



Legal Liability of Corporations on License Violating in Utilizing Coastal Border for Sustainable Tourism Development in Bali Province

Gede Agung Wirawan Nusantara*, I Nyoman Putu Budiarta, I Nyoman Gede Sugiarta

Doctor of Law Study Program, Postgraduate Program Warmadewa University, Denpasar, Indonesia

Email: nusantaragede10@gmail.com

Abstract – The study on Legal Liability for Corporations Violating Coastal Border Permits in Bali Province aims to assess law enforcement efficacy concerning corporate violations in coastal area utilization. This empirical legal research utilizes multiple approaches; legislative, case-based, sociological, historical, and comparative legal analyses. The comparative legal approach involves reviewing coastal regulations in Canada, Norway, and Japan, considering their extensive coastlines. Philosophically, the 2nd and 5th principles of *Pancasila* guide corporate responsibility regulation for violating coastal permits. Law enforcement shows ineffectiveness in resolving coastal border violations, deviating from normative provisions. To address this, the proposed legal formulation for corporate liability integrates sustainable tourism development. It emphasizes non-litigious approaches, suggesting a Restorative Justice model to resolve coastal permit violations effectively.

Keywords: Legal Liability, Coastal Border Permits, Law Enforcement.

I. INTRODUCTION

The coastal border refers to the land situated along the shoreline, its width dependent on the beach's physical characteristics, extending a minimum of 100 meters from the highest tide point inland. According to Sadyohutomo (2016), state-owned coastal land must be preserved and accessible to the public, enabling collective use without causing damage or granting individual or group ownership rights. Despite this principle, the phenomenon of beach privatization has emerged within the context of sustainable tourism development. Sanjiwani (2016) elaborates on this trend and its consequences as follows; the extensive trend of privatization observed in Bali's coastal regions significantly hampers the use and purpose of beaches as public spaces, notably affecting the livelihoods of fishermen. They encounter restrictions in docking boats, unloading catches at certain points, and conducting trade transactions along the shore. Moreover, the Hindu community faces limitations accessing the beach for the traditional Melasti ritual, an essential purification ceremony preceding the Nyepi holiday. This closure of access routes has compelled local communities to seek alternate paths or create new ones to conduct the Melasti ritual. Due to the actions of tourism entrepreneurs, several Hindu groups had to relocate the ritual to more distant beaches from their temples. Consequently, Balinese children are deprived of their entitlement to freely enjoy the beach for recreational activities and play.

The coastal area has been appropriated by restaurant proprietors who arrange tables and chairs for their dining guests. This private utilization of the area restricts public access and is distinctly regulated to serve commercial interests. Similarly, hotel owners restrict local residents from engaging in activities on the beach, asserting ownership over the beach and constructing infrastructure to further their business pursuits. From a spatial planning perspective, beaches serve as tourist attractions in coastal regions. Their preservation and regulation are outlined in Law Number 27 of 2007 concerning the Management of Coastal

Areas and Small Islands, as well as Law Number 1 of 2014 amending Law Number 27 of 2007. Article 1, section 1 of these laws stipulates the following; the management of Coastal Areas and Small Islands involves the coordination of planning, utilization, supervision, and control of resources within these regions, overseen by the Government and Regional Governments. This coordination operates between sectors, land and marine ecosystems, as well as integrates scientific knowledge with management practices, aimed at enhancing the welfare of the populace.

Juridically, protection against coastal privatization is delineated in several statutory regulations. Article 18 of the Republic of Indonesia Law Number 11 of 2020, amending Article 16 of Law Number 1 of 2014 regarding Amendments to Law Number 27 of 2007 on the Management of Coastal Areas and Small Islands, specifies the following;

- (1) Coastal space utilization must be carried out in accordance with spatial planning and/or zoning planning.
- (2) Every person who utilizes coastal space as intended in paragraph (1) is obliged to fulfill a Business Permit related to marine utilization from the Central Government.

Article 18 of the Republic of Indonesia Law Number 11 of 2020, amending the provisions in Article 17 of Law Number 1 of 2014 regarding Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands, states the following;

- (1) The granting of business permits related to marine use as intended in Article 16 must take into account the preservation of coastal water ecosystems, communities, traditional fishermen, national interests, and the right of innocent passage for foreign vessels.
- (2) Business permits related to marine use cannot be granted in core zones in conservation areas.

The state's intervention in countering coastal privatization constitutes its duty to provide security, order, and prosperity. Corporations and their management can be held accountable under criminal, civil, and administrative law. Corporate conduct serves as a reflection of the will of individuals in their functional capacity (M. Ali, 2015). Preventing coastal privatization necessitates corporate cooperation through the implementation of robust corporate governance and active community engagement to avert encroachments on coastal borders.

Tourism establishments, including hotels and restaurants in these coastal zones, are not solely owned by local communities operating with minimal management; many are managed by larger entities and even transnational corporations. Public access to beaches is often restricted to maintain guests' comfort, with business legitimacy derived from regional and village regulations. Yet, regulations at these levels often fall short in regulating corporate criminal liability. This research discusses "Legal Liability of Corporations on License Violating in Utilizing Coastal Border for Sustainable Tourism Development in Bali Province."

II. METHOD

Empirical legal research is employed to scrutinize corporate violations concerning the use of coastal borders, the efficacy of law enforcement against corporations, and the efforts undertaken by pertinent stakeholders to address these violations. Specifically, this study delves into the conduct of business entities operating in the tourism sector. Primary and secondary data constitute the dataset for this research. Primary data encompasses interviews conducted with the Bali Provincial Government Spatial Planning Service and Traditional Villages situated in Bali's tourist destinations. Additionally, primary data includes on-site observations conducted in villages where businesses are illicitly utilizing coastal areas. Secondary data, comprising legal materials, encompasses primary, secondary, and tertiary sources. Collection of primary data involved interviews with the Regional Apparatus Organizations of the Bali Provincial Government Spatial Planning Service and Traditional Villages, along with direct observations of areas where unauthorized use of coastal borders is prevalent. The gathering of secondary data (legal materials) was executed through comprehensive library research. This literature review included identifying pertinent libraries as sources and cataloging essential legal materials, recognizing libraries as reservoirs of

knowledge over time (Soekanto, 2010). Bali was chosen as the research location due to its status as a prominent tourist destination, particularly known for its beach attractions located within village territories. The selection of sample locations within these villages was predicated on the presence of corporate activities utilizing coastal border areas.

III. RESULT AND DISCUSSION

Based on philosophical foundations, the protection of coastal borders aligns with legal objectives, which Gustav Radbruch categorized into justice, expediency, and legal certainty (A. Ali, 2012). Upholding Indonesia's state objectives mandates adherence to Pancasila's values as the guiding principles (Soemarsono, 2017). Preserving coastal areas resonates with Pancasila's 2nd and 5th principles. Establishing stringent coastal borders seeks to safeguard coastal environments and ecosystems. Bali's coastal protection is rooted in the *Nangun Sat Kerthi Loka* Bali philosophy. Juridically, considerations about coastal border protection align with the rule of law theory. Indonesia's conceptualization as a legal state encompasses the *Pancasila* Legal State. Regulations governing coastal borders are integrated into spatial planning frameworks. Sociologically, developmental activities inherently encounter dilemmatic challenges balancing resource utilization for human needs and welfare enhancement while conserving environmental functions essential for all life forms, including humans. This duality presents a complex endeavor.

The terminology related to corporations is not found in general legal codes like the Criminal Code or Civil Code but in specific regulations. Article 1 Number 38 of Law Number 1 of 2014 revising Law Number 27 of 2007 on Coastal Areas and Small Islands Management states, "every person, whether individual or corporate entity, with or without legal entities." However, this law lacks an explicit definition of corporations. Article 1 Number 1 of Supreme Court Regulation Number 13 of 2016 regarding Procedures for Handling Criminal Cases by Corporations defines a corporation as an organized collection of people and/or assets, whether legal entities or not. Geis (2011) asserts, "white-collar and corporate crime issues significantly contribute to addressing environmental threats arising from uncontrolled business or entrepreneurial activities that pose serious risks to the population." This definition clarifies that corporations, as legal entities, can be held liable under administrative, civil, and criminal law instruments for their actions. Hence, establishing a definitive classification of corporations accountable for their legal conduct is imperative in reality.

According to Radbruch, law represents the essence of justice and serves as a metric to assess fairness within a legal system (Halilah & Arif, 2021). The philosophical foundation behind corporate liability concerning coastal border violations primarily aims to protect environmental rights. The right to a healthy environment is an inherent entitlement for all individuals, demanding safeguarding against external interferences. The existence of legal mechanisms is envisioned to bolster the confidence of those holding authority to protect the environment, minimizing erroneous decisions. Thus, ensuring the transmission of a pristine environment to future generations, averting potential lawsuits against our successors. Elevating environmental standards is not merely an act of compassion but a conscious commitment driven by awareness. Fostering an ethos of environmental consciousness should be ingrained early and enshrined in related legislation and regulations.

Legal accountability, as outlined in Law Number 27 of 2007 regarding Coastal Areas and Small Islands Management, along with Law Number 1 of 2014 amending the former, encompasses civil, administrative, and criminal liabilities. Civil liability emerges when a corporation faces demands for compensation due to coastal border infractions. Non-litigious dispute resolution, increasingly prominent in civil law enforcement, is evolving to address violations. Criminal provisions are essentially a last resort or *ultimum remedium*.

Enforcing environmental law is notably intricate compared to other offenses, occupying the convergence of diverse classical laws. Administrative, civil, and criminal law enforcement processes differ considerably. Violations of environmental law serve as the focal point, which can be initiated by private individuals, community members, or enforcement victims directly

familiar with violations, without formal complaints. Environmental law enforcement in Indonesia spans state administrative, civil, and criminal law domains. Thus, resorting to criminal proceedings should be a final recourse. Coastal border violation enforcement aims to implement environmental laws comprehensively, employing administrative sanctions, civil litigations, and criminal charges.

The study of coastal border regulations in Bali was concentrated in specific locations: Lovina Beach in the north, Candidasa Beach in the east, Melasti Beach, and Kedonganan Beach in the south, and Sanur Beach in Denpasar. Lovina Beach, situated in the northern part of Bali, particularly Kalibukbuk Village, relies heavily on coastal tourism. The village collaborates with tourism stakeholders and local authorities to ensure sustainable tourism. Kalibukbuk Village perceives coastal borders as state-owned, with delegated control and management to the village government. The beach border extends roughly 25 meters from the high tide point, beyond which community and tourism entrepreneurs possess freehold title (*SHM*) certification. This discrepancy contravenes the legal requirement of a minimum 100-meter distance from the highest tide point.

Candidasa Beach is a renowned destination in Bali, particularly in Karangasem Regency, specifically situated within Sengkidu Village. The village grapples with a crucial issue concerning beach border regulations, mandating a minimum distance of 100 meters from the highest tide point, posing a significant challenge for Sengkidu Village. Consequently, an agreement between Sengkidu Village and the Karangasem Regency Spatial Planning Service was reached to restore the beach border, which currently stands at 16 meters during high tide and 20 meters during low tide. The village authorizes coastal area usage by tourism entrepreneurs, contingent on their adherence to permits and stipulations. Entrepreneurs are required to engage the village, ensuring compliance with several conditions, such as refraining from privatizing the area, ensuring public access, maintaining a minimum 2-meter-wide road access to the beach, and preserving cleanliness. Additionally, entrepreneurs are obliged to employ local residents from Sengkidu Village.

Kedonganan Village, situated in Badung Regency, boasts a coastline celebrated for its breathtaking sunset vistas. The village comprises Kedonganan Traditional Village, six official sub-villages, and six traditional Banjars. Given the 1-kilometer expanse of coastline spanning the village's west and east, fishing constitutes the primary livelihood for most residents. Maximizing all village potentials includes cafe arrangements managed by each Banjar, totaling 24 cafes. The Badung Regency Government established the Kedonganan Beach Tourism Area Management Agency (*BPKP2K*) to oversee these cafes. Comprising members from the Traditional Village and administrators from each Banjar, the *BPKP2K* manages, organizes, and supervises the coastal cafes.

Sanur Kaja Village boasts a sprawling coastal area from its northern to southern bounds, renowned for tourism activities, including hotels, travel, villas, and seaports. Sanur Kaja Village encompasses *Matahari Terbit* Beach and Sanur Beach, spanning approximately 2 kilometers. Historically, the coastline was less organized, posing difficulties for village organization and monitoring. Denpasar Mayor Regulation Number 51 of 2022 empowered Sanur Kaja Village, under the Traditional Village's authority, to form Galang Kangin *BUPDA* (Sanur Traditional Village-owned enterprises). This institution aims to professionally manage Sanur Beach and Matahari Terbit Beach, catering to the surging visits from local and international tourists. Galang Kangin *BUPDA* works in collaboration with the Denpasar City government for coastal planning and records tourism activities, ensuring responsible management.

Among the three forms of law enforcement, administrative law enforcement stands as the most crucial in addressing environmental concerns. Administrative law enforcement primarily focuses on preventing environmental harm and penalizing perpetrators of environmental pollution or destruction (Husin, 2020). Under Law Number 32 of 2009 concerning Environmental Management and Protection, criminal law enforcement in environmental provisions adheres to the *ultimum remedium* principle, allowing criminal law as a final recourse after failed administrative law enforcement. However, this principle is limited

to specific formal criminal acts like violations of wastewater quality standards, emissions, and disturbances. Corporations, being legal entities devoid of personal faults, challenge the application of fault-based liability doctrines in criminal acts. Theoretical possibilities include adopting strict liability and vicarious liability doctrines; however, this complicates the punishment of corporations.

Governmental endeavors to address coastal border violations predominantly utilize administrative law. State administrative law serves as a fundamental means of fulfilling citizens' needs, upholding constitutional supremacy in Indonesia. Thus, adherence to the law by government entities is pivotal in preventing the corruption of power, as Lord Acton's maxim warns, "power tends to corrupt, but absolute power corrupts absolutely" (Manan, 1994). Good environmental governance refers to the adept management of internal factors for capital calculation, profits, planning, implementation, and performance evaluation in economic development.

Experts advocate for integrated coastal zone management as pivotal in resolving complex coastal area issues. Integration in public management involves synchronized goal-setting, collective information gathering, joint planning, analysis, and shared management tools. However, the ideal scenario of complete integration is hardly achievable; practical integration is often a coordinated effort among various institutions to align interests, priorities, and actions.

Internationally, societal involvement in environmental decision-making is recognized as a vital principle of environmental governance. Principle 10 of the Rio Declaration highlights the importance of citizen participation at the highest level in handling environmental problems (Sucy & Murniwati, 2023). States are urged to ensure public access to environmental information and foster participation in decision-making processes. Community participation is an avenue for the public to actively demand a conducive environment. This recognition of community participation spans various policy levels internationally, regionally, nationally, and locally.

For future resolution models of coastal border violations, adopting the concept of restorative justice holds promise. Restorative justice focuses on bringing together victims and perpetrators to engage in dialogue to resolve legal violations. Braithwaite (2001) asserts the historical prevalence of restorative justice across societies worldwide. Restorative justice aims to restore victims' welfare, reconcile perpetrators, and mend communities affected by crimes, potentially allowing corporations to make amends and compensate for damages incurred (Hariyono, 2021).

IV. CONCLUSION

The philosophical underpinning for regulating corporate responsibility regarding violations of permits in utilizing coastal borderlines aims to achieve sustainable environmental conservation, preserving coastal areas as public spaces accessible to all Indonesian citizens. However, the effectiveness of law enforcement against corporate permit violations for sustainable development in Bali Province remains inadequate, as instances of coastal border breaches have not been addressed in alignment with normative provisions. The legal framework for addressing corporations violating coastal border permits in Bali Province prioritizes environmental conservation for sustainable tourism development. To prevent such violations, systematic permit administration is advocated, while punitive measures include criminal reporting. Moreover, a structured resolution for permit breaches is imperative, emphasizing a non-litigious approach through a restorative justice model. The Bali Provincial Government and Regency/City Governments should facilitate indigenous communities residing in coastal areas, providing educational outreach and fostering a comprehensive understanding of coastal border environmental conservation. Future legal regulations, particularly Bali Provincial and Regency/City Regional Regulations, ought to incorporate mechanisms for resolving permit violations concerning coastal borders, emphasizing the restorative justice model.

REFERENCES

- Ali, A. (2012). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang*. Kencana Prenada Media Group.
- Ali, M. (2015). *Asas-Asas Hukum Pidana Korporasi*. Rajawali Pers.
- Braithwaite, J. (2001). *Restorative Justice & Responsive Regulation*. Oxford University Press. <https://doi.org/10.1093/oso/9780195136395.001.0001>
- Geis, G. (2011). *White-Collar and Corporate Crime*. Greenwood.
- Halilah, S., & Arif, Mhd. F. (2021). Asas Kepastian Hukum Menurut Para Ahli. *Siyasah: Jurnal Hukum Tata Negara*, 4(2).
- Hariyono, T. (2021). Mediasi Penal sebagai Alternatif Upaya Penyelesaian Perkara Pidana di Luar Pengadilan. *Jurnal Penegakan Hukum Dan Keadilan*, 2(1). <https://doi.org/10.18196/jphk.v2i1.8731>
- Husin, S. (2020). *Penegakan Hukum Lingkungan* (Tarmizi, Ed.; 1st ed.). Sinar Grafika.
- Manan, B. (1994). *Hubungan antara Pusat dan Daerah Menurut UUD 1945*. Pustaka Sinar Harapan.
- Sadyohutomo, M. (2016). *Tata Guna Tanah dan Penyerasian Tata Ruang*. Pustaka Belajar.
- Sanjiwani, P. K. (2016). Pengaturan Hukum terhadap Privatisasi Sempadan Pantai oleh Pengusaha Pariwisata di Provinsi Bali. *Analisis Pariwisata*, 16(1).
- Soekanto, S. (2010). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (1st ed.). Raja Grafindo Persada.
- Soemarsono, M. (2017). Negara Hukum Indonesia Ditinjau dari Sudut Teori Tujuan Negara. *Jurnal Hukum & Pembangunan*, 37(2), 300–322. <https://doi.org/10.21143/jhp.vol37.no2.1480>
- Sucy, D., & Murniwati, R. (2023). Peran Serta Masyarakat dalam Penyusunan Analisis Mengenai Dampak Lingkungan Dalam Rangka Perlindungan Hak atas Lingkungan Hidup. *UNES Journal of Swara Justisia*, 7(2), 1063–1084.