Conference Paper

Management Regulation of Indonesia’s Coastal and Sea Areas

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Abstract

The scope of Act No. 27 of 2007 concerning PWP-PK includes the meeting area between water and land, inland covering the administrative area of the sub-district, and as far as 12 nautical miles measured from the coastline towards the open sea and/or to direction of archipelagic waters. The determination of the boundaries of coastal and marine areas cannot be equated between the provisions in Act No. 27 of 2007 concerning PWP-PK with UNCLOS 1982. Special handling in coastal and marine areas includes aspects of integration and institutional authority, so that the resources contained in the area this can be a superior product contributing to the development of the Indonesian nation in the future. In accordance with the principles of integrated coastal management, as regulated in Article 4 of Act No. 27 of 2007 concerning PWP-PK, coastal area management in Indonesia involves many sectors and natural resources, both living and non-living, and implementation requires collaboration between the Government and Regional Governments.

Keywords: Territory; Law; Sea.

1. Introduction

Integrated coastal management is based on Chapter 17 Agenda 21, Johannesburg Declaration 2002, (Plan of Implementation of the World Summit on Sustainable Development, 2002 stated: “Ocean, seas, islands and coastal areas form an integrated and essential component of the Earth’s ecosystem and are critical for global food security and for sustaining economic prosperity and the well-being of many national economies, particularly in developing countries. Ensuring the sustainable development of the oceans requires effective coordination and cooperation, including at the global and regional levels, between relevant bodies, and actions at all levels to) Plan of Implementation of the World Summit on Sustainable Development, 2002, and Bali Plan of Action 2005 (Bali Plan of Action, “Towards Healthy Oceans and Coast for the Sustainable Growth and Prosperity of the Asia-Pacifc Community,” Joint Ministerial
Integrated coastal management is a guideline in regulating utilization and management of natural resources in coastal and marine areas with due regard to the environment. The implementation of integrated coastal management is carried out as an effort to overcome conflicts in the use of resources in coastal and marine areas, and overlapping authorities and conflicts of interest between sectors.

Integrated coastal management contains principles in the management of coastal and marine areas as regulated in the Agenda 21 Chapter 17 Program (a), the Government of Indonesia in 1995 has compiled Agenda 21-Indonesia, in Chapter 18 on Integrated Management of Coastal and Marine Areas. It is stated that the development orientation and management of coastal and marine areas are development priorities, especially those covering aspects of integration and institutional authority, so that it is hoped that the resources contained in this area can become superior products in the development of the Indonesian nation in the next century. (Agenda 21 Indonesia. (1997). Publikasi Awal, Strategi Nasional Untuk Pembangunan Berkelanjutan, Kantor Menteri Negara Lingkungan Hidup. p.18-1)

Differences in regulatory understanding of the management of coastal and marine areas in Indonesia have resulted in many conflicts between the users of these areas and the bordering districts/cities. The pluralism of laws and regulations has the potential to cause conflict of norms. Efforts to integrate into the implementation of coastal area management are through synchronizing statutory arrangements in the management of coastal and marine areas.

2. Results and Discussion

In the General Provisions of Act No. 27 of 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, exploiting, supervising and controlling Coastal Resources and Small Islands between sectors, between the Government and Local government, between terrestrial and marine ecosystems, and between science and management to improve community welfare. Coastal Resources and Small Islands are biological resources, non-living resources; artificial resources, and environmental services; biological resources include fish, coral reefs, seagrass beds, mangroves and other marine biota; non-living resources include sand, sea water, seabed minerals; artificial resources include marine infrastructure related to marine and fisheries.

In Act No. 27 of 2007 concerning Management of Coastal Areas and Small Islands (hereinafter referred to as PWP-PK) Article 1 Paragraph (2), states that: “Coastal areas
are transitional areas between terrestrial and marine ecosystems which are affected by changes in land and sea”.

Furthermore, Article 2 of Act No. 27 of 2007 concerning PWP-PK states that: “The scope of regulation of coastal areas and small islands includes transitional areas between terrestrial and marine ecosystems that are affected by changes in land and sea, landward includes the administrative area of sub-districts and out to sea as far as 12 (twelve) nautical miles measured from coastline”.

The scope of Act No. 27 of 2007 concerning PWP-PK includes the meeting area between the influence of water and land, towards the land covering the administrative area of the sub-district and towards the sea as far as 12 (twelve) nautical miles measured from the coastline towards the open sea and/or to archipelagic waters.

Meanwhile, according to UNCLOS 1982, the definition/boundaries of coastal areas are not regulated, but UNCLOS 1982, divides the sea into zones, namely: (Lowe, Churchill V. (1999). The Law of the Sea, Juris Publishing. p. 30)

a. The sea areas which are under the jurisdiction of a State are:

1. Inland Waters (Internal Waters)
2. Archipelagic Waters
3. Territorial Sea
4. Additional Zones (Contiguous Zone)
5. Exclusive Economic Zone
6. Continent Shelf (Continental Shelf)

b. Sea territories that are outside the jurisdiction of a State are:

1. High Seas
2. Deep Sea Bed

The determination of the boundaries of coastal and marine areas cannot be equated between the provisions in Act No. 27 of 2007 concerning PWP-PK with UNCLOS 1982. Act No. 27 of 2007 applies to the administrative boundaries of sub-districts and to the sea as far as 12 (twelve) miles measured from the line coast, while UNCLOS 1982 does not define the boundaries of the coastal areas or how to measure them.

The characteristics, definition and boundaries of coastal areas in each country are different, depending on geographical conditions. In general, the general characteristics
of coastal and marine areas are as follows: (Dahuri, Rohmin. (2003). Paradigma Baru Pembangunan Indonesia Berbasis Kelautan, Orasi Ilmiah. Bogor: Institut Pertanian. p.15)

1. The sea is a source of “common property resources”, so that it has a public function/public interest;

2. The sea is “open access”, allowing anyone to use marine space for various purposes;

3. The sea is “fluid”, where the resources (marine biota) and the dynamics of hydrooceanography cannot be divided/parcelled;

4. The coast is a strategic area because it has a topography that is relatively easy to develop and has very good access (by utilizing the sea as a movement “infrastructure”);

5. Coastal areas are rich in natural resources, both in land and in ocean spaces, which are needed to meet human needs.

To broaden the readers’ horizons and be able to understand about government regulations regarding the management of coastal and marine areas.

The implementation of the management of coastal and marine areas in national law can be divided into two forms, namely, first, national legislation regulating the management of coastal and marine areas which is concrete and binding (hard law), or provisions resulting from international agreements (treaty), conventions, or agreements, whether bilateral, multilateral, global, regional or sub-regional for countries that declare themselves ready to be bound (express to be bound) and enforce them in their territories (Putra, Ida Bagus Wyasa. (2003). Hukum Lingkungan Internasional. Bandung: Refika Aditama. p. 6). Second, soft law provisions, namely provisions containing general principles, are in the form of a statement of attitude or moral commitment and are not legally binding. Its binding capacity depends on the willingness of states to accept it as national law, for example in the form of a declaration, charter or protocol.

Several commitments (soft law) that support the implementation of coastal and marine area management with reference to integrated coastal management are:

2.1. Indonesia’s Agenda 21

Indonesia has accepted the Global Agenda 21 as a non-binding agreement as a result of the 1992 UNCED conference and makes it a basic guideline for the implementation and
formulation of environmental and development policies. The provisions of Chapter 18 in Agenda 21-Indonesia regarding the management of coastal areas are very important because the environmental conditions of coastal and marine areas require special handling. Special handling in coastal and marine areas includes aspects of integration and institutional authority, so it is hoped that the resources in this area can become superior products in the development of the Indonesian nation in the future.

2.2. Jakarta Mandate, 1995

Agenda 21 Chapter 17 has produced a program known as “Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity” in 1995. The diversity of natural resources on the coast, both in developed and developing countries is over-exploited, so it is necessary a work program that is integrated in its management with activity priorities on 5 elements, namely: (Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity, Introduction, 1995)

1. implementation of integrated marine and coastal area management;
2. marine and coastal living resources;
3. marine and coastal protected areas;
4. marine culture; and
5. other species and genotype.

_Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity_, Element 1 regarding the implementation of integrated marine and coastal area management is an effort that must be made by countries in managing coastal and marine areas, as stated in Agenda 21 Chapter 17 program (a).

2.3. Bunaken Declaration, 1998

The Bunaken Declaration was declared by the President of the Republic of Indonesia BJ Habibie on September 26, 1998 to coincide with the declaration of 1998 as the “Indonesian Maritime Year”. This declaration is one of the milestones in Indonesia’s maritime development and is an effort to reuse the sea, after development carried out in the previous era was more land-based (land-based development). It is hoped
that from this declaration all levels of government and society will pay attention to the development, utilization and maintenance of Indonesia’s marine potential.

The United Nations Convention on the Law of the Sea 1982, ratified by Act No. 17 of 1985 concerning Ratification of UNCLOS 1982. UNCLOS 1982 does not specifically regulate in its articles concerning the management of coastal and marine areas. But it is implied that the source of wealth in the sea requires good management in accordance with the principles of sustainable development, without damaging the marine environment, so that it can be used for the prosperity of mankind. Regulations on the importance of protection and preservation of the marine environment are regulated in UNCLOS 1982 Part XII concerning Protection and Preservation of the Marine Environment.

Act No. 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (UNCLOS), 1982, had consequences for the Republic of Indonesia to renew the provisions on Indonesian Waters as regulated in Act No. 4/Prp of 1960 concerning Indonesian Waters with Act No. 6 of 1996 concerning Indonesian Waters and adapted to the development of the new archipelagic state regime as contained in Chapter IV of UNCLOS 1982.

Specific arrangements regarding the management of coastal and marine areas are not explained in detail, but only implied in Chapter IV concerning Utilization, Management, Protection and Conservation of the Indonesian Aquatic Environment. This is in accordance with the principles of sustainable development in resource management in coastal and marine areas. In Article 23 paragraph (1) it is stated that: “The utilization, management, protection and preservation of the Indonesian marine environment is carried out based on the applicable national laws and international law”.

As an effort to increase the use of natural resources in Indonesian waters, it is explained in Article 23 paragraph (3), that: “If it is necessary to increase the utilization, management, protection and preservation of the Indonesian marine environment as meant in paragraph (10), a coordinating body can be established which is stipulated by a Presidential Decree.

Management of natural resources in a sustainable manner is part of the development plan that will be carried out by the government in accordance with the National RPJP for 2005-2025, contained in Chapter II - letter I which regulates Natural Resources and the Environment. (Act No. 17 of 2007 concerning the National Long-Term Development Plan (RPJP) 2005-2025, State Gazette of the Republic of Indonesia of 2007 Number 33, Supplement to the State Gazette of the Republic of Indonesia Number 4700, p. 20) In Chapter II-letter I it states that resources nature and the environment have a dual role, namely as capital for development and at the same time as a support for a
living system. Environmental services include biodiversity, carbon sequestration, natural regulation, natural beauty, and clean air, which support human life.

The development direction to develop the potential of marine resources according to Act No. 17 of 2007 concerning the National RPJP is the utilization and supervision of a very wide marine area. The direction of its use must be carried out through a multisectoral, integrative, and comprehensive approach in order to minimize conflicts and maintain their sustainability. Given the complexity of the problems in managing marine, coastal and small island resources, an integrated approach to policy and planning is the main prerequisite for ensuring the sustainability of economic, social and environmental processes in accordance with the principles contained in integrated coastal management.

The management of coastal and marine resources has not been integrated with development activities from various sectors and regions. This can be seen from the laws and regulations regarding the use of coastal and marine resources so far have been more oriented towards exploitation of coastal and marine resources without paying attention to the preservation of their resources, and have not been able to eliminate factors that cause environmental damage. As stated in the Elucidation of Act No. 27 of 2007 concerning PWP-PK, that:

“The norms for the management of the coastal area are compiled in the scope of planning, utilization, management, control and supervision, by taking into account the norms regulated in other laws and regulations.”

As a rule of law, the implementation of the development of a coastal and marine area management system as part of sustainable development must be in accordance with the norms given a clear, firm, and comprehensive legal basis to ensure legal certainty for efforts to manage coastal areas.

Act No. 27 of 2007 concerning PWP-PK, in Article 3 concerning Principles and Objectives, states that: “Management of Coastal Areas and Small Islands is based on: (a) sustainability; (b) consistency; (c) integration; (d) legal certainty; (e) partnerships; (f) equity; (g) community participation; (h) openness; (i) decentralization; (j) accountability; and (k) justice.”

The principles contained in Act No. 27 of 2007 concerning PWP-PK are the implementation of the basic principles contained in integrated coastal management. The implementation of these principles in Act No. 27 of 2007 concerning PWP-PK is adapted to the geographical and community conditions in Indonesia. Consistency and integration in implementing coastal area management in accordance with these principles requires monitoring and evaluation, either by the Government or stakeholders.
There are 15 basic principles that should be considered in the management of coastal and marine areas according to JR Clark (1992); (Clark, J.R. (1992). Integrated Management of Coastal Zone, FAO Fisheries Technical Paper, No.327, Rome, Italy, 1992, dalam Rochmin Dahuri et.al Pengelolaan Sumberdaya Wilayah Pesisir dan Lautan Secara Terpadu. Jakarta: Pradnya Paramita. p.157-171) “(1) system resources; (2) the major integrating force; (3) integrated; (4) focal point; (5) the boundary of coastal zone; (6) conservation of common property resources; (7) degradation of conservation; (8) inclusion all levels of government; (9) character and dynamic of nature; (10) economic benefits conservation as main purpose; (11) multipurpose management; (12) multiple-uses utilization; (13) traditional management; (14) environment impact analysis.”

In accordance with the principles of integrated coastal management, as regulated in Article 4 of Act No. 27 of 2007 concerning PWP-PK, the management of coastal areas involves many sectors and natural resources, both living and non-living, so that the implementation is carried out by creating harmony and synergy between Government and Local Government, including the participation of the community and government institutions.

Planning in the management of coastal areas integrates various plans prepared by various sectors and regions so that there is harmony and mutual strengthening of their use is regulated in Chapter IV-Planning, from Article 7 to Article 15 of Act No. 27 of 2007 concerning PWP-PK. Coastal area planning is divided into 4 (four stages) which will be further regulated in detail in a Ministerial Regulation, namely (1) strategic plan; (2) zoning plans; (3) management plan; and (4) an action plan in accordance with Principles 1 and 3 of integrated coastal management.

The optimal utilization of coastal areas based on Principles 12 and 14 in integrated coastal management, is implemented by granting Coastal Water Concession Rights (HP-3) by the Government as regulated in Article 16 Paragraph (1) of Act No. 27 of 2007 concerning PWP PK. It is explained in Article 16 paragraph (2) that HP-3 includes exploitation over sea level and water column up to sea level.

According to Article 18 of Act No. 27 of 2007 concerning PWP-PK, HP-3 is given by the Government to individual Indonesian citizens, and legal entities established under Indonesian law; or indigenous peoples. However, there are several areas that cannot be granted HP-3, namely conservation areas, fishery reserves, shipping lanes, port areas and public beaches as regulated in Article 22 of Act No. 27 of 2007 concerning PWP-PK.

Furthermore, in Article 1 point 18, the HP-3 provided by the Government is certain parts of coastal waters for marine and fisheries businesses, as well as other businesses.
related to the utilization of Coastal Resources and Small Islands covering above sea level and the water column up to the sea floor at a certain extent.

The provisions regarding the HP-3 will cause different interpretations if they are related to the provisions regarding rights contained in Act No. 5 of 1960 concerning Agrarian Principles Chapter II Part 1, Article 16 Paragraph (1) and Paragraph (2). (Article 16 paragraph (1) Act No. 5 of 1960 on UUPA contains: The rights to land as referred to in Article 4 paragraph (1) are: a) property rights; b) business use rights; c) building rights; d) rights of use; e) rental rights; f) the right to open land; g) the right to collect forest products; h) other rights not included in the above rights which shall be stipulated by Law as well as rights of a temporary nature as mentioned in Article 53. Article 16 Paragraph (2) states that the rights to water and space as referred to in Article 4 Paragraph (3) is a) the right to use water; b) the right of conservation and fishing; c) space use rights)

According to Act No. 5 of 1960 concerning Agrarian Principles, land rights do not include ownership of natural resources contained in the earth’s body below it. (Harsono, Boedi. (2005). Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya. Ep.1 Hukum Tanah Nasional, Djambatan, Ed. Rev. Jakarta. p.19) As stated in Article 8 of Act No. 5 of 1960 concerning Agrarian Principles, that the extraction of natural resources contained in the earth, water and space needs to be regulated. Basically, natural resource wealth in coastal areas is also part of the natural resources referred to in Article 8 of Act No. 5 of 1960 concerning Agrarian Principles. But the elucidation of Article 8 of Act No. 5 of 1960 concerning Agrarian Principles basically states that land rights only give rights to the surface of the earth,

Referring to Article 8 of Act No. 5 concerning Agrarian Principles and Article 16 Paragraph (2) of Act No. 27 of 2007 concerning PWP-PK, HP-3 for coastal areas is a new rule in the management of coastal areas which has never been regulated in Act No. 5 concerning Agrarian Principles, or any other Law. In contrast to land rights as regulated in Article 16 of Act No. 5 of 1960 concerning Agrarian Principles, HP-3 is granted by the Government for a certain area and time, as stated in Article 17 paragraph (2).

The participation of local communities and indigenous peoples in the management of coastal areas is regulated in Article 18 of Act No. 27 of 2007 concerning PWP-PK. The existence of indigenous peoples who have used the coast from generation to generation, such as ulayat rights, against them according to the law must be respected and protected as regulated in Article 61 paragraph (1) of Act No. 27 of 2007 concerning PWP-PK.
Referring to principles 5 and 6 of integrated coastal management, to avoid differences in interpretation, division and determination of coastal area boundaries related to coastal area management, integration and coordination with other related sectors is needed, especially in the conservation of common property resources so that it does not cause conflict in its implementation.

The zoning of coastal areas in accordance with Article 2 of Act No. 27 of 2007 concerning PWP-PK is closely related to Act No. 32 of 2004, namely dividing marine areas for administrative purposes and boundaries of authority in the regions. Furthermore, for exploration and exploitation activities on land and seabed, Act No. 11 of 1967 on Mining will conform to Act No. 27 of 2007 on PWP-PK.

Settlement of disputes in the use of resources in coastal areas according to Act No. 27 of 2007 concerning PWP-PK is pursued through courts and/or outside the court. (Act No. 27 of 2007 on PWP-PK, article 64), or certain actions that must be taken by the losing parties in the dispute. Meanwhile, settlement outside the court is carried out by means of consultation, expert judgment, negotiation, mediation, consultation, arbitration or through local customs/habits/wisdom. (The explanation of Act No. 27 of 2007 on PWP-PK)

The provisions in Chapter V concerning the Prevention of Pollution and/or Destruction of the Sea, in Article 15 stipulate that: “Every person or person in charge of a business and/or activity that results in pollution and/or destruction of the sea is obliged to deal with sea pollution and/or damage caused by their activities.” Excessive use of resources in coastal areas without considering the sustainability of the coastal environment, will result in damage to ecosystems in coastal areas.

The authority of the Government in terms of natural resource management is regulated in the Government Regulation of the Republic of Indonesia Number 38 of 2007 concerning the Sharing of Government Affairs between the Government, Provincial Governments and Regency/City Governments (hereinafter referred to as Government Regulation Number 38 of 2007). (Government Regulation of the Republic of Indonesia Number 38 of 2007 concerning the Sharing of Government Affairs between the Government, Provincial Government and Regency / City Government, State Gazette of the Republic of Indonesia of 2007 Number 82 (hereinafter referred to as PP Number 38 of 2007))

Government affairs which fall under the authority of the Government include foreign policy, defense, security, justice, national monetary and fiscal, as well as religion, while those included in the management of coastal area resources (Marine and Fisheries) are
regulated in Article 2 Paragraph (4) point cc, and constitute part of government affairs that can be shared between levels and/or levels of government.

Government Regulation Number 38 of 2007 regulates government affairs which fall under the authority of Regional Government divided into mandatory affairs and optional affairs. The management of coastal and marine areas is part of maritime affairs and fisheries, which in this provision is part of optional affairs which fall under the authority of regional governments.

Governmental affairs which fall under the authority of the Provincial Government in the management of coastal areas are only limited to government functions that are inter-regency/municipal in nature and to avoid conflicts of interest between regencies/municipalities as well as authorities which are not/not yet able to be implemented by the regency/municipal government.

General elucidation of Act No. 32 of 2004, that regional governments have the authority to regulate and manage their own government affairs according to the principle of autonomy and assistance tasks. The granting of broad autonomy to the regions is directed at accelerating the realization of community welfare through improved services, empowerment and community participation.

Since the enactment of Act No. 32 of 2004 concerning Regional Government, the Central Government has never given real autonomy in the utilization of coastal resources in coastal areas. The status quo of regional authority is not a concern of the Government, because economic activities that take place in coastal areas are carried out based on a sectoral approach that benefits certain sectoral agencies and businesses.

Article 18 paragraph (10) of Act No. 32 of 2004 concerning Regional Government, states that: “Regions that have sea territory are given the authority to manage resources in the sea area.” Governmental affairs which fall under the authority of the Provincial Government in the management of coastal areas are only limited to government functions that are inter-regency/municipal in nature and to avoid conflicts of interest between regencies/municipalities as well as authorities which are not/not yet able to be implemented by the regency/municipal government.

In Article 7 paragraph (3) of Act No. 27 of 2007 concerning PWPPK, Regional Governments are required to prepare all plans as referred to in paragraph (1) in accordance with their respective authorities. (PP Number 38 of 2007 concerning the Sharing of Government Affairs between the Government, Provincial Government and Regency / City Government, Article 6 Paragraph (2)) Regional Governments are given the authority to undertake exploration, exploitation, conservation and regulating natural resources such as making spatial planning arrangements, regulating and providing assistance to
the Central Government in implementing laws and national sovereignty. (Ibid, Article 7 Paragraph (4))

The authority of the Central Government in managing resources in this area is attributed directly to the 1945 Constitution Article 33, Act No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone, Act No. 1 of 1973 concerning the Indonesian Continental Shelf, Act No. 6 of 1996 concerning Indonesian Waters, and Act No. 17 of 1985 concerning Ratification of the 1982 UNCLOS. (Ibid, Article 13)

The extension of the authority to manage coastal areas is given to regencies/cities and provinces to manage marine and land resources within their jurisdiction. This is reinforced by Act No. 33 of 2004 concerning Financial Balance between the Central Government and Regional Government Article 6, namely: “Original regional income comes from: a) Local taxes; b) Regional levies; c) proceeds from the management of separated regional assets; and d) other legal PAD.” Own-source revenue can also be obtained from balancing funds, as described in Article 11 regarding profit sharing funds. Paragraph (1) of Article 11 states that the profit sharing funds come from taxes and natural resources.

The division of authority to local governments over the sea area as referred to in Act No. 32 of 2004 concerning Regional Government, does not legally change the territorial waters of Indonesia as regulated in Act No. 6 of 1996 concerning Indonesian Waters. The authority granted by Act No. 32 of 2004 concerning Regional Government to carry out the management of marine resources in its jurisdiction is accompanied by the obligation to preserve the environment.

As one form of marine policy formulation, especially the management of coastal and marine areas in the region, is the provision of legal products for coastal and marine areas in the form of Regional Regulations by initiating a community-based model. Several areas in Kalimantan and Sulawesi which have been facilitated by the Marine and Coastal Resources Management Project (MCRMP), Directorate General of Marine, Coastal and Small Islands, Ministry of Marine Affairs and Fisheries, have produced several Regional Regulations on Management Coastal and marine areas.

3. Conclusion

Indonesia has accepted the Global Agenda 21 as a non-binding agreement as a result of the 1992 UNCED conference and makes it a basic guideline for the implementation and formulation of environmental and development policies. The provisions of Chapter 18 in Agenda 21-Indonesia regarding the management of coastal areas are very important
because the environmental conditions of coastal and marine areas require special handling. Special handling in coastal and marine areas includes aspects of integration and institutional authority, so it is hoped that the resources in this area can become superior products in the development of the Indonesian nation in the future.

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