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Legal Politics of Sea Sand Mining Governance From The Perspective of Blue Economy

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ABSTRACT

The governance of marine sand mining in Indonesia has been controversial since the issuance of Government Regulation No. 26 of 2023 concerning the Management of Sedimentation in the Sea. The discourse on the blue economy in coastal development has been used as the basis for the government to implement governance regulations for coastal and marine areas. The type of research used is legal-normative research employing two approaches: the legal approach and the conceptual approach. The results of this study indicate that the legal policy on the management of marine sand mining does not reflect rules that align with democratic principles. This is evidenced by the fact that the process of making the regulation was not conducted transparently and involved minimal public participation. Based on this, there are two alternative recommendations that can be chosen to address the issue: revising the parts that do not reflect a commitment to the greatest prosperity of the people or implementing a moratorium on policies related to the management of marine sand mining, so that marine sand mining is not reintroduced as it was in 2002. Furthermore, moving forward, the government needs to be more prudent in determining political considerations that are consistently aligned with the principles of the blue economy.

Keywords: legal policy, sea sand, blue economy, sustainability

1. INTRODUCTION

Indonesia ranks second in the world for terrestrial biodiversity and first for marine biodiversity. The consequence of this abundant natural wealth is that the state must ensure the preservation, protection, and optimal utilization of these resources for the greatest possible prosperity of the people. This is also guided by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as the fundamental basis for the state in regulating the management of natural resources. In line with the constitutional mandate that Indonesia is a nation governed by law, all regulations, including the protection and conservation of natural resources for the greatest prosperity of the people, will require legal regulations in the form of legislation.

A country with extensive maritime areas like Indonesia requires a development model that can provide inclusive protection and conservation in maritime areas. The blue economy discourse is one of the development models applied to minimize development that is too biased toward land



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areas. The management of marine areas based on the blue economy principle is regulated in Article 14 of Law Number 32 of 2014 on Marine Affairs.

The potential to develop the principles of the blue economy will encourage policymakers to formulate legal products that lead to maritime development and governance, including the management of natural resources within them. Sea sand is one of the mineral resources whose utilization needs to be controlled. In May 2023, the Government issued Government Regulation No. 26 of 2023 on the Management of Sedimentation in the Sea. In this implementing regulation, sedimentation in the sea is defined as sea sand and/or mud sedimentation. There are four stages in the management of sea sedimentation, namely planning, control, utilization, and supervision.

In terms of content, this government regulation is still subject to debate in society. First, the process of its formation is considered non-transparent. This is evidenced by the fact that the enactment of this government regulation did not involve open and broad public participation. Additionally, the academic paper that should have served as the academic basis for the formation of a regulation was not disseminated to the public, leading to the perception among the public that this government regulation was not formed based on the principle of meaningful participation.

Second, controlling marine sedimentation by conducting cleanup does not reflect the objective of reducing the impact of sedimentation processes that do not decrease the carrying capacity and resilience of coastal and marine ecosystems. Third, Article 9(2) outlines four points regarding the utilization of marine sand based on this government regulation, including:

- a. Domestic reclamation:
- b. Government infrastructure development;
- c. Infrastructure development by business actors; and/or
- d. Export, provided that domestic needs are met and in accordance with the provisions of laws and regulations.

The content of the article on the utilization of marine sand has sparked debate in society, particularly regarding the export of marine sand. The policy on marine sand exports has a long history in Indonesia. In 2003, under the leadership of President Megawati, sea sand exports were temporarily suspended. However, after the enactment of this government regulation, the potential for sea sand exports was reopened. Fourth, the supervision of sedimentation utilization activities appears to be more formalistic and tends to be oriented toward economic interests without considering other interests such as the environment or socio-cultural aspects for the community.

Debate and controversy in society regarding sea sand mining has arisen because it is believed that legalizing sea sand mining could lead to environmental impacts and horizontal and



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vertical conflicts for communities in coastal areas. One example of this is happening in coastal communities around Kodingareng Island. The sea sand mining conducted by PT Royal Boskalis for the Makassar New Port (MNP) project has caused damage to the marine ecosystem, resulting in a decline in fish populations and extensive damage to coral reefs. This situation has also led to fishermen losing their livelihoods due to fishing grounds becoming increasingly distant from ideal conditions (Mukarromah & Mulyawati, 2023).

The issues mentioned above serve as evidence that the management of marine sand mining in Indonesia still requires reevaluation. The principle of blue economy emerges as a tool to promote development oriented toward justice, particularly in the management of marine and coastal resources. Researchers observe that there is a definitional gap in interpreting the blue economy principle within the regulations governing the management of marine sand mining today. According to Mahfud MD, politics and law are interconnected, but politics dominates over law because politics has a greater concentration of energy (Mahfud MD, 2009). In its formation process, a legal product cannot be separated from political choices, including in the management of marine sand mining. Based on this, the researcher aims to describe and analyze how the political law of marine sand management has evolved over time by identifying the existence of the blue economy principle in the legal products issued.

2. RESEARCH METHOD

This study uses a legal-normative research method. The object of this study is normative law in the form of legal principles, legal systems, and the level of vertical and horizontal synchronization (Soekanti & Mamudji 2011). Since the object of this study is normative law, it involves a comprehensive review of literature that refers to the gap between law (das sein) and legal rules (das sollen).

Based on the type of research used, the research approach chosen is the legislative approach and the conceptual approach. The legislative approach is carried out by examining laws and regulations related to the legal issues being addressed, which has benefits, both practically and academically (Irwansyah, 2022). Meanwhile, the conceptual approach is a type of approach that provides an analytical perspective on problem solving in legal research from the aspect of the underlying legal concepts, or even from the values contained in the norms of a regulation in relation to the concepts used (Irwansyah, 2022).





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3. RESULTS AND DISCUSSION

The management of natural resources is inseparable from national economic interests and national welfare, as stipulated in Article 33, paragraphs (1) to (5). The implementation of the national economy takes into account the principles of solidarity, equitable efficiency, sustainability, environmental awareness, independence, and maintaining the balance between national economic progress and unity. The management of natural resources contributes significantly to economic benefits. However, on the other hand, it also causes various negative impacts from several perspectives, such as destructive or degrading effects on the environment, pollution, agrarian conflicts, or exclusion of affected communities.

Historically, Indonesia once reached the peak of economic development by relying on the natural resource sector during the New Order era (Mumu Muhajir et al, 2019). The exploitation of natural resources was opened up with the enactment of Law No. 1 of 1976 on Foreign Investment. During that period, the ruling regime was subservient to the interests of capital owners. This law opened opportunities for entrepreneurs to expand capitalism into natural resources (Rachmad et al., 2023). In addition to this law, several regulations specifically referring to natural resource management in various sectors also emerged, including Law No. 5 of 1967 on Basic Forestry Provisions, Law No. 11 of 1967 on Basic Provisions for Mining, Law No. 11 of 1974 on Irrigation, and Law No. 9 of 1985 on Fisheries. I Nyoman Nurjaya explains that the regulations governing natural resource management in that era were still oriented towards exploitation, favoritism towards capitalists, an ideology of control and centralized utilization, and tended not to recognize and protect the rights of indigenous peoples in a genuine manner (I Nyoman Nurjaya, 2015).

This tendency toward exploitative governance and lack of inclusivity also occurred in regulations related to the governance of sea sand mining during the New Order era. Under President Soeharto's leadership, there were no specific regulations governing sea sand management. Law No. 11 of 1967 on Basic Provisions for Mining served as the basic guideline for mining activities in Indonesia at that time, including sea sand mining. Over time, activities related to the utilization of natural resources began to be balanced with attention to the environmental, social, and cultural impacts on affected communities. This is evidenced by developments in legal products related to environmental protection and management, starting with the enactment of Law No. 4 of 1982 on the Basic Provisions for Environmental Management, which was later improved by Law No. 23 of 1997 on Environmental Management, further refined by Law No. 32 of 2009 on Environmental Protection and Management, some of whose provisions were later amended in the Job Creation Law.



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The management of marine and coastal areas has also been accompanied by the emergence of various legal products aimed at improving the governance of marine and coastal areas. The Djuanda Declaration of 1957 marked the beginning of maritime governance in Indonesia. During the reform era under the leadership of President Megawati Soekarnoputri, an instruction was issued to temporarily suspend or impose a moratorium on marine sand mining activities through Presidential Instruction No. 2 of 2002 on the Control of Marine Sand Mining. This Presidential Instruction was issued with the consideration that control over marine sand mining, exploitation, and export activities was necessary for national development, while taking into account the sustainability of ecosystems in marine sand mining areas. This Presidential Instruction was followed by the enactment of various subordinate regulations, such as the Joint Decision of the Minister of Industry and Trade, the Minister of Marine Affairs and Fisheries, and the Minister of the Environment No. SKB.07/MEN/2002. This regulation, which was enacted at the beginning of the reform era, was triggered by the significant impact felt in the coastal areas of the Riau Islands due to sea sand mining activities for export to neighboring Singapore. The impacts included the sinking of small islands, particularly in the border areas of the Riau Islands (Dwi Lestari, 2023).

The diversity of natural resource potential in coastal areas and small islands prompted the government during the presidency of Susilo Bambang Yudhoyono to further strengthen regulations to protect and ensure regulatory certainty as an umbrella act on coastal areas and small islands through Law No. 27 of 2007 on Coastal Area and Small Islands Management (PWP3 K). As part of the law enforcement process, to date, this law has undergone two judicial reviews at the Constitutional Court (MK). Based on data compiled from the website of the Constitutional Court of the Republic of Indonesia, there are two Constitutional Court decisions related to this law. First, Constitutional Court Decision No. 3/PUU-VIII/2010, which was filed by a Civil Society Coalition consisting of the People's Coalition for Fisheries Justice (KIARA), the Agrarian Reform Consortium (KPA), the Indonesian Farmers Union (SPI), the Indonesian Legal Aid Foundation (YLBHI), the Indonesian Forum for the Environment (WALHI), as well as other organizations and individual members of civil society. In its ruling, the Constitutional Court stated that the provisions regarding Coastal Water Control Rights (HP3) were unconstitutional and had no binding legal force. The final and binding nature of the Constitutional Court's ruling resulted in legal consequences that necessitated material changes to the law. Finally, during the final days of President Susilo Bambang Yudhoyono's administration, amendments to the PWP3K law were enacted in Law No. 1 of 2014.



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Second, Constitutional Court Decision No. 35/PUU-XXI/2023, which was filed by PT Gema Kreasi Perdana (GKP), one of the corporations operating on Wawonii Island, Southeast Sulawesi. The Constitutional Court's ruling rejected the petitioner's request in its entirety regarding the provisions of Article 23(2) and Article 35(k) of the law, which the petitioner interpreted as an absolute prohibition on mining activities in coastal areas and small islands. The ruling, which rejected the petitioner's request in its entirety, was based on the consideration that the prohibitions contained in the two articles are conditional or not absolute and their content does not conflict with the 1945 Constitution of the Republic of Indonesia. From the dynamics that occurred in this constitutional law enforcement process, the author concludes that the Constitutional Court, as the guardian of the constitution, is steadfast and firmly ensures that laws related to coastal and marine management are implemented properly and do not conflict with the 1945 Constitution of the Republic of Indonesia.

Entering the era of President Joko Widodo's leadership, the implementation of changes to the PWP3K Law was enforced. There were no further changes during this period, but significant changes to regulations governing coastal areas and small islands emerged when the Job Creation Law was enacted in 2020, which then underwent further developments, resulting in the current applicable law being Law No. 6 of 2023 on the Replacement of Law No. 2 of 2022 on Job Creation with the Job Creation Law. In this new omnibus law model, several articles of the PWP3K Law have been amended, including Articles 23, 26, and 30. In line with the objectives of enacting the Job Creation Law, the partial amendments to the PWP3K Law also aim to accelerate investment, particularly in coastal and marine areas.

The management of coastal and marine areas, which tends to favor business interests, continues with the issuance of Government Regulation No. 26 of 2023 on Sediment Management in the Sea. In its policy paper, the Indonesia Ocean Justice Initiative (IOJI) states that the reopening of opportunities for sea sand exports under Article 9(2) of this Government Regulation contradicts Minister of Trade Regulation No. 18 of 2021 as amended by 40 of 2022, which states that unprocessed silica sand, quartz sand, and other natural sands are prohibited from being exported (IOJI, 2023). From this, we can conclude that the applicable positive law does not permit the export of marine sand. The legitimization of sea sand mining activities, which had previously been halted, indicates that the political configuration under President Joko Widodo's leadership does not prioritize ecological protection and justice. Examples of small islands sinking and the resulting impact on the socio-economic conditions of surrounding communities are not a primary concern



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for the government. This is further reinforced by several subsidiary regulations related to the management of marine sedimentation, some of which:

- Regulation of the Minister of Marine Affairs and Fisheries No. 33 of 2023 concerning the Implementation Regulation of Government Regulation No. 26 of 2023 concerning the Management of Sedimentation Products in the Sea;
- 2. Decision of the Minister of Marine Affairs and Fisheries No. 16 of 2024 concerning the Planning Document for the Management of Sedimentation Products in the Sea;
- 3. Decree of the Minister of Marine Affairs and Fisheries No. 47 of 2024 concerning Specifications for Sedimentation Sand in the Sea for Export;
- 4. Decree of the Minister of Marine Affairs and Fisheries No. 49 of 2024 concerning Domestic Demand for Sedimentation Materials in the Sea in the Form of Sea Sand in 2024.

A study of the relationship between political configuration and the nature of legal products has produced the thesis that every legal product is a reflection of the political configuration that gave rise to it. This means that the content of every legal product will be largely determined by the politics of the dominant group (the rulers) (Mahfud MD, 2009). From the dynamics of the development of regulations on the management of sea sand mining, it can be seen that the related legal products produced are not always responsive/populist in nature. To assess whether these legal products are Under the leadership of President Megawati, the policy to impose a temporary halt/moratorium on sea sand exports demonstrates the government's responsive action in addressing a societal issue. When the government became aware that the marine ecosystem in the Riau Islands was being damaged by sea sand mining activities intended for export to Singapore for land reclamation projects, the government swiftly responded to the needs of the community. The aspirations of the community were heard and immediately implemented in policy-making. Here, it can be seen that the government involved the wider community in expressing their aspirations, thereby ensuring that democratic political configuration was represented as it should be.

Similarly, under the leadership of President Susilo Bambang Yudhoyono, the legal products issued during this period can also be considered responsive legal products. The government recognized the urgency of enacting an umbrella law on coastal and marine area management, leading to the enactment of Law No. 27 of 2007 on Coastal Area and Small Island Management. Furthermore, to maintain the stability of legislation in line with the constitution, the Constitutional Court issued a ruling granting the petitioners' (civil society) request to declare several articles in the PWP3K Law unconstitutional. The beginnings of changes in coastal and marine governance also originated during the administration of President Susilo Bambang Yudhoyono.



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The administration under President Joko Widodo has demonstrated a different political configuration in its view of the existence of marine sand mining governance. According to Mahfud MD, to determine whether a legal product is responsive or conservative, the indicators used are the law-making process, the nature of the law's function, and the possibility of interpretation of a legal product (Mahfud MD, 2009). The process of drafting Government Regulation No. 26 of 2023 did not involve full public participation. The implication is that the substance of the regulation only reflects the vision and mission of those in power. The orientation toward economic development interests without or with minimal consideration of environmental and socio-cultural impacts on the community can be seen in Article 9(2), which regulates the utilization of marine sand. The reopening of exports with the addition of the nomenclature, "... provided that domestic needs are met and in accordance with the provisions of laws and regulations," implies that there are economic interests that must be fulfilled by the government. The opportunity for entrepreneurs or corporations to be involved in the utilization of marine sedimentation in the form of marine sand will be very significant. The economic value of this mineral resource has led businesses to compete for permits to dredge marine sedimentation. As of July 2024, 66 companies have applied for permits to dredge marine sedimentation for domestic sand needs (Tempo, 2024).

The dominance of the government and businesses will place communities in a very weak bargaining position. Limited access to the fulfillment of rights due to an unbalanced political configuration will result in the community not obtaining the rights that are rightfully theirs as stipulated in the constitution. This conservative regulation on marine sand management alone can violate the right to a good environment, which is actually guaranteed by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Furthermore, this violation of rights will also impact other constitutional rights, such as the right to self-development, the right to life, and other substantial rights related to the right to a good and healthy environment (Indah & Ilham, 2022). When the state limits or violates the fundamental rights of its citizens, it can be said that the state is not ensuring, protecting, or fulfilling those rights. When this occurs, the principle of a democratic state is not fulfilled.

Essentially, the dynamics of legal politics in the management of marine sand originate from conflicting norms in establishing the objectives to be achieved in the management of natural resources as outlined in the constitution, particularly in Article 33, paragraphs (1), (2), and (3), which emphasize the principle of a people-centered economy, versus paragraphs (4) and (5), which lean toward neo-liberalism. This contradiction has led to the creation of various laws and regulations that, hierarchically, have not been able to achieve social justice and environmental



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sustainability, as envisioned in Article 33 of the 1945 Constitution of the Republic of Indonesia (Rachmad et al., 2022).

Marine governance in Indonesia is based on the principle of blue economy. This principle has been adopted by Indonesia, emphasizing that the management of marine resources is carried out in a sustainable, equitable, and socially inclusive manner. Terminologically, the blue economy is an approach that seeks to combine opportunities for marine- and fisheries-based development with environmental management (Riza Damanik et al, 2023). This approach is the result of a global agreement from the Rio+20 Conference in 2012, based on the premise that healthy and sustainable marine ecosystems are more productive, and this is essential for the implementation of a marine-based economy. In positive law, this principle is explicitly regulated in Law No. 32 of 2014 on Marine Affairs, particularly in Article 14(1), which states that marine management must adhere to the principles of the blue economy. This principle is also reinforced in Presidential Regulation No. 16 of 2017 on Indonesia's Maritime Policy, which places the blue economy as one of the six basic principles of national maritime management. This concept reflects Indonesia's efforts to make the sea not only an economic resource but also the foundation for sustainable development that respects the carrying capacity of ecosystems and the welfare of coastal communities.

According to Rafi Darajati, there are four components that pose challenges to the effectiveness of regulations and policies for the implementation of the blue economy in Indonesia, including: (Darajati, 2023);

- 1. How to ensure that existing and future regulations and policies are in line with Pancasila and the 1945 Constitution of the Republic of Indonesia;
- 2. The readiness of institutions implementing blue economy regulations and policies, starting from the availability of infrastructure, adequate human resources, clarity of authority for each position and unit, as well as a clean, accountable bureaucracy with a strong work ethic in achieving the vision;
- 3. The realization of a legal culture regarding regulations and policies related to the blue economy, as reflected in the behavior of the community;
- 4. The active involvement of the community so that these blue economy management regulations and policies become a tool of social engineering in fostering a blue economy paradigm that has been adapted to national values.

Constitutionally, the principle of the blue economy is implied in Article 33 paragraphs (3) and (4) of the 1945 Constitution of the Republic of Indonesia. To date, the country's constitution



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does not accommodate explicit statements and is only normative in nature regarding this principle of the blue economy. The implications of this are the potential for multiple interpretations, inconsistencies, or weaknesses in its sectoral implementation. These potentials then create space for sectoral policies that deviate from the spirit of the constitution, including in the practice of exploiting marine resources in ways that are destructive or unfair from a social and ecological perspective. The practice of the blue economy principle in Government Regulation No. 26 of 2023 shows a reduction in value, which is viewed solely as an economic instrument. Sea sand mining, which is described as "sea sand utilization" in this regulation, is promoted solely in the name of investment and export interests, disregarding ecological sustainability and public participation.

The implementation of environmentally friendly and sustainable mining practices is crucial to maintaining a balance between economic development and environmental protection. A damaged environment will have adverse effects on society, the government, and the state (Manahan, 2023). Therefore, the implementation of good governance is essential for the sustainable utilization of mineral resources such as marine sand, ensuring a legacy for future generations. Future governance of marine sand mining is expected to prioritize sustainable principles and not be biased toward economic interests alone. Extractive activities that are still rampant need to be limited by formulating policies oriented toward fulfilling the right to a good environment. In the future, the governance of sea sand mining must fully incorporate the principles of the blue economy, not merely as development rhetoric, but as an ethical and ecological guiding framework. The state must ensure that the practice of utilizing natural resources at sea does not preclude citizens from enjoying their right to a good and healthy environment as guaranteed by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Policies that open the floodgates to sea sand exports without rigorous analysis of ecosystem carrying capacity are tantamount to neglecting the state's obligation to protect the constitutional rights of its citizens. The state's failure to uphold the principle of ecological justice will further distance Indonesia from its goal of achieving democratic and sustainable management of natural resources.

4. CONCLUSIONS

The political development of legal governance of sea sand mining has experienced ups and downs, and the political configuration inherent in those in power has not always been democratic. During the reform era, under the leadership of Presidents Megawati and Susilo Bambang Yudhoyono, the legal products produced were responsive in nature. However, under the leadership of President Joko Widodo, the character of legal products has tended to be conservative, clearly



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showing the dominance of political elite interests without considering the needs of the community and opening up wide opportunities for corporations. The blue economy concept, which Indonesia has adopted since 2014, is not permitted to exceed the limits set out in the 1945 Constitution of the Republic of Indonesia. The implementation of national development focused on economic interests must also consider the principles of solidarity, efficiency, sustainability, and environmental awareness as mandated by the constitution and must not reduce the meaning of the blue economy principle.

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