

Legal Implications Of Local Government Authority In Granting Permits For The Use Of Land And Coastal Waters Intended As Tourism Activities

ABSTRACT:

Aims: This study examines the regulation of authority to use coastal land and waters for tourism purposes in improving community welfare. With the enactment of the Job Creation Law, it affects the existing legal order.

Study design: Researching The inconsistency of legal regulations

Methodology: This research uses normative legal research by using legal materials such as primary, secondary legal materials.

Results: The results of this study found that it was concluded that the regulation of coastal land tenure and coastal area management by communities in Indonesia is regulated in Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands jo. Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands and is inseparable from Law Number 5 of 1960 concerning Basic Basic Regulations Agrarian or known as Basic of Law Agrarian. As well as Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.has caused many inconsistencies and disharmonies with related laws.

Conclusion: There is a shift from decentralization to centralization. There are inconsistencies and disharmonies with the Job Creation Law with the Law on the Management of Coastal Areas and Small Islands related to regulated authority.

Keywords: authority to grant permits, utilization of coastal land, inconsistency

1. INTRODUCTION

“Coastal areas are part of natural resources that have strategic value that

need to be managed and utilized in such a way that they can become a source of prosperity for the Indonesian people as mandated in the Constitution of the

Republic of Indonesia Year 1945). The coastal area which is a transition between land and sea areas is a potential resource that stores enormous natural wealth. The coastal area has a high diversity of natural resource potential, and is very important for social, economic, cultural, environmental, and sovereign development of the nation".[1]

One important part of the coastal area is the land which is where various people's lives take place. Therefore, land becomes a resource that has a very high value, not only from an economic aspect but also socio-cultural value. The economic value of land in the coastal area if associated with tourism will be a source of income for those who use it, both by local communities themselves and investors and also the Regional Government. While the socio-cultural value can be seen as a forum for the continuity of community life with various socio-cultural dimensions.[2] The various dimensions of coastal land make coastal land a resource that is vulnerable to grabs and even has the potential to cause conflicts of interest between various parties related to its control and use. For example, the interests of local communities with investors or with local governments.

"Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) has stipulated various kinds of land rights that can be granted and owned by legal subjects, both individuals and legal entities as specified in Article 4 paragraph (1) of the UUPA and Article 16 of the UUPA, such as Property Rights, Business Use Rights, Building Use Rights, Use Rights and Rental Rights".[3] However, coastal areas have now obtained regulations in the control

and utilization of coastal areas with the enactment of Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands. However, some articles related to the use of coastal areas have been revoked by the Constitutional Court Decision of the Republic of Indonesia so that these articles become non-binding.

In addition, in general, in coastal areas there has been land control and utilization by local communities. In addition, because coastal land is a very strategic area for tourism purposes, it is very vulnerable to causing problems in its control and utilization. There are indications of inconsistencies in the authority in granting permits related to the use of coastal land areas with the emergence of Job Creation Law Number 6 of 2023, where the authority in this law emphasizes more centralization than existing laws in local governments and Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. Article 50 paragraph 3 states that "The Regent / Mayor is authorized to provide HP-3 in the Coastal Waters area 1/3 (one third) of the provincial authority area. However, in Law Number 6 of 2023 in the Job Creation Law, Article 50 states that the Central Government or Regional Government in accordance with its authority grants and revokes Business Permits related to utilization at sea in Coastal Waters. There is a shift in authority that was previously fully carried out by the Regional Government of Kab/Kota to the Central Government. There is a shift from decentralization to centralization. With inconsistencies and disharmony with the Job Creation Law and the Law on the Management of Coastal Areas and Small Islands related to regulated authority.

Based on the potential problems mentioned above, harmonization of coastal land tenure and utilization arrangements is needed, so that interested parties can control and utilize it based on the provisions of applicable laws and regulations, and do not cause problems that can actually lead to damage to the resources themselves, it is interesting to conduct research on the regulation of control and utilization of coastal land and waters For tourism activities by taking into account the rules that apply to the community and the provisions of national law and its legal implications.

2. LITERATURE REVIEW

“The coastal area is the meeting area between land and sea, with the boundary towards land covering the land part, both dry and submerged in water which is still influenced by marine properties such as sea breezes, tides, seawater permeation characterized by its distinctive vegetation, while the boundary of coastal areas towards the sea includes the outermost part or boundary of the continental shelf area (*continental chelf*), where the characteristics of these waters are still influenced by natural processes that occur on land such as sidementation and freshwater flow, as well as processes caused by human activities on land such as deforestation and pollution”. [4]

“According to Yuwono, the coastal area can be divided into two parts, namely coastal waters and coastal land. While the land boundary with the coast there is an area used for the purposes of security and coastal protection called the coastal border. A beach is defined as the area between the highest tide and the lowest low tide”. [5] “According

to some scholars, there are many definitions of coastal areas. In general, there is agreement that coastal areas are a transitional area between land and sea”. [6] “Coastal areas are transitional regions connecting terrestrial ecosystems and marine ecosystems, which are highly vulnerable to changes due to human activities on land and at sea, geographically inland as far as the highest tides and seaward as far as influences from land. For legal certainty, there must be administratively the territory then inland as far as the boundary that has the role of the sea and towards the sea as far as 12 miles from the coastline”. [7]

In Indonesia, the definition used is coastal areas as areas that are meeting areas between land and sea, towards land covering parts of land both dry and submerged in water that is still influenced by processes related to the sea or sea properties such as tides, sea breezes and salt water permeation. While towards the sea, coastal areas include parts of the sea that are still influenced by natural processes that occur on land such as sedimentation and freshwater flow, as well as those caused by human activities on land such as deforestation and pollution. [7]

3 METHODS

This research is a type of normative legal research that emphasizes the study of legal aspects. As a normative legal research, this research is aimed at laws and regulations relating to applicable legal rules or norms, both contained in laws and regulations, as stipulated in Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, Law Number 5 of 1960 concerning Basic Regulations of

Agrarian Principles, Law Number 26 of 2007 concerning Spatial Planning, Implementing regulations, including provincial or regency/city regulations, as well as legal norms applicable in the community.

The approach applied in this study is the statutory approach (*Statute approach*), historical approach (*historical approach*) and conceptual approach (*conceptual approach*). Comparative law approach.

4. RESULTS AND DISCUSSION

4.1 Legal Implications Of Regulating The Granting Of Land Utilization Permits For Coastal Areas Based On Law Number 6 Of 2023 Concerning Job Creation

Article 1 point (1) of the Job Creation Law states that the Management of Coastal Areas and Small Islands is a coordination of planning, utilization, supervision, and control of coastal resources and small islands carried out by the Government and Regional Governments, between sectors, between land and sea ecosystems, and between science and management to improve the welfare of the people. [8]

Based on the above definition, the government's efforts to carry out the management of small islands are based primarily on the principle of improving the welfare of the people. Therefore, for the sake of creating a pro-people government, there are regulations regarding the management of coastal areas and small islands related to "rights for the community regulated in Article 60 Paragraph (1) of the Job Creation Law states that in the Management of Coastal Areas and Small Islands, the Community has the right to: 1. gain access to parts of Coastal Waters that have received

Business Permits related to utilization at sea; 2. propose traditional fishing grounds into RZWP-3-K; 3. propose the managed area of Indigenous Peoples into RZWP-3-K; 4. carry out management activities for Coastal Resources and Small Islands based on applicable customary law and not contrary to the provisions of laws and regulations; 5. obtain benefits from the implementation of Coastal Area and Small Island Management; 6. obtain information regarding the Management of Coastal Areas and Small Islands; 7. submit reports and complaints to the competent authorities for losses incurred by him relating to the implementation of Coastal Area and Small Island Management; 8. express objections to the management plan that has been announced within a certain period of time; 9. report to law enforcement due to suspected pollution, pollution, and/or destruction of Coastal Areas and Small Islands that harm their lives; 10. Against various issues of Coastal Areas and filing a lawsuit with the court; 11. Small Islands that harm their lives; 12. obtain indemnification; and 13. receive assistance and legal assistance to problems faced in the Management of Coastal Areas and Small Islands in accordance with the provisions of laws and regulations.[9]

The fulfillment of the welfare of the people with the fulfillment of their rights as described above is not enough to legalize the government in granting permits, there needs to be guarantees in the form of control of the impact of the use. Such thinking is then manifested in the form of imposing sanctions on everyone who violates. The regulations related to sanctions regulated in Article 71 of the Job Creation Law, namely the utilization of aquatic space and coastal

resources and small islands that do not meet the Business Permits related to utilization at sea provided as referred to in Article 16 paragraph (2) and Article 19 paragraph (1) are subject to administrative sanctions. [9] Furthermore, Article 71 letter A describes the types or forms of administrative sanctions as follows: 1. written warning; 2. temporary suspension of activities; 3. closure of premises; 4. revocation of Business License; 5. cancellation of Business License; and or 6. administrative fines.

Descriptions related to articles regulating the management of small islands in Indonesia after the presence of the Job Creation Law provide a new color in their utilization and management. It can be clearly seen that the impact of the presence of such arrangements so that there are investors who want to invest in Indonesia and thus the government's efforts in utilizing existing natural resources can run optimally by providing appropriate procedures and permit requirements, so that indirectly the government has opened the widest possible door for investors to come to invest with various existing facilities. Another impact of the presence of the Job Creation Law which only changes a few articles without providing further provisions can be a boomerang for the Indonesian nation, it is then strengthened by the fact that a good and correct understanding is not easy to be absorbed by every community. That the presence of the Job Creation Law not only provides benefits in the form of investment in relation to the use of small islands, but also continues to strengthen and maintain the surrounding environmental ecosystem.

4.2 Analysis Of The Regulation Of The Authority To Grant Permits For The Use Of Land And Coastal Areas

The implementation of various kinds of laws and regulations together without harmonization efforts or alignment and harmony will certainly cause problems such as conflicts of interest between coastal stakeholders. Each law has a purpose, a strategy to achieve the goal, and guidelines for implementing the strategy, where all three are often formulated in the form of policies.

Policies consist of two kinds, namely policies that are fixed or regulatory policies that are applied in various forms of implementing regulations from higher level regulations and policies that are not fixed, which are easy to change in order to follow developments. In this connection, harmonization can be started by aligning and harmonizing goals, strategies and guidelines for each law through efforts to interpret laws, legal construction, legal reasoning, and provide rational argumentation. [10]

The implementation of various laws and regulations together without efforts to harmonize or harmonize the harmony clan will certainly cause problems such as conflicts of interest between coastal stakeholders. Each law has a purpose, a strategy to achieve the goal, and guidelines for implementing the strategy, where all three are often formulated in the form of policies. [11]

Harmonization has the function of prevention and the function of overcoming the occurrence of legal disharmony. Harmonization of law to prevent legal disharmony is carried out

through legal discovery (interpretation of legal construction), legal reasoning, and rational argumentation. This effort is carried out with a direction to affirm the will of law, the will of society, and the will of morals. Harmonization efforts that are preventive in nature are carried out in order to anticipate the reality of potential factors that can cause legal disharmony.

Harmonization carried out to overcome and prevent legal disharmony requires legal discovery techniques in order to reinforce the will of law, the will of society, and the will of morals. Thus, it can be concluded that legal harmonization is an activity of discovering legal will, community will and moral will through legal interpretation and legal reasoning activities, as well as providing rational arguments to the results of legal interpretation and reasoning. In integrated coastal management, harmonization must be able to reflect the integration in coastal area management, and vice versa in the integration of management is also reflected in legal harmonization.

Legal and institutional aspects in the implementation of coastal and marine area management activities are manifested in the form of legal and institutional interactions. Each stakeholder involved in management activities, whether government agencies, private institutions or community institutions, obtains a legal mandate from applicable laws and regulations to carry out one, two, or several components of coastal and marine resource management activities. Therefore, it can be understood that each component of management activities is a legal and institutional interaction.

Because legal and institutional interactions occur in every component of management activities and also between components of activities in management, such integration should be sought to be realized at every line and level of legal and institutional interaction. Efforts to integrate management laws and regulations, or at least to harmonize and harmonize them, can be done through legal interpretation, legal reasoning, and rational argumentation by taking into account the interests of each institution with the main direction to develop the protected function of coastal and marine protected areas. If legal integration can be realized, then the problem of integration in its application must also always be pursued by coastal and marine protected area management institutions. Institutional integration will always be a guarantee for the implementation of legal harmonization in the management of coastal and marine areas.[12]

Article 33 paragraph (3) of the 1945 Constitution is the source of law as well as the legal basis for every legislation that regulates the utilization of the Sea Clan's coastal natural resource management. In this regard, Article 18A of the Constitution stipulates that the relationship between the central government and local government in the utilization of natural resources and other resources must be regulated by the clan to be carried out fairly and in harmony with the law. The law referred to here is a law relating to efforts to manage coastal areas of sea clans.

Harmonization of law is an effort to create harmony between legal norms in laws and regulations into a unified national legal framework.¹⁰⁷ The

creation of harmonious legal products is not an easy matter, because it must explore values in society which requires time and money. In general, legal harmonization in Indonesia is carried out in the following ways: [13]

1. Ensure that the legal regulation plan contains Pancasila's values;
2. Ensure that the provisions of the UUD of 1945 which ordered the formation of legal regulations were included in the plan of the legal regulations and in accordance with the principles of the country's maintainers in the UUD of 1945;
3. Use legal terms properly and consistently;
4. Carefully examine the compatibility between the load material of the legal regulation plan and other higher and equivalent legal regulations;
5. Ensure that the basis of the legal regulations has been well accommodated in the plan of the legal regulations;
6. Ensure that the drafting of the legal regulations is in accordance with the planning techniques of the legal regulations; And
7. Ensure that the language used in the formulation of norms is in accordance with good and correct Indonesian rules.

Ideally, the harmonisation of the law is carried out during the planning of the rule of law. The harmonisation of the law covers two aspects, namely: first, the harmonization of the material of the legal plan with Pancasila, UUD RI of 1945, the law, and the basis of the formation of legal regulations; secondly, the harmonization of the legal plan with the technique of drafting legal regulations. The harmonization effort itself is divided into two, that is, vertical harmonisation and horizontal harmonisation. Vertical harmonisation

is an attempt to integrate between the rules of law in different hierarchies. Vertical harmonisation is based on the basis of *lex superior derogat legi inferiori*, which means higher legal regulations sideline the lower rule of law. Vertical harmonisation is carried out by means of researching the norms of higher regulation, so that the material regulated in the drafting of the rule of law does not contradict the rules of law on it. The vertical harmonisation of legal regulations plays an important role in shaping interrelated legal regulations and preventing judicial reviews that require cost, time, mind, and energy. Whereas, horizontal harmonisation is an attempt at compatibility of equal legal rules. [14]

Horizontal harmonisation departs from the base of *lex posterior derogat legi priori*, which means the new legal regulations are stifling the old legal regulations. In addition, horizontal harmonisation is also based on the basis of *lex specialis derogat legi generalist*, which is a rule of law that specifically sidesteps the general rule of law

In practice, horizontal harmonisation based on the basis of *lex posterior derogat legi a priori* is carried out against the rules of law that are on an equal hierarchy and are governed in the closing provisions. Whereas, horizontal harmonisation based on the basis of *lex specialis derogat legi generalist* is required to form a rule of law of particular character to achieve a specific goal. Horizontal harmonisation is done by ensuring that the norms regulated in a legal regulation are consistent or do not overlap between the rules of law equivalent. So every rule of law becomes an integral part of the entire legislative system. [15]

Weak supervision, guidance and law enforcement have triggered various environmental problems. The lack of supervision and enforcement of law enforcement both at the lower level (community) and at the top level (government) makes the tendency of environmental damage worse. This can be seen from the absence of an independent special institution with full authority to supervise and enforce laws governing natural resource management. Currently in Indonesia there are many laws and regulations governing the sustainable management of coastal and marine resources. But in reality, many of these laws and regulations are not implemented. This is due to weak law enforcement, sectoral egoism and weak coordination between sectors.[16]

Increased pollution in various coastal areas, one of the causes is due to lack of supervision of the sewage system. Likewise, when there is a violation of the law, sometimes the sanctions given are relatively lighter than the damage caused by the resulting tendency to commit violations continues to increase. [17]

The progress of a nation can be seen from the level of legal awareness of its citizens. The higher the legal awareness of the population of a country, the more orderly the life of society and state. This legal awareness factor has an important role in the development of law, meaning that the weaker the level of public awareness, the weaker the legal compliance. Conversely, the stronger the legal awareness, the stronger the legal compliance factor. Community legal awareness which in turn will create a good law enforcement atmosphere, which can provide a sense of justice,

create legal certainty in the community and provide benefits for community members.

5. CONCLUSION

As the basis for the authority of the Regional Government in Managing Coastal Areas and Small Islands is Law No. 1 of 2014, in Article 54 and Article 55 it is explained that the management of coastal areas and small islands at the provincial level and at the district level is carried out in an integrated manner coordinated with the office in charge of marine and fisheries. However, after the existence of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, it is regulated in Article 50 that the Central Government or Regional Government in accordance with its authority grants and revokes Business Permits related to utilization at sea in Coastal Waters areas. There is a shift in authority that was previously fully carried out by the Regional Government of Kab/Kota to the Central Government. There is a shift from decentralization to centralization. There are inconsistencies and disharmonies with the Job Creation Law with the Law on the Management of Coastal Areas and Small Islands related to regulated authority.

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