

JURIDICAL ANALYSIS OF THE FORMATION OF GOVERNMENT REGULATION NUMBER 26 OF 2023 CONCERNING MANAGEMENT OF SEDIMENTATION PRODUCTS IN THE SEA

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Abstract

This research was motivated by the enactment of Government Regulation (PP) Number 26 of 2023 concerning Management of Marine Sedimentation Products where when the PP came into force, its implementation was considered fragile because it did not refer to higher statutory regulations such as Law Number 12 of 2011 concerning Formation of Legislative Regulations (UU No. 12/2011), where many coastal communities were not asked for consideration during the process of drafting the PP. This research aims to find out and analyze first, the formation of Government Regulation Number 26 of 2023 concerning Management of Sedimentation Products in the Sea according to Law No.12/2011. Second, Indonesia's maritime territorial boundaries need to be considered considering the results of sedimentation across national borders. This research uses normative legal research methods with a regulatory and contextual approach. The research results concluded that, first, based on Law no. 12/2011 only fulfills some of the principles of the formation of statutory regulations and does not fulfill meaningful community participation because affected communities were not involved at all in the formation of PP No. 26/2023. Second, Singapore cannot claim the area resulting from the reclamation that it has carried out because based on Article 60 paragraph (8) UNCLOS 1982, artificial islands, installations and buildings do not have island status, so they do not have their own sea area, and even their existence does not affect the boundaries, territorial sea, exclusive economic zone or continental shelf.

Keywords: Government Regulation, Export of Sea Land, Reclamation

INTRODUCTION

Indonesia is a developing country that has significant interests in the exploration and exploitation of non-biological natural resources (minerals) in the seabed and subsoil, which is carried out within the country's jurisdiction. Management of natural resources should be able to realize people's prosperity.¹

Recently, President Joko Widodo ratified Government Regulation Number 26 of 2023 concerning Management of Sedimentation Results in the Sea (PP No. 26/2023) on May 15 2023. This regulation regulates the use of sea sand for domestic

reclamation, infrastructure and infrastructure development, as well as export activities. Through this regulation, after 20 years of being prohibited from exporting, the sea sand export ban was lifted and sea sand export activities were reintroduced.²

Previously, the Indonesian Government had banned the export of sea sand during President Megawati's administration in 2002. At that time, the ban was stated in Presidential Decree Number 33 of 2022 concerning Control and Supervision of Sea Sand Cultivation and a Joint Decree (SKB) between the Minister of Maritime Affairs and Fisheries, Minister of

¹ Nur Ainun Wulandari, "Perlindungan Hukum Nelayan Kecil Terhadap Penambangan Pasir Laut Di Perairan Spermonde Sulawesi Selatan" (Skripsi, Makassar, Universitas Hasanuddin, 2022).

² Navalía Caren, "Ekspor Pasir Laut: Ancaman Atau Keberuntungan?," LK FHUI, Diakses pada tanggal 7 September 2023, <https://lk2fhui.law.ui.ac.id/portfolio/ekspor-pasir-laut-ancaman-atau-keberuntungan/>.

Industry and Trade and Minister of Environment Number 89/MPP/Kep/2/2022, Number SKB.07/MEN/2022 and Number 01/MENLH/2/2002 concerning Temporary Suspension of Sea Sand Exports.³

President Joko Widodo's government is based on the issuance of regulations for processing marine market products which are used for infrastructure development and sea sand exports. President Joko Widodo revealed several limitations on sea sand export activities. First, the type of sea sand permitted for export activities is sedimentary sand which disturbs shipping and coral reefs.⁴ Second, export activities carried out by business entities to extract sedimentary sand must first apply for a Mining Business Permit (IUP) for commercial use.⁵

Issuance of PP No. 26/2023 raises pros and cons not only among the public, but also among high-ranking officials. One of them is Member of Commission VI DPR RI Luluk Nur Hamidah who asked the government to review Government Regulation Number 26 of 2023 concerning Management of Sedimentation Products in the Sea, the consideration is that the

export of sea sand is considered to result in a reduction in environmental resources and endanger marine ecology.⁶ Apart from that, Member of Commission IV DPR RI Yohanis Fransiskus Lema assessed that the process of drafting Government Regulation Number 26 of 2023 concerning Control and Supervision of Sea Sand Businesses (sea sand exports) was not transparent and had minimal public participation. Therefore, the government needs to provide an explanation regarding the management of marine sedimentation results and the export of sea sand.⁷ Legal of Destructive Fishing Watch (DFW) Indonesia Jeanny Sirait stated that public consultations regarding the use of marine sedimentation results have not fully involved coastal communities, even though coastal communities are most affected by the sea sand dredging policy.⁸

Chairman of the Indonesian Maritime Scholars Association (Iskindo), Riza Damanik, said that his party had never been aware of any discussions or been asked to provide input regarding the preparation of PP No. 26/2023.⁹ Apart from that, the Head of the Center for

³ BBC News Indonesia, "Mengapa Kebijakan Ekspor Pasir Laut Ditolak Pegiat Lingkungan Dan Negara Mana Yang Diuntungkan?," Mei 2023, Diakses pada tanggal 3 September 2023, <https://www.bbc.com/indonesia/articles/c0wv9q3q941o>.

⁴ Nadia Intan Fajarlie, "Lemhanas Sebut Aturan Ekspor Pasir Laut Atasi Masalah Sedimentasi Yang Ganggu Pelayaran," Kompas.Com (blog), June 15, 2023, Diakses pada tanggal 4 September 2023, <https://www.kompas.tv/nasional/416325/lemhanas-sebut-aturan-ekspor-pasir-laut-atasi-masalah-sedimentasi-yang-ganggu-pelayaran>.

⁵ Verda Nano Setiawan, "Nah Lho! Menteri ESDM Sebut Pasir Laut Harusnya Tak Diekspor," CNBC Indonesia (blog), June 14, 2023, Diakses pada tanggal 4 September 2023, <https://www.cnbcindonesia.com/news/20230614080424-4-445700/nah-lho-menteri-esdm-sebut-pasir-laut-harusnya-tak-diekspor>.

⁶ Luluk Nur Hamidah, "Luluk Minta Pemerintah Tak Sembrono Buka Larangan Ekspor Pasir Laut," Parlemenaria DPR RI (blog), June 8,

2023, Diakses pada tanggal 4 September 2023, <https://www.dpr.go.id/berita/detail/id/44914/t/Luluk%20Minta%20Pemerintah%20Tak%20Sembrono%20Buka%20Larangan%20Ekspor%20Pasir%20Laut>.

⁷ Yohanis Fransiskus Lema, "Minim Partisipasi Publik, Penyusunan PP Ekspor Pasir Laut Dinilai Tidak Transparan," Parlemenaria DPR RI (blog), June 7, 2023, Diakses pada tanggal 06 September 2023, <https://www.dpr.go.id/berita/detail/id/44883/t/Minim%20Partisipasi%20Publik,%20Penyusunan%20PP%20Ekspor%20Pasir%20Laut%20Dinilai%20Tidak%20Transparan>.

⁸ BM Lukita Grahadyarini, "Aturan Pasir Laut Berpotensi Tumpang Tindih," Kompas.Id (blog), June 13, 2023, <https://www.kompas.id/baca/ekonomi/2023/06/13/aturan-pasir-laut-berpotensi-tumpang-tindih>.

⁹ BM Lukita Grahadyarini, "Partisipasi Publik Diabaikan Dalam Kebijakan Ekspor Pasir Laut," Kompas.Id (blog), Mei 2023, Diakses pada tanggal 10 Oktober 2023, <https://www.kompas.id/baca/ekonomi/2023/05/31/partisipasi-publik-diabaikan>.

Coastal and Marine Resources Studies (PKSPK) IPB University, Yonvitner, explained that his party had never been asked for input in the preparation of PP No. 26/2023, and the academic manuscript was never shared with the campus.¹⁰

Community participation is basically a guarantee given by the state to the people to be able to participate in the process of administering the state, and is also an embodiment of a system that ideally requires sovereignty to be in the hands of the people and a form of participatory democracy is implemented.¹¹ Normatively, Law no. 12/2011 provides guarantees for citizens to be involved in the process of drafting legislative regulations. All processes of forming legislative regulations relating to the interests of the people must be based on people's sovereignty and the most important thing is to provide wider space to the community. However, in empirical practice, up to now, the government and the People's Representative Council (DPR) often do not or even involve public participation in the process of forming laws and regulations, in this case PP No. 26/2023.¹²

Community participation is a condition for the realization of democratic government.¹³ In line with this, Ann Seidman interprets participation as opening up ample opportunities to convey suggestions, criticism and be involved in forming government policies for each community group based on policies

determined by interested parties (stakeholders).¹⁴

Meanwhile, Lothar Gundling explained the basic reasons for the importance of public participation in forming a policy, including: providing information to the government (informing the administration), increasing the readiness of the public to accept decisions (increasing the readiness of the public to accept decisions), helping legal protection (supplementing judicial protection), democratizing decision-making.¹⁵

Then, referring to the opinion of Anthony Allot who is a legal expert from the University of London, there are 4 (four) requirements for good legislation that can be applied effectively, namely, one is that there is an adequate preliminary survey. Two, there is communication, including socialization (communication). Three, there is acceptance from community members (acceptance). Four, through law enforcement mechanisms.¹⁶

Apart from that, from the perspective of international maritime law, sand imports carried out by Australia can be used as a way to expand its land area to approach the maritime borders of Indonesia, considering that Singapore is the largest consumer of sand in the world and has been reclaiming beaches since 1962 for military reasons. and commercial, of course this

¹⁰ Grahadyarini.

¹¹ Djoko Riskiyono, Pengaruh Partisipasi Publik Dalam Pembentukan Undang-Undang: Telaah Atas Pembentukan Undang-Undang Penyelenggara Pemilu, Cetakan Pertama (Jakarta: Perludem, 2016), 48.

¹² Kana Kurnia, "Problematisa Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 20, No. 1 (2023): 125. <https://doi.org/10.54629/jli.v20i1.1092>

¹³ B. Hestu Cipto Handoyo, *Prinsip-Prinsip Legal Drafting & Desain Naskah Akademik*, 5th Ed, 5th ed. (Yogyakarta: Cahaya Atma Pustaka, 2018), 171.

¹⁴ Robert B Seidman and Nalin Abeysekere Seidman, *Penyusunan Rancangan Undang-Undang Dalam Perubahan Masyarakat Yang Demokratis* (Jakarta: Proyek ELIPS Departemen Kehakiman dan Hak Asasi Manusia Republik Indonesia, 2001), 8.

¹⁵ Dodi Haryono, "Metode Tafsir Putusan Mahkamah Konstitusi Dalam Pengujian Konstitusional Undang-Undang Cipta Kerja," *Jurnal Konstitusi* 18, No. 4 (2021): 787.

¹⁶ Dirman Nurjaman, "Penerapan Asas Keterbukaan Dalam Proses Pembuatan Udnang-Undang Omnibus Law", *Jurnal Khazanah Multidisiplin*, Volume 2 No. 2 (2021): 62, <https://doi.org/10.15575/kl.v2i2.13165>

poses a major threat to the sovereignty of neighboring countries such as Indonesia.¹⁷

Therefore, based on this, it is necessary to know in more depth first, how the formation of government regulation number 26 of 2023 concerning the management of sedimentation results in the sea is carried out according to law number 12 of 2011 concerning the formation of statutory regulations. Second, what are the maritime boundaries of Indonesia's territory that need to be considered considering the movement of sedimentation products across national borders.

RESEARCH METHODS

In addition, this writing uses a normative juridical method with 2 (two) approaches, namely the statutory approach and the conceptual approach.¹⁸ The reason is that this research was carried out by examining library materials or secondary data.¹⁹ In terms of nature, this research is descriptive research, which means research to describe something in a certain time and space. In legal research, descriptive research is very important to present existing legal materials correctly. That is why, the collection of legal materials is carried out through library research on primary legal materials in the form of statutory regulations, secondary legal materials in the form of books, journal articles and scientific papers, and tertiary legal materials in the form of dictionaries and the internet.²⁰

RESEARCH RESULT AND DISCUSSION

Establishment of Government Regulation Number 26 of 2023 concerning Management of Sedimentation Results in the Sea According to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations

In Indonesia, Government Regulations (PP) have an important position in the legal hierarchy.²¹ The formation of PP is indeed the domain of the executive, but it is important to know that in drafting legislation it is very important to pay attention to the elements of good legislation.²² Good regulations are made to provide a sense of justice, legal certainty and benefit society.²³

According to A. Hamid S. Attamimi, the characteristics of Government Regulations are:²⁴ a) PP cannot be formed first without a law as its parent, b) PP cannot include criminal sanctions if the relevant law does not include criminal sanctions, c) The provisions of the PP cannot add to or reduce the provisions of the relevant law, d) The PP cannot be formed even though the provisions of the relevant law do not expressly require it, e) The provisions of the PP contain regulations or a combination of regulations and stipulations, the PP does not contains only determinations.

In May 2002, President Megawati Soekarnoputri signed Presidential Decree Number 33 of 2002 concerning Control and Supervision of Sea Sand Cultivation. One of the reasons for the issuance of this presidential

¹⁷ M. Farian Akbar, "Analysis of the Impact of Singapore Reclamation on International Maritime Boundaries Delimitation" (Jurnal Skripsi, Yogyakarta, Universitas Muhammadiyah Yogyakarta, 2022).

¹⁸ Zainudin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011), 105.

¹⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press, 1984), 76.

²⁰ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Rajawali Pers, 2003), 33-37.

²¹ Dwi Lestari Indah Sari, "Kebijakan Ekspor Pasir Laut Pasca Diundangkan Peraturan

Pemerintah Nomor 26 Tahun 2023 Berdasarkan Perspektif Teori Sistem Hukum," *Jurnal Hukum Samudra Keadilan* 18, no. 2 (2023): 406-23.

²² Made Nurmawati, *Jenis, Fungsi Dan Materi Muatan Peraturan Perundang-Undangan* (Bali: IGMW Atmaja: Fakultas Hukum Universitas Udayana, 2017), 7.

²³ Bernard Arief Sidharta, *Ilmu Hukum Indonesia, Upaya Pengembangan Sistem Hukum Sistematis Yang Responsif Terhadap Perubahan Masyarakat* (Yogyakarta: Genta Publishing, 2013), 7.

²⁴ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya* (Yogyakarta: Kanisius, 2006), 99.

decree was "the mining, dredging, transporting and trading activities of sea sand, which have been going on uncontrollably, have caused damage to the coastal and marine economy, the decline of fishermen and fish farmers, as well as the fall in the price of sea sand."²⁵

After being stopped for more than 2 (two) decades, sea sand exports have reopened with the issuance of Government Regulation Number 26 of 2023 (PP No. 26/2023) concerning Management of Sedimentation Products in the Sea. Apart from exports, other uses include domestic reclamation, government infrastructure development, and infrastructure development by business actors.²⁶ The issuance of marine sedimentation management regulations which underlie the opening of sea sand exports is considered fragile. This government policy is considered not to be based on a thorough study.²⁷

The National Coordinator of Destructive Fishing Watch (DFW) Indonesia, Mohammad Abdi Suhufan, is of the opinion that the basis for drafting PP Number 26 of 2023 is considered fragile because it does not refer to higher statutory regulations, in this case Law Number 12 of 2011 concerning the Establishment of Legislative Regulations - Invitation (Law No. 12/2011).²⁸

When forming good laws and regulations, and for these regulations to be well accepted in society, these regulations must be formed and originate from the existence of a good system. In forming a statutory regulation, there are principles that must be fulfilled so that

its formation is in accordance with the provisions that have been regulated.²⁹ Legal principles are needed in forming laws and regulations. The functions of principles are:³⁰ 1) as a benchmark in the formation and/or testing of legal norms; 2) to facilitate close understanding of the law; 3) as a mirror of the civilization of society or nation in viewing behavior.

Referring to Law no. 12/2011 The principles for forming these laws and regulations include:

First, the Principle of Clarity of Goals, this principle means that every legislative regulation must have a clear goal to be achieved. Based on the stated objectives of PP No. 26/2023 in the preamble section explains that the purpose of establishing PP No. 26/2023 is to improve marine health, it is necessary to control natural processes that interfere with the management of marine resources through regulating the management of sedimentation results in the sea, apart from that the aim of PP No. 26/2023 is to support the maintenance of the carrying capacity of coastal and marine ecosystems thereby improving marine health.

Second, the Principle of Institutions or Appropriate Forming Officials, this principle means that every type of statutory regulation must be made by a state institution or an authorized official forming legal regulations, such statutory regulations can be canceled or null and void if made by the institution unauthorized state or official. Regarding this principle, the author sees it as appropriate because the PP was issued by the government

²⁵ Andreas Aditya Salim, "Perspektif Hukum Pemanfaatan (Sedimentasi) Pasir Laut," *Kompas.Id* (blog), June 17, 2023, <https://www.kompas.id/baca/opini/2023/06/16/perspektif-hukum-pemanfaatan-sedimentasi-pasir-laut>.

²⁶ Yosep Budianto, "Penambangan Pasir Laut Mengancam Kelestarian Lingkungan," *Kompas.Id* (blog), June 6, 2023, https://www.kompas.id/baca/riset/2023/06/06/penambangan-pasir-laut-mengancam-kelestarian-lingkungan?open_from=Search_Result_Page.

²⁷ BM Lukita Grahadyarini, "Kebijakan Ekspor Pasir Laut Dinilai Rapuh," *Kompas.Id*

(blog), June 3, 2023, https://www.kompas.id/baca/ekonomi/2023/06/03/kebijakan-ekspor-pasir-laut-dinilai-rapuh?open_from=Search_Result_Page.

²⁸ Grahadyarini.

²⁹ Otje Salman dan Anthon F. Susanto, *Teori Hukum: Mengingat, Mengumpulkan dan Membuka Kembali*, (Bandung: PT. Refika Aditama, 2008), 1.

³⁰ I Gde Pantja Astawa dan Suprin Na'a, *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*, (Bandung: Alumni, 2012), 81-82.

as an implementation of the law that was passed by the House of Representatives (DPR).

Third, the Principle of Conformity between Type, Hierarchy and Content Material, this principle means that in the formation of statutory regulations, one must really pay attention to the appropriate content material in accordance with the type and hierarchy of statutory regulations. Regarding this principle, the author uses Law Number 32 of 2014 (UU No. 32/2014) concerning Maritime Affairs as a reference for PP No. 26/2023. In the consideration or weighing section in PP No. 26/2023 states Article 56 of Law no. 32/2014 as the legal basis underlying the issuance of PP No. 26/2023.

Meanwhile, based on Article 56 of Law no. 32/2014 concerning Maritime Affairs regulates the government's responsibility to protect and preserve the marine environment which is carried out through preventing, reducing and controlling the marine environment from any marine pollution as well as handling damage to the marine environment. Apart from that, based on Article 55 of Law no. 32/2014 requires central and regional governments to organize/implement a system for preventing and controlling pollution and damage to the marine environment as an integrated part of the national disaster prevention and management system.³¹

Article 56 does not delegate the formation of government regulations. According to Law Number 12 of 2011 concerning the Formation of Legislative Regulations (UU No. 12/2011), government regulations are statutory regulations stipulated by the president to implement the laws as they should, law here means Law Number 32 of 2014 concerning Maritime Affairs.

Government Regulation Number 26 of 2023 concerning Management of Sedimentation Products at Sea does not reflect

the cargo material as regulated in Law No. 32/2014 concerning Marine Affairs because: first, sedimentation management has no connection or correlation with marine conservation. If you pay attention, the meaning of marine conservation according to the explanation of Law no. 32/2014 is aimed at the existence, availability and sustainability of biodiversity, protection of cultural sites and geomorphological features, so it is clear that controlling marine sedimentation has nothing to do with marine conservation.³² Second, management of marine sedimentation is not related to controlling marine pollution, because based on Article 1 number 11 of Law no. 32/2014 Marine pollution is human activity that causes marine environmental quality standards to be exceeded. Based on the consideration of letter c PP No. 26/2023 states "that to improve ocean health, it is necessary to control natural processes that interfere with the management of marine resources". Natural processes are not human activities that can cause marine pollution.³³

Third, marine sedimentation management is not related to marine disaster management. According to Article 53 of Law no. 32/2014, the various types of marine disasters are a) natural phenomena, b) environmental pollution and/or c) environmental warming, while the natural process of sediment formation is not one of them, and fourth, management of marine sedimentation has nothing to do with prevention and control. pollution, damage and disasters. PP No. 26/2023 does not regulate aspects of damage and disaster prevention, there are 2 (two) important elements of the definition of damage according to Law no. 32/2014 that must be fulfilled are: a) physical, chemical and/or biological changes to the environment, b) detrimental impacts on marine resources, human health and other marine activities.

³¹ Indonesia Ocean Justice Initiative, "Analisis Terhadap Peraturan Pemerintah Nomor 26 Tahun 2023 Tentang Pengelolaan Hasil Sedimentasi

Di Laut," Kertas Kebijakan (Jakarta: Indonesia Ocean Justice Initiative, 2023).

³² Indonesia Ocean Justice Initiative.

³³ Indonesia Ocean Justice Initiative.

Therefore, the content of PP No. 26/2023 is not in accordance with what is desired by Law no. 32/2014, because sea sand mining can also result in the sinking of small islands, this is in line with the opinion of environmental activists, one of which is the Coastal and Marine Campaign Manager of the Indonesian Forum for the Environment (WALHI) Parid Ridwanuddin, who stated that PP Number 26 of 2023 will be at risk of reducing small islands in Indonesia because dredged sand sediment can damage coastal ecosystems and cause abrasion, so this PP can threaten small islands, especially in Indonesia because Indonesia is an archipelagic country, including its coastal areas.³⁴

Apart from that, Lecturer at the Faculty of Fisheries and Marine Sciences, Sam Ratulangi University, Rignolda Djamaludin, warned of the dangers of sedimentation carried out by tools or machines which can damage marine ecosystems and also explained that when the sediment is transported, the quality of the environment around the waters will decrease because of the materials. natural resources needed for ecosystem balance will be lost, and if the contour of the waters is changed by taking material, changing the profile of the bottom of the waters, the oceanographic dynamics will definitely change, especially in areas where there are small islands.³⁵

Then, the Head of the Center for Coastal and Marine Resources Studies (PKSPL) IPB University, Yonvitner, questioned the academic text for the preparation of PP No. 26/2023 which is not accompanied by academic data and studies, where academic data

should contain, among other things, potential reserves, distribution and marine sedimentation deposits. Apart from that, academic data must also contain problems, risks, ecological information related to ecosystems and waters, as well as economic prospects, objectives and exploitation scenarios.³⁶

One of the important elements to produce responsive legal products is community participation. Nonet and Selznick argue that the importance of the role of society in the formation of legal products must be seen in the participatory formation process by inviting as much participation as possible from all elements of society, both in terms of individuals and groups of society. Apart from that, it must also be aspirational in nature, originating from the desires or desires of the community. This means that the legal product is not the will of the ruler to legitimize his power.³⁷ The community must participate in determining the priority policy direction for drafting statutory regulations, without community involvement in its formation, it is impossible for a statutory regulation to be accepted and implemented properly.³⁸

Mahfud MD is of the opinion that the indicators of a responsive legal product are: a) its creation is participatory, b) its content is aspirational. Participatory drafting means that the process of forming a law, from planning, discussion, enactment to evaluation, its implementation requires the active involvement of the community. The content is aspirational, meaning that the material or substance of the norms in the law must be in accordance with the aspirations of the community.³⁹

³⁴ Indonesia, "Mengapa Kebijakan Ekspor Pasir Laut Ditolak Pegiat Lingkungan Dan Negara Mana Yang Diuntungkan?"

³⁵ Indonesia.

³⁶ Grahadyarini, "Kebijakan Ekspor Pasir Laut Dinilai Rapuh."

³⁷ Nonet dan Selznick, "Law and Society in Transition: Toward Responsive Law", dalam A. Ahsin Thohari, Reorientasi Fungsi Legislasi Dewan Perwakilan: Upaya Menuju Undang-Undang Responsif", Jurnal Legislasi Indonesia, Volume 8

No. 4 (Jakarta: Direktorat Jenderal Peraturan Perundang-Undangan, 2011), 569.

³⁸ Yuliandri Tim Pengkajian Hukum, 2014, Laporan Akhir Pengkajian Hukum tentang Partisipasi Masyarakat dalam Penentuan Arah dan Kebijakan Prioritas Penyusunan Peraturan Perundang-undangan.

³⁹ Heri Kurniadi, "Partisipasi Dari Masyarakat Pembentukan Peraturan", Muhammadiyah Law Review, Volume 5 No. 1

Many parties question the sea sand export policy in the form of PP No. 26/2023, which was made without involving public input. Chairman of the Indonesian Maritime Scholars Association (Iskindo) Riza Damanik explained that his party had never been aware of any discussions or been asked to provide input regarding the preparation of PP No. 26/2023.⁴⁰ even though the community's right to participation in drafting laws and regulations is regulated in Constitutional Court Decision Number: 91/PUU-XVIII/2020. These rights include the right to have one's opinion heard, the right to have one's opinion considered, and the right to receive an explanation or answer to an opinion given in the context of ensuring meaningful participation for society.

Based on the Ocean Health Index report, Indonesia's marine health score is below the world average.⁴¹ The government should prioritize caution and involve the public or community in formulating policies, especially those that have the potential to have an impact on fishermen and communities in coastal areas and small islands.⁴² Furthermore, there are also social impacts that occur as a result of sea sand mining, based on a study by Andi Kurniawati who is a researcher from Mulawarman University, namely the injustice felt by the local fishing community who depend on the affected sea for their daily livelihood. An example of this can be seen from the construction of the Makassar New Port, which is a national strategic project which requires sand for reclamation activities, and sea sand has been extracted from the Spermonde Islands, South Sulawesi. The activity of extracting sea sand

has resulted in the loss of the source of income for Kodingareng fishermen who depend on marine products in the waters of the Spermonde Islands for their livelihood.⁴³

Therefore, it is important that during the process of drafting PP No. 26/2023 yesterday can pay attention to meaningful community participation. The principle of community participation is important in development and environmental management because the community is the party most vulnerable to the impacts caused by environmental damage so that for the community the concept of community involvement is a manifestation of the development process and environmental management itself as well as an effort to improve the quality of government policies related to the environment.⁴⁴

Apart from that, public participation in a democratic country has a role in maintaining the values of democracy itself, such as: a) avoiding abuse of power, b) channeling the aspirations of the community (citizens) to the government, c) involving citizens in public decision making, d) upholding sovereignty people.⁴⁵ Meanwhile, Sirajuddin classifies community involvement in policy formulation, including environmental policy, into 3 (three) levels, namely: a) First level, no public participation (non-participation), namely the level of manipulation and therapy, b) Second level, pseudo participation, namely the level of mitigation, consultation, and information. In this second level, the community is listened to and allowed to express their opinions, but they do not have the ability and there is no guarantee

(2021):
<http://dx.doi.org/10.24127/lr.v5i1.1500.g977> 42,

⁴⁰ Grahadyarini, "Partisipasi Publik Diabaikan Dalam Kebijakan Ekspor Pasir Laut."

⁴¹ Ocean Health Index, "Global Score," accessed January 7, 2024, <https://oceanhealthindex.org/regions/indonesia/>.

⁴² Grahadyarini, "Partisipasi Publik Diabaikan Dalam Kebijakan Ekspor Pasir Laut."

⁴³ Indonesia Ocean Justice Initiative, "Analisis Terhadap Peraturan Pemerintah Nomor 26

Tahun 2023 Tentang Pengelolaan Hasil Sedimentasi Di Laut."

⁴⁴ Safrina, "Partisipasi Masyarakat Dalam Pengelolaan Wilayah Pesisir Di Aceh," *Jurnal Hukum Lingkungan* 2, no. 1 (2015): 32.

⁴⁵ Laurensius Arliman, "Partisipasi Masyarakat Dalam Pembentukan Peraturan Perundang-Undangan Untuk Mewujudkan Negara Kesejahteraan," *Jurnal Politik Pemerintahan* 10, no. 1 (2017): 66.

that their views will be seriously considered by policy makers, c) The third level, degree of citizen power, namely the level of partnership, delegation of power and control of society. At this level the community has influence in the policy determination process.⁴⁶

The author believes that public participation in the preparation of Government Regulation Number 26 of 2023 concerning Management of Sedimentation Products in the Sea is in first place, namely the absence of community involvement, especially fishermen, coastal communities and academics in the marine sector.

Indonesian Territorial Maritime Boundaries that Need to be Considered the Movement of Marine Sedimentation Products Across National Bordes.

As an archipelagic country, Indonesia sets the width of its territorial sea at 12 miles from the baseline. The determination of the area's size is contained in the Djuanda Declaration issued on December 13 1957. However, after Singapore reclaimed its coast, the width of the sea separating the two countries became less than 15 miles from the baseline of each country.⁴⁷

The sea border between Indonesia and Singapore is the narrowest area between Indonesia's sea borders and other neighboring countries. The width of the Singapore Strait is only around 16 KM and is estimated to be 105 KM long. This strait is located between Singapore Island and the Riau Islands which connects the Malacca Strait and the South China Sea. Thus, the Singapore Strait has strategic

value for shipping traffic in the Malacca Strait and the South China Sea.⁴⁸

Indonesia and Singapore have actually agreed on an international maritime boundary in the Singapore Strait. The two countries signed a territorial maritime boundary agreement on May 25 1973 which established 6 (six) boundary points better known as the V-Line as the turning points of the boundary line. Since both countries ratify it, the agreement is officially valid and legally binding.⁴⁹

Indonesia and Singapore agreed to divide the maritime boundaries between the two countries in the Singapore Strait into several boundary segments, namely in the west (Nipa Island - Tuas), central, and east (Batam - Changi and Bintan - South Ledge/Middle Rock/Pedra Branca).⁵⁰ The maritime boundary of the Indonesia-Singapore region in the Central segment of the Singapore Strait was determined by the signing of the Agreement between the Republic of Indonesia and the Republic of Singapore concerning the Determination of the Maritime Boundary Line of the Two Countries in the Singapore Strait in Jakarta, on 25 May 1973, which was subsequently ratified by Law Number 7 of 1973. The sea boundary between Indonesia and Singapore in the western segment of the Singapore Strait was determined by the signing of the Agreement between the Republic of Indonesia and the Republic of Singapore concerning the Determination of the Maritime Boundary Line of the Two Countries in the Western Part of the Singapore Strait (Nipah-Tuas Island) in Jakarta, dated March 10 2009, which was subsequently ratified by Law

⁴⁶ Sirajuddin, Fatkhuroman, and Zulkarnain, *Legislative Drafting: Pelembagaan Metode Partisipatif* (Malang: In-Trans Publishing, 2006).

⁴⁷ Arni Nur Sukma Pertiwi, Hardi Alunaza SD, and Adityo Darmawan Sudagung, "Dampak Reklamasi Pantai Singapura Terhadap Batas Laut Dan Kedaulatan Wilayah Indonesia-Singapura," *Jurnal Asia Pasific Studies* 2, no. 2 (2018): 132-43.

⁴⁸ Japanton Sitohang and Emilia Yustiningrum, *Masalah Perbatasan Wilayah Laut*

Indonesia Dengan Malaysia Dan Singapura, 1st ed. (Yogyakarta: Graha Ilmu, 2016).

⁴⁹ Wisnu Yudha AR, "Reklamasi Singapura Sebagai Potensi Konflik Delimitasi Perbatasan Wilayah Indonesia - Singapura," *Global Strategis* 1, no. 2 (2007): 120-37.

⁵⁰ "Naskah Akademik Rancangan Undang-Undang Tentang Pengesahan Perjanjian Antara Republik Indonesia Dan Republik Singapura Tentang Penetapan Garis Batas Laut Wilayah Kedua Negara Di Bagian Timur Selat Singapura" (2015).

Number 4 of 2010.⁵¹ Thus, Indonesia and Singapore still need to establish maritime boundaries between the two countries in the eastern segment of the Singapore Strait (Batam-Changi) and the eastern segment of the 2nd Singapore Strait (in the waters around Bintan-South Ledge/Middle Rocks/Pedra Branca).

The absence of a clear maritime boundary between Indonesia and Singapore in the Singapore Strait has also raised a number of concerns among the people in the border area regarding a number of other threats that arise, such as environmental pollution at sea, oil spills from tankers or other pollution caused by shipping traffic or ship accident. There are also concerns about the loss of some of Indonesia's marine waters or outer islands around the Singapore Strait, as well as the export of sand obtained from mining on a number of Indonesia's outer islands.⁵²

Singapore has been the largest sand importer in the world in recent years, because Singapore focuses on large-scale construction and reclamation. In 1965, when Singapore had just gained independence, Singapore's land area was 581 KM² and increased by one fifth to 719KM² in 2015. This land expansion will continue so that in 2030 Singapore's land area will increase by 30% since 1965.⁵³

Tabel 1.
Regional Development of
Singapore

Tahun	Total Wilayah (km ²)	Penambahan Wilayah (km ²)
1960	580	0

1966	581,5	1,5
1975	596,8	15,3
1985	620,5	23,7
1995	647,5	27
2005	699	51,5
2015	719	20

Sources: Wisnu Yudha AR, "Reklamasi Singapura Sebagai Potensi Konflik Delimitasi Perbatasan Wilayah Indonesia - Singapura," *Global Strategis* 1, No. 2 (2007): 120–37.

Initially, Singapore bought sea sand from Indonesia and Malaysia. However, during the era of President Megawati in 2002, Indonesia officially closed sea sand exports to Singapore. Then Malaysia followed suit with a ban in 2019. Singapore then turned to other neighboring countries such as Cambodia, Myanmar, the Philippines and Vietnam.⁵⁴ Because Singapore needs sand in large quantities, the price of sea sand is high, from only USD 3 per ton in the 1995-2001 period, rising to USD 190 per ton in the 2003-2005 period.⁵⁵

Before there was a ban on sea sand exports, Indonesia was the main supplier of sea sand for land expansion activities in Singapore. Imported sand was taken from a group of islands around the Riau archipelago, sending an average of more than 53 million tons of sea sand per year between 1997 until 2002.⁵⁶ Singapore is by far the largest country that imports sand,

⁵¹ Naskah Akademik Rancangan Undang-Undang tentang Pengesahan Perjanjian Antara Republik Indonesia dan Republik Singapura tentang Penetapan Garis Batas Laut Wilayah Kedua Negara di Bagian Timur Selat Singapura.

⁵² Naskah Akademik Rancangan Undang-Undang tentang Pengesahan Perjanjian Antara Republik Indonesia dan Republik Singapura tentang Penetapan Garis Batas Laut Wilayah Kedua Negara di Bagian Timur Selat Singapura.

⁵³ Rodolphe De Koninck and Marc Girard, *Singapores Permanent Territorial Revolution: Fifty Years in Fifty Maps* (Singapore: NUS Press, 2017).

⁵⁴ Koninck and Girard.

⁵⁵ Koninck and Girard.

⁵⁶ Ananda Teresia and Bernadette Christina, "Boon for Singapore as Indonesia Scraps Ban on Sea Sand Exports," *Reuters* (blog), May 29, 2023, <https://www.reuters.com/markets/asia/boon-singapore-indonesia-scraps-ban-sea-sand-exports-2023-05-29/>.

especially sand from neighboring countries.⁵⁷ Based on the 2019 United Nations Report, Singapore in the last 2 (two) decades has imported 517 million tons of sand from neighboring countries.⁵⁸

The Riau Islands, which are one of the outermost borders of Indonesia's territory, are very important. This is because most of the sand sucked from the Indonesian seabed comes from the islands. Sea sand is exported to Singapore and Malaysia to reclaim beaches. From this reclamation, Singapore succeeded in making 8 (eight) small islands, namely Seraya, Merbabu, Merlimau, Ayer Chawan, Sakra, Pesek, Masemut Laut and Meskol into Jurong Island. After reclamation, the Jurong area advanced 3.5 kilometers to the southwest.⁵⁹

Singapore is an island country and also a port country with unfavorable geographical conditions, because it only has inland waters, a territorial sea and a narrow seabed (not a continental shelf). However, Singapore greatly benefits from its position as a port country located on the Malacca - Singapore Strait, which is one of the busiest international shipping lanes (straits for international navigation) in the world. This position has made Singapore one of the centers of the service industry in the world.⁶⁰

The problem then is that because sand exported from Indonesia to neighboring countries, especially Singapore, can be used by Singapore to expand its land area, concerns arise about Singapore's maritime claims. In accordance with the provisions of the 1982 UN Convention on the Law of the Sea (UNCLOS), every coastal state has the right to a territorial

sea, additional zone, exclusive economic zone and continental shelf as measured from the baseline (coast line).

The reclamation project caused tension between Indonesia and Singapore. From the Indonesian side, it is feared that reclamation could disrupt and threaten Indonesia's territorial sovereignty. This is shown by the many criticisms received from the public.⁶¹ Beach reclamation in Singapore caused the city's land area to increase by 12 km towards Indonesian waters, while Indonesia's territorial waters decreased by 6 km.⁶²

The reclamation carried out by Singapore cannot be separated from the provisions of international maritime law, in this case UNCLOS 1982. This is because UNCLOS is the only legal reference for countries that have problems with maritime areas. The following are several articles in UNCLOS that can be interpreted into the reclamation process carried out by Singapore, namely: 1) Article 60 paragraph 8 of UNCLOS 1982 which explains: "artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of territorial sea, the exclusive economic zone or the continental shelf." which means that artificial islands, installations and buildings do not have island status, so they do not have their own territorial sea. Its presence also does not affect the determination of territorial sea boundaries, exclusive economic zones or continental shelves, and Article 121 paragraph (1) of UNCLOS 1982 which reads: "an island is a naturally formed area of land, surrounded by

⁵⁷ GESAMP, "CG 5: Sand and Gravel Mining in the Marine Environment - New Insights on a Growing Environmental Problem" (London: International Maritime Organization, 2019).

⁵⁸ GESAMP.

⁵⁹ Retno Sulistyowati, "Ada Apa Di Balik Aturan Pasir Laut," *Tempo* (blog), June 11, 2023, <https://majalah.tempo.co/read/laporan-utama/169043/aturan-penambangan-pasir-laut>.

⁶⁰ Tommy Hendra Purwaka, "Peluang Menurut UNCLOS Dan Hukum Positif Indonesia

Untuk Membuka Kembali Ekspor Pasir Laut Ke Singapura" (Skripsi, Jakarta Selatan, Universitas Katolik Indonesia Atma Jaya, 2014).

⁶¹ Wisnu Yudha AR, "Reklamasi Singapura Sebagai Potensi Konflik Delimitasi Perbatasan Wilayah Indonesia - Singapura," *Global Strategis* 1, No. 2 (2007): 120–37.

⁶² Pertiwi, SD, and Sudagung, "Dampak Reklamasi Pantai Singapura Terhadap Batas Laut Dan Kedaulatan Wilayah Indonesia-Singapura."

water, which is above water at high tide.” Based on this definition, the island referred to in Article 121 paragraph (1) is a land area that is formed naturally, surrounded by water and is above the water at high tide. This means that territorial boundaries are determined by natural boundaries and the addition of land areas through land reclamation projects does not change the territorial boundaries of the two countries. So, it can be interpreted that the base point can only be measured from the natural outer islands, not from reclaimed land.⁶³ In other words, even though Singapore's land area increases, its territorial waters do not necessarily advance and have an impact on the sovereignty of Indonesia's territorial waters.

2) Article 11 of UNCLOS 1982 which reads: "for the purposes of delimiting the territorial sea, the outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbor works." Which means, for the purposes of determining territorial sea boundaries, the outermost permanent port installation which is an integral part of the port system is considered to be part of the coast. Offshore installations and artificial islands will not be considered permanent harbor installations. So, if the coastal reclamation carried out by Singapore aims to build a structure as intended in Article 11 of UNCLOS 1982, then clearly the installation cannot be used as a baseline, because offshore installations and artificial islands are not included in permanent harbor installations so they are not baseline can be drawn.

3) Article 15 of UNCLOS 1982 which reads: "where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea

beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of each of the two states in a way which is at variance therewith. which means that the determination of territorial sea boundaries between countries whose coasts are opposite or adjacent, that in order to determine the boundaries of their territorial sea, none of them has the right, unless there is an agreement to the contrary between them, to determine the boundaries of their territorial sea beyond the Central whose points are the same distance from the nearest points on the baselines from which the width of each country's territorial sea is measured. Based on Article 15 of UNCLOS, the territorial boundaries between Indonesia and Singapore must be resolved through negotiations between the two parties, and there must be no unilateral claims.

Then, based on Article 62 paragraph 2.A.a of the 1969 Vienna Convention, it is stated that agreements between countries in general can change, except for agreements regarding borders. The analogy is like the condition of 2 (two) households living next to each other. Renovation of our neighbor's house, whether it is bigger or smaller, will not move the yard fence that has been installed.⁶⁴

Therefore, the author believes that the Government should not have opened the tap for sea sand exports because if we refer to Article 2 paragraphs (1) and (2) of Ministerial Decree

⁶³ AR, “Reklamasi Singapura Sebagai Potensi Konflik Delimitasi Perbatasan Wilayah Indonesia - Singapura.”

⁶⁴ I Made Arsana, “Ekspor Pasir, Reklamasi Dan Ancaman Batas Maritim,” *Kompas.Id* (blog),

Number 117/MPP/Kep/2/2003 concerning Temporary Suspension of Sea Sand Exports, it is explained that "The export of sea sand has been stopped from all territories of the Republic of Indonesia." and paragraph (2) "the cessation of sea sand exports as referred to in paragraph 1 will be reviewed after a program to prevent damage to the coast and small islands has been prepared, and the determination of maritime boundaries between Indonesia and Singapore has been completed." Because there is no maritime boundary between Indonesia and Singapore yet, the Indonesian government should not issue a sea sand export policy, because it is worried that if Singapore buys sea sand from Indonesia and uses it to expand its land area, it could threaten Indonesia's maritime borders. and also the land reclamation carried out by Singapore cannot be used as a basis for baseline claims to expand Singapore's maritime territory.

CONCLUSION

Based on the analysis and discussion as described above, there are 2 (two) conclusions, namely, First, it is important that during the process of drafting PP No. 26/2023 yesterday

can pay attention to meaningful community participation, the principle of community participation is important in environmental development and management because the community is the party most vulnerable to the impacts caused by environmental damage resulting from sea sand dredging, and the author also concludes that There was no public participation in the preparation of Government Regulation Number 26 of 2023 concerning Management of Sedimentation Products in the Sea, especially fishermen, coastal communities and academics in the marine sector.

Second, from the perspective of international maritime law, the author concludes that Singapore cannot claim the territory resulting from the reclamation it has carried out because based on Article 60 paragraph (8) UNCLOS 1982, artificial islands, installations and buildings do not have island status, so they do not have a territorial sea. Alone. In fact, its presence does not affect the determination of territorial sea boundaries, exclusive economic zones or continental shelves.

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