

Legal Reconstruction of Land Rights Allocation for Coastal Land Based on Justice Values

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Abstract

This research analyzes the weaknesses of the Land Rights Allocation for Coastal Communities and finds a legal reconstruction of the Land Rights Allocation for Coastal Communities based on justice values in Indonesia in a constructivism paradigm where the type of research method used is normative juridical and the specifications of this research have a prescriptive analytical nature with the approach used by the author being a statutory approach. The research results found that the Weaknesses can be seen from the fact that coastal communities have been given land rights for generations based on Minister of Agrarian Affairs and Spatial Planning/BPN Regulation Number 17 of 2016. Regulations on granting land rights to coastal communities have been implemented, but are not yet optimal, and the legal certainty has not yet been explained in detail the definition of the people who can be given Land Rights Land (indigenous communities/local communities/traditional communities), no clear boundaries, and no hereditary criteria. From a legal conceptual perspective, there will be confusion if a land-over-water settlement is given a clear certificate of ownership issued by the Land Office but the object to which the Certificate of Ownership of Land is entitled is actually on water, there needs to be an appropriate policy formulation to address this issue. so that legal certainty for people living in settlements on water can be realized. Therefore, the Regulations related to granting land rights to communities in coastal areas need to be harmonized and reviewed regarding the substance of the purpose and function of the certificate itself so that it can guarantee legal certainty and legal protection for holders of land rights certificates to improve community welfare in a broad sense.

Keywords: Legal Reconstruction, Land Rights, Coastal Land, Justice Value.

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INTRODUCTION

Sectoral planning and management of coastal areas is usually related to only one type of use of coastal resources or space by one government agency to fulfill certain objectives, such as capture fisheries, ponds, tourism, ports, settlements or the oil and gas industry (Ali, 2022). This kind of management can give rise to conflicts of interest between interested sectors carrying out development activities in coastal areas. Article 2 paragraph (2) of the UUPA states that the State's Right to Control is to give authority to the state to regulate and administer the allocation, use, supply and maintenance of earth, water and space. The right to control the state does not mean that the state owns the land, but gives authority to the state as the ruling organization of the Indonesian nation at the highest level to regulate and administer the allocation, use, supply and maintenance of earth, water and space (Widodo, 2019).

Ownership and control of land in coastal areas is permitted according to applicable laws and regulations. The birth of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, which in its development was later replaced by Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Coastal Areas and Small Islands. Guarantee of legal certainty for people living in coastal areas. No different from land ownership and control in land areas (outside coastal areas), land tenure and ownership patterns in coastal areas also often experience disputes.

In general, many people have settled in coastal areas and some even have land rights in coastal areas. This then has an impact on changes in coastal ecosystems because people who live in these areas exploit coastal resources. However, apart from the negative impact, there is also a positive impact, namely the better

maintenance of the coastal ecosystem because those who live in the area believe that this is their potential for life (Nawi, 2023). Ownership and control of land in coastal areas is permitted according to applicable laws and regulations.

In order to provide legal protection for community land control in coastal areas, article 60 of Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights states that Grants Business Use Rights, Building Use Rights or Use Rights, that is "a plot of land which is entirely an island or which borders the coast is regulated separately by Government Regulation." Last amended in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration Article 65 (2) Granting of Land Rights in water areas is carried out based on permits issued by the ministry that handles government affairs in the maritime and fisheries sector in accordance with the provisions of statutory regulations.

Based on the Regulation of the Minister of State for Land Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Procedures for Determining Management Rights and Land Rights Article 197 states: Management Rights and/or Land Rights for business activities in Water Areas are granted after obtaining KKPRL approval or KKPRL confirmation from the Ministry that handles government affairs in the maritime and fisheries sector. Article 198 (1) Water areas that have been controlled and utilized can be granted Land Rights or Management Rights by considering the requirements as a subject of rights. (2) The control and utilization as intended in paragraph (1) is proven by a statement that the person concerned has lived and settled in the Water Area for generations for 20 (twenty) years or more consecutively by the person concerned and his predecessors.

This is especially true for land that borders directly on the coast, causing each region that has a coast to set policies according to their respective interests, giving rise to inconsistencies with higher regulations and will give rise to legal uncertainty over land rights in the future.

Based on the background above, the author is interested in conducting research with the title "Legal Reconstruction of Land Rights Allocation for Coastal Land Based on Justice Values". Where the problem studied are further organized into research with the following main problem:

1. What are the weaknesses of The Land Rights Allocation for Coastal Land in Indonesia currently?
2. How is the Legal Reconstruction of Land Rights Allocation for Coastal Land Based on the Value of Pancasila Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. The Weaknesses of the Land Rights Allocation for Coastal Land in Indonesia Currently

The promulgation of Law Number 32 of 2004 concerning Regional Government (UU 32/2004) and Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (UU 27/2007) has brought a breath of fresh air to the management of coastal areas and small islands. These two laws provide a legal umbrella for local governments to develop and optimize coastal areas and small islands.

As explained previously, Law Number 32 of 2004 concerning Regional Government has given district/city regional governments the authority to manage coastal areas as far as 12 (twelve) miles

measured from the coastline while inland directions are determined according to sub-district boundaries for provincial authority. The authority of the district/city towards the sea is determined as far as one-third of the sea area under provincial authority, while towards the land it is determined according to the sub-district boundaries.

As a follow-up to Law 32/2004, the government enacted Law 27/2007. The rationale behind the promulgation of Law 27/2007 is due to the tendency that coastal areas and small islands are vulnerable to damage due to people's activities in utilizing their resources or due to natural disasters. Apart from that, the accumulation of various partial/sectoral exploitation activities in coastal areas and small islands or the impact of other activities in upstream coastal areas supported by existing laws and regulations often results in damage to coastal and small island resources. In addition, the existing laws and regulations at that time were more oriented towards the exploitation of coastal and small island resources without paying attention to the preservation and sustainability of the resources (Arnold, 2010).

Meanwhile, there is still very little awareness of the strategic value of managing coastal areas and small islands in a sustainable, integrated, and community-based manner. The implications of the lack of respect for the rights of indigenous/local communities in the management of coastal and small island resources such as *sasi*, *mane'e*, *panglima laot*, *awig-awig*, limited space for community participation in the management of coastal and small island resources show that the principles of integrated coastal and small island management have not been integrated with development activities from various sectors and regions (Indrawati, 2018). The coastal management system has not been able to eliminate the factors that cause damage and has not provided an opportunity for biological resources to recover naturally or for non-biological resources to be substituted with other resources.

For this reason, the government feels that the uniqueness of coastal areas and small islands, which are vulnerable to the development of conflict and limited access to utilization for coastal communities and small islands, needs to be managed well so that the impact of human activities can be controlled and some coastal areas are maintained for conservation. Communities need to be encouraged to manage their coastal areas well and those who are successful need to be given incentives, but those who do damage need to be given sanctions. The norms for managing coastal areas and small islands are prepared within the scope of planning, utilization, management, control, and supervision, taking into account the norms regulated in other laws and regulations such as Law Number 26 of 2007 concerning Spatial Planning.

The norms for the management of coastal areas and small islands that are intended to be published are focused on legal norms that have not yet been regulated in the existing legislative system or are more specific than the general regulations that have been promulgated. These norms will provide a role for the Government, society, and the private sector as stakeholders in regional interests, national interests, and international interests through an integrated regional management system. Following the essence of the Unitary State of the Republic of Indonesia as a legal state, the development of a management system for coastal areas and small islands as part of sustainable development with an environmental perspective must be given a clear, firm, and comprehensive legal basis to ensure legal certainty for coastal area management efforts (Toebagus, 2022). And small islands. The legal basis is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Law 27/2007 legally applies to coastal areas and small islands which include areas where the influence of water and land meet, towards land including sub-district administrative areas, and towards sea waters as far as 12 (twelve) nautical miles measured from the coastline towards the open sea and/or towards archipelagic waters. Meanwhile, the regulatory scope of Law 27/2007 generally consists of three parts, namely planning, management, and supervision and control.

However, at the implementation level, Law 27/2007 is considered by several groups to have not yet realized the Integrated Coastal Management approach, which is characterized by the absence of renewal of unequal control and exploitation and the lack of synchronization with other laws. Law 27/2007 is also considered to prioritize investment aspects and be more pro-business, so there is no room for the community, especially traditional fishing communities, and indigenous communities, in proposing WP3K management plans. The existence of HP3 is considered to substantially hinder coastal communities' access, especially fishermen, to marine resources, both on the sea surface, water bodies, and on the seabed. It is feared that all access to water and marine resources will be controlled by investors/capital owners who have the technology and can fulfill statutory requirements, while coastal communities/traditional fishermen will once again become mere spectators because they cannot compete.

Apart from that, after Law 27/2007 came into effect, there was competition for exploration and exploitation between government institutions, prioritizing the egos of each institution. The regulation of coastal areas and small islands is managed by various state agencies or government agencies armed with their respective legal regulations. For example, the management of marine conservation areas is included in the management regime under the Ministry of Forestry, through Law Number 5 of 1990 concerning Conservation

of Biological Resources and Ecosystems, which is the Indonesian Government's ratification of the World Conservation Strategy established in 1980.

This is of course contrary to the national maritime sector. The contribution of the marine sector to national GDP (Gross Domestic Product) reaches more than 20% every year. This contribution comes from the fisheries, sea transportation, marine tourism, maritime industry, offshore mining, and marine services sectors. Therefore, marine, fisheries, and coastal sector activists want legislation at the national level, because, first, coastal area resources have not been managed optimally so their contribution to the welfare of the surrounding community is very minimal (Widodo, 2018).

Law 27/2007 also places more emphasis on the investment aspect and is more pro-business, so that there is no room for the community, especially small traditional fishermen and indigenous communities, to propose management plans, and leaves the issue of territorial sovereignty only at the level of Government Regulation. Law 27/2007 regulates Coastal Water Concession Rights (HP3), namely rights to certain parts of coastal waters for marine and fisheries businesses, as well as other businesses related to the utilization of Coastal Resources and Small Islands which cover the surface. Sea and the water column up to the surface of the seabed at a certain extent. This HP3 substance further aggravates the deprivation of coastal communities' rights to access resources both on the sea surface, in water bodies, and below the seabed. There is no longer room for coastal communities, especially fishermen, fish farmers, marine SMEs, and fishing workers to carry out economic activities in coastal areas (Hubbard, 2019). All practical access to marine resources will be controlled by capital owners. Because only they are able to fulfill all the requirements regulated in this Law.

As a result, coastal communities only become spectators because they do not have large capital and technology to compete with capital owners. This results in fishermen's poverty getting worse. Other problems with Law 27/2007 are: First, this law always relates to adaptation to the global situation. It is not clear what global context is intended. However, if examined more deeply, the global concept here refers more to globalization; Second, privatization in areas that should be controlled by the state as well as spatial planning issues; Third, protection of Vulnerable Groups in Coastal Rural Areas; Fourth. Issues of poverty and state sovereignty on small islands; fifth, synchronize with other laws and regulations related to coastal area management.

2. Legal Reconstruction of Land Rights Allocation for Coastal Land Based on the Value of Pancasila Justice

Indonesia is the largest archipelagic country in the world, having more than 17,000 islands. The islands scattered throughout Indonesia do not necessarily have

the rights of the original people of these islands. Based on the provisions of Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, it is stated that the earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Furthermore, in Roman II number (1) Elucidation of the Agrarian Law, it is emphasized that land in regions and islands is not solely the right of the native people of the region or island concerned. The rights of Coastal Residents in Indonesia to inhabit and utilize Coastal Areas have been guaranteed by Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands as amended several times, most recently amended by Law Number 6 of 2023 concerning the Determination of Government Regulations Substitute Law Number 2 of 2022 concerning Job Creation into Law. In order to provide clearer direction, boundaries, and legal certainty regarding land rights in coastal areas and small islands, the government has issued a Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2016 concerning Arrangement Land in Coastal Areas and Small Islands. Ministerial Regulation 17/2016 provides guidelines related to granting land rights in coastal areas and small islands in Indonesia

Coastal agrarian reform must be accompanied by a commitment from the recipient to rehabilitate the ecosystem as a form of bio-infrastructure restoration. Also, if it is successful, the economic and ecological benefits will be felt by the community itself. Coastal agrarian reform is not just a policy but is actually a constitutional order of the 1945 Constitution and its implementing regulations, namely the Basic Agrarian Law Number 5 of 1960.

Based on the above, it is necessary to reconstruct regulations granting land rights to communities in coastal areas based on justice, including the need to harmonize and review the substance of the purpose and function of the certificate itself so that it can provide guarantees of legal certainty and legal protection for objects and holders. Certificate of land rights so that it can improve community welfare in a broad sense. These include:

1. The City/Regency Government must determine coastal boundaries by Presidential Decree Number 51 of 2016;
2. Regency/City Regional Spatial Plans that do not yet accommodate the existence of communities that have lived and developed for generations in coastal areas need to be revised and inventoried first so that it is clear which indigenous communities/local communities/traditional communities can be given ownership status for their land.
3. Based on PP Number 16 of 2004 concerning Land Use, Coastal Borders are protected areas

whose function is to protect the area below them, while article 11 states that land in protected areas for which land rights do not yet exist can be given land rights, except for forest areas and land. Cultural heritage sites for which there are no land rights can be granted certain land rights following applicable laws and regulations, except for the location of the site. Meanwhile, in ATR/KBPN Ministerial Regulation Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands, land rights can be granted by fulfilling the criteria following applicable regulations. Based on the Circular Letter of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 4/SE-100.PG.01.01/II/2022 dated 24 February 2022 concerning Land Use Policy in Protected Areas, areas in protected areas that do not yet have rights can be given land rights except for forest areas, so there are conflicts with existing regulations that require harmonization and review.

CONCLUSION

1. The Weaknesses in the current regulation of granting land rights to communities in coastal areas is that the legal certainty has not yet been explained in detail: the communities that can be granted land rights (indigenous communities/local communities/traditional communities), clear boundary boundaries, and hereditary criteria. The thing that needs to be paid attention to by the state to realize legal certainty and protection for communities whose settlements are on the water is the provision of proper legal ownership of rights. If land rights are granted to settlements located on water, it is seen that there is an overlap in the application of regulations, as is the case in the Cambodian Village of Tanjungpinang City. Because UUPA, PP no. 40 of 1996, and other land regulations only grant ownership rights, HGU, HGB and Use Rights to land or buildings standing on the land. From a legal conceptual perspective, there will be confusion if a land-over-water settlement is given a clear certificate of ownership issued by the Land Office but the object entitled to the Certificate of Ownership of land is actually on water. There needs to be an appropriate policy formulation to address this issue to ensure certainty. Law for those who live in settlements on the water can be realized. Furthermore, counseling and outreach in the land sector to agencies and the public is important for the local government to carry out considering that the land aspect is a crucial matter which on the one hand has the potential to involve land which often creates legal problems.

2. The Legal Reconstruction of regulations on granting land rights to communities in coastal areas based on justice, including the need for harmonization and review of the substance of the purpose and function of the certificate itself so that it can provide guarantees of legal certainty and legal protection for objects and holders of land rights certificates to improve social welfare in the broadest sense. These include. The City/Regency Government should determine coastal boundaries by Presidential Decree Number 51 of 2016; Regency/City Regional Spatial Plans that do not yet accommodate the existence of communities that have lived and developed for generations in coastal areas need to be revised and inventoried first so that it is clear which indigenous communities/local communities/traditional communities can be given ownership status for their land.

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