

## A REVIEW ON THE NON-DEMARCATION BORDER COOPERATION BETWEEN INDONESIA AND MALAYSIA

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### ABSTRACT

Indonesia and Malaysia have established cooperation on various aspects of the border regions for decades. The two countries have ratified the 1984 Security Arrangement Treaty, where the General Border Committee ("GBC") is established to contend the security aspect of the border areas. The GBC also formed a Social Economic Committee of Indonesia and Malaysia, which is called the SOSEKMALINDO, focusing on the social and economic aspects of the border. Meanwhile, there has been the 1970 Agreement on Border Trade ("BTA") that governs the movement of goods in and out of the border and maintain the border's economy. As time goes by, the border cooperation between the two countries has developed, resulting the need to meet the new challenges in terms of border security. While the governments have been emphasizing its focus on economic cooperation, the security challenges are neglected. Hence, this paper provides an analysis on the urgency to reform the 1984 Security Arrangement Treaty due to the overlapping function between the GBC and the BTA.

**Keywords:** Treaty, Border Security, States Cooperation.

### ABSTRAK

Indonesia dan Malaysia telah menjalin kerja sama dalam berbagai aspek wilayah perbatasan selama beberapa dekade. Misalnya, kedua negara telah meratifikasi Security Arrangement Treaty 1984, di mana General Border Committee ("GBC") dibentuk untuk memperjuangkan aspek keamanan wilayah perbatasan. GBC juga membentuk Komite Sosial Ekonomi Indonesia dan Malaysia, yang disebut SOSEKMALINDO. Komite ini berfokus pada aspek sosial dan ekonomi perbatasan. Sementara itu, telah ada Perjanjian 1970 tentang Perdagangan Perbatasan ("BTA") yang mengatur pergerakan barang masuk dan keluar dari perbatasan dan menjaga ekonomi perbatasan. Seiring berjalannya waktu, kerja sama perbatasan antara kedua negara telah berkembang, menghasilkan kebutuhan untuk memenuhi tantangan baru dalam hal keamanan perbatasan. Sementara pemerintah kedua negara menaruh fokusnya dalam kerja sama ekonomi, masalah keamanan masih diabaikan. Oleh karena itu, jurnal ini memberikan analisis tentang urgensi untuk mereformasi Security Arrangement Treaty 1984 atas dasar fungsi GBC dan BTA yang saling tumpang tindih.

**Kata Kunci:** Perjanjian, Keamanan Perbatasan, Kerjasama Negara

### Introduction

In international relation, there is a widely-known concept that establishes the bond between States, these are: actors, interests, and power. These three essential foundation will later form an interaction in a unity, and run the system of international relations. (Slotin & Romita, 2010).

Indonesia, for instance, as an actor that adhere to the ideology of free-active international politics, perform its power by enforcing the right to determine the direction of policies and desires as a sovereign country to meet the nation's interest. By this means, no

State could interfere in Indonesia's international politics. (Putera, n.d.)

In its implementation, national power must be positioned as a bargaining value in order to meet its national interests. Indonesia needs to consider some elements of national power as national force, including military power, politics, geographical conditions, the number and quality of the population, the economy and resources of the country, and the state ideology.

Take the relationship between Indonesia and Malaysia for example. Both States have exercised their power to maintain the territorial sovereignty of each country, which resulted in

the establishment of a 2,019.5 km land border that separates the Indonesian provinces of North Kalimantan, East Kalimantan and West Kalimantan, and the Malaysian states of Sabah and Sarawak. This process of demarcation is then finalized with a legally binding treaties on the latter. This border region could be seen in the below Figure.



**Figure 1. Indonesia-Malaysia Land Border.**  
**(Indonesia-Malaysia Land Boundary, n.d.)**

However, aside from the demarcation of boundaries between Indonesia and Malaysia, there are still a lot of cross-border issues that have to be settled by actuating the three essential concepts of international relations. In this sense, the issues throughout this border areas cover a wide range of aspects, especially in terms of border security, economic, social, cultural and other sectors which are very closely related.

Firstly, in terms of the economic aspect, the most occurring issue relates to the connectivity of the people living in the border areas. For instance, bordering States cooperate to govern the trading policies between the local communities, as well as matters relating to the entry or exit of goods between the bordering countries.

Secondly, concerning the security aspect of the border regions, it originally focuses on the defense instruments of a State to safeguard its sovereignty from threats and communism. However, in the present regime, these issues are not relevant anymore, taking into account the

rapid development of all aspects around the world. Now, security issues mostly revolve around transnational organized crimes, as well as human or goods smuggling and trafficking. (Rizki & Merdekawati, 2019)

These trafficking issues are developing at an exponential rate, and could only be eradicated by enhancing the law enforcement instruments to impose regulations relating to customs, immigration, and quarantine throughout the border regions.

Thirdly, the social and cultural aspect of the border regions covers the field of education, work, and other related matters. From this aspect, the most common issue that arises is concerning the trafficking and smuggling of illegal labor force.

From this, we could see that the aforementioned aspects are interrelated to each other to some extent, therefore, a clear distinction must be made. It is highly significant for each aspect to be regulated respectively due to the related issues, through the establishment of a joint cooperation between Indonesia and Malaysia.

Essentially, the two States have first showed their priority to strengthen the economic aspect of the border regions by establishing the Basic Arrangement of Trade and Economic Relations back in the 1967. This agreement is then followed by the adoption of the 1970 Agreement on Border Trade (“BTA”).

In 1972, both States begin to establish a cooperation on the security aspect by adopting the 1972 Agreement on Border Security, which is then amended into the 1984 Security Arrangement on the Border Regions Treaty (“SA 84”). In addition, the Border Crossing Agreement is correspondently adopted in 1984 to overview the social and cultural aspect for the people crossing the border.

Under the SA 84, the General Border Committee (“GBC”) was established to carry out the function of the treaty itself. It has been given the discretion to establish permanent or ad-hoc committee to uphold Customs, Immigration, Quarantine, and Security aspects (“CIQS”) with such terms of references “for the purpose of looking into any particular matter

which may affect stability and resilience in the Border Regions.” (Minister of Defence Indonesia and Malaysia, 1984)

However, the GBC established several bodies that leans more toward the military aspect rather than security. Moreover, it also established a Social Economic Ad-Hoc Committee to enforce the economic aspect of the GBC, which particularly have the same function with the Border Trade Agreement that also focuses on the economic aspect of the Border Region.

The irony is, even if the treaty is called Security Arrangement, no single body established under the treaty is enforcing the security aspect of the border. The lack of law enforcement officers from both countries leads to an ineffective and overlapping structure established by the joint cooperation between Indonesia and Malaysia.

In the present condition, throughout the border regions, the cross-border traffic is crowded with legal and illegal migrants entering and exiting Indonesia and Malaysia. Even with the presence of the Indonesia-Malaysia GBC, the function of current physical border markers are often still disregarded by the locals as there is no legal enforcement, and that the high rate of human and goods smuggling and trafficking are inevitable (Rizki & Merdekawati, 2019). This high rate is proven by the IOM 2005-2010 data, which shows that the border in Indonesia-Malaysia, especially in Entikong, ranks second in the 12 highest regions of human trafficking cases, with 722 cases or 19.33 percent from the total trafficking cases (Wismayanti, 2012).

This crime and violation clearly shows that the implementation and the purpose of the security arrangement treaty failed and it created a gap between the *das sollen* and *das sein* that needs to be further evaluated. Both States as actors in the international relations, therefore, should focus on the safety of communities in the border regions as their national interest, and thus strengthen their cooperation particularly on these issues.

Therefore, based on the description above, the problems raised by the author in this article consist of (a) How effective is the Non-

Demarcation Border Cooperation between Indonesia and Malaysia? And (b) What steps should be taken to restructure the General Border Committee of Indonesia and Malaysia?

### Literature Review

In this part, the author will firstly elaborate the theories used to find the result of this research, stipulate it in a scheme of thought, and explain the outcomes.

Before proceeding to the comparison and evaluation of the main issue in this paper, there are two grand theory that the author took as the basis of this research, which is the Theory of Law Reform and Migration-Security Theory.

### Theory of Law Reform

In the general term, there is yet a precise definition on law reform. For legal purposes, it could be interpreted as “improving law” or “make law better”. It has been pointed out that “if there is no pre-existent law on a particular topic then it is arguable that one cannot logically have law reform”. (Hurlburt, 1986)

Farrar (1974), however, presents a limitation on this law reform to the extent that it “comprehends reform of the substance and the form of the law and the institutions of the legal system.” But we know for sure, that the purpose of law reform is to assess if an existing law is still applicable to the present situation, or needs to be changed or amended in the legal system, with the aim of enhancing justice or efficiency.

For instance, the substance of a treaty adopted back in the 80’s contains the spirit of economic or political spheres being faced by the State in that era. Most likely, it does not have the same urgency to the present national interest.

While some understand that law reform only exists and could be done in a sovereign State, international law also able to accommodate the needs of law reform of bordering States, or even in the multilateral level.

Therefore, the concept of law reform needs to be inferred as a mean for States to develop and to act in conformity with the development of the world, as well as to eliminate threats being challenged in the present regime.

### **Theory of Migration-Security**

Moving on to the second theory, which is the theory of Migration-Security, the author would like to breach each terms first. Security is a core value of human life. To be secure is to be untroubled by danger or fear. Policies taken to ensure national security may be of an economic, political or military nature. They may be either internally or externally directed. (Jackson-Preece, 2011)

International migration is probably one of the most cited, yet also most contested, areas of the so called new security agenda, which emerged at the end of the Cold War, and resulted in a broadening and deepening of our understanding of what constitutes a security threat or challenge. (Wohlfeld, n.d.)

Migration tends to be viewed as a security issue in security studies since the 1980s. The duality of threats apparently caused by migration to both national sovereignty and human security are largely reflected in much of the recent academic literature. (Thompson, 2013)

This large movement of persons and goods are caused by globalization. Globalization has placed the state in a new kind of environment, one in which seeks to recruit labour in its bid to remain competitive, but anxious about the kinds of threats that can move amidst these flows.

However, not all type of migration constitutes security issues. Migration can be distinguished into regular and irregular migration. Regular migration means that individuals or groups legally enter or exit a country in accordance with the requirements established by that country. On the other hand, irregular migration is unauthorized entry or exit from one country to another, which poses security threat to the country. Officially defined, this irregular migration is referred by the International Organization for Migration (“IOM”) as: “movement that takes place outside the regulatory norms of the sending, transit, and receiving country”. (International Organization for Migration, 2019)

These irregular migration constitutes a high risk of human smuggling and trafficking. Smuggling and trafficking of persons, clearly exists and acknowledged as a threat to the security of an individual, that of political entities as well as regional and international security.

Hence, irregular migration must be abolished by States, by establishing a joint cooperation in the border regions and strengthening the supervision of the movement of people and good.

### **Research Method**

The nature of this research is prescriptive, where this research is giving out prescriptions about what should be the essence of this research, because that is why research is conducted. (Fajar & Achmad, 2010)

Based on the research method used, the data collection technique used is the study of documents or literature study conducted through the collection of materials and data. In addition, if necessary, data collection techniques can be done through interviews with relevant parties.

After the data and materials are collected, in normative research, data processing is carried out in such a way as to systematize written legal materials. In this case the processing of materials is carried out by means of selecting materials, then classifying according to the classification of materials and compiling the material of the research results systematically, of course this is done logically, meaning that there is a relationship and the relationship between material one with other materials to get a general picture of the results of research. (Fajar & Achmad, 2010)

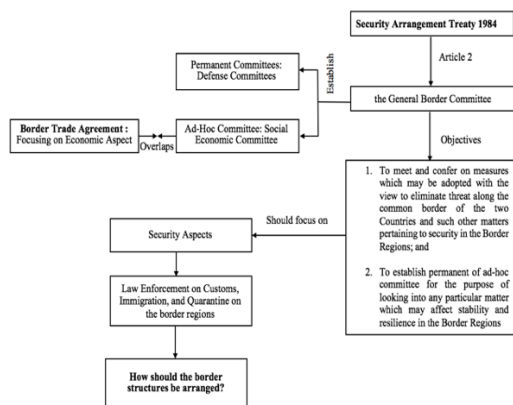
This study uses the study of material by means of deductive logic. Peter Mahmud Marzuki who quoted the opinion of Philipus M. Hadjon, explained about the deduction method as syllogism taught by Aristotle. The use of deduction method originates from the submission of a major premise. Then a minor premise is submitted, from the two premises it is then drawn a conclusion. (Fajar & Achmad, 2010)

The next steps used in conducting research are:

- a. Identifying facts and eliminating things that are not relevant to determine the issues to be solved;
- b. Collection of materials;
- c. Examine the issues raised based on the material that has been collected;
- d. Draw conclusions in the form of arguments that answer the issues;
- e. Give a prescription based on the argument that has been built in the conclusion.

### Conceptual Framework of Research

Now for the main topic for this paper entitled “A Review on the Non-Demarcation Border Cooperation between Indonesia and Malaysia”, the author will deliver it into a scheme of thought as follows:



**Figure 2. Relationship between Security Arrangement Treaty and Border Trade Agreement.**

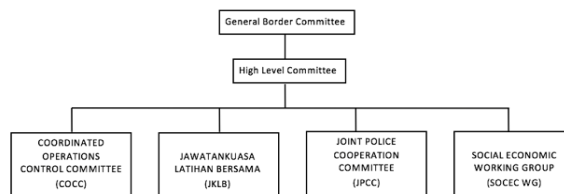
Firstly, back in 1974, Indonesia and Malaysia have agreed upon the adoption of SA Treaty for the purpose of contending border security aspects in the border regions. From this bilateral treaty, the General Border Committee (“GBC”) is established to carry out the function of the treaty itself.

If we refer to Article 2 of the SA Treaty, the terms of reference of the GBC is to meet and confer on measure which may be adopted to eliminate threat along the common border of the

two Countries and such other matters pertaining to security in the Border Regions.

To carry out its function, the GBC may formulate working procedural matters to be adopted by the GBC or any Committee established by it, and they shall hold its meeting at least once a year alternately in Indonesia and Malaysia.

In addition, the GBC has also been given the discretion to establish permanent or ad-hoc committee with such terms of references “for the purpose of looking into any particular matter which may affect stability and resiliency in the Border Regions.” (Rizki & Merdekawati, 2019) The structure of the present GBC is enacted in the illustration in Figure 1 as follows.



**Figure 3. GBC Structure (Hudori, n.d.)**

Meanwhile, the BTA is established in 1970, to support the implementation of Article XI of the 1967 Treaty, relating to the movement of goods into and out of the Border Areas of Indonesia and Malaysia. (Minister of Defence Indonesia and Malaysia, 1970)

Pursuant to the preamble of the BTA, both countries agreed that the objective of this agreement is to establish a procedure to govern the conduct of border trade between the two Countries. This agreement classifies the border trade into two regions: the overland (or land) border trade and the sea border trade. In this paper, the author focuses solely on the overland border trade to provide an apple-to-apple comparison with the bodies established under the Security Arrangement Treaty.

Under the overland border trade provision enacted in Article II of the BTA, the BTA governs that every movement of goods into and out of Malaysian border area shall pass through a Malaysian Border Control Post, and equally, every movement of goods into and out of Indonesian border area shall also pass through

an Indonesian Border Control Post. These movement of goods in and out of the borders are monitored by a forum called the Joint Working Group on BTA.

Next, the concept of security along the border in the early years after independence tends to focus on the military aspects to defend and eliminate communist threats. However, this view is not in line anymore with the present situation.

Now, security cooperation has the purpose to support the acceleration of economic growth, social progresses, and cultural developments (ASEAN Political-Security Community (APSC), n.d.). Thus, this shall cover the law enforcement which has the scope of customs, immigration, and quarantines ("CIQ"). (ASEAN Defence Ministers, n.d.) These aspects are present to prevent and repress the practice of smuggling and trafficking, which are prone to occur along the borders between two countries. (Napier-Moore, 2011)

To begin, under the Indonesia Ministry of Transportation Regulation No. 61 of 2015, customs is defined as:

"every matter related to the supervision of the traffic of goods entering or exiting customs areas as well as collection of import duties, export duties and other state levies which become an integral part of the import or export process."

This regulation on customs need to also be effectively implemented in the border regions, by the authorized State officials. Currently, the enter and exit of goods in the Indonesia-Malaysia Border regions are not supervised effectively. (Wisnawati, 2012) An improved enforcement on the movement of goods will reduce the rate of goods trafficking and/or smuggling, such as narcotics, guns, and other illegal substances in the border areas.

Meanwhile, immigration concerns about the traffic of people (or migrants) entering or leaving the territory of a State. Migrants could be classified as: voluntary or forced migrants, which also includes, but not limited to, human trafficking and smuggling. These type of migrants are often found at the borders of a State. Therefore, state officials shall strictly

monitor and take any action to repress the acts to effectively reduce the number of human trafficking and smuggling. (International Organization for Migration, 2019)

Next, to control the spread of disease within State borders, states have laws on Quarantine. In Indonesia's legislation, the concept on quarantine is limited to animal, fish, and plant. Generally, this concept of quarantine aims to prevent the spread of cross-border diseases through the movement of goods or people in and out of the countries.

The security aspect covers all of the CIQ concepts above, and this could be implemented by first enhancing the law enforcement instruments. Therefore, it is highly essential for border-sharing States to conduct a joint border cooperation to safeguard the aforementioned CIQ aspects, through effective joint cooperation forums.

### **Border Cooperation Restructuring**

Based on the above description on the non-demarcation border cooperation between Indonesia and Malaysia, the following section will provide a particular analysis on the Agreement on Border Trade and the security Arrangement on the Border Regions Treaty as mentioned.

The Social Economic Committee established under the GBC has the same focus with the Joint Working Group on BTA, where both forums aim their attention on the economic flow throughout the Border Region.

A significant issue will arise when there is an overlapping policy adopted by the Social Economic Committee and the Joint Working Group on BTA. Which body shall prevail in governing the border trade if the Ministers of Internal Affairs adopt a policy that clashes with the one adopted by the Ministers of Trade?

This question indicates that there is an ineffective work scope of both forums, and there is no clear distinction to separate the functions of the two forums. This existence of Social Economic Ad-hoc Committee and BTA hand-in-hand creates a dualistic paradigm in the economic aspect of the border region.

In light of this, the present structure of organization under the SA Treaty and the BTA constitutes a complexity, which causes a diversion in the work scope of each forum, thus leading to the lack of effectivity in the implementation of the border aspects.

To support this statement, it could be seen that the existence of Social Economic committee overlaps with the function of the BTA, as both bodies focuses solely on the border trading and other economic aspects in the border regions. This creates a dualism in the joint cooperation between Indonesia and Malaysia.

On the other hand, from the defense and security perspectives, it is critical to draw more intensive attention to border security issues. Whereas, border security issues in general are more of a supporting element for the law enforcement in the CIQ concept. (MA, n.d.)

In this case, the existing bodies have yet been able to accommodate the CIQ concept on the border regions. The enforcement of the CIQ concept in the security aspect has to be further assessed by the GBC. This is because the current organization structure aside from the Social Economic Committee (namely: Coordinated Operations Control Committee, Jawatankuasa Latihan Bersama, Joint Police and Cooperation Committee) tends to reflect more on the military or defense aspect of the border regions, which mostly covers military trainings activities. (Minister of Defence Indonesia and Malaysia, 1970)

Therefore, to enhance the development of CIQ policies to be governed in the border areas, it is essential for the State apparatus to formulate a strategy or to construct a new arrangement with a purpose to strengthen the legal policies and instruments. There is an essential need for Indonesia and Malaysia to conduct a restructuration on the committees established under the GBC.

That being said, the non-demarcation organization structures particularly under the SA Treaty and the BTA between Indonesia and Malaysia needs to be restructured in order for it to be effective in the implementation, and to prevent a further overlap of tasks.

There are several steps that have to be taken to restructure of Border Cooperation organization between Indonesia and Malaysia, in order to make the traffic control in the border regions be more effective.

Firstly, the two countries need to withdraw the Social Economic Ad-hoc Committee from the GBC structure, and to establish it under the BTA. By doing this, the Ministers of Defense and National Armies of both Countries in charge of the GBC will divert its focus solely on the security aspect of the border regions, and thus, they would not be required to handle social economic issues anymore.

Secondly, a new agreement between the two countries is essential to govern the military or defense aspect of the border regions. In light of this, the forums under the High Level Committee which reflect more on the military aspects shall be shifted to the new agreement.

Finally, under the SA Treaty, the GBC shall establish a renewed set of integrated forums that exclusively concentrate on the CIQ concept to effectively enforce the security aspect of the border regions, which has not been implemented at the moment.

In sum, there will be no more overlapping aspects between the two agreements. The GBC will govern the aspects relating to security, and the BTA will be in charge on the Economic aspects. This restructuration will create a clear distinction for each forum to conduct each of their functions, and that this kind of certainty will also provide an assurance to the local communities in the border regions.

## **Conclusion**

Indonesia and Malaysia have cooperated for decades on the security, economic, social, and cultural aspects of the borders, and succeeded to establish several non-demarcation organizations.

Since the adoption of the SA Treaty by Indonesia and Malaysia, the GBC established the Social Economic Ad-hoc Committee, which according to the author is not at all necessary, as it shift the main objective of the SA Treaty to safeguard the security aspects, into governing the economic aspects of the border regions.

Furthermore, the existence of this ad-hoc committee overlaps with the function of the BTA, that focuses solely on the border trading and other economic aspects in the border regions. Thus, this creates a dualism in the joint cooperation between Indonesia and Malaysia.

In this regard, it is ironic that the security aspects to be enforced in the border region itself are yet to be seen. There is no doubt that this overlapping bodies constitutes a danger to the national security of both countries. In the present day, medias provided data reports that indicates the relatively high rate of smuggling and trafficking in the border regions.

To focus on the security aspects of the border regions, there is a need to conduct a restructuration on the committees established under the GBC itself. This is essential for implementing the nature of the SA Treaty, and to enforce all aspects of security, the CIQS, on the border regions by the suitable law enforcement officers.

In addition, the Social Economic Ad-hoc Committee shall be taken out of the structure of the GBC, and it may be better to be established under the BTA, so that there will be no more overlapping aspects between the two agreements.

Hence, the bodies under GBC will govern the aspects relating to security, and the BTA will be in charge on the Economic aspects in the border regions. This restructuration will create a clear distinction for each bodies to conduct each of their functions, and that this kind of certainty will also provide an assurance to the local communities in the border region.



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