

The Urgency of Reviewing the Revocation of the Sea Sand Export Ban Policy

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Abstract

The lifting of the ban on the export of sea sand is a policy that impacts marine ecosystems and coastal communities. Protecting the environment is part of the state's obligation, which is also the right of every citizen. Unwise management of natural resources has a significant impact on environmental balance. In this case, policies regarding natural resource management are in the

spotlight in various countries. One of the natural resources currently getting much discussion is resources resulting from marine sedimentation, such as sea sand, which is the main ingredient used in constructing buildings and other infrastructure. The research methodology used is a normative juridical approach. This research aims to determine what regulations are in government regulations regarding the management of marine sedimentation products and the urgency of studying the promulgated policies. The research results obtained by the author are that the Government Regulation on Management of Marine Sedimentation Results, which revokes the Presidential Decree on Control and Supervision of Sea Sand Cultivation, only focuses on the administrative obligations of business actors in managing marine sedimentation products. The government must review the impact of managing marine sedimentation results on environmental sustainability.

Keywords

Environmental Law, Environmental Conservation, Environmental Damage, Marine Ecosystem Pollution

I. Introduction

Using natural resources has become one of the main foundations for advancing a country's economy. However, unwise use of these resources often has the potential to threaten environmental sustainability¹. In this context, banning sea sand exports has

¹ Samsul Wahidin. *Paradigma Lingkungan Hidup di Indonesia*. (Malang: Universitas Merdeka, 2012).

become a severe concern in various countries. As an essential material in various construction and manufacturing industries, sea sand is vital to infrastructure development. However, the escalation of sea sand exploitation also raises concerns regarding its negative impact on aquatic ecosystems and the environment.

The issuance of Government Regulation Number 26 of 2023, which occurred on May 15, 2023, concerning the Management of Marine Sedimentation Products², has been controversial among the public. This policy abolishes Presidential Decree Number 33 of 2002, which regulates the control and supervision of business activities in sea sand fishing so that this policy can Open a ban on sea sand exports whose impact cannot ignored. Removing the ban on sea sand exports has the potential to trigger an increase in increasingly intensive sea sand mining activities. The implications of revoking this policy are closely related to environmental sustainability, such as damage to marine ecosystems and long-term impacts, including coastal erosion, loss of habitat, and disruption of the marine food chain due to sea sand mining. In this context, conducting an in-depth analysis of what matters regulated by this policy impact the exploitation of sea sand on coastal ecosystems, biodiversity, and air quality is necessary. This impact is not only local but can also have a global impact on climate change and marine ecosystems.

The government's objectives in issuing Government Regulation Number 26 of 2023 concerning the Regulation of Marine Sedimentation Results that year are diverse. Regarding economic development, the government permits business entities to utilize the results of marine sedimentation, including exporting and mining sea sand. The government has the potential to receive income through the imposition of taxes and royalties from the

² Navalía Caren, "Ekspor Pasir Laut: Ancaman atau Keberuntungan?", *Article Online, Portofolio LK2FHUI*, retrieved from <<https://lk2fhui.law.ui.ac.id/portfolio/ekspor-pasir-laut-ancaman-atau-keberuntungan/>>

industrial sector, which can later be used to support development projects and public services in the country³. However, it should be noted that because this policy impacts environmental sustainability in the long term, it must be prepared with appropriate regulations to protect natural resources and the coastal environment so that it remains sustainable. The government must play a role in preserving the environment to create a prosperous society. Based on Article 33, paragraph (4) of the 1945 Constitution, the philosophical foundation of this research is the national economy, which is rooted in democratic principles such as equality, efficiency, justice, sustainability, and attention to the environment⁴.

Law Number 32 of 2009 concerning Environmental Protection and Management plays an essential role in the legal context of this situation. This law provides a legal framework for the government to protect, care for, and promote the sustainability of a healthy and balanced environment to support human welfare and quality of life⁵. Article 2, paragraph (1) of the law states that everyone has the responsibility to maintain the function of the environment. Meanwhile, Article 3, paragraph (1) of the law regulates environmental management carried out in a sustainable, fair, and environmentally sound manner to achieve ecological balance and harmony between humans and nature. That is the basis for the urgency of reviewing the repeal of the export ban policy for the sand sea, considering that environmental

³ Peraturan Pemerintah Tahun 2023 tentang Pengelolaan Hasil Sedimentasi Laut.

⁴ Undang-Undang Dasar 1945 Pasal 33 ayat 4

⁵ Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. *See also* Purniawati Purniawati, Nikmatul Kasana, and Rodyah Rodyah. "Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management)." *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (2020): 43-56.

sustainability must be the paramount consideration in every policy that has the potential to affect ecosystems and nature⁶.

Law Number 32 of 2014 concerning Maritime Affairs provides additional guidance on protecting and maintaining the marine environment and regulating marine resource management. Article 56, paragraph (1) in this law emphasizes the government's obligation to care for and maintain the marine environment, including protecting aquatic ecosystems and marine biodiversity⁷. Revocation of the policy prohibiting sea sand exports has the potential to impact marine biodiversity and aquatic ecosystems. Considering this legal basis, reviewing the repeal of the export ban policy on the sand sea becomes increasingly important to ensure that this action aligns with the principles of environmental protection and sustainability of marine natural resources by applicable laws and regulations.

Based on existing research, there are ten major environmental cases in Indonesia with a reasonably high percentage, such as 40% caused by waste, 20% flood disasters, 10% global warming, 6% air pollution, 11% polluted rivers, 3% difficulty in clean water, 4 % damage to marine ecosystems, 2% impact of forest destruction, 2% coastal erosion, and 2% soil contamination⁸. The fact is that natural and human factors cause environmental problems in Indonesia; apart from that, policies implemented by the government can trigger the sustainability of the existing ecosystem.

⁶ Bruce Mitchell, B. Rahmi, Setiawan, and Hadi Dwita. *Pengelolaan Samsul Sumber Daya dan Lingkungan*. (Yogyakarta: Gadjah Mada University Press, 2010).

⁷ Undang-Undang Republik Indonesia Nomor 32 Tahun 2014 tentang Kelautan, Pasal 56 ayat (1).

⁸ Andrea Lidwina, "Potensi Bencana dari Ekpor Pasir Laut", *KATADATA*, June 9, 2023. Retrieved from <<https://katadata.co.id/sortatobing/infografik/648286efd322c/potensi-bencana-dari-ekspor-pasir-laut>>

The revocation of the policy prohibiting sea sand exports has broadly impacted society, becoming the author's sociological basis for reviewing the promulgated policies, especially in social and environmental matters. The social impacts that occur include changes in the livelihoods of communities around the coast, which previously depended on fishermen's livelihoods, turning to workers in the sea sand mining industry, which can bring changes to the local social and economic structure, another example is the result of intensive sea sand mining which can cause population displacement, from coastal areas which will affect the lives of local traditional communities⁹. The most significant disadvantage of sea sand mining is the environment, where ecosystem damage due to mining activities can threaten biodiversity and natural balance. Sea sand mining can also disrupt marine food chains and impact the survival of marine species.

Lifting the ban on sea sand exports has the potential to significantly increase sea sand mining activities. Therefore, more effective and efficient management measures are needed to regulate this activity, such as applying environmentally friendly mining technology and strict supervision of management practices for sedimentation results. In addition, efforts must be made to educate the public and industry players about the importance of maintaining the balance of coastal ecosystems and the long-term impacts of excessive exploitation.

Based on the background explained, the problem formulation in this research can be detailed as follows:

1. What provisions are contained in Government Regulation 26 of 2023, which replaces Presidential Decree Number 33 of 2002, concerning the Control and Supervision of Sea Sand Cultivation?

⁹ Arif Satria. *Pengantar Sosiologi Masyarakat Pesisir*. (Jakarta: Yayasan Pustaka Obor Indonesia, 2015).

2. What is the urgency of studying Government Regulation Number 26 of 2023 in the context of maintaining the sustainability of marine ecosystems?

II. Method

In this research, the approach used is a normative juridical approach. This approach builds upon analyzing relevant legal and regulatory texts, such as Government Regulation Number 26 of 2023 concerning Management of Marine Sedimentation Products and Presidential Decree Number 33 of 2002 concerning Control and Supervision of Sea Sand Cultivation. Through this approach, the research aims to gain a deeper understanding of the contents of these regulations and how their implementation affects environmental sustainability and the rights and obligations of business actors.

III. Matters regulated in Government Regulation Number 26 of 2023 concerning Management of Marine Sedimentation Result

From the results of the research that has been done, there are several aspects regulated in Government Regulation Number 26 of 2023 concerning the management of marine sedimentation products that are only partially based on the principles of environmental sustainability. One example is in Chapter I, which contains General Provisions, especially in Article 1, with several paragraphs such as (1), (2), and (4). Although this regulation attempts to regulate the management of marine sedimentation results, several areas for improvement need further attention.

In Article 1, paragraph (1), a definition of marine sedimentation results is given, which describes that marine sedimentation results are natural materials formed on the seabed through weathering and erosion processes. Ocean movements spread this material, then settle, and can be retrieved to prevent disruption to the marine ecosystem. However, this definition is still general and requires further clarification regarding sediment types and more specific collection criteria. That is necessary to avoid erroneous interpretations or the potential for excessive exploitation of marine sedimentation results.

Paragraph (2) of this article also underlines the management of marine sedimentation results as an integrated action, which includes planning, control, utilization, and supervision stages. However, in this verse, no detailed explanation is given regarding how this process should be built up concretely. That can cause ambiguity in the implementation of the process. Although the main aim is to prevent ecosystem disturbance, this regulation needs more concrete guidelines to minimize the impact of sediment extraction on biodiversity.

Paragraph 4 explains that the utilization of marine sedimentation results includes activities such as transporting, placing, utilizing, and/or selling sediment at sea. However, no provisions set firm limits or controls on these activities, which can lead to overexploitation and potential damage to marine ecosystems. These arrangements may need a more transparent process and a robust monitoring system to monitor marine sedimentation utilization activities to help prevent violations and environmental damage.

Article 2 of the Government Regulation regulates the regulation of marine sedimentation results. Article 2 of this regulation states two main objectives: overcoming sedimentation, which can damage coastal and marine ecosystems, and optimizing sedimentation results for development and ecosystem improvement. This part of the article covers two goals that may

have different priorities: economic development and environmental conservation. That could lead to conflicts in implementation. This article does not provide practical guidance on how to manage sedimentation results effectively. Hence, how these two objectives will be balanced not to harm the ecosystem and the environment needs to be clarified further.

Even though Article 2 mentions the aim of marine health, there still needs to be a strong enough emphasis on protecting the marine environment against the exploitation of these sediments. This exploitation can support economic development, produce valuable resources, and create jobs, but this practice also has significant environmental impacts that require emphasis on management. Excessive mining of marine sediments, such as sea sand, can disrupt the balance of the beach, especially during the west monsoon, which can result in abrasion. Exploitation of marine sedimentation can also impact coastal communities that are highly dependent on marine resources. Changes in marine ecosystems can threaten fishermen's livelihoods and local economic activities. Implementing sustainable management practices, complying with strict regulations, and integrating environmental conservation principles in resource utilization policies are essential to reducing the negative impacts of marine sedimentation exploitation.

In Chapter III, regarding control, which contains Article 8 paragraph (2), a foreign-flagged vessel can be used if an Indonesian-flagged suction vessel is unavailable. In this article are environmental or safety requirements the Indonesian Government sets for operations in its waters. For foreign-flagged vessels passing through Indonesian waters, the Indonesian Government should have special requirements, licensing requirements, and regulations that must be followed by foreign suction vessels. If the foreign-flagged ship does not comply with the regulations that have been established, stronger sanctions or more decisive action need to be

applied, such as a fine that must be paid or, at worst, the revocation of the permit.

In Chapter IV concerning Utilization, which contains Article 9, paragraph (2), The use of sea sand produced from sedimentation in the sea, as mentioned in paragraph (1) letter a, is used for domestic reclamation projects, infrastructure development by the Government, and construction of facilities by related parties, and export of sea sand after meeting domestic needs and by applicable legal regulations.

Environmentally friendly sustainable development is an approach that focuses on the context of economic, social, and environmental development and must ensure that the needs of current generations are met without compromising the ability of future generations to meet their needs¹⁰. That includes efforts to reduce negative impacts on the natural environment, promote social justice, and create a sustainable economy in the long term. Development that aims to improve people's welfare, we often have to rely on natural resources. However, the development of natural resources that do not pay attention to the capacity and carrying capacity of the environment can become a severe problem that will result in a decline in the quality of the environment¹¹. Many factors, especially those caused by human activities, can cause a decline in environmental quality and damage. Do not have to wait long to see the impact of environmental damage. Losses resulting from careless management of natural resources not only disrupt the balance of nature but also cause a decrease in the quality of the environment. Environmental damage can also impact society's economic and social life.

¹⁰ Makmun Makmun, "Green Economy: Konsep, Implementasi, dan Peranan Kementerian Keuangan". *Jurnal Ekonomi dan Pembangunan* 19, no. 2 (2011): 1-15.

¹¹ Burhan Sesa, "Implementasi AMDAL dalam Mendukung Pembangunan Berkelanjutan (Sustainable Development)." *Jurnal Sosio Sains* 4, no. 1 (2018): 1-13.

The statement in Article 9 paragraph (2) of Government Regulation 26 of 2023 concerning using sea sand for export merely deceives the public to reduce pressure on the sea sand export policy. That is visible from Government Regulation Article 9 paragraph (2) letter D, which contains export permits. That means completely lifting the ban on sea sand exports that has been in effect since 2003, and the Government issued a Decree of the Minister of Industry and Trade Number 117/MPP/Kep/2/2003 (SK) regarding the temporary suspension of sea sand exports¹². Article 9 states domestic reclamation and exports, as long as domestic needs are met. This issue related to exports is misleading, primarily when the issue is related to sand mining activities, known as sedimentation dredging. This article only measures economic value, and there are no benefits for development that do not pay attention to the environment and can cause environmental damage. On the other hand, environmental damage can also affect development.

According to Article 1 point (5) in the Minister of Environment and Forestry Regulation Number 13 of 2011 concerning Compensation for Environmental Pollution and/or Damage¹³. Compensation is a cost that must be borne by the person responsible for the activity and/or business due to environmental pollution and/or damage, according to Article 87 paragraph (1) of Law no. 32 of 2009 concerning Environmental Protection and Management. This provision indicates that every business actor or activity that illegally damages or pollutes the environment, thereby harming others or the environment itself,

¹² Hidayat Khairul, “Larangan Ekspor Benih Lobster Perspektif Masalah Mursalah (Studi Analisis Terhadap Pasal 18 Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor 17 Tahun 2021)”. *Thesis*. (Bengkulu: UIN Fatmawati Sukarno Bengkulu, 2022).

¹³ Peraturan Menteri Negara Lingkungan Hidup Republik Indonesia Nomor 13 Tahun 2011 tentang Ganti Rugi Terhadap Pencemaran dan/atau Kerusakan Lingkungan.

must be responsible for their actions. This responsibility includes compensating parties who suffer losses due to these actions and/or carrying out actions regulated by law to restore or reduce negative impacts on the environment.

Therefore, every person or business entity that commits unlawful acts (environmental pollution) must be responsible for the losses suffered by the community, Government, and other parties. Forms of liability include civil, criminal, and administrative liability.¹⁴ Therefore, provisions regarding compensation or damages involve civil liability for unlawful acts, furthermore, in the regulations of the Minister of the Environment Number 13 of 12 concerning Compensation for Environmental Pollution and/or Damage explains matters regarding compensation as follows:

Article 3 concerning Persons in charge of businesses and/or activities that commit unlawful acts in the form of environmental pollution and/or damage that cause harm to other people or society and/or the environment or the state are obliged to take specific actions and/or pay compensation.

Article 14 paragraph (1) Transport ships, by the provisions in Article 13 paragraph (1), must have crew members who have Indonesian citizenship. Article 14, paragraph (2) permits the use of foreign crew members if Indonesian crew members are not available. That can be a source of potential problems or controversy, mainly concerning local labor protection, national security, or maritime sovereignty. This article needs to be detailed and well-regulated to avoid giving rise to issues that can potentially harm national interests.

¹⁴ Sarwono Sarwono, *Hukum Acara Perdata Teori dan Praktek* (Jakarta: Sinar Grafika, Jakarta, 2012), pp. 308-309. See also Natasya Arsyiprameswari, et al. "Environmental Law and Mining Law in the Framework of State Administration Law." *Unnes Law Journal* 7, no. 2 (2021): 347-370.

IV. The Urgency of Reviewing Government Regulation Number 26 of 2023 regarding the Sustainability of Marine Ecosystems

The authors found that Government Regulation Number 26 of 2023 concerning Management of Marine Sedimentation Results only focuses on administrative obligations as stated in Article 23, which contains business actors who do not carry out the obligations as intended in Article 9 paragraph (5), Article 10 paragraph (1), Article 11, Article 12 paragraph (1) and paragraph (4), Article 13 paragraph (1), Article 14 paragraph (1) and paragraph (4), Article 15 paragraph (3), Article 20 paragraph (1) and paragraph (2), and/or Article 21 paragraph (1) are subject to administrative sanctions. The administrative sanctions include written warnings, temporary suspension of activities, revocation of sea sand utilization permits, termination of activities, and/or administrative fines.

Environmental law enforcement regulates all forms of violations and crimes for perpetrators, whether carried out by individuals or bodies, with preventive and repressive efforts. For repressive measures, several types of instruments can be applied depending on the need to consider, among other things, looking at their impact. The instruments in question include administrative actions, civil actions (civil cases), and criminal actions (criminals). However, in Government Regulation Number 26 of 2023, only administrative sanctions are imposed.

Instruments are implemented without or without legal sanctions, which sometimes creates problems for groups of people. For example, some business actors have not obtained permits to use sea sand, so carrying out sea sand mining activities gives rise to claims from the public who consider the environment polluted and the marine ecosystem damaged. Opening up opportunities to resolve problems with administrative sanctions without providing

accountability for restoring the environment to its original state and having no deterrent effect on business actors who violate it.

The authors also highlight administrative sanctions that do not support environmental protection. Administrative sanctions do not regulate sanctions for the negative consequences of sea sand mining behavior. Negative impacts that occur from mining, for example, include sand mining activities in the Galesong coastal area, which have started since 2017, so they do not yet refer to South Sulawesi Regional Regulation Number 2 of 2019, which is a guideline for granting location permits and sand mining management permits in South Sulawesi. The impact of sand mining activities on the social and economic situation of communities in the Galesong coastal area is the loss of fishing areas due to the excavation of sea sand, which causes seawater turbidity. Apart from that, there are significant changes in the socio-economic aspect, where small fishermen are forced to leave their jobs and join fishermen who carry out deep sea fishing and become less independent workers under the auspices of large ship owners. Another impact is the increase in patrols from maritime police, which makes fishermen feel limited in their activities and feel like they have lost the freedom they enjoyed in the past.¹⁵

In this article, there is also a need for more clarity regarding supervision and enforcement. Article 29 states that the Ministry will impose administrative sanctions but does not explain the process of supervision and enforcement. That can give rise to confusion about how supervision will be carried out, who is responsible, and how business actors can defend their rights in the enforcement process. These articles must also provide a clear framework for evaluating the environmental impacts of sea sand mining activities. A comprehensive and transparent environmental impact assessment framework will help identify

¹⁵ Dewi Anggariani, Santri Sahar, and M. Sayful. "Tambang Pasir dan Dampak Sosial Ekonomi Masyarakat di Pesisir Pantai." *SIGN Journal of Social Science* 1, no. 1 (2020): 15-29.

possible impacts and measures to minimize or compensate for them.

Based on the opinion above, the author concludes that the administrative sanctions contained in Government Regulation Number 26 of 2023 concerning the Management of Marine Sedimentation Results are not by environmental legal theory, namely the homocentric theory, which is based on the interests of some parts of society¹⁶. This ethic is based on various models of social interests and approaches between environmental actors that protect most of human society. Homocentric ethics is the same as utilitarianism ethics, so if egocentric ethics bases the assessment of the good and bad of an action on the purpose and consequences of that action for the individual, then this utilitarianism ethic assesses the good and bad of an action based on the purpose and consequences of that action for as many people as possible. Person. This theory explains that this action only benefits one individual. In this case, the government/state benefits and harms a social group.

Environmental problems are problems for the Government and society. However, we must realize that only some things related to environmental pollution or destruction have become problematic. The causal factors include a lack of public awareness to report, a lack of public courage to act (claim), and a lack of public knowledge. To handle environmental problems, limited facilities and infrastructure from the Government, and the absence of a single view or conception regarding the environment, sometimes there are government interests. Hence, handling environmental cases needs to be addressed. The critical problem in handling environmental problems is the similarity of perception for law enforcement officials and returns to the issue of authority.¹⁷

¹⁶ Sonny A. Keraf, *Etika Lingkungan Hidup*. (Jakarta: PT Kompas Media Nusantara, 2010), pp. 47-48.

¹⁷ See also Elly Kristiani Purwendah, Agoes Djatmiko, and Elisabeth Pudyastiwi. "Civil Responsibility Model of Coastal State to Oil Pollution

The Government's authority is to continue to protect and maintain the environment, although this is not solely the Government's responsibility. For example, supervision of mining companies is carried out early before the company carries out activities using predetermined procedures, namely in the form of permits through the competent Government. However, if this permit is violated, action can be taken using legal procedures by applying the specified sanctions.

Based on the explanation above, Government Regulation Number 26 of 2023 concerning the Management of Marine Sedimentation Results needs to be reviewed regarding administrative sanctions because the author concludes there is a discrepancy in this policy. The Government is obliged to review the impact of management of marine sedimentation results on environmental sustainability.

V. Conclusion

Based on the research that has been carried out, several things in the Government Regulations Concerning the Management of Marine Sedimentation Products raise concerns regarding environmental sustainability.

Government Regulations on the Management of Marine Sedimentation Products provide a clear picture of several problems and inconsistencies in these regulations with the principles of environmental sustainability and environmental law. The authors highlight several important aspects, including unclear definitions, an imbalance between economic development and environmental

in the Sea as the Impact from the Stipulation of Dumping Area by Tanker Ship." *The Indonesian Journal of International Clinical Legal Education* 1, no. 1 (2019): 337-352; Maruf Maruf. "Indonesia Response and Recent Development of Law and Policy in Addressing Marine Plastic Litter." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 167-188.

conservation, and a need for more emphasis on marine environmental protection. The authors also note that the sanctions contained in this regulation are limited to administrative sanctions, which may need to be more effective in dealing with violations that can have severe impacts on the environment. The author highlights the need for stricter sanctions to ensure better environmental protection.

The urgency of reviewing these regulations to preserve marine ecosystems, expand sanctions, and improve monitoring is very relevant to environmental protection and sustainability. In-depth review and improvements to these regulations are essential to protect fragile marine ecosystems and ensure that economic activities do not damage them.

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