



Protection of Rights to The Land of Peoples in Coastal Areas

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ABSTRACT

Land ownership and ownership in coastal areas are strictly regulated. Only, the complexity of the coastal matter is not only in relation to the legal certainty of coastal peoples to their region alone, but also the implementation of government policies on the management of the coastal region has not fully advanced in implementing legislation from the central level to the region. As for what's a matter of research is how it grants the protection of rights to the people's land in the coastal region. The purpose of this study is to analyze and evaluate the protection of land rights in coastal areas. Research methods used are normative by use of primary law materials, secondary law materials and non-legal materials. Studies have concluded that the rights of coastal land protection can be given and protected, but at least in accordance with the terms of the national strategic program, the common good, the above-water settlements for indigenous law societies, and/or tourism. Then meet the requirements governed by legislation, the overthrow according to the province/district/city, or the coastal zone plan; Is recommended by the provincial/district/city authorities in terms of unregulated land reduction in the RTRW; Meets the policy of the relevant agencies; As well as the total requirements were exempted from the customary legal community that had been settled down in the coastal region.

Keywords: Vocational, Nursing Education, Current Situation, Method

I. INTRODUCTION

The coastal region is a national treasure ruled by a country that needs to be preserved and used for great prosperity of the people, both for present and for future generations, according to chapter 33 (3) chapter 1945. The legitimacy of existing laws gives clear direction that the people are the main pillars and the basis for each activity, for whatever it is, that the legal concepts created by the founder of the Republic of Indonesia require that the building of this country be addressed to the welfare of its people in achieving a fair and prosperous society, including those in the region of the Nusantara coast.

The facts show that coastal conditions across the landmass in Indonesia have suffered catastrophic ecosystem damage. Yet many elements of society that are today less sensitive to the sustainability and sustainability of aquatic ecosystems. If this is not taken seriously, then it will have enough danger in the future. Not only was concyng to the beauty of the coastline viewed in terms of its intrinsic value (fitrah) but it had to be thought about the long-term effects of the irrational use of coastal regions for successive generations (Rudianto, 2017).

Land ownership and ownership in coastal areas are strictly regulated. The arrangement for the use of coastal regions and islet in Indonesia is governed by the 2007 Act 27 on the management of coastal areas and the latter has been amended to the 2014 no. 1 law that provides further assurance of legal certainty for those living in the coastal region.

The complexity of the coastal matter is not only in relation to the legal certainty of the coastal region, but also the implementation of government policies in the region's management has not yet fully been synergy in implementing legislation from the central level to the region. Under the law, such as the law, the rule of government (PP), the presidential rule, the minister rule, and the local ordinance are still limited to enumerating the interests of coastal people and those of other countries.

The land-related coastal issue, The coastal region on the Tanjung Balai Karimun, it's a publishing certificate of title on land in the coastal border Kuda Laut region Barang Timur, The issuance of the right to property of objects is coastal land and may even provide a region of waterfront for the development of Meral housing of Tanjung Balai

Karimun. As a result of the convergence caused the coastal communities to lose access to the coastal areas of the fishing communities to rest their boats in generations (Heriaksa, 2020). In the case of the coast, it indirectly led to the hereditary, preexisting communities and the exploitation of coastal areas resulting from the rise of personal property rights of the coastal land. In accordance with legislation that coastal and seacoasts are boundary areas that are not the point of setting the agrarian point legislation. This meant that land on the coast could not be given as easily as property rights on the land. If allowed, then ownership and possession of the coastal lands and use of these coastal areas would naturally have to observe and according to the layout of the provincial region which objects not to the coastal region but to the seaside, and to place more emphasis on the granting of the seaside lands to the preexisting coastal people, taking over their lands by tradition.

In the coastal case of Beautiful Bajo village, the Soropia District of Konawe, Southeast Sulawesi leaves behind a long coastal community of Bajo fishermen who had been living in the coastal region as a result of the development of the city tourist road of Kendari to Toronipa district of Konawe. The impact of this development left some coastal communities especially fishermen homeless. This coastal region was once a site where fishermen set up a traditional fishing device called "serong." Road construction aims to improve development but in other ways resulted in the loss of the identity of coastal people in the village of beautiful bajo as fishermen in direct contact with the coast of both livelihoods and the wooden housing cultures along the coast.

The coastal region has not been given much attention since national development in the past was more land-based. Moreover, the legal aspects of coastal management have little attention to the existence of indigenous peoples in the coastal region, whereas those with ocean rights have been acquiring mastery and management of the region.

Such inequality undoubtedly results as strong governmental dominance. On matters of a constitutional community of indigenous peoples acknowledge existence including the policing area (ulayat), both on sea and on land.. Therefore, balance in the coastal region of indigenous people must be attributed to government policies on the boundary of coastal management authority. In perspective there is a confession given by the country that can be categorized as an objective recognition.

II. RESEARCH METHOD

This research uses normative legal research. The problem approach used in this research is an analytical approach which examines juridical principles, principles, rules, systems and concepts (Irwansyah, 2020). In this study legal materials used in primary law materials, secondary legal materials as well as non-legal materials that are unrelated to the law but provide a supporting data. To collect primary and secondary law materials, literature is used. As for non-legal material gathered by using observation methods.

III. DISCUSSION

There is a difference in perception between coastal people and governments over land and surrounding waters. The coastal people held the hereditary possession of land to which they gained recognition within the coastal communities themselves. On the other hand, governments that put more emphasis on legal formalism, always requiring formal proof of land possession and the waters surrounding it, and set up land in the coastal region as state land (Patittingi, 2022).

With land possession in the coastal region, people have no clear legal status, they set up buildings only on the traditional basis of their families, and so the houses that they erected on the coastal land are illegal, of this land possession being in question at some time because there is no legal force on the reason. So that in the event of further evictions from the government against the houses erected on the coast, there was nothing that the people could do because they had little evidence and argument to defend the homes they had erected on the coast (Sari, 2021).

Boedi harsono explained that the possession of the land contained a set of authority, obligations, and or prohibitions for the holder of his right to do something about the land that was rightfully his (Santoso, 2006). That which shall, obligatory, or be forbidden to perform which is the content of the domain is the measure of the difference between the rights of the ruler over the land governed by the laws of the land (Arisaputra, 2015).

3.1 Land-Mastery Rights Regulations

The regulations rights of the land within the land law are divided into two, which is:

- 1) As a legal institution. The possession of this land has not been associated with certain land and persons or corporations as its rightful owner. Provisions in the possession of land are as follows:
 - a) names the rights of the owner.
 - b) setting out its contents, that is, governing what is allowed, mandatory, and forbidden to be committed by its rightful owner and the time frame of his office.
 - c) to arrange matters concerning the subject, who may be the rightful owner and the conditions for his banishment govern matters concerning his land.
- 2) Mastery rights over the land as a concrete legal relationship. The rights to this land are already linked to certain lands as their obtories and persons or corporations as their subjects or rightful owners. Provisions in the possession of land, as follows (Arisaputra, 2015):
 - a) regulating the matter of its creator became a concrete legal relationship, with a name or title of the rights to certain lands.
 - b) arranged matters regarding his anointing with other rights.
 - c) arranged matters regarding his transfer to another party.

d) organize things regarding his delete.

e) organise things about the proof.

The 2004 County Rule Number 32 of 2004 was amended with 2020 Statute Number 11 on Cipta Kerja and Statute Number 27 in 2007 on Coastal and Small Islands, bringing fresh wind to the management of coastal areas and small islands. Both laws provide legal umbrellas for local governments to develop and optimize coastal areas and small islands (Ali et al., 2020).

For the arable land found on the coast it should also be noted as to the regulation of land use of the coastal region, which is governed by the law on the management of the coastal region and the minor islands in chapter 16 that arranged:

"Anyone who uses space from some coastal waters and the safe use of some islets is under strict restriction. Location permits became the basis for management permits. The central government and the local government are required to facilitate location and management permits to local and traditional communities.

In turn, the arrangement for land rights in the coastal region is governed in Article 5 of the 2008 State Ministry Agraria/Head No. 17 in 2016 on the deployment of land in the coastal region and the small islands that mention it: "Land rights on the coast can be given only to buildings that must exist in the coastal region:

- a. buildings used for defense and security.
- b. port or dock.
- c. tower lifeguards coastal visitor.
- d. The traditional law community or the traditional members of the community settled there."

Land management in the region of the coast refers to the President's 18th year 2021 rule on management rights, land rights, housing units and land registration. In Article 65 arrange that:

- 1) the granting of management rights and/or land rights to a piece of land totaling 1 (one) a small island is obliged to take note of public rights.
- 2) land rights in the region of water are conducted according to a permit issued by the ministry that conducts oceanological and fisheries policies in accordance with regulations of the law.
- 3) further provisions regarding the right to a small island are arranged in the minister's regulations.

An arrangement for space use in the coastal region and minor islands is arranged in chapter 21 of the Law on the Management of the Coastal Region and the Isles:

- 1) the use of space and the resources of coastal waters and the waters of islets in the region of indigenous law by the tribal law community was the authority of the local indigenous law;
- 2) the use of space and resources of coastal waters and of isles as indicated in Verse 91 is done under consideration of national interests and according to the terms of legislation

3.2 Federal and Local Authority Over Coastal Areas

Regional government legislation have given the county/city government authority to manage coastal regions 12 (twelve) miles measured from the coastline while in a landmass established according to the district authority. This ocean-facing district/city authority is set at about a third of the province's jurisdiction, Whereas in the direction of land it is set according to the boundary of subdistrict.

Meanwhile, the island-characterized provincial government received much authority from the central government. This as stated in Chapter 28 of the Chapter (2) Act No. 23 in 2014, that in addition to exercising the authority to manage resources in the Marine region, for the islands' provinces, the central government commissioned the execution of its naval authority. New assignments could be implemented if the provincial authorities identifying the islands had met the norms, standards, procedures and criteria established by the central government. As to norms, standards, procedures and criteria, 2014 Law No. 23 has defined an arrangement in the form of government regulations (Adrianto, 2015).

Ruling the constitutional court of number 3/PUU-VIII/2010, this legislation on the management of coastal areas and islets recognizes that the management of coastal areas and islets has not adequately provided the management and responsibility of state coastal waters and islets through the mechanism that entitles coastal waters (HP3). Then the performance has not yet yielded optimal results. Hence, in order to optimize the management of coastal areas and islets, countries are responsible for the management of coastal regions and small islands in the form of mastery to others (individual or private) through permit mechanisms. Granting permission to others does not minimize state authority to make policies (beleid), do regelendaad (regelurdaad), do management (beheersdaad), and do surveillance (toezichhoudendaad). Thus the state remained in control of and supervised entirely the management of coastal areas and small islands (Ali et al., 2020).

3.3 People's Rights to Land in Coastal Areas

Land rights in coastal waters could be given only to buildings that had to exist in coastal waters, among other things: (a) a national strategic program; (b) public interests; (c) settlements on water for tribal law communities; and/or (d) tourism. As for the conditions the land rights in the coastal region included:

- 1) done according to the regulations of the law;
- 2) must meet some conditions:
 - a) the collapse corresponds to the county/district/city, or the coastal zone plan;
 - b) was recommended by the provincial/district/city authorities in unregulated land reduction;
 - c) meet restrictions from associated agencies;

d) all these requirements were exempted to the traditional tribal society of laws that had settled in the coastal region.

The legal community essentially existed before the country was formed. It means the indigenous legal community as one of the architects of this country. Therefore the question arises as to whether traditional law societies should be recognized. That the people of tribal law need to get recognition from the state. This is in view of the possibility that once existed existed but is now extinct. Another possibility is that indigenous legal societies exist that are not consistent with the development of communities and the principles of the United Republic of Indonesia.

Recognition and protection from the country was not only declarative but also constituent so that the claim resulted in legal consequences. Protecting the protection of the state constitutionally leads to how the state maintains and maintains the rights of indigenous law societies from intervention on the other side (Nababan, 2013). Public recognition and protection for the government in meeting the rights of the indigenous law community and asa basis in the governance and development of government programs.

Only, while coastal communities that are predominantly indigenous communities are said to have the right to HP3, as stated in Chapter 18B (2) UUDNRI, 1945, the existence of HP3 is an outright denial of indigenous peoples' existence. Based on the content of chapter 1 in Law 33 on the Management of the Coastal Region and the Small Islands, it can be concluded that the indigenous people consisted of geographic and community elements. That is, by conditions HP3 for access to coastal waters, The same is to eliminate one element of the indigenous people themselves (Yurista, 2016).

The protection of peoples' rights in the coastal region is an indicator that can be used to assess the impact of a national oceanic policy program. This is because in the coastal region there are rights that need to be protected by the state. Moreover, to this day communities that have settled around the coastal region have not been able to reach their well-being equally.

IV. CONCLUSION

The protection of land rights in the coastal region may be granted and protected, but at least in accordance with the terms of the national strategic program, the common good, the above-water settlements of the indigenous law community, and/or tourism. Then meet the requirements governed by legislation, the overthrow according to the province/district/city, or the coastal zone plan; is recommended by the provincial/district/city authorities in terms of unregulated land reduction in the RTRW; meets the policy of the relevant agencies; as well as the total requirements were exempted to the traditional tribal society of laws that had settled in the coastal region.

REFERENCES

- Adrianto, L. (2015). Analisis Dan Evaluasi Hukum Tentang Pengelolaan Wilayah Pesisir Dan Pulau-Pulau Kecil. https://bphn.go.id/data/documents/ae_tentang_pengelolaan_wilayah_pesisir_dan_pulau-pulau_kecil.pdf
- Ali, M. M., Aditya, Z. F., Konstitusi, M., & Indonesia, R. (2020). Perlindungan Hak Konstitusional Masyarakat Pesisir : Urgensi Harmonisasi Regulasi Pengelolaan Pesisir Terpadu Coastal Communities Protection of Harmonization of Integrated Coastal Management Regulations. *Konstitusi*, 17(4), 811.
- Arisaputra, M. I. (2015). Penguasaan Tanah Pantai dan Wilayah Pesisir di Indonesia. *Jurnal Perspektif Hukum*, 15(1), 30.
- Heriaksa, A. (2020). Perlindungan Hukum Atas Penguasaan Tanah oleh Masyarakat di Wilayah Pesisir Tanjung Balai Karimun Kepulauan Riau. Universitas Hasanuddin.
- Irwansyah. (2020). Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel. *Mirra Buana Media*.
- Nababan, A. (2013). Antara Usulan AMAN dan Versi Inisiatif DPR RI terhadap RUU tentang Pengakuan dan Perlindungan Hak-Hak Masyarakat Adat.
- Patittingi, F. (2022). Potensi Konflik dan Permasalahn Pemberian Hak Atas Tanah di Laut (hal. 5). Universitas Hasanuddin.
- Rudianto. (2017). Restorasi Ekosistem Pesisir. Universitas Brawijaya Press (UB Press).
- Santoso, U. (2006). Hukum Agraria dan Hak-Hak Atas Tanah. Prenada Media.
- Sari, S. D. N. (2021). Perlindungan Hukum Terhadap Masyarakat Atas Penguasaan Tanah Pesisir Pantai dalam Perspektif Hukum Agraria Nasional. Universitas Islam Malang.
- Yurista, A. P. (2016). Pengejawantahan Hak Tradisional MAsyarakat Hukum Adat dalam Pengaturan Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil (Embodiment of Indigenous People's Traditional Rights In Regulation of Coastal Areas And Small Islands Management). *Legislasi Indonesia*, 13(2), 203–212.