

Indonesias Border Areas: Are They More Appropriately Managed by the Central Government or Regional Governments? Study in Central and Upper Ketungau District, Sintang Regency, West Kalimantan Province

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Abstract:

Indonesia's border areas have 2 (two) functions, namely as state territory and as autonomous territory. The determination of state territory and autonomous regions in state border areas ultimately has consequences for the government's authority in managing borders, both for the central government and regional governments. This research aims to solve the problem regarding the importance of managing state border areas from the aspect of authority, whether it is more appropriate to be managed by the Central Government or Regional Government, by looking at two sub-districts, namely Ketungau Tengah District and Ketungau Hulu District as sub-districts that are on the border of state territory. between Indonesia and Malaysia which is located in Sintang Regency, West Kalimantan Province, Republic of Indonesia.

Keywords: borders, state territory, management, government.

1. Introduction

The Indonesian state defines border areas as "part of the state territory and located in sub-districts," as stated in Article 1 number 6 of the State Territory Law Number 43 of 2008, which reads: "Border Areas are parts of the State Territory which are located on the inner side along Indonesia's territorial boundaries with other countries, in the case of State Territorial Borders on land, the Border Areas are in sub-districts." However, this is very confusing, because according to Article 1 number 24 of the Regional Government Law Number 23 of 2014, which currently has several articles amended by the Job Creation Law Number 6 of 2023, that what is meant by sub-district is: "part of the region from the Regency/City area led by the sub-district head." From the definitions mentioned above, it shows that the border area is on the one hand part of the state territory and on the other hand, because the border area is in a sub-district, the border area is also part of the Regency/City area which is led by the sub-district

head. This means that border areas have 2 (two) functions, namely as state territory and as autonomous territory. Determination of state territory and autonomous regions in border areas.

The state ultimately has consequences for the government's authority in managing borders, both for the central government and regional governments, but the problem is, the authority of the central government is greater than the authority of regional governments, giving rise to jealousy on the part of regional governments.

Apart from that, even though the central government has greater authority in managing the country's territorial borders, the condition of the people in these border areas has not yet improved. Currently, the Central Government has built more National Border Post (PLBN) buildings as "official doors" for the flow of people, animals, plants and goods entering and leaving Indonesia's territory, while infrastructure and basic needs as well as facilities and infrastructure or In short, "physical development" which is actually a need for people in border areas has not been provided, so that people still look poor and isolated. Conditions like the above raise the question, "Is the state border area more appropriate as part of the State Territory managed by the Central Government or as part of the Regency/City area managed by the Regional Government, in this case the sub-district head as the sub-district head?" Therefore, this research will analyze the management of the border area.

2. Theoretical Foundation

This chapter explains the theoretical basis used to answer problems regarding the management of state border areas from various relevant concepts. The concepts discussed are :

2.1. National Sovereignty

State sovereignty was born from the theory of sovereignty initiated by Jean Bodin so that he is known as the "Father of the Doctrine of Sovereignty" or "Founder of Sovereignty." According to Jean Bodin (I Gde Pantja Astawa and Suprin Na'a, 2012), sovereignty is "the highest power over its citizens and people, without any restrictions from law." The theory of state sovereignty according to Moh. Mahfud MD (1999) is closely related to the concept of rechtsstaat, the rule of law and the pluralistic concept.

The theory of state sovereignty was chosen in this research because this theory is able to explain Indonesia's position as a subject of international law which has 4 (four) elements of state formation in accordance with the 1933 Montevideo Convention, namely the existence of a permanent population, territory, government and the ability to establish relations with other countries, so that Thus, Indonesia as a sovereign country has the ability to determine the law and its point of view regarding a phenomenon and this cannot be contested by other countries. Referring to Article 25A of the 1945 Constitution of the Republic of Indonesia or in this article abbreviated to the 1945 Constitution, the existence of state territory is one of the important pillars in the formation of the state, therefore the Unitary State of the Republic of Indonesia as an archipelago with the characteristics of an archipelago has sovereignty. over territory and has sovereign rights outside its sovereign territory. If you look at the regulations regarding state territory as stated in the State Territory Law Number 43 of 2008, the regulation of state territory includes the regulation of territorial boundaries and border areas. Regulation of state territorial boundaries is intended to provide legal certainty regarding the scope of state territory, authority to manage state territory, and sovereign rights. Meanwhile, regulation of border areas is a regulation from the outermost side of the state territory, namely the border area which is a strategic area in maintaining

the integrity (integrity) of the state territory. This is intended to provide legal certainty regarding the management and maximum utilization of border areas for the prosperity of the Indonesian people. carried out with a joint approach to welfare, security and environmental sustainability.

Approach Welfare in the sense of efforts to manage border areas should provide maximum benefits for improving the welfare of people living in border areas. A security approach in the sense of managing border areas to ensure territorial integrity and state sovereignty as well as the protection of the entire nation. Meanwhile, the environmental sustainability approach means border area development that pays attention to aspects of environmental sustainability which is a form of sustainable development. Law is a tool for safeguarding sovereignty where the law provides clear boundaries regarding state territorial boundaries, authority to manage state territory, and sovereign rights.

2.2. Division of Power

The concept of division of power was chosen in this research because this concept is able to explain Indonesia's position as one of the countries in the world that implements the division of power between legislative, executive and judicial government functions, better known as Trias Politica as coined by Montesquieu (Miriam). Budiarjo, 1998), which are interconnected with each other so that the three powers can be distinguished but cannot be separated and all three are equal and control each other in accordance with the principle "*checks and balances*" (A. Fickar Hadjar, *ed.all*, 2003).

The holder of executive power in Indonesia is the President as head of government, as stated in Article 4 paragraph (1) of the 1945 Constitution which states that: "The President of the Republic of Indonesia holds government power according to the Constitution." Meanwhile, executive power in the regional government administration system in Indonesia is held by a regional head as chief executive who is assisted by a deputy regional head. The Regional Head of the Province is called the Governor and in carrying out his duties and authority as regional head, the Governor is responsible to the Provincial Regional People's Representative Council (DPRD). Likewise, in his position as a representative of the central government, the Governor is subordinate to and responsible to the President. Furthermore, the Regency Regional Head is called the Regent and the City Regional Head is called the Mayor. In carrying out their duties and authority, the Regent/Mayor is responsible to the Regency/City DPRD.

Because the Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into districts and cities, each province, district and city has a regional government to regulate and manage its own government affairs according to the principles of autonomy and co-administration duties. led by the respective Governors, Regents and Mayors as stated in Article 18 of the 1945 Constitution, the President as head of government who holds executive power divides his powers among provincial and district/city regions based on the principles of regional government administration, namely: decentralization, deconcentration and assistance tasks.

The principles of regional government administration are regulated in Regional Government Law Number 23 of 2014 which confirms that provincial, district and city regional governments regulate and manage their own government affairs according to the principles of autonomy and their respective auxiliary duties. This confirms that regional government is an autonomous government in the Unitary State of the Republic of Indonesia. Where regions are given the broadest possible authority accompanied by the granting of rights and obligations to carry out regional autonomy within a unified government administration system. The principles of regional government administration are as follows :

1. Decentralization

Many authors express the meaning of decentralization, including the following : *First*, Budiyanto (2000) said that decentralization is the transfer of government authority by the government to autonomous regions to regulate and manage their own government affairs in the system of the Unitary State of the Republic of Indonesia. Consideration of the principle of decentralization because the central government places greater emphasis on the principles of democracy, community participation, equality and justice and pays attention to regional potential and diversity. *Second*, Sarundayang (2000) defines decentralization as the transfer of authority from a higher level of government to a lower government, whether concerning the legislative, judicial or administrative fields. *Third*, H.M.Laica Marzuki as quoted by Ratnawati Latief, (2007) defines decentralization as political decentralization, where the people and their representatives participate in government within the boundaries of their respective regions. Government with a decentralized system gives rise to regional autonomy because decentralization requires government organizational units to realize the authority that has been handed over by the Central Government to be regulated and managed by the regions themselves. *Fourth*, Syamsuddin Haris (2007) defines decentralization as the transfer of authority from the central government to regional governments to manage their own households. However, this delegation of authority was not given in full. The form of using the principle of decentralization is regional autonomy. Regional autonomy is an authority where a region has responsibility for its own affairs. *Fifth*, Brian C Smith as quoted by Saiman, (2017) explains that decentralization is the distribution of power based on the regional or territorial dimensions of a country. Smith, quoted by Saiman, (2017) explains that the concept of decentralization is related to the amount of delegation of power and authority which is handed over from the central government to local governments through a geographical hierarchy in the country. *Sixth*, Jayadi Nas Kamaludin (2002) said that decentralization contains 4 (four) meanings, namely: a). decentralization is the formation of autonomous regions; b). the autonomous regions that are formed are entrusted with certain powers by the central government; c). decentralization is also the distribution of power by the central government; and D). The power radiated is given to groups of people in a certain area. Meanwhile, the definition of decentralization according to Regional Government Law Number 23 of 2014 which is formulated in Article 1 number 8 states that: decentralization is the handover of government affairs by the central government to autonomous regions based on the principle of autonomy.

From the several definitions of decentralization above, it can be seen how important decentralization is for a region. This is in line with Josef Riwu Kaho (1997) who said that decentralization can have many positive impacts, especially for underdeveloped areas. They can develop their regions without interference from the central government. Regions will independently develop their advantages in various aspects.

Decentralization is divided into several main forms of activity, namely political decentralization (*devolved*) and administrative decentralization (deconcentration). Devolution according to Rondinelli as quoted by Syamsuddin Haris, (2007) is the handover of tasks and functions to sub-national governments which have a certain level of autonomy in carrying out these tasks and functions. The consequence of devolution is that the central government forms government units outside the central government by handing over certain functions to the units to be carried out independently. Meanwhile, deconcentration is the handover of tasks and functions in central government administration to regional units.

Decentralization or Regional Autonomy during its current development is known as "asymmetric decentralization" which is applied to special or special areas. This asymmetric decentralization is also implemented in Indonesia because Indonesia recognizes and respects regional government units that are special or special in nature, as stated in Article 18 B paragraph (1) of the 1945 Constitution which states that : "The State recognizes and respects regional government units of a special or special nature that is regulated by law."

The enactment of laws and regulations by the center to regions which have their own characteristics is an asymmetrical (non-uniform) delegation of authority (decentralization). Asymmetric autonomy is another name for Asymmetric Decentralization whose special powers are granted by the central government in a country, so that they are not given to other regions. The term asymmetric decentralization is given to areas where the level of separatism is quite high, in this connection Van Houten as quoted by Solossa in Ardika Nurfurqon, (2020) defines special autonomy, namely : "Legal authority given to special community groups that do not have sovereignty or territory ethnically specific, making fundamental public decisions and implementing public policy freely outside the sources of state authority, but remaining subject to the laws of the state as a whole."

2. Deconcentration

Many experts and writers express different views regarding the meaning of deconcentration, as Erlina Hartanti (2007) in her writing says that generally experts, such as: Dubois & Fattore, Larson, Rondinelli, World Bank, and Crook & Mannor categorize deconcentration as wrong. a form/type of decentralization, along with devolution and delegation. However, other experts such as Fesler do not categorize deconcentration as part of decentralization. The differences in the views of these experts led Erlina Hartanti (2007) to group them into 2 (two) groups, namely the expert opinion group which categorized deconcentration as part of decentralization (group one) and the group which stated that deconcentration was different from decentralization and was not part of decentralization (group one). two).

Group one, including : Dubois & Fattore, Larson, Rondinelli, World Bank, Crook & Mannor, stated that decentralization is referred to as the transfer of power from the central government to lower levels in the political-administrative and territorial hierarchy. Decentralization is a tool to enable community and local government participation. Decentralization is the transfer of power from the federal to the regional level or providing management functions to other authorized parties. Based on these understandings, it can be concluded that the experts in this group agree that decentralization is the transfer of authority and responsibility from the central government to the regions and deconcentration is one type of administrative decentralization, such as devolution and delegation (Erlina Hartanti, 2007).

Meanwhile, group two was pioneered by Fesler (Erlina Hartanti, 2007) that deconcentration is not part of decentralization. Deconcentration, devolution and delegation are ways of administering government that are related to government administration and are not related to the transfer of authority from the government to the party assigned the task. Meanwhile, decentralization is closely related to democracy (the desire to involve local communities in decision making related to their region) and other interests related to territory (geography) and the expansion of the distribution/sharing of authority through government (politics). In decentralization, regions (lower levels of government) can make decisions and decisions in some cases, they can participate in making adjustments to conditions in their region based on policies made by the central government (Erlina Hartanti, 2007). From the two groups

who have different views on deconcentration, what needs to be understood is that deconcentration concerns a regional government administration system in which there is a delegation of power from the central government to regional governments, meaning it can also be equated with devolution and delegation. This is in line with the thoughts of other experts. *First*, Budiyanto (2000) said that deconcentration is the delegation of authority from the central government or regional heads or heads of higher level vertical agencies to officials in the regions. *Second*, Amran Muslim (1978) defines deconcentration as the delegation of authority from the central government to central government tools in the regions. The central government, as the party that delegates authority, remains responsible for the implementation of the affairs that have been delegated. *Third*, Laica Marzuki as quoted by Agus Salim Andi Gadjong, (2007) said that deconcentration is *official secentralism* or *delegation of authority*, namely the delegation of authority from state equipment at the center to subordinate agencies, in order to carry out certain work in the administration of government. *Fourth*, Philipus M. Hadjon (1993) said that deconcentration is the assignment of officials or services that have a hierarchical relationship within a government body to take care of certain tasks accompanied by making decisions on certain issues at the government body concerned. Meanwhile, the definition of deconcentration according to Regional Government Law Number 23 of 2014, which is formulated in Article 1 number 9 states that deconcentration is the delegation of some government affairs which are the authority of the central government to the governor as the representative of the central government, to vertical agencies in certain regions, and/or to governors and regents/mayors as persons responsible for general government affairs. Implementation of deconcentration in Indonesia is currently carried out through Government Regulation Number 19 of 2022 concerning Deconcentration and Assistance Duties.

So, based on the definitions mentioned above, it can be understood that not all government affairs can be handed over to the regions in accordance with the principle of decentralization, so that the implementation of various government affairs in the regions is carried out by government officials in the regions based on the principle of deconcentration.

3. Assistance Duties

The duty of assistance is a principle inherited from the Dutch East Indies Constitutional Law. Assistance Tasks have terms *Co-rule*. According to SLS. Danuredjo (1967) that *Co-rule* It is the obligation of autonomous regions to implement statutory regulations by implementing regional regulations to adapt central statutory regulations to the conditions of the autonomous region. The duties of assistance are stated in the 1945 Constitution in Article 18 paragraph (2) which states that : "Provincial, Regency and City Governments regulate and manage government affairs themselves according to the Principle of Autonomy and Assistance Duties."

Assistance duties have the nature of "helping" and are not in the context of a "superior-subordinate" relationship, but in the administration of regional government they have the right to refuse. Basically, the assistance task is to carry out the statutory regulations ordered within the framework of the assistance task. Assistance tasks are regulated in Article 1 number 11 of the Regional Government Law Number 23 of 2014 which states that : "Assistance tasks are assignments from the central government to autonomous regions to carry out some government affairs which are the authority of the central government from provincial regional governments to district/district regions. city to carry out some government affairs that fall under the authority of the province."

From some of the definitions of Assistance Duties above, it can be seen that not all government affairs can be handed over to the regions to be their own household affairs. There are several government affairs that remain the business of the central government. This is seen from the perspective of efficiency and useful results, namely that it would be less irresponsible if all central government affairs in the regions had to be carried out themselves by the officials in the regions, because this would require a lot of energy and cost a very large amount. Therefore, considering the nature of various matters, it is difficult to carry out them well without assistance from the regional government concerned. Based on these considerations, it is given to carry out various regional government affairs according to the principle of co-administration duties.

2.3. Management of State Border Areas

State territorial borders in this paper mean the existence of a country's territory on the border between one country and another, or in other words, that country's territory is the territory of one country which is bounded by the territory of another country.

The existence of territory in international law is absolute for the formation of a state as stated in Article 1 of the 1933 Montevideo Convention which states territory as one of the conditions for the formation of a state, namely "*a defined territory*" (Sefriani, 2018). He emphasized that the existence of territory is absolute for the formation of a state, there will be no state without a territory where the population of a country lives (Boer Mauna, 2018).

State territorial boundaries are an important element in a country that limits the extent to which the country's sovereignty can be exercised (Ferry Adamhar, 2015). The importance of the meaning of national borders as a sign of a country's sovereignty contains a sacred meaning for border crossers who travel between countries, there is even an adage put forward by Hans Kelsen as quoted by Caesar Ali Fahroy (2017), namely : "*He who is in my territory is also my subject*" meaning : "if someone is in my territory then he is also subject to me."

According to Margaretha Hanita, the territorial boundaries of a country as quoted by Budi Hermawan Bangun (2017) occupy an important position from geographical, legal and political aspects. Geographically, territorial boundaries mark the area of a country which includes land, sea and air above it. Legally, state territorial boundaries determine the scope of the application of a country's national laws, while politically, state territorial boundaries are the end of the reach of a state's highest power over the territory and everything within that territory.

The land border between two countries can be a natural border, for example, a mountain, river or sea. Mountains divide two countries, for example, between Indonesia (in the West Kalimantan region) and Malaysia (Sarawak state) which is bordered by the Kapuas Hulu mountains. Rivers serve as a barrier, for example, between the Soviet Union (Russia) and the People's Republic of China which is bordered by the Amur River. Meanwhile, the sea is the border between two countries, for example, between Indonesia and Australia, as well as between Indonesia and the Philippines. In addition, the land border between two countries can be an artificial border. For example, between West Germany and East Germany (in the past) which were bordered by the Berlin Wall. Land borders can also take the form of milestones or barbed wire, such as the border between the countries of Belgium-Nederland and Luxembourg (FX. Adji Samekto, 2009). Artificial land borders can be in the form of lines *imaginary*, such as the border between North Korea and South Korea, which is limited by latitude (earth) 38° south latitude. Border line (*imaginary*) between North Korea and South Korea was created after the end of the

Korean War in 1950-1953, which resulted in the splitting of Korea into two parts (Caesar Ali Fahroy, 2017).

In several regions of Indonesia, borders are marked with boundaries in the form of large or small monuments or stones. Therefore, border areas are actually not only limited to two or more different countries, but can also be found within a country, such as cities or villages that are under two different jurisdictions. In essence, border areas are areas (either cities or regions) which demarcates between two different jurisdictional interests (J.G Starke, 1972). A number of foreign literature sometimes uses terminology “border,” “boundary,” nor “frontier” alternately to interpret the word “limit.” Boundary terms (*boundary*) and borders (*frontier*) differentiated. Lucile Carlson and Allenk Philbrick as quoted by Ane Permatasari (2014) said that the limit (*boundary*) defined as : “*an international boundary marks the outer limits of the area over which government has sovereignty,*” namely a sign that delimits the outermost part of the territory controlled by a country. Meanwhile the border(*frontier*) is the boundary or dividing line between two countries. *Boundary* has an internal meaning, whereas *frontier* has the meaning of the boundary of relations between two neighboring countries. If “*a boundary is a line, separating factor, which is-inner oriented*” for “*a frontier is a zone of transition, an integrating factor....*”

According to Nanette Neuwahl as quoted by Humphrey Wangke (2013) that there are 2 (two) categories of borders between countries, namely: *hard border* and *soft border*. *Hard border* It is intended as a closed, exclusive border because it applies strict regulations so that people or goods cannot easily pass through the border. Whereas *soft border* intended as a border that is open, inclusive and acts as a link or bridge between one region and another from two different countries. Through this kind of policy, people and goods can more easily cross the border because the regulations are softer. Approach *soft border* this is based on the idea that in an increasingly unified world, interconnectedness and economic integration are the keys that can encourage economic growth and social development. Therefore, every country is now required to facilitate cross-border flows by reducing unnecessary regulations that can hamper or burden trade at the border.

National borders require management, which means there is a process of carrying out activities to manage national borders. The State Administration Institute as quoted by Sandy Nur Ikfal Raharjo, (2013) said that border area management is defined as all efforts made by the government to manage regional sovereignty boundaries, utilize natural resources, and maintain the integrity of the area, both land, sea and air.

The importance of managing national borders is because it cannot be separated from world developments which have now entered the era of globalization. The simplest way to explain the presence of the globalization phenomenon is to point to the increasingly rapid development of franchise businesses in Indonesia, the rise of telenovelas on television, and the presence of tens of thousands of foreign workers working in Indonesia. Globalization, on the other hand, is also illustrated by the increasing number of Indonesian workers working abroad. In globalization, the main asset a country has is the expertise and insight of its citizens or in a more popular expression, the human resources it has (Edi Setiadi, 2002).

3. Research Methods

The type of research used in this research is normative juridical research, namely legal research carried out by examining library materials (secondary data) and field studies (primary data) with a

statutory regulation approach and a conceptual approach with the nature of explanatory research, namely to strengthen a theory. Existing, descriptive, namely to express and describe certain things related to the object of research, and prescriptive, namely to offers concepts about problem solving (*problem solving*), and is also a way to establish new legal provisions (*prescribe*) or determine new norms (*normative*) after explaining, assessing and finding deficiencies in existing provisions. The analysis in this research was carried out qualitatively, namely from the data obtained, then compiled systematically and then analyzed qualitatively to achieve clarity on the problems discussed.

4. Discussion

4.1. Sub-district is the location, location or location of a state border area

The provisions of Article 1 point 6 of the State Territory Law Number 43 of 2008 have confirmed that state border areas are located in sub-districts. Likewise in Article 361 of the Regional Government Law Number 23 of 2014, which states that : "*State border areas are the outermost sub-districts that border directly with other countries.*" The provisions of the two laws do not explain further what is meant by "*The border area is in the sub-district.*" However, for legal science using the method of legal interpretation, it can be interpreted that this assertion contains the meaning of "location," "location," or "place" which is addressed to the sub-district as a border area.

4.2. Centralization of Management of State Border Areas

Sub-districts are border areas which are actually part of the territory of the Regency/City autonomous region, but these border areas are managed in a "centralized" or "centralized" manner by the Central Government so that they "usurp" the rights, authority and obligations of the Regency/City autonomous region to regulate and manage government affairs and the interests of local communities in the system of the Unitary State of the Republic of Indonesia. According to Rira Nuradhawati (2019), the weakness of the centralized system is that regional government policies and decisions are produced by people in the central government so that the time to decide on something takes longer. In fact, in the Indonesian context, decentralization has become the consensus of the nation's founders. Article 18 of the 1945 Constitution which has been amended and added to Articles 18, 18A and 18B provides the basis for implementing decentralization. This Constitutional Mandate and Consensus has long been put into practice since the Independence of the Republic of Indonesia with various ups and downs in the goals to be achieved through decentralization.

Decentralization is actually an organizational term which is simply defined as the transfer of authority. Decentralization can also be interpreted as the transfer of responsibility, authority and resources (funds, people, etc.) from the central government to regional governments. This will increase the relevance of public services to the needs and conditions of local communities, while still pursuing the goals that the government wants to achieve at regional and national levels, from a social and economic perspective. Initiatives to improve planning, implementation and financing of socio-economic development are expected to ensure that government resources are used effectively and efficiently to meet local needs. Inconsistent regulations regarding border area management due to not implementing the principle of decentralization can be found, as follows :

First, Article 1 number 6 of the State Territory Law Number 43 of 2008 clearly states that the border area is "located" in the sub-district, where the "sub-district" referred to is part of the territory of the Regency/City, as defined by Article 1 number 24 of the Law -Regional Government Law Number 23

of 2014, so that the regulation and management of border areas should be handed over to the sub-district which is led by a sub-district head called the sub-district head who is under and responsible to the Regent/Mayor through the Regional Secretary, as stated in Article 224 paragraph (1) of the Regional Government Law Number 23 of 2014. However, the formulation of Article 1 number 6 of the State Territory Law Number 43 of 2008 is not in accordance with the principle of decentralization, when this law through Articles 14-18 mandates the establishment of border management institutions at the central and regional levels, namely the National Border Management Agency (BNPP) at the central level and the Regional Border Management Agency (BPPD) at the Provincial level and at the Regency/City level. Currently these institutions remain *exist* carry out his duties. By looking at this reality, the presence of border management institutions proves that the legislators are inconsistent in formulating articles regarding border area management, thereby ignoring the principle of decentralization.

Second, the mandate of Article 18 of the 1945 Constitution which contains the Principle of Decentralization is the basis for the formation of Regional Government Law Number 23 of 2014, but this spirit of decentralization seems to have been ignored by the legislators when formulating Article 361, even though it is actually in paragraph (1) of it. has been formulated carefully and precisely which states that : "*State border areas are the outermost sub-districts that border directly with other countries*," which means that the border area is in the sub-district, where the meaning of the sub-district in accordance with Article 1 point 24 is: "part of the territory of the Regency/City Region," so that matters regarding the regulation and management of the border area should be handed over to the sub-district headed by a the sub-district head is called the sub-district head who is below and is responsible to the Regent/Mayor through the Regional Secretary, as stated in Article 224 paragraph (1). However, Article 361 paragraph (1) is not consistent with the paragraphs below, namely from paragraph (2) to paragraph (7) which gives authority to the Central Government in managing border areas, while the Governor, Regent/Mayor and District Head are only used as supporting role. In fact, without hesitation, the legislators firmly stated that : "*The Central Government is obliged to develop border areas so that they are not left behind by the progress of border areas in neighboring countries*," as formulated in Article 361 paragraph (7).

The provisions of Article 361 paragraph (7) have received correction from the House of Representatives of the Republic of Indonesia based on the results of monitoring and supervision of the implementation of Regional Government Law Number 23 of 2014 regarding the phrase : "*so as not to be left behind by progress in neighboring countries*," where the DPR RI at that time stated that : "Phrase "*so as not to be left behind by progress in neighboring countries*" In the provisions of Article 361 paragraph (7) it is incorrect because it can mean that the obligation to develop border areas only applies to border areas of countries where border development is more advanced."

However, apart from the correction of this phrase, it was even more extreme when the DPR RI, in the previous year, namely 2015, also completely corrected the sound of Article 361 paragraph (7) based on the results of supervision of the implementation of State Territory Law Number 43 of 2008, where the DPD RI at that time stated that : "As a result of the provisions of Article 361 paragraph (7), the role of Regional Government becomes small in developing border areas because of the tendency for socio-economic development in border areas to become the domain of the central government, so that the role of regional governments in developing border areas is felt less than optimal."

Regulations regarding the management and utilization of border areas which contain centralism make the role of Regional Governments small in developing border areas because of the tendency for

socio-economic development in border areas to become the domain of the central government, so that the provisions of Article 361 are unable to make Provincial Governments or Districts/Cities in border areas to carry out various things such as regional autonomy as widely as possible because they will be very dependent on the Central Government. Even though the Governor is a representative of the Central Government, of course the Governor's role can only be to carry out what is determined by the Central Government. Likewise with the role of the Regent/Mayor who can actually assign sub-district heads, but can only carry out what is determined by the Central Government. Of course this will not lead to developments *significant* in border areas and has implications for the lack of facilities and infrastructure, and will clearly hinder the acceleration of development, because we have to wait for "orders" from the Central Government first.

Ade Priangani (2014) in his writing noted that in 1999 following the formation of the Regional Autonomy Law Number 22 of 1999, regulations regarding the development of border areas were legally under the responsibility of the Regency/City Regional Government. The central government's authority only exists at border gates (*border gate*) which includes aspects of customs, quarantine, and security and defense (CIQS). However, in practice, the regional government at that time had not yet implemented its authority. This is caused by several factors, namely: 1). Insufficient regional government capacity in managing border areas considering that handling is cross-administrative of government areas and cross-sectoral, so it requires coordination from hierarchically higher institutions; 2). Legislation has not yet been implemented invitation regarding border area management; 3). Limited regional government development budget; 4). There is still a tug of war between central and regional authority. If at the time of the enactment of the Regional Autonomy Law Number 22 of 1999, regulations regarding the development of border areas were legally under the responsibility of the Regency/City Regional Government, but this is not how it is regulated by the Regional Government Law Number 23 of 2014, where Regulations regarding the management of border areas are carried out in a centralized manner. If you look closely at the centralized authority contained in Article 361 of the Regional Government Law Number 23 of 2014, it essentially boils down to Article 13 which stipulates the division of concurrent government affairs between the Central Government and the Provincial Regions and Regency/City Regions, where in paragraph (2) the letter a, b, and c, in relation to state borders, these articles stipulate criteria for government affairs which fall under the authority of the Central Government, namely: "government affairs located across provinces or across countries; whose users cross provinces or cross countries; and whose benefits or negative impacts cross provinces or cross countries." So, all provincial areas in Indonesia (including Regency/City areas) whose areas are in state border areas with the criteria "cross-country," which currently number 15 provinces, 92 regencies/cities, and 562 sub-districts, including in It includes 2 (two) sub-districts in Sintang Regency, West Kalimantan Province which directly borders Malaysia, namely: Ketungau Hulu Sub-district and Ketungau Tengah Sub-district as the focus of this research, which are government affairs which fall under the authority of the Central Government. Therefore, the management of state border areas is a government affair within the authority of the Central Government, which is then technically regulated in Article 361. Apart from that, the provisions of Article 13 paragraph (2) letters a, b, and c regarding concurrent government affairs are being the authority of the central government, there is no clear delegation of authority to Regional Heads, from the use of the word "can" contained in Article 176 of the Job Creation Law Number 6 of 2023, which amends Article 16 of the Regional Government Law Number 23 of 2014 from 5 (five) paragraph becomes 7 (seven) paragraphs of amendment, which reads: "Central Government *can*

delegate regulations implementation of norms, standards, procedures and criteria as intended in paragraph (3) to regional heads as determined by Regional Head Regulations."

So, based on these provisions, Article 13 paragraph (2) letters a, b, and c concerns concurrent government affairs which are the authority of the central government regarding government affairs located across provincial or cross-country areas; government affairs whose users cross provincial or cross-country areas; and government affairs whose benefits or negative impacts cross-province or cross-country have on the delegation of authority for government affairs to regional heads *ambiguity*, it can be "yes" and it can also be "no," meaning, if "yes" (can) it means carrying out the law's orders, but if "no" (can)," is that a prohibition? But what is clear is that nature *ambiguity*. This indicates that regional heads still have to wait for the will of the central government.

Of all government affairs, only general government affairs are strictly delegated to the Provincial Government and Regency/City Government and even to the sub-district head, as stated in Article 9 paragraph (5) *juncto* Article 25 paragraph (6) Regional Government Law Number 23 of 2014. The provisions of these articles state that the delegation of general government affairs which are the authority of the President as head of government is given, both to the Governor and Regent/Mayor as well as to the District Head to carry out government affairs general.

However, the existence of Article 25 paragraph (6) has received correction from the House of Representatives of the Republic of Indonesia based on the results of monitoring and supervision of the implementation of Regional Government Law Number 23 of 2014 which states that Article 25 paragraph (6) is not in line with the principle of "*the delegate cannot delegate*," which means the delegation cannot be delegated again. Because general government affairs are the authority of the President and in certain cases can be delegated to the Governor and Regent/Mayor which should no longer be delegated to the Subdistrict Head. Based on this, in theory there should be no sub-delegation of authority. Principle "*the delegate cannot delegate*," viewed as "*one of pivotal principle of administrative law*," Although sometimes this principle is also used in constitutional law (Moh Fadli, 2011).

Principle or basis "*the delegate cannot delegate*" used as a reference in the entity delegating authority in the context of administering state government. This principle or principle means that the institution or body receiving the delegation has no authority to delegate again without the consent of the delegate. This principle is often stated as: "*delegated power cannot be delegated*" by A. Hamid S. Attamimi as quoted by Fathorrahman (2018). In addition, this principle is essentially subject to the doctrine or "*legal maxim*" which is widely known, which has meaning "*a delegate may not sub-delegate his or her power*." This means, as said by Jimly Asshiddiqie, quoted by Fathorrahman (2018), that officials or institutions that are delegated authority may not further delegate the authority to regulate it to lower institutions.

So, by not delegating or existing *ambiguity* by using the word "can" regarding Concurrent Government Affairs, especially regarding Government Affairs located across provincial areas or across countries; Government Affairs whose users cross provinces or cross countries; and Government Affairs whose benefits or negative impacts cross provinces or countries, as stated in Article 13 paragraph (2) letters a, b, and c *juncto* Article 361 mentioned above means that there is a centralization of authority from the central government so that it can "paralyze" provincial and regency/city regions to carry out management of border areas, especially those related to the implementation of development in border areas. This of course has implications for hampering the rapid movement of development in border areas, which include including roads/bridges, electricity, drinking water, telecommunications, hospitals,

markets, cross-border posts, transportation, government, social and economic, which can actually be carried out by the Regency/City Government as an autonomous government through the Regent/Mayor by coordinating with sub-district heads located in the state border area.

Apart from that, the centralization of authority which rests on the Central Government means that the management of border areas will of course create gaps between districts/cities or sub-districts located in state border areas, because the central government in carrying out management of these border areas will of course will use "*priority scale*" in development planning to determine or determine the districts/cities or sub-districts in the state border areas that will be developed, meaning that with this priority scale, the development of border areas will be "selected" first from the criteria determined from all regions districts/cities or sub-districts in national border areas. This will of course have an impact on the "equitable" development gap in border areas in Indonesia.

The slogan "accelerating development of border areas" as a national strategic area which is often echoed will be in vain if the priority scale for prioritized locations (Lokpri) is determined. On the other hand, it will be faster to develop border areas if the authority to manage these border areas is delegated expressly to each district/city whose area is in the state border area, so that the sub-district automatically becomes the central area of the border area which is located in the district/city simultaneously. development can be implemented immediately, which is carried out with supervision by the Governor as the Representative of the Central Government in the regions together with the Regional People's Representative Council (DPRD), both the Provincial DPRD and Regency/City DPRD as elements of regional government administration which have supervisory functions, as well as the Subdistrict Head as the leader in The Border Area District (KKP) will remain ready to assist the Regent/Mayor because the District Head is a Regency/City Regional Apparatus as an extension of the Regent/Mayor in the District.

4.3. Sub-districts on the Indonesian Border Territory have 3 (three) functions : Decentralization, Deconcentration and Assistance Duties.

The sub-districts in the border area (KKP) including the Central and Hulu Ketungau Subdistricts in Sintang Regency, West Kalimantan Province and the Non-Border Subdistricts (KNP) are regional government organizations that are unique compared to other regional apparatus organizations in the government area. Sub-district organization based on the provisions of the Law Regional Government Law Number 23 of 2014 and Article 12 of Government Regulation Number 17 of 2018 concerning Districts, can carry out 3 (three) functions at once, namely: decentralization, deconcentration and assistance tasks (Irfan Setiawan, 2020), namely :

1. Decentralization Function.

The decentralization function is indirectly mandated through Article 209 paragraph (2) of the Regional Government Law Number 23 of 2014 which reads: "Regency/City Regional Apparatus consists of: a). The regional Secretariat; b). DPRD Secretariat; c). Inspectorate; d). Service; e). Body; and f). Subdistrict. Apart from that, it is also mandated in Article 225 paragraph (1) of the Regional Government Law Number 23 of 2014 which carries out the duties as stated in letters (b) to (h), namely: Coordinating community empowerment activities; Coordinate efforts to maintain peace and public order; Coordinate the implementation and enforcement of Regional Regulations and Local Government Regulations; Coordinating the maintenance of public service infrastructure and facilities; Coordinate the implementation of activities governance carried out by Regional Apparatus in the District; Fostering and

supervising the implementation of Village and/or sub-district activities; and Carrying out Government Affairs which are the authority of the regency/city Region which are not carried out by the regency/city Regional Work Units in the District.

Likewise, this is mandated through Article 226 paragraph (1) of the Regional Government Law Number 23 of 2014 which reads: "In addition to carrying out the duties as intended in Article 225 paragraph (1), the sub-district head is delegated part of the authority of the regent/mayor to carry out some of the government affairs that becomes the authority of the district/city region," where the implementation of this activity is through a budget charged to the district/city APBD. This decentralization function means that the sub-districts located in the border area (KKP) including the Central and Hulu Ketungau Sub-districts in Sintang Regency, West Kalimantan Province and the Non-Border Sub-districts (KNP) are autonomous regions and in this case the sub-district head gets attributive authority. However, as an autonomous region, sub-districts do not have representative or legislative institutions, because sub-districts are "regional parts" of regency/city areas, as confirmed in Article 1 number 24 of the Regional Government Law Number 23 of 2014. Likewise, attributive authority is obtained by the sub-district head because the sub-district is a "regional part" which is attribution through law, in this case Article 18 of the 1945 Constitution and Regional Government Law Number 23 of 2014 is made an autonomous region of the district/city area.

2. Deconcentration Function.

Indirectly, the function of sub-district deconcentration is mandated through Article 225 paragraph (1) letter (a) of the Regional Government Law Number 23 of 2014, namely as the organizer of general government affairs whose activities are funded through the State Revenue and Expenditure Budget (APBN). The general government affairs referred to in Article 225 paragraph (1) letter (a) can be seen in Article 25 paragraph (1) of the Regional Government Law Number 23 of 2014, namely: Fostering national insight and national resilience in the context of strengthening the practice of Pancasila, implementation The 1945 Constitution of the Republic of Indonesia, the preservation of Bhinneka Tunggal Ika and the defense and maintenance of the integrity of the Unitary State of the Republic of Indonesia; Fostering national unity and unity; Fostering inter-tribal and intra-tribal harmony, religious communities, races and other groups in order to realize local, regional and national security stability; Handling social conflicts in accordance with statutory provisions; Coordinate the implementation of tasks between government agencies in provincial and district/city regions to resolve problems that arise by taking into account the principles of democracy, human rights, equality, justice, privileges and specialties, regional potential and diversity in accordance with the provisions of statutory regulations; Development of democratic life based on Pancasila; and Implementation of all Government Affairs which are not the authority of the Region and are not carried out by Vertical Agencies. Apart from that, the indirect function of deconcentration is also mandated in Article 225 paragraph (1) letter (i), namely: carrying out other tasks in accordance with the provisions of laws and regulations where the budget is borne by those who assign sub-district heads outside of the regent/mayor's delegation of authority to carry out Some government affairs fall under the authority of regency/city areas. The deconcentration function means that sub-districts located in border areas (KKP) including Central and Hulu Ketungau Districts in Sintang Regency, West Kalimantan Province and Non-Border Districts (KNP) are administrative areas and in this case the sub-district head has the authority delegation. This matter it can be said that this administrative area is the work area for the sub-district head as "representative of the

central government," and "deputy regent/mayor," in carrying out general government affairs in the sub-district area, so that the sub-district head's authority is delegated.

3. Assistance Task Function.

The Assistance Task function is indirectly mandated through Article 361 paragraph (6) of Regional Government Law Number 23 of 2014, that in providing assistance in implementing border area development, the Regent/Mayor assigns sub-district heads in border areas, and is also mandated through Article 12 of Government Regulation Number 17 In 2018 concerning Subdistricts, specifically for subdistrict heads in state border areas whose territory is outside cross-border border posts, they can assist as supervisors in the fields of immigration, customs and quarantine assigned by the relevant ministry/non-ministerial government agency to the regent/mayor. Apart from that, sub-district heads in state border areas can be given certain authorities according to assignments from the central government in stages in the management and utilization of state border areas in accordance with the provisions of statutory regulations.

From the function of this assistance task, it means that the sub-districts in the border area (KKP) including the Central and Hulu Ketungau Districts in Sintang Regency, West Kalimantan Province and the Non-Border Districts (KNP) are administrative areas and in this case the sub-district head obtain mandated authority. However, critically it can be said that the mandate authority obtained by the sub-district head in Article 12 above is not between superiors and subordinates, because the sub-district head receives this mandate from Government Regulation Number 17 of 2018 concerning Subdistricts which is issued by the government, in this case the President, or in other words, the President gives a mandate to the sub-district head through the relevant ministry/non-ministerial government agency to the regent/mayor, meaning that the sub-district head is a direct subordinate of the President. In fact, the relationship between superiors and subordinates in the sub-district environment only occurs between the Regent/Mayor as superior and the sub-district head as subordinate. This is in accordance with the provisions of Article 224 paragraph (1) of the Regional Government Law Number 23 of 2014 which states that : "A sub-district is led by a sub-district head called a sub-district head who is subordinate to and responsible to the Regent/Mayor through the Regional Secretary." The meaning of "through" does not mean that the sub-district head is directly subordinate to the Regional Secretary, because structurally the sub-district head is directly under the Regent (Martin Nandung, 2010). However, the sub-district head can obtain mandated authority from other government institutions or organs that do not have a direct "superior-subordinate" relationship, or are "not subordinate," with the following conditions: 1). Mandatory receives the mandate, 2). The authority given is day-to-day authority, and 3). The provisions of statutory regulations do not oppose the granting of this mandate (I Dewa Gede Atmadja and I Nyoman Putu Budiarta, 2018). This is as reflected in Article 12 above.

5. Conclusions and Suggestions

5.1. Conclusion

From the several descriptions that have been stated above, it can be concluded that the border areas of Indonesia are more appropriately managed by regional governments through sub-districts because sub-districts are the location, location or place for border areas; and sub-districts in border areas of state territory have 3 (three) functions: Decentralization, Deconcentration and Assistance Duties.

5.2. Suggestion

Border areas should be managed by regional governments through sub-districts located on the borders of the country by forming a government organization with the name Border Area District.

6. Confession

The author expresses his deepest gratitude and highest appreciation to Mr. Prof. Dr. Budiman Ginting, S.H., M.Hum, Professor, University of North Sumatra, Mr. Prof. Dr. H. Kamarullah, S.H., M.Hum, Professor at Tanjungpura University, and Mr. Dr. Mirza Nasution, S.H., M.Hum, Senior Lecturer at the University of North Sumatra, who in the midst of his busy schedule still found time for the author to provide guidance so that this research could be completed, where this research did not receive a special grant from any funding agency in the sector public, commercial, or non-profit.

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