

Social Justice-Based Reconstruction On The Ideal Use Of Coastal And Marine Resources

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Abstract

Conflict on the use of coastal and marine resources are mainly caused by the material content (norms) of laws and regulations that may bring some disadvantages for coastal communities in using the coastal and marine resources to meet their daily needs. The problem observed in this study is that there are differences in community categorization on the use of coastal and marine resources as well as granting a business license for coastal and marine resources to foreign investors. The authors used normative legal research with a statutory and conceptual approach. This article is a descriptive study using the principles of social justice as set in Pancasila as well as primary and secondary legal materials. The analysis was then performed using a prescriptive method. Social justice is defined as an equal access to wealth, opportunities, and privileges in a coastal community. It requires a balance between individual interests and public interests or common interests. In this case, the state must maintain broader interests, meaning that it becomes the guardian of public order, security of the social structure of society, conservation of natural resources, and interests of foreign investors which are all included in one system that supports the life of the nation and state.

Keywords: Use, Coastal Resources, Social Justice.

I. Introduction

The relationship between land and marine ecosystems makes coastal and marine resources increasingly complex, so it is not surprising that Peter Burbridge, a coastal expert from the University of Newcastle upon Tyne, England, said "The development

challenges Facing humanity are the most complex in the coastal region. Why? Partly because the richness and diversity of the coastal resources' opportunities to support economic and social development are much greater than in the terrestrial environment or the purely marine environment" (Akhmad Fauzi, 2016). This may not happen without a reason, because the potential for coastal and marine resources is so rich that it can attract people (individuals) or business entities (corporations) who want to take advantages of the coastal and marine resources to obtain benefits regardless of the sustainability aspects of the coastal and marine resources.

The complexity of spatial use activities in coastal and marine areas often triggers conflicts in these areas. Based on data released by the Consortium for Agrarian Reform (KPA) in 2020, there were 3 (three) conflict cases out of 241 total cases that occurred in coastal areas with the total area of coastal land conflict during 2020 was 264,272 hectares (i.e., 243 hectares of the total area), which became a conflict in coastal and marine areas (Kompas, 2020). The paradigm that begins to develop nowadays is the nature of coastal and marine resources, such as common property or quasi open access. It raises a conflict between local coastal communities and coastal communities in other areas as well as coastal communities and business entities or corporations that make use of coastal and marine resources (Chikmawati, 2013).

The conflict on the use of coastal and marine resources are mainly caused by the material content (norms) of laws and regulations may bring some disadvantages for coastal communities in using the coastal and marine resources to meet their daily need, such as the regulations in Article 22A and Article 26A of the Act of the Republic of Indonesia No.1/2014 concerning Amendments to the Act of the Republic of Indonesia No. 27/2007 concerning Management of Coastal Areas and Small Islands THE as last amended by the Act of the Republic of Indonesia No. 11/2020 concerning Job Creation (Omnibus Law). In Article 22A, it is stated that legal subjects that must be granted a business license include: (a) people (individuals); (b) corporations established under the Act of the Republic of Indonesia; (c) cooperatives formed by the community; or (d) local communities. Interestingly, there are only local communities mentioned in the Article 22A, but in Article 20 paragraph (1) and paragraph (2), the position of traditional communities is equalized with other legal subjects in obtaining a business license for the use of coastal resources and waters of small islands to meet their daily

needs. While in Article 26A, it is stated that in terms of foreign investment, the use of small islands and the surrounding waters must meet the business license granted by the government and it must also be in accordance with the provisions of the legislation in the investment sector.

The authors observed that the provisions in Article 22A of the Act No. 1/2014 concerning Amendments to the Act No. 27/2007 concerning Management of Coastal Areas and Small Islands as the last amendment by the Act No. 11/2020 concerning Job Creation (Omnibus Law) can bring the disadvantages for coastal communities (local communities and traditional communities). Although it is stated in Article 20, the central government is obliged to facilitate a business license related to the use of coastal and marine resources to both the local communities and traditional communities in meeting their daily needs. This does not rule out the possibility that in the facilitation, there are problems that may be faced by the communities (Moh. Ismail, 2021).

Reference availability, the lack of availability of actual data and up-to-date supporting data due to minimal studies and research related to the targets of indigenous, local communities, and traditional communities on the coast and small islands. Weather, the weather conditions on the coast and small islands that are very volatile affect the activities for indigenous, local communities, and traditional community. Accessibility, the difficulty of access to the location of coastal communities (indigenous, local communities, and traditional communities) is caused by coastal communities who generally live in remote and isolated areas, thus requiring adequate means of transportation in land, air, and sea. Rights to Management, the traditional rights of indigenous peoples have not been accommodated in their territories since there is no positive legal recognition, so conflicts often occur between coastal communities. Also, not all managed areas are still accommodated in the Zoning Plan map. Local government participation, the local governments are less active in facilitating coastal communities regarding the determination and management of areas in the zoning plan. For this reason, not all coastal community management areas are accommodated in the Zonation Plan for Coastal Area and Small Islands (commonly called RZWP3K). This is due to the local government's lack of understanding on the definition or characteristics of coastal communities as well as the rights and obligations of coastal communities and the obligations of local governments in their recognition.

Based on the description, it is significant to conduct further discussions on issues related to the use of coastal and marine resources by coastal communities and the granting of a business license for coastal and marine resources to foreign investors. The analysis was performed using the theory of social justice as a framework to obtain a reconstruction on the ideal use of coastal and marine resources to implement social justice for all coastal communities to meet their daily needs.

II. Research Method

This study belongs to normative legal research with a statutory approach and a conceptual approach consisting of views developed in legal science. Also, it is a descriptive study using social justice as set in Pancasila as the main reference in the thinking framework to find out the concept of the ideal use of coastal and marine resources by coastal communities. The authors used primary legal materials and secondary legal materials through literature study. Besides, the analysis was performed using a prescriptive method.

III. Results and Discussion

Pancasila-based Social Justice

The issues on today's justice are often interpreted differently according to their approach, such as economic, social, and legal approaches (Heri Chand, 1994). Meanwhile, the notion of justice is part of the moral and political concepts from time to time in the history of human mind. According to Amartya Sen, to pursue the ideal concept of justice, the thing that needs to be considered is to compare other social policies as a solution to eliminating injustice, which does not only focus on theoretical thinking, but also focuses on real justice practices (Amartya Sen, 2009).

The term "justice", according to Kamus Besar Bahasa Indonesia (KBBI), has 3 (three) meanings: (1) equal (neutral; impartial); (2) side with the right (hold on to the truth); and (3) appropriate (not arbitrary) (Indonesian Language Center, 2008). In English literature, the term "justice" refers to the root word *jus* which means law or rights. Thus, one understanding of justice is law (Nasution, 2014). Moreover, based on the Oxford English dictionary, justice is defined as a "just person as one who does what is morally right and just person as one who typically does what is morally right and is synonym". A just

person only does things based on right morals and is moved to give to everyone according to what becomes his/her right.

The understanding on justice in the Indonesian concept must be related to Pancasila, then linked to the goals of the Indonesian nation as a state that has the sense of justice. The concept of Pancasila-based justice is carried out through legal arrangements that protect the nation, i.e., protecting all people of Indonesia passively (negative) by preventing arbitrary actions and actively (positive) by creating humanist situations and conditions and allowing the social process to take place naturally. Therefore, it is fair for every citizen to obtain a broad and equal opportunity to develop the full potential of every citizen to the utmost. Pancasila-based justice is the basic principle used to obtain justice. It comes from the five precepts of Pancasila. The characteristics of Pancasila-based justice are the values of justice that meet the principles of justice (Febriansyah, 2017).

Social justice is commonly defined as equal access to wealth, opportunities, and privileges in a society. It means that social justice is a description of a fair and just relationship between individuals and society, especially assessed according to the distribution of welfare, opportunities for everyone to do their personal activities, and the privileges that exist in a society (Palguna, 2019). The words just, justice, and social justice (Indonesian: adil, keadilan, dan keadilan sosial) can be found in 3 (three) paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia. Of the three paragraphs, the word just is written once and the word social justice is written twice in the fourth paragraph, so the words are mentioned thrice as a whole.

Moreover, the word just is written once in the first paragraph and the word fair is also written once in the second paragraph. Thus, the words fair, justice, and social justice are overall written 5 (five) times in the Preamble of the 1945 Constitution of the Republic of Indonesia. The next question is "What is the meaning of the words in that mention?" There are words fair, justice, and social justice in the Preamble of the 1945 Constitution of the Republic of Indonesia, which is a very important legal document of the state. It indicates the importance of justice and is a fundamental problem in the state and law. Specifically, it has an implication in a more dynamic issue, that is a justice which, in its various forms and appearances, is the basis of the framework in living the life of people in a state and law.

Social justice is clearly seen in the first paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia and the articles contained in the 1945 Constitution of the Republic of Indonesia. The first paragraph asserts that "... therefore, all colonialism must be abolished in this world as it is not in conformity with humanity and justice" The word justice (Indonesian: *perikeadilan*), which is preceded by the word humanity, begins with the suffix *peri*, which means things about humanity and justice. The word is related to things that are essential for humans and their worth and dignity. People's knowledge and awareness of independence as the right of all nations means the freedom to determine their own destiny individually or collectively.

The second paragraph asserts that "... the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence of the state of Indonesia which shall be independent, united, sovereign, just and prosperous". In particular, the depiction of the Indonesian state that is being fought for is an independent, united, sovereign, just, and prosperous state. The founders of this state interpret the word just as a country that is always associated with prosperity, so to find its meaning, the word must be completed with the phrase just and prosperous. The two words are other terms for social justice, which is defined as a combination of political democracy and economic democracy.

In the fourth paragraph, there are 3 (three) formulations related to justice, such as (a) the formulation of social justice set in the function of state government; (b) a just formulation set in the state constitution; and (c) social justice set in the basis of the state or the goals of the state. In general, the meaning of justice set in the three formulations from a state and legal perspective shows the importance of justice and is a fundamental problem in the state. In particular, the meaning is more dynamic, i.e., justice in various forms and appearances is the basis of framework in living the life of people in a state and law (Sumadi, 2015). The thing that is most coveted or aspired by all people of Indonesia in living the life in a nation and state is to obtain social justice. Therefore, the principle of social justice must be understood as evidence that the Indonesia has seriously realized the values of belief in the Almighty God, just and civilized humanity, the unity of Indonesia, democracy guided by the inner wisdom in the unanimity arising out of deliberations among representatives, and social justice for all of the people of Indonesia. This first precept is likely to be a light for other precepts of Pancasila.

Referring to the public sharing material for the Four Pillars of the People's Consultative Assembly of the Republic of Indonesia published in 2017, the fifth precept of Pancasila has applicable meanings for the reality of living the life in a state as follows (Samekto, 2021; BPIP, 2020):

- a. Indonesia was established to earnestly promote the welfare of all people of Indonesian, both physically and mentally;
- b. Indonesia is a democratic country that recognizes and upholds the sovereignty of the people by prioritizing the principle of deliberation in the people's representative institutions;
- c. Indonesia is obliged to guarantee every citizen to obtain education, work, and a decent, dignified, and just life;
- d. Indonesians are always led by the values of divinity, humanity, and unity in the spirit of wisdom in deliberation to achieve justice in making decisions; and
- e. Every Indonesian does not use their property rights for extravagant things and a luxurious lifestyle.

The meaning of social justice in the Preamble of the 1945 Constitution of the Republic of Indonesia is "state control", that is the state must make control over the production branch it controls and fulfil 3 (three) things that are of the interest of the community, such as sufficient availability, equitable distribution, and affordable prices for the community. Having provided with control performed by the state, social justice includes the meaning of control by the state broadly which is sourced and derived from the conception of the sovereignty of the people of Indonesia over all sources of natural wealth.

Social Justice in the Use of Coastal and Marine Resources

Kelsen said "If justice is interpreted as social happiness, then social happiness will be actualized if individual's needs are met" (Asshiddiqie and Safa'at, 2006). Each individual cannot create his/her own happiness freely, each individual must work together and influence other individuals to create shared social happiness. This social justice leads an individual to respect each other and respect other individuals.

The theory of social justice must be a “guiding star” in the making of laws and regulations, especially in the use of coastal and marine resources. As social justice exists in the philosophischegrondslag in Indonesia (Manullang, 2020), the prevention of massive exploitation and exploration of coastal and marine resources carried out by capital owners should be prevented since it can make the lives of communities around the coast increasingly difficult or poor and the environment of coastal areas are also increasingly damaged and polluted. Thus, social justice must be interpreted as by the people, from people and for the people (Handayani, et al, 2019). Social justice requires equitable welfare for all coastal communities.

The category of coastal communities (i.e., customary law communities, local communities, and traditional communities) is the differentiator in the use of coastal and marine resources. The exception is given to customary law communities in having licensing processed to use coastal and marine resources. Meanwhile, local communities and traditional communities are given the obligation to obtain a business license to use coastal and marine resources.

There are very interesting things to reconstruct the content material (norms) of this law, i.e., Article 20 and Article 22A of the Act No. 1/2014 concerning Amendments to the Act No. 27/2007 concerning the Management of Coastal Areas and Small Islands as lastly amended by the Act No. 11/2020 concerning Job Creation (Omnibus Law). In Article 22A, legal subjects that must be granted a business license include: (a) people (individuals); (b) corporations established under Indonesian law; (c) cooperatives formed by the community; or (d) local communities. Interestingly, there are only local communities in the Article 22A, but in Article 20 paragraph (1) and paragraph (2), the position of traditional communities is equalized with other legal subjects in obtaining business license for the use of coastal waters and waters of small islands to meet their daily needs.

Then the question is “Can’t people who historically do not have customary law be given the right to manage coastal areas?”, because it is only the indigenous peoples who had been previously given privileges or exceptions in obtaining management rights. Therefore, it is necessary to formulate certain criteria for coastal resources managed by non-customary communities (Academic Text of Bill on Amendment to Act No. 27/2007 concerning Management of Coastal Areas and Small Islands) as follows coastal resources

that have become the foundation of the life of local communities for generations, coastal resources that have been managed by local communities for generations, coastal resources whose surrounding community has local knowledge for its management; and coastal resources whose extent is within the community's ability to manage them.

Wojciech Sadurski said, "Justice would be actualized if there was a balanced position." Balance takes place when the government respects every freedom of its people and fulfills every need that is considered important for people. When each of the needs has been met, then the participation carried out by the community will run well. Justice as a balance means that the level of benefit must be given equally, not as a burden (Wojciech Sadurski, 1985). Every coastal community must be given political, economic, and social freedom in doing their activities to use coastal and marine resources while respecting the local wisdom. Therefore, the freedom allows coastal communities to have open or broad opportunities to achieve what is considered important in meeting their daily needs. Every human being must have an instinct to always win in every competition in meeting their daily needs. Also, the freedom given can also form skills or expertise to maintain keep their lives going.

Having provided with the description above, the authors are of the opinion that the formulation of Article 20 paragraph (1) and paragraph (2) and Article 22A of the Act No.1/2014 concerning Amendments to the Act No. 27/2007 concerning Management of Coastal Areas and Small Islands as lastly amended by the Act No. 11/2020 concerning Job Creation (Omnibus Law) needs to be reconstructed, that the Article 20 paragraph (1) and paragraph (2) should be deleted. Also, Article 22A needs to have the formulation of norms as follows: business licensing as referred to in Article 16 is given to (a) people (individual Indonesian); (b) corporations established under the Indonesian law; and (c) cooperatives formed by the community.

The proposal for formulating the norm has several grounds, such as first, the elimination of Article 20 paragraph (1) and paragraph (2) is based on the facilitation of business licensing which is no longer needed, considering that facilitating coastal communities in remote and isolated areas with adequate means of transportation are needed, either by land, sea, or air. This facilitation should be replaced with institutional facilitation or empowerment of coastal communities, whether addressed by the central government or local governments. Second, according to the authors, the elimination of

the word “local community” in legal subject to obtain the business license is aimed at protecting the existence of traditional community rights and local community wisdom on the use of coastal and marine resources. Traditional communities and local communities who have traditionally had rights to the use of coastal waters and small islands will be granted management rights and may receive compensation for granting rights to business entities/corporations based on mutual agreements.

Moreover, Article 26A of the Act No.1/2014 concerning Amendments to the Act No. 27/2007 concerning Management of Coastal Areas and Small Islands as lastly amended by the ActNo. 11/2020 concerning Job Creation (Omnibus Law), it is stated that in the context of foreign investment, the use of small islands and its surrounding waters must meet the business license from the central government and must also be in accordance with the provisions of the laws and regulations in investment sector. By opening the gate for foreign investment in the use of small islands and surrounding coastal waters through the concept of business licensing issued directly by the central government, it will also open the chance for the loss of state control rights to the management of coastal resources and small islands (Darwis, 2018). The control of coastal waters and small islands by foreign investors with such a large area, for example, will eliminate the access of communities around coastal and marine areas to meet their daily needs and bring losses to communities around coastal and marine areas.

Such issue also raises concern for indigenous peoples in North Lombok Regency regarding the granting of Business License for the Use of Coastal Waters (IP-3) to business entities or corporations. It has implications for the transfer of IP-3 from indigenous peoples to business entities or corporations which results in opportunities for accumulation of control of coastal waters by certain business entities or corporations. It will bring an impact on the massive exploitation of coastal resources without paying attention to environmental sustainability in coastal and marine areas. For example, local traditional leaders said, “If IP-3 is controlled by a business entity or corporation engaged in tourism, it will allow the business entity or corporation to use the land provided by the government as tourism land which results in the access of fishing communities to the outer boundary line of the beach that will be closed for tourism purposes and most importantly, indigenous peoples are prohibited from crossing locations used as tourism sites” (PMB BRIN, 2021).

In addition to indigenous peoples in North Lombok Regency who have suffered losses from the control of the use of coastal and marine resources by business entities or corporations, the same thing also happened in Ety Barat, a village in Seram Regency, in which corporations engaged in pearl cultivation have easily obtained a business license from the government to use coastal resources in indigenous peoples' territories. Whereas the corporation prohibits indigenous peoples from approaching the pearl cultivation area. The area used for pearl cultivation was, in fact, initially an area of indigenous peoples that was used to meet daily needs (Tjiptabudy, 2018).

To anticipate such problem, the authors recommend that the use of coastal and marine resources by foreign investors should not bring any disadvantage to the community, especially the people around the coastal and marine areas and the people of Indonesia in general. The recommendation proposed by the authors using the theory of justice in this study does not mean that every individual gets the same wealth of coastal and marine resources, but the justice in question is social justice which requires a balance between individual interests and public interests. According to Shidarta, citing Roscoe Pound on the theory of interests, the state has an important role as a "guardian of social interest" (Shidarta, 2020). In this case, the state must safeguard broader interests that serves as the guardian of public order, security of the social structure of society, conservation of natural resources, and the interests of foreign investors. All of which are in one system that supports the life of the Indonesian nation and state. Also, Shidarta said that the state must be brave and firm in showing that behind the interests of foreign investors (in this case is the interests of individuals), there are social interests, meaning that the state must safeguard public interest.

Welfare state, as adopted by the Indonesian state, has an impact on every government legal action, whether aimed at the public or private, which must lead to the welfare of every citizen. The government's public legal action in the formation of legislation must use social justice as a guide for its formation. Social justice as a philosophical foundation in the formation of legislation must be used as a preventive instrument in providing legal protection or guarantees for traditional communities and local communities so that economic disparities can be eliminated, and the ideal concept of justice and prosperity can be actualized as well.

In other words, the social justice provided should be based on the needs of coastal communities in improving mutual welfare, and hence, the authors' recommendation is listed as follows plan in the planning process for the use of coastal waters space for foreign investment should get a fair plan by involving the participation of coastal communities, give a freedom to coastal communities in the use of coastal and marine resources while maintaining the sustainability of coastal ecosystems and small islands; and the distribution of plans for the use of coastal waters in a fair manner without disturbing the rights of coastal communities so that the social and economic inequalities do not occur. Besides, it can give benefits to the people of Indonesia through state income from investors in the use of coastal waters.

The affluence in coastal and marine resources is controlled by the state to be managed in such a way which aims to reach the welfare of the community as well as make benefits for the current generation without compromising the interests of future generations to take advantage of them. Therefore, the 1945 Constitution of the Republic of Indonesia and the laws and regulations should become a juridical instrument in actualizing a social justice. By referring to the concept of the theory of welfare state, the state must be proactive to improve welfare for actualizing the social justice. In terms of the use of coastal and marine resources, the state must be fair to all people, especially the community (customary law communities, local communities, and traditional communities) without any exception.

The recommendation in this study aims to develop a socially equitable use of coastal and marine resources for coastal communities as emphasized in the fifth precept of Pancasila (i.e., Social Justice is for all the people of Indonesia), which remains based on the principle of: 1) Belief in the Almighty God; 2) Just and civilized humanity; 3) The unity of Indonesia; 4) Democracy guided by the inner wisdom in the unanimity arising out of deliberations among representatives; and 5) Social justice for all of the people of Indonesia, as formulated from the first to the fourth precept. Therefore, the concept of social justice can be used as a basis or reference in any decision or policy making on the use of coastal and marine resources.

IV. Conclusion

An equal place between local communities and traditional communities with business entities (company) or corporations in the use of coastal and marine resources is a form of social justice, not a deal that gives benefits to foreign investors in exploiting coastal and marine resources. Therefore, the formulation of Article 20 paragraph (1) and paragraph (2) and Article 22A of Act No.1/2014 concerning Amendments to Act No. 27/2007 concerning Management of Coastal Areas and Small Islands as lastly amended by ActNo. 11/2020 concerning Job Creation (Omnibus Law) needs to be reconstructed (i.e., Article 20 paragraph (1) and paragraph (2) and Article 22A letterbshould beeliminated).In conclusion, giving foreign investors control over coastal waters and small islands with such a large area will eliminate the community's access of coastal communities to meet their daily needs and bring them losses.

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