

Juridical Review of Marine Sand Utilization within The Regulation of Government Regulation No. 26 of 2023 Concerning the Utilization of Marine Sedimentation

Panji Riyadi¹, Zudan Arief Fakrulloh²

ptp4nji@gmail.com¹, cclsis@yahoo.com²

Universitas Borobudur^{1,2}

Abstract. Government Regulation No. 26 of 2023 on marine sedimentation utilization integrates national and international legal frameworks, notably Law No. 32 of 2014 on Regional Government and Environmental Law No. 32 of 2009, to ensure collaborative permit granting, supervision, and sustainable marine sand exploitation benefiting local communities. This study aims to explore these legal intersections and propose strategies for enhancing regulatory effectiveness and environmental protection in marine resource utilization, aligning with international standards like the United Nations Convention on the Law of the Sea. Data analysis is conducted qualitatively and descriptively. In the juridical review of the Utilization of Marine Sand within the scope of Government Regulation No. 26 of 2023, it is also important to consider the related criminal legal framework, including the Criminal Code. Although government regulation is more administrative in nature and regulates procedures for marine sand utilization, the Criminal Code can serve as a reference in addressing violations occurred in the context of natural resource exploitation and provides relevant criminal provisions related to environmental crimes. In the context of marine sand utilization, violations such as illegal mining, waste disposal into the sea that damages ecosystems, or violations of permits regulated in Government Regulation No. 26 of 2023 may be subject to criminal sanctions according to the provisions of the Criminal Code.

Keywords: Juridical Review, Utilization of Marine Sand, Government Regulation No. 26 of 2023 Concerning the Utilization of Marine Sedimentation.

1 Introduction

The Utilization of Marine Sand Within the Scope of Government Regulation No. 26 of 2023 Concerning Marine Sedimentation Utilization depicts the legal dynamics associated with the exploitation of marine natural resources, particularly in the context of marine sand utilization. Marine sand is one of the natural resources with significant economic potential, both in infrastructure development and the construction industry.

Government Regulation No. 26 of 2023 serves as a legal framework governing the procedures for marine sedimentation utilization, including marine sand, to ensure the sustainability of the exploitation of these natural resources. In a juridical review, this regulation

becomes the main focus in analyzing the legal aspects related to the use of marine sand. This juridical review involves the analysis of various provisions contained in Government Regulation No. 26 of 2023, ranging from the definition of marine sand, licensing procedures, rights and obligations of license holders, to sanctions for violations. Additionally, the juridical aspect also encompasses the connection of this regulation with environmental law, the protection of marine ecosystems, and the rights of local communities over natural resources in their territories.[1]

Indonesia is the largest archipelagic country in the world, located in the Southeast Asian region. Indonesia consists of more than 17,000 islands stretching across the Indian and Pacific Oceans. However, out of this number, about 6,000 islands are inhabited. These islands vary in size, from large islands like Java, Sumatra, Kalimantan (Borneo), Sulawesi, and Papua, to small islands that may only have a few hectares. Geographically, Indonesia is situated between two continents (Asia and Australia) and two oceans (the Indian Ocean and the Pacific Ocean). Its strategic location provides the country with incredible natural wealth potential, including natural resources and biodiversity. With over 17,000 islands spanning along the equator, Indonesia serves as a prime example of an archipelagic state facing unique challenges and opportunities in terms of legal and territorial regulations. Seventy percent of Indonesia's territory consists of the ocean, and it is undeniable that Indonesia is rich in natural resources, which inevitably brings up environmental sustainability issues. Environmental conservation has become a widely discussed issue nowadays, raising awareness and triggering societal concern for environmental preservation in both developing and developed countries.[2]

Law No. 32 of 2009 provides a strong legal basis for law enforcement related to environmental violations. In it, some articles stipulate prohibitions against various actions that damage the environment, such as air, water, and land pollution, deforestation, and the use of dangerous chemicals without permission.[3] However, when environmental violations occur, the Criminal Code also becomes an important instrument in dealing with these violations. For example, articles in the Criminal Code relating to environmental damage, such as articles concerning pollution (Article 98), destruction of goods (Article 406), and abuse of power (Article 221), can be used to prosecute perpetrators of environmental violations.[4]

In addition, coordination between Law No. 32 of 2009 and the Criminal Code is necessary to ensure the effectiveness of law enforcement. Environmental law enforcement often involves various institutions, such as the police, prosecutors, and courts. Therefore, coordination and collaboration between these institutions, as well as consistent application of the law, is necessary to ensure that perpetrators of environmental violations can be tried fairly and firmly by applicable legal provisions. In this case, the articles in the Law No. 32 of 2009 and the Criminal Code work together to provide a comprehensive legal basis for environmental law enforcement, so that it can encourage compliance with environmental regulations and reduce the level of violations that are detrimental to the environment and society.

Utilization of Deep-Sea Sand under Government Regulation No. 26 of 2023 concerning the Utilization of Marine Sedimentation becomes more detailed by considering its relationship to broader laws at the national and international levels. One of the relevant laws is Law Number 32 of 2014 concerning Regional Government. This law regulates the division of authority between the central government and regional governments, including in terms of managing natural resources. In the context of sea sand utilization, it is necessary to consider how the central government and regional governments work together in granting permits, supervising exploitation activities, ensuring sustainable use, and providing benefits to local communities.

Apart from that, it is related to Environmental Law Number 32 of 2009 is also of concern in this judicial review. The law emphasizes the importance of protecting the environment, including marine ecosystems, and requires environmental impact analysis before carrying out natural resource exploitation activities. At the international level, regulations regarding the use of marine resources also need to be considered, such as the United Nations Convention on the Law of the Sea (UNCLOS) which establishes the principles of sustainable management of marine resources and sustainability of the marine environment.[5]

One of the laws that has a significant impact in this context is Law Number 45 of 2009 concerning Fisheries. This law establishes principles for the management of fisheries resources, including offshore sand which indirectly relates to various types of marine organisms living around the seabed sediment. Protection of this habitat is a primary concern in the context of managing offshore sand, ensuring that exploitation activities do not harm existing marine ecosystems and biodiversity. Additionally, Law Number 23 of 2014 concerning Maritime Affairs is also an important reference in this juridical review. The statute sets a comprehensive framework for the management of marine resources, including regulations related to the utilization of offshore sand and efforts to protect sensitive marine environments. At the international level, Indonesia is also bound by various agreements and conventions, including the Convention on Biological Diversity and the Ramsar Convention on the protection of wetland habitats, which have direct implications for the management of offshore sand and related marine habitats. The implementation of principles contained within these agreements forms an integral part of the juridical review of offshore sand utilization.[6]

Apart from that, Article 70 of Law No. 32 of 2009 stipulates the obligation for perpetrators of environmental violations to provide compensation and carry out rehabilitation for the environment that has been damaged. This compensation can be in the form of financial compensation or concrete action to repair the damage that has occurred. It ensures that violation perpetrators are held accountable for the negative impacts they cause. However, in cases of serious and damaging violations, law enforcement also relies on criminal sanctions. Article 71 Law no. 32 of 2009 regulates criminal sanctions in the form of imprisonment and/or fines for perpetrators of environmental violations who carry out serious actions that damage the environment. This criminal sanction aims to provide a deterrent effect to perpetrators of violations and as a preventive measure so that people do not carelessly violate environmental provisions. Apart from the Law on the Environment, the Criminal Code also has several articles that are relevant for enforcing environmental law. For example, Article 98 which regulates environmental pollution, and Article 406 which regulates damage to other people's property, which can be applied in cases of environmental damage.[7] With the implementation of these articles, it is hoped that environmental law enforcement can be carried out firmly and fairly, thus ensuring the well-being of society and the sustainability of ecosystems.

Indonesia, as a country with abundant natural resources and extraordinary biodiversity, has a great responsibility to preserve and protect its environment. The lives of the Indonesian people depend heavily on natural resources and environmental conservation for various aspects of life, ranging from economics to cultural sustainability. In the legal context, efforts to protect the environment in Indonesia have been regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. This law establishes a comprehensive framework for sustainable environmental management, regulating prevention efforts, handling, and law enforcement against various forms of environmental damage. Environmental law enforcement in Indonesia faces various challenges, including weaknesses in the judicial system, lack of public awareness,

and widespread corruption practices. However, with the enactment of Law No. 32 of 2009, the Indonesian government has strengthened the legal foundation for enforcing environmental regulations.

In the realm of law, environmental law enforcement relies on various articles that regulate environmental violations, both in Law No. 32 of 2009 and the Criminal Code. These articles provide a strong legal basis for law enforcement agencies to firmly address environmental violations, whether through administrative or criminal sanctions. However, environmental law enforcement is not solely the responsibility of the government and law enforcement agencies. Civil society, NGOs, and the media also play a crucial role in monitoring, reporting, and promoting effective law enforcement against environmental violations. Thus, environmental law enforcement in Indonesia is a collective effort between the government, law enforcement agencies, and society to ensure environmental sustainability for current and future generations.[8]

The utilization of marine sedimentation is becoming more detailed, taking into account the protection of biodiversity and the highly important marine ecosystems. One of the laws that directly plays a role in ensuring the sustainability of marine ecosystems is Law Number 32 of 2009 concerning Environmental Protection and Management. This law establishes obligations for the government and society to protect and preserve marine ecosystems as well as the biodiversity within them. In the context of the utilization of marine sedimentation, the protection of vulnerable marine habitats against changes due to exploitation becomes an integral part of juridical studies. It includes the protection of coral reefs, seagrass beds, and various other marine organisms that are part of complex ecosystems. Additionally, Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems also provides an important legal basis for maintaining marine biodiversity. This law mandates the protection of endangered species and their habitats, including in marine environments.[9]

Internationally, Indonesia is also involved in numerous international agreements and conventions, including the Convention on Biological Diversity (CBD) and the Ramsar Convention on Wetland Management. Adhering to the principles outlined in these agreements is essential in the legal assessment of marine sedimentation usage, guaranteeing that the preservation of marine ecosystems and biodiversity takes precedence in all marine resource exploitation endeavors.

In the context of the utilization of marine sedimentation, the juridical review also considers Law Number 23 of 2014 concerning the Management of Coastal Areas and Small Islands. This law provides an important legal foundation for the management of coastal zones, including regulations related to activities involving the exploitation of marine sedimentation that may affect coastal ecosystems and local communities dependent on marine resources. The protection of coastal environments and marine biodiversity is also a primary focus of the juridical review. Marine sedimentation serves as a habitat for various marine species and crucial coastal ecosystems, such as nesting sites for turtles and habitats for small fish. Therefore, regulations governing the utilization of marine sedimentation must consider their impact on ecosystems and the sustainability of species populations reliant on these habitats.[9]

Apart from that, protecting the rights of local communities that depend on marine resources is also an important part of this juridical review. Law Number 6 of 2014 concerning Villages provides recognition of the rights of indigenous communities and villages to manage natural resources in their territories. Therefore, in the use of sea sand, it is necessary to consider how

these exploitation activities can provide benefits to local communities and not harm their traditional rights. By considering these aspects, the juridical review of the Use of Deep Sea Sand in the scope of Government Regulation No. 26 of 2023 becomes more comprehensive and ensures that the exploitation of marine natural resources is performed responsibly, paying attention to the sustainability of the marine environment, the balance of coastal ecosystems, as well as the rights of local communities who depend on marine resources for their lives.

In a juridical review of the use of deep-sea sand in the context of Government Regulation No. 26 of 2023, it is also important to consider the related criminal law framework, including the Criminal Code (KUHP). Even though these government regulations are more administrative in nature and regulate procedures for the use of sea sand, the Criminal Code can be a reference in dealing with violations that occur in the context of natural resource exploitation. The Criminal Code provides relevant criminal provisions related to environmental crimes, such as environmental pollution and destruction of natural habitats.[10] In the context of sea sand utilization, violations such as illegal mining, dumping of waste into the sea which damages the ecosystem, or violations of permits regulated in Government Regulation no. 26 of 2023 can be subject to criminal sanctions by the provisions contained in the Criminal Code. Apart from that, the criminal law framework can also be used to uphold justice in cases of conflict between sea sand utilization permit holders and local communities or indigenous groups who feel their rights have been disturbed. Dispute resolution through the criminal legal process can provide guarantees that justice and community rights are fulfilled by applicable legal principles.

Thus, the juridical review of the use of deep-sea sand in the scope of Government Regulation No. 26 of 2023 not only pays attention to administrative legal aspects that regulate permits and utilization procedures but also considers the criminal law framework that can be used to enforce compliance with these regulations and protect community interests and environmental sustainability.

2 Method

This type of research is descriptive research. The approach used is a qualitative approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively.[11] The conclusion is drawn employing the deductive method, which entails concluding general principles to specific instances, particularly related to the research topic of the “Juridical Review of the Utilization of Marine Sedimentation within the Scope of Government Regulation No. 26 of 2023 Regarding the Utilization of Marine Sedimentation.” Qualitative data analysis is conducted when the empirical data obtained consists of a collection of verbal descriptions rather than numerical sequences and cannot be categorized. Such data can be gathered through various methods, including observation, interviews, document analysis, and recorded tapes.[12] It is usually processed first before being used in qualitative research, including the results of interview transcripts, data reduction, analysis, data interpretation, and triangulation.

3 Results And Discussion

3.1 Implications of Juridical Review of Deep Sea Sand Utilization in the Domain of Government Regulation No. 26 of 2023 concerning the Use of Marine Sedimentation

Implications of Juridical Review of the Use of Sea Sand in the Domain of Government Regulation No. 26 of 2023 concerning the Utilization of Marine Sedimentation has close relevance to the criminal law framework regulated in the Criminal Procedure Code (KUHAP). In this context, several articles in the Criminal Procedure Code can describe the juridical implications of using sea sand within government regulations. Article 48 of the Criminal Procedure Code provides the legal basis that regulates law enforcement efforts in investigating criminal acts. In case of violation of Government Regulation No. 26 of 2023, law enforcement officers can carry out investigations to uncover violations committed by parties involved in exploiting sea sand without permission or violating other provisions stipulated in the regulation.[13]

The positive implication of Article 15 is the establishment of a mechanism that ensures projects or activities with significant environmental impacts can be managed responsibly. With regular monitoring and evaluation, the potential risks to the environment can be minimized, thereby preventing or reducing their negative impacts as much as possible. Additionally, Article 15 also fosters transparency and accountability in the implementation of Environmental Impact Assessments (EIAs).[14] With monitoring and evaluation that is open to the public, the public has access to monitor how the project or activity affects the environment, as well as whether the mitigation steps that have been planned are implemented well. the perspective of Law No. 32 of 2009, especially through the implementation of Article 15, has an important role in ensuring that sustainable development can be realized, by paying attention to and maintaining a balance between economic development and environmental protection.

Article 50 of the Criminal Procedure Code regulates valid evidence in the criminal investigation. In the case of investigations related to violations of sea sand utilization, evidence such as permit documents, environmental reports, or witnesses who can provide information about sea sand exploitation activities are important to show violations or conformity with the provisions stipulated in government regulations. Next, Article 55 of the Criminal Procedure Code regulates the detention of suspects during the investigation process. If during the investigation sufficient evidence is found to point to a person's involvement in a violation of Government Regulation No. 26 of 2023, law enforcement officers can detain suspects by the procedures regulated in the Criminal Procedure Code.

Thus, the judicial review of the use of sea sand in the realm of government regulations has significant implications in the context of criminal law enforcement. Through the legal framework regulated in the Criminal Procedure Code, violations of government regulations can be followed up legally to ensure compliance with the provisions that have been set for the sustainable management of marine natural resources.[15]

Article 15 establishes a mechanism to ensure responsible management of projects or activities with significant environmental impacts. Through regular monitoring and evaluation, environmental risks can be minimized, thereby preventing or reducing negative impacts whenever possible. Additionally, Article 15 promotes transparency and accountability in the

execution of Environmental Impact Assessments (Amdal). By making monitoring and evaluation accessible to the public, individuals can observe how projects or activities affect the environment and assess the implementation of planned mitigation measures. In a broader legal context, Article 184 of the Criminal Procedure Code serves as a guide for enforcing regulations related to environmental violations. This article mandates individuals to report criminal acts to law enforcement authorities, facilitating prompt prosecution of violators to uphold environmental sustainability.[14]

Article 1 Number 14 of the Criminal Procedure Code (KUHP) states that a criminal act is an action prohibited by law and punishable by law. In the context of the utilization of marine sedimentation, violations of Government Regulation No. 26 of 2023 can be categorized as criminal acts if they contravene the provisions stipulated in the regulation and are punishable by criminal sanctions.

Article 184 of the Criminal Procedure Code regulates the prosecution of criminal acts. If during the investigation there is sufficient evidence to support that an individual has violated government regulation, the public prosecutor is authorized to prosecute the perpetrator in court and demand legal accountability by applicable provisions.

Furthermore, Article 186 of the Criminal Procedure Code regulates the indictment. An indictment is a document containing a brief description of the acts charged against the suspect, accompanied by the articles violated and the legal reasons supporting the indictment. In the context of the utilization of marine sedimentation, the indictment may include articles stipulated in Government Regulation No. 26 of 2023 that have been violated by the suspect.[10]

3.2 The Urgency of Juridical Review of Deep Sea Sand Utilization in the Domain of Government Regulation no. 26 of 2023 concerning the Use of Marine Sedimentation

The Urgency of the Juridical Review of Deep-Sea Sand Utilization in the Domain of Government Regulation no. 26 of 2023 concerning the Utilization of Marine Sedimentation cannot be overstated. Sea sedimentation is a natural resource that has significant economic value and is used in various development projects, such as infrastructure construction, reclamation, and other construction industries. However, uncontrolled or irregular exploitation can cause serious environmental impacts, including degradation of marine habitats, damage to coral reefs, and decline in fish populations. In this context, regulations such as Government Regulation No. 26 of 2023 are significant in regulating the use of sea sand sustainably and responsibly. Judicial review of this regulation is key in ensuring that sea sand exploitation is carried out by applicable legal principles, including environmental protection, sustainability of marine ecosystems, as well as the rights of local communities related to natural resources in their territory.[6]

With the existence of Article 184 of the Criminal Procedure Code, the public must participate in preserving the environment by reporting any actions that are detrimental to the environment to law enforcement officials. It is important because the environment is a common property that must be protected by all elements of society.[7] The urgency of enforcing environmental law is evident from the impacts caused by violations of environmental regulations. Environmental damage can lead to various serious problems such as air pollution, water contamination, loss of wildlife habitat, and global climate change. Therefore, effective law enforcement can prevent uncontrollable damage and protect the environment for future generations. Thus, environmental law enforcement is not only the responsibility of the

government or law enforcement agencies but also a collective obligation of the entire society to ensure environmental sustainability.

For example, Article 33 of the 1945 Constitution of Indonesia asserts that the earth, water, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people. In this context, the utilization of marine sedimentation must consider marine biodiversity and ensure that marine ecosystems remain well-preserved.

Furthermore, Article 23 of Law Number 32 of 2014 concerning Environmental Protection and Management regulates the protection of ecosystems and biodiversity. In the utilization of marine sedimentation, the protection of marine ecosystems and biodiversity takes precedence, so every exploitation activity must consider its impact on the marine environment and its efforts to minimize damage. By considering articles regulating the protection of marine and natural biodiversity, a Juridical Review of the Utilization of Marine Sedimentation within the Scope of Government Regulation No. 26 of 2023 becomes more holistic. This approach ensures that the exploitation of marine natural resources is carried out responsibly and considers the sustainability of marine ecosystems and the biodiversity within them.

One relevant law is Law Number 32 of 2014 concerning Maritime Affairs, which provides a comprehensive framework for the management of marine resources, including the utilization of marine sedimentation. In this regard, it is important to ensure that the exploitation of marine sedimentation is by the sustainability principles stipulated in the Maritime Law, which includes protection of the marine environment, conservation of marine resources, and empowerment of coastal communities. Additionally, Indonesia has also adopted various international legal instruments related to the management of marine resources, such as the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS provides a legal framework that regulates various aspects of marine resource management, including the rights and obligations of participating states in utilizing and protecting the marine environment.[14]

In Civil Law, environmental issues do not preclude the possibility of filing a civil lawsuit. For example, the Civil Code, Article 1365, states: Every act that violates the law, which causes harm to another person, requires the person whose fault it was to cause the loss, to compensate for the loss. Article 84 of Law Number 32 of 2009 concerning Environmental Protection and Management, specifically regulates the resolution of environmental disputes, which in full is Article 84: (1) Settlement of environmental disputes can be achieved through court or outside court. (2) Environmental dispute resolution options are made voluntarily by the parties to the dispute. (3) A lawsuit through the court can only be pursued if the chosen effort to resolve the dispute outside the court is declared unsuccessful by one of the parties to the dispute.

One of the laws that is a reference in managing water resources is Law Number 7 of 2004 concerning Water Resources. The law regulates the holistic management of water resources, including seawater. In the context of the use of sea sand, it is necessary to consider the impact of sea sand extraction on the quality of the surrounding seawater as well as the potential conflict of use between the need for sand supply and environmental sustainability.

In addition, derivative regulations from the Water Resources Law, such as Government Regulation No. 122 of 2015 concerning Water Quality Management and Water Pollution Control, are also relevant in the Juridical Review. This regulation sets water quality standards that must be met in the aquatic environment, including seawater quality around sea sand exploitation areas.

By considering relevant water resources laws, the Juridical Review of the Utilization of Deep-Sea Sand under Government Regulation No. 26 of 2023 becomes more comprehensive. The approach ensures that the use of sea sand not only takes into account the sustainability of the marine ecosystem, but also takes into account its impact on water resources, and complies with standards and regulations that have been set to maintain water quality and environmental sustainability.[15]

4 Conclusion

1. In the juridical review of the Utilization of Marine Sedimentation within the Scope of Government Regulation No. 26 of 2023, it is also important to consider the criminal legal framework, including the Indonesian Criminal Code (KUHP). Although government regulation is more administrative in nature and regulates the procedures for the utilization of marine sedimentation, the Indonesian Criminal Code can serve as a reference for addressing violations that occur in the context of natural resource exploitation. The Indonesian Criminal Code provides relevant criminal provisions related to environmental crimes, such as environmental pollution and damage to natural habitats. In the context of marine sedimentation utilization, violations such as illegal mining, waste disposal into the sea that harms the ecosystem, or violations of permits regulated in Government Regulation No. 26 of 2023 may be subject to criminal sanctions according to the provisions in the Indonesian Criminal Code.
2. The criminal legal framework can also be used to uphold justice in cases of conflicts between holders of marine sedimentation utilization permits and local communities or indigenous groups who feel their rights are infringed upon. Resolving disputes through criminal legal processes can ensure that justice and the rights of communities are fulfilled by the principles of law.
3. Article 23 of Law Number 32 of 2014 concerning Environmental Protection and Management regulates the protection of ecosystems and biodiversity. In the utilization of marine sedimentation, the protection of marine ecosystems and biodiversity takes precedence, so every exploitation activity must consider its impact on the marine environment and its efforts to minimize damage. By considering articles regulating the protection of marine and natural biodiversity, the Juridical Review of the Utilization of Marine Sedimentation within the Scope of Government Regulation No. 26 of 2023 becomes more holistic.

5 Recommendations

1. The relevance to the Environmental Law Number 32 of 2009 should also be considered in this juridical review. This law emphasizes the importance of environmental protection, including marine ecosystems, and requires environmental impact analysis before conducting natural resource exploitation activities. At the international level, regulations regarding the utilization of marine resources also need to be considered, such as the United Nations Convention on the Law of the Sea (UNCLOS), which

- establishes principles for sustainable management of marine resources and marine environmental sustainability.
2. The government needs to strengthen law enforcement agencies specifically handling environmental cases. Investment in training and necessary equipment for law enforcement officials will enhance their capacity to effectively handle environmental violation cases. Additionally, increasing cooperation between government agencies, civil society organizations, and the private sector is also necessary to optimize law enforcement efforts and deter environmental violators.
 3. Transparency and accountability in environmental law enforcement need to be enhanced. By providing greater access to the public to monitor and oversee law enforcement processes, better social control will be created, and the public can become more active agents of change in environmental protection efforts. The government needs to ensure that information related to environmental cases and law enforcement processes is easily accessible to the public so that law enforcement processes can proceed more transparently and accountably.

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