Protection of the rights of indigenous people in the archipelagic province in planning on management of coastal areas and small islands post of Law Number 11 of 2020 concerning job creation

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Abstract. The inconsistency of the state's commitment to the protection of the archipelago's indigenous people in the management of coastal areas and small islands has become more apparent since the passage of Law Number 11 of 2020 concerning Job Creation. This research is normative legal research that analyzes the synchronization of legislation relating to the management of coastal resources and small islands that are responsive to the protection of indigenous people. The results show that (1) Recognition of indigenous people according to the Job Creation Law is placed on government legal politics in accordance with the provisions of the applicable legislation, showing the incompleteness of norms, which has implications for the weak position of indigenous people in managing coastal resources without recognition/determination as legal subjects. (2) Indigenous people who have received recognition/determination from the local government have the privilege of including the management area as part of the RZ WP3K and managing coastal resources and small islands in accordance with customary law, as long as it does not conflict with the applicable laws. As a result, the research's recommendations are as follows: (1) Policy advocacy, encouraging acceleration of the legislative process for the Draft Law on Indigenous People and the Draft Law on Archipelagic Regions; and (2) Empowerment, support for capacity building of indigenous people to be critical and innovative in sustainable coastal and small island management through community development.

1. Introduction

Indonesia has the most biodiversity in coastal and marine areas, with an area of 7.81 million km, consisting of 2.01 million km of land and 95,186 km of coastline. The United Nations Convention on the Law of the Sea was ratified by Indonesia in 1982 through Law Number 17 of 1985 Concerning Ratification of the United Nations Convention on the Law of the Sea, abbreviated as UNCLOS 1982. Indonesia has a sea area of 5.9 million km, with 3.25 million km of territorial waters and 2.7 km of Exclusive Economic Zone waters (EEZ)[1].

According to Article 25A of the Republic of Indonesia's 1945 Constitution, the country's territory is designated as an archipelagic country with archipelagic characteristics known as the archipelagic state principle, which is further regulated by Law Number 6 of 1996 concerning Indonesian Waters. The
material substance of this law concerning Indonesian waters, including jurisdiction and activities in the framework of national development based on the insight of the archipelago. In line with the implementation of regional autonomy, the government formulates a provincial characterized by islands with the parameters of the sea area being more dominant than the mainland and having the distribution of islands/island clusters as a geographical and socio-cultural unit.

Using the parameters above, 16 (sixteen) provinces (47%) were identified in Indonesia as provinces characterized by islands guided by Minister of Home Affairs Regulation Number 137 of 2017 concerning Government Administration Area Codes and Data and provincial regional profiles. Within the framework of regional autonomy, Articles 27-30 of Law Number 23 of 2014 concerning Regional Government stipulate the authority of a province characterized by islands to manage natural resources at sea up to 12 nautical miles, assignments by the central government based on the principle of assistance, and DAU/DAK.

The authority for spatial planning is determined by the regional government of the archipelagic province in order to realize prosperity as one of the state's goals. The archipelagic province's spatial planning is intended to accommodate specific regional characteristics. It is realized by the local government through the Zoning Plan of Coastal Areas and Small Islands (RZ WP3K) as an instrument for planning structures and spatial patterns as the basis for planning resource use in coastal and marine areas. RZ WP3K is a marine spatial planning instrument as regulated in Law Number 27 of 2007 in conjunction with Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands.

In the context of accelerating investment development in Indonesia, the government stipulates Law Number 11 of 2020 concerning Job Creation, which has implications for substantive changes to legislation related to coastal areas and small islands, as well as a new paradigm of integrative spatial planning. This demonstrates that the Law on Coastal Area Management and Small Islands, as well as the Spatial Planning Law, are legal instruments for improving the investment ecosystem and making doing business easier.

The law on job creation by civil society elements is viewed as a centralized legal product that is far from justice values, measurable from its preparation, discussion, and enactment. On the other hand, the preamble to the law shows that the spirit of this law is intended to provide support for the improvement of the investment ecosystem and ease of doing business, which shows that this law has the potential to reduce the spirit of protection for indigenous people, based on the facts of the development of the mining, plantation, and fisheries extraction industries in most of the islands in Indonesia.

This study analyzes the existence and urgency of the protection of indigenous people in the archipelagic province as well as policies for the management of coastal areas and small islands after the Job Creation Law in accommodating the protection of the rights of indigenous people, especially the right to manage space in the spatial planning stage, as well as analyzing the gaps and challenges faced by indigenous people in obtaining justice through planning for the sustainable management of coastal areas and small islands.

2. Method
This paper is part of normative legal research to produce arguments, theories or new concepts as prescriptions for solving problems encountered so that the expected answers in legal research are right, appropriate, inappropriate or wrong [2]. This study uses several approaches, including a statute approach and a conceptual approach.

The statute approach is carried out by examining primary legal materials, namely Law Number 11 of 2020, Law Number 27 of 2007 in conjunction with Law Number 1 of 2014, and implementing regulations related to legal issues based on an understanding of hierarchy and general principles of legislation. The conceptual approach is to analyze theories and expert views regarding customary law communities and the management of coastal areas and small islands in the context of archipelagic provinces.
3. Result and discussion
The principle of an archipelagic state is intended to realize state sovereignty throughout the archipelago. The concept of an archipelagic state is based on the concept of an "archipelago", which means the sea where there are many islands, where the ratio of sea or water is greater than the land (island), but both are considered as a unit. Thus, the most important meaning of the archipelago concept is the unity between the sea and the land (and the air above it), where the ratio of the sea area is greater than the ratio of the land area [3]. Tara Davenport divides the physical characteristics of archipelagic between (1) continental or coastal archipelagic and (2) mid-ocean or outlying archipelagic. She defines mid-ocean or outlying archipelagic as “group of islands situated ata such a distance from the coast of firm land as to be considered an independent whole rather that forming part or outer coastline of the mainland [4].

It was first expressed in the Djuanda Declaration on December 13, 1957, which served as the foundation for the territorial concept needed to realize the archipelago insight. Djuanda Declaration was adopted as a reaction to the doctrine of mare liberum [5], which might threaten the sovereignty and security of Indonesia. This declaration states that all waters around, between, and connecting islands or parts of islands that are part of the landmass of the Republic of Indonesia, regardless of their extent or breadth, are part of the territory of the Republic of Indonesia and thus are part of the national waters which are under the absolute sovereignty of the Republic of Indonesia. This declaration was ratified by Law Number 4/PRP/1960 concerning Indonesian Waters, which affirmed the provisions for an area of 12 territorial sea miles, so that Indonesia's sovereignty in the sea area includes the water, the seabed, and the land below it (subsoil) as well as the air above it.

Indonesia's diplomacy to gain recognition as an archipelagic country, including the regulation of the 12 nautical mile territorial sea, achieved results after the third UN conference on the Law of the Sea[6], which was stated in the UN Convention on the Law of the Sea (UNCLOS) on December 10, 1982, which was ratified by Law No. 17 of 1985. This convention contains provisions for the breadth of the territorial sea of 12 nautical miles, the Exclusive Economic Zone (200 nautical miles), the continental shelf, the rights of landlocked countries, the regime of archipelagic states, the concept of the common heritage of mankind, prevention of pollution at sea, and straits for shipping, international affairs, technology transfer, scientific research on the sea, and dispute resolution. This demonstrates that UNCLOS 1982 spawned a new legal regime, namely the principle of an archipelagic state, defined by the Convention as "a state constituted wholly of one or more archipelagos and may include other islands" as a geographical, economic, and political unit. This has implications for the extent of the territorial waters that used to be part of the high seas, but have now become archipelagic waters.

The archipelagic waters in Part IV of the UNCLOS were a significant innovation in the law of the sea. The development of this regime was shaped by the exclusive interests of the archipelagic states which desired control over interconnecting waters surrounding their insular territory for historical, economic, and security reasons, and the inclusive interest of the maritime powers, which wanted to preserve maritime mobility through such waters.[4]

This convention also recognizes the sovereign right of every country to utilize its natural resources, but is obliged by the state to protect and preserve the marine environment. This provision for the protection and maintenance of the marine environment shows an awareness that the vast sea also stores natural resources that are not without limits, so that the management of marine resources needs to pay attention to the sustainable power of marine biota and the environment. Provision relating the protection of marine environment remained in the realm of soft law, being recommendatory and thus havung no imposition of duty and sanctions. With its character being changed from soft to hard law, the degree on state's obligation is strengthened [6].

Jimly Asshiddiqie stated that Article 25A of the 1945 Constitution shows that first, it affirms that the State of Indonesia has its own jurisdiction as an independent and sovereign state. Second, to emphasize that the legal territory of the State of Indonesia, the boundaries and rights contained therein are regulated by law, which means that anyone, including the government, has no right to add or reduce the territory of the State without the consent of the people as outlined in the law. Third, the
determination of territorial boundaries and their rights in the law must also not be understood to be unilateral without heeding the norms that apply in the international world.[7]

As a consequence of the Unitary State being an archipelagic state, it has an impact on the formal juridical legitimacy of the regulation of autonomous regions based on islands in a mutatis mutandis manner that shows harmonization between international law and national law through the adoption of the principle of an archipelagic state into an archipelagic regional (province/district/city) principle. The enactment of Law Number 23 of 2014 shows the accommodation of this arrangement as regulated in Articles 27-30, using the nomenclature of provincial characterized by islands, which is defined as "Provincial characterized by islands are provincial areas that have geographical characteristics with an ocean area wider than the mainland, in which there are islands that form a group of islands so that they become one geographical and socio-cultural unit".

The above definition contains a grammatical meaning of visualizing the area in 2 (two) parameters, namely an ocean area that is wider than the mainland and islands/clusters of islands that fulfill the prerequisites as an archipelagic province is a province that has land (land that is not flooded by water, earth, and land) that is smaller in area than the ocean in the form of a collection of salty water that inundates and divides the land (continent or island) [8]. Another parameter that forms the character of an archipelagic province is the distribution of islands or groups of islands within the province. It can be interpreted that a province with archipelagic characteristics has a land morphology that is surrounded by water (in the sea, in a river, or in a lake) of a certain size, alone or in a group.

3.1. The urgency of the protection of indigenous people in the coastal areas and small islands in the archipelagic province

In Indonesia, we can find various terms that refer to indigenous people as a result of sociological and legal debates along with the dynamics of socio-political transformation from time to time, including ethnicity/ethnicity, indigenous people, tribal communities, traditional communities, indigenous communities, customary law alliances, and customary law communities. These terms were introduced in order to identify, categorize, and intervene in development programs carried out by the government regime in the coastal areas and small islands in the archipelagic province.

This difference in terms occurs because there is no unified view of the elements that make up the institutionalization system of customary law communities, as well as internationally, there are still many terms to define these special community units, such as native, aboriginal, ethnic, tribal people, indigenous, and others, which developed in areas since colonialization before the development of the characteristics of a modern understanding of this institution. The United Nations conducted one study that resulted in the following general definition:

“Indigenous communities, people and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as people, in accordance with their own cultural patterns, social institutions and legal systems.”[9]

The above definition describes the modern interpretation of the identification of the characteristics of indigenous people as a promotion step for human rights, because in contemporary developments, this community unit is in a disadvantageous condition.

Indigenous people as a translation of legal community (rechtsgemeenschappen), according to Ter Haar Bzn, is formulated as "organized groups of permanent character having their own material and immaterial property"[10]. In harmony with Ter Haar, this community group, according to [11]:

“They are an orderly group of people who live in a certain area, have their own power, and have their own wealth in the form of visible and invisible objects. The members of each unit experience life in society as a natural thing according to the nature of nature, and none of them
have the thought or inclination to dissolve the bond that has grown or leave it in the sense of breaking free from the bond for good.”

In relation to the management of coastal areas and small islands, Law Number 1 of 2007 in conjunction with Law Number 1 of 2014 states three community entities, namely indigenous people, local communities and traditional communities, whose differences are placed on the level of dependence on coastal resources and small islands, as follows:

![Image](image_url)

**Figure 1.** Differences between indigenous people, traditional communities and local communities according to Law No. 11 of 2020

The illustration above shows that the equivalent of the word "indigenous people" is treated lexically as a synonym for "traditional communities," but has a broader meaning because it has a meaning dimension that is more than just a legal aspect, namely related to culture, religion, and so on. The term "traditional communities" is used in the context of managing coastal areas and small islands to concretize the existence of community associations that depend on coastal resources, have hereditary habits, but shortage complete customary institutions. The term "indigenous people" refers to community associations that rely on coastal and forest resources, are bound by customary institutions, and are recognized as indigenous people. Using an extensive interpretation, it is possible to conclude that the traditional communities are in fact a part of the indigenous people, who are no longer bound to the behavioral power of customary institutions, thus indicating the existence of customary practices in relation to natural resources, especially in coastal/marine areas.

Based on the results of the 2010 Statistic Indonesia mapping, the state of Indonesia, which is an archipelagic country, consists of a group of islands stretching from Aceh to Papua that are joined by the sea and have an identified ethnic distribution of 1,340 ethnic groups. AMAN identified approximately 70 million indigenous people divided into 2,371 indigenous communities spread across 31 provinces of the country, while the Ministry of Maritime Affairs and Fisheries facilitated it from 2016 to 2020 and identified as many as 29 communities, as many as 20 communities (Regent/Mayor Regulation).

The "beschikkingrecht" environment can be found to be dual (dubbele becschikkingskring), in which indigenous people' living space is not only in the environment in the form of land/forest but also takes marine products/salt [10]. The diaspora of indigenous people in Indonesia also provides a variety of beschikkingrecht styles as lordship areas/ownership areas/food-producing areas/restricted/forbidden areas with various names such as petuanan (Ambon), nuru (Buru), aha/cocatu (Ternate, North Maluku), ulayat (Minangkabau), popah (Bengkalis, Riau), tano (Nias), wewengkon (Java), leuwewung kolo (Baduy, Banten), prabumian and payar (Bali), paer (Lombok), totabuang (Bolaang Mongondow), limpo and tongkonan (South Sulawesi), is part of the living space of indigenous people.

The indigenous people in the archipelagic province above are the dubbele becschikkingskring, which means that they not only use the land as a living space but also support maritime culture, including Sekak (Bangka), Sea Tribe (Riau Islands), Madura (East Java), Mandar (West Sulawesi), Mangkasara and Bugis (South Sulawesi), Sasak (Lombok), Helong (Kupang), Kawio (Talaud), Soa (Maluku), Sangaji/Hoana (North Maluku), Pig-pig sekar (West Papua), Fam (Papua) also Butonese and Bajo diaspora (Southeast Sulawesi).
Indigenous people are resource dependent, and indigenous people who live in coastal areas and small islands can be divided into three (three) groups based on their livelihoods, namely: (1) fishermen; (2) farmers/planter; and (3) fishermen and farmers/planter [12]. This categorization appears as the identification of the main livelihood system based on the size of the customary area/island inhabited.

The management of fisheries and marine resources is in the hands of the government, according to Article 33 paragraph (3) of the 1945 Constitution. However, there has been a management mechanism that has grown based on local practices (indigenous people) as res communes (communal property) based on customary institutions that show the relationship between humans and the macrocosm and microcosm of the environment, containing values and norms in the trilogy of relations between humans, God, and nature. This relationship is based on an attitude of respect (known as taboolumpamalitpantangan) to maintain cosmological harmony.

The practice of managing coastal resources by indigenous people is guided by customary law and local wisdom that still exists and develops in several archipelagic provinces such as awig-awig (Bali), sawen (Lombok), lilifuk (NTT), ammana gappa (Bugis Makassar), ombo (Central Sulawesi), eha (Sangihe), sasi (Maluku), yotattaw yutut (Southeast Maluku) and abanfan matilon (Papua) are intended to maintain the sustainability of fishery resources, especially certain commodities such as certain types of fish, loa, sea cucumbers, pearl oysters and lobster. In order to realize the balance of cosmology, various rituals are performed as a form of respect and protection from God/Gods/Spirits such as the ritual of turun perahu, mantra/prayer before going to sea, entertaining the sea/taber laot/buang jong (Bangka), petik laut/rokat tasse (Madura), melasti, nyepi segara and ngusaba agung penyegjeg jagad (Bali), madak madek mare (Lombok), maccera tasi (Bugis Makassar), apeng ratu, mane’e and seke (Sangihe), hapongka (Kendari), joko molo and si oho oti (Ternate), and buka pintu (Papua).[13]

Similarly, with the use of fishing gear and simpler fishing techniques such as boat/jongkong/pledang/sopel/jegoltembon, sampan/sandelle/lepoh/ljunzko, bido, ketinting, pamboat, guiop and other names to catch various types of fish, both reef fish, fish bottom, and pelagic fish, using jubi/arrow/spear, soma, gilnet, handline, longline, bubu, seke, rumpon and lot [13]. The use of fishing gear and fishing techniques shows the practice of managing coastal resources with a social-ecological system approach.

The preceding description demonstrates that local wisdom in the form of customary law related to the coast and the sea contains a set of rules concerning fishing gear, timing, and the fishing process. On the other hand, in terms of spatial patterns, the coastal ecological area by indigenous people is divided into several spaces with the function of settlement, boat/ship landing, fishing areas, and sacred areas.

The pattern of customary ecological space is still dealing with state-based management regimes that have not optimally accommodated the protection of the rights of indigenous people because they are conditional recognition, as stated in Article 18B paragraph (2) of the 1945 Constitution and Article 18 point 1 of Law Number 11 of 2020, which amends the formulation of Article 1 of Law Number 27 of 2007 in conjunction with Law Number 1 of 2014 regarding the definition of indigenous people. Furthermore, Article 61 of Law Number 27 of 2007 states that "the government recognizes, respects, and protects the rights of indigenous people, traditional communities, and local wisdom over coastal areas and small islands that have been used as hereditary". This article demonstrates that the state's recognition is shown to be a right that is inherently a gift from God Almighty, but the fulfillment of this right is dependent on the recognition of the indigenous people so that it can be called a legal subject supporting the rights and obligations stipulated by the Job Creation Law Article 18 number 18 (Article 22) stipulates the recognition in accordance with the provisions of the legislation without further stipulation regarding the format of recognition. This is the basis for considering why it is necessary to expedite the Indigenous People Bill so that it can become a legal basis for the actualization of state responsibilities in recognizing and protecting indigenous people.

On the other hand, coastal resource management is evolving in tandem with economic development, as evidenced by the growth of the extraction industry, which exploits land areas with an
impact on the coast and small islands. This reality is demonstrated by indications of changes in the environment, such as pollution in indigenous people’s living spaces as a result of permits for natural resource management. Exploitation of natural resources through this permit has resulted in marginalization, deprivation of living space, poverty and resulting in conflict. To be able to obtain optimal benefits from managing coastal and marine resources, indigenous people need to obtain recognition as legal subjects, which matters are incompletely regulated in the Job Creation Law relating to the authority and legal products of recognition/determination of indigenous people, despite the fact that Article 18 number 26 (Article 60) defines the rights and obligations of the community, including indigenous people, as follows:

a. access to parts of coastal waters given a business permits;
b. propose the inclusion of traditional fishing areas into RZ WP3K;
c. propose the inclusion of the area of indigenous people into the RZ WP3K;
d. manage resources in coastal areas and small islands based on customary law which is not against the law and regulation;
e. benefits from the management of coastal areas and small islands;
f. obtain information related to the management of coastal areas and small islands;
g. file reports and complaints on losses;
h. express objections to the planned management announced for a certain period of time;
i. file report to the law enforcement agency about alleged pollution, pollution, and/or damage of coastal areas and small islands;
j. file a lawsuit with the court;
k. receive compensation; and/or
l. obtain legal counsel and assistance.

The description of Article 60 above, in the context of the protection of indigenous people, shows general and abstract legal norms that have validity (validity/geltung) when the regulated subject is recognized as a supporter of rights and obligations through recognition/determination by the state.

The formulation of pseudo-recognition in the constitution shows that the fulfillment of the requirements for the recognition/determination of indigenous people is left to state legal politics in protecting the rights of indigenous people. This demonstrates the submission of customary law to state law, which Griffiths refers to as weak legal pluralism, namely, that the application of customary law is only possible with the recognition of state law.

This is the basis for the urgency of recognizing customary law communities as a starting point for obtaining guaranteed rights protection in the management of coastal areas and small islands, because the regulation of rights without subject recognition becomes an incomplete norm whose implementation is far from the value of justice. As a result, the presence of the draft Law on Indigenous People (19th priority) in the priority national legislation program in 2021 becomes critical as a lex specialis basis for indigenous people recognition, which are incomplete and consistent in their current arrangements in sectoral legislation so that it becomes a solution inconsistency, incoherence between sectoral regulations that hinder the achievement of legal ideals (rechts idee), namely Pancasila.

3.2. Implications of Law Number 11 of 2020 concerning job creation on planning for the management of coastal areas and small islands by indigenous law

Coastal areas, as terrestrial areas between land and sea, are vulnerable to changes caused by spatial use activities on upper land (land/upstream), particularly in land areas with watersheds, so that spatial space planning, utilization, and control are consistent in land and coastal areas, will have a significant impact on the long-term viability of environmental functions/spatial carrying capacity.

The challenges in regional development that have been more oriented towards land areas are based on Law Number 26 of 2007 concerning Spatial Planning, in which the characteristics of planning, utilization, and control of spatial planning are treated uniformly between areas dominated by land (continental) and island areas dominated by oceans (acuatic terristerial). Whereas in the concept of an
archipelagic state, territorial development must consider the presence of a sea area surrounded by islands, with spatial development that comprehensively depicts land-sea-land as a field of attachment (a development arena) [14].

On the other hand, abundant coastal resources and small islands represent potential state revenues that can be used to benefit the community in the form of biological resources (fish, coral reefs, seagrass beds, mangroves, and other marine biota), non-biological resources (sand, seawater, seabed minerals), artificial resources (marine infrastructure related to marine and fisheries), and environmental services (natural beauty, seabed surface where underwater installations are related to marine and fisheries, and ocean wave energy) in the coastal area. These resources are found in almost all areas of the province, thereby encouraging increased exploitation of coastal areas and small islands in line with the implementation of regional autonomy, especially provinces characterized by islands based on authority according to Article 27 paragraph (2) letter a of Law Number 23 of 2014 namely exploration, exploitation, conservation, and management of marine resources other than oil and gas.

The management of coastal areas and small islands is the coordination of planning, use, supervision and control of resources in coastal areas and small islands involving the government, regional government, inter sectoral agencies, between the land and sea ecosystem, and between sciences and management to promote the people’s welfare. Coastal ecosystems that are very complex, dynamic, and easily damaged are one of the uniquenesses of coastal areas. On the other hand, there is still an open access management regime so that the strong often control the resources and limit the access of coastal communities to utilizing them [15]. The existence of the Job Creation Law shows the pattern of control of the government and the private sector in the management of coastal resources, which civil society groups tend to ignore aspects of the carrying capacity and capacity of the environment.

No country in the world perceives the instruments of environmental protection and management (environmental safeguards) as investment barriers. Meanwhile, the nature and function of environmental protection and management instruments are reduced by the Job Creation Law. This legal politics occurs at a time when the world is promoting environmentally friendly and responsible investment in the environment and society in line with the political ecology paradigm that places the relationship between the environment, welfare and social justice.

The legal politics of the Job Creation Law using the omnibus law method also has implications for the Law on the Management of Coastal Areas and Small Islands as regulated in Article 18 (point 1 till 32) which consists of Amend 20 norms (18 Articles), Removed 11 norms (9 Articles) and Formulating new norms 9 Articles. In addition, three special norms relating to indigenous people were developed. One of the sociological foundations for the enactment of this law is the regulation of this norm, which aims to improve the investment ecosystem and accelerate national strategic projects.

Basically, the practice of exploitation of natural resources and land grabbing in coastal areas and small islands has been happening for decades. However, with the enactment of the Job Creation Law, this will only increase the practice of confiscation, and accelerate the destruction of the environment as well as natural resources in coastal areas and small islands. The biggest content of the law is about investment, and it gives almost nothing to protect Indigenous people’s customary lands. This is identified by the regulation of norms in the Job Creation Law, which has implications for the community, the sustainability of living space and coastal resources, as follows:

1. Reduction of the authority of local governments (provinces/districts/cities) in planning the management of coastal areas and small islands;
2. Expansion of the reasons for reviewing the RZ WP3K due to changes in strategic national policies;
3. Removal of Location Permit and Management Permit into Business permits, through electronic-based licensing established by the Central Government;
4. Allows granting of Business permits in core zones of conservation areas due to national strategic projects;
5. Pre-determined conservation areas are under the authority of the Government;
(6) The removal of the provision in foreign investment business licensing that allows for “national interest” considerations.

The preceding description demonstrates that, in terms of planning, utilization, and control of the management of coastal areas and small islands, the Job Creation Law simplifies the exclusive regulation of human activities, particularly economic activities hampered by over-proceduralization, in the context of simplifying the investment system, giving discretion to the government, and reducing the concept of environmentally sustainable development. This is, of course, contrary to the theory of the welfare state, which means that the existence of the state aims to realize general welfare [16]. In order to achieve the goal of community prosperity, every activity of the state/government must be based on the rule of law, so the state must guarantee legal protection for the rights of the people, particularly the human rights of every citizen.

In the planning aspect, the authority of provincial regions with archipelagic characteristics is regulated in Article 27 of Law Number 23 of 2014 relating to the management of marine resources along 12 (twelve) nautical miles, including exploration, exploitation, and management of marine resources, including spatial planning. Specifically, for the management of coastal areas and small islands, local governments are authorized to formulate and stipulate:

a. Strategic Plan of Coastal area Regional and Islands (RS WP3K);
b. Zoning Plan of Coastal area Regional and Islands (RZ WP3K);
c. Manajemen Plan of Coastal area Regional and Islands (RP WP3K);
d. Action Plan of Manajemen of Coastal area Regional and Islands (RAP WP3K);
e. Detail Zoning Plan.

However, the authority of the provincial/district/city in relation to this planning document is reduced according to the provisions of Article 18 point 2 of the Job Creation Law covering RS WP3K, RP WP3K, RAP WP3K and Detailed Zoning Plans. This law also does not provide an explanation of the documents used to replace the intended planning documents, thus raising concerns about whether the RZ WP3K is able to accommodate the arrangements and functions of the RS WP3K, RP WP3K, and RAP WP3K.

The Job Creation Law develops a new paradigm of spatial unity through the concept of a one-map policy, where, based on the provisions of Article 18 point 3, the provisions for the integration of RZ WP3K into the Provincial RTRW are formulated, which means that the final RZ WP3K document is a technical material for coastal waters in the RTRW has been determined, the integration is carried out at the time of the RTRW review. The concept of unitary spatial planning is a legal breakthrough that is in line with the principle of integration, where the spatial planning implemented integrates various interests in land, sea, and air areas into a single spatial unit. However, this spatial planning unit needs to pay attention to the different spatial characteristics between land and sea, where the land area only recognizes one spatial dimension while the sea area recognizes three spatial dimensions (surface, water column, and seabed), which have different complexity and characteristics [17]. This integration is expected to facilitate actualization and prevent overlapping of spatial use and conflicts of authority, so that the legal function as a means of development/social engineering becomes more dynamic, namely as a means to make changes in society [18].

The concept of one map policy is to integrate all map information (one reference, one standard, one database, and one geoportal) produced by various sectors into one map so that there are no differences or overlapping formations on the assigned map. The integration of the RZ WP3K into the RTRW illustrates the unity of spatial planning policies in accordance with the principle of integration with the material content as shown below:
Figure 2. Integration of RZ WP3K into the Provincial RTRW in the concept of one map policy

In accordance with the principles of legal certainty and justice in spatial planning, coastal area management planning is part of a 20 (twenty) year long term spatial planning as the spatial dimension of regional development, but taking sides with infrastructure, regional and economic development is the basis of sustainable development. The government changed the provisions for reviewing RZ WP3K outside the periodical review mechanism (5 years), namely changes in the strategic environment in the form of strategic national policies, outside of disasters, and regional/territorial factors due to changes in state or regional administration areas. The review due to changes in national policies that are strategic in nature, shows the privilege of national strategic projects, which in fact creates uncertainty about the carrying capacity and capacity of the environment as a consideration for the preparation of the RTRW/RZ WP3K in the regions, so that it has the potential to cause negative externalities that threaten spatial justice for future generations [19]. This is because the RTRW and RZ WP3K are two of the legal instruments that ensure the implementation of sustainable development, according to Sudikno Mertokusumo, is essentially to protect human interests, strive for a balance of order in society and legal certainty so as to achieve the goal of the law, namely public order [20].

In the management of coastal areas and small islands, the Job Creation Law *expressive verbiss* formulation relating to indigenous people, including:

a) proposal for management area in RZ WP3K is regulated in Article 60 paragraph (1) letter c;
b) management of coastal resources and small islands based on customary law is regulated in Article 60 paragraph (1) letter d;
c) the exception of business licensing in customary management areas is regulated in Article 22 paragraph (1).

Special provisions for indigenous people that still apply in Law No. 27 of 2007 and Law Number 1 of 2014, among others:

1) the authority to use space, coastal resources and small islands in customary areas is regulated in Article 21 paragraph (1);
2) the determination of conservation areas to protect customary management areas is regulated in Article 28 paragraph (3) letter e; and
3) the recognition of the rights of indigenous people as a reference for the management of coastal areas and small islands is regulated in Article 61 paragraph (2).

The description above shows that the management of coastal areas and small islands is carried out by taking into account the recognition of the rights of indigenous people, but the provisions of Article 21 paragraph (2) of Law Number 1 of 2014 confirm that the authority is given taking into account the national interest and in accordance with the provisions of the legislation. The formulation of this article implies that the recognition of the subject of indigenous people is the main thing before the
recognition of rights, because it is also related to customary management areas as an element of identification of the requirements for recognition of indigenous people.

The preparation of the final RZ WP3K document consists of 10 (ten) stages, as follows: (1) preparation; (2) document collection and processing; (3) preparation of initial documents; (4) initial document public consultation; (5) initial document technical consultation; (6) preparation of the final document; (7) public consultation of final documents; (8) final document technical consultation; and (9) ministerial technical approval. The following figure shows the accommodation of indigenous people’s rights in the preparation of the RZ WP3K:

**Figure 3.** Participation of indigenous people in the flow of the preparation of the RZ WP3K

According to the above description of the planning flow for the preparation of the RZ WP3K, there are only three stages that allow indigenous people to be involved: (1) document collection and processing; (2) initial public consultation of documents; and (3) public consultation of the final document. Data was collected in order to obtain thematic data on the determination of indigenous people and customary territories, which was then compiled into a thematic map as an attachment to the initial document, while the participation of indigenous people became part of public participation in the process of drafting legal products so that, if accommodated, it could increase legitimacy, transparency, and responsiveness to produce accommodative policies.

Public participation in the management of coastal areas and small islands is regulated in Article 62 of Law Number 27 of 2007. The community has the same opportunity to participate in the planning, implementation, and supervision of the sustainable management of coastal areas and small islands. The form of active participation in the planning stage of the RZ WP3K as part of the RTRW is carried out through public consultations regulated by the Minister of Maritime Affairs and Fisheries Regulation Number 28 of 2021 concerning the Implementation of Marine Spatial Planning as the implementation of the Job Creation Law is formalistic and legalistic.

Public participation is a manifestation of the right to determine individuals/parties who participate in utilizing natural resources as part of human rights, which in the concept of preventive legal protection by Hadjon is intended as a means of legal protection related to the freies ermessenen principle in the form of objections (inspraak) or being asked for public opinion regarding plans, government decisions, and objections before the government sets a bestemming plan [21]. This legal protection puts forward the right to be heard as a means of ensuring justice that places individuals/communities who are affected by government actions to express their rights, especially indigenous people, which is the embodiment of the principle of Free Prior Informed Consent (FPIC), which is known as the collective rights of indigenous people, based on international human rights instruments, through the United Nations Declaration on the Rights of Indigenous People (UNDRIP).

4. Conclusion and recommendation

The regulations that are the state’s pseudo recognition of the existence of indigenous people who existed long before the state was formed and have institutions, including their own understanding of
the sovereignty of living space, demonstrate the weak position of customary law in dealing with state law, whereas, in this context, legal pluralism is a problem that has been solved by minimizing justice gaps and conflicts between indigenous people and the government as well as the private sector, primarily related to the management of coastal areas and small islands following the passage of the Job Creation Law, the ultimate goal of which is to ensure easy investment. Based on the foregoing, it is possible to conclude that there are two issues relating to the position of indigenous people and the implications of the Job Creation Law for indigenous people in the management of coastal resources and small islands, which are as follows:

1) Recognition of indigenous people according to the Job Creation Law is placed on the government's legal politics in accordance with the provisions of the applicable legislation, showing the incompleteness of norms, which has implications for the weak position of indigenous people in the management of coastal resources without recognition/determination as legal subjects.

2) Indigenous people that have received recognition/determination from the regional government have the following privileges: a. include the management area as part of the WP3K RZ; b. manage coastal resources and small islands in accordance with customary law as long as it does not conflict with the applicable laws; c. exceptions from the provision of business licenses are limited to customary management areas; and d. file for compensation and lawsuits for losses due to permits for the management of coastal areas and small islands.

Thus, to be able to obtain optimal benefits from the potential of coastal resources and small islands, indigenous people must obtain the legitimacy of legal subjects so that they have the right and authority to manage coastal areas and small islands based on customary law. This recognition is the basis for strengthening the application of customary law to state law, which is strong legal pluralism. Looking at the challenges of fulfilling and protecting indigenous people rights, it is suggested that the following steps be taken:

1) Policy advocacy, encouraging the acceleration of the legislative process of the Draft on Indigenous People Law related to the clarity of the scope and format of the recognition and protection of indigenous people, has been spread in sectoral legislation. This advocacy was also carried out on the Draft on Archipelagic Regions Law as a lex specialis for regulating the authority of regional governments in provinces characterized by islands in optimizing the management of coastal resources and small islands, as well as funding support for accelerating the development of archipelagic regions.

2) Local governments are seeking legal steps to recognize indigenous people living in coastal areas and small islands.

3) Empowerment, through support for capacity building for indigenous people to be critical and innovative in sustainable coastal and small island management through community development (participatory-based community empowerment).

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