

# Returning to Customary Law to Maintain Sovereignty

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It has been sixteen years since Timor Leste gained independence. Looking at the globe, some of Timor Leste territories are surrounded by Indonesian territories (exclave). This issue has been the subject of study of a Law doctoral student, Yanto Melkiamus P. Ekon, for his dissertation.

Doing his doctoral promotion at Faculty of Law UGM on Monday (2/7), Yanto said the area division was based on the *uti possedis juris* principle which states that borders of a new state have to follow the borders determined by the states previously occupying it. "So, the exclave of Timor Leste was caused by the former occupiers, namely the Netherlands and Portugal," he said.

Yanto said the exclave in Timor Leste had cause some problems in the area, such as traffic. "To be able to run a business in its outside territory, a citizen of Timor Leste has to pay duties to the Indonesian government," he said.

Yanto also described the implications for Indonesia saying that such exclave had segregated Indonesia because the district of Oecusse lies inside Indonesia. Thus, the argument of Indonesia with its unitary state condition is a failure because of another sovereignty inside it.

The main problem, however, according to Yanto, was the security of both parties. Lingering border issues have triggered conflict between them. This includes the neutral area of Natuka. Yanto said both countries have interpreted the neutral area differently. "Indonesia wants this area to be free from the country's authority while Timor Leste considers it is free to be utilised," he said.

Yanto suggested a re-interpretation of the *uti possedis juris* principle. He wishes to interpret the principle based on the historical context, which is to determine the borders based on previous kingdoms. He based this view following his study of the customary people of Timor both in Indonesia and Timor Leste. According to the belief of the customary people, by following the former kingdom borders, prosperity will be achieved. This solution, however, applies only to the land areas but does not apply to the marine territories. Yanto suggested the marine borders can be established based on international laws after the land borders have been determined.

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