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“ISLAND FOR SALE” IS IT LEGAL? A LEGAL AND POLICY ANALYSIS FROM COASTAL AND SMALL ISLANDS MANAGEMENT PERSPECTIVE¹

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Abstract

For more than ten years already, Indonesian public discourse has been set ablaze by the rumours of Indonesian small islands being sold to foreigners, inviting emotional and, thus, superficial reactions from general public and public authorities alike. This article seeks to offer a conceptual framework to discuss this issue in a more cool-headed manner, thus finding a solution to it. It can be concluded that the problems of small islands are best discussed in the context of coastal areas and small islands (CSI) management, which is the implementation of the Marine Economy policy in order to realize the Archipelagic Outlook. “Island trade,” therefore, is possible under Indonesian law, but more than just transfer of land rights or giving permit to utilize. Instead, it must take into account sustainability, bio-ecoregional as well as participatory considerations.

Keywords: *island trade, coastal areas and small islands management, marine economy, archipelagic outlook.*

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*“The ocean and our coasts provide jobs, food, energy resources, ecological services, recreation and tourism opportunities, and play critical roles in our Nation’s transportation, economy and trade, as well as the mobility of our Armed Forces and the maintenance of peace and security.”—
Barrack Obama*

I. INTRODUCTION

It has been quite a couple of years public discourse in Indonesia is repeatedly set ablaze by several small islands within Indonesian territory being “offered” for purchase by certain company claiming to be international broker specializing in buying and selling of “private”

¹ An earlier version of this article, written in Bahasa Indonesia, titled “*Tinjauan Hukum dan Kebijakan mengenai “Jual-Beli Pulau” dalam Perspektif Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil*” was presented in Universitas Indonesia, Faculty of Law, Djokosoetono Research Center Monthly Discussion, September 2012 in Depok, 29 Oktober 2012.

islands.² Indonesian House of Representatives (DPR)³ and several public authorities were fast to react and offer their comments on this issue. As of late, no less than the Coordinating Minister of Maritime Affairs⁴ and Ministry of Marine Affairs and Fisheries⁵ themselves also asserted their stances. Most of them question the legality and validity of such transactions while relating the issue to state sovereignty. In order to avoid emotional and superficial reactions to this "islands for sale" issue, this article seeks to offer a framework within which the issue shall be better understood and discussed. This conceptual framework will thus be utilized as a mind-map to help locate "islands for sale" issue within a proper context i.e. coastal areas and small islands (CSI) management. As conceptual framework is built upon ideas, this article will finally explore possible measures worth considering to implement these ideas, within which suggestion of a solution to the problem of "islands for sale" can be thought of.

II. CONCEPTUAL FRAMEWORK ON SMALL ISLANDS

The problems of small islands have attracted the attention of policy makers and academic circles around the world since at least the 1970s, when the world began to realize the importance of sustainable development. This problem is usually discussed in one breath with the coastal region, in the discourse on the CSI management. Coasts and small islands are understood as unique ecological as well as socio-economic landscapes, characterized by remoteness of location and very limited space, yet are venues for a wide variety of uses by various stakeholders, hence vulnerable to conflict; and such spans include not less than 80

² The company is Private Island Inc., operating a website <http://privateislandsonline.com> which it claims as "the foremost global marketplace for private island sales and rentals." The website has a specific page concerning islands to sell in Indonesia. <https://www.privateislandsonline.com/region/indonesia>

³ Republika, 17/01/2018 "Lukman Edy: Tak Boleh Ada Jual Beli Pulau di Indonesia." <http://nasional.republika.co.id/berita/nasional/politik/18/01/17/p2p3i3384-lukman-edy-tak-boleh-ada-jual-beli-pulau-di-indonesia> , Accessed on 03/02/2018.

⁴ Detik Finance, 15/01/2018. "Heboh Pulau RI Dijual Online. Kemenko Maritim: Tidak Boleh!" <https://finance.detik.com/berita-ekonomi-bisnis/3815293/heboh-pulau-ri-dijual-online-kemenko-maritim-tidak-boleh>, Accessed on 03/02/2018.

⁵ Detik Finance, 16/01/2018. "KKP: Sesuai UU Tak Boleh Ada Jual Beli Pulau di RI." <https://finance.detik.com/properti/3817805/kkp-sesuai-uu-tak-boleh-ada-jual-beli-pulau-di-ri> , Accessed on 03/02/2018.

percent of the earth's surface where the land meets the oceans. This has led to the adoption of, among others, an international initiative, when UNESCO in 1996 created a platform for the Environment and Development in Coastal Regions and Small Islands (UNESCO-CSI) that focuses on developing "an intersectoral, interdisciplinary and integrated approach on the prevention and resolution of conflicts over resource utilization of coastal areas and small islands."⁶

The uniqueness of the coastal landscapes and small islands make the resources and economic facilities available to them unique. The part that is the sea becomes the "way" for the passers-by, whereas the land becomes a place of stop or foothold—because humans are somehow terrestrial creatures. The seas, for the same reason, are also militarily important, both for displacing and deploying military power and as obstacles to resisting enemies' invasions—considering that almost all wars in history have the theme of struggle for economic resources. Many of their biological resources, especially fish, are not only a source of life but also a very profitable commodity. The fact that humans cannot really dwell in the seas makes them the ideal place to dump waste. In line with the progress of human civilization, coastal areas and small islands increasingly become strategic means for humans with the discovery of new resources in the form of minerals, energy, and even tourism. All this makes economic activities in coastal areas and small islands distinctive, which can therefore be termed as "marine economy"—to fundamentally distinguish it from land-based economy.⁷

III. THE STRATEGIC IMPORTANCE OF CSI MANAGEMENT FOR INDONESIA

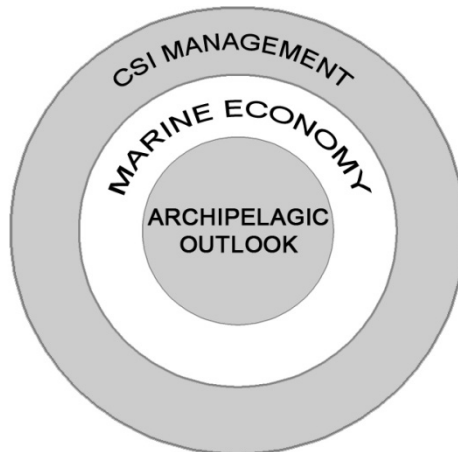
As the largest archipelagic country in the world, CSI Management clearly has a very significant meaning for Indonesia; in other words, with 17.508 islands that make up 95.181 km of coastline, and with

⁶ Moira L. McConnell, , "Conflict Prevention and Management. Designing effective dispute resolution strategies for aquaculture siting and operations." in Van der Zwaag, David L. and Chao, Gloria. (Eds.) *Aquaculture Law and Policy. Towards principled access and operations.* (New York: Routledge, 2006) pp. 172-173.

⁷ Alistair D. Couper, "The Economic Geography of the Sea." in Johnston, Douglas M. (Ed.) *Marine Policy and the Coastal Community: The Impact of the Law of the Sea.* (London: Taylor and Francis, 1976) pp. 37-38.

sea area of 5.8 million km² while its landmass is only 1.9 million km², managing Indonesia actually means managing coastal areas and islands, big and small. In accordance with its geographical form and pattern, the Indonesian economy should have been a marine economy; because the management of the economy is in fact inseparable from the way people perceive themselves and their surroundings, which in turn affects their judgment of what is needed and what is precious to them. This is what would encourage the struggle of Archipelagic Outlook or *Wawasan Nusantara*, the geostrategy of Indonesia as an archipelagic state.⁸ The relationship between the Archipelagic Outlook, the Marine Economy and CSI Management is very close, which can be demonstrated as in Figure 1. Archipelagic Outlook is a mental attitude about the physical identity of Indonesia in the form of archipelagic state, which then forms the mindset, attitudes and behavior of Indonesian human beings in doing economic activities, so that it has the character of marine economy. The marine economic activities are basically activities in managing the entire territory of Indonesian sovereignty, all of which are stretched out in coastal areas as well as small and big islands.

Figure 1.
Relations between Archipelagic Outlook, Marine Economy and
CSI Management

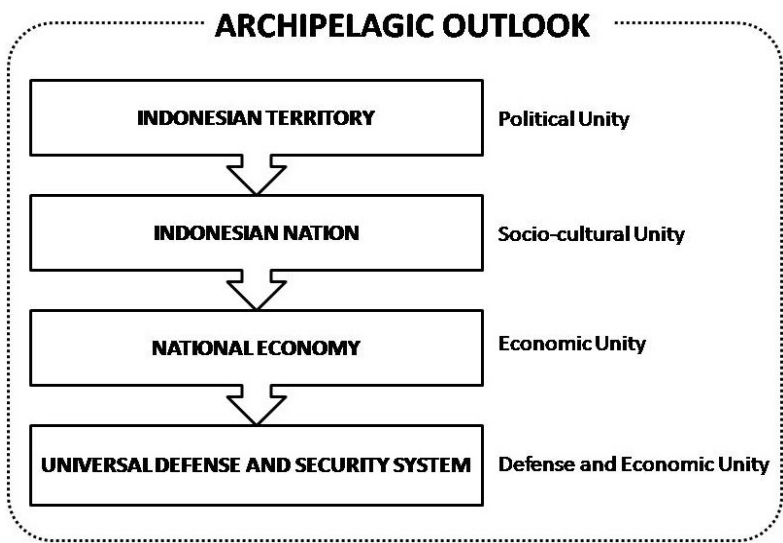


⁸ Djoko Prasmono, *Budaya Bahari*. (Jakarta: Gramedia Pustaka Utama, 2005) p. 2.

A. ARCHIPELAGIC OUTLOOK

The Archipelagic Outlook, however defined, is essentially a territorial claim of the Republic of Indonesia that had begun since the Proclamation of Independence of 17 August 1945, gained momentum of importance with the Juanda Declaration of 1957 and culminated in the recognition of the archipelagic state concept in UNCLOS 1982. These territorial claims are subsequently conceptualized as “Archipelagic Outlook” and defined as the state policy of the Republic of Indonesia in the Decree of *Majelis Permusyawaratan Rakyat (MPR; People’s Consultative Assembly)* No. 7/1999.IV/1973 to MPR Decree No. XI/1993 on the Guidelines of State Policy.

Figure 2. Archipelagic Outlook Concept



The concept of “Archipelagic Outlook” is fundamentally a territorial political claim as an archipelagic state—where Indonesia is not a country of islands separated by the seas, but sea studded with islands—which is understood not only as a single unity in (i) politics, but also a unity in (ii) socio-culture, and therefore also a unity in (iii) economy; as well as, (iv) defense and security.⁹ Indonesia’s geographical or physical

⁹ N.H.T. Siahaan, *Hukum Lingkungan dan Ekologi Pembangunan. Second Edition.* (Jakarta: Erlangga, 2004) pp. 165-167.

appearance is in fact a definer of the Indonesian nation as one *volk* or people, in which Indonesian people are defined as the people, and their descendants, who dwell in the lands and seas of Indonesia—this is why the Archipelagic Outlook is called National Outlook. In addition, the water and land of Indonesia with its various resources are also a source of livelihood for the nation of Indonesia in meeting the needs of life, which therefore needs to be maintained and secured in order to maintain the survival of the Indonesian nation.

B. MARINE ECONOMY

As a public discourse, Marine Economy—or in Bahasa Indonesia known as “*Ekonomi Kelautan*”—is still very young in Indonesia. President Abdurrahman Wahid’s interest in marine issues may be referred to here as the trigger. This he proved with the establishment of the Department of Marine Exploration and Fisheries in 1999 in a cabinet led by him, with Sarwono Kusumaatmadja as its minister.¹⁰ Since then, the snowball of marine economy discourse continues to roll and enlarge. A further significant follow-up is the inclusion of this discourse as one of Indonesia’s long-term development mission for 2005-2025 period. With the vision of “Independent Indonesia, Advanced, Fair and Prosperous,” as stipulated in Law No. 17/2007 on the National Long-Term Development Plan of the Year 2005-2025, it was then planned 8 (eight) national development missions, one of which is:

“Creating Indonesia as an independent, advanced, strong, and nationally-based archipelagic state is generating maritime outlook for the people and government for maritime-oriented Indonesian development; improve the capacity of maritime-oriented human resources through the development of marine science and technology; managing national sea territories to defend sovereignty and prosperity; and develop an integrated marine economy by optimizing the sustainable use of ocean resources.”¹¹

Since its establishment in 1999, the Ministry of Marine Affairs and Fisheries has also produced 5 (five) strategic plans to carry out the mission. The ambitious Rokhmin Dahuri Plan makes resource-

¹⁰ Arif Satria, *Ekologi Politik Nelayan*. (Yogyakarta: LKiS, 2009) p. 114.

¹¹ Indonesia. Law Regarding National Long-Term Development Plan 2005-2025. Law No. 17/2007. SG. 33-2007 Appendix. p. 40.

based economy, especially marine economy, as the prime mover of the national economy, where the fishery sector becomes the spearhead.¹² Freddy Numberi Plan was simple and actually a mere description of the main tasks and functions of the Department of Marine and Fisheries.¹³ Fadel Muhammad Plan, meanwhile, carries the vision of “Indonesia as Largest Marine and Fishery Product Producer in 2015” and in achieving it uses “Region-based Marine and Fisheries Economy” strategy by forming the region of superior marine economic potentials and production centers.¹⁴ Unfortunately, these plans that should have served as guidelines for managing Indonesian marine economy have never really been—or have not had the time to be—successful. Rokhmin’s approach—ambitious as it was, but conventional, because it assumes the fishery sector to haul other marine sectors—certainly requires more than five years to be fruitful. Fadel’s more moderate approach—and therefore, perhaps, should have had a better chance to succeed—had not had the chance to succeed because he was removed from office after only a year.

Although it mentioned the vague term of “Blue Economy,” Sharif Cicip Plan was almost routine as it largely focused on what it understood as “industrialization” and “increase in export revenue.”¹⁵ Apparently, the idea was simply to allow and facilitate exploitation of Indonesian fisheries in industrial scale to increase export revenue.¹⁶ As if a drastic change of direction, Susi Pudjiastuti Plan talked about “safeguarding marine and fishery resources” in a three-pronged marine economic policy of sovereignty, sustainability and prosperity.¹⁷ This is based on President Joko Widodo’s campaign promise of National

¹² Ministry of Marine-Affairs and Fisheries Decree No. 18/2002 on *the Strategic Plans for Development of Marine and Fisheries Year 2001-2004*. Appendix.

¹³ Ministry of Marine Affairs and Fisheries Regulation No. 17/2005 on *the Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2005-2009*. Appendix.

¹⁴ Ministry of Marine Affairs and Fisheries Regulation No. 6/2010 on *Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2010-2014*. Appendix. pp. 36-37.

¹⁵ Ministry of Marine Affairs and Fisheries Regulation No. 15/2012 on *Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2010-2014*. Appendix.

¹⁶ Tempo.co 08/01/2014. “100 Kapal Asing Curi Ikan di Indonesia Tiap Tahun.” <https://bisnis.tempo.co/read/543036/100-kapal-asing-curi-ikan-di-indonesia-tiap-tahun> , Accessed 02/03/2018.

¹⁷ Ministry of Marine Affairs and Fisheries Regulation No. 45/2015 on *Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2015-2019*. Appendix. p. 19.

Development Priority Agenda that is dubbed as Nawa Cita, (The Nine Ideals) which among others aims to "realize economic independence by actuating domestic strategic economic sectors."¹⁸ In line with this, President Joko Widodo also introduced the policy vision of "Indonesia as Global Maritime Axis" that among others will be achieved through a better management of fishery resources as input for fishery industries, in a view to realize food sovereignty.¹⁹ So far, the most notable measure is the popularly celebrated policy to sink foreign fishing vessels that violate Indonesian Fisheries Law. Minister Susi herself asserted that if Indonesian waters are eventually free from these fish poachers, the fish will be aplenty once again and fishers will of course be better off.²⁰

C. CSI MANAGEMENT

On one hand, Indonesia may have been one of the pioneers in the regulation of CSI Management because since 1916 it has set about coastal fisheries effort in an integrated and sustainable way.²¹ On the other hand, Indonesia was too late to adjust its CSI Management regulation with the latest developments, as it was only in 2007 that Law No. 27/2007 on the Management of Coastal Areas and Small Islands has adopted the modern CSI Management paradigm based on (i) bio-ecoregion based zoning; (ii) participatory management; and, (iii) rights-based management.²² In the framework of planning, instead of fragmenting coastal areas and small islands into administrative units, this Law commands to do so on

¹⁸ *Ibid.* p. 2.

¹⁹ Bono Budi Priambodo. "Global Maritime Axis. A Curious Vision (Part 1)." [https://maritimeneews.id/06/jbxnk\\$\\$mx/](https://maritimeneews.id/06/jbxnk$$mx/), Accessed 02/03/2018.

²⁰ The Jakarta Post, "Susi insists on continuing her ship-sinking policy", <http://www.thejakartapost.com/news/2018/01/10/susi-insists-on-continuing-her-ship-sinking-policy.html>, Accessed 02/03/2018.

²¹ Kusnadi Hardjasumantri. *Hukum Tata Lingkungan*. (Yogyakarta: Penerbit Universitas Gadjah Mada, 1989) p. 90. In this case, what is meant is *Parelvisscherij en Sponsevisscherij Ordonnantie 1916*, which was followed by *Visscherij Ordonnantie 1920* and *Kustvisscherij Ordonnantie 1927*. These regulations govern coastal fisheries efforts, to distinguish them from offshore marine fisheries, which include not only the provisions on their own business but also the socio-economic and ecological aspects.

²² White, Alan T. Deguit, Evelyn. Jatulan, William. Eisma-Osorio, Liza. "Integrated coastal management in Philippine local governance: Evolution and benefits." in Khrisnamurty, R.R. et.al. (Eds.) *Integrated Coastal Zone Management. The Global Challenge*. (Singapore: Research Publishing, 2008) pp. 38-40.

the basis of bio-ecoregion,²³ which in this Law is understood to be “a landscape within one a stretch of ecological unity defined by natural boundaries, such as watersheds, bays and currents.”²⁴ This planning task—to identify the bio-ecoregion zones and what should, should not and/or be done to them—shall be borne by the Local Government, with the Central Government providing guidance on how to do it.²⁵ In order to strengthen participation and encourage community initiatives, Law No. 27/2007 requires the Local Government to involve the community in preparing the plan.²⁶

Today, one of the most prominent academic and policy discourses concerning natural resource management is the phenomenon of tragedy of the commons, in which a resource is considered to belong to the commons so that all are competing to utilize it until it runs out completely. The latest solution offered to solve this problem is to impose the property rights on some resources for each of the beneficiaries, assuming that people will take better care of what their personal property is.²⁷ With such understanding, Law no. 27/2007 introduces the concept of Coastal Water Management Right (*Hak Pengelolaan Perairan Pesisir or HP3*) in the utilization of coastal and small islands, where the right “covers the exploitation of sea level and water column up to the surface of the seabed” and “given in certain areas.”²⁸ Either (i) an individual Indonesian Citizen; (ii) a legal entity established under Indonesian law; or (iii) indigenous peoples may obtain HP3.²⁹ More importantly, HP3 has the perfect property right because “it can be switched, transferred and used

²³ Indonesia. Law Regarding Management of Coastal Zone and Small Islands. Law No. 27/2007. SG.84-2007, Article 10 and 11. *See also* General Explanation.

²⁴ *Ibid.* Article 1 Numeral 6. Compare with the notion of “ekoregion” in Law No. 32/2009 on Environmental Protection and Management, (LN Th of 2009 No. 140, TLN No. 5059) “Ecoregion is a geographical region that shares the same characteristics of climate, soil, water, native flora and fauna, and patterns of human interaction with nature which illustrates the integrity of the natural and environmental systems. “ (Article 1 Numeral 29)

²⁵ Law No. 27/2007. Article 7.

²⁶ *Ibid.* Article 4 jo. Article 7 Subsection 4.

²⁷ John Taylor and Akila Weerapana. *Economics*. 6th Ed. (New York: Houghton Mifflin, 2008) pp. 436-437.

²⁸ Law No. 27/2007. Article 16 Subsection 2 jo. Article 17 Subsection 1.

²⁹ *Ibid.* Article 18.

as a guarantee of debt with the burden of mortgage.”³⁰In addition to mandatory adjustments to the planning as described previously, HP3 grants are subject to very strict conditions; which includes technical, administrative and operational requirements.³¹

IV.IMPLEMENTATION OF CSI MANAGEMENT IN INDONESIA IN THE FUTURE

As a concept that is still very new, CSI Management—especially as the implementation of the Archipelagic Outlook doctrine in the economic aspect (gatra)—is not well known to many people; even presumably by those who are actually responsible for carrying it out. The ideas contained therein still require more militant socialization, which will only be made possible by, for the first time, a very strong political commitment. In fact, the half-hearted attention to the marine economy has been going on for decades while the land economy has gained too much attention—which is a neglect and even denial of the identity of Indonesia as a country and a nation of seas—that would have been the main cause of the “gap trilogy” namely (i) the inter-regional development gap; (ii) developmental disparities between sectors; and, (iii) income and welfare gaps.³² Negative adherence to the market economy, furthermore, makes economic development without priority and even loss of direction; so the following things are unavoidable.

*“The ever-widening gap between the rich and the poor, the financial crisis, the increasing pressure on the environment, the commodification of more and more aspects of life, the ideological naturalization of commodity relations and the subordination of society to the rhythm of the financial casino and the world market.”*³³

Therefore, when all can become commodities (merchandise), it is not surprising when small islands in Indonesia can be “traded” by people. The following is a brief discussion of the ideal implementation

³⁰ *Ibid.* Article 20 subsection 1.

³¹ *Ibid.* Article 21.

³² Ahmad Erani Yustika, “Pembangunan dan Trilogi Ketimpangan.” Economic Analysis, *Okezone.com*. <http://economy.okezone.com/read/2012/10/18/279/705700/pembangunan-dan-trilogi-ketimpangan> . Accessed on 25 Oktober 2012.

³³ Gareth Dale, *Karl Polanyi. Key Contemporary Thinkers Series.* (Cambridge: Polity Press, 2010) p. 241.

of CSI Management in Indonesia, which would prevent the occurrence of such thing as “island trade” in the future.

A. RIGHTS-BASED CSI MANAGEMENT: COASTAL AREAS AND SMALL ISLANDS FOR THE ENTITLED

Apart from the breakthroughs that it presented in CSI Management, Law no. 27/2007 has some weaknesses that can be said to be fatal. Most critics say that the law is too inclined to the interests of the business world. This is evident in, for example, the provision that the proposed management plan “is undertaken by the Regional Government and the business world” while the Community is only involved in it.³⁴ When this reality is combined with HP3 construction as the main instrument of utilization, critics are concerned that coastal communities will actually lose access to their environmental resources because they have been retained by the business people. Moreover, the concept of “indigenous people” as HP3 recipients, defined simply as “a group of Coastal Communities who have traditionally settled in a particular geographical area due to ties to ancestral origins, a strong relationship with Coastal Resources and Small Islands, and the existence of a value system that determines economic, political, social and legal institutions”³⁵ may have been less operational than the legal provisions of persons and legal entities. All of these normative realities, reinforced by the various realities of Indonesian economic politics in which coastal communities are always marginalized, pushed the Constitutional Court to decide that the provisions of Law no. 27/2007, insofar as it relates to HP3, is contrary to the 1945 Basic Law, and therefore has no binding force.³⁶

As far as I am concerned, the reaction to Law no. 27/2007, which resulted in the illegal nature of the main instrument of the Law, if not exaggerated, was based on a lack of a thorough and orderly understanding of the normative realities and political realities of the CSI Management economy. The fact that the editorial of this Law does indeed show the obvious alignment to the interests of the business world here and there

³⁴ Indonesia. Law Regarding Management of Coastal Zone and Small Islands. Law No. 27/2007. SG.84 2007 ,Article 14 Subsection 1 and 2.

³⁵ *Ibid.* Article 1 (33).

³⁶ Indonesian Constitutional Court, Decision of the Constitutional Court No. 3/PUU-VIII/2010.

cannot be denied. However, the normative reality that this Law requires the practice of CSI Management approaches that have been proven effective in various parts of the world should not be ignored. The biggest difficulty faced in implementing Law no. 27/2007 may have been the potential for sectoral clashes with matters of authority other than CSI Management. Nevertheless, this should not be discouraged and subject to the existing legal framework, which in reality does not fully understand the nature and context of CSI Management. The suggestion to replace the construction of rights with a permit would also be unwise,³⁷ when the main purpose of CSI Management is actually to establish the right to coastal resources and small islands for the rightful, that is the coastal communities themselves. After all, why one should ask permission to exploit resources that in fact are the only source of livelihood for him; and, therefore, is naturally his due? Instead of making the Law totally non-functional, it is far more logical to find solutions in enforcing rules that ensure that the right is justified.

B. "PRO-POOR" AND "PRO-JOB" MARINE ECONOMY

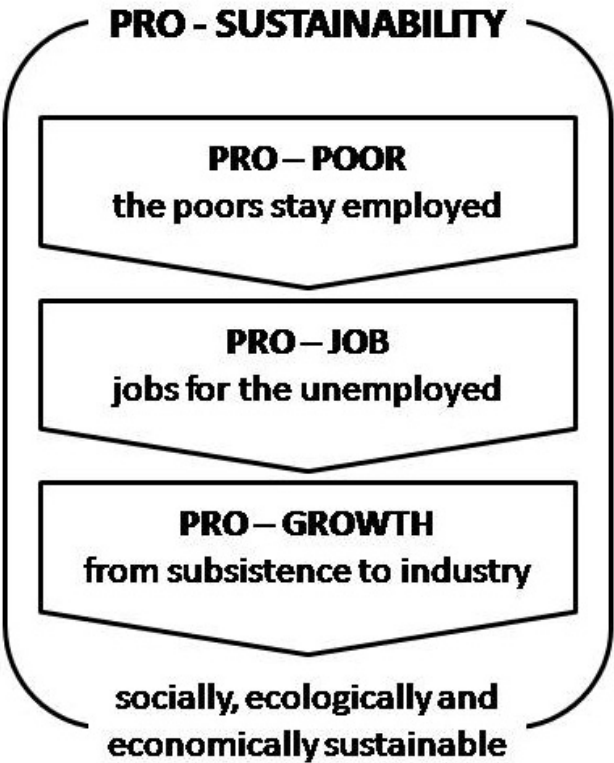
Poverty is still one of the main themes of development planning in Indonesia, which is so recognized as, among other things, "lack of alignment in planning and budgeting, lack of synergy and coordination of central and local government policies in poverty alleviation efforts, and ... limitations understanding in developing the potential of the poor."³⁸ Accordingly, in order to "Achieve equitable development and equality," national development is directed at, among other things, reducing social inequalities by coping with poverty and unemployment drastically, which is materialized through the enhancement of regional development by managing community-oriented plans and policies, groups and territories/regions that are still weak.³⁹

³⁷ *Ibid.* This approach eventually found its way to Law No. 1/2014 on the Amendment to Law No. 27/2007.

³⁸ Law No. 17/2007. Appendix. p. 25.

³⁹ *Ibid.* p. 40.

Figure 3. Marine Economy Strategy



The Ministry of Marine Affairs and Fisheries in its 2010 Renstra translates this national policy into (i) Pro-poor policy, which is directed primarily at the socio-economic and marine business communities which are still not empowered; (ii) Pro-job policy, which is directed to job creation in marine and fishery sectors through optimization of potential of aquaculture fishery, with support for capital development and business certainty. These two approaches will in turn create a condition that is (iii) pro-growth, that is when marine and fishery economic actors successfully transform from subsistence mode into industry, so that marine and fishery sector can in turn be one of the pillars of national economic resilience. Finally, these should be managed

within a framework of (iv) pro-sustainability, where marine, coastal, small island and fishery resources are managed sustainably through various recovery, conservation, mitigation and adaptation efforts to climate change.⁴⁰

In this marine economic strategy, a right-based CSI Management scheme aimed at establishing the right of coastal communities to coastal resources becomes highly relevant. Acknowledgment of this actual right not only provides the most perfect legal protection, but the material rights of coastal resources are also highly instrumental in transforming the largely subsistence coastal economy into industrial ones. As it becomes understood, the increase in production capacity is only made possible by the increase in capital capacity. The increase of capital capacity is made possible if the assets are bankable, in a sense that it can be integrated with credit mechanism provided by the banking system.⁴¹ The confirmation of the nature of the material right to coastal resources, particularly with the ability to be borne by the dependents, will enlarge the access of marine and fishery efforts to the capital provided by the banking system. The nature of property right over coastal resources, in other words, increases the bankability of marine and fishery subsistence efforts that coastal communities have been engaged in; thereby increasing its chances of escalating capacity to an industrial level. Thus, it can be understood that the right-based CSI Management is not only instrumental, but it is also crucial for increasing the capacity of the Indonesian marine economy.

C. NATIONAL LEADERSHIP WITH MARINE OUTLOOK

The State of Indonesia was formed, *inter alia*, with the aim of "protecting the whole Indonesian nation and the whole of Indonesia's blood sphere and to promote the common prosperity."⁴² This objective, in relation to the management of the economy, is further elaborated as the task of the state to (i) develop the economy as a joint enterprise on the basis of family principles; (ii) control important production branches that affect the livelihood of the public; and (iii) control the

⁴⁰ The Regulation of Ministry of Marine Affairs and Fisheries No. 6/2010. Appendix. pp. 35-36.

⁴¹ *Ibid.* p. 29.

⁴² Indonesia., Constitution of Indonesia 1945, Preamble.

natural resources to be used as much as for the prosperity of the people.⁴³ This constitutional provision is then further elaborated in the legislation level into what Prof. Budi Harsono said as the Right to Control the State, which is merely public, namely the right of the state as the power and the officer of the Indonesian nation to manage the natural resources of Indonesia.⁴⁴ Such right gives rise to the authority of the state to (1) organize and administer the designation, use, inventory and maintenance of the earth, water and space; (2) determine and regulate the legal relations between persons and the earth, water and space; and, (3) determine and regulate the legal relationships between persons and legal acts concerning the earth, water and space.⁴⁵ Thus, the leadership of the state in managing resources, in particular, marine and fisheries is not only based on law, but also constitutional mandate.

However, unfortunately, to realize right-based CSI Management within the pro-poor and pro-jobocean economic framework in Indonesia, constitutional and legislative provisions alone are still inadequate. As former President Suharto succeeded in completely changing President Sukarno's revolutionary political will to be the theme of national economic development, what is needed now is that national leadership is also capable of shifting the land-based orientation into the ocean. This way of thinking is shown, for example, by the opinion of Sultan Hamengkubuwono X of Jogjakarta who seems eager to "restore the maritime glory of the past as an effort to build a glorious homeland." "The spirit and nautical skills that once became the pride of Indonesia," the Sultan said, "need to be explored and developed among the younger generation, so that this nation will host its own maritime country." Such a vision, still according to the Sultan, is only possible if it is driven by "great political power, especially by a cohesive and powerful national

⁴³ Indonesia. Constitution of Indonesia 1945, Article 33. See also Sri-Edi Swasono. "Indonesia is Not for Sale: Sistem Ekonomi Nasional untuk Sebesar-besar Kemakmuran Rakyat." Paper presented in *The Limited Working Meeting of the National Defense Council's Working Group*, 20-21 November 2007.

⁴⁴ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya, Volume 1 of the National Land Law, Revised Edition* (Jakarta: Djambatan, 2003) pp. 232-234.

⁴⁵ Indonesia, Law Regarding Basic Agrarian Law. Law No. 5/1960, SG. 104-1960. Article 2 Subsection 2.

leadership in one vision.”⁴⁶ Like it or not, this is the political reality of Indonesia, where political power, and ultimately also policy choices, is highly dependent on the paternalistic relationship between leaders—as patrons, and their people—as clients.⁴⁷ Under these circumstances, the personality and personal interests of a leader determine whether or not a particular policy is adopted; regardless of any system, including the legal and constitutional systems, prevailing at the time.

V. CONCLUSION

Finally, it can be concluded that the problems of small islands are best discussed in the context of CSI Management, which is the implementation of the Marine Economy policy in order to realize the archipelagic Outlook. The Archipelago Outlook, which is an awareness of the physical condition of the Ocean State or the Archipelagic State, makes the Marine Economy for Indonesia not just the one, but also the only choice of economic policy context. Thus, managing the Indonesian economy will inevitably mean managing coastal areas and, later on, large and small islands. In this context, small islands are managed in such a way that, at the very least, guarantee the welfare of their inhabitants, or bring prosperity to all Indonesians in general; because for Indonesia, these small islands are an inseparable part of the Indonesian sea which is the frontyard, not the backyard of the “house” of Indonesia. In order to achieve this condition, a right-based CSI Management governance framework is required to support pro-poor and pro-job policy programs to adapt to the current conditions of the Marine Economy whose reality still continues to be the “stepchild” in the national economy. All this can only be realized in Indonesia, unfortunately, if there is a national leadership withocean outlook and, therefore, has a strong political commitment to implement it.

Thus, it can be understood why the “island-trade” frenzy lately is reactionary, and the attitude toward it is superficial. Basically,

⁴⁶ “Pemimpin Harus Bervisi Maritim.” *Mitranews.com*. <http://www.mitranews.com/index.php?pilih=news&mod=yes&aksi=lihat&id=3022&judul=pemimpin-harus-bervisi-maritim.html>, accessed on October 25, 2012.

⁴⁷ Lucian W. Pye, *Asian Power and Politics. The Cultural Dimensions of Authority*, (Cambridge: Harvard University Press, 1985), p. 117.

within the right-based CSI Management framework, “island-trade” is possible. However, its implementation—should, if based on Law No. 27/2007 alone—will be much more difficult than just the transfer of land rights, when the various technical, administrative and operational requirements that should be highly limitative must be met first. If an island can be traded as easy as transferring land rights, or as easy as managing the permit of a certain resource extraction in an island or the surrounding waters, it is a sign that CSI Management is not functioning which, firstly, should be organized based on bioecoregion and planned and utilized participatively, with the interests of the local community as a top priority. Although Law No. 27/2007 is impotent because the main instrument is made illegal thus amended into Law No. 1/2014, Law No. 32/2009 presumably leaves little hope because of the arrangement paradigm based on its ecoregion. Nonetheless, right-based CSI Management still needs to be fought for, as it is necessary to have legal mechanism to recognize the rights, in particular and above all, of coastal communities for their environmental resources.

BIBLIOGRAPHY

Books

- Couper, Alistair D. "The Economic Geography of the Sea." in Johnston, Douglas M. (Ed.) *Marine Policy and the Coastal Community: The Impact of the Law of the Sea*. London: Taylor and Francis, 1976.
- Dale, Gareth. Karl Polanyi. *Key Contemporary Thinkers Series*. Cambridge: Polity Press, 2010.
- Hardjasumantri, Kusnadi. *Hukum Tata Lingkungan*. Yogyakarta: Penerbit Universitas Gadjah Mada, 1989.
- Harsono, Boedi. *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya*, Volume 1 of the National Land Law, Revised Edition. Jakarta: Djambatan, 2003.
- McConnell, Moira L. "Conflict Prevention and Management. Designing effective dispute resolution strategies for aquaculture siting and operations." in Van der Zwaag, David L. and Chao, Gloria. (Eds.) *Aquaculture Law and Policy. Towards principled access and operations*. New York: Routledge, 2006.
- Pramono, Djoko. *Budaya Bahari*. Jakarta: Gramedia Pustaka Utama, 2005.
- Pye, Lucian W. *Asian Power and Politics. The Cultural Dimensions of Authority*. Cambridge: Harvard University Press, 1985.
- Satria, Arif. *Ekologi Politik Nelayan*. Yogyakarta: LKiS, 2009.
- Siahaan, N.H.T. *Hukum Lingkungan dan Ekologi Pembangunan*. Second Edition. Jakarta: Erlangga, 2004.
- Taylor, John. Weerapana, Akila. *Economics*. 6th Ed. New York: Houghton Mifflin, 2008
- White, Alan T. Deguit, Evelyn. Jatulan, William. Eisma-Osorio, Liza. "Integrated coastal management in Philippine local governance: Evolution and benefits." in Khrisnamurty, R.R. et.al. (Eds.) *Integrated Coastal Zone Management. The Global Challenge*. Singapore: Research Publishing, 2008.

Paper

- Swasono, Sri-Edi. "Indonesia is Not for Sale: Sistem Ekonomi Nasional untuk Sebesar-besar Kemakmuran Rakyat." Paper presented in The Limited Working Meeting of the National Defense Council's Working Group, 20-21 November 2007.

Statutes/Regulations

- Indonesia. *Constitution of Indonesia 1945*
- Indonesia. *Law Regarding Management of Coastal Areas and Small Islands*. Law No. 1/2014, SG.2-2014.
- Indonesia. *Law Regarding National Long-Term Development Plan 2005-2025*. Law No. 17/2007. SG. 33-2007
- Indonesia. *Law Regarding Management of Coastal Zone and Small Islands*. Law No. 27/2007. SG.84-2007
- Indonesia. *Law Regarding Environmental Protection and Management*. Law No. 32/2009, SG. 140-2009.

Indonesia. Law Regarding Basic Agrarian Law. Law No. 5/1960, SG. 104-1960.

Ministry of Marine Affairs and Fisheries Regulation No. 15/2012 on Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2010-2014.

Ministry of Marine Affairs and Fisheries Regulation No. 17/2005 on the Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2005-2009.

Ministry of Marine Affairs and Fisheries Regulation No. 45/2015 on Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2015-2019.

Ministry of Marine Affairs and Fisheries Regulation No. 6/2010 on Strategic Plans of the Ministry of Marine Affairs and Fisheries Year 2010-2014.

Ministry of Marine Affairs and Fisheries Regulation No. 6/2010.

Ministry of Marine Affairs and Fisheries Decree No. 18/2002 on the Strategic Plans for Development of Marine and Fisheries Year 2001-2004.

Court Decisions

Constitutional Court of Indonesia. Constitutional Court Decision No. 3/PUU-VIII/2010.

Internet

“Pemimpin Harus Bervisi Maritim.” Mitranews.com. <http://www.mitranews.com/index.php?pilih=news&mod=yes&aksi=lihat&id=3022&judul=pemimpin-harus-bervisi-maritim.html>.

Detik Finance, 15/01/2018. “Heboh Pulau RI Dijual Online. Kemenko Maritim: Tidak Boleh!” <https://finance.detik.com/berita-ekonomi-bisnis/3815293/heboh-pulau-ri-dijual-online-kemenko-maritim-tidak-boleh>.

Detik Finance, 16/01/2018. “KKP: Sesuai UU Tak Boleh Ada Jual Beli Pulau di RI.” <https://finance.detik.com/properti/3817805/kkp-sesuai-uu-tak-boleh-ada-jual-beli-pulau-di-ri>.

Jakarta Post, 10/01/2018. “Susi insists on continuing her ship-sinking policy.” <http://www.thejakartapost.com/news/2018/01/10/susi-insists-on-continuing-her-ship-sinking-policy.html>.

Priambodo, Bono Budi. “Global Maritime Axis. A Curious Vision (Part 1).” [https://maritimeneeds.id/06/jbxnk\\$mx/](https://maritimeneeds.id/06/jbxnk$mx/).

Private Island Inc., <http://privateislandsonline.com>.

Republika, 17/01/2018 “Lukman Edy: Tak Boleh Ada Jual Beli Pulau di Indonesia.” <http://nasional.republika.co.id/berita/nasional/politik/18/01/17/p2p3i3384-lukman-edy-tak-boleh-ada-jual-beli-pulau-di-indonesia>.

Tempo.co 08/01/2014. “100 Kapal Asing Curi Ikan di Indonesia Tiap Tahun.” <https://bisnis.tempo.co/read/543036/100-kapal-asing-curi-ikan-di-indonesia-tiap-tahun>.

Yustika, Ahmad Erani. “Pembangunan dan Trilogi Ketimpangan.” Economic Analysis, Okezone.com. <http://economy.okezone.com/read/2012/10/18/279/705700/pembangunan-dan-trilogi-ketimpangan>.