



Indonesian Marine Resources Law Perspective of Marine Tourism Development

I Dewa Gede Atmadja

Fakultas Hukum, Universitas Warmadewa, Denpasar, Bali

ABSTRACT - Indonesia as an archipelagic country with an archipelago perspective has the second widest beach in the world, as well as a territorial sea area (archipelago waters) including the Exclusive Economic Zone (EEZ) and the Continental Shelf with rich and potential marine resources. In fulfilling the mandate of the Constitution to realize social justice for all Indonesian people (social justice principle). After the Covid outbreak subsided, tourism activities began to increase, providing a positive impact on the national and regional economy, including in the field of marine tourism (maritime tourism), including tourism activities on the waters that take advantage of high waves, namely for surfers (surfing), underwater activities for Diving tourists to enjoy the beauty of coral reefs and ornamental fish (diving to enjoy the coral reef and the ornamental fishing), this marine tourism destination is quite a lot provided by Indonesian nature, including on the island of Bali

Keywords: Indonesian Marine, Law, Marine Tourism, Tourism Development

I. INTRODUCTION

In terms of geography, Indonesia as an “Archipelago State” has a strategic position located between two oceans, namely the Indian Ocean and the Pacific Ocean, which are very busy economic-business routes. Indonesia’s territory has been recognized as an “archipelago state”, the result of the 1982 United Nations Convention Law of the Sea (UNCLOS), which was ratified by the Government of Indonesia, based on Law no. 17 of 1985, the total area became:

(1) landmass, 1.91 million km²; (2) oceans around 3.25 million km², (3) Exclusive Economy Zone (EEZ) around 2.55 km²; and (4) the Continental Shelf, about 2.8 hundred km². Thus, the potential of marine resources (marine resources), is very rich in terms of economy and important for defense and security (Salim HS, 2018).

Because the components of the philosophical foundation, include: view of life, philosophy; juridical basis: principles, legal principles, legal ideals of Pancasila; sociological foundation, values, culture that live in society (Atmadja & Budiarta, 2018).

Operationally, Law Number 32 of 2014 concerning the Sea determines that the use of marine resources has a philosophical basis, namely:

Fair benefits for the community, legal certainty, juridical basis include: Article 20 of the 1945 Constitution, Article 22 D paragraph (1) of the 1945 Constitution, Article 25A of the 1945 Constitution, Article 33 paragraph (3) of the 1945 Constitution. Furthermore, the sociological basis for community welfare by utilizing natural resources sea power comprehensively. Accompanied by the legal principles of marine resources, as stated in Article 2 of Law no. 32 of 2014 concerning the MARINE, consists of ss 11 principles whose understanding we can observe in the Elucidation of Article 2. The eleven principles include:

1. the principle of sustainability,
2. the principle of consistency,
3. the principle of cohesiveness,
4. the principle of legal certainty,

5. the principle of partnership,
6. the principle of equity,
7. community participation,
8. the principle of openness,
9. the principle of decentralization,
10. the principle of accountability, and
11. the principle of justice

Principles are defined as basic thoughts that contain moral values that provide legal policy direction in the development of macro law, namely the formation of comprehensive laws and regulations, as well as the formation of micro laws, namely “in concreto legal decisions (law in concreto), namely “Court Decision”, Decision of the State Administration Agency; and Notary Deed.

However, the reality is that these principles are still experiencing obstacles, both juridical, institutional and non-juridical factors which can even be said to be resolved beyond the control of the Indonesian government specifically with regard to “maritime tourism” (maritime tourism).

1.2. Formulation of the problem

Referring to the background of the problem, in this paper two (2) problems can be formulated, namely:

1. How is the arrangement of comprehensive laws and regulations in the use of marine resources, and the arrangement of law enforcement agencies in the field of marine tourism?
2. What is the role of the Government of Indonesia, which holds the mandate of leading the G. 20 countries in resolving conflicts, especially in bringing about peace in the war between Russia and Ukraine and their allies, for the development of marine tourism, which requires investment?

II. RESEARCH METHOD

The type of research in the study of Marine Resources is “doctrinal research” or “normative research, with a statute approach and a conceptual approach. In the legislative approach, a systematic analysis of authoritative texts is carried out, both Constitution, legislative products, regulations, continued interpretation, and evaluation of the Law of Marine Resources “The water space on earth that connects land and sea and other natural forms which constitute a geographical and ecological unit along with all natural elements where the boundaries and their ecosystems are determined in national legislation and international law (Salim HS, 2018).

The statutory approach is called primary legal material which is authoritative in nature, which is legally binding-formal, the conceptual approach is secondary legal material that has doctrinal power, because of the scientific authority of the author. Then tertiary legal materials, such as research reports, abstracts, indexes, dictionaries, articles in newspapers are only for reference (Cohen, 1978).

III. LITERATURE REVIEW

3.1. Conceptual framework

3.1.1 Marine Resources Legal Concept

Indonesia as an archipelagic country with an archipelagic perspective, has the second longest coastline, has abundant biodiversity of natural resources, needs to be managed and protected in an integrated, comprehensive system between the marine, land and air environments (Marlang, et al., 2015). In detail, marine resources are classified as:

- A. biological resources, including:
 - (1) Fish,
 - (2) Coral reefs,
 - (3) Seagrass meadow,
 - (4) Mangroves and other marine life.
- B. Non-biological resources, including:

- (1) Sands, and
 - (2) Sea water, seabed minerals.
- C. Artificial resources are marine infrastructure related to:
- (1) Marine,
 - (2) Aquaculture,
- D. Environmental service, in the form of:
- (1) Natural beauty
 - (2) Underwater installations, and
 - (3) Seawater wave energy (Salim HS, 2018).

In the context of the utilization of marine resources, along the coastline, coast and small islands, the utilization includes:

- (a) *salt production*,
- (b) *bio pharmacology*,
- (c) *biotechnology of the sea*
- (d) *utilization of sea water apart of energy*,
- (e) *recovering content sinking the ship*; and
- (f) *marine-tourism* (Atmadja, et al., 2020).

3.1.2. Marine Tourism Concept

Marine tourism is part of the marine economy that is carried out in coastal and ocean areas, as well as on land that uses marine environmental services to produce goods and services. The benefits of marine tourism are:

1. Generate foreign exchange, thereby increasing state finances,
2. Can expand employment, and
3. Attracting foreign investors to invest their capital or foreign investors' investment

3.2. Theoretical basis.

3.2.1 Legislation Theory, "Momentum Theory"

According to this theory, there are four essential moments in structuring legislation, including: (Atmadja & Budiarta, 2018):

First: the philosophical ideal moment, its components consist of: the nation's view of life, culture, religious beliefs, philosophy of law, and legal awareness, and national insight. The philosophical-ideal moment serves as the philosophical foundation of legislation.

Second: the political-aspirational moment, the components of which are political interests and goals determined and related to aspirations about the real needs of the community. The aspirations of the real needs of society require political articulation. In this context, the role of legislators in absorbing the aspirations of the community is very urgent, often neglected. In terms of people's political aspirations, it functions as a sociological basis so that laws and regulations fulfill the benefits of the community comprehensively.

Third, the normative moment, its components consist of: legal ideals, constitution, rules, principles, values, and legal institutions, whose function is as a legal basis for legislation. Meuwissen argues that juridically the normative moment is central in realizing the purpose of structuring a legislation.

Fourth, the technical moment, is a work of skill, skill in compiling norms, both the structure of norms, systematic legislation. Apeldorn, argued that the moment of the technique of legislation (legal drafting) is the art of law formulating legislation, so that goals can be expressed clearly and precisely (Apeldoorn, 1990). In the sense of giving birth to a model of community behavior and a model for resolving legal conflicts, violations and resolving conflicts, both litigation and non-litigation.

3.2.2. State Institutional Theory

The Indonesian constitution, on the one hand prior to the Amendment of the 1945 Constitution, adhered to the "Structural Theory"; on the other hand, the Change embraces "Functional Theory. Teopri Struktul, whose emphasis is on "palement supremacy" (MPR), so that the MPR

is known as the highest state institution and other institutions are the President, DPA, DPR, BPK, and MA. As a high state institution, and there is no institution that has the authority to “judicial review”.

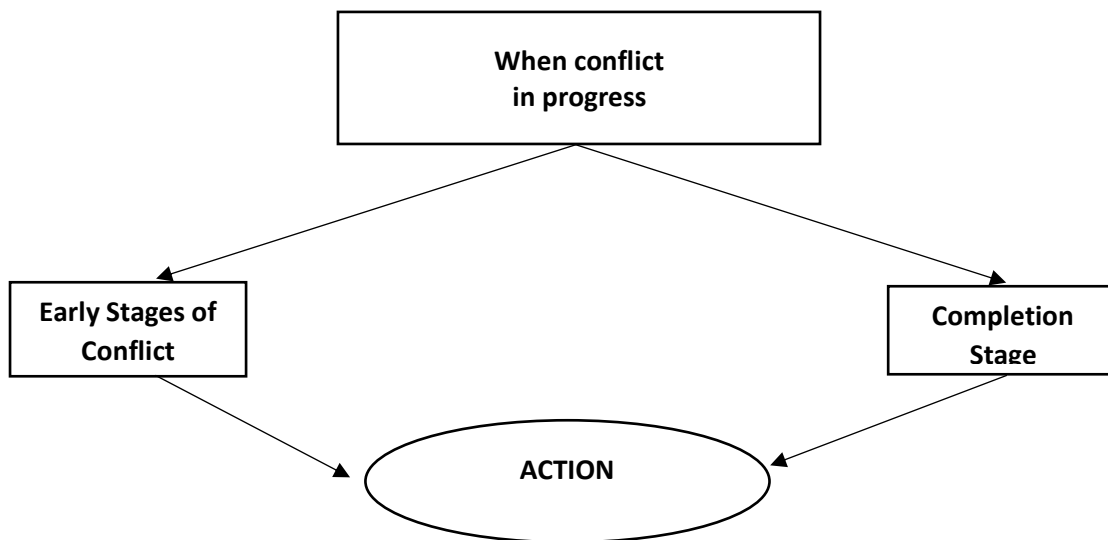
Behind that “Functional Theory”, the emphasis is on the supremacy of the Constitution, with the “principle of “checks and balances” between state institutions whose powers are granted by the Constitution, and strengthened by the Constitutional Court (Constitutional Court), whose central authority is the “judicial review”. the law against the constitution (Atmadja, et al., 2020).

3.2.3. International Conflict Resolution Theory

According to Hostly, the stages of international conflict occur in 14 stages, as follows:

- Protest Notes;
- Denial or Allegation;
- Withdrawal of ambassadors
- Threat;
- Threats of boycott or embargo;
- Make a complaint,
- Termination of diplomatic relations;
- Military bluff (standby, mobilize);
- Barriers to citizen communication;
- Formal blockade;
- The act of reciprocating with violence; and
- In War. This is what happened between Russia and Ukraine, even indirectly involving NATO and the United States, Japan, Australia.

Visually, the Government is usually in an international conflict resolution strategy, depicted in a chart like the one below:



Sumber: Hostly (2012)

International law provides complete freedom for states to choose the procedure for resolving international conflicts. But generally used: First, Politically (non-jurisdiction). Second, legally (jurisdictional). It turned out that the settlement of the war took the usual political settlement through: formal negotiations, bilateral negotiations or using the services of a third party (The Golbal Overview, 2012).

IV. RESULTS AND DISCUSSION

The concept of marine resources law is written and unwritten legal rules regarding wealth in the sea which is the water on earth that connects the sea with the land and other natural forms in the form of geographical and ecological units along with all related elements, where its boundaries and systems are determined by statutory regulations and international law, the concept of which is determined by Article 1 point 1 of Law no. 32 of 2014 concerning Marine Affairs.

Maritime tourism, conceptualized as a recreational activity is part of the marine economy which aims to increase foreign exchange, enlarge the State Budget and Revenue, attract investment both domestically (PMDN) and abroad (PMDA), and preserve the environment, so that tourism becomes a quality. All of these goals can rotate the national economy directly or indirectly.

The form of tourism utilization includes the use of non-living marine resources, namely at sea level, in the form of surfing, laying, underwater diving, enjoying the beauty of coral reefs and ornamental fish, the beauty of the beach, in the morning enjoying the beauty of the sunrise (sun rise). , in the afternoon the beauty of the sunset (sun set). Maritime tourism centers in Indonesia include: Raja Empat beach (Papua); Beach Bunaken (Menado) North Sulawesi; Sanur Beach, Kuta Beach: Batu Bolong Beach, Tulamben Beach; Pendawa Beach, Teluk Beach accepts the beauty of underwater temples and coral reefs (in Bali), becoming an underwater diver fan activity.

Where the “post-covid-19” condition, tourism begins to stretch, it certainly has a positive impact on tourism development and provides hopes for the fulfillment of the movement of the national economy, directly and indirectly expanding employment opportunities, as well as increasing the income of tourist villages whose utilization is managed. based on ecotourism with local wisdom of rural communities.

However, according to the author, there are two problems that still need to be watched out for, namely problems that can be solved depending on the capabilities of the Indonesian people, namely: the first problem, the professionalism of the legislators in structuring the formation of laws and institutional arrangements in the maritime sector; The second problem whose solution does not depend solely on our nation but also depends on the big countries, especially the G20 members, namely the resolution of the international conflict “Russia and Ukraine war” and the conflict in the Exclusive Economic Zone (EEZ), especially in the North Natuna Sea between “ Indonesia and the People’s Republic of China (PRC)”, namely China’s claim to Indonesia’s EEZ.

The first problem solving can be done through a review of the laws and regulations in the marine sector. Especially regarding the “content material” of Law No. 32 of 2014 concerning the Sea, that its principles which function as “ratio-legis” do not appear to be translated into cargo material. For example:

(1). “Principle of decentralization” is the delegation of authority from a part of the government which is the authority to:

- a. Governor as a representative of the government,
- b. Vertical agencies in certain areas, and/or
- c. To the governor, and
- d. Regent/mayor as the person in charge of general government affairs.

(2) “Accountability principle” means that maritime operations are carried out:

- a. openly, and
- b. can be accounted for.

(3) The “principle of justice” is that the content of this law must reflect the rights and obligations proportionally for every citizen.

Notes: (1) the notion of “decentralization principle”, is incorrect, because the definition of “decentralization” is the handover of government affairs by the Central Government to autonomous regions based on the principle of regional autonomy (see Article 1 point 6 of Law

Number 23 of 2014 concerning Regional Government). The definition of “the principle of decentralization as formulated in Article 2 of Law Number 32 of 2014 concerning the Sea is actually a “principle of deconcentration”. Because it is not in accordance with the principle of legal certainty regarding the “authority” of the Regional Government in the maritime sector, community participation in participating in the maritime sector is “marginalized”. (2) The principle of accountability is also not clearly explained in the “contents”, therefore the concept of open accountability to the community and citizens is only formal. (3) The “principle of justice” in this case is not clearly conceptualized in accordance with the principle of “social justice for all Indonesian people”, so it seems that the emphasis is on proportionalism of the rights and obligations of citizens, not on equitable distribution of community welfare. But something that is quite promising, especially regarding “marine tourism”, is regulated in the use of marine resources. Where it is conceptualized that marine tourism is a travel activity carried out by a person or group of people who aims to visit certain objects with the aim of:

1. recreation,
2. personal development or
3. learn the uniqueness of the tourist attraction visited.

The philosophy of developing marine tourism is to improve the welfare of the people around the sea. Implementation of marine tourism by considering aspects of interest: (1) local communities and local wisdom, (2) paying attention to marine conservation areas. [Article 28 paragraph (3) of Law Number. 32 of 2014).

Furthermore, regarding the arrangement, especially overcoming the weaknesses of the organs authorized to maintain security, especially in terms of coordinating supervision and law enforcement in the EEZ zone and the Continental Shelf, which is the task and authority of the BaKamla (Sea Security Agency) to overcome the strong ego-sectoral attitude. In addition, BaKamla does not yet have adequate surveillance capabilities, perhaps due to a lack of budget. Therefore, it is necessary to strengthen law enforcement in the EEZ area from upstream to downstream, namely: from regulation, investigation, investigation, prosecution and court. “Last but not least” patrols in the EEZ area need to be increased to ensure the security of our fishermen over Indonesia’s sovereign rights in the EEZ area, to natural resources in the form of caught fish.

With regard to the resolution of the international conflict “Russia versus Ukraine” involving Nato members who are also members of the G 20, Indonesia’s role has now become important in the position of the G. 20 Presidency in resolving the conflict. In the theory of international conflict resolution, there are two methods, namely: (1) Jurisdictional Method (through legal settlement) and (2) Non-Juridical Method (politico-diplomatic settlement method) through bilateral and multilateral negotiations. The settlement through the G20 Session in Nusa Dua-Bali is very relevant where most of the Nato members including the United States on the one hand support Ukraine and on the other Russia with supporters such as the PRC. According to the author, the point is that Indonesia, which leads the session, must be able to convince all members of the G 20 of the importance of a “peaceful settlement”. If the war continues, then what the G.20 Summit really wants is to realize the will of the common ideals to improve the world economy for the welfare of the world community through the principles of peace, “social welfare”, democracy and the protection of human rights, will not be realized, so that the G 20 “not needed anymore”.

It is also worth noting the analysis of Hikmahanto Yuwahana (UI Professor of International Law) in an interview with the political daily RMOL, resolving the “Russian-Ukrainian war conflict”, that at the G. On the other hand, Ukraine stated in writing it was ‘not a member of NATO, and NATO also stated in writing that it did not accept Ukraine as a member of NATO. Likewise, Russia stated in writing that it was “willing to carry out a ceasefire until peace is realized. The settlement of efforts in this way by Hikmahanto is called “hunting security”.

V. CONCLUSION

Referring to the above analysis, conclusions are drawn, namely:

1. Indonesia as an archipelagic country with an archipelago perspective has the second widest beach in the world, as well as a territorial sea area (archipelago waters) including the Exclusive Economic Zone (EEZ) and the Continental Shelf with rich and potential marine resources. in fulfilling the mandate of the Constitution to realize social justice for all Indonesian people (social justice principle).
2. After the Covid outbreak subsided, tourism activities began to increase, providing a positive impact on the national and regional economy, including in the field of marine tourism (maritime tourism), including tourism activities on the waters that take advantage of high waves, namely for surfers (surfing), underwater activities for Diving tourists to enjoy the beauty of coral reefs and ornamental fish (diving to enjoy the coral reef and the ornamental fishing), this marine tourism destination is quite a lot provided by Indonesian nature, including on the island of Bali.
3. However, in fact, the perspective of tourism economic development still has the potential to face obstacles, namely there are at least two problems, namely (1) the internal-Indonesian problem, namely the weakness of laws and regulations in the marine sector, both "mutant material" and institutions authorized to maintain security and law enforcement. which has not been able to optimally ensure the utilization of "marine resources" both biological and non-biological. (2) Global external problems, in which the position of the President of Indonesia who occupies the position of President of the G 20, can control the G 20 Summit in November in Nusa Dua Bali, which is expected to be able to overcome, namely mediating the conflict "Russia-Ukraine war", by convincing members of the G. 20 the need to create world peace in accordance with our foreign policy credo, we are free and active to "realize lasting world peace, with the principles of independence and social justice, so that the G-20 goal of improving the world economy can be realized.

5.1 Suggestion

1. Resolution of the problem of incompatibility of the principles adopted by Law Number 32 of 2014 concerning the Sea and its institutional weaknesses that have authority in the field of security and law enforcement at sea, including the sovereign rights of the Republic of Indonesia, namely in the Exclusive Economic Zone (EEZ) and also it is necessary to review the marine environment and marine regulations including the conservation of marine resources and their ecosystems. The review is intended to synchronize and harmonize maritime laws and regulations, including the Job Creation Law (UU Number 11 of 2020) which eliminates the principle of Regional Autonomy as widely as possible, so that the Job Creation Law, also known as the Omnibus Law, is an obstacle for regional authority to manage marine resources within 12 miles of the provincial territory. If the problem of weakness in laws and institutions can be overcome, then the development of tourism, including marine tourism, can move the national-regional economy, as well as ensure environmental sustainability, improve the welfare of local communities and local wisdom, and can even increase foreign investment through foreign investment. (PMDA) and PMDN.
2. The problem of global-international conflicts, especially the "Russia-Ukraine war" which also had a negative impact on the economy, including the world tourism industry, including maritime tourism, one of the mainstays of Indonesia's tourism development, proposed the functions or duties and authorities of the President/Government of Indonesia, especially the Diplomats from the Ministry of Foreign Affairs must maximally be able to direct the G20 Summit to end the war peacefully and the proposals of UI's International Lawyer, Hikmahanto can be considered by the Foreign Minister who will lead the G20 Summit Session. Through negotiations at the G20 Summit to realize "peace", the goal of the Republic of Indonesia has succeeded in realizing the goals of the state in accordance with the mandate of paragraph IV of the Preamble to the 1945 Constitution.

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