



## **The Authority of Local Government Regarding Decentralization on Managing Islands in The Borders Area towards Indonesia the World Maritime Axis**

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### **ABSTRACT**

The authority of Local Government regarding on management islands in the border area requires access from the Central Government. The purpose of this research is to find a new concept of local government authority at the border. The methodology used is the normative juridical method. The results of the study: there is an overlapping authority of the Central Government and Local Government, limited access and authority of the Local Government to develop border areas, border development requires decentralization and the authority of the Local Government. In conclusion, the Central Government handed over the federative authority to the Local Government regarding the managing islands in the border areas, the budget for developing the potential of the border areas and the managing islands in the border areas towards the World Maritime Axis.

**Keywords:** Border Areas, Decentralization on Managing Island, Discretion, World Maritime Axis

**JEL Classification Codes:** M00, M10, M19

### **INTRODUCTION**

Geographically and demographically, Indonesia has a very wide area both sea and land with a population of around 270 million people. Indonesia's supporting factors are: 77% of the ocean area of approximately 6,315,222 km<sup>2</sup> and 23% of the land area of about 1,913,578m<sup>2</sup>. Geographically, it is located on the equator, between the two continents of Australia and Asia, and is flanked by two, namely the Pacific Ocean and the Indian Ocean. As an archipelagic country according to UNCLOS 1982, Indonesia also has 4 crossing lines of East and West world crossings. Based on maritime history, Indonesia, formerly known as Nusantara, once controlled the seas in the Sriwijaya era in the 7th century and Majapahit in the 13th century (Danasaputro, 1984). However, not all of the potential development of marine and fisheries has been seriously undertaken by the central and regional governments, only the development of fisheries business is dominant. The problems and constraints of the fisheries sector are also quite large. The main issues of development that hamper the development of marine and fisheries include: poverty, environmental degradation, development orientation that is still oriented



to land, and human resources (Rumawas, 2018). Therefore, developing Indonesia today requires a maritime-oriented development concept, both governance, mastery of maritime cultural understanding, utilization of maritime resources, improvement of infrastructure/connectivity, defense diplomacy and maritime defense. Indonesia as the world's maritime axis is a strategic idea of President Joko Widodo which is realized to ensure inter-island connectivity, development of the shipping industry, utilization of fisheries and marine resources, improvement of sea and port transportation and a focus on diplomacy and maritime defence (Marsetio, 2014a).

The Indonesian government is divided into the central government and local governments. Indonesia has 34 provinces, 416 districts and 98 cities. Regionally, the provincial government's authority is led by the Governor and the Regency/City is led by the Regent/Mayor. With a very broad reach, of course, government efforts are needed to build and manage development in the regions. The country's development is focused on the World Maritime Axis which is Indonesia's current idea and vision. The position of the provinces and districts is an important point to build Indonesia as the World Maritime Axis. Therefore, institutional strengthening and governance are the main reference in developing the potential in border areas.

The government system in Indonesia is divided into two, namely the affairs of the central government and the affairs of local governments. Local governments carry out all government affairs except foreign policy, defense, security, justice, monetary and fiscal affairs, national and religious affairs. The central government can organize itself and can delegate some of its affairs to government officials or government representatives in the regions. The relationship between the Central Government and Local Governments, according to the constitution, is regulated based on the authority between the Central Government and Local Governments at each level, province, district and city. The characteristics of each region are related to Local autonomy, the implementation of government authority takes into account the specificity and diversity of the local (Constitution Article 18 of the 1945 Constitution).

The authority of the Local Government to develop and managing islands in the national border area is regulated in the Local Government Law No. 23 of 2014 (articles 27, 28, 29 and 30). The provincial government's authority in the sea is to manage natural resources in its territory including: exploration, exploitation, conservation, and management of marine wealth outside of oil and gas; administrative arrangements; spatial arrangement; participate in maintaining security at sea; and participate in defending the sovereignty of the state. The limit for the managing of marine natural resources is a maximum of 12 nautical miles measured from the coastline towards the high seas and/or towards the archipelagic waters (Article 27).

For provincial areas with archipelagic characteristics, they are given the authority to manage natural resources at sea, have the authority and receive assignments from the Central Government to carry out the Central Government's authority in the marine sector based on the principle of Co-administration (Article 28). The concept of the regional development acceleration strategy includes the priority of development and



management of natural resources in the sea, acceleration of economic development, socio-cultural development, human resource development, development of customary law related to marine management, and community participation in the development of an archipelagic province. In order to support the acceleration of development in the Provinces with Archipelagic Characteristics, the Central Government may allocate acceleration funds other than the General Allocation Fund (DAU) and the Special Allocation Fund (DAK) (article 29).

Furthermore, the Local Government Law No. 23 of 2014 regulates Special Areas and State Border Areas in articles 360, 361 and 362. Special state border areas are the outermost sub-districts which are directly adjacent to other countries and the Central Government has the authority to determine spatial planning, control and permit for spatial use and development of local facilities and infrastructure. The task of the Governor is to coordinate the implementation of local development based on the guidelines set by the Central Government (article 361).

In reality on the ground, Law no. 23 of 2014 has not adequately accommodated the various interests and problems of the archipelagic region in the context of catching up with development, mastery of technology and natural resource management as well as increasing human resources for the realization of the welfare of the archipelagic community. It is recorded that 8 provinces which include 86 regencies/cities belonging to the Archipelago Province group have asked the Central Government to develop archipelagic and border areas whose potential is not inferior to mainland areas.

The management of national border areas still faces various problems, including:

- 1) Community conditions in border areas are still isolated and socio-economic conditions are still lagging behind, even though the potential resources are quite large;
- 2) The condition of infrastructure is minimal and the posts in the border areas are not adequate, so that the supervision of the border areas is still weak;
- 3) There are cases of cross-border violations committed by Indonesian citizens to neighboring countries and vice versa;
- 4) There are socio-economic disparities in the community in the border areas that can lead to jealousy; and
- 5) Some land and sea boundaries with several neighboring countries have not been completed.

Border management is an integral part of state management, which operationally is an activity to handle or manage local boundaries and border areas. In line with the reorientation of development policies in border areas, through Law Number 43 of 2008 concerning State Territory, the government mandates the establishment of a Border Management Agency at the central and local levels in order to manage border areas.

In the context of managing state boundaries and border areas, BNPP prioritizes policy and program synergies, so that the weaknesses of existing border management, namely the ad-hoc and partial and ego-central handling of state borders, have resulted in



overlapping and redundancy as well as misdirected and inefficiency. In border management, is expected to be improved. Therefore, this study aims to analyze the process of implementing local government authority in the management of border islands, referring to the applicable law.

### RESEARCH METHOD

The research method is normative juridical, where the relevance of authority refers to the legal norms contained in legislation or positive law and other legal materials. The type of data to be used in this study is secondary data, namely data obtained from library research or documentation, including: Primary legal materials, namely binding legal materials, consisting of basic norms or rules, basic rules and regulations legislation, including:

1. Article 25A of the 1945 Constitution concerning the Territory of the State.
2. Article 18 of the 1945 Constitution concerning Regional Government.
3. Law Number 43 of 2008 concerning the Territory of the State;
4. Law Number 23 of 2014 concerning Local Government;
5. Presidential Regulation Number 12 of 2010 concerning the Establishment of the National Border Management Agency.

Secondary Legal Materials, namely legal materials that provide an explanation of primary legal materials. The secondary legal materials used in this research include books, magazines, articles, legal journals, and written works.

This research is descriptive analytical because it is intended to accurately describe and provide solutions to the conception of border development in Indonesia. The theories that the author finds in the secondary legal materials will be used as a basis for conducting a juridical analysis, which in turn finds new theories on the selected problems. This research is a normative juridical because it examines the rules and authorities of the Government. This research was conducted in a monodisciplinary manner because it only bases on legal science by raising the perspective of developing the concept of authority in managing the development of border areas.

So far, the managing islands in border areas has been carried out through determining the status and scope of maintaining national territorial sovereignty. The management part is a problem for the central government with a security and welfare approach. The purpose of this study is to find a new concept of local government authority related to the duties, functions and authorities in managing border areas as mandated by Law Number 23 of 2014 concerning Local Government and Law Number 43 of 2008 concerning State Territory which can be a guide for legal development. Border areas in developing Indonesia towards the World Maritime Axis.

The data processing procedure is carried out by analyzing legal sources by using a comparative law approach, comparing the concept of border area development to determine the authority of the blood government which is described systematically and descriptively. There are three research design approaches in this dissertation, namely;





1) Comparative Legal Research, namely a critical analysis of legal entities and sources of authority granted by law in carrying out government duties and functions related to the managing islands in border areas. 2) Conceptual Approach (Conceptual Legal Approach) Legal principles are examined according to the concept of managing islands in border areas. The conception of development at the border has been identified since the Law on the Waters of the Dutch East Indies - Territoriale Zee en Maritieme Kringen Ordonantie (TZMKO) in 1939, the Indonesian Territory in 1945, the Conception of the Djuanda Declaration in 1957, the Conception of Tagarua in 1970, the Archipelagic State in 1982, and legal doctrines on the Territory. Border. 3. Historical approach (History Approach) The historical approach is used to research and examine history in relation to the discussion that is the topic of discussion in legal research. This approach is carried out by examining the background and development of the regulations regarding the legal issues faced. By knowing historically, this research can see the flow of approaches taken by lawmakers regarding local government from time to time.

## RESULTS AND DISCUSSION

Research on the Authority of Local Governments regarding the Managing Islands in the National Border Area towards Indonesia, the World Maritime Axis, has never been conducted. Previous research on the Implementation of Local Government Authority in the Management of Interstate Border Areas (Talaud Islands Regency Study) was conducted by Hlean, Lengkong and Tampi (2018). Hlean raised the issue of border areas in terms of development, economy, social, education and the agency that manages border areas is not present in border areas. This study discusses the process of implementing local government authority in the management of border areas between countries. The authority of the local government refers to an autonomous region.

The results of the research on the process of implementing the authority to manage border areas are very complex, because there is the authority of the central government and local governments. On the other hand, the problems that exist in the local government implementation process are that there is no regional border management agency. Therefore, it is very important to form a regional border management agency in improving the welfare of the people of the border area.

The recommendation offered by Hlean, Lengkong and Tampi (2018) is that each region has the right to carry out the implementation process rather than any existing policies. The implementation of the authority to manage the border areas of local governments in its implementation has not been seen optimally, this can be seen from the absence of a body in charge of managing border areas as the one who carries out the process of developing border areas whose reference is the national border management agency. The capacity of local governments in policy-making for border area management is inadequate, resulting in regional government budgeting for border area development.

Hlean, Lengkong and Tampi (2018) suggested that the implementation of border area management should pay attention to communication, resources, disposition, and adequate bureaucratic structure. In addition, strengthening the authority of local



governments in the management of border areas, both institutional and program improvement, organizational structuring, increasing personnel resources and adequate infrastructure. Lastly, the regional government establishes a Border Management Agency as stipulated in the Regulation of the Minister of Home Affairs Number 140 of 2017.

This study expected border areas are given special autonomy by the Central Government and the authority of the Regional Government in making policies, proposing budgets, centralized development and continuity of management for 25 years for development and development. As a whole, the Islands in the Border Region. This management takes the successful path given by the Central Government to Batam Island, Rempang and Galang where there is a Batam Authority for 25 years.

Karwur, Bengen, Dahuri and Monintja (2010) in his socio legal research entitled Legal Design in the Management of the Outermost Small Islands in North Sulawesi Province, examines the legal design in the Management of the Outermost Small Islands in the case of Marore Island and Miangas Island. The research was carried out in Indonesia, which borders the Philippines. This study examines the integration of small island management in border areas and Indonesian law enforcement with the applicable laws and regulations. The object in research conducted by Karwur examined development on Marore Island and Miangas Island where the budget and development program are still centralized and even excessive development and no coordination of the Central Government causes the implementation of runway construction, land acquisition and facilities at the border to be delayed due to a long bureaucratic process. Karwur offered the role of local governments to manage themselves assisted by the Border Management (Otorita Authority) to develop the Outer Islands in Indonesia.

According to Syahuri and Sitompul (2020), the maximum limit for the province's marine area is 12 nautical miles, while the regency/municipal marine product sharing limit is a maximum of 4 miles. if the sea area boundary between provinces does not reach the maximum limit, then the boundary will be divided equally by the distance principle (median line). The division of authority in managing the boundaries of marine and coastal areas is felt by the regional government and the central government. Syahuri and Sitompul (2020) analyzed the implications of the Regional Government Law on several laws and regulations on marine and fisheries and finds out the ideal division of authority in the management of marine and coastal boundaries.

Syahuri and Sitompul (2020) used a normative juridical approach which aims to provide a more detailed explanation of policies governing aspects of marine and coastal area boundary management as well as the implementation of central, regional and other vertical institutions' authority for the welfare of the people in the Sea and Coastal areas. The results of the study show that the implementation of local government authority in the management of coastal marine boundaries is the division of selected concurrent government affairs and the division of marine affairs between the Central Government, Provincial Regions and Regency / City Regions, especially in the marine and fisheries sector.



Massie (2019) reviewed research on the Determination of the Legal Status of the Outer Islands and its Relation to the Implementation of State Sovereignty. The research was conducted using a normative juridical method resulting in a legal conception in the determination and affirmation of state border areas and their relation to state sovereignty. Massie discovered non-juridical factors that contributed to the formation of legal norms related to the determination of the legal status of the outermost islands as an effort by the state in order to prove the implementation of the principle of effective occupation, as well as to find provisions which are used as the basis for determining the legal status of the outermost islands which have implications for on the implementation of the sovereignty of the Indonesian state.

The role of the central, provincial and district/city governments in the development of the outermost small islands needs to be carried out appropriately and emphasizes three main things, namely: regulator, executor and facilitator. The government as a regulator is obliged to encourage the arrangement of existing rules in the development and utilization of small islands by all decision makers. The function of this regulation must be implemented in a transparent, democratic and fair manner. As the executor, the government implements policy programs that directly touch all levels of society. As a facilitator, the government encourages the creation of a conducive climate for the development and utilization of small islands through the provision of various forms of supporting infrastructure in the area concerned.

From the juridical aspect, the handling of the outermost small islands still requires adequate legislation in order to maintain and empower them. The review of various laws and regulations such as Laws, Government Regulations, Presidential Decrees, and others related to the handling of state borders and borders, both on land and sea boundaries is an urgent matter to be resolved. Government Regulation No. 38/2002 concerning the List of Geographical Coordinates of the Baseline Points of the Indonesian Archipelago, would need to be revised immediately following the decision on the ownership of Sipadan Island and Ligitan Island and the latest data collection regarding the number and names of islands in Indonesia.

Sarundajang (2011), conducted a study on the development of Sam Ratulangi's thinking and the role of North Sulawesi's Geostrategic as the Gateway to Indonesia in the Pacific Region. The results of the research are contained in the title Geostrategic of North Sulawesi Province as a Gateway to the Asia Pacific Region (Case Study Regarding the Development of Sam Ratulangi Thoughts on Indonesia in the Pacific and the Role of North Sulawesi). Sarundajang concluded that the conception of Sam Ratulangi (1938) was a contribution of thought to the importance of North Sulawesi in the Asia Pacific region in the international trade arena. Indonesia is in a strategic position in the Asia Pacific region and can play an important role in the political and economic arena in the Asia Pacific. The proof from Sam Ratulangi's current thinking is that it is true that 60 percent of the world's containers are in the Asia Pacific and 50 percent of the world's economic growth is also in the Asia Pacific.





The concept of Sam Ratulangi's (1928) thought that geostrategic development is a concept of development policies and strategies that are not only motivated by economic benefits, but also has a strategic political goal, namely development that is able to bring the country's glory in various fields. That is, in carrying out international trade relations, it is not only pursuing economic profit, but also building the strength, influence, and glory of the country. So far, the concept of development is more land-based, so it is time to apply the concept of development that is in accordance with the geographical conditions of the nation, namely the development of island-based or coastal areas.

Sam Ratulangi's thoughts on economic geography and geopolitics are embodied in the preparation of a road map for the development of North Sulawesi as the gateway for Indonesia in the Asia Pacific region through the development of a multi-Gate System. Several things were carried out, among others, turning the Samudera Bitung port and Sam Ratulangi Airport into an International Hub-Port (IHP), which functions as a Cargo Consolidation Center (CCC) and a Cargo Distribution Center (CDC). In addition, developing the potential of leading geostrategic-based industries, namely the fisheries and marine industry, plantation industry and tourism industry.

Professor of Defense University Marsetio (2014a) raised the issue of the New Maritime Awareness which explores Indonesia's maritime development as the World Maritime Axis. In studies and literature full of knowledge and experience in the maritime field, Marsetio, Chief of Naval Staff 2012-2014, describes the potential strength of geography, geopolitics and the strength of the maritime defense sector which are the main requirements in building the World Maritime Axis. The reality on the ground shows that Indonesia's capital and potential as an archipelagic country are the main forces in the maritime trade, fisheries, industry and services fleet as well as the development of the maritime community (Marsetio, 2014b).

The sources of authority of the Regional Government in the managing islands in the border areas are divided into different regulations. There are rules governing the authority based on Law no. 23 of 2004 concerning Local Government and Law Number 43 of 2008 concerning State Territory. The concept of border area development is more appropriate to be carried out by the Central Government which gives authority to the Local Government. State power or authority theoretically is a legitimate power given to an institution in this case the Local Government that allows its officials to carry out their functions. This implies the granting of the right to act, to have power and the right to act or the right to make rules.

Authority in public law is related to power. Power has the same meaning as authority. Power is an essential element of the state in the process of governance. Power has two aspects, namely political aspects and legal aspects, while authority only has legal aspects. Power can come from the constitution, it can also come from outside the constitution (unconstitutional), for example through a coup or war, while authority clearly comes from the constitution. In terms of governance of islands in border areas, the authority of local governments can be obtained from the constitution, namely the mandate of the law.





The implementation of regional autonomy requires the division of government affairs between the central government and the autonomous government, which is based on the idea that there are always various government affairs that remain fully under the authority of the government. Government affairs that remain under the authority of the government include foreign policy, defense, security, monetary, judicial and religious. In addition, there are government affairs that are carried out concurrently, namely the handling in certain sections or fields is carried out jointly between the central government and local governments. This means that for the concurrent affairs there are divisions, namely there are sections handled by the Central Government, and there are sections handled by the Provincial Government and sections handled by the Regency/City Governments.

Responsible regional autonomy is autonomy whose implementation is in line with the purpose of granting autonomy, namely to empower regions, including to improve people's welfare which is the main part of national goals. This means that the implementation of regional autonomy must always be oriented towards improving the welfare of the community by always paying attention to the interests and aspirations that grow in the community (Rahmadan 2021).

In the context of development in the regions, government programs must be in line with national development goals. Development at the border is included in the 2019-2024 RPJMN Medium-Term Development Plan. The concept of the World Maritime Axis is included in the RPJMN. In Presidential Regulation No. 2 of 2015. Indonesia as the world's maritime axis is supported by five main pillars, namely: first, rebuilding Indonesian maritime culture; second, the commitment to maintain and manage marine resources with a focus on building seafood sovereignty through the development of the fishing industry by placing fishermen as the main pillar; third, the commitment to encourage the development of maritime infrastructure and connectivity by building sea highways, seaports, logistics, and the shipping industry, as well as maritime tourism; fourth, maritime diplomacy that invites all Indonesian partners to work together in the maritime sector; and fifth, building a maritime defense force.

In the 2020-2024 RPJMN, one of the programs is accountable, effective and efficient Governance in supporting the improvement of the performance of all dimensions of development. One of the dimensions of development is to build islands in border areas. The synchronization of authority granted by law to local governments should be utilized effectively and efficiently. In positive law, the form of authority (*rechtsbevoegheden*) of the Local Government can regulate itself (*zelfregelen*) and manage itself (*zelfbestuuren*). The substance of government authority is the ability to carry out government legal actions or actions.

The results of this study are: 1) the concept of developing islands in the border area has not been well organized from the synchronization of laws and regulations, action plans, implementation and supervision in the field. Therefore, this study offers a conception of the development of islands in the border area, which is carried out by establishing border



areas including islands and water areas as special development areas. 2) Managing Islands in the National Border Area, requires local government discretion in carrying out the implementation of programs at the border. This occurs from the accumulation of rules and regulations and institutional conflicts between central government units in carrying out development programs at the border. Sectoral ego between work units has delayed the development of border areas for 70 years in Indonesia. 3) The concept of asymmetric decentralization. The central government gives federative authority to regional governments as a form of decentralization of authority and development programs. Asymmetric/special decentralization, can make border areas more attention both in terms of budgeting, national interest, defense and security and in fighting for state jurisdiction as an archipelagic state.

### CONCLUSIONS

The concept of developing the local potential of the national border area towards Indonesia, the World Maritime Axis, can imitate the development of Batam Rempang Galang carried out by the Batam Authority for 25 to 40 years. Determination of special areas will facilitate development in border areas and give more authority to local governments.

The Central Government delegates limited authority or federative authority to Regional Governments based on the principle of asymmetric decentralization of islands in border areas and the constitution of the 1945 Constitution. Discretion of authority, both deconcentrated and budgetary authority to form the Regency/City Government in archipelagic/border areas.

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