LAW ENFORCEMENT IN DEVELOPMENT ACTIVITIES AROUND COASTAL AREAS OF KUPANG^{\Omega}

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Abstract

Coastal zone is a crucial zone because it has a wealth of natural resources of high economic value while at the same time is prone to adverse affects due to interference of development activities. This research is an empirical legal research which examines that there have been various local regulations with which management of the zone must comply but within those regulations themselves there exist contradictory articles. Furthermore, this research discovered that this was caused by the drafting of local regulations do not consider to environmental aspects in coastal zone, inaccuracy in the process of local regulations drafting and the strong ego sector so that the Government issued building license by law enforcement officials that deviate much from the existing regulations. The incompliance of which was done for the sake of economic gain without the least consideration about the environmental aspects and proper land use whereas the development in coastal zone should have a strong regulatory foundation and not based on interests of public authority and sheer power.

Keywords: development activities, land use, coastal zone

Abstrak

Wilayah pesisir merupakan wilayah yang krusial karena selain memiliki kekayaan sumber daya alam bernilai ekonomis tinggi tetapi juga rentan terhadap gangguan misalnya kegiatan pembangunan. Penelitian ini merupakan penelitian hukum empiris yang mengkaji tentang pengelolaan wilayah pesisir di Kota Kupang yang memiliki beberapa rujukan peraturan daerah namun terdapat kontradiksi dalam rumusan pasal-pasalnya. Hasil Penelitian menunjukan bahwa hal ini disebabkan oleh karena pembuatan peraturan daerah tidak mempertimbangkan aspek lingkungan hidup di wilayah pesisir, ketidakcermatan dalam proses penyusunan rancangan peraturan daerah, dan kentalnya ego sektoral sehingga dikeluarkanlah izin membangun oleh aparat penegak hukum yang melenceng dari ketentuan hukum yang ada. Kesemua hal ini dilakukan demi keuntungan ekonomis tanpa mempertimbangkan aspek lingkungan hidup dan tata ruang, padahal pembangunan di wilayah pesisir seharusnya berpondasi kuat pada hukum dan bukan atas dasar kepentingan dan kekuasaan belaka.

Kata kunci: kegiatan pembangunan, tata ruang, wilayah pesisir

Introduction

Indonesia is the largest archipelago country in the world which has a length of beach line about 81,00 km and the islands reached 17,500. Because of that, the coastal areas become strategic and crucial which have a wealth

of natural resources of high economic value, but it also prone to disorders such as for development activities. In fact, the management of natural resources is not just a means of preservation and protection, but also prudent utilization in accordance with the principles and legal norms.²

^Ω This article is part of the thesis of the same title in the Postgraduate Program Universitas Nusa Cendana

Endang Sutrisno, "Implementasi Pengelolaan Sumber Daya Pesisir Berbasis Pengelolaan Wilayah Pesisir Secara Terpadu Untuk Kesejahteraan Nelayan (Studi di Perdesaan Nelayan Cangkol Kelurahan Lemahwungkuk Kecamatan Lemahwungkuk Kota Cirebon", *Jurnal Dinamika Hu*kum, Vol. 14 No. 1, January 2014, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page.1.

² Iskandar, "Aktualisasi Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Kebijakan Perubahan Peruntukan, Fungsi, Dan Penggunaan Kawasan Hutan", *Jurnal Dinamika Hukum*, Vol. 11 No. 3, September 2011, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page. 533.

The regulation of coastal areas contained in the Law Number 27 Year 2007 jo. Law Number 1 Yaer 2014 concerning Management of Coastal Areas and Small Islands (hereinafter in this article will be mentioned as Law Coastal Management) and based on those norms, Kupang city have formed Local Regulation Number 21 Year 2007 concerning Management of Coastal Areas (hereinafter in this article will be mentioned as Local Regulation of Coastal Management). This is in line with the fact of a Local Regulation that being an integral part of the unity of the national legal system.³ In the other hand, there are also references from other regulation i.e. Kupang City Local Regulation Number 11 Year 2011 concerning Spatial Planning 2011-2031 (hereinafter mentioned as RTRW Local Regulation) and Local Regulation Number 12 Year 2011 jo. Local Regulation Number 9 Year 2012 concerning Detail Spatial Plan of Kupang for year 2011-2031 (hereinafter mentioned as RDTR Local Regulation). But from the three Local Regulations above there is a contradiction between the formulation of the three Local Regulations related to the minimum limit tide mark or among the articles of the RTRW Local Regulations so that was launched a permit to carry out development in coastal areas by law enforcement officials to entrepreneurs or people who violate the provisions of three Local Regulations.

Problems

This paper discusses about: *first*, what is the factors that caused a contradiction in substance of Coastal Management Local Regulation and RTRW Local Regulation; and *second*, Local Regulation of Coastal Management, RTRW and RDTR Local Regulation whether it has been able to ensure the law enforcement of the construction activities in coastal areas of Kupang.

Research methods

This paper used empirical juridical legal research. The primary data is obtained directly on-site research through interviews and observations. Territory sample is taken by purposive sampling technique (direct assignment) with the consideration that in the Pasir Panjang village and Kelapa Lima village found the intensity of development activities in coastal areas that is quite high and contrary to the Government Regulation relating to coastal management. Rationality behind the informant sample selection was because the informants were parties in direct contact with the judicial process of the construction activities in coastal areas and as actors of development activities. Informants in this study can be presented in this following matrix table:

Table 1. Draft of Informant

informant	Total		
	(person)		
Staff at the Department of Marine and	1		
Fisheries of Kupang	•		
Staff at the Department of Housing and	1		
Spatial of Kupang	1		
Staff at Departement of Planning and	1		
Regional Development of Kupang	'		
Staff at the Regional Environmental	1		
Impact Management Agency of Kupang	'		
Staff of Kelapa Lima Village	1		
Staff of Pasir Panjang Village	1		
Parliament Members of Kupang	1		
People in coastal areas of Pasir Pan-	6		
jang Village	O		
People in coastal areas of Kelapa Lima	4		
Village	4		
TOTAL	17		

The primary data obtained by observation and focused interview. This research also used a secondary data that obtained from the other books, literatures and Government Regulation related to the object of research by using secondary data collection techniques do with the study of literature (Library Research). Data processing method in this research through three stages, which is: Editing, data classification, and data tabulation. This study uses data analysis juridical qualitatively using inductive thinking.

Discussion

Iza Rumesten R. S, "Model Ideal Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah", Jurnal Dinamika Hukum, Vol. 12 No. 1, Januari 2012, Purwoker-to: Faculty of Law Universitas Jenderal Soedirman, page. 136

Factors that cause contradictions of Substance Coastal Management Local Regulation, RTRW and Detailed Spatial Plan Local Regulations

According to Satjipto Rahardjo, law enforcement is a logical process that follows the presence of a rule of law. What should happen following the presence of the rule of law is almost completely occurs through the processing logic. Logic becomes the credo in law enforcement.⁴ Similarly, Bernard L. Tanya stated that law enforcement is a task performed by law enforcement officials. Because that is a task, such as Kant says, is "a categorical obligation"," absolute obligation". Law enforcement here do not recognize the term "with the condition". The task is a task, must be carried out. 5 Thus, law enforcement is the enforcement of remedies, or the functioning of legal norms significantly as a conduct code in the legal relations in the society and state.6

Based on interview result with several informants, there found several factors that cause the contradictions of the substance in Coastal Management Local Regulation, RTRW and Detail Spatial Plan Local Regulations include: first, the RTRW and RDTR Local Regulation made with less of considering the aspects of the environmental in coastal areas. The informant who is a member of the Regional Representatives Council (DPRD) of Kupang⁷ revealed that in the Law Number 27 Year 2007 jo. Law Number 1 Year 2014 or Coastal Management Local Regulation confirmed that the boundary border coast is 100 meters, but due to a deviation in the coastal of Kupang so the boundary border coast that used as a basis for development in Kota Kupang is RDTR Local Regulation with the limit of demarcation beach line is 15 meters. Besides, the minimum threshold coastal border is should be used as a reference in coastal development is a Law and Local Regulation of Coastal Management with the provisions 100 meters because it is based on consideration from the protection of natural disasters, coastal ecosystems and public access to the beach. The main issues in the development of coastal and marine areas in Indonesia such as poverty, conflict of space utilization, environ-mental degradation to global climate change⁸ is not noticed by the makers of RTRW and RDTR Local Regulations. *Second*, less careful in drafting for RTRW Regulation. This is shown by the following table 2.

Third, The very strong ego sectoral of the parties who draw up and propose the draft law of Coastal Management, RDTR and RTRW Local Regulations. Based on the interview with one of the informants⁹ it is known that the authority to propose the draft of RTRW Local Regulation of Kupang City is in the Regional Development Planning Board (Bappeda) Kupang City. In fact, the Coastal Management Local Regulation which was enacted in 2007 was allegedly a regulation copied from other areas and enforced in Kupang City so that the formulation of the section regarding the delimitation of the demarcation line beach 100 meters rated at odds with the real conditions of coastal areas in the city of Kupang, Informants in the office of the Department of Housing and Urban Spatial of Kupang said that the making and proposing the draft of RDTR Local Regulation is the duty of the Department of Housing and Spatial Planning (DPRTR) of Kupang. 10 While informants on Marine and Fisheries Agency office Kupang¹¹ said that the Coastal Regulation, RTRW and RDTR Local Regu-

Satjipto Rahardjo, 2010, Sosiologi Hukum; Perkembangan metode dan pilihan Masalah, Yogyakarta: Genta Publishing, page 191-192.

Bernard L. Tanya, 2011, Penegakan Hukum Dalam Terang Etika, Yogyakarta: Genta Publishing, page 25.

Kartono, "Penegakan Hukum Lingkungan Administratif Dalam Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup", Jurnal Dinamika Hukum, Vol. 9 No. 3, September 2009, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page. 249.

Interviews were conducted on 15 september 2015, 09.08-10.08 WITA.

Ridwan Lasabuda, "Pembangunan Wilayah Pesisir dan Lautan Dalam Perspektif Negara Kepulauan Republik Indonesia", Jurnal Ilmiah Platax, Vol. 1 No. 2, January 2013, Manado: Faculty of Fisheries and Marine Science Universitas Sam Ratulangi Manado, page 96-97.

The informant was Head of Physical and Infrastructure (FisPra) in the Office of Regional Development Planning Board (Bappeda) Kota Kupang. Interview was conducted on Monday, 3 August 2015; 08.00 until 10.30 WITA.

The informant was Section Head of Planning, Survey and Mapping in office DPRTR. Interview was conducted on 31 July 2015, 12.00 until 14.00 WITA.

The informant was Head of Control Section of Fishery Resources. Interview was conducted on 8 July 2015, 09.30 until 10.55 WITA.

Table 2. Contradictions Article In RTRW Local Regulation

Substance / Article	Analysis
Article 29, paragraph 1 states: "The plan of spatial pattern and regional areas including protected areas and cultivation areas". Furthermore, Article 29, paragraph 2 states: "The protected area consists of the area that give a protection to the areas underneath, local protection area, the area of green space, nature reserves and cultural heritage, and disaster-prone areas. Article 34 letter A states: "disaster-prone areas include areas prone to tsu-	Both of this articles is punctuated by the substances of article 31, paragraph 1 which states that local protection area one of those is coastal border area. Furthermore, Article 31, paragraph 2, states that the Kelapa Lima and Pasir Panjang village included in the protected coastal border region. The formulation of this article implies that the disaster-prone areas also include the Pasir Panjang and Kelapa Lima beach area which is
namis, tidal waves and erosion along the gulf coast of Kupang start from Te- nau to Lasiana".	the locus research of the researchers.
Article 39 paragraph 2 letter A states: "The plan of natural tourism areas is along the Gulf Coast beach of Kupang from Tenau beach to Lasiana".	This article means that the area of Pasir Panjang and Kelapa Lima also included the natural tourism area. According to Article 1 point 27, the area of tourism is a strategic area of tourism that are in a geographic one or more areas of administrative villages/ wards in which there is a potential tourist attraction, high accessibility, the availability of public facilities and tourism facilities as well as the social culture of mutual support in the embodiment of tourism. The formulation of Article 1 point 27 is caused the construction of public facilities (such as hotels and restaurants) in the coastal areas become inevitable in order to support increasing in the tourism sector. Thus, some areas are functioned as protect because a disaster-prone coastal border and then also set as a tourism area is illogical because the consequences on the availability of public facilities and tourism facilities such as hotels and restaurants. Determination of a region burdened with two different functions and this seeming paradox reflects the lack care study and analysis of the drafters of this RTRW Regulation.
Article 10 paragraph 3 letter B states: "limit the development of the develop region in the area that functioned as a protector for city environmental capacity remains guaranteed".	The formulation of this article is contradiction with the formulation of Article 39 paragraph 2 letter A and Article 1 number 27.
Article 52, paragraph 8 letter A states: "the general provisions of zoning regulations on disaster-prone areas is limiting the development of the region in disasterprone areas".	The formulation of this article is contrary to Article 39 paragraph 2 letter A.

lations is not connected properly. Thus there is a mismatch substance/contents of the article regarding the demarcation line between the three coastal border of this law and no one is sure about the reference of tide mark caused by sectoral ego. Ego sector will be a threat when each sector makes its own program without coordination with other sectors. It means, the possibility of overlapping the utilization of land is quite big. ¹²

Law Enforcement upon a Building Coastal of Kupang

Law enforcement aimed for enhancing public order and rule of law in society. This is done by curb the functions, duties and authority of the institutions that upholding the law in proportion by each scope, and also based on a good

Amiruddin Tahir, Dietriech G. Bengen, Setyo Budi Susilo, "Analisis Kesesuaian Lahan dan Kebijakan Pemanfaatan

Ruang awasan Pesisir Teluk Balikpapan", *Jurnal Pesisir dan Lautan*, Vol. 4 No. 3, 2002, Bogor: Faculty of Fisheries and Marine Science Institut Pertanian Bogor, page 12.

cooperation system and supports the goal that to be achieved. 13

The informant give an example by the construction of Barata Hotel in Kelapa Lima Village who has violated the rules in RTRW Local Regulation (Article 52 paragraph 3 letter F) and RDTR Local Regulation article 44 paragraph (2) letter A that setting a limits high-tide mark may be less than 25 meters and at least 15 meter. The hotel is built right on the shoreline (longshore) and blocking public access to enjoy the beach; Hotel Barata already have Building Permit (IMB) issued by BPPT (Integrated Licensing Service Agency) Kupang city with number 054/ BPPT/640 644/002.KKL/I/2012.14 If it has bagged the advice plan issued by the Agency Licensing Services Integrated/ BPPT on DPRTR recommendation and UKL-UPL issued by the Environmental Management Agency Regions also must have owned, for advice plan and UKL-UPL is 2 out of 14 files requirements that must be met when IMB maintenance at BPPT office. IMB Ownership assumes that law regulation related to coastal management and spatial planning is not applied properly and fairly for their other forces outside the law enforcement intervenes on development activities in coastal areas. Policies issued by the Regional Head made barren existing legislation because the policy is actually a deviation from the rule of law. 15

Others example are Hotel Sotis and *B&B Kitchen and Lounge* restaurant construction in Pasir Panjang village. RDTR local regulations article 24 paragraph 3 letter B requires about RU-MIJA limit (the right of way) for Jalan Timor Raya where hotels and restaurants are located are 20 meters, while in reality RUMIJA of hotel and restaurant is less than 20 meters. It is against the rules in Regulation RDTR so traffic jams are

inevitable because of many vehicles parked on the road.

This fact is also experienced by many cities in Indonesia because of inconsistency of policy on spatial planning as well as weaknesses in development control. 16 If it is associated with the theory that proposed by Robert Seidman be true namely that a norm/rule of law are made by legislators will be challenged on the interests and opposing social classes so that the institutions that are supposed to enforce law it will build their own behavior. Coastal Management, RTRW and RDTR local regulations that has been made by law-making institutions are challenged by Entrepreneur or Investor that use non-legal factors (factor of emotional closeness with law enforcement officials and factors bargaining position that promises economic progress in the region) to legalize coastal Kupang development.

Demolition of building that violate the provisions of Coastal Management local regulation, RTRW local regulation and RDTR local regulation is the duty of Civil Service Police Unit (hereinafter referred to as municipal police). Even the provision of direct and tangible sanctions by statutory powers and municipal police duties. The But this is not done optimally for demolition are limited to emergency buildings used by street vendors to vend while large buildings such as hotels and restaurants that clearly violate the provisions of the law does not do all three firmly and fairly.

Based on the results of study found nearly 80% of the buildings in violation provisions of RD TR local regulation article 44 paragraph 2 letter A because building is less than minimum limit coastal border region they must not be less than 15 meters (Table 3) so consequently the informant suffered catastrophic tidal wave of sea water.

Sanyoto, "Penegakan Hukum Di Indonesia", Jurnal Dinamika Hukum, Vol. 8 No. 3, September 2008, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 199.

Sources of primary data in the form of photos that notice the name of development projects in front of Barata hotel. The project site in the village of Kelapa Lima.

Statement of the Head of Physical and Infrastructure on Bappeda Kota Kupang. Interview was conducted on Monday, 3 August 2015;

Suwitno Y. Imran, "Fungsi Tata Ruang Dalam Menjaga Kelestarian Lingkungan Hidup Kota Gorontalo", Jurnal Dinamika Hukum, Vol. 13 No. 3, September 2013, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 457-458.

Anis Widyawati, "Implementasi Perda No. 13 Tahun 2004 Tentang Rencana Detail Tata Ruang Kota (RDTRK), Kotamadya Daerah Tingkat II Kotamadya Semarang BWK VIII (Kecamatan Gunung Pati)", Jurnal Dinamika Hukum, Vol. 13 No. 1, January 2013, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, Page. 44.

Table 3. Data Distance Rear Building with Boundary Border Coast

Distance Rear Building with coastal border (meters)	frequency	%			
< 1 meter	2	20			
1-5 meter	3	30			
6-10 meter	2	20			
10-≤ 14 meter	1	10			
≥15 meter	2	20			
Total	10	100			

Table 4. Data Completeness of Document Building Owners Should be Owned By Coastal Community Informants

tal Community Informants				
Type Designation Building	Building Ownership document	Fre- quency	%	
Residential	a. Land certificate	1	10	
house	b. Land certificate and IMB	2	20	
Business	a. Land certificate	-	-	
place	b. Land certificate and IMB	=	-	
	c. IMB, SIUP, SITU	1	10	
	d. IMB, SITU, UKL- UPL	1	10	
	e. SITU	1	10	
	f. Land certificate, IMB, SITU, UKL- UPL	1	10	
	g. Land certificate, IMB, SITU, SIUP, UKL-UPL	1	10	
Residential	a. Land certificate	1	10	
house and Business place	b. Land certificate and IMB	-	1	
	c. SITU	-	ı	
	d. Land certificate, IMB, SITU	-	-	
	e. Land certificate, IMB, SITU, UKL- UPL	1	10	
	Total	10	100	

Based on data in Table 5 it appears that there are some people who have residence building but not yet have a building permit, since there is the proximity of buildings owned by the informant with coastal border and because of the distance the building demarcation near the way where it is in violation of the provisions of RDTR local regulation. In addition, 80% informant community did not know about existence

and substance of Coastal Management local regulation, RTRW local regulation and RD TR local regulation and lack of socialization from the Government. This is reflected in data on the following table.

Table 5. Data Answers Community Informants about existence of Coastal Management local regulation, RTRW local regulation and RDTR local regulation

gatation and No IN tocal regulation			
Answers Community	Frequency	Percentage	
Informants			
Knowing	2	20 %	
Don't Knowing	8	80 %	
Doubt	-	-	
Total	10	100 %	

Conclusion

Substance contradiction of Coastal Management local regulation, RTRW local regulation and Detail Spatial Plan local regulation caused by several factors: first, the RTRW local regulation and RDTR local regulation made with less consideration of environmental aspects in coastal areas; second, Lack of careful drafting for RTRW local regulation; and third, Very strong ego sectoral of the parties who draw up and propose the draft Coastal Management local regulation, RTRW local regulation and RDTR local regulation.

Coastal Management local regulation, RT RW local regulation and RDTR local regulation can not guarantee the enforcement of construction activities in coastal areas caused by several things: first, the absence of formulas article explicitly and expressly mentions the minimum limit coastal border as a benchmark in building in coastal areas; and second, people who build have minimal knowledge about Coastal Management local regulation, RTRW local regulation and RDTR local regulation because of lack of socialization from Government.

Suggestion

Coastal Management local regulation, RT RW local regulation and RDTR local regulation had to be changed several provisions of contradictory article. In addition, there must be a formula clause that explicitly and clearly states the prohibition of construction activities is less than minimum limit coastal border as well as

need for common ground about setting limits tide mark. Communities should be given the right socialization of Coastal Management local regulation, RTRW local Regulation and RDTR local regulation and for law enforcement officials who deviated from three provisions of local regulation must be given strict sanctions.

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