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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252

Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

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## The Principles of *Uti Possidetis Juris* As an Alternative to Settlement Determination of Territorial Limits in the Oecusse Sacred Area (Study of the NKRI and RDTL Boundaries)

Dina Sunyowati, Haidar Adam and Ria Tri Vinata

dina@fh.unair.ac.id

Universitas Airlangga

### Abstract

Based on the Decree of the People's Consultative Assembly in 1999, the legal status of the territory of Timor Leste is no longer the territory of the Unitary State of the Republic of Indonesia. With the establishment of the state of Timor Leste, between Indonesia and Timor Leste, boundaries of land and sea need to be included which cover territorial, ZEE and continental shelf boundaries, especially in the southern waters and north of the island of Timor, including the Oecusse enclave area. The negotiators of the two countries have not succeeded in agreeing on several Oecusse borderlines with the Indonesian territory. Various methods have been pursued including involving indigenous peoples. At present, the Oecusse enclave is designated as a special economic zone by Timor Leste with the aim of optimizing the area as a border area and having adequate economic activities so as to improve the quality of the local community. As an alternative effort in resolving regional boundary agreements, the application of the principle of *Uti Possidetis Juris*, which is a principle of territorial claims based on the *Uti possidetis* doctrine, means that a newly independent state inherits administrative boundaries formed by the previous authorities, so that the historical and conceptual approaches in the stipulation are established. It is recommended to avoid different interpretations between the two countries, and regional boundaries can be resolved immediately.

**Keywords:** Border; Oecusse enclave; *Uti Possidetis Juris* Principle.

### Introduction

State succession is one of the objects of classical study in Public International law. Oscar Schachter revealed that the state succession is one of the oldest subjects of international law.<sup>1</sup> State succession refers to changes in state identity that occur because of the loss or change of the sovereignty of the country which is accompanied

<sup>1</sup> Oscar Schachter, 'The Once and Future Law' (1993) 33 Va. J.Int'l L.[253], quoted in Carter and Trimble, *International Law* (2nd edn, Little, Brown and Co 1993). [480].

by the acquisition of sovereignty of new territories by other countries.<sup>2</sup> Indonesia has experienced this in the case of East Timor (now called the Democratic Republic of East Timor / RDTL) from Indonesia.<sup>3</sup>

With the issuance of the Decree of the People's Consultative Assembly (MPR) in 1999, the status of Timor Leste had changed and was no longer the territory of the Republic of Indonesia. The legal status of East Timor is further regulated by the United Nations (UN), Indonesia and Portugal based on the New York agreement on 5 May 1999. Based on the New York agreement and part of the results of the popular consultation, East Timor will become an independent country. The United Nations Transitional Administration in East Timor (UNTAET), which was formed through the United Nations Security Council Resolution 1272 dated October 25, 1999, aims to prepare for the independence of East Timor.

There are two main problems at the Indonesian border that must be addressed immediately. First, there is no clear regulation on the sea boundaries of Indonesia. Second, there is no clear authority in managing Indonesia's borders which affect the security.<sup>4</sup> The separation of Timor Leste from the territory of the Republic of Indonesia resulted in a change in the configuration of the Indonesian archipelago. Thus, it is necessary to make certain adjustments on Indonesian law of the sea, namely:<sup>5</sup>

1. Adjustment on base points for baselines in accordance with the illustrative map of Law No. 6 of 1999 concerning Indonesian Waters;
2. Adjustment on Indonesian Archipelago Sea Flow (ALKI), where the International

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<sup>2</sup> Hasjim Djalal, 'Menentukan Batas Negara Guna Meningkatkan Pengawasan, Penegakan Hukum Dan Kedaulatan NKRI' (2013) 3 Jurnal Pertahanan.[30].

<sup>3</sup> Josdy Damopolii MAP, 'Kian Terbuka Regional Conflict Potential' (*Kompas*) <www.kompas.com> accessed 25 February 2017.

<sup>4</sup> Eddy Pratomo, 'Foreign Political Policy and Position of Indonesia to Accelerate the Implementation of the International Convention on Marine and Fisheries' (*DKP*, 2003) <www.dkp.go.id> accessed 12 March 2017. Besides, the border is the frontier of the state and Indonesian border face several complexities in term of security (illegal smuggling, illegal logging, terrorism), and social economy. See also Budi Hermawan Bangun, 'Konsepsi Dan Pengelolaan Wilayah Perbatasan Negara: Perspektif Hukum Internasional' (2017) 1 Tanjungpura Law Journal.[53].

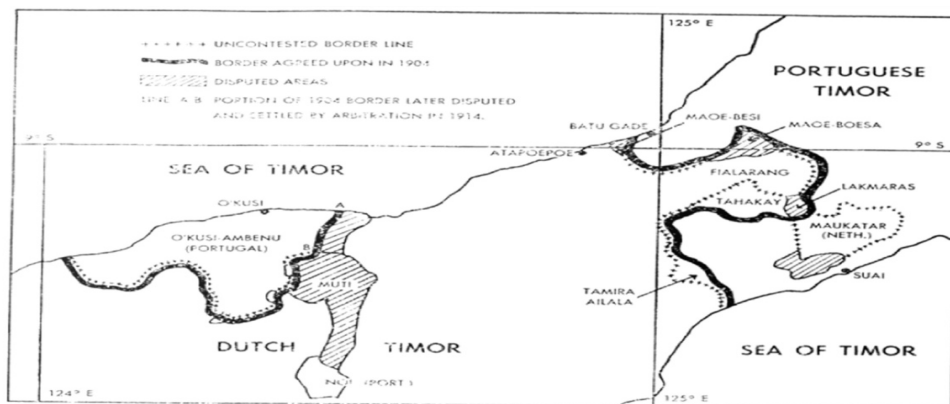
<sup>5</sup> Adi Sumardiman, 'Juridical Aspect in Structuring National Boundaries in Optimizing Roles and Mapping Surveys in the Management of State Areas (Regional Boundary Technical Coordination and Communication Forum)' (2002).[67].

Maritime Organization (IMO) has approved the proposal of 3 Indonesian ALKIs whose lines cross Timor waters, namely ALKI IIIA and IIIB;

3. Adjustment on Sea boundary agreements which have implications due to the separation of East Timor, namely the agreement of the Republic of Indonesia-Australia concerning the 1989 Timor Gap and the 1997-Australia 1997 agreement on certain limits on the Continental Shelf and the Exclusive Economic Zone (EEZ).<sup>6</sup> The maritime border area that needs to be set is located north of the Ombai Strait, and the Leti Strait which is closely related to the planned establishment of the ALKI and south of Timor Island, namely the Gap of Timor.

The biggest problem occurred in Oecusse, an enclave area of East Timor located within Indonesian territory in West Timor. Negotiators of the two countries have not yet succeeded in agreeing on several Oecusse border lines.<sup>7</sup> Following is the picture of the division of Timor Leste with Indonesia.

**Figure 1:** Division of the Territory of Timor Leste



Map based on *Annexe I and II, Sentence arbitrale rendue en execution du compromis signe à la Haye le 3 avril 1913 entre les Pays-Bas et le Portugal, Bureau International de la Cour Permanente d'Arbitrage.*

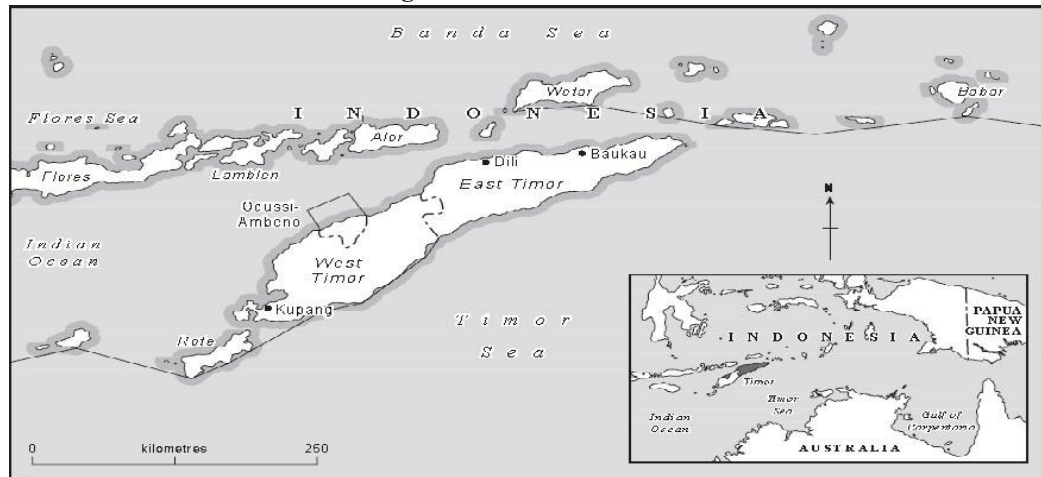
**Source:** 1904 Netherlands-Portugal Border Agreement (International Hydrographic Bureau)

<sup>6</sup> The zone boundaries in the Timor Gap agreement turned out to cover the entire jurisdiction of Australia and Timor Leste so that they were no longer within the jurisdiction of Indonesia. Thus, Indonesia can no longer continue the agreement as a state party. Regarding the Republic of Indonesia-Australia 1997 agreement on certain boundaries of the Continental shelf and EEZ, the sea floor boundaries are not expected to have implications for the emergence of the country of Timor Leste. However, this agreement also covers the EEZ boundary that crosses areas that are not in the jurisdiction of Indonesian territory after independent East Timor, namely the EEZ boundary in Timor Gap. Since this agreement has not been ratified by the People’s Legislative Assembly of the Republic of Indonesia (DPR-RI) and if the ratification process will be carried out after East Timor becomes independent, the contents of the agreement need to be adjusted in advance especially regarding the EEZ boundary.

<sup>7</sup> Mutti Anggita, ‘Kesepakatan Batas Darat RI-Timor Leste: Sebuah Kajian Diplomasi Perbatasan RI’ (2014) 11 Jurnal Penelitian Politik.[29].

The largest area occupies the eastern half of the island of Timor and will be called Timor Leste. The smaller area is called Oecussi-Ambeno. Oecussi is located on the northwest coast of the island.

**Figure 2: Oecussi's Position**



**Source:** IBRU Boundary and Security Bulletin, Winter accessed at [www.bsb7-4\\_prescott.pdf](http://www.bsb7-4_prescott.pdf)

Article 59 of the 1982 Sea Law Convention, concerning Settlement of Disputes in the EEZ, requires states to make agreements in fair ways with relevant considerations. Settlement of disputes in International Law concerning borders can be done through negotiations or other ways agreed by both parties. Each party identifies the problem to then make an agreement. The intended identification is the boundary line between two countries. The boundary line is a geometrical solution for dividing the sea.<sup>8</sup> Each point of the boundary line is located at the same distance from the point closest to the baseline of each country. This means that if the equidistance line is chosen as the sea boundary of each country, then countries must guarantee the waters and the seabed closer to the baseline from the baseline of other countries.<sup>9</sup>

Determining the starting point and baseline is an important step before the delimitation of the oceanic boundary because the baseline will be regarded as a

<sup>8</sup> Victor Prescott, 'The Question of East Timor Maritime Boundaries' IBRU Boundary and Security Bulletin.

<sup>9</sup> Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishment of Certain Boundaries in the Area May 1831, opened for signature 9 October 1972, entered into force 8 November 1973, 974 UNTS 319.

reference for measuring the delimitation line. Indonesia, in this case has determined the starting point and baseline throughout the Indonesian archipelago. The coordinates of the base point are contained in Government Regulation No. 38 of 2002 (Peraturan Pemerintah or PP 38).<sup>10</sup> Nevertheless, the starting point contained in the Regulation does not complete the Indonesian archipelago as a whole. On the other hand, Timor Leste does not have legal regulations or provisions related to the coordinates of the base point of the country. Therefore, the starting point and new baseline need to be determined especially in the maritime border area between Indonesia and Timor Leste. Thus the delimitation of maritime boundaries will consider the starting point and baseline that already exists.<sup>11</sup>

Based on the above mentioned problems, the legal issues that will be discussed are about alternatives for resolving sea border disputes between the two countries by referring to the principle of *uti possidetis juris* in territorial ownership between the Republic of Indonesia and the RDTL (Oecusse sac area) and the determination of the limits of the management rights of natural and non-biological natural resources. According to UNCLOS 1982, the arrangements are general in nature so that they require references from existing state practices or court decisions.<sup>12</sup> This is needed to find out about what factors need to be considered in negotiating the maritime boundary setting.<sup>13</sup>

### **State Sovereignty Over the Sea Territory**

Jean Bodin regards sovereignty as a special attribute and characteristic of the state. Without sovereignty, there is no country. The notion of sovereignty undergoes various changes, in which the state is said to be sovereign if the country is capable

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<sup>10</sup> Mexsasai Indra, 'Urgensi Pengelolaan Wilayah Perbatasan Dalam Kaitannya Dengan Kedaulatan Negara Kesatuan Republik Indonesia' (2013) 1 SELAT.[15-16].

<sup>11</sup> Anak Agung Banyu Perwita, *National Border Management and Security Issues in Indonesia* (DCAF & LESPERSI 2007).[13].

<sup>12</sup> I Made Arsana, *Inter-State Maritime Boundaries A Technical Review and Juridical* (Gadjah Mada University Press 2007).[25].

<sup>13</sup> Abdul Rival Rais, *South China Sea Conflict and Asia Pacific Regional Resilience: Indonesia's Viewpoint* (APSINDO 2001).

and has the right to regulate and manage its own interests domestically and abroad, without relying on other countries.<sup>14</sup> Boer Mauna also explained that sovereignty has three main aspects, namely:<sup>15</sup> (1) The external aspect of sovereignty is the right for each country to freely determine its relationship with various countries or other groups without pressure or supervision from other countries; (2) The internal aspect of sovereignty is the exclusive right or authority of a country to determine the form of the institution and the right to make desired laws and actions to comply; (3). The territorial aspect of sovereignty means the full and exclusive power that the state has over individuals and objects contained within the territory.

A sovereign country, remains subject to international law and may not violate or harm the sovereignty of other countries.<sup>16</sup> The sovereignty of the state is always related to the jurisdiction of the state, taking into account the territorial boundaries of a country showing the end of a state's legal power and explaining the enactment of legal powers for other countries at that border. For the purpose of carrying out territorial sea jurisdiction, it should be noted (a) the maritime coastline or the state's sea boundary that is implemented in maps or geographical coordinates; (b) State rights and obligations in a territory; (c) Management of territorial sea jurisdiction, and (d) Enforcement of the legal sovereignty of the state in the sea.

### **Ocean Territory Boundary**

Determination of a country's sea borders in accordance with UNCLOS 1982, is determined by the determination of the baseline first. Determination of the Indonesian baseline was first stated in 1961. The existence of the Indonesian baseline had an important role in negotiating the regulations set out in Article 47 UNCLOS 1982 relating to the maximum length baseline and land and sea ratios included in the baseline. A map and analysis of the Indonesian baseline was published by

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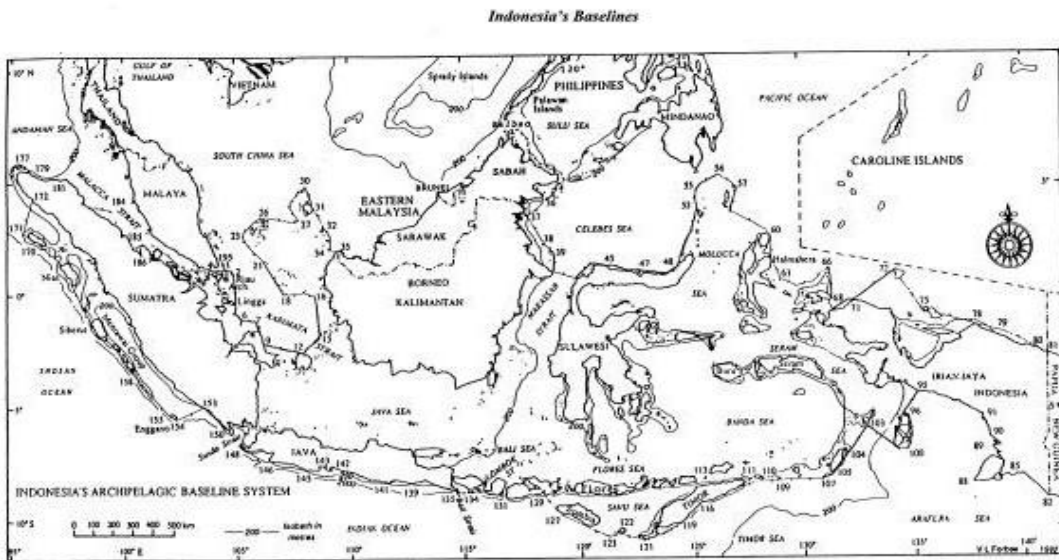
<sup>14</sup> Yudha Bhakti Ardhiwisastra, *State Sovereignty Immunity at the Foreign Court Forum* (Alumni 1991).[43].

<sup>15</sup> Boer Mauna, *International Law, Definition, Role and Function in the Global Dynamics Era* (Alumni 2005).[181].

<sup>16</sup> T. May Rudy, *International Law* (Refika Aditama 2002).[21].

The Geographer 1971. The map states that the northern part of Timor is not yet included in the territory of Indonesia. So that for the certainty of a country's borders a boundary determination is needed between the two countries

Figure 3: Indonesian Baseline



Source: V.L. Forber *The Maritime Boundaries of the Indian Ocean Region*; Singapore University Press, 1995.

Border is one of the important manifestations in a country and is not an imaginary line above the surface of the earth but rather a line that separates an area from other regions.<sup>17</sup> Border can be interpreted as boundary or frontier.<sup>18</sup> Boundaries appear on the map as a thin line that marks the boundary of sovereignty as a state. While the frontier is described as a political geographic area with the expansion of the state can be done. Frontier is an area even though it is not always an area that separates two or more countries. In Moodie's opinion<sup>19</sup> boundary is lines that become the demarcation of the outer boundaries of a country.<sup>20</sup> Named a boundary because it is binding on a political unit. While the frontier embodies a wide range of paths (zones) that separate two different regions.

<sup>17</sup> Starke, *Introduction to the Tenth Edition of International Law I*. (Sinar Grafika 2002).

<sup>18</sup> I Martin Glassner, *Political Geograph* (John Wiley & Sons Inc 1993).

<sup>19</sup> N Djalijoeni, *Basic-Geography* (Citra Aditya Bakti 1990).

<sup>20</sup> See also Yahya Ahmad Zein, 'Politik Hukum Pengelolaan Wilayah Perbatasan Berbasis Pemenuhan Hak Konstitusional Warga Negara' (2016) 23 *Ius Quia Iustum*. [98].

The borders of a country with other countries are important factors in the efforts of identification, boundaries, enforcement of laws, and sovereignty of a country. Therefore, defining borders between countries clearly not only reduces the risk of future border conflicts, but also guarantee the implementation of laws on each side of the border.<sup>21</sup> Theoretically there are nine aspects which are the reasons for claiming a territory by a country, namely:<sup>22</sup>

1. Treaties, general claim based on international treaty and tend to minimize the conflict;
2. Geography, claim based on nature;
3. Economy, claim based on development of the state certainty;
4. Culture, claim based on cultural characteristics;
5. Effective Control, claim based on the administration control toward population (regarded as the strongest claim in International law);
6. History, claim based on the history of ownership;
7. *Utis possidetis Juris*, claim based on principle that a newly independent state inherits administrative boundaries formed by the previous authorities;
8. Elitism, claim based on technological capacity;
9. Ideology, claim based on ideology expansion.

Indonesia has tended to use *utis possidetis* claims, treaties, history and culture in claiming its 'floating' border regions when facing disputes over border areas with other countries.<sup>23</sup> Technically, the juridical 1982 Convention on the Law of the Sea regulates the establishment of maritime boundaries, including through baselines as stipulated in Article 5 of UNCLOS 1982, clarified by the PP concerning List of Baseline Geographic Coordinates Indonesian archipelago.<sup>24</sup> The Convention provides different alternatives and types for all geographical types, namely (1) Article 5 UNCLOS 1982 states that the normal baseline is a low water line along the coast. In this case, the lowest water line from the outermost fringing reefs can also be used. The low water line must be shown on a map that is officially recognized in

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<sup>21</sup> Arif Havas Oegroseno, 'Indonesia's Basic Policy in Maritime Border Determination' (*Departemen Luar Negeri*, 2006) <www.deplu.com> accessed 20 March 2017.

<sup>22</sup> Bappenas, *Main Book of the Master Plan for Management of State Borders, Basic Principles, Direction of Policy, Strategy and Development Programs* (Bappenas 2006).[31-34].

<sup>23</sup> Aditya Batara G, *Management of Indonesia's Border Line An Effort to Ensure Citizen Security, Reform of Border Management in Indonesia* (DCAF & LESPERSI 2007).[52-53].

<sup>24</sup> Bambang Susanto, 'Juridical Study of the Problems of the Maritime Boundary of the Sea Territory of the Republic of Indonesia' [2004] *Indonesian Journal of International Law*. [41].



the country concerned; (2) Article 7 UNCLOS 1982 establishes a straight baseline, a straight line drawn to cover beaches that are too curved, delta, river mouth. In this case the baseline can be drawn straight without following the low coast water line; (3) The Archipelagic baseline is regulated in Article 47 UNCLOS 1982, which is the baseline that connects the outer points of the island and the dry coral outside the archipelago provided that inside the baseline includes the main islands and an area where the comparison between waters and land areas including atolls are one in nine. According to Article 15 of the 1982 UNCLOS, if there are two countries that are located opposite or side by side with each other, then in terms of determining sea boundaries no country has the right unless there is an opposite agreement between them, to determine the territorial sea boundary beyond the centre line where the points are the same as the points closest to the baseline where the width of the territorial sea of each country is measured.

### **Sea Boundary Conditions**

Some of the Laws of the Sea Law are a reference in determining the boundaries of Indonesia's sea territory, namely:

1. Maritime and Territorial Environment Ordinance (Territoriale Zee en Maritim Kringen Ordonantie) 1939. Issued by the Dutch East Indies Government to regulate the Maritime and Maritime Territories in Indonesia. This ordinance states that the width of Indonesia's territorial sea stretches towards the sea to a distance of 3 nautical miles measured from the receding lines of islands including the territory of the Indies - the Netherlands. In addition to the determination of the territorial sea boundary above, this ordinance regulates the territorial sea area.
2. Djuanda Declaration of 1957  
Determination of territorial sea boundaries as set out in the 1939 Maritime and Territorial Sea Territorial Ordinance made by the Dutch created a condition where each island has a territory. As a result, the sea area between these islands will have legal status as high seas which subject to an international legal regime. This condition will affect defence and security and law enforcement in newly independent Indonesia. Based on these considerations, the Indonesian Government changed the way in determining its territorial sea by issuing the Djuanda Declaration on 13 December 1957. The statement was unilateral

(declaration) signed by Prime Minister Djuanda.<sup>25</sup>

This declaration states that the territorial sea width of the Republic of Indonesia is 12 nautical miles measured from the line connecting the outermost points of the outer islands of Indonesia, all waters around, between and connecting the islands of the Republic of Indonesia as a unit that is not separated (archipelagic state principle).

3. Government Regulation in lieu of Law No. 4 of 1960. This Regulation is a continuation of the enactment of the Djuanda Declaration which has binding conditions and applies throughout the territory of the Republic of Indonesia.
4. The Law No. 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (UNCLOS) 1982. This law strengthens the status of Indonesia as an archipelagic country so as to provide a strong legal basis for Indonesia's efforts to settle marine areas that have no boundaries with other countries.
5. Law No. 6 of 1996 concerning Indonesian Waters. This law provides an understanding of matters relating to the determination of maritime boundary activities (Chapter I - General Provisions), while relating to the determination of the boundaries of the Indonesian sea area is regulated in Chapter II starting from Articles 3-10.<sup>26</sup>
6. PP 38 concerning List of Geographical lines of Indonesian Islands Baseline Points. This regulation regulates and describes the boundaries of Indonesian territorial waters, determines geographical coordinates from the outermost points of the baseline to determine the territorial sea.

### **Principles of *Utī Possidetis Juris* in Territorial Ownership between the Republic of Indonesia and the Democrat Republic of East Timor (Oecusse Sacred Territory)**

RDTL is formerly one the Provinces of Indonesia. The separation has made both countries must determine the boundaries of land and sea. Various peaceful diplomacy efforts in the form of negotiations for the determination of the territorial boundaries of the two countries have been carried out and agreed upon. But for some regions, there are still obstacles up to now. As an alternative effort to resolve the territorial boundaries of the two countries, the application of the principle of *uti*

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<sup>25</sup> Suhana, 'Djuanda Declaration of December 13, Long Journey to the Islands' Country' (*Indosmarin*, 2008) <[https://indosmarin.com/"deklarasi-djuanda"-13-desember-perjalanan-panjang-menuju-negara-kepulauan/>](https://indosmarin.com/) accessed 20 March 2017.

<sup>26</sup> Article 10 paragraph 1 regulates the determination of the territorial sea boundary if there is an Indonesian coast that is located opposite or side by side with another country. if there are reasons for historical rights or other special circumstances which state the need for the determination of the sea boundary in a manner different from that provision.

*possidetis juris* is very possible. This refers to the colonial inheritance boundary agreement in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.<sup>27</sup> For territorial sea boundaries, the emphasis was on border agreements that were in effect at the time the boundary agreement was made and the technology available at that time.

The island of Timor is located at the southern tip of the Sunda archipelago 430 km southwest of the Australian continent. The territory of Timor Leste covers half of the island of Timor in the east, the smallest island of Oecussi and the island of Atauro Do Jaco. The area is 146,000 km<sup>2</sup> and has a population of 700,000. In 1701, Portugal claimed East Timor as its colony, during the 18th century, the Dutch occupied more than the largest area next to West Timor, this section described the division of the island into 2 large kingdoms. Both of them are still divided into a number of residencies. On April 20, 1859, Portugal and the Netherlands participated in a landline border agreement between West Timor and East Timor. In the agreement of 1859, the terms demarcation and delimitation are regulated in Article 2, describing the process of requests for demarcation of boundaries of the Timor Islands. Article 6 stipulates and provides alternatives to both countries in resolving border disputes through an arbitration process. The agreement to determine the boundaries of West Timor and East Timor continued until there was an agreement on the Declaration of July 1, 1894, which resulted in a Convention on the Establishment of an Arbitration Commission. The border commission approved the majority of the disputed territory.

Work on the border was stopped in parts of Timor on the island of Oecussi in 1899 in response to warnings from local tribal chiefs. As a result, a small portion of the border in this area was abandoned without review. A conference was held at the Hague on June 23, 1902 in an effort to reach a resolution on the claims of both parties to all debated and mapped areas. Finally, an agreement called the Convention for the Demarcation of Portuguese and Dutch Dominions on the Island of Timor was signed in The Hague on October 1, 1904, and ratified on August 29, 1908.

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<sup>27</sup> Sutisna Sobar, 'Viewing the Indonesian Border Region' (2004).[18].

In Article 1 the Dutch surrendered the small island of Maucatar to Portugal, while in Article 2 Portugal retaliated by surrendering the Dutch territory bordering the main island of Tahakai and Ailala Tamiru. In addition, Portugal handed over to the Dutch territory of the small island of Oecussi in Noimutu. Article 3 contains details in 10 clauses concerning the border of Portugal's small island Oecussi.

**Figure 4:** Netherlands-Portugal Border Convention and Decision of the 1914 Permanent Arbitration Court.



In its development, the The Hague 1904 Convention has not been mutually agreed upon, so the case was submitted to the Permanent Court of Arbitration in 1913 and a decision was issued in Paris on June 20, 1914 which contained: the borders of Dutch and Portuguese ownership in the Timor islands, should be interpreted by the conclusion of the Kingdom of the Netherlands over the border starting from Noel Billomi to Noel Metto. Consequently, a review will be carried out in this section regarding the baseline on a map with a scale of 1: 50000 annex IV from the first case with the Dutch royal and was signed by the arbitrator and used as Annex VII.

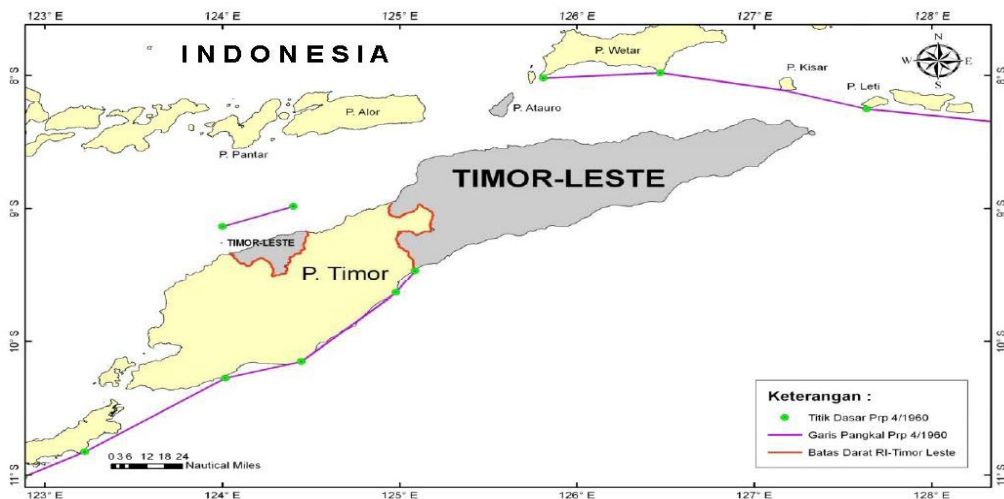
As a continuation of the verdict, three original official maps were first stored and received by the Secretary General of the International Bureau of Permanent Court Arbitration in The Hague with the Dutch Minister of Foreign Affairs as envoys from the Dutch kingdom, and both stored on the same day and form the same as His Excellency the Envoy Extraordinary and the Plenipotentiary Ministry of the Republic of Portugal HM the Queen of the Netherlands, as representatives

of the Republic Portuguese government, the third is stored as an archive of the International Bureau of the Permanent Court of Arbitration.

**Regional Boundary Agreement of the Republic of Indonesia with the Democratic Republic of East Timor in the Oecusse Sacred Territory  
Determination of Basic Points for Indonesia and Timor Leste**

Based on the 1957 Juanda Declaration and Law No. 4 of 1960, Timor Island experienced changes regarding the base point. First, the baseline of islands in the eastern part of Timor Island and the Oecusse enclave under the jurisdiction of Portugal, there are nine base points around the area now known as Timor Leste, one of the islands in Meatimiarang (TD109), two base points (TD 114 & TD 115 ) located about 12 nautical miles from the coast of Oecusse, TD 116 TD & 117 in the southern part of Timor Island, two base points (TD TD 110 & 111) on Leti and two other islands basepoints (TD TD 112 & 113) on Wetar Island.

**Figure 5:** Position of Timor Leste based on Law No. 4 / Prp of 1960

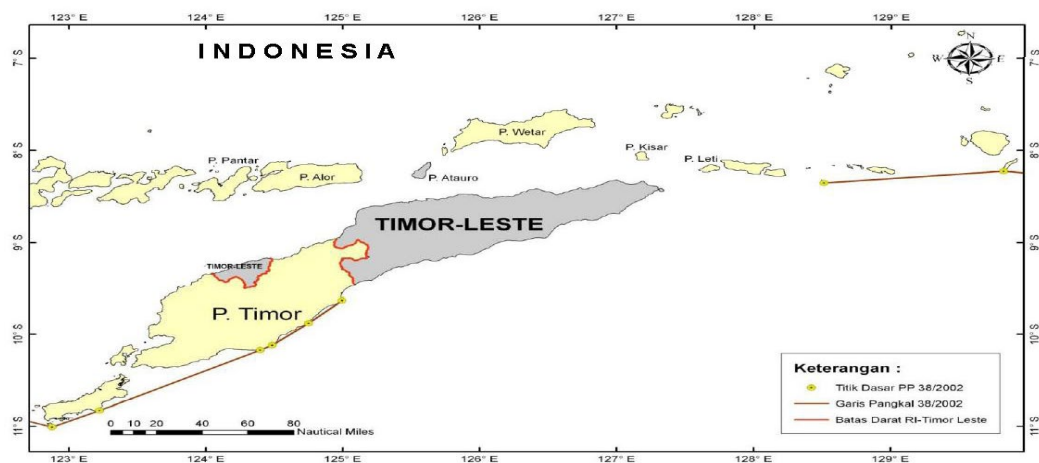


**Source:** International Hydrographic Bureau, Monaco (Accessed <http://www.gmat.usw.nedu.au/ablos/ABLOS05FOLDER/Sutisnapaper>)

On the map, Timor Leste is not yet an Indonesian territory, illustrated that on the island of Timor the territory is divided into two parts. The western part is controlled by Indonesia which is administratively the boundary of the Dutch colonial territory, while the island of East Timor is controlled by Portugal. The

boundary between the territory of Indonesia and the territory of Portugal is a line that crosses the waist of the island of Timor with a larger figure towards Timor which then ends at the mouth of the river Mota Biku and Mota Talas. Subsequently there was a political decision by the Indonesian Government in 1978 to integrate Timor-Leste as part of Indonesia's territory. Whereas according to PP 38 there are around five East Timor base points, one on Meatimiarang Island (TD109) and four base points (TD 115 TD to 118) located on Timor Island.

**Figure 6:** Position of Timor Leste based on PP 38



**Source:** International Hydrographic Bureau, Monaco (Accessed [http / www.gmat.usw.nedu.au / ablos / ABLOS05FOLDER / Sutisnapaper](http://www.gmat.usw.nedu.au/ablos/ABLOS05FOLDER/Sutisnapaper))

After East Timor became a separate country with Indonesia, it was necessary to revise boundaries, especially in Oecussi and Atauro, East Timor's islands. In preparation for amendments, several considerations included the geographical characteristics of the Wetar Strait located in the sea area between Wetar Island and the eastern part of Timor Island belonging to Timor Leste. Between Atauro Island (Timor Leste) located between Wetar Island and Alor Island (Indonesia), 10 new base points have been determined, there are two base points in the Timor Sea (Karang and Tg. Kesioh on Leti Island); three on the Wetar Strait (Tutun Yen on Kisar Island, Tutun Eden on Wetar Island and Lirang Island); two in the Ombai Strait (Tg. Lisomu and Tg. Lisomu and Tg. Seromu on Alor Island), two in the Savu Sea (Tg. Sibera on Alor Island and Mota Biku on Timor Island) and one base point on Timor Island (Mota Talas in Timor Island).

## **Determination of the Base Point of Timor Island before the Independence of East Timor**

Geographically, East Timor is located at the eastern end of the Timor stretching between 123°25 'and 127°19' east longitude, between 8°17 'and 10°22' south latitude. The total area of East Timor is approximately 14,609.38 km<sup>2</sup> which includes: a flat area of 13,670 km<sup>2</sup>, the Ambeno area covering 787.50 km<sup>2</sup>, Atauro Island covering an area of 140,625 km<sup>2</sup> and Jaco Island covering an area of 11,250 km<sup>2</sup>.

The location of the province of Timor Leste stretches from Southwest to Northeast as a continuation of the island of Timor as a whole, in positions that are 08-17 17 ' - 10° 22' South Latitude and 123° 25 ' - 127° 19' East Longitude.<sup>28</sup> On the north it borders P. Alor and the Wetar Strait, which is part of Maluku Province, on the east bordering the Banda Sea, on the south and east bordering on the Timor Sea, on the Southwest on the East Nusa Tenggara Province.

Besides the mainland of Timor Island, this province also has several small islands. The two large islands are: Atauro Island (Goat Island) covering an area of 140 km<sup>2</sup> and Yako Island with an area of 11 km<sup>2</sup>.<sup>29</sup> Because the Province of Timor Leste is still part of Indonesia, the maritime border at that time between the East Nusa Tenggara Province along the Mota'ain coast was included in the enclave area. Oecussi Regency, North of Wetar Island, is an inter-provincial border. Communities around the maritime border in Belu Regency, Alor Regency, Wetar Regency, Ambeno Regency, Bobonaro and Kovalima District interact positively, living their lives as Indonesian citizens in development.<sup>30</sup> The development of the maritime aspects that have been carried out includes making a Base Point (TD) and

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<sup>28</sup> ETAN, 'The Plain Facts about Australia and East Timor's Maritime Boundary' (*ETAN.ORG*, 2005) <<https://www.etan.org/issues/tsea/plainfact.htm>> accessed 20 March 2017.[3].

<sup>29</sup> Coalter G, 'Tripoint Issues in Maritime Boundary Delimitation'. *International Maritime Boundary* (*The American Society of International Law*, 2000) <[www.dur.ac.uk](http://www.dur.ac.uk)> accessed 20 March 2017.. [3305].

<sup>30</sup> Arsana Andi, 'The Application of GIS In Maritime Boundary Delimitation: A Case Study on the Indonesia-East Timor Maritime Boundary Delimitation' (*University of Wallongong Research Online*, 2006) <<https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1464&context=lawpapers>> accessed 20 March 2017.

baseline withdrawal in the South of Timor Island as the basis for the withdrawal of maritime borders with Australia.

**Table 1:** List of Basic Points on Timor Island before there is a Change<sup>31</sup>

TD	Posisi	Lokasi
TD 110	08° 26' 44,6" S-127° 19' 54,5" T	P. Yako Timor Timur
TD 111	08° 41' 08,4" S-127° 00' 48,1" T	Tg. Soeloro Timor Timur
TD 112	08° 57' 04,4" S-126° 28' 41,0" T	Tg. Beaso Timor Timur
TD 113	09° 08' 05,4" S-125° 56' 09,0" T	Tg. Wekusu Timor Timur
TD 114	09° 25' 47,8" S-125° 12' 30,3" T	Tg. Tafaro Timor Timur
TD 115	09° 25' 47,8" S-125° 12' 30,3" T	Tg. Wetoh Timor Timur
TD 116	09° 53' 40,0" S-124° 45' 15,0" T	Tg. Batu Merah Timor Barat
TD 117	10° 07' 25,0" S-124° 28' 42,3" T	Tg. Haikmeo Timor Barat

Based on 1982 Sea Law, New East Timor has the right to claim ex Timor Gap to be its territory. This was due to the fact that in the past there had not been any good delimitation between Timor and Portugal and Indonesia with the Australian side.<sup>32</sup>

### Base Point Determination of Timor Island After the Independence of East Timor

After independence, RDTL and Indonesia have three maritime border segments that must be resolved, namely:

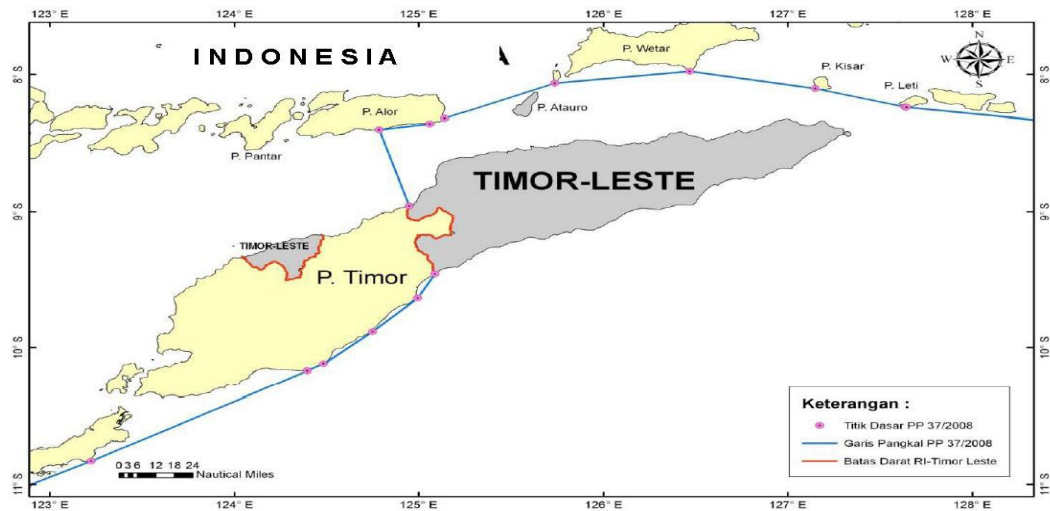
- a. The Southern Segment of Timor Island located in the Timor Sea region;
- b. The North Segments of Timor Island are located in the Wetar Sea and the Ombai Strait;
- c. Middle Segment in the Ombai Strait (enclave).

One of the Indonesian government's policies in efforts to determine boundaries according to the 1982 International Law of the Sea Convention was to take new baseline measurements (TD) as a replacement for the abolished Basic Points in the RDTL area. The base points were abolished were TD 110 (Yako), 111 TD (Cape Soeloro), TD 112 (Cape Beaso), TD 113 (Cape Wekusu), TD 114 (Cape Tafaro).

<sup>31</sup> Directorate General of Defense Strategy, *Optimizing the Handling of RI-RDTL Maritime Border Areas in Order to Maintain the Integrity of the Republic of Indonesia* (Directorate General of Defense Strategy 2007). [25].

<sup>32</sup> Sherlock S, 'The Timor Sea Treaty: Are the Issues Resolved?' Parliament of Australia, Research Note No. 45 2001-02' (*Parliament of Australia*, 2002) <www.aph.gov.au> accessed 22 March 2017.



**Figure 7:** Position of Timor Island based on PP 37

**Source:** International Hydrographic Bureau, Monaco

Accessed [http / www.gmat.usw.nedu.au / ablos / ABLOS05FOLDER / Sutisnapaper](http://www.gmat.usw.nedu.au/ablos/ABLOS05FOLDER/Sutisnapaper)

**Table 1:** Base Point on the New Island of Timor

TD	Posisi	Lokasi
TD 110	08° 14' 20" S – 127° 38' 34" T	Tg. Karang P. Leti
TD 110A	08° 14' 17" S – 127° 38' 04" T	Tg. Kesioh P. Leti
TD 111	08° 06' 07" S – 127° 08' 52" T	Tutun Yen P. Kisar
TD 112	07° 58' 31" S – 126° 27' 59" T	Tutun Eden
TD 112A	08° 03' 44" S – 125° 44' 06" T	P. Lirang
TD 113	08° 19' 04" S – 127° 08' 25" T	Tg. Loisamo P. Alor
TD 113A	08° 21' 26" S – 125° 03' 37" T	Tg. Seromo P. Alor
TD 113B	08° 23' 58" S – 124° 47' 10" T	Tg. Sibera P. Alor
TD 114	08° 57' 26" S – 124° 56' 57" T	Mota Biku P. Timor
TD 114A	09° 27' 37" S – 125° 05' 20" T	Mota Talas P. Timor

The two countries have agreed to discuss after the confirmation of the land boundary is over.<sup>33</sup> The interim agreement between the government of the Republic of Indonesia and the Government of the Democratic Republic of East Timor concerning land borders explains that the parties will refer to higher authorities to solve the problem and consider the interests of local people (indigenous people).<sup>34</sup>

<sup>33</sup> IBRU, 'Border Demarcation Plan East Timor Indonesia' (*IBRU Boundary Report*, 2002) <[www.antara.com](http://www.antara.com)> accessed 20 March 2017.

<sup>34</sup> Yakobus Kolne, 'Implementasi Perjanjian Perbatasan RI-RDTL Dalam Upaya Penyelesaian Masalah Perbatasan (Studi Kasus Di Kabupaten TTU-RI Dengan Distrik Oecusse-RDTL)' (2014) 5 *POLITIKA*. [7].

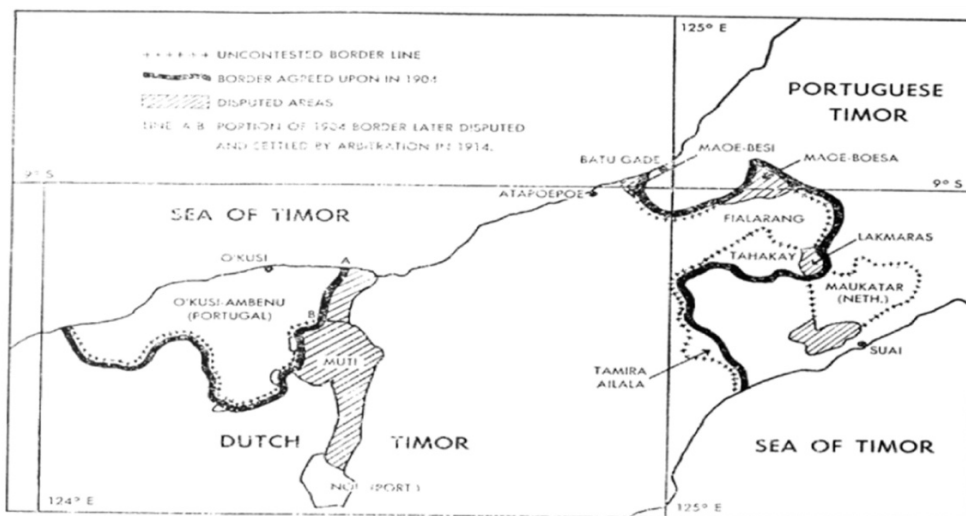
The temporary nature of this agreement still has to be carried out a delineation and demarcation survey. This is based on the fact that there are still land areas that still have to be negotiated. It Includes 4 terminal points from the coastline which will be the starting point of the four territorial sea boundaries of the region, namely Noel Meto, Mota Biku, Mota Ain, and Mota Masin.

The delimitation of the maritime boundary between Indonesia and Timor Leste consists of several stages. This stage includes a description of the starting point and baseline of the overlapping claims, drawing the equidistance line and determining the possibility of maritime boundaries. The baseline will be a reference for the measurement of the delimitation line. Indonesia, in this case has determined the starting point and baseline throughout the Indonesian Archipelago. The coordinates of the base point are contained in PP 38. But the starting point contained in the PP 38 has not been equipped with the Indonesian archipelago as a whole. On the other hand, RDTL does not yet have regulations or legal provisions related to the coordinates of the base point of the country.

### Sea Boundary Line for the Territory of Indonesia with Timor Leste

After becoming an independent and independent country from the Republic of Indonesia, Timor Leste consists of two regions of different sizes.

**Figure 8:** Division of the East Timor Region

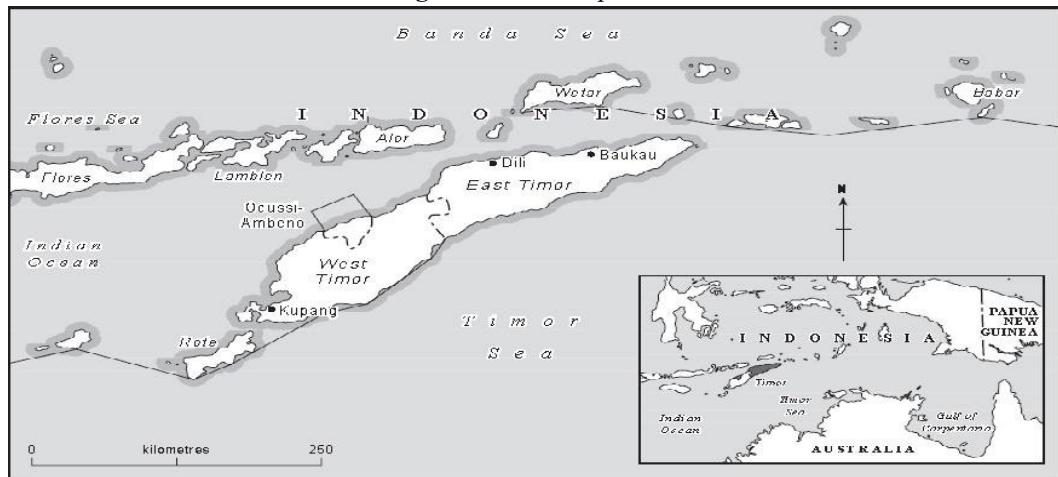


Map based on *Annexe I and II, Sentence arbitrale rendue en exécution du compromis signé à la Haye le 3 avril 1913 entre les Pays-Bas et le Portugal, Bureau International de la Cour Permanente d'Arbitrage.*

**Source:** 1904 Dutch-Portugal Border Agreement

The largest region occupies the eastern half of the island of Timor and is called Timor Leste. The smaller region called Ocussi-Ambeno in the colonial period, now Oecusse. Oecusse is located on the northwest coast of Timor Island

**Figure 9: Oecusse position**



**Source:** IBRU Boundary and Security Bulletin, Winter accessed at [www.bsb7-4\\_prescott.pdf](http://www.bsb7-4_prescott.pdf)

Both sides must negotiate and identify boundaries between the two regions. The boundary line is a geometric solution for dividing the sea.<sup>35</sup> Each point of the boundary line is located at the same distance from the nearest point of the base line of each country. This means that if the equidistance line is chosen as the sea boundary of each country, each country should guarantee the waters and seabed closer to the baseline of the bases of other countries.<sup>36</sup>

Indonesia, in this case has determined the starting point and baseline throughout the Indonesian archipelago but not complemented the Indonesian archipelago as a whole. On the other hand, Timor Leste does not have legal regulations or provisions related to the coordinates of the base point of the country. Judging from the geographical position and distance measurement from the normal baseline, Indonesia and Timor Leste have the potential to carry out delimitation in three maritime regions. These three locations are north of Oecusse (Ombai Strait) to

<sup>35</sup> Victor Prescott (n 8).

<sup>36</sup> Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishment of Certain Boundaries in the Area May 1831, opened for signature 9 October 1972, entered into force 8 November 1973, 974 UNTS 319.

the north of Timor Island (Wetar Strait) and south of Timor Island (Timor Sea). For the Ombai Strait there are three considerations that need to be considered, namely the existence of Oecusse, the last point of the land boundary in Noel Meto, and Noel Bessi and the existence of Batek Island. Geographically, Oecusse is located in the western part of Timor Island about 70km west of East Timor, and Oekusse covers an area of approximately 2700 km<sup>2</sup>.

### **East Timor Sea Boundary Line with Indonesia in Oecusse (East Timor)**

In the 1904 Agreement, Oecusse was the area at the mouth of Noel Besi located on the west and the mouth of Noel Meto on the east.<sup>37</sup> The 1904 agreement states that the mouth of Noel Besi located on the coast at the point of Batek Island is located at 30 ° 47 'west of the north. British shipping guidelines state that the Noel Iron river is located on the coast at the 124 ° 02'E meridian point and Noel Meto stretching 27 nm northeast on the 124 ° 27'E meridian.<sup>38</sup> The line from the boundary between the two ends produces a rectangular area of 550nm<sup>2</sup>, bounded by the lateral boundary connected to the north coast of Timor and connected by an Ocusse coastline and from the Indonesian coast from Pantar Island and Alor Island. East Timor's claims from the Oecusse coast are limited by Batek Island in the Indonesian territory. This is explained as a small island with a surface or coral that has a height of 81 meters.<sup>39</sup> Because of this small island, Indonesia has the right to claim an extension of the maritime zone of this region.

If Indonesia states that this island is a coral in accordance with the term Article 121 Paragraph (3) of the 1982 Sea Law Convention, states that "rock that cannot support human habitation or its own economic life has no exclusive or continental economic zone," Indonesia is still can extend from demands if Indonesia can maintain its place or have their own economic life. In addition, Indonesia as an archipelagic country is allowed to determine the baseline of

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<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

islands from the outer islands and reefs, according to Article 121 Paragraph (2) UNCLOS 1982.

### **Conclusion**

In determining the boundaries of a country such as between the Republic of Indonesia and the Democratic Republic of East Timor, which have cultural ties and have been part of Indonesia, the principle of *Uti Possidetis Juris* should be applied. Meanwhile, for the territorial sea boundary between the two The state refers to the provisions contained in UNCLOS 1982 and the agreement of the parties.

The agreement of the Republic of Indonesia and the Democratic Republic of East Timor for the Oecusse Region, is still in the process of completion. To avoid things that are not desirable the Government of Timor Leste makes Oecusse Region a special economic zone, a zone which is expected to have economic value for both countries, especially in the border region. Suddenly the two countries completed the land and sea border agreement.

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