

# Policy License of Law of Natural Resources Especially on Management Coastal and Small Island in Indonesia

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## ABSTRACT

As an archipelagic state, Indonesia has potentially with most natural resources on coastal areas, waters, and small islands land. Research problem (1) why can foreign investors behave utilization management business activity in coastal area waters resource and waters around small islands? (2) How do realization management coastal resource areas and small islands based on local communities with the principle of local wisdom? The type of research method is doctrinal or normative research with a statue approach and concept approach. Result and discussion, the policy license is an essential function because it is an administrative law instrument for guarantee to prevent pollution and environmental damage. On the other hand, the licenser also guarantees to legalize business activity for corporation domestic and foreign investor's investment to manage utilization resource of coastal waters area and islet around waters sea level and sea bed. The problem about permitted of the foreigner is debatable, but from the point of view government policy to open job opportunities only hope that policy really and actually can be realized. The second research problem is local community participation to manage coastal resources and islet no good realization. There is an intern and extern obstacle. Government and local government must be petrified local communities through microcredit to increase welfare and prosperity citizen compatible with our constitutional mandate to the welfare of the people.

**Keywords:** Policy license, Coastal area and small islands, Customary law community, Microcredit.

## 1. INTRODUCTION

According, article 33, paragraph (3), The 1945 Constitution of The Republic of Indonesia, stated "The land and the waters and the natural riches contained therein shall be controlled by the State and exploited to the most significant benefit for the all of the people. As an archipelago country, Indonesia has a very long coastline, and most have small islands with potential natural resources to manage for utilization. It means the Governance of the function making rules in figure legislation authority of legislator and regulation authority of executive; policy gives a license for persons or corporation to engage in the activity utilization of coastal area and small islands<sup>[1]</sup>. The function of license as government control for guarantee utilization of resources coastal areas and small island areas to the prosperity of entities local community. Government-regulated utilization of small islands and coastal area not only for persons, corporations, and corporative, foreign investors based on business orientation, but also for customary law communities sustainability environment orientation based on local wisdom right take use management of coastal resources of the area and small island the land

area.<sup>[2]</sup> It is mean that the legal subject who can take advantage the coastal resources and small island beside domestic investors, cooperative, and customary law community, foreigner inverter too. Based on the background problem, in this research, there are two which can be formulated, that is:

- (1) Why could foreign investors use the investment to manage the resource's natural resources on coastal areas and small islands?
- (2) How the realization of the utilization of natural resources on the coastal area and small islands based on communities for welfare of the local population

## 2. METHOD

The type of this research is doctrinal or nominative, which statute approach and the conceptual approach. The statute approach is systematization, interpretation, and evaluation text of the Constitution, Statute, and regulation also court decision related to the natural right, especially about the coastal area and small island land to

economic activities. It is called the primary legal material and is authoritative because the texts could be subject to sanction, criminal, private, and administrative when violated. The concept approach is all information about law from a law expert who has a scientific authority, and it has called secondary legal material. The tertiary law material or resource of law, among others: abstract, index, dictionary, and other reference material [3].

### 3. RESULT AND DISCUSSION

According to Article 19 Omnibus Law, Act Number 11, the year 2020 about Job Creation, stated that each person who utilization the natural resources around the coastal and small island must behave license for salt production; bio pharmacology; biotechnology of the sea; utilization sea apart energy; marine tourism; bedding of pipe and cable under the sea inadequate; and/or recovering content from sinking ship.

The implementation of Article 19, paragraphs 1 and 2 about other utilization of the natural resources around waters and small islands should be regulated by Government Regulation. Its utilization is for realized conservation, education, and training to the upgrading of knowledge community, how they could sustainability natural resources. The other business utilization is marine culture; tourism; sustainable fishing industry activity; organic farm; and bio farms, like cattle farms, chicken farms, and goat farms.

#### 3.1 *Utilization of coastal and small areas for Domestic Investor*

Government policy regulate the utilization natural resource on sea level, and seawater pool must be two licenses are for manage, that is:

- (1) The location license is to take advantage of the coastal resource, involve utilization for space apart of the coastal area of the sea and the small island area.
- (2) According to article 50 paragraph (1) Act Number 1 the year 2014 about Management Coastal Areas and Small Islands, the official authority to issue location license that is Minster of Marine and Fisheries, in coastal water and of small islands on:
  - a. Cross-province;
  - b. Strategic national area; and
  - c. Specific national strategic areas;
  - d. National conservation area.
- (3) Governor with authority to issue area license on:
  - a. Coastal water sea;
  - b. Small islands by their authority until 12 miles.
- (4) Regent or Mayor with authority to issue area license on:
  - a. Coastal water sea; and
  - b. Small islands according to their authority.

Three requirements have the right to apply for the area license for the local domestic investor: the business license is a management permit venture to exploit water resources on coastal areas waters and small island waters. According to his authority, the authority can assign a location license by the minister called the field function of marine and fisheries; governor, regent, or mayor. Three legal subjects have asked for location licenses based on Indonesian law: individual, corporation, and cooperative.

The requirement licenses business activities that are consist of the (1) technical, like a business proposal, which contains: type and plans of activity; consideration (environmental technicalities, social) map area; and conformity with the spatial plan. (2) administrative, like identity, profile/company deed, Taxpayer Number, recommendation, like, map; containing and planning of business activity; and (3) operational requirement, like:

The validity of the license period is pending on the type of business:

- a. Salt production only five years;
- b. Bio pharmacology of the sea, only five years;
- c. Biotechnology of the sea, only five years;
- d. Marine-tourism, twenty years;
- e. Utilization of seawater apart energy, ten years;
- f. Bedding of pipe and cable under the seabed, thirty years; and
- g. Recovering content sinking the ship, only two years. [4]

The validity location license period is the pending type that is:

- a. Coastal waters valid last the most extended two years, and can be extended for two years, totally four years;
- b. Small islands valid of two years, and can be extended two years again, totally valid for four years (according to the Article 22B Act Number 1 the year 2014 about Management Coastal Areas and Small Islands).

#### 3.2 *Special for Foreign Investor*

Utilization of business on the small island and around of seawater by foreign investors has regulated in Article 26A the Act Number: 1 the year 2014, stated

First, the official management utilization assignation business license is a Minister of Marine Affairs and Fisheries, according to Ministerial of Marine and Fisheries Regulation, Number 24/KP/2019 about Procedure of License for Granting Location and Management of Waters Area and Small Islands.

Second, the license is granted after the recommendation of the regent or mayor; and

Third, the requirement of assigning license involve:

- a. Has a legal entity in the form of Limited Company, according to Indonesian law;

- b. Aces public guarantee; like aces for the community to utility beach border when face danger of the coast; aces for traditional fishing; aces for people's voyages; and aces communities for religious.
- c. There is no resident in the land area;
- d. There are no utilities by the local community;
- e. Corporate with Indonesian people participant;
- f. Carry out the transfer of share to Indonesia participant step by step;
- g. Undertake technology transfer and
- h. Pay attention to aspects ecology, social, economical on land area.

The concept of ecology is the aspect that influences environmental sustainability and the ecosystem on the islet. The social aspect is the aspect that influences community social-cultural. The economic aspect is the aspect that influences business eligibility or investment.

Granting license location and business license for a foreigner has been debatable. Some scholars said it is not compatible with massage utilization on coastal and small island land areas based on the local community, especially the orthodox law community[5]. The utilization rights to manage the Small Islands and around sea waters for local communities' interest. The other one statement that the utilization for the foreign investor to manage the resource of area coastal and islet is limit on water sea level and undersea surface water with strictly requirement and control by government and local government. The Foreigner investor could utilization only on the area of small islands, which not resident in those land areas, and according to the investment ecosystem, can open job opportunities[6].

### **3.3 Customary law community Right**

The customary law community given the right to make use of Small Island and surrounding waters based on local wisdom to manage to involve:

- a. Space and waters resources coastal and;
- b. Small island waters.

The concept of customary law community is a group of people as communities which is hereditary from generation to generation life on the territory of the Republic Indonesia geography because of the bond of origin has a great relationship with the land, which has the figure of customary government, and customary law order" [7]. According to that concept, it is four elements of the customary law communities that is:

- a. There is a group of people;
- b. There is a place to live;
- c. The existence of a bond origin; and
- d. The figure of government and customary law order. As the figure government on Balinese local wisdom where the customary law communities which government based on community, called "DESA ADAT" (Balinese Traditional Village) has autonomic government and has authority making a written customary law, we called

"AWIG-AWIG Traditional Village) where" the law material" based on principles of local wisdom, with the philosophy of "*Tri Hite Karana*" (the harmony relation between man and God; harmony man and the other man or individual and community; and harmony mans with his environmental).

According to the decision of the Constitutional Court of the Republic of Indonesia, Number: 3/PUU-VIII/2010 on material judicial review of Act Number 27 the year 2007 about Management Coastal Area and Small Islands as was amended by Law Number 1 the year 2014. The Constitutional Court, under legal consideration, set that the right to manage natural resources have the status, not fundamental rights. However, it is a material right, can be used as a mortgage. That is why also the customary law community, whose have rights to manage the natural resources, must be given according to law. It is legal consideration according to original intent interpretation[8].

### **3.4 License Revocation and Sanction**

Each person or corporation who have the license to utilization resource of the coastal areas and small islands must be implementing the substance requirement of the permit according to law.

When the government regulates those who take advantage of the coastal resources areas and the small island without obtaining the permit, it may issue criminals for their investment. However, when each legal subject is to utilize coastal resources and islet not use the permit substance properly, the licensing could be revocation of the location permit and their management of a business.

The sanction for violation of one of the permits can be administrative and criminal. The administrative sanction in the form: first, warning; second, temporary freeze; and/or third, revocation of location license.

The administration sanction for manage of business activity, when violation material permit, can be in forms: first, written warning; second, temporary suspension of activities; third, closure of the location; fourth, license revocation; five, revocation of license; and/or, sixth administrative fines.

Next to the criminal sanctions, according to article 75 Act Number 1 the year 2014, stated: "*Each person which utilization resources of area waters of coastal and islet which not have the license of location as arranging stated in the article 16 paragraph (1) the imprisonment with criminal the longest three years and a maximum fines five billion rupiahs*".

According to article 75B the Statute Number 1 year 20014, that stated: "*Each person who not have the license of manage to the utilization of resources islet space as arranging stated in the article 19 paragraph (1) the imprisonment with longest four years and maximum fines two billion rupiahs*".

Next, the second problem of this research about the realization of management resources coastal areas and small islands land areas must be based on local communities. the author thinks to the systematic interpretation of the Act Number 1 the year 2014 about Amended on Act Number 27 the year 2007 concerning Management of Resource Coastal Area and Small Island, the central management resource of Coastal waters area and Small Islands involve:

- a. Regulation, control, rehabilitation, utilization, enrich natural resources territory of the islet, and sustainability the ecology.
- b. Create harmony and synergy between Government, Local Government, and local communities in management resources coastal areas and small islands.
- c. Strengthening community participation accelerates the achievement of sustainable development.
- d. Increase achievement of local community strengthens in social, cultural, and economical through participation in utilization to manage resources of coastal areas and small islands.

These the ideal main goal to utilization management resource coastal areas and small islands based on local communities, in reality, is not could be realized. This matter is caused influence of intern and extern factors. The intern factors are that the local communities lack knowledge in fields of technology, lack of capital, and another synergy between government, local government, and local communities not maximal yet to accelerate poverty alleviation of rural communities. The extern factor is the domination of domestic and foreign investors because they have high technology for exploration and exploitation to utilization resources coastal areas and islet. Until now, they are master the utilization of business activity on fishing industries, tourism, and bio pharmacology of the sea. In reality, that business utilization manages the resources of coastal water areas, and small island land areas could not be the workforce of local communities. In the description of the influence intern and extern above, the author thinks the main goals to manage utilization of natural resources based on communities cannot be welfare and prosperity for all Indonesian citizens.

#### **4. CONCLUSION**

As is described above, it can be concluded:

1. Indonesia is an archipelago country, surrounded by long beaches stacked with resources on coastal areas and small islands for citizen welfare, compatible with the mandate of our Constitution. That is why the Indonesian Government could be making an authority license policy for managing the coastal areas and small islands as is regulated on Act Number 27 the year 2007 as has amended by Act Number 1 the year 2014 about Management Coastal Areas and Small Island.

2. The license, as in administrative law instrument, has these functions:
  - a. A guarantee to prevent environmental pollution and destruction which is effective, and;
  - b. A guarantee to legalize each person, corporation, cooperative, and foreigner's investor; c. It is the realization of "legal certainty."
3. The role of foreign investors is debatable because it is government policy, according to the investment ecosystem. From a positive point of view, the writer hopes that the policy will open job opportunities moving forward.
4. Problem about the realization management of utilization resources on coastal waters area and small islands based on the local community cannot be realized yet, because two-factor obstacle:
  - a. Intern obstacle, which includes local communities lack capital and lack of knowledge toward technology;
  - b. Extern obstacles, which include the national capital corporation and foreign investment, have dominated.

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