized in Law of the Republic of Indonesia Number 43 of 2008 concerning State Territory Article 6 paragraph (1) letter (a) which reads:

- (1) The boundaries of the State as stipulated in Article 5, include: a. On land it borders the State Territory: Malaysia, Papua New Guinea and Timor Leste.

Then continued in Article 6 paragraph (2) which reads:

- (2) The boundaries of the State as referred to in paragraph (1), including its coordinate points, shall be determined based on bilateral and/or trilateral agreements.

From the quotation of the content of the Law above, it is clear that the agreement regarding territorial boundaries between Indonesia and Malaysia is very important to be established in a form of international law product that is binding and has permanent legal force.

In the Explanation to the Law of the Republic of Indonesia Number 43 of 2008 concerning State Territory Article 6 Paragraph (1) Letter (a) explains that: The boundaries of the State on land in this provision are the boundaries agreed by the Government of the Dutch East Indies and the British Government in Kalimantan and Papua, and the Portuguese Government on the island of Timor which subsequently became Indonesian territory based on the principle of *uti possidetis juris* applicable in international law. Based on this principle, an independent state inherits the territory of its former colonial state.

The land boundary between Indonesia and Malaysia was established on the basis of the Dutch East Indies and British Conventions of 1891, 1915, and 1928. The land boundary between Indonesia and Timor Leste was established on the basis of the Convention on the Delimitation of the Dutch East Indies and Portugal of 1904 and the Permanent Court of Arbitration (PCA) Decision of 1914.

The land boundary between Indonesia and Papua New Guinea was established on the basis of the Dutch East Indies and British Boundary Treaty of 1895. The application of the principle of *uti possidetis juris* in determining land boundaries between Indonesia and Malaysia also needs to be reviewed. This is because, the facts on the ground have been much different from what was written in the agreement made by the Dutch East Indies and England.³²

However, despite being mentioned in Law Number 43 of 2008 concerning State Territory, neither the agreements between the Netherlands and Britain nor the MoU between Indonesia and Malaysia regarding territorial boundaries on the island of Kalimantan are publicly published. According to the Head of the Border Management Agency of Bengkayang Regency, West Kalimantan, the agreements are not made

³² Harold Crouch, "Indonesia and the security of Australia and Papua New Guinea." *Australian Journal of International Affairs* 40, no. 3 (1986): 167-174.

public because they are state secrets. This causes a lack of public knowledge about the boundaries of their own country.

The issue of asserting territorial boundaries in a law is becoming increasingly important in line with rapid changes in various regions due to the influence of the global situation. The issue of state boundaries is not only about threats from outside, but also related to the issue of territorial sovereignty and the right of every citizen to exploit his natural wealth. Due to limited resources and increasing population, borders become sensitive to disputes and conflicts.

Therefore, it is important for Indonesia and countries bordering both land and sea areas with Indonesia to make a product of international law that is more strongly binding such as international agreements or treaties. Article 62 paragraph (2) of the 1969 Vienna Convention on International Treaties states that the *rebus sic stantibus*³³ clause cannot be applied to international agreements governing state borders.

The land border between Indonesia and Malaysia is indeed stated in the agreement, but differences in perception or opinion between Indonesia and Malaysia at some point cause problems that have not been agreed upon by both parties. Indonesia and Malaysia themselves have experienced several disputes regarding territorial disputes, both in terms of determining territorial boundaries, and island struggles.

The MOU was deliberately chosen by Indonesia and Malaysia as a joint legal instrument, because of its simple shape and relatively faster manufacture. However, it does not rule out the possibility that the MOU, if fully completed regarding joint surveys and mapping, will be upgraded to a border agreement (treaty) that can be deposited with the United Nations.³³

The measurement of boundaries in Borneo refers to the Treaty of London, March 17, 1824, between Britain and the Netherlands regarding the colonies. The Treaty of London was signed by Hendrik Fagel and Anton Reinhard Faclk of the Netherlands, and George Canning and Charles William Wynn Watkin of England. In the Treaty of London, the Malay Archipelago, Singapore, was controlled by the British and the

³³ Saru Arifin, *Hukum Perbatasan Darat Antar Negara* (Jakarta: Sinar Grafika, Jakarta, 2014), p. 216.

southern territories were controlled by the Dutch. One of the references to the London Treaty agreement is the boundaries of Indonesia and Malaysia which are based on watershed. This means the separation of river or mountain flows, mountain rows, natural boundaries in the form of mountain ridges as a sign of separation.³⁴

The boundaries of Indonesia and Malaysia in Sambas, including in Camar Wulan refer to the boundary lines of Van Doorn's Dutch map of 1906, Sambas's map of Borneo (NB 120E 10908/40 Greenwind) and the map of the Federated Malaysi State Survey in 1935. Under this agreement, the boundaries of Indonesia and Malaysia in Camar Wulan curved like a horseshoe, but changed to a straight line after the MOU in Kota Kinabalu, Sabah State, Federation of Malaysia in 1974 and in Semarang, Central Java Province in 1978.³⁵

Settlement of Land Boundary Disputes between Indonesia and Malaysia

Indonesia and Malaysia prioritize peaceful settlement methods because Indonesia and Malaysia are allied countries. Indonesian people living in border areas such as Jagoi Babang District, Bengkayang Regency, West Kalimantan and Serikin and Serawak Districts also have close relationships and the same language spoken.³⁶ An effective method of

³⁴ See Nicholas Tarling, "British policy in the Malay Peninsula and Archipelago 1824-1871." *Journal of the Malayan Branch of the Royal Asiatic Society* 30, no. 3 (1957): 3-228; Lennox Algernon Mills, Constance M. Turnbull, and D. K. Bassett. "British Malaya 1824-67." *Journal of the Malayan Branch of the Royal Asiatic Society* 33, no. 3 (191 (1960): 1-424.

³⁵ See Muhammad Rizki, and Agustina Merdekawati. "The Significance of Boundary Construction at Land Border between Indonesia–Malaysia in Temajuk Village, Sambas Regency as Manifestations of Indonesia's Sovereignty." *KnE Social Sciences* (2018): 405-423; Iva Rachmawati, and Machya Astuti Dewi. "Nationalism in Border Community: Temajuk, Sambas District, West Kalimantan, Indonesia." *Journal of Nationalism, Memory & Language Politics* 15, no. 2 (2021): 210-229.

³⁶ See Hans-Dieter Evers, "Transition towards a knowledge society: Malaysia and Indonesia in comparative perspective." *Comparative Sociology* 2, no. 2 (2003): 355-

resolving international disputes for the States of Indonesia and Malaysia in resolving land boundary cases is by negotiation between the two countries. This effort to resolve land boundary disputes between Indonesia and Malaysia uses MoUs and the results of joint mapping surveys as the basis for dispute resolution.

Negotiations conducted by Indonesia and Malaysia were taken through the formation of a special team to handle border issues. Indonesia and Malaysia regularly hold meetings between the two parties at the level of Joint Boundary Committee, Joint Boundary Technical Committee, and Co-project Director. Negotiations can also be seen when at the end of May 2014, the Malaysian government built a lighthouse in Tanjung Datu, Paloh District, West Kalimantan. When the construction of this lighthouse was considered to trigger an international dispute between these two countries. Therefore, Indonesia and Malaysia immediately held a meeting to discuss this case. The action taken by the government through the Ministry of Defense, the TNI, and the Ministry of Foreign Affairs is a form of negotiation.³⁷

Therefore, to strengthen the position of States in dealing with potential territorial disputes with neighboring States, various cases that have been decided through international legal mechanisms have demonstrated the importance of effective control. Therefore, regulations and policies at the national level are needed that can optimally encourage the development of the country's border areas. In border management, the State requires a comprehensive understanding, namely by placing residents in border areas as part of the subject of border management.³⁸ An

373; Joseph Chinyong Liow, *The politics of Indonesia-Malaysia relations: one kin, two nations*. (London: Routledge, 2004).

³⁷ See Uly Nuzulian Elyta, "Border Diplomacy in Handling Disputes on Tanjung Datu (Case Between Indonesia and Malaysia)." *Prosiding Vennas AIHII* 9 (2018): 157-167; Iva Rachmawati, and Machya Astuti Dewi. "Paradiplomacy Roles in Border Diplomacy. Case Study: Camar Bulan, Temajok, West Kalimantan, Indonesia." *Politics* 1, no. 1 (2015): 103-122

³⁸ John Agnew, "Borders on the mind: re-framing border thinking." *Ethics & Global Politics* 1, no. 4 (2008): 175-191. See also Joel S. Migdal, and Klaus Schlichte. "Rethinking the state." *The Dynamics of States*. (London: Routledge, 2016), pp. 11-50.

understanding of the dynamism of border areas will be a strong basis for boundary area management in accordance with the needs of border communities.

Conclusion

In conclusion, the legal basis for determining land boundaries between Indonesia and Malaysia is primarily founded upon historical agreements such as the Dutch-British Conventions of 1891, 1915, and 1928, alongside the Memorandum of Understanding (MOU) of 1973. However, the relevance of these agreements is subject to scrutiny due to changing natural conditions on the ground and the principle of *pacta tertiis nec nocent nec prosunt*, which limits the enforceability of agreements on non-parties. Consequently, while the 1973 MOU remains the prevailing legal framework, it may require revision to align with current realities and ensure equitable boundary delineation.

Regarding the settlement of land boundary disputes between Indonesia and Malaysia, negotiation has been the primary method employed, facilitated by specialized committees such as the Joint Boundary Committee and Joint Boundary Technical Committee. However, to enhance the efficacy of dispute resolution efforts and safeguard national interests, specific recommendations are proposed. Firstly, the Government of the Republic of Indonesia is urged to develop comprehensive national legislation addressing land boundaries in Kalimantan, prioritizing infrastructure development, social services, and economic opportunities in border regions to reduce dependency on Malaysia and mitigate boundary disputes. Secondly, active participation and vigilance from Indonesian citizens, particularly those residing along the border, are emphasized to safeguard territorial integrity by reporting any boundary encroachments and adhering to legal regulations.

In essence, while historical agreements form the legal basis for determining land boundaries between Indonesia and Malaysia, ongoing efforts are required to adapt to evolving circumstances and ensure effective dispute resolution mechanisms. By prioritizing legislative reforms, socioeconomic development, and citizen engagement, both nations can

foster stronger border security, preserve territorial sovereignty, and promote peaceful coexistence along the Indonesia-Malaysia frontier.

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When you look at territorial disputes, there are good arguments on any sides. I think it's important that we don't take sides on legitimacy.

Henry Paulson

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