

ELUCIDATION
OF
LAW OF THE REPUBLIC OF INDONESIA
NUMBER 1 OF 2014
ON
AMENDMENT TO LAW NUMBER 27 OF 2007 ON
MANAGEMENT OF COASTAL ZONE AND SMALL ISLANDS

I. GENERAL

Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia put an obligation on the State to protect all Indonesian people and to promote public welfare and to fulfill social justice for the whole Indonesian people. The State's responsibility in protecting the Indonesian people is carried out through the control of natural resources owned by the State, including the Management of the Coastal Zone and Small Islands.

All this time the Management of the Coastal Zone and Small Islands has not prescribe adequate State's jurisdiction and responsibility in the management of coastal and small islands' waters through the mechanism of issuance of Right to Undertake Business Undertakings in the Coastal Waters (HP-3). The HP-3 mechanism has reduced the right of the State to control the Management of the Coastal Zone and Small Islands, therefore, the Constitutional Court through its Judgment Number 3/PUU-VIII/2010 has declared that the provisions on HP-3 as contrary to the 1945 Constitution of the Republic of Indonesia and do not have a legal binding force.

The existence of Law Number 27 of 2007 on Management of Coastal Zone and Small Islands is very strategic in the attainment of the sustainability of coastal zone and small islands' resources, and in the

promotion of the welfare of the Community who resides in the area of coastal zone and small islands. However, in its implementation Law Number 27 of 2007 on Management of Coastal Zone and Small Islands has not produced an optimum result, It is, therefore, within the framework of optimizing the Management of Coastal Zone and Small Islands, it is the State who is responsible for the Management of Coastal Zone and Small Islands, in the form of giving the mandate to other parties (individuals or private) through the mechanism of licensing. The issuance of license to other parties will not reduce the State's jurisdiction to establish policy (*beleid*), to regulate (*regelendaad*), to manage (*beheersdaad*), and to control (*toezichthoudensdaad*). Therefore, the State still has complete power and control the whole Management of Coastal Zone and Small Islands.

The Management of the Coastal Zone and Small Islands is also carried out by still recognizing and respecting the associations of Indigenous (Adat) Law Community and their traditional rights in conformity with the principle of The Unitary State of the Republic of Indonesia (NKRI), and by recognizing and respecting the Local and Traditional Communities who reside in the area of coastal zone and small islands.

Based on the mentioned considerations above, it is necessary to amend Law Number 27 of 2007 on Management of Coastal Zone and Small Islands based on the legal development and legal needs of the Community. In general this Law comprises provisions giving rights to the public to submit proposals for devising the Strategic Plan, Zoning Plan, Management Plan, and Action Plan for the Management of Coastal Zone and Small Islands; for regulating the issuance of Location License and Management License to Any Person and the Indigenous (Adat) Law Community, Local Community, and the Traditional Community who exploit coastal zone and small islands' resources; for regulating the exploitation of small islands and their surrounding waters, and for providing authority to the Minister, governor, and the regent/mayor in the Management of Coastal Zone and Small Islands.

II. ARTICLE BY ARTICLE

Article I

Point 1

Article 1

Sufficiently clear.

Point 2

Article 14

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Inputs, comments, suggestions, and revision from various stakeholders, Government agencies, provincial governments, and city and regency governments within their jurisdictions, are submitted effectively through available means of communication.

Section (4)

Sufficiently clear.

Section (5)

The provincial government is obligated to carry out revisions and published the final document on plan for the Management of the Coastal Zone and Small Islands based on the inputs, comments and suggestion for revisions received from the reviewers.

Section (6)

Sufficiently clear.

Section (7)

In the event that the final document on plan for the Management of the Coastal Zone and Small Islands does not receive any comments and/or suggestions up to the time limit prescribed in this Law, the document is deemed final.

Point 3

Sufficiently clear.

Point 4

Article 16

Sufficiently clear.

Point 5

Article 17

Section (1)

Sufficiently clear.

Section (2)

The term “traditional fishermen” means fishermen using unmotored vessels, as a hereditary activity, having a permanent area for fishing, and as daily subsistence.

Section (3)

Sufficiently clear.

Section (4)

Port area includes area for port facilities and area for working facility;

Public beach is part of the area for public use which has been used by the Public, among others, for religious, social, cultural, recreation, tourism, sport and economic purposes.

Point 6

Article 18

Sufficiently clear.

Point 7

Article 19

Sufficiently clear.

Point 8

Article 20

Section (1)

The term “facilitating”, among others, may be in the forms of conveniences on the conditions and expedient service.

Section (2)

Sufficiently clear.

Point 9

Article 21

Sufficiently clear.

Point 10

Article 22

Sufficiently clear.

Point 11

Article 22A

Sufficiently clear.

Article 22 B

Sufficiently clear.

Article 21

Sufficiently clear.

Point 12

Article 23

Sufficiently clear.

Point 13

Article 26A

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Point a

Sufficiently clear.

Point b

The term “public access” means the access in the form of conveniences, among others:

- a. Public access to use the shoreline in anticipation of a Coastal Disaster;
- b. Public access to the beach for the enjoyment of natural beauty/scenery;
- c. access for fishermen and fish farmers in fisheries activity, including access to obtain drinking or clean water;
- d. traditional navigational access; and
- e. Public access for religious and Indigenous (Adat) activities on the beach.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Indonesian Participants, among others, are the Government, Provincial Government, Regency/Municipal Government, government enterprise, local government enterprise, micro, small, medium enterprise, and cooperatives and national private enterprise.

Point f

Sufficiently clear.

Point g

Sufficiently clear.

Point h

The term “ecological aspects” means all aspects which have an effect to the preservation of the environment/ecosystem of the small islands.

The term “social aspects” means all aspects which have effect on the life (socio-cultural system) of the

Community of the small islands.

The term “economic aspects” means all aspects having effect to the business/investment worthiness and the level of welfare of the Community within the small islands.

Section (5)

Sufficiently clear.

Point 14

Article 30

Section (1)

Integrated research is carried out to assure the objectivity and quality of the research outcome.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Point 15

Article 50

Section (1)

The term “National Conservation Area” means the Conservation Area in the Coastal Zone and Small Islands which is managed by the Government.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Point 16

Article 51

Sufficiently clear.

Point 17

Article 60

Section (1)

Point a

Sufficiently clear.

Point b

The term “traditional fishing area” means fishing area for fishing carried out by traditional fishermen.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

Sufficiently clear.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Point j

Sufficiently clear.

Point k

Sufficiently clear.

Point l

Sufficiently clear.

Section (2)

Sufficiently clear.

Point 18

Article 63

Sufficiently clear.

Point 19

Article 75

Sufficiently clear.

Point 20

Article 75

Sufficiently clear.

Point 21

Article 75

Sufficiently clear.

Point 22

Article 78A

The term “conservation area in coastal zone and small islands” includes Nature Sanctuary Area, and Nature Preservation Area which are located in coastal zone and small islands, in the forms of National Park/ Marine National Park, Marine Sanctuary, Marine Nature Preservation, Marine Tourism Park, and Marine Reserve, among others:

- a. Kepulauan Seribu Marine National Park;
- b. Kepulauan Karimunjawa National Park ;
- c. Bunaken Marine National Park ;
- d. Kepulauan Wakatobi Marine National Park ;
- e. Taka Bonerate Marine National Park of;
- f. Teluk Cendrawasih National Park;
- g. Kepulauan Togean National Park

Article 78B

Sufficiently clear.

Article II

Sufficiently clear.