

Mangrove Management in Indonesia from Laws on Coastal and Small Islands

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This research is financed by the Indonesian Government under "BPPS" Doctoral Studies Scholarship programme

Abstract

Mangrove in coastal ecosystem is in the transition zone between land and marine ecosystem. In the management, the authority should apply multisectoral approach. The research purpose will study the implication of issuing Law Number 27 Year 2007 concerning Management of Coastal and Small Islands with legislations on mangrove forest management. In the mangrove forest management, it is urgent to have a definite state policy. There are the authority of Forestry Ministry Republic of Indonesia in the forest management (Law Number 41 Year 1999 concerning Forestry) and Conservation of Natural Resources and the Ecosystem (Law Number Year 1990), the authority of Minister of Environment Republic of Indonesia (Law Number 23/1997 concerning Environmental Management), the minister-level authority appointed as spatial planning coordinator by President (Law Number 26 Year 2007 concerning Spatial Planning), Law Number 5 Year 1974 concerning the Principles of Regional Government, the authority of Minister of Public Works (Law Number 11 Year 1974 concerning Irrigation) and Law Number 27/2007 PWP-3-K. Moreover, there is no minister-level official in the coordination of inter-and-non-ministerial mangrove forest management.

Keywords: legislation, coastal area, mangrove management

1. Introduction

Law Number 27 Year 2007 concerning the Management of Coastal and Small Islands (UU No.27/2007) states that: Coastal Area is the transition zone between land and sea ecosystem that get influence from the land and sea. Coastal and Small Islands are natural, non-natural sources; human-made resources and environmental services; natural resources include fishes, coral reef, seagrass bed, mangrove and other marine biota; non-natural resources comprise among others sand, sea water, seabed mineral; man-made resources comprise sea infrastructure related to marine and fishery; and other environmental services, i.e., natural beauty, sea floor surface where underwater installation related to marine, fishery and ocean wave energy in coastal areas locate.

The coastal ecosystem of mangrove is the transition zone between land and sea the management authority has to invite the involvement of multisectoral agencies. It can be seen from the interested parties with the coastal areas particularly in mangrove forest utilization. Therefore, conflicts often occur. The sectors consist of fishery and trade, mining, forestry, dwelling and tourism (Saparinto, 2007). Such a condition reflects high mangrove forest destruction in many coastal regions in this country. For example, massive mangrove forest degradation occurs in Jakarta Bay. Mangrove forest change reaches 43% in the last decade (Indar Parawansa 2007).

There are many regulations and laws concerning mangrove ecosystem management, i.e. Law Number 5 Year 1965 concerning Principles of Agrarian, Law Number 5 Year 1967 concerning Principles of Forestry, Law Number 5 Year 1974 concerning Principles of Local Government, Law Number 11 Year 1974 concerning Irrigation, Law Number 5 Year 1979 concerning Village Government, Law Number 5 Year 1990 concerning Conservation of Natural Resources and the Ecosystem, Law Number 9 Year 1990 concerning Tourism, Law Number 24 Year 1992 concerning Spatial Planning, Law Number 23 Year 1997 concerning the Principles of Environmental Management, Law Number 22 Year 1999 concerning Local Autonomy Government, Law Number 25 Year 1999 concerning Regional Government Authorities and Law Number 41 Year 1999 concerning Forestry. In the period of 1965 – 1999, there are six (6) agencies that have authority in mangrove forest management, i.e. National Land Agency, Ministry of Forestry, Ministry of Internal Affairs, Ministry of Environment, Ministry of Public Works Departemen and Ministry of Tourism Republic of Indonesia. The fact that the mangrove forest management is under the authority of Ministry of Forestry. It is regulated in Law Number 5 Year 1967, Law Number 5 Year 1990, Law Number 41 Year 1999 concerning Forestry and Law Number 19 Year 2004 and Government Regulation Number 28 Year 1985. The issuance of Law Number 31 Year 2004 and Law Number 27/2007 becomes the additional list of laws and regulations concerning mangrove forest management and agencies which have coastal management authority particularly for mangrove forest. The research purpose is to study the implication of issuing the Law Number 27 Year 2007 concerning the Management of Coastal and Small Islands with laws and regulations concerning mangrove forest management.

2. Methodology

Materials

The analysis material includes the transcript of Law Number 5 Year 1990, Law Number 26 Year 2007, Law Number 23 Year 1997, Law Number 41 Year 1999 as well as Law Number 27 Year 2007 concerning the Management of Coastal and Small Islands.

Data Analysis

The analysis approach focuses on the content analysis combining and comparing the content of articles and paragraphs concerning the mangrove forest management from the laws particularly the definition or general provisions, management authority, utilization, investigation and criminal provisions in the Law Number 41 Year 1999 and Law Number 27 Year 2007.

3. Analysis Results of Laws and Regulations Concerning the Management of Mangrove Forest

Basic Mangrove Management Authority

Law Number 5 Year 1990

The conservation of natural resources aims at reaching the realization of natural resources and the equilibrium of the ecosystem, and therefore it is able to support the improvement of community's prosperity and welfare, and the quality of human life as well (Article 3).

Law Number 41 Year 1999

The forest management as stated in Paragraph (1) covers implementation activities of: a. forestry planning, b. forest management, c. Research and development, education and training as well as forestry extension, and d. Supervision (Article 10 Paragraph 2).

The forest management as referred to in Article 10 Paragraph (2) Letter b, includes the following activities of: a. forest governance and forest management design, b. forest and forest land uses, c. forest rehabilitation and reclamation, and d. forest protection and natural conservation as well as supervision (Article 21).

Law Number 27 Year 2007

The management scope of Coastal and Small Islands include transition areas between land and marine ecosystem that gets influence from any changes in the land and the sea, landwards include sub-district administration territory and seaward as long as 12 (twelve) nautical miles measured from the coastal line (Article 12).

The management of Coastal and Small Islands as stated in Article 5 shall carry out the measures of integrated activities:

- a. Between the Central Government and Local Government
- b. Inter-Local Government
- c. Inter-sector
- d. Between the government, business community and public;
- e. Between land and marine ecosystem; as well as
- f. Between sciences and management principles

The Management of Coastal and Small Islands as referred to in Article 5 consists of:

- a. The Coastal and Small Islands Strategic Plan (RSWP-3-K).
- b. The Coastal and Small Islands Zonation Plan (RZWP-3K)
- c. The Coastal and Small Islands Management Plan (RPWP-3-K)
- d. The Action Plan of Coastal and Small Islands Management (RAPWP-3-K). (Article 7 Paragraph 1)

4. Basic Mangrove Utilization Authority

Law Number 5 Year 1990 concerning Conservation of Natural Resources and the Ecosystem

The sustainable utilization of natural resources and the ecosystem shall be carried out in the following activities of:

- a. The utilization of environmental condition in nature conservation;
- b. The uses of flora (plants) and fauna (wild animals) types (Article 26).

The utilization of environmental condition in nature conservation shall be carried out as long as it preserve the sustainability of conservation functions (Article 27).

The utilization of flora (plants) and fauna (wild animals) shall be conducted in consideration of the continuity of potential, capacity and diversity of the flora (plants) and fauna (wild animals) Article 28).

Law Number 41 Year 1999

The forest land uses for the development interests out of the forestry activities can be only carried out inside the production forest and protected forest area (Article 38 Paragraph 1).

The forest land uses as referred to in Paragraph (1) can be carried out without any changes in the principle functions of forest land (Article 38 Paragraph 2).

The forest land uses for the mining interests shall be carried out in a kind of awarding land-and-use permit issued by the Minister in consideration of the broad limits, the period of time as well as the environmental sustainability

(Article 38 Paragraph 3).

Law Number 27 Year 2007

The Utilization Rights of Coastal Waters hereinafter called HP-3 shall include the rights to control certain parts of the coastal waters for marine and fishery business activities as well as the others related to the utilization of Coastal and Small Islands Resources that include sea level and water column as well as seafloor in the extent of some broad limits (Article 1 Paragraph 18).

The utilization of coastal waters shall be awarded in a kind of HP-3 (Article 16 Paragraph 1).

HP-3 as referred to in Paragraph (1) shall include the business activities in sea level and water column as well as seafloor (Article 16 Paragraph 2).

HP-3 shall be provided in the extent of limited area and the period of time (Article 17 Paragraph 1).

The awarding of the HP-3 as referred to in Article (1) shall consider the interests of Sustainable Coastal and Small Islands Ecosystem, Indigenous People, and the nation as well as the traffic rights for foreign vessels (Article 17 Paragraph 2).

The HP-3 can be provided to: a. Individual who is the citizen of the Republic of Indonesia; b. Legal entities established by the laws and regulations of the Republic of Indonesia; or c. Indigenous People (Article 18).

5. Implication of Issuing Law Number 27 Year 2007 Concerning the Management of Mangrove Forest *Management of mangrove*

The explanatory notes for Law Number 27 Year 2007 Article 2 states that:

The scope of the provision in the Law shall comprise the coastal region, i.e. the ocean area that gets influence from activities on the land and the land area that has the sea influence as well as the Small Islands and the surrounding waters in a single entity and have great potential for the utilization of resources, environment and public.

In the implementation, the provision of seawards shall be regulated as long as 12 (twelve) nautical miles measured from coastline as stipulated in the Law Number 32 Year 2004, and the landward borders shall be based on the provision of sub-district limits under the provincial authority. The district/city authority of the seawards shall be stipulated as long as the one third of the provincial authority as determined in the Law Number 32 Year 2004.

The Article 2 has the mandate that the authority of Ministry of Marine and Fishery in the management shall include mangrove ecosystem, and it has the legal status as determined in the definition of the coastal areas (Law Number 27 Year 2007 Article 1 Paragraph 2) stated as the transition areas between the land and marine ecosystem which gets influence from the land and marine changes. Moreover, the mangrove habitat lives in the coastal area.

When combined to the Law Number 41 Year 1999 particularly in relation to the mangrove management, Ministry of Forestry shall have the authority based on the forest management of which the stipulation in Article 1 Paragraph 2 concerning the forest definition, Article 10 Paragraph 2 and article 21, and therefore, Ministry of Marine and Forestry as determined in Law Number 27 Year 2007 has the authority to manage forest/mangrove forest ecosystem on the basis of the area or the ecosystem (coastal area) while Ministry of Forestry as stipulated in Law Number 41 Year 1999 shall have the authority of the forest management. Despite Article 1 Paragraph 3 Law Number 41 Year 1999 states that the forest products shall include biological, non-biological and the derivative products as well as services from the forest. The facts indicate that the existence of two agencies has the authority of the similar regional/ecosystem management.

Concerning the authority of managing coastal areas carried out by Ministry of Marine and Fishery as referred to in Law Number 27 Year 2007, the ministry shall be entitled in the Planning Management of Coastal and Small Islands as stipulated in Article 5, i.e. the Strategic Plan of Coastal and Small Islands (RSWP-3-K), the Zonation Plan of Coastal and Small Islands (RZWP-3K), the Management Plan of Coastal and Small Islands (RPWP-3-K), and the Action Plan for the Management of Coastal and Small Islands (RAPWP-3-K). (Article 7 Paragraph 1).

In relation to the authority of Ministry of Forestry in the Conservation of Natural Resources and the Ecosystem (Law Number 5 Year 1990), that of Ministry of Environment (Law Number 23 Year 1997), that of Ministerial-Level official in-charge as appointed by the President as the Coordinator (Law Number 26 Year 2007), Law Number 5 Year 1974, and that of Ministry of Public Works (Law Number 11 Year 1974) in the management of Mangrove Forest, and therefore it is very urgent that the government's policy is required in the management regulation. Until right now there is no ministerial-level official in-charge who coordinates the management of Mangrove Forest in the inter-ministry and non-ministry level.

Utilization of mangrove forests

Law Number 41 Year 1999 Article 38 Paragraph 1, 2 and 3 shall authorize Ministry of Forestry the forest utilization particularly mangrove forest and the determination of mining site permits (Law Number 19 Year

2004).

The authority of coastal area management as mandated in Law Number 27 Year 2007 in Article 5 and Article 7 Paragraph (1) to Ministry of Marine and Fishery shall grant the ministry to utilize the coastal area particularly mangrove forest. The impact relates to the authority to award the HP-3 (Article 1 Paragraph 18, Article 16 Paragraph (1) and (2), Article 17 Paragraph (1) and (2), and Paragraph 18 of Law Number 27 Year 2007).

Despite the zonation scope of the HP-3 covers the coastal waters (from the definition based in Article 1 Paragraph 7 of Law Number 27 Year 2007), the tidal pattern determines mostly on the extent of the coastline at the low tide formed to reach mangrove forest where infrastructure and supporting facilities in the implementation of businessmen or a group of people or individuals in the utilization of the HP-3 permit are adjacent to mangrove forest.

When understanding the actual condition to the legislation mandate on the authority of “mangrove forest” utilization as stipulated in Law Number 41 Year 1999 and Law Number 27 Year 2007, and no optimal execution in the Spasial Planning as referred to in Law Number 24 year 1992 concerning Spasial Planning, of course it will stimulate conflicting authority in the awarding of the utilization permits.

Investigation authority

The investigation authority carried out by Civil Servant Officials in-charge in the scope of forestry particularly Forestry of Ministry shall get the mandate stipulated in Law Number 41 Year 1999 Chapter XIII Investigation Article 77 Paragraph (1), (2) and (3). Moreover, in appropriate to Law Number 27 Year 2007 Chapter XV Investigation Article 70 Paragraph (1), (2), (3), (4) and (5) it shall authorize the Civil Servant Official in-charge in the scope of the Management of Coastal and Small Islands.

Based on the authority if there is any probation violation stipulated in Law Number 41 Year 1999 Article 50 Paragraph (1), (2), (3), and (4) and Law Number 27 Year 2007 Paragraph 35 Letter e, f and g, so the question arises who will have the power of authority? The two laws do not mandate the combined investigation of inter-Civil Servants in-charge.

Criminal provisions

The criminal provisions stipulated in Law Number 41 Year 1999 Article 78 from Paragraph (1) to Paragraph (15) with the maximum prison penalty between 3 (three) years and 10 (ten) years, and a fine at the most from Rp 10.000.000,00 (ten million rupiah) to Rp 10.000.000.000,00 (ten billion rupiah).

The criminal provisions as referred to in Law Number 27 Year 2007 Chapter XVII Article 73 Paragraph (1) Letter b, states that the minimum prison penalty from 2 (two) years to 10 (ten) years and a fine at least from Rp 2.000.000.000,00 (two billion rupiah) to the maximum of Rp10.000.000.000,00 (ten billion rupiah) to anyone who consciously : (b) using means and methods that destroy mangrove ecosystem, the conversion of mangrove ecosystem, mangrove cutting for industrial and settlement activities, and/or others as intended in Article 35 letter e, letter f, and letter g.

The criminal provisions stipulated in the two laws differ. If violation occurs it will be at first determined which criminal penalty will be punished. For example, in the case for the conversion of mangrove forest to aquaculture not intended in Mahakam Delta according to Law Number 41 Year 1999 Article 99 paragraph (3) it states that whoever violates consciously the provision of Article 50 paragraph (3) letter d, he/she shall be punishable in imprisonment as long as 15 (fifteen) years and the maximum fine of Rp 5.000.000.000,00 (five billion rupiah). On the other hand, Law Number 27 Year 2007 CHAPTER XVII Article 73 paragraph (1) letter b mandates the minimum sentence of imprisonment between at least 2 (two) years and the maximum of 10 (ten) years, and the minimum fine of Rp 2.000.000.000,00 (two billion rupiah) to the maximum of Rp 10.000.000.000,00 (ten billion rupiah). If the two criminal provisions prevail in the same case the criminal penalty differs.

6. Conclusion

The principles of mangrove forest management for the Ministry of Forestry Republic of Indonesia relate to the forest, and Ministry of Marine and Fishery Republic of Indonesia handles mangrove ecosystem as the part of coastal ecosystem. It remains the overlapping management authority and utilization of mangrove forest/ecosystem between Ministry of Marine and Fishery and Ministry of Forestry.

There is any potential influence of the authority to do investigation in relation to the violations in mangrove forest/ecosystem. There is dualism in sanction scale to any violations in mangrove forest/ecosystem.

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