

The Synchronization of Legal Substance on the Arrangement of Spatial Planning of Coastal and Marine Areas

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Abstract

Spatial planning arrangement of the coastal and marine areas can be used optimally, orderly, given the certainty law to the whole stakeholders related to the existing law. The used of space sectorally can caused the conflict of interest and the authority conflict. The un synchronized space utilization would not given certainty law. The law number 26 years 2007 is the regulation of spatial planning with *lex generalis* characterized, to the law number 27 year 2007 as replace into Law number 1 year 2014 and law number 32 year 2014 especially regarding to the spatial planning of coastal and marine. However, there is against regulation between those 3 Laws which caused the uncertainty law that at the end will damage to the stakeholder as the user of special planning of coastal and marine areas.

Keywords: Synchronization, Spatial Planning of Coastal and Marine .

INTRODUCED

Indonesia as the biggest archipelagic state in the world has 17.499 big and small island, 13.466 of have named and registered in United Nation. For the whole, Indonesia has around 80.791 km⁵ coastline ,the second longest coastline after Canada with the width of marine area to 6.315.222 km².⁶

The international recognition to the Indonesian rights of the marine area reaffirmed by ratified the The United Nations Convention on The Law on The Sea (UNCLOS) year 1982, according to the law number 17 year 1982. Even under the replacement II of Republic Indonesia Constitution of 1945 which is on 18 August 2000, as constitutionally of Indonesia strength and reaffirmed as the archipelagic state with archipelago characteristic as mentioned under article 25A, which is the Republic Indonesia as the archipelagic state with the boundaries and rights as mentioned by the law.

The Confirmed Of Indonesia must be together with the responsibility to manage and control of the resource and the natural wealth that contained under. The Control of natural resources to the whole of Republik Indonesia must be used for the sake of the society welfare as mentioned under article 33 point (3) of Republic Indonesia Constitution with reaffirmed that “earth, and water and natural resources contained therein controlled by the State and used for the prosperity of the people”.

One of the basic concept of natural resources and natural wealth management according to the article 2 point (1) Law number 5 year 1960 of basic regulation of the principle of agrarian which arrange that earth, water and outer space are including of the natural resources in the highest level dominated by the State. The authority that come from the right of control of the state utilize to achieve the huge prosperity of the people under the meaning of nation, wealthy and freedom of the people and state under the state law⁷.

The huge potential of resources have not arrangement optimally yet whether by government nor by private company or people. The former development have oriented just to the land, and ignored the marine and coastal areas. The development of marine and fisheries is still conduct sectorally, not coordinate and integrative so raise some conflict of used, degradation of potential resources that cause damage like overfishing, contamination, the damage of ecosystem.

The sectoral development in marine and coastal area with each of the sector have their own planning depend to their sector interest. Like fisheries sector have the plan by stated the marine area of Indonesia into 11 (eleven) areas of fish arrangement⁸, Fishing Line determination and Placement Tools and Tools Fishing in

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⁵ Saad, Sudirman. 2014. *Materials Roadmap Workshop Presentation on Marine and Maritime Development organized by the University of Gadjah Mada*, Yogyakarta.pg 3. (article 2 Law number 5 year 1993 of economy exclusive zone Indonesia). According to the data from information geospasial institution, long coastline up to 99.093 km².

⁶ *The important information Geospasial to plan the maritime Indonesia* <http://www.bakosurtanal.go.id/berita-surta/show/pentingnya-informasi-geospasial-untuk-menata-laut-indonesia>, accessed on, 25 January 2015.

⁷ Silalahi, M. Daud. 2001. *Hukum Lingkungan: Dalam Sistem Penegakan Hukum Lingkungan Indonesia*. Edisi Revisi. Alumni. Bandung. Hlm. 78-79

⁸ Law number 31 year 2004 of fisheries jo Minister of Regulation number 01/MEN/2009 changed into minister regulation

Regional Fisheries Management State RI¹ and determination of Fish Resources Conservation Area². In the mining sector, the Government set Mining Area³; forestry Sector⁴ establish conservation areas which are within the authority (for example Marine National Park); Sea defense sector, the defense area covers the whole territory of Indonesia; The cruise sector, the establishment of good grooves traditional cruise shipping, regional, national, and international⁵, and port⁶ with the establishment of the Regional Working Environment and the Regional Environmental Interest ; Determination tourism sector with Sea Travel Destinations by the National Tourism Master Plan and the Regional Tourism Master Plan, as well as various other sectoral interests.

Some of regulation of Law is not synchronizes one to each other, they have characteristic regarding to its sector and have exploited depend to its and ignored others. There is no umbrella act in natural resources yet cause un harmonizes and synchronizes. Therefore the spatial planning as instrument in order to arrange the utilize of resource, it expected to reduce the conflict interest between them. This is along together with the Opinion of Director of the spatial planning of marine in the Ministry of Maritime and Fisheries Affairs, Subandono⁷, mentioned that there is no map of national space, the authorize of the region is have no umbrella act so caused the conflict interest between them.

The local government have the authority to manage the resource in the marine area since the Law Number 22 year 1999 of Local Government (article 10), changed into Law number 32 year 2004 (article 18). The authority of local government in conduct the natural resources regarding to the law, cover the authority of local province for the furthers as 12 of the sea measured from the coastline to the free sea and or to the island. While the authority of the local government is 1/3 from the whole width of the authority from the Government of Province. But since the existing law number 23 year 2014 (article 27 and 28) now its becoming the authority of the Province.

In describing the authority, it have been issued some of the regulation, like law number 26 year 2007 of Spatial Planning, law number 27 year 2007 the manage of coastlines and small islands that replace into law number 1 year 2014, and Law number 32 year 2014, together with the implementation. According to those regulation, have found that some have against to each other so need to harmonize and synchronize in order to give certainty law also justified to the whole sector. According to Yuswanda A. Temenggung, the policy of the maritime in Indonesia have not collaborated yet with the regulation of the spatial planning, while one of the requirement to become a maritime state is if able to collaborate those unsure in one policy.⁸

For those all reason above, in this research, focusing to answer how is regulate the substance of the law to some of the laws that mentioned about the regulation and norms of spatial planning that have conflict norms which end with interest conflict. And How to synchronize all those regulation in conducting the utilize of spatial planning of coastline and marine area.

RESEARCH METHODE

To analysis and discuss those problem above, will use the doctrinal research, by using statute approach, which is analysis the legal regulation related to the spatial planning of coastline and marine area also the policy that issued by the government.

ANALYSIS AND DISCUSSION

A. Synchronize of Legal Substance

Legal synchronize can be conduct in two ways⁹, like: a. Synchronize vertical, conduct by seeing the

number 18 /2014 of the arrangement of fisheries of Republik Indonesia.

¹The Minister Regulation of Maritim and Fisheries number PER.02/MEN/2011 of the fishing trails and the tool of fishing in maritime and fisheries area; Last changed with Minister regulation of KP No. 18/PERMEN-KP/2013.

²Government regulation number 60 year 2007 of fish resources conservation , under this regulation also arranged water conservation area.

³Government regulation number. 22 year 2010 of mining area.

⁴Law Number 41 year 1999 of forestry changed into Law number 54 year 2009.

⁵Law number 17 year 2008 of shipping jo Minister Regulation of transportation number 68 year 2011 about the shipping channel in the sea. See also Government regulation number 37 year 2002 of the right and obligation of the ship and foreigner plane in order to conducting the right passage of island to the archipelagic of sea land that have stipulated.

⁶PP No. 61 Year 2009 concerning Port modified with PP No.64 year 2015.

⁷Subandono Diposaptono. 2014. *Region Black Inhibition Formulation National Spatial*. (<http://www.varia.id/2014/12/03/kawasan-hitam-hambat-penyusunan-peta-tata-ruang-laut-nasional/#ixzz3aOzqOift>). accessed on, 14 April 2015.

⁸Yuswanda A. Temenggung. Inspector General of the Ministry of Agrarian and Spatial Planning / National Land Agency, *Government's Policy Orientation Related Spatial Keep in Touch Elements Marine*. <http://www.unpad.ac.id/2015/06/orientasi-kebijakan-pemerintah-terkait-tata-ruang-perlu-sentuh-unsur-kelautan/>, accessed on, 17 April 2016.

⁹ *ibid*.

existing law in one field is not against one to each other. Apart from that, must be look carefully into the hierarchy of law, also must look into the year of chronology and the number of the law, b. Synchronize Horizontal by seeing with any regulation in the same level and arrange the same field or connected with. In general, procedure of synchronize started with the inventarisasi, like an activity to know and get the data and information about the law connected then analysis to the legal substance of the law.

Under the management of space of the coastal line and marine, at least, there are 4 (four) Laws regarding to the spatial planning with space of marine, like :

1. Legal Substances of the Management Marine Space According to the Local Government

The Constitution 1945 of the Republic Indonesia, article 33 point (3) stated that earth and water and natural resources inside hold by the State and use for the welfare of the state. From those regulate, the state is not only take under control and use but also must able to manage for the whole people in Indonesia. Local government has given authority to conduct and use also manage the natural resources in its region, this mentioned in article 18A point (2) of the constitution.¹

Under the new era regime, the problem of maritime and fisheries problem is not become sector to get the serious attention from the government, the development orientated is still to the land. Even from the institution, the fisheries sector is only become part of the ministry agriculture, while from the maritime sector is not regulated yet.²

Regarding to the authority of local government in order to conduct the marine resources, as mentioned under Law Number 22 year 1999 about the local government. The local government have given the authority to manage the maritime area in its region. Article 10 mentioned that: (1) Local government has authority to arrange the provided national resources and responsibility to the environment according to the law. One of the authority of the local government is to manage the maritime space (article 2-c). (2) Under the regulation, the local government have authority to manage the space of the marine as furthers as 1/3 from the sea boundaries. Article 10 point (1) means there is vertically authorization divide between the Government and local government.

Further more Law number 22 year 1999 replaced into Law Number 32 year 2004 about the local government. The authority in maritime sector arrange under article 18. Under this authority there is no significant change as mentioned under law number.22 year 1999 .

The existed of law number 32 year 2004 have influenced to the legal substance that have legislated , like law number No. 27 year 2007, on article 7, 9 and 11, that mentioned about obligation of local government to provide the plan document of coastline and small islands.

According to the evaluation about the implementation the law number. 32 year 2004 which connected to the conduct of coastline and marine, it have found there is 2 factors so the law must be change., first is the ecology factor, with effectively and efficient that along one decade of the conducted of local autonomy, it was hard to divide between the local government and the region.; Second, In conducting the sea with based to the 4 miles for the regency and , 4 miles to 12 miles for province, in reality often caused the problem.³

2. The Legal Substance Of Marine Spatial Planning Arrangement Under The Law Number 26 year 2007

From the history of spatial planning , according to the law number 24 year 1992 about the special planning, then replaced into Law number 26 year 2007 about the spatial planning. Those change based on consideration like: (a) National situation or international situation that demanded the law enforcer , continuously, democracy and justice in order to conduct the good spatial planning; (b) The conduct of local autonomy policy that have given bigger authority to the local government in order conducting spatial planning . and (c) The awareness and understanding of people to the spatial planning need more trained and controlled in order get along with the development.⁴

Space is a place that covered land space, marine space and air space included space under the earth as one of the area, where human and other life things live, have activity and to keep their life⁵.

¹ Yurisal D. Aesong. tt. *Regional Authority in the Management of Coastal Areas and Small Islands* https://www.academia.edu/4238282/Kewenangan_Pemerintah_Daerah_Dalam_Pengelolaan_Wilayah_Pesisir_dan_Pulau-Pulau_Kecil. diakses 14 Desember 2005.

² Sudirman Saad. 2003. *Fisheries Law Politics in Indonesia*. Dian Pratama Printing. Jakarta.

³ *Ministry of Internal Affairs*. 2011. *Academic draft Law on Local Government*. hal 81-82

⁴ Point 8 General description of Law Number 26 year 2007 of Spatial Planning.
⁵ 22. Article 1 point (1) Law number 26 year 2007.

While the spatial planning is a process system of the spatial planning, use of space and control of the use of space.

Spatial Planning for the national area have covered the jurisdiction area and the State Sovereignty that covered the space of the land, sea and air as ones.

3. Legal substance of Marine Spatial Planning Under the Law Number 27 year 2007 replaced into Law number 1 year 2014, and Law Number 32 year 2014

Spatial planning of marine according to the law number 27 year 2007, used *nomenklatur* Zone of Coastline and small island area. It is part of the area management of coastline and small island¹. It is also one document that must be provide by the local government. Zone is one of technique artificial of the use of space trough the determination of functional limitation along with the resource potential and the ecologic supported in one coastline ecosystem². While zone of plan is the plan to determined the way to use the resource in each sector together with the structure determination that contain the activity that allow nor not allow to do also the activity that only can be conduct after get permission.³.

The Ministry of Maritime and Fisheries issued the Ministry regulation Number PER. 16/ MEN/2008 of the spatial plan of coastline and small island that replaced into the regulation of Ministry maritime and fisheries number 34/PERMEN-KP/2014 about the spatial planning of use the coastline and small island. The purpose of providing the zone plan is to divide the area under the zones for the activity conduct and compatible also separate the incompatible activity.

Article 9 UUPWP3K arranged that zone plan of coastline and small islands is to utilize the source contained under it .

Space allocated under the general use zone, conservation zone, certain national strategic zone and sea line as mentioned on article 10 and 11 law number 27 year 2007, Like:

- (1) Multiple/general use zone, is the zone that activity production by man that related to the used of coastline and sea source. Is the area that human activity is connected to the used of coastline and marine resources. For that reason the used of it un limitate to one activity but as mentioned in tourism zone, house, port, farm, forest, mining, fisheries and or use the sea water as energy, also another use that along with the environment characteristic⁴. Type and intensity of activity of man is controlled by permit mechanism.
- (2) conservation zone, is locate that have the unique ecology attribute, have high biodiversity and used to have the endemic species. According to the Minister Regulation KP No. 17/Men/2008 of the conservation zone of the conservation zone in coastline and small island jo Minister Regulation -KP No. 34/ Minister Regulation -KP/2014 of spatial planning of the coastline and small island , which is divide into conservation zone and conservation maritime, conservation water and beach of sempadan. Especially about the water conservation, there is a regulation under government regulation number 60 year 2007 of the conservation of the fish source.
- (3) Certain National Strategic Area. This area is used for the management of the maritime boundaries of state sovereignty, national defense and security, the management of world heritage sites, public welfare, and / or environmental preservation. This region is translated into zones and sub-zones or use in accordance with the allocation of space in the area of general use, conservation areas and sea lanes.
- (4) Regional sea lanes. This area is particularly intended as shipping lanes, installation of pipelines / submarine cable, and the migration of marine life.

In the planning, utilization, and control the utilization of marine and coastal space (including small islands), various implementation regulations as derived from Act No. 27 Year 2007 jo Law No. 1 2014, has been issued by the government in the form of Presidential Decree (Decree) or the Regulation of the Minister of Maritime and Fisheries (Minister Regulation), including: (1)Minister Regulation KP No. Per 16 / Men / 2008 on Planning Management of Coastal Areas and Small Islands, amended by Minister Regulation KP No. 34 / Minister regulation KP / 2014; (2) Minister regulation KP No. Per. 17 / Men / 2008 on Conservation Areas in Coastal Areas and Small Islands; (3) Presidential Decree No. 122 of 2012 on Reclamation of Coastal Areas and Small Islands to the implementing regulation of Minister regulation KP No. 17 / Men / 2013 on Licensing of Reclamation in Coastal Areas and Small Islands, amended by Minister regulation KP 28 / Men / 2014.

Marine spatial management, which is only regulates spatial planning in marine areas as far as 12 miles of

¹ Article 7 Law Number 27 year 2007

² Article 11 point 12 UUPW3K

³ Article 1 point 13 UUPWP3K

⁴ Minister Regulation -KP No. 34/Permen-KP/2014 of the Arrangement of Coastline and small island area.

shoreline, the sea seemed to leave room which is not in the scope of management. For example a room in inland waters and archipelagic waters covering an area exceeding 12 miles of shoreline. The space is covered with the passage of Law number 32 year 2014 concerning the Marine, that the empty spaces in the top 12 nautical miles from the coast on inland waters and archipelagic waters up to the limit of the Exclusive Economic Zone of Indonesia, including the scope of the provisions of the Act. Even in the spatial planning of the sea, which include spatial planning national sea (yield Spatial Plan National Marine), Zone of plan of the coastal areas and small islands (zone Plan of Coastal Areas and Small Islands, and zone plan marine areas (e.g. bays, straits and sea), and inter-regional zone plan, produce a national strategic zone plan, zone plans of certain national strategic area, like a zone plan of the bays, a zone plan of the straits and zone plan of the sea.¹ Meanwhile Article 43, implicitly provides that RZWP3K arranged in UUPWP3K is part of a marine spatial planning, so be instrumental in managing the marine space (coastal and small islands)

B. Synchronization Of Spatial Planning in coastal and marine areas

As described previously, the spatial arrangement of space in coastal areas and marine, there are discrepancies in the substance of the law / legal norms, the law with other legislation including implementation of the regulations. It can be described in the following points :

1. The Arrangement of legal Substance of marine spatial planning as the implementing regulations of Law Number 32 year 2004, for example Minister of National Affairs regulation number 1 year 2008 That regulates the reclamation (Article 24 to article 28), which provides that the responsibility of reclamation is the Regent / Mayor, except Jakarta which is the under governor responsible. Additionally, with the enactment of Law Number 23 year 2014, the authority of Regents / Mayors as responsible for the reclamation is revoked. Furthermore, by the of the President decree number 122 year 2012 as the conducting regulation of article 34 law number 27 year 2007, and under article 33 the enclosing article, mentioned that all the regulation of reclamation activities in coastline and small islands , as along as not against with the presidential decree is still exist until the new regulation have issue.
2. It has shown that the regulation regarding the conduct of reclamation in the coastline and small island that have spread out into some sector, like in the ministry of home affairs and the ministry of Public Work (as long as connected with spatial planning that now become the authority from the ministry of Agrarian and spatial planning) must be subjected to the President Decree number 122 year 2012, So the government when make any policy is not against with the law. As remained to the *lex superior derogat legi inferiori* principle , means that the higher law waives the lower law. Also against article 7 and article 8 law number 12 year 2011 of the making laws about the type and hierarchy of legislation This shows that the legislation related to the implementation of the reclamation in coastal areas and small islands scattered in some sectors, for example the Ministry of Interior and the Ministry of Public Works (all related to spatial now under the authority of the Ministry of Agrarian and Spatial Planning) must subject to Presidential Decree No. 122 in 2012, so the government in making policies do not violate laws and regulations. In this case apply the principle of *lex superior derogat legi inferiori*, which means that higher regulation waives the rules lower. In addition contrary to Article 7 and 8 of Law No. 12 Year 2011 on the Establishment of Legislation, on the types and hierarchy of legislation.
3. Observing the provisions of Article 6 (3 and 4) and Article 15 of Law Number 26 year 2007, that the spatial structuring of national and provincial, district / city remained governing sea space, and a special national spatial extends to the plan to use natural resources in the exclusive economic zones of Indonesia, can result in overlapping of legal norms spatial arrangement and may result in conflicts of authority. Article 6, paragraph (5) of Law No. 26 year 2007, stipulates that the management of marine space governed by a separate law, the law in question is Law No. 27 year 2007 amended by Law No. 1 year 2007 and Law No. 32 year 2014. Thus, the authority stipulated in separate legislation that, consistently no longer regulated in the implementing regulations of Law No. 26 year 2007, both in the form of regulation or regulation.
4. Institutionally with reference to the teachings of the authority, Law No. 26 of 2007 under the authority of the Ministry of Agricultural and Spatial Planning, while Law No. 27 of 2007 amended by Law No. 1 of 2007 and Law No. 32 In 2014, under the authority of the Ministry of Maritime Affairs and Fisheries. In this case apply the principle of *lex specialist* , that the law of particular importance aside the law of a general nature. Therefore, to avoid any conflict of norms or conflicts of authority, it is necessary to maximize the duties and functions of the National Spatial Planning Coordinating Board (BKPRN) as well as the Regional Spatial Planning Coordinating Board (BKPRD).

¹ Article 43 Number. 32 year 2014.

5. In an effort to coordinate management of coastal areas and small islands national level through the process of harmonization and synchronization efforts, and synergy between the implementation of management of coastal areas and small islands at the national level in an integrated and sustainable, the Government released a policy, by issuing Presidential Decree number 73 year 2015 on the Implementation Coordination of Coastal Areas and Small Islands, as the implementation of Article 53 paragraph (3), Article 3, paragraph (2). The Presidential Decree stipulates that the management of coastal areas and small islands at the national level include: a. the activities of a cross-province; and b. activities in Particular National Strategic Area. This setting does not sync vertically with Law Number 1 year 2014 as an amendment to Law number 27 year 2007, because the activities are coordinated at the regulation does not regulate the activities of national strategic importance as stipulated in Article 50 of Law number 1 year 2014. So planning, utilization, utilization control, and monitoring of activities in the coastal areas in the sea which is in a national strategic area can not be coordinated by the Ministry of Maritime Affairs and Fisheries, including reclamation activities that take place in the North Coast Jakarta and Makassar

Enclosed

According to above, it can be concluded that the substance of legal regulation of spatial coastal and marine areas are intended to space coastal and marine areas can be utilized optimally, orderly and can provide legal certainty to all stakeholders, there is a conflict of norms between Law horizontally, or a conflict Law vertically between Law with its implementing regulations, so that it is necessary synchronization attempts. The settings in the Act must be consistent with the settings in the implementation regulations. Law number 26 year 2007 the spatial planning regulations that are *lex generalis*, of Law number 27 year 2007 as amended by Act No. 1 year 2014 and Law No. 32 year 2014, especially with regard to coastal and marine spatial planning as an arrangement that is *lex*. However, a conflict between the norms of the third Act, cause legal uncertainty, which would ultimately harm the stakeholders utilizing space coastal and marine areas.

So the law maker that connected to the spatial planning of coastline and marine must be refer to legal principle and not ignored the hierarchy of law as mentioned under Law number 12 year 2011. It is need to conduct the judicial review or legislative review for the unsynchronized legislation.

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