



# Sustainability Management and Planning of Coastal Areas and Small Islands to Ensure Environmental Justice for Fishermen Communities

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## Abstract

As the largest archipelagic state in the world, most provinces in Indonesia have coastal areas with different physical characteristics. In addition, Indonesia has small islands located on the outer side of the country. So far, there are unclear regulations and management to protect the ecological environment in these areas, as well as legal protection for residents. This study seeks to analyze the sustainability management in coastal waters and development planning of small islands to ensure environmental justice for fishermen communities with special reference to Law No. 1 of 2014 regarding the Management of Coastal Areas and Small Islands. This study also wants to analyze the obstacles in the implementation of Law No. 1 of 2014 regarding Management of Coastal Areas and Small Islands. The results showed that the coastal waters management scheme according to the law is carried out through the mechanism of location permits and management permits and requires that the permits granted must not violate the decision of the Constitutional Court. In addition, in this law, the government grants the community the right to propose the preparation of Strategic Zoning Plan for the Management of Coastal Areas and Small Islands.

**Keywords:** Sustainable Development, Spatial Planning, Marine Environment, Small Island, Environmental Justice, Indigenous Rights

## 1 Introduction

Indonesia is the largest archipelago in the world consisting of 17,499 islands, making it the largest archipelagic state in the planet. The total area of Indonesia is 7.81 million km, consisting of 2.01 million km of land, 3.25 million km of ocean, and 2.55 Exclusive Economic Zone (EEZ). As an archipelago, most provinces in Indonesia have coastal areas with different physical characteristics [1, 2]. Indonesia is a country with the longest coastline in the world, formed from geological formations since the Pleistocene [3, 4, 5]. With its characteristics that are formed from thousands of islands, Indonesia has an inland sea in the form of straits, coastal waters, bays and other forms of water with a very large number (93,000 square kilometers), and 6,159,032 km<sup>2</sup> of the Exclusive Economic Zone [6, 7]. Coastal waters have a strategic meaning in building the nation and the welfare of its people because it is an important area from a planning and management point of view [8, 9]. On the other hand, the misuse of natural resources in coastal areas can result in threats to the sustainability of very critical ecosystems [10]. Problems that occur in coastal areas and small islands, among others, occur due to conflicts between government agencies (sectorial conflicts); conflict because the regional government which has the authority is not immediately responsive to solve problems in the field over seizure of catchment areas. Likewise, with exploration, exploitation, conservation and management of marine resources, in practice irregularities have occurred which have resulted in

damage to coastal areas [11, 12, 13, 14].

In order to ensure the sustainability of natural resources and planned coastal management; integrated and providing great benefits to coastal communities, the Government enacted Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands [15]. One of the legal breakthroughs in this law is the emergence of Coastal Water Concession Rights (hereinafter referred to as HP-3). Instead of realizing the welfare of the fishing community, the enactment of this law has actually triggered polemics and resistance from various groups, especially the enforcement of the HP-3 which is feared to displace fishing communities from their traditional fishing areas.

An eminent environmentalist, Wahana Lingkungan Hidup Indonesia (Walhi) along with several non-governmental organizations (NGOs) as well as fishing communities agreed to submit a request to the Constitutional Court for a Judicial Review. In essence, they asked for the annulment of several articles related to HP3 in Law No. 27 of 2007, because they were considered to be against the interests of the Indonesian people, in particular Article 33 and Article 18 letter B; Article 28 I; and Article 32 of the 1945 Constitution of the Republic of Indonesia. Through decision Number 3/PUUVIII/2010 the Constitutional Court (MK) finally granted part of the petition and stated that the articles related to HP-3 no longer have binding power because they contradict the 1945 Constitution of the Republic of Indonesia. Following up on this decision, the government issued Law No. 1

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of 2014 concerning Amendments to Law No. 27 of 2007. One of the reasons for the cancellation of the HP-3 is stated in the dictum of consideration of the Court which explicitly states that the government's objective in managing coastal areas and small islands cannot be carried out/will not be achieved if the management scheme is to provide HP-3.

On this basis, the government issued a legal policy by enacting Law No. 1 of 2014 as an amendment to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands which are considered not to side with fishing communities. However, whether the enactment of Law No. 1 of 2014 can guarantee that the rights of fishing communities will be accommodated, if only looking at the issue of management rights changing to permits only. Another problem is related to harmonization and synchronization with several previous legislations that have been enforced [16, 17, 18, 19, 20, 21]. This research was conducted to analyze the sustainability management in coastal waters and development planning of small islands to ensure environmental justice for fishermen communities with special reference to Law No. 1 of 2014 regarding the Management of Coastal Areas and Small Islands. This study also wants to analyze the obstacles in the implementation of Law No. 1 of 2014 regarding Management of Coastal Areas and Small Islands.

## 2 Legal Norms for Spatial Planning of Coastal Waters

The implementation of HP-3 as regulated in Law No. 27 of 2007 has received many rejections because crucially HP-3 violates the constitution, where the rights of fishing communities on the coast are neglected by HP-3. These rights are (1) the rights of fishing communities to access resources on the coast; (2) the right to manage/utilize resources; (3) the right to manage resources according to traditions and beliefs/local wisdom and (4) the right to get a clean coastal environment. The four rights are inherent in the traditional fishing community and cannot be exchanged for overthrow. Management of Coastal Zone and Small Islands through the mechanism of granting HP-3 actually reduces the state's control over the Management of Coastal Zone and Small Islands. Through its decision Number 3/PUU-VIII/2010, the Constitutional Court cancelled the implementation of HP-3 as regulated by Law No. 27 of 2007 because it contradicts the 1945 Constitution of the Republic of Indonesia.

The politics of law of Law No. 1 of 2014 is evident in the preamble which states that the basis for the consideration of the issuance of this law is that the state is given the mandate of the 1945 Constitution of the Republic of Indonesia to control coastal areas and small islands to be used maximally for the welfare of the people [22, 23]. In addition, it also states that the state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Constitution, which are regulated in law [8, 19, 24]. The meaning of this provision, state recognition and respect for customary law communities and their traditional rights becomes the spirit in the management of coastal areas. Likewise, the purpose of the stipulation of this law as an amendment to the old law, it is clearly stated in Article 33 paragraph (3) and paragraph (4) of this preamble, which in essence is the right to control the state over the land, water and natural resources contained therein for used in economic activities based on economic democracy in order to

realize the greatest prosperity of the people.

In general, this law includes granting the right to the community to propose the preparation of a Strategic Plan, a Zoning Plan, a Management Plan, and an Action Plan for the Management of Coastal Areas and Small Islands; Regulations regarding Location Permits and Management Permits for Individuals and Customary Law Communities, Local Communities, and Traditional Communities who utilize resources in coastal areas and small islands; regulating the use of small islands and the waters around them; The HP-3 revision scheme is not just a change of rights (Coastal Water Concession Rights) to a permit (Coastal Water Management Permit), but ensures that the permits granted cannot violate 4 things as decided by the Constitutional Court.

Law No. 1 of 2014 does not change all articles concerning coastal area management, only changes to articles related to HP-3. The management of coastal areas is mentioned in Article 1 point 1, namely the Management of Coastal Areas and Small Islands is a coordinating planning, utilization, supervision and control of coastal resources and small islands carried out by the Government and Regional Governments, between sectors, between terrestrial and marine ecosystems, as well as between science and management to improve people's welfare. This law also eliminates the meaning of HP-3 completely and replaces it with a permit. The meaning of license is stated in Article 1 number 18 and 18A, specifying that Location Permit and Management Permit. The Location Permit is a permit granted to utilize the space of a portion of coastal waters covering sea level and water column up to sea level at a certain extent and/or to take advantage of a part of small islands. Furthermore, it is specified that Management Permit is a permit granted to carry out activities to utilize the resources of coastal waters and waters of small islands.

This provision is reaffirmed in Article 16 paragraph (1) and paragraph (2) which states that every person who will carry out spatial utilization of part of the coastal waters and partially exploiting small islands is obliged to have a location permit. (2) Location Permit as referred to in paragraph (1) shall be the basis for granting Management Permits, which are granted by the Minister, Governor or Regent/mayor according to their respective authorities, based on zoning plans, the interest of preserving coastal ecosystems and small islands, traditional fishing communities and national interests. This location permit is exempted or cannot be granted in the core zone in conservation areas, sea lanes, port areas, and public beaches. Article 20 states that the Government and Regional Governments are obliged to facilitate the granting of Location Permits and Management Permits to Local Communities and Traditional Communities, as well as determine the requirements, procedures for granting, revocation, period, area, and expiration of Location Permits and Management Permits regulated by Government Regulation.

The provisions of the obligation to obtain a permit before utilizing space are exempted for customary law communities, because this permit falls under the authority of the local Customary Law Community. Even so, in the utilization of space and resources of coastal waters and waters of small islands by the customary law community must consider the national interest and in accordance with the provisions of laws and regulations.

Another thing that is different from Law No. 27 of 2007 is the definition of society, including those of traditional communities, which previously this definition was separated separately in Law

No. 27 of 2007. Based on these general provisions, the state through this law recognizes the existence of traditional communities along with Traditional rights that are still alive in a certain area are part of the community's understanding that needs to be considered in their involvement in coastal management. The difference between the politics of law in Law No. 1 of 2014 and the previous law is the obligation to involve the community in the preparation of the Strategic Plan; Zoning Plan; Management Plan and Action Plan for the Management of Coastal Zone and Small Islands, as stated in Article 14 paragraph (1) and paragraph (2). Community involvement (customary law communities, local communities and traditional communities) in the preparation of a coastal area management plan is a new norm that was previously ignored in Law No. 27 of 2007. Community involvement in the process of compiling strategic plans, management plans and in coastal area management action plans. It is hoped that the state really accommodates and pays attention to and protects community units and their traditional rights, so that they are not reckless and bump into or ignore their existence when the government issues coastal management permits to individuals or corporations.

Thus, the legal politics of Law No. 1 of 2014 essentially eliminates the legal norms regarding HP-3 as regulated in Law 27 of 2007 and replaces them with location permit mechanisms and management permits. However, the political legal construction of this law is not just a change of rights (HP-3) to a permit (Coastal Water Management Permit), but ensures that the permits granted cannot violate the rights of fishing communities as mentioned above, which are decided by the Court Constitution.

### 3 Implementation of Sustainability Management of Coastal Areas and Small Island

Law No. 1 of 2014 as an amendment from Law No. 27 of 2007 contains the main points determined by the Constitutional Court, because the nature of the decision is binding. Apart from that, it is also a form of state responsibility to provide protection with the principle of social justice as referred to in the fourth paragraph of the Preamble to the Constitution and Article 33 paragraph (4) of the 1945 Constitution. Several changes in norms in Law No. 1 of 2014 include:

1. The involvement of fishing communities in the management of coastal waters which results in the emergence of indirect discrimination
2. Equity and management in the utilization of coastal space by fishing communities
3. The holder of a coastal water's management permit may not lose the rights of traditional fishing communities and local wisdom on coastal areas because it is contrary to the concept of customary rights and traditional rights of the people which cannot be limited because they can be enjoyed from generation to generation (just saving principle).
4. As a form of the government's political will to realize the ideal goals for managing coastal areas and small islands, including to protect, conserve, rehabilitate, utilize, and enrich coastal resources and small islands and their ecological systems in a sustainable manner; to create harmony and synergy between the Government and Regional Governments in the management of coastal resources and small islands; and, to strengthen the participation of the community and government institutions

and encouraging community initiatives in the management of coastal resources and small islands in order to achieve justice, balance and sustainability

This goal, however, is not realized by the government through the HP-3 scheme. Even though Law No. 1 of 2014 has changed the concept of HP-3 into licensing, in practice its implementation is still experiencing obstacles due to the substance of the law and its linkages with the authorities of other institutions, resulting in overlapping legal regulations; dualism of arrangements for aspects of the same object arrangement as well as institutional authority and others.

Some of the problems become obstacles to implementation. From the legal aspect, the problem of implementing dualism of Management Permits and Concession Permits in Coastal Spaces is based on Law No. 1 of 2014 and Government Regulation Number 36 of 2010 concerning Natural Tourism Exploitation. Article 19 paragraph (1) of Law No. 1 of 2014 concerning provisions for management permits and concession permits in coastal areas conflicts with Article 8 of Government Regulation Number 36 of 2010. The licensing mechanism in two different ministries is still valid. This of course has the potential for inefficiency in bureaucratic management and also has implications for high costs.

Dualism of Regional Regulations on Spatial Planning and Zoning Plans for Coastal Areas and Small Islands. According to Article 9 paragraph (5) of Law No. 27 of 2007, the Zoning Plans is stipulated by a Regional Regulation. Meanwhile Article 24 paragraph (1) of Law No. 26 Of 2007 explains that detailed spatial planning is also stipulated by Regional Regulation. The Spatial Planning rules regulate relatively the same things but at the technical level two different Regional Regulations must be issued.

Legal certainty conflicts of authority Planning and granting location permits and management permits based on Law No. 1 of 2014 and Law No. 23 of 2014. The legal norms of the two laws have differences in planning institutions as well as issuing permits. In Article 14 and Article 50 paragraph (3) of Law No. 1 of 2014 the authority rests with the regional government (province and district/city) to manage the coast and small islands comprehensively. On the other hand, Article 27 of Law No. 23 of 2014 has the authority only in provincial areas to manage natural resources in the sea in their territory. The inconsistency between Law No. 1 of 2014 and Law No. 23 of 2014 has resulted in unclear authority in issuing location permits and resource management permits in marine areas, as well as unclear division of functions and roles between the Provincial Government and District/City Governments in resource management the coast.

Legal certainty for foreign investment licensing based on Law No. 1 of 2014 with Law No. 25 of 2007. Article 26A paragraph (1) of Law No. 1 of 2014, the use of small islands and the use of the surrounding waters for investment foreigners must obtain the Minister's permission. On the other hand, Article 26A paragraph (5) relates to investment for investment in small islands, outlines that specifically for the gradual transfer of shares to Indonesian participants and land area with due regard to ecological, social and economic aspects is mandated to be stipulated through a Presidential Regulation. The conflict that occurs in this case is legal regulations related to business permits in the framework of foreign investment in small islands. In this case, there are two agencies authorized to issue permits, namely the Ministry of Marine Affairs and Fisheries as referred to in Article 26A

paragraph (1) of Law No. 1 of 2014; as well as the Ministry of Trade based on Law No. 25 of 2007 and Presidential Regulation No. 36 of 2010 concerning the Limitation of Closed Business Fields and Open Business Sectors.

Provisions for the transfer of shares as referred to in Article 26 paragraph (5) of Law No. 1 of 2014 are not in sync with Law No. 25 of 2007 concerning Investment. The problem that occurs in this context is the dualism of legal rules and institutional authority in licensing investment in these small islands which will cause problems, namely legal uncertainty for investors.

As a consequence, these legal uncertainties bring back the privatization of the control of part of the coastal area by private companies owned by Indonesian citizens/foreigners, which means that it will be contrary to Article 22A of Law No. 1 of 2014, namely subjects that are allowed to manage coastal areas.

From the institutional aspect, there is a conflict of authority of the institution which has the right to grant and revoke location permits and management permits as a result of the dualism of legal regulations governing permits as stated in Article 14 paragraph (1); (2) and (4); Article 50 paragraph (4) of Law No. 1 of 2014 with Article 27 paragraph (1); (2); (3) Law No. 23 of 2014. Moreover, Law No. 1 of 2014 still gives authority to the Regional Government/Regent/Mayor to be given the right to issue and revoke location permits and management permits in accordance with their respective powers. Meanwhile, Article 27 paragraph (1); (2); (4) Law No. 23 of 2014, authority is only given to provinces. The regulation of different legal norms based on these two laws results in legal uncertainty over which institution has the right to compile a management plan in coastal areas and who can legally grant location permits and management permits.

Then, the institutional conflict in managing water conservation, based on Article 78A of Law No.1 of 2014, Conservation Areas in Coastal Areas and Small Islands which have been established through statutory regulations before this Law comes into effect are under the authority of the Minister of Marine Affairs and Fisheries. However, until now the conservation area as mentioned above is still under the management of the Ministry of Environment and Forestry on the basis of the authority granted by Law No. 5 of 1990 concerning Conservation of Living Natural Resources and their Ecosystems.

Lastly, from the legal service aspects and community involvement in location permits and management permits. Article 16 Paragraph (1) of Law No. 1 of 2014, clearly stated that anyone who uses space from part of the coastal waters and utilizes part of small islands permanently is required to have a location permit. The phrase "Everyone", means that including local communities and traditional communities, they still have to take care of location permits and management permits when they are going to carry out economic activities in coastal waters even though these activities are intended to fulfill their daily needs. This norm needs to be changed, because the Government can be considered as allowing competition between local communities; traditional communities with entrepreneurs/investors whose conditions are different both in terms of access to capital, technology and knowledge. This has led to unclear licensing procedures, the division of authority between the central and regional governments so that it is predicted that it will hamper investment.

Referring to Article 71 Paragraph (1) of Law No. 1 of 2014 states that the utilization of coastal water resources that are not in accordance with the location permit, as Article 16 Paragraph (1) is subject to administrative sanctions, will potentially criminalize

and restrict the freedom of access to coastal community resources. The fact is that not all coastal communities are able to obtain permits, because most coastal communities are in fact unable, economically, socially and politically. They do not have equal power when compared to the owners of capital.

Article 21 and Article 22 of Law No. 1 of 2014 provide protection for customary law communities, namely exemption from the obligation to have permits, both location permits and management permits. The substance of Article 21 suggests that there are multilevel requirements, namely to give freedom to indigenous peoples to manage their livelihood spaces, but it clashes with the phrase "considering national interests and recognition of legal status based on statutory regulations". The Coastal Law does not define the definition of national interest. This condition is very potential to expel indigenous peoples from their territory or living space on the coast if they do not receive recognition of the legal status of indigenous peoples by the government.

#### 4 Conclusion

Indonesia has made substantial changes in last decades to legally increase the capacity for environmental protection in coastal waters, and to improve spatial management to provide wider environmental access and rights to local residents. This change is to protect environmental sustainability and development in the coastal areas and outer islands. Law No. 1 of 2014 concerning Management of Coastal Areas and Small Islands is a change in the government's legal politics in the management of coastal waters. However, this law does not change all articles concerning coastal area management, only removes articles related to HP-3 which are regulated in Law 27 of 2007 and replaces it with the Coastal Water Management Permit mechanism. The coastal waters management scheme according to the law is carried out through the mechanism of location permits and management permits and requires that the permits granted must not violate 4 things as decided by the Constitutional Court. In addition, in this law, the government grants the community the right to propose the preparation of a Strategic Plan, a Zoning Plan, a Management Plan, and an Action Plan for the Management of Coastal Areas and Small Islands.

In practice, the implementation of Law No. 1 Of 2014 has experienced many obstacles, especially synchronization with other legal regulations that were earlier in effect, causing the problem of legal uncertainty over the implementation of this law. Some of the problems that become obstacles to its implementation include, first, the legal aspects of dualism of management permits and concessions in coastal spaces based on Law No. 1 of 2014 and Government Regulation Number 36 of 2010 concerning Natural Tourism Exploitation. Then also the dualism of the Regional Regulation on Spatial Planning and Regional Planning and the Zoning Plan for Coastal Areas and Small Islands. Second, from the institutional aspect there is a conflict of authority over the institution which has the right to grant and revoke location permits and management permits; Conflict in the authority of planning and granting location permits and management permits as a result of the dualism of legal regulations of Law No. 1 of 2014 with Law No. 23 of 2014; water conservation management institutional conflicts. Third, the aspect of legal services and community involvement in location permits and management permits, as if the government has allowed the struggle for coastal waters management between traditional fishing communities and

investors who own capital.

## 5 Suggestion

The government needs to supervise and if necessary form a task force to monitor the regional government in granting location permits and management permits based on 4 matters of the Constitutional Court decisions, namely (1) the rights of fishing communities to access coastal resources; (2) the right to manage/utilize resources; (3) the right to manage resources according to traditions and beliefs/local wisdom and (4) the right to get a clean coastal environment. The government needs to immediately synchronize and harmonize several legal regulations related to their enactment with Law No. 1 of 2014, so that there is no overlap in the legal aspects, institutional authority as a result of dualism of governing legal regulations. If deemed necessary, change the legal norm of one of the legal regulations according to the authority of each institution. Several articles in Law No. 1 of 2014, especially the issue of the obligation to obtain permits for traditional fishing communities, the authority to grant and revoke permits between local and central governments based on Law No. 23 of 2014.

## Ethical issue

Authors are aware of, and comply with, best practice in publication ethics specifically with regard to authorship (avoidance of guest authorship), dual submission, manipulation of figures, competing interests and compliance with policies on research ethics. Authors adhere to publication requirements that submitted work is original and has not been published elsewhere in any language.

## Competing interests

The authors declare that there is no conflict of interest that would prejudice the impartiality of this scientific work.

## Authors' contribution

All authors of this study have a complete contribution for data collection, data analyses and manuscript writing.

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