

# Laws of Authority and Uncertain Law On the Beach Reclamation Activities in The Gulf Coast of Jakarta

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**Abstract-** Conflict of authority and legal uncertainty related to coastal reclamation in coastal areas and small islands surfaced in almost reclamation activities in the area, especially the implementation of reclamation in the Jakarta Bay. Although the reclamation at Ancol Beach was successful in the 1980s, it does not guarantee that the reclamation will run smoothly and successfully in the era of regional autonomy. Various regulations have emerged that regulate reclamation activities and the authority to manage coastal and small islands. Such a lot of rules actually makes stakeholders more uncertain to use what regulations are in accordance with the interests of their respective regions. Coastal reclamation in the era of regional autonomy has caused many conflicts in the community, demonstrations of reclamation rejection, and lawsuits in the State Administrative Court. Regarding reclamation in Jakarta Bay, governor Basuki Tjahaja Purnama (Ahok) gave reclamation permission, but when Governor Ahok was replaced with Anies Baswedan, the reclamation permit was canceled. This causes legal uncertainty especially for entrepreneurs, which results in entrepreneurs filing a lawsuit against the Provincial Government of DKI Jakarta.

**Index Terms-** Coastal Reclamation, Reclamation Authority, and Legal Certainty

## I. INTRODUCTION

Indonesia is the largest archipelago country in the world consisting of 17,499 islands from Sabang to Merauke.<sup>1</sup> Data from the Ministry of Home Affairs (2006), Indonesia is inhabited by around 17,504 islands. The amount is different compared to the count of the Toponimi Team which is coordinated by the Directorate General of Marine, Coastal and Small Islands, Ministry of Maritime Affairs and Fisheries (DKP). The total area of Indonesia is 7.81 million km<sup>2</sup> which consists of 2.01 million km<sup>2</sup> 3.25 million km<sup>2</sup> of the sea, and 2.55 million km<sup>2</sup> of the Exclusive Economic Zone (EEZ)<sup>2</sup>. It is estimated that 3/4 of

Indonesia (5.8 million km<sup>2</sup>) is ocean and a quarter (1.9 million km<sup>2</sup>) is land area.<sup>3</sup> With the adoption of the 1982 United Nations Law of the Sea Law (*United Nations Convention on the Law of the Sea 1982 - UNCLOS 1982*) which was ratified by RI Law No. 17 of 1985, Indonesia's territory expanded to approximately 8.5 million square kilometers. In addition, UNCLOS has opened a new chapter on the demarcation of territorial borders and jurisdictional authority at sea, where in this connection the Unitary State of the Republic of Indonesia as an "Archipelagic State" legally has territorial borders and jurisdictional authority over inland waters, archipelagic waters, territorial seas, Zone Exclusive economy, free sea, and clearer continental shelf and international seabed.<sup>4</sup>

The first reclamation in Indonesia was carried out at Ancol Beach in Jakarta in the early 1960s. The Ancol area is located east of Jakarta's Old City, to the border of the Tanjung Priok Port complex. The area is now used as a village of the same name, including the Pademangan sub-district, North Jakarta Municipality. The reclamation has succeeded in transforming the Ancol Beach area into the largest tourist destination in Jakarta visited by domestic and foreign tourists. Ancol Beach, which is owned by the DKI Jakarta Regional Government, even produces the second highest local revenue (PAD) after Bank DKI. The Ancol Beach reclamation goal has been achieved, so that it becomes an inspiration for other entrepreneurs to conduct similar reclamations in the Jakarta Bay.

Based on Act Number 32 of 2004 concerning Regional Government, each regency / city which has a coastal and sea boundary is given the authority to utilize the beach and the sea. Areas that have sea areas are given the authority to manage marine resources (Article 18 paragraph 1 of Act No.32 / 2004). The authority to manage the resources in the sea area at most 12 (twelve) nautical miles is measured from the coastline towards the open sea and / or towards archipelagic waters for the province and 1/3 (one third) of the provincial authority for the district / city . However, when Act No. 32/2004 was replaced with Act Number

<sup>1</sup> Surat Edaran Kepala Dishidros Mabes TNI-AL No.SE/1241/IV/2012 tanggal 10 April 2012 tentang Data Wilayah Negara Kesatuan Indonesia.

<sup>2</sup> Luky Adrianto, Laporan Analisis dan Evaluasi Hukum tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil, Pusat Perencanaan Pembangunan Hukum Nasional, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI tahun 2015.

<sup>3</sup> Bambang Iriana Djajaatmadji, Harmonisasi Hukum Pengelolaan Sumber Daya Kelautan Dalam Kerangka Desentralisasi, Badan Pembinaan Hukum Nasional, Departemen Hukum dan Hak Asasi Manusia RI, Jakarta, 2005.

<sup>4</sup> Ibid

23 of 2014, the authority of regency / city areas to manage coastal areas and small islands was revoked. Article 27 paragraph (1) of Act No. 23/2014 states that the Provincial region is given the authority to manage the existing marine resources in its territory. This article invalidates Article 18 paragraph (1) of Act No. 32 of 2004, which states that regencies / cities that have sea areas are given the authority to manage resources in the sea area.

Conflicts related to the enactment of legislation also occurred in Presidential Regulation No. 52 of 1995 concerning the Implementation of the North Coast Reclamation of Jakarta, and Presidential Decree No. 122 of 2012 concerning Management of Coastal Areas and Small Islands. The two regulations can lead to different interpretations in the implementation of reclamation in Jakarta Bay. If using Perpres 52/1995, the reclamation on the North Coast of Jakarta is the authority of the governor of DKI Jakarta. However, if referring to the Presidential Decree 122/2012, to obtain a location permit and permit for the implementation of the reclamation must undergo a long process in several related ministries.

## II. RECLAMATION BEFORE REGIONAL AUTONOMY

The beach reclamation in the Jakarta Ancol Beach area, by PT Pembangunan Jaya Ancol owned by the Provincial Government of DKI Jakarta in collaboration with the private sector, in the early 1980s, was successfully carried out successfully and successfully. Originally the Ancol area, which covered an area of 552 hectares, would be used as an industrial area. The President of the Republic of Indonesia, Ir. Soekarno then came up with an idea to change its designation, not for an industrial area but a tourist area. For this reason, the President of the Republic of Indonesia, Ir. Soekarno, then appointed the DKI Jakarta Regional Government, in this case Governor Dr. H. Soemarno Sosroatmodjo as the executor. Development funds obtained from foreign and domestic loans.<sup>5</sup>

In accordance with Presidential Decree 338/1960, the Governor of the Greater Jakarta Region is determined as the Responsible for the smooth implementation of the Ancol development, therefore in the framework of implementing the Presidential Decree, the Governor of the Greater Jakarta Region through his decision No. 11 / Seker / Antjol on 30 March 1961 formed the Implementing Agency and the Ancol Project Development Control Agency.

In 1966, the Governor of the Greater Jakarta Region through Decree No. 1b.3 / 1/26/1966 dated 19 October 1966 appointed PT Pembangunan Capital Jakarta Raya ("PT Pembangunan Jaya") as the Ancol Project Development Implementing Agency. The Governor's Decree was renewed by Decree No.1b.3 / 1/59/66 dated November 25, 1966 and finally by Decree No. 1b.3 / 1/5/70 dated January 14, 1970. Official reclamation activities were only carried out in 1980 when the Governor of the Jakarta KDKI issued a Jakarta KDKI Decree No. 812 of 1980 (Decree 812/1980) concerning the Implementation of Reclamation in the Ancol Project, dated July 26, 1980.

## III. RECLAMATION IN THE ERA OF REGIONAL AUTONOMY

The implementation of beach reclamation in the era of regional autonomy is increasing. Minister of Maritime Affairs and Fisheries Susi Pujiastuti stated that currently there are 37 locations that will be developed through reclamation, 17 are reclaiming and 20 will be reclaiming. Reclamation in Indonesia include: Jakarta Bay, covering an area of 5,153 hectares; Bali's Benoa Bay (883 hectares) and Serangan Bali Island (379 hectares); in Manado there is Bitung Beach (534 hectares), Tanjung Merah Beach (1,000 hectares), Boulevard Beach (76 hectares), Teluk / Manado Beach (150 hectares); Kenjeran Beach Surabaya (320 hectares), Losari Makassar Beach (4,000 hectares), Center Point of Indonesia - CPI Project, in Makassar (157 hectares); Marina Semarang Beach (232 hectares), Talise Palu Beach (3,833 hectares), Balikpapan Bay (329 hectares), Ternate Swering Beach (3,833 hectares); Lamongan Beach (62 hectares); Pantai Tapak Tuan Aceh and Delta Berbak Jambi.

The success of the reclamation at Jakarta's Ancol Beach in the early 1980s inspired the government to make Jakarta's North Coast a Mainstay Area. This was stipulated through Presidential Decree No. 17 of 1994 which declared the Jakarta Pantura as the Mainstay Area. A year later, Presidential Decree No. 52 of 1995 concerning the Implementation of the Jakarta North Coast Reclamation, which was followed up with Jakarta's Regional Regulation No. 6 of 1999 concerning DKI Jakarta Regional Spatial Planning. The purpose of the reclamation is to increase, namely for international trade and services, housing for the upper middle class and tourist ports.

Legal conflicts began to emerge when the 2003 Ministry of Environment issued Decree No. 14 of 2003 concerning the Ineligibility of the Plan for the Reclamation and Revitalization of the North Coast of Jakarta. According to the KLH study, reclamation increases the risk of flooding, especially in the northern region, damaging marine ecosystems, causing fishermen income to decline, and disruption of the Muara Karang power plant. This decision was sued by 6 entrepreneurs who did the reclamation until the Supreme Court decision came out that won the lawsuit of 6 entrepreneurs in 2011.

When the entrepreneurs won the case, the governor continued the process of reclamation permits. August 2012 Fauzi Bowo issued an implementation permit as a continuation of the principle license from Sutiyoso for Island 2A, which was then referred to as Island D, to PT Kapuk Naga Indah. On September 19, 2012, Fauzi Bowo issued Governor Regulation No. 121/2012 concerning Spatial Planning for the North Jakarta Reclamation Area. For the first time the DKI Jakarta Government revealed that there will be 17 islands named Island A to Q Island with a total area of 5,155 hectares. Pergub projects there will be 750,000 new residents on the 17 new islands. Then, on September 21, 2012, DKI Jakarta Governor Fauzi Bowo issued principle licenses for the islands of F, G, I, and K.

<sup>5</sup> Departemen Hukum PT Pembangunan Jaya Ancol, Tbk, Kronologi Pembentukan Pt Pembangunan Jaya Ancol, TBK, Jakarta, 2005, p. 5.

#### IV. CONFLICT OF AUTHORITY AND LEGAL UNCERTAINTY

In the era of governor Ahok, on December 23, 2014 the DKI Jakarta Government issued a permit for the implementation of the reclamation of Pulau G owned by Agung Podomoro Land Company, PT Muara Wisesa Samudra. But in April 2015, the Minister of Maritime Affairs and Fisheries Susi Pudjiastuti asked the DKI Regional Government to stop reclamation on the grounds that it was the authority of the central government. The DKI Regional Government responded by saying that the reclamation of 17 islands is not part of the NCICD, thus it is the authority of the regional government in accordance with the 1995 Presidential Decree regarding Jakarta Bay reclamation.

If the governmental duties as a government organizer are equipped with authority which according to positive law has been determined and regulated, then legal actions (valid according to law) need not be a concern. That is why when governor Ahok based on Kepres 52/1995 provisions decided to grant reclamation permits to developers in Jakarta Bay, it should not be able to be intervened by the Central Government, because the authority granted to the governor as regulated in Presidential Decree 51/1995 is very strong and specific specifically for reclamation in Jakarta's North Coast. However, it turned out that the governor's authority was deemed to be flawed so that in September 2015, the Indonesian Forum for the Environment (Walhi), the People's Coalition for Indonesian Fisheries Justice (Kiara), and a number of Muara Angke fishermen sued the Jakarta administration for issuing permits for Pulau G for Pluit City in Pluit City in State Administrative Court (PTUN). The lawsuit was won by the fishermen and decided on May 31, 2016. However, the Panel of Judges at the State Administrative High Court (PTTUN) overturned the previous decision and won the defendant DKI Governor Basuki Tjahaja Purnama on the basis that the lawsuit filed by the fishermen to the PTUN had expired, because has passed 90 days after the permit was issued in 2014.

In February 2016, the Indonesian Forum for the Environment (Walhi), the Indonesian Traditional Fishermen Coalition (KNTI), and the Muara Angke fishermen sued the regional government for issuing permits for the implementation of islands F, I, and K in the PTUN by the Governor of DKI Jakarta. All these claims were won by KNTI and fishermen as per the Judges' verdict. "Declaring the decision of the Governor of the Jakarta Special Capital Region Province No. 2486 of 2015, concerning the granting of a permit for the implementation of K Island reclamation to PT Pembangunan Jaya Ancol, tbk. "Likewise the decision on Island F made by PT Jakarta Propertindo (Jakpro), and the ruling on Island I by PT Jaladri Kartika Ekapaksi, on March 16 2017. The judges cancel all reclamation licenses held by employers and prohibit reclamation activities until the decision has permanent legal force.

After Anies Baswedan became Governor on October 16, 2017, a year later the reclamation of the North Bay of Jakarta was stopped with the provision that 13 island licenses were revoked including the A, B and E Island permits owned by PT Kapuk Niaga Indah, the J and K Island permits by PT Pembangunan Jaya Ancol, Pulau L and M licenses by PT Manggala Krida Yudha, Pulau O and F permits by PT Jakarta Propertindo (Jakpro), Pulau P and Q licenses by Marunda KEK Jakarta, Pulau H permits by PT Tunas Harapan Indah, and Pulau I by PT Jaladri Kartika Eka Paksi. Whereas the four islands that are retained are Pulau C and D which

are owned by PT Kapuk Naga Indah, Pulau G is owned by PT Muara Wisesa Samudera, and Island N is owned by PT Pelindo II. The event of revocation of the reclamation permit in Jakarta Bay by Governor Anies Baswedan, for economic actors or business people can result in a decrease in confidence in legal certainty in Indonesia. All business actors need legal certainty in every investment made, including a very large reclamation investment. If the permit given by the previous governor (Ahok), then canceled by the next governor (Anies), will cause a huge loss among entrepreneurs who have obtained official permission from the previous authorized official.

#### V. UPCOMING BEACH RECLAMATION CONCEPTS

In line with the spirit of Regional Autonomy where according to Law Number 23 of 2014 concerning Regional Government in Article 1 point (6) states that "regional autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in accordance with legislation". In the case of delegation of authority to the regional government in the field of environmental management it is intended to increase the role of local communities in environmental protection and management.

The principles of participatory, local wisdom, good governance, and regional autonomy provide directions that the government and local government in managing and managing the environment must be imbued with the principles of participation, transparency, accountability, efficiency, and justice, by encouraging community members to play an active role in the process decision making and implementation of environmental protection and management and pay attention to the noble values that apply in people's lives. Therefore, based on these principles, the government and regional governments must not ignore the interests of the community in the implementation of government affairs in the field of environmental protection and management. Environmental protection and management must be carried out properly based on community interests.

#### VI. CLOSING

This contradicts Article 1 point 1 and article 1 point 41, Act No. 27/2007 concerning Management of Coastal Areas and Small Islands. It is stated that the Management of Coastal Areas and Small Islands is a process of planning, monitoring, and controlling Coastal and Small Islands Resources between sectors, between the government and the Regional Government, between terrestrial and marine ecosystems, and between science and management to improve public welfare (Article 1 point 1), while the Regional Government refers to the governor, district head or mayor, and regional apparatus as elements of regional governance (Article 1 point 41).

Revocation of authority is not in line with the 1945 Constitution Article 18 paragraph (5), Article 18 A paragraph (1), Article 18 B paragraph (2), and Article 33 paragraph (3), and is contrary to the principle of regional autonomy, namely regional autonomy breadth, where each region has the authority to regulate matters of government and regulate the interests of society.

The government must restore the authority of the regency / city area, as stated in Article 18 of Act No.32 / 2004, namely the authority to manage resources in the sea area at most 12 (twelve) nautical miles measured from the coastline towards the open sea and / or in the direction of archipelagic waters for the province and 1/3 (one third) of the province's jurisdiction for the district / city. The President must provide policy directives regarding the emergence of overlaps and understanding of the enactment of Presidential Decree 52/1995 on the Implementation of reclamation on the North Coast of Jakarta and Perpres 122/2012 on Management of Coastal Areas and Small Islands.

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