



## Analysis of the border trade agreement (BTA) between Indonesia and Malaysia after renewal

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### ABSTRACT

Indonesia has done a variety of bilateral agreement with Malaysia. An agreement consists of several types such as bilateral and multilateral agreements. Bilateral agreements such as Indonesia and Malaysia on Border Trade Agreement (BTA). Even though sometimes a tension between the state on the boundary, then it needs an update on those agreements, seeing that the need of society and state, change on mechanism on the effort to increase the supervision on the implementation of the BTA. This research uses normative research methods, which attempting to examine the regulations between Indonesia and Malaysia which in this case on Border Trade Agreement. Through studying the regulations or agreements, the author examines the existence and implementation of BTA during the enactment of the bilateral agreement between Indonesia and Malaysia to increase the cooperation on the Economy sector. The implementation of this agreement which is not properly implemented. This can be seen from the cases which ever done such as drugs smuggling. The government of states were focused only on the economic sector while the security sector is still abandoned, therefore there's several cases of smuggling which made the BTA cannot be implemented properly. To solve the problems which occurs severely on the border area, it could be done through adding a patrol point which in line with the border area topography which is hoped to encourage the supervise of the area could done optimally and create an institution which also could help the Indonesia State Army on supervise the cross-border areas.

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### 1. Introduction

According to G. Schwarzenberg, "Treaties are agreements between subjects of international law creating binding obligation in international law. They may be bilaterally concluded between contracting parties". According to International Agreements of Law No. 24 of 2000 Article paragraph 1, "International Treaties are agreements, in a certain form and name, which are

regulated in international law made in writing and give rise to rights and obligations in the field of public law". Subjects of International Law are Individuals (limitedly), States, International Organizations, Holy See, International Committee of The Red Cross (ICRC) dan Beligerent. Forms of international treaties according to Viena Convention on The Law of Treaty, art: "Treaty means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more relates instrument and whatever its particular designation". International treaties also serve as a means to enhance international cooperation. Various cooperation in various aspects of state life is realized in the form of international treaties.

There are two kinds of treaties: bilateral and multilateral. This paper focuses on bilateral agreements. Border management must also be aimed at the prosperity of the people, especially those living on the border. The Malaysian side's friendliness to Indonesian traders stems from deep social and cultural ties. Indonesia has many bilateral agreements with neighboring countries such as Singapore, Malaysia, Brunei and the Philippines. Bilateral agreements agreed into by Indonesia and Malaysia are agreements concerning the BTA, which was renewed in Kuala Lumpur, Malaysia, by the Indonesian Minister of Trade.

This agreement has been in place since 1970, but due to the fact that Indonesia and Malaysia have done a lot of collaboration over the years, and there are also periodic tensions relating, some time ago the agreement was updated considering the needs of the community and the state, changes in the mechanism and as an effort to improve supervision of the implementation of the BTA. The signing and reviewing of the BTA is also more intended for the benefit of the people of the two countries who live in the border area. Border studies is an understanding of political, economic, social, spatial and temporal contexts.

The BTA regulates more about what goods enter and exit from these two countries (Indonesia and Malaysia), and includes rules requiring people in the Pas Lintas Batas border area to report themselves to the supervisory post in order to conduct buying and selling transactions in the border area. There are several requirements for border communities who want to obtain a Cross Border Pass, including being an Indonesian or Malaysian citizen who is 10 years old or older, a resident who was born and raised in the border area of Indonesia or Malaysia, and having a valid certificate of injection and smallpox. The Cross Border Pass will function as a passport for the holder.

## **2. Method**

In this research, the research method that can be used involves an interdisciplinary approach which includes document research methods and quantitative analysis. First, the document research method will allow researchers to collect and analyze the text of the updated agreement and other related documents. This helps in an in-depth understanding of the issues addressed in the agreement, the purpose of the updates, and the legal consequences of the changes. Qualitative and content analysis of the document will be used to identify key clauses, significant changes, and the political and economic context behind those changes. Additionally, quantitative analysis will allow researchers to measure the economic impact of BTA changes through trade and investment data, allowing more quantitative conclusions to be drawn regarding economic growth, increased bilateral trade, and its impact on specific sectors. The combination of these methods will provide a comprehensive view of the border trade agreement between Indonesia and Malaysia after renewal. The relevant legal theory used in this paper is as contained in Article 26 of the Vienna Convention concerning Pacta Sunt Servanda which stated "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". This principle requires that the agreement or contract that has been signed must be carried out in good faith. Hugo de Groot said that among the principles of natural law that underlie the international legal system, pacta sunt servanda is the most fundamental principle because it is part of natural law which is the basis for consensus. In relation to this paper, it can be related to the BTA that this agreement is binding for Indonesia and Malaysia

because it comes from an agreement that has been implemented by the two countries and implemented in good faith.

### **3. Analysis of the Implementation and Existence of the BTA between Indonesia and Malaysia**

The agreement between Indonesia and Malaysia is based on the two nations desire to implement Article XI of the Basic Arrangement on Border Crossing, which was agreed and signed on May 26, 1967, regarding the traffic of goods in and out of the two countries border areas. Indonesia and Malaysia have similar objectives and perceptions regarding the usage of resources or the potential of the border area to be handled for the welfare and prosperity of the two nations' border communities. In terms of the existence of BTA, it has a good impact on both the community and the government because it makes it simpler to meet fundamental demands in daily life. Indonesia's geographical conditions between islands separated by oceans and infrastructure in interior areas have not been adequately accommodated, therefore the existence of the agreement clearly relieves border communities. Similarly, the government is more secure in dealing with smuggling cases and conflicts between countries as a result of this agreement.

#### **3.1. Advantages of Border Trade Agreement**

A definite legal guarantee for every Indonesian citizen in carrying out international trade activities, especially those who live in the border area between the two countries. Since 1995 Indonesia and Malaysia have cooperated in the socio-economic sphere, in the border areas of East Kalimantan, North Kalimantan, and in Malaysia only the state of Sabah. The 2006 agreement designated 16 points along the West Kalimantan border line as exit and entry points for the State, namely: Temajok, Liku, Sajingan, Aruk, Siding, Jagoi Babang, Saparan, Entikong, Segumon, Bantan, Jasa, Nanga Bayan, Semareh, Merakai Panjang, Langau and Nanga Badau. Provide protection for trade actors, especially Indonesian citizens who are close to cross-border passes, in carrying out cross-border trade activities.

Minimize illegal trade activities so that there is no smuggling and criminalization from countries that make agreements. From the viewpoint of the government of the Republic of Indonesia (RI), the bilateral trade relations of Sabah-East Kalimantan and barter-trade were important from the very beginning, which led to the signing of several important agreements, namely the Border Trade Agreement 1970 and the Border Cross Agreement 2006. RI also supports Malaysia in the implementation of measures to improve security in the waters off the east coast of Sabah with the view to combat cross-border crimes. This will also assist merchants from East Kalimantan to do barter-trade activities with Tawau dealers formally and without hindrance in the future.

Avoiding conflicts between countries, in accordance with this cross-border trade agreement, border communities are given the convenience to shop in Malaysia without being subject to customs tax according to the BTA rules, which are allowed to make transactions but not more than six hundred Malaysian ringgit for one person for one month. Monitor trade activities that occur across the Indonesian and Malaysian borders. The Indonesian consulate in Tawau is also aware that the implementation of security measures by ESSCOM in ESSZONE would affect the Tawau-Nunukan bilateral trade and the revenue from the bilateral trade would decline. However, the positive effect is even greater in the long-term, where the trade routes on the east coast of Sabah, including Tawau, can be monitored safely for non-traditional security threats, such as the smuggling of illegal goods such as drugs and weapons, and human trafficking

#### **3.2. Disadvantages of the Border Trade Agreement between Indonesia and Malaysia**

The implementation of this agreement is not fully implemented properly. The governments of both countries focus on economic cooperation, but security issues are still ignored. In 2013, the local government obtained 18 kilograms of methamphetamine, 1.7 kilograms of marijuana,

and various other types of narcotics smuggled through West Kalimantan Province's border with Malaysia. The BTA stipulates that one country is not allowed to carry out transactions related to illegal drugs. Then there was a case on February 16, 2016, where a truck carrying around 33 sacks of sugar illegally from Malaysia was successfully secured by customs through the Entikong Integrated Cross Border Post (PLBN). In addition, on March 19, 2016 there was a smuggling of sugar that was dealt with by Entikong Customs and Kodam XII where the smuggling was carried out in the early hours of the morning through the forest path around the Entikong border area as many as 22 sacks with a weight per sack of 50 kilograms. This is considered a violation of the agreement because it has been regulated in the agreement regarding the goods that can be used as the object of the border area transaction. So, it can be concluded that the implementation of the BTA still tends to be not well organized as a whole, because there are still cases of smuggling that occur in this border area. The management of border areas must utilise a new paradigm that makes border areas no longer the back fence but the front porch of a country.

A solution which could be applied to solving the problem which frequently occurs on the border area, especially on the areas which included on the BTA agreement which vulnerable and occurs frequently is by carrying out a comprehensive survey on natural sightings and maps of the border area. So that, when the survey is done, a patrol could be done by the Indonesia Army personnel on the cross-border post, both from land and aerial to monitoring the activity which occurs on the border. By adding a monitoring patrol points which in line with the topography of the border area which are expected could encourage optimal supervision.

Furthermore, the government can work with related institutions, especially on the border area to coordinate on preparing the institution which is hoped to help the army personnel on the cross-border post to monitor more closely on the activity which occurs on the border area. The government could also strive for a special institution which has the power to supervise and manage the border area which have authority to carryout the coordination and control on the border area especially on the cross-border area. These institutions will work as an assistant and coming from the local village which the location is directly facing the border area. In this case, whereas the society seen a suspicious activity, they could directly coordinate with the army personnel. Therefore, there will be a synergy between community which are directly involved with the government, especially army personnel which given a mandate to supervise the border area.

To create a society which is productively involved, as the supervisor, then it will need socialization. Therefore, we seen that it also important to create a regular socialization in order for community empowerment in the framework of increasing awareness on a violation which are prone to occurs on the border area and also giving an understanding on the negative impact which might be appear on the society welfare caused by the widespread of the abusive practice on the border area which also the important point and must be used as an agenda for holding the socialization.

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#### 4. Conclusion

The results of this research show that with Border Trade Agreement (BTA) between Indonesia and Malaysia, especially in North Kalimantan with Sabah-Malaysia shows the influence, development and increasing trade on the North Kalimantan border with Sabah-Malaysia. This is proven by an increase in exports and imports as well development of trade traffic in North Kalimantan with Sabah-Malaysia which continues to increase from year to year, through collaboration SOSEK-MALINDO, Border Crossing Agreement and Border Trade Agreement. This means that Indonesia and Malaysia have strong bilateral relations increasingly closely intertwined in order to create world peace and welfare for the people living on the borders of the two countries.

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