



Legal Implications of Local Government Authority in Granting Land Utilization of Coastal Area for Tourism

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Abstract. There is a conflict of norms and the need for discussion on: 1) Regulations on granting permits for the utilization of coastal areas as tourism businesses by local governments and 2) The implications of regulating the granting of permits for the utilization of coastal areas by the Local Provincial Government based on the Job Creation Law. The method used is normative legal research. By applying statute approach and comparative law approach. The result for this research is the regulation of the granting of permits for the use of coastal areas as tourism businesses by the local government is basically an authority in the exercise of autonomous rights. In Law No. 1 Year 2014, which states in The Government and Local Governments are required to assist in the issuance of location licenses and management permits, according to Article 20 Paragraph 1. This is based on the fact that the State and the Constitution provide a legal basis for local governments to manage resources in coastal areas within their jurisdiction. However, the Job Creation Act states that “any person who uses the area of the coastal waters referred to in paragraph (1) shall be obliged to obtain from the central government a business license for use at sea”. The clause “local government” is clearly excluded from the power to grant business licenses. Therefore, the Constitution overrides the authority of the local government. Then, in Article 50 of the Job Creation Law, the local government is given the power to revoke business licenses. This shows the disharmony of authority after the enactment of the Job Creation Law, which can lead to conflict of norms and legal uncertainty.

Keywords: Authority, Coastal Land, Legal Implication.

1 Introduction

Tourism is one of the most developed sectors in the world. I Wayan Rideng, et.al state that “The existence of tourism development today is considered increasingly important to support national development.” [1] Tourism is having significant social and economic benefits and legislation is one of the main factors for the development of tourism-related activities. [2] It is important to pay attention to the regulations governing the tourism sector. The regulation of tourism involves several interests, namely the interests of the government, society and economic actors. The role of the government as the guardian of tourism policy, the role of the economic actors as the parties operating tourism businesses, and the role of the community as the parties

enjoying and/or using tourism facilities have the same obligation to maintain the sustainability of tourism.

In terms of tourism, Indonesia as a maritime country has a water area of 6,315,222 km² with a coastline length of 99,093 km. [3] This is a strong reason why coastal areas are part of the natural resources of strategic value that need to be managed and used. Coastal areas have biological potential such as fisheries, mangrove forests and coral reefs. Then, non-biological potential, such as natural panoramas that contain strategic tourism potential, so it can be a suitable area for the development of tourism supporters, such as establishing cafes, restaurants and other tourism supporters.

Coastal regions' strategic importance for the growth of tourism can result in a number of issues and conflicts, including social, economic, political, and cultural ones in addition to biological and physical ones. The Republic of Indonesia's 1945 Constitution makes it abundantly evident in Article 33(3) that the State will control its natural resources and use them for the benefit of its citizens. This is the basis for local governments around the coast to use these resources as a source of original local opinion to support the local economy. On the other hand, the tourism potential of the coastal area is also very attractive for investors and local businesses to invest in tourism businesses, especially in coastal areas. The interests of government and business actors are the beginning of conflicts in the use of natural resources in coastal areas.

Experts in coastal and marine resource management argue that the main problems causing overexploitation of coastal and marine resources are social, economic and political issues arising from the interests of both government and business actors. The rights of the community, which are required by the 1945 Constitution to use natural resources as efficiently as possible for the benefit of the people, are superseded by exploitation by the government and corporate players. Therefore, in order to harmonize the control and usage of coastal regions, a legal foundation for their use must be established. Law No. 27/2007 on the Management of Coastal Areas and Small Islands (hereafter referred to as the Coastal Law). In the Coastal Law, the provisions on the use of coastal areas are regulated in a rights instrument called the Coastal Waters Tenure Rights (HP-3).

Constitutional Court Decision No. 3/PUU-VIII/2010 is the legal basis for the right to control coastal waters (HP-3) to no longer have binding legal force. It is based on the contradiction of twelve constitutional norms in the 1945 Constitution. The Constitutional Court is of the opinion that the use of coastal areas with the instrument of HP-3 cannot guarantee the greatest prosperity of the people. Through the decision of the Constitutional Court, the right to use the licensing instrument in the coastal waters area was abolished. [4] Furthermore, in relation to land in the coastal area, it is possible to be granted land rights by the National Land Agency even with limited land rights, such as building rights or rights of use on state land. Later, Law No. 27 of 2007 was amended by Law No. 1 of 2014.

Article 16 of Law No. 1/2014 states that the spatial use of some coastal waters and the sedentary use of some small islands require a location permit. Furthermore, Article 20 establishes that location and management permits are granted by the Government and the Local Governments. The provisions of Article 20 provide for local autonomy. Local autonomy is defined as the authority of a region to regulate and manage the interests of

its people in accordance with applicable laws. [5] local autonomy, the delegation of governmental authority from the central government includes the provincial, regency and city governments. [6] However, after the enactment of Law No. 11 of 2020 on Job Creation (henceforth known as the Law on Job Creation), the authority of local governments is excluded from the issuance of location permits.

The absence of any mention of local governments in the issuance of siting permits creates an inconsistency with the concept of local autonomy, particularly the regulation of local government authority in the issuance of permits. On this basis, further analysis is needed in relation to 1) Regulations on granting permits for the utilization of coastal areas as tourism businesses by the local governments and 2) The implications of regulating the granting of permits for the utilization of coastal areas by the Local Provincial Government based on the Job Creation Law by considering the rules that apply to the community and the provisions of national law with an article with the title “Legal Implications of Local Government Authority in Granting Land Utilization of Coastal Area for Tourism.”

2. Method

This thesis research is a type of Normative legal research that emphasizes the study of legal aspects. As normative legal research, this research is aimed at laws and regulations relating to the rules or legal norms that apply and are contained in laws and regulations. Including implementing regulations, including provincial or district/city regulations, as well as legal norms prevailing in society such as:

1. Law Number 1 of 2014 of the Republic of Indonesia, which amends Law Number 27 of 2007 on the Management of Coastal Areas and Small Islands.
2. Law No. 9 of 2015, which amends Law No. 23 of 2014 on Local Government to include the Second Amendment, and Law No. 23 of 2014 on Local Governance.
3. In lieu of Law No. 2 of 2022 on Job Creation, Law No. 6 of 2023 stipulates government regulations.
4. The Law on Spatial Planning No. 26 of 2007 of the Republic of Indonesia.

3. Results and Discussion

The regulation of the granting of authorisations for the use of coastal areas for tourist activities by the local government is basically a power in the exercise of autonomous rights, as stipulated in Article 18 of the 1945 Constitution. The Regions' utilization of the licensing sector's jurisdiction in the management of marine natural resources is supported by this constitutional principle. The local government is also in charge of managing marine resources within a 12-nautical-mile radius, calculated from the shoreline towards the open sea and/or archipelagic waters, according to Law No. 23/2014 on Local Government, specifically mentioned in Article 27. The management of natural resources includes the granting of operating licences. Law No. 27/2007, which still applies the HP-3, also regulates the powers of the Local Government, where

Article 23 paragraph (4) states that the use of waters must have an HP-3 issued by the Local Government in accordance with its powers.

Similar to this, Article 20(1) of Law No. 1 Year 2014's modified regulation declares that the Government and Local Governments are required to assist in the issuance of location and management permits. This is based on the fact that the State and the Constitution provide a legal basis for local governments to manage resources in coastal areas within their jurisdiction. The authority of the local government is also recognised in Law No. 5 of 1960 on Basic Agrarian Regulations. Article 14 states that the Local Government shall regulate the supply, distribution and use of land, water and space in its territory, in accordance with the circumstances of each region, by drawing up a general plan.

The regulatory implications of the provincial government's granting of coastal use permits under the Job Creation Act create disharmony. Legislative harmonisation is an effort to create harmony between legal norms in laws and regulations into a unified national legal framework. [7] The powers of the Local Government in Article 176 as an amendment to Law No. 23 of 2014 on the Local Government does not change Article 27, which establishes the local authority to manage natural resources in the sea.

However, the amendment to the Coastal Law in the Job Creation Law does not further regulate the powers of the local government. Article 18 of the Job Creation Act is an amendment to Act No. 1/2014 on the Management of Coastal Areas and Small Islands. The Job Creation Act amends the provisions of Article 16 of Law No. 1/2014 on the Management of Coastal Areas and Small Islands, which originally reads "Any person who carries out the spatial exploitation of certain coastal waters and the use of certain small islands on a permanent basis must have a location permit", to "Any person who carries out the spatial exploitation of certain coastal waters and the use of certain small islands on a permanent basis must have a location permit". Becomes "Every person who carries out spatial utilisation of coastal waters as referred to in paragraph (1) must obtain a business licence for use at sea from the Central Government".

Amendments to the Job Creation Law indirectly illustrate The application of the principle of centralisation, where the central government has the authority as the holder of full decision-making power. This view is supported by the amendments to Article 17, which in the Coastal Law does not mention the authority to issue location permits, but in the Job Creation Law a new article is added, namely Article 17A, which clearly states that the business permit related to the use of the sea shall be issued by the central government and shall be based on the national spatial plan and/or the marine spatial plan. In addition, Article 20(1) of the Coastal Law states that the granting of permits shall be facilitated by the Government and local governments. However, the amendment in the Job Creation Law states that "the central government is obliged to facilitate the granting of business licences related to the use of the sea to local communities and traditional communities."

The clause "local government" is clearly removed from the authority to grant location permits, business licences for the management and use of small islands and waters around local jurisdictions. However, inconsistencies arise from the changes in the Job Creation Act, where Article 50, as an amendment to the Coastal Act, states that "The Government or the Local Government, in accordance with its powers, shall grant and

revoke business licences for use at sea in the coastal waters area”. Inconsistencies arise from the existence of the power to revoke business licences where previously the power of local governments to grant business licences had been abolished. Changes in the authority of local governments to issue permits for the use of coastal areas for tourism following the passage of the Job Creation Law, which to normative conflicts and legal uncertainty.

4. Conclusion

Regarding the regulation of the granting of permits for the utilization of coastal regions as tourism enterprises by the local government, it has been regulated in laws and regulations such as the 1945 Constitution of the Republic of Indonesia, Law No. 23 of 2014 on Local Government, Law No. 5 of 1960 on Basic Agricultural Regulations, and Law No. 27 of 2007 and Law No. 1 of 2014 on Amendments to Law No. 27 of 2007 on Small Island and Coastal Area Management.

With regard to the legal implications of the regulation on the granting of permits for the utilization of the province’s coastline areas government, based on the Employment Creation Law, it creates legal uncertainty and normative ambiguity by removing the authority of the local government in Article 16, but then giving the local government the authority to revoke business permits in Article 50. Conflicts over the management of natural resources could result from this amendment’s inconsistency, particularly in coastal areas. Furthermore, it does not completely rule out the possibility of resource exploitation brought about by ambiguity in the law’s terms.

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