



# The Implementation of Fisheries Resources Management in Law Number 23 of 2014 on Local Government of East Java Province

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**Abstract.** The enactment of law Number 23 of 2014 amending the law Number 32 of 2004 results in several consequences for the provincial and district/municipal government. One of them is the policy on fisheries resources management delegated to the provincial government causing the shift of authority and institution which brings about the impact on many parties. This research focuses on the implementation of fisheries resources in East Java Province. The doctrinal research method was employed to study the impact viewed from a legal perspective. Moreover, another impact is the emergence of significant change in the authority and institution. As a result, there is disharmony between the provincial government and the district/municipal government. Thus, there is an urgency to do the coordination and role sharing in managing the fisheries resources in the regions.

**Keywords:** Fisheries Resources Management · Local Government

## 1 Introduction

Normatively, the constitution regulating the basis of regional autonomy applies to the 1975 Constitution Article 18 particularly in Sect. 5 stating “Local government broadly runs the autonomy except for the government affairs which have been stipulated by law as they are the affairs of the central government.” [1]. Thoughts on the Implementation of Regional Autonomy were further drafted in Law Number 32 of 2004 which was subsequently amended by the stipulation of Law Number 23 of 2014. Its enactment results in a number of structural changes, one of which was the division of authority in the marine and fisheries sector. It aims to make the government carry out its authority more honestly, effectively, efficiently, and optimally [2]. The changes due to the enactment of Law Number 23 of 2014 amending law Number 32 of 2004 on regional autonomy lead to a number of consequences, especially for the provincial and district/municipal governments. The a quo law delegates maritime affairs, Energy and Human Resources (ESDM), and forestry to the authority of the Provincial Government.

## 2 Research Method

This research is doctrinal legal research. Soerjono Soekanto defines doctrinal legal research as research covering legal principles, legal systematics, level of legal synchronization, legal history and comparative law. Doctrinal law research aims to describe the body of the law itself and its legal implications. Doctrinal legal research or also called normative legal research is carried out on written regulations or other legal materials. Data were collected through interviews to gather primary data, the 1945 Constitution, and laws related to the research topic. Meanwhile, the secondary legal materials include the journal literature.

## 3 Findings and Discussion

### A. Conservation and Management of Fishery Resources in Law Number 23 of 2014

The regulation regarding the provincial authority in the marine sector has been specifically regulated in Law Number 23 of 2014 in Article 27 Part One on the Provincial Authority in Marine Areas. In article 27 Sect. 1, it is explained that provincial areas are authorized to manage natural resources in the marine areas in their territory. Areas recognized as the province's as described Article 27 Sect. 3 of Law Number 23 of 2014 stipulates that a maximum of 12 (twelve) nautical miles is measured from coastline towards the high seas or archipelagic waters [3]. This article abolishes the previous policy in Law Number 32 of 2004 stating that the area of provincial authority of the 4–12 mile zoning has now become 0–12 mile and shifted the authority of district/municipal government covering that 0–4 mile zoning of marine waters.

The issuance of Law Number 23 of 2014 diminished the functions of government and the authority of district/municipal governments. The authority in the fisheries resources management focuses on the provincial government. This not only has an impact on the management of conservation areas previously carried out by the district/ municipal government but also many legislative instruments that have changed due to the shift of authority from the district/city government to the provincial government [4].

Distributing the authority from Central Government to Local Governments is carried out in two ways; [5].

1. *Ultra Vires Doctrine*, the delegation of authority is carried out by expounding the authority delegated by the Central Government to the Local Government. Autonomous regions may only exert the authority of these details. The authority not delegated to the Autonomous Region becomes the responsibility of the Central Government. If exercising authority is carried out on the right basis of the principle of authority division, the action is an *intra vires* act (within the limits of authority) and is considered legal action. Conversely, exercising authority carried out without a legal basis is called *ultra vires* (beyond the limits of authority) and deemed illegal [6].

2. *General Competence*, the delegation of authority from the central government to the autonomous region is carried out based on the needs and initiatives of the autonomous region itself, except for all matters determined to be the authority of the central government. Central Government does not thoroughly and specifically delegate authority, but provides freedom for the autonomous region to regulate and manage based on its initiative as long as it is not under the authority of the central government [7].

Division of Maritime Affairs and Fisheries Affairs in Indonesia has been specifically and thoroughly regulated in Attachment Y of Law Number 23 of 2014 on the Division of Maritime Affairs and Fisheries Affairs which divides the authority into three categories including the authority of the central government, the authority of the province, and the authority of the district/city. The concept of authority division over marine and fisheries areas in the a quo Law uses the *Ultra Vires Doctrine* principle. This applies when central government thoroughly and specifically has divided the affairs of authority for the autonomous region. From this division, each provincial and district/municipal government forms a governor's regulation and/or regional regulation as a derivative rule for implementing fisheries management.

#### B. Impact of Fishery Resources Management in East Java following the enactment of Law Number 23 of 2014

The enactment of Law Number 23 of 2014 as an amendment to Law Number 32 of 2004 also had an impact on the administration of government affairs for the East Java Province. This, in the long run, led to changes in the institutional structure of the East Java provincial government in the marine and fisheries sector as regulated in the East Java Governor Regulation Number 72 of 2016 on the functions of technical and structural marine and fishery resource management.

The a quo law abolishes almost all the previous authority of the district/city government. District/city governments no longer have the authority to administer asset management of marine and fishery areas. There are two structural and basic derivative rules established by East Java Provincial Government from Law Number 23 of 2014 includes Regional Regulation Number 3 of 2016 concerning the Protection of Fishermen and Regional Regulation Number 1 of 2018 on regional planning by its zones for areas on the coastal areas and small islands (the Zoning Plan for Coastal Areas and Small Islands/RZPWK). This derivative regulation concerns the management of fishery resources by establishing two zones, namely the capture fisheries zone and the aquaculture zone [8]. Both local regulations give authority to the East Java Provincial Government more broadly and abolish all previous authorities of the district/municipal government on the marine fishery products management.

In the division of capture fisheries authority, all affairs are delegated to the provincial government, leaving the authority to empower traditional fishermen and the management and operation of fish auctions delegated to the district/municipal government. Meanwhile, supervising the exploitation of marine resources has become the authority of the provincial government and is no longer carried out by the district/municipal government. The change in authority causes a number of impacts studied in three aspects

including the impact on authority, the impact on institutions, and the impact of obstacles encountered by the East Java provincial government in implementing this change.

There are two impacts due to the changes of Law Number 23 of 2014 on the East Java provincial government, namely the impact on authority. The division of authority regulated in detail in Attachment Y of Law Number 23 of 2014 led to a change in the division of authority in marine and fisheries sector. The attachment clearly shows the proportion of the division of authority lies mostly with the central government and provincial regional governments. More specifically, the district/municipal governments are only given 5 authorities in the form of two capture fisheries, namely: a. empowerment and management of small fishermen in the district/municipality; b. the operation of fish auction sites, and the three authorities in aquaculture including: a. issuance of Fishery Business Permit (IUP) in fish farming whose business is in one district/municipal area; b. empowerment of small fish farming businesses; c. fish farming management.

Meanwhile, the provincial government was delegated 11 authorities covering the Sub-Agencies of Marine, Coast, and Small Islands a. marine space management up to 12 miles excluding oil and gas; b. issuance of permits and utilization of marine space below 12 miles excluding oil and gas; c. Empowerment of coastal communities and small islands. In the field of capture fisheries, five authorities are delegated, including a. management of fishing in marine areas up to 12 miles.; b. issuance of capture fisheries business permits for fishing vessels above 5 GT to 30 GT; c. determination of the location of development and provincial fishing ports management; d. issuance of permits for the procurement of fishing vessels and fish transporting vessels above 5 GT to 30 GT. e. Registration of fishing vessels above 5 GT to 30 GT. In the field of aquaculture, the authority is delegated to the provincial government to issue a fishery business permit (IUP) for fish farming whose business is across district/municipal within 1 (one) provincial area. In addition, the provincial government has two other authorities in the implementation of supervision of marine and fishery resources which is up to 12 miles, and the issuance of business permits for marketing and processing fishery products across districts/cities within one province.

Second is the impact on institutions. Changes in terms of the aforementioned authority automatically result in changes in the institutional structure of the East Java provincial government. Many affairs in the marine and fisheries sector which are now the responsibility of the East Java Provincial government are carried out by the Marine and Fisheries Service (DKP) which is responsible for carrying out its duties to the governor through the Provincial Secretary. In carrying out co-administration for the governor, DKP has five main duties and functions including: a. Policy formulation; b. Policy implementation; c. Evaluation and reporting procedures; d. Administrative activities; and e. The administration of tasks according to the governor's mandate in accordance with the main duties and functions. [9] Based on Governor Regulation Number 73 of 2018 concerning the structure and function of the East Java Provincial DKP, the provincial government carries out this main task by establishing the Marine and Fisheries Service Branch as an extension of the East Java Provincial DKP in carrying out some government affairs under the authority of the provincial government [10].

In addition to the service branch, the East Java Provincial Government established a Technical Implementation Unit (UPT) for the Marine and Fisheries Service based

on the East Java Governor Regulation Number 115 of 2016 concerning Nomenclature, Organizational Structure, Description of Duties and Functions and Work Procedures of UPT DKP East Java Province. Based on the results of the interview with Jadmika Sufiadi, S.Psi, MAP as the Head of Fish Resources Management of DKP East Java, the change in authority raises new problems regarding the institutional relationship of UPT DKP and branch service with the district/city government. The institutional relationship between both institutions and the district/ municipal government is merely coordinating. This problem arose when there were only a few personnel deployed in the delivery of P3D (Personnel Assets, Equipment, Distribution, and Documentation), even though DKP was obliged to manage all marine areas in East Java Province.

## 4 Conclusion

The issuance of Law Number 23 of 2014 generates the impacts that demand changes to regulations in the local government. One of the policy changes regarding the authority of regional autonomy affects fisheries management in East Java Province. This study examines the impact of Law Number 23 of 2014 with a legal approach. Through the discussion above, it can be seen that the impact on authority and the impact on institutions are the major problems. The provincial government launched policies that ultimately reduced the authority of district/ municipal government in managing their fisheries sector. In addition, the establishment of branch offices and UPT leads to new problems regarding institutional relations. The impact that occurred caused disharmony in the relationship between the provincial government and the district/municipal government so coordination was required to give back the role of the district/ municipal government in the management of fishery resources.

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8. It can be seen in Part Two, Public Utilization Areas, Article 15 Regional Regulation of East Java Province Number 1 of 2018 RZPWK stating “The plan for the allocation of space for public use areas as referred to in article 13 letter a consists of: capture fisheries zones and aquaculture zones”
9. Article 4 Section (2) Regulation of the Governor of the organization and main tasks of DKP East Java Province
10. Article 5 Governor Regulation Number 73 of 2018 concerning the Organization and main tasks of the East Java Provincial DKP which regulates the Work Area of the Service Branch.

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