

# Construction of Sea Barriers in Tangerang Based on Agrarian Law Perspectives and Implementation Issues

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**Abstract :** The issuance of hundreds of Building Use Rights certificates in the Tangerang sea area raises fundamental questions about the application of agrarian law in coastal areas, which should be public domain. This study analyze agrarian law aspects implementing problems sea wall construction in Tangerang, particularly regarding the legality of issuing HGB certificates in the sea area and their impact on the rights of coastal communities. The research method used is normative juridical. The results show that the issuance of 263 SHGB and 17 SHM in the sea area is contrary to UUPA Number 5 of 1960 because the sea area is not an object of land rights, thus containing juridical defects in terms of authority, procedure, and substance. The construction of the sea fence has violated the constitutional rights of coastal communities to work, a healthy environment, and fair legal certainty, causing significant economic losses in the form of increased operational costs for fishermen and the loss of traditional access to the sea. The problems in implementation reflect a failure of coordination between government agencies, a lack of synchronization of authority between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), the Ministry of Marine Affairs and Fisheries (KKP), and the Investment Coordinating Board (BKPM) after the Job Creation Law, as well as construction without the mandatory Marine Spatial Utilization Conformity, which can be categorized as an unlawful act that violates the principle of state control for the prosperity of the people..

**Keywords :** Agrarian Law; Coastal Fences; Coastal Community Rights

## I. INTRODUCTION

Indonesia is a rule of law state. Article 1 paragraph (3) of the 1945<sup>1</sup> Constitution of the Republic of Indonesia, “The State of Indonesia is a State based on the rule of law.” Indonesia is a country where the law is the main foundation of its government and society. Indonesia is also the largest archipelagic country in the world with the second longest coastline<sup>2</sup>. sea fence construction in coastal Tangerang has caused many conflicts due to the interrelationship between agrarian law in Indonesia and the problems

<sup>1</sup> Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

<sup>2</sup> BPS. (2023). Statistics Indonesia 2023. Jakarta: Central Statistics Agency.



surrounding its implementation. If we look at the location, there are 263 plots of land, consisting of 234 SHGB plots in the name of PT Intan Agung Makmur, 20 SHGB plots in the name of PT Cahaya Inti Sentosa, and 9 plots in the name of individuals. In addition, 17 SHM certificates were also found<sup>3</sup>. How can a company have SHGB certificates over Indonesian waters. The legal issue that arises is not merely technical or administrative. It concerns the essence of the Basic Agrarian Law (UUPA) No. 5 of 1960, which explicitly stipulates that the object of land rights is “land” and not sea waters<sup>4</sup>. Article 35 of the UUPA defines Building Use Rights as the right to erect and own buildings on land that is not one's own property<sup>5</sup>. The keyword “land” here has clear legal limitations and cannot be arbitrarily expanded to include sea waters, which are actually under the jurisdiction of maritime law, not agrarian law.

The construction of this sea fence was carried out without a Marine Space Utilization Conformity (KKPRL), a mandatory requirement under Minister of Marine Affairs and Fisheries Regulation No. 31 of 2021<sup>6</sup>. This means that, procedurally and substantively, this construction is legally flawed from the outset. The lack of coordination between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) and the Ministry of Maritime Affairs and Fisheries (KKP) reflects a systemic failure in the management of natural resources, which should be managed in an integrated and transparent manner. From a human rights perspective, this situation violates at least three constitutional rights of coastal communities. First, the right to work and a decent livelihood as guaranteed by Article 28D paragraph (2) of the 1945 Constitution<sup>7</sup>. Second, the right to a good and healthy environment as stipulated in Article 28H paragraph (1) of the 1945 Constitution and Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights, considering that sea walls have been proven to damage coastal ecosystems, including seagrass beds and fish migration routes<sup>8</sup>. The right to fair legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, because the community was never involved in the planning process and did not receive adequate information about developments that affected their lives<sup>9</sup>. Data from the Agrarian Reform Consortium (KPA) reinforces this concern. Agrarian conflicts in coastal areas have increased dramatically by 40% in the last five years, and most of them have been

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<sup>3</sup> Adhi, I. S. (January 22, 2025). The Journey of the Tangerang Sea Wall Case from its Discovery to the Revocation of the SHGB. Kompas.com. <https://www.kompas.com/tren/read/2025/01/23/050000065/perjalanan-kasus-pagar-laut-tangerang-dari-awal-ditemukan-sampai-shgb>

<sup>4</sup> Article 4 paragraph (1) and Article 16 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

<sup>5</sup> Article 35 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

<sup>6</sup> Article 32 of Minister of Marine Affairs and Fisheries Regulation No. 31 of 2021 concerning Procedures for Issuing Conformity for Marine Space Utilization Activities.

<sup>7</sup> Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

<sup>8</sup> Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia; Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights.

<sup>9</sup> Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

triggered by coastal infrastructure development that ignores the rights of local communities<sup>10</sup>.

The lack of regulatory synchronization is another serious problem. On the one hand, the UUPA regulates land rights with land as the object. On the other hand, Law No. 32 of 2014 on Maritime Affairs asserts that the state has full authority over maritime areas and that their use must be oriented towards the public interest<sup>11</sup>. Meanwhile, Law No. 27 of 2007 on Coastal Zone and Small Island Management regulates the mechanism of utilization through licensing rather than granting ownership rights<sup>12</sup>. The gaps between these various regulations have been exploited by certain parties to obtain economic benefits by ignoring the principles of justice and sustainability. Constitutional Court Decision Number 3/PUU-VIII/2010 has actually provided clear guidelines. The Court invalidated the concept of Coastal Water Use Rights (HP-3) because it was considered contrary to the principle of state control as it transferred control of the sea to the private sector on an exclusive basis<sup>13</sup>. This ruling emphasized that the sea is *res communis*, common property that can only be managed through temporary licensing, not through permanent property rights such as HGB or Freehold Title. However, the reality on the ground shows that this ruling occurred ignored in practice. The government's response to this case occurred reactive, not proactive. Only after the case went viral on social media and received widespread attention did the government respond with administrative action. This pattern shows the weak enforcement of the law and the absence of effective oversight mechanisms in the licensing system.

Prof. Boedi Harsono once emphasized that the concept of state control over natural resources should not be interpreted as the authority to grant exclusive management rights to certain individuals or corporations while ignoring the rights of indigenous peoples, coastal communities, or the general public<sup>14</sup>. The state must ensure that every utilization of natural resources provides maximum benefits for the welfare of all people, not just a handful of parties who have access to power and capital. Article 33 paragraph (3) of the 1945 Constitution explicitly states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people<sup>15</sup>. However, the Tangerang sea fence case raises the question: whose prosperity is actually being pursued? When 263 SHGB certificates were controlled by two large companies, PT Intan Agung Makmur and PT Cahaya Inti Sentosa, which are suspected of being affiliated with the Agung Sedayu Group, while thousands of fishermen lost access to the sea, the principle of “the greatest prosperity of the people” was clearly violated.

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<sup>10</sup> Agrarian Reform Consortium (KPA), Annual Report on Agrarian Conflicts 2024 (Jakarta: KPA, 2024), pp. 45-52.

<sup>11</sup> Article 15 of Law Number 32 of 2014 concerning Maritime Affairs.

<sup>12</sup> Article 7 paragraph (1) and Article 16 of Law Number 27 of 2007 concerning Coastal Zone and Small Islands Management as amended by Law Number 1 of 2014

<sup>13</sup> Constitutional Court Decision Number 3/PUU-VIII/2010 concerning the Review of Law Number 27 of 2007 concerning Coastal Zone and Small Islands Management, pp. 189-192.

<sup>14</sup> Boedi Harsono, *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Contents and Implementation* (Revised Edition) (Jakarta: Djambatan, 2005), pp. 224-230.

<sup>15</sup> Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The complexity of this issue has become increasingly apparent following the enactment of Law No. 11 of 2020 on Job Creation, which changed the licensing system to be centralized in the Investment Coordinating Board (BKPM) through the Online Single Submission Risk-Based Approach (OSS-RBA) system<sup>16</sup>. Although it aims to facilitate investment, in practice this system has created legal loopholes due to weak coordination between ministries. This research is important for several fundamental reasons. To uncover the root causes of legal problems in the construction of sea walls from an agrarian law perspective and identify violations of the basic principles of the Basic Agrarian Law (UUPA), analyze the socio-economic and human rights impacts experienced by coastal communities as a result of this development, to map implementation problems, including regulatory inconsistencies, overlapping institutional authorities, and weak law enforcement, and to provide recommendations for more equitable and sustainable policies that respect the rights of coastal communities and preserve the environment.

## II. RESEARCH METHODS

This paper uses a normative juridical research methodology supplemented by interviews to analyze the case of sea wall construction in Tangerang from the perspective of agrarian law and the problems of its implementation<sup>17</sup>. The normative juridical approach is used to analyze legislation, legal doctrine, and primary legal sources such as the Basic Agrarian Law (UUPA), regulations on coastal zone management, and regulations related to building use rights (HGB), as well as secondary legal sources such as legal literature, journals, and relevant previous research results. the Basic Agrarian Law (UUPA), regulations on coastal zone management, and regulations related to Building Use Rights (HGB), as well as secondary legal materials such as legal literature, journals, and relevant previous research results and credible sources.

With the normative juridical method combined with interviews, the researcher is confident that conclusions can be drawn on the legal issues found. Thus, the use of the normative juridical method combined with interviews is expected to provide a comprehensive analysis, both from a legal perspective and the empirical reality in the field, so that the research results can serve as applicable recommendations in the social, economic, and environmental aspects, as well as legal norms and standards.

## III. DISCUSSION

### **How is the construction of sea fences in the Tangerang area based on the perspective of agrarian law?**

From the perspective of agrarian law, the construction of sea fences in Tangerang challenges the conventional understanding of land rights as regulated in the Basic Agrarian Law. Conceptually, the Basic Agrarian Law regulates land rights whose object is land, both on the surface and below it. However, the application of this provision in the context of

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<sup>16</sup> Article 1 paragraph (5) and Article 7 of Law Number 11 of 2020 concerning Job Creation.

<sup>17</sup> Soerjono Soekanto and Sri Mamudji. Normative Legal Research: A Brief Review. Jakarta: Rajawali Pers, 2001.

marine waters raises significant legal ambiguities. The fundamental question that arises is whether marine waters can be categorized as land within the meaning of the Basic Agrarian Law so that land rights such as Building Use Rights can be issued over them<sup>18</sup>.

#### **a) Legal Basis and Regulations for Coastal and Marine Area Management in Indonesia**

The 1945 Constitution of the Republic of Indonesia. Article 33 paragraph (3) of the 1945 Constitution explicitly states that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people<sup>19</sup>. This is essentially the philosophical basis that in managing natural resources, including marine areas, we must be oriented towards the interests of the people, namely the Indonesian people, because a great nation must prioritize its people, not just the interests of a handful of parties or certain corporations. The Constitutional Court in Decision Number 001-021-022/PUU-I/2003. The Constitutional Court emphasized that the meaning of “controlled by the state” is not merely ownership in the civil sense, but rather something that essentially covers five important functions, namely the policy function (*beleid*), the regulatory function (*regelendaad*), the administrative function (*bestuursdaad*), the management function (*beheersdaad*), and the supervisory function (*toezichthoudensdaad*)<sup>20</sup>. Therefore, these five functions must be carried out comprehensively to ensure that every utilization of natural resources can truly provide maximum benefits for the welfare of the entire population.

In the context of coastal and marine areas, in addition to the UUPA, the main regulation governing this area is Law Number 27 of 2007 concerning Coastal Zone and Small Islands Management, as amended by Law Number 1 of 2014. This law stipulates that coastal areas are shared resources that must be managed sustainably for the benefit of the community<sup>21</sup>. Further provisions are contained in Law No. 32 of 2014 on Maritime Affairs, which affirms the state's full authority over Indonesia's maritime territory. Article 15 of this law states that the state has full authority to ensure that waters are used fairly for the public interest<sup>22</sup>. This provision is in line with the principle that the sea is a common property (*res communis*) that cannot be privatized or controlled exclusively by certain parties.

The Constitutional Court has provided an important confirmation through Decision Number 3/PUU-VIII/2010, which invalidates the concept of Coastal Waters Management Rights (HP-3) in Law Number 27 of 2007. In its ruling, the Court stated that HP-3 as a property right contradicts the principle of state control because it transfers control of the sea area exclusively to private parties<sup>23</sup>. This ruling has fundamental

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<sup>18</sup> Ridha Wahyuni, Wardani Rizkianti, and Siti Nurul Intan, *Introduction to Indonesian Agrarian Law* (Jakarta: LovRinz Publishing, 2025), pp. 125-127.

<sup>19</sup> Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

<sup>20</sup> Constitutional Court Decision Number 001-021-022/PUU-I/2003 concerning the Review of Law Number 20 of 2002 concerning Electricity.

<sup>21</sup> Article 1 paragraph (1) of Law Number 27 of 2007 concerning Coastal Zone and Small Islands Management.

<sup>22</sup> Article 15 of Law Number 32 of 2014 concerning Maritime Affairs.

<sup>23</sup> Constitutional Court Decision Number 3/PUU-VIII/2010 concerning the Review of Law Number 27 of 2007 concerning Coastal Zone and Small Islands Management, pp. 189-192

implications: the management of sea areas can only be carried out through a licensing mechanism, not through the granting of land rights as recognized in agrarian law. Minister of Marine Affairs and Fisheries Regulation No. 24 of 2021 regulates in detail the utilization of maritime space. Article 5 paragraph (3) of this regulation requires that every activity involving the utilization of coastal and maritime areas, including the installation of permanent structures such as fences, must first obtain a location permit and a maritime utilization permit<sup>24</sup>.

#### **b) Legal Analysis of the Issuance of Building Use Rights Certificates (SHGB) in Maritime Areas and Waters**

The issuance of Building Use Rights Certificates in the Tangerang sea area is a legal anomaly that raises fundamental questions about the authority and validity of administrative actions related to land. There are 263 SHGBs and 17 Freehold Title Certificates (SHM) for a total of 280 certificates. It is known that of the 280 certificates, 58 are located within the coastline and 222 are outside the coastline<sup>25</sup>. Theoretically, Building Use Rights are one of the land rights regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles. Article 35 of the UUPA defines SHGB as the right to erect and own buildings on land that is not one's own<sup>26</sup>. The key word in this definition is "land," which legally has a different meaning from "sea waters." Article 1 paragraph (4) of the UUPA does mention that the definition of land also includes the earth's body and water as well as the space above it<sup>27</sup>. However, this provision cannot be interpreted arbitrarily to justify the granting of SHGB over offshore waters. Boedi Harsono, one of the key figures in the formulation of the UUPA, explained that this provision was intended for land covered by water, such as rice fields or swamps, not for sea waters, which are a different domain in the Indonesian legal system<sup>28</sup>.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2016 has provided clear limitations on the granting of land rights in coastal areas. Article 2 paragraph (1) of this regulation states that land rights can be granted to land located in coastal areas and coastal zones<sup>29</sup>. The terms "coastal areas" and "coastal zones" here refer to land bordering the sea, not the waters themselves. Furthermore, Article 8 of the same regulation explicitly prohibits the granting of land rights outside coastal areas, including for reclamation or reclaimed land that does

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<sup>24</sup> Article 5 paragraph (3) of Minister of Marine Affairs and Fisheries Regulation No. 24 of 2021 concerning Marine Space Management.

<sup>25</sup> Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), "Responding to the Issue of Certificates in the Pagar Laut Area Owned by Aguan Being Revoked, Minister Nusron: The News Is Not True," accessed October 16, 2025, <https://www.atrbpn.go.id/berita/tanggapi-isu-sertipikat-di-kawasan-pagar-laut-milik-aguan-batal-dicabut-menteri-nusron-berita-itu-tidak-benar>.

<sup>26</sup> Article 35 of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law (UUPA).

<sup>27</sup> Article 1 paragraph (4) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

<sup>28</sup> Boedi Harsono, *Indonesian Agrarian Law: History of the Formation of the UUPA, Its Contents and Implementation* (Revised Edition), (Jakarta: Djambatan, 2005), pp. 18-20.

<sup>29</sup> Article 2 paragraph (1) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2016 concerning Land Management in Coastal Areas and Small Islands.

not meet administrative and technical requirements. Constitutional Court Decision Number 3/PUU-VIII/2010 provides important guidance in understanding this issue. The Court explicitly states that maritime areas cannot be made the object of property rights such as SHGB because this would transfer state control to private parties. According to the ruling, the concept of maritime zone management can only be carried out through a temporary licensing mechanism that can be revoked at any time if it violates the public interest, not through the granting of rights that have property characteristics such as being transferable, assignable, or pledgeable.

From the perspective of administrative law, issuing of SHGB in maritime areas can be categorized as a legally flawed State Administrative Decision (KTUN). This legal flaw can take the form of a flaw in authority (*onbevoegdheid*), a procedural flaw (*vormgebreken*), or a substantive flaw (*materiele gebreken*)<sup>30</sup>. In this context, all three forms of defect have the potential to be fulfilled: a defect of authority because the National Land Agency (BPN) does not have the authority to issue certificates in maritime areas, a procedural defect because it does not go through the KKPR mechanism, and a substantive defect because the object is not land within the meaning of the Basic Agrarian Law (UUPA). Theoretically, issuing of SHGB in maritime areas also contradicts the basic principles of national agrarian law. The UUPA is based on customary law, which recognizes the concept of *ulayat* rights, namely the customary legal rights of communities over land and natural resources in their territories. In coastal areas, many indigenous peoples and traditional fishermen have utilized these areas for generations. The granting of SHGB to corporations over areas traditionally used by communities is a form of disregard for customary rights and the rights of indigenous peoples protected by Article 18B paragraph (2) of the 1945 Constitution<sup>31</sup>.

Issuing of these certificates also contradicts the principle of social justice, which is the spirit of the Basic Agrarian Law. Article 9 paragraph (2) of the Basic Agrarian Law states that every Indonesian citizen has the same opportunity to obtain land rights<sup>32</sup>. Formally, there occurred a violation of institutional authority and licensing procedures. In material terms, maritime areas are not objects of land rights within the meaning of the UUPA and cannot be granted SHGBs. This legal defect means that these certificates can be revoked, and the parties that issued or benefited from issuing of these legally defective certificates can be held accountable in civil, administrative, and criminal proceedings.

#### **c) Agrarian Law and Coastal Community Rights in the Context of Sea Wall Development in Tangerang**

The Basic Agrarian Law No. 5 of 1960 actually provides a basis for the protection of community rights. Article 2 paragraph (4) of the Basic Agrarian Law states that the state's right of control may be delegated to regions and customary law communities, as

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<sup>30</sup> Philipus M. Hadjon, *Legal Protection for the People in Indonesia (A Study of its Principles, Handling by the General Courts and the Establishment of State Administrative Courts)*, (Surabaya: Bina Ilmu, 1987), pp. 75-82.

<sup>31</sup> Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia

<sup>32</sup> Article 9 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

long as it is necessary and does not conflict with national interests<sup>33</sup>. This provision recognizes the existence of the customary rights of indigenous peoples, including rights to coastal and marine areas that have traditionally been used for daily life. Boedi Harsono, in his monumental work, explains that the concept of state control rights should not be interpreted as the authority to grant exclusive rights to manage or utilize marine areas to certain individuals or corporations while ignoring the rights of indigenous peoples, coastal communities, or the general public<sup>34</sup>. The state must ensure that the regulation and utilization of marine areas continue to take into account the principles of environmental sustainability, social justice, and public access. Based on interviews with LBH Jakarta, the impact of sea fence construction on coastal communities is significant. Fishermen must take long detours to access fishing grounds, which increases operational costs, especially with the rise in diesel prices<sup>35</sup>. This situation shows that sea fence construction is not only a technical or administrative issue, but also concerns the constitutionally guaranteed rights to life and work of coastal communities.

There has also been damage to a good and healthy environment through the destruction of ecosystems, seagrass beds, fish trails, and fishermen's access. Human rights violations have also occurred because the government has remained silent and allowed this to happen, with no response, and only responding when it went viral. In fact, the installation must have been built a long time ago, since when has there been a certificate at sea? There is damage and implications for other laws, including ratified ecosystems. Because the government has not responded, violations have occurred. Can companies influence public policy, civil rights, public access, and the right to fair legal protection?

From a human rights perspective, this situation constitutes a violation of several constitutional rights. It violates the right to work and a decent livelihood as guaranteed by Article 28D paragraph (2) of the 1945 Constitution, which states that every person has the right to work and to receive fair and decent compensation and treatment in employment relationships<sup>36</sup>. It is a violation of the right to a good and healthy environment as stipulated in Article 28H paragraph (1) of the 1945 Constitution and Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights<sup>37</sup>. The construction of sea fences occurred proven to damage coastal ecosystems, including seagrass beds and fish migration routes. In LBH Jakarta's monitoring, a case was found in Bekasi where dolphins died after being trapped in a sea fence, demonstrating the serious ecological impact of this type of construction.

Violation of the right to legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution<sup>38</sup>. Coastal communities were not involved in the planning

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<sup>33</sup> Article 2 paragraph (4) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

<sup>34</sup> Boedi Harsono, *Indonesian Agrarian Law: History of the Formation of the UUPA, Its Contents and Implementation* (Revised Edition), (Jakarta: Djambatan, 2005), pp. 224-230.

<sup>35</sup> Khaerul Anwar, Public Attorney at LBH Jakarta, Interview, Jakarta, September 30, 2025.

<sup>36</sup> Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia

<sup>37</sup> Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia; Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights.

<sup>38</sup> Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.



process for the construction of the sea fence, there was no adequate socialization, and there was no effective complaint mechanism. This situation reflects the absence of legal certainty and procedural justice in decision-making that affects their lives. Constitutional Court Decision Number 3/PUU-VIII/2010 provides an important basis for understanding the rights of coastal communities. The Court uses four benchmarks to assess whether a natural resource management policy has fulfilled the principle of “the greatest prosperity for the people<sup>39</sup>.” The fact that 234 SHGB plots are controlled by PT Intan Agung Makmur and 20 plots by PT Cahaya Inti Sentosa shows that there is no equitable distribution, with benefits concentrated in two large corporations that are suspected of being affiliated with the Agung Sedayu Group<sup>40</sup>. public participation in determining benefits. Based on an investigation by LBH Jakarta, the community was never involved in the planning of the sea fence construction. Even when the fence began to be built, there was no socialization or explanation to fishermen about the intent and purpose of the project<sup>41</sup>. This top-down and exclusive decision-making pattern clearly contradicts the principle of community participation, which is one of the pillars of economic democracy in Article 33 paragraph (4) of the 1945 Constitution.

The Constitutional Court, in its ruling, emphasized that customary rights and traditional rights of the community cannot be limited in time due to their communal and hereditary nature<sup>42</sup>. From the perspective of consumer and community protection law, Philipus M. Hadjon distinguishes legal protection into two forms: preventive and repressive. Preventive protection aims to prevent violations of rights, while repressive protection aims to resolve disputes that have already occurred<sup>43</sup>. In the case of the Tangerang sea fence, both forms of protection have failed. Preventive protection failed because the government allowed issuing of legally flawed certificates and construction without permits. Repressive protection was also slow because the government only responded after the case went viral in the media.

Based on a report by LBH Jakarta, many fishermen and pond owners on the coast have experienced intimidation from unscrupulous officials, including the local police chief and village head<sup>44</sup>. This pattern of intimidation indicates the involvement of those in power protecting corporate interests behind the construction of the sea fence, which further clarifies that this is not merely a technical administrative issue but involves complex political and political-economic dimensions. In the context of agrarian law, the conflict that has occurred can be categorized as a structural agrarian conflict. The Agrarian Reform Consortium (KPA) notes that agrarian conflicts in coastal areas have increased by 40% in the last five years, largely due to coastal infrastructure development that does

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<sup>39</sup> Constitutional Court Decision Number 3/PUU-VIII/2010, pp. 195-198

<sup>40</sup> Bono Budi Priambodo, “Juridical-Normative Analysis of the Case and the Legal and Policy Framework Related to the ‘Mysterious Sea Fence’ on the North Coast of Tangerang,” *Unes Law Review*, Vol. 7, No. 3, (2025), pp. 2415-2420.

<sup>41</sup> Khaerul Anwar, *Op.Cit.*

<sup>42</sup> Constitutional Court Decision Number 3/PUU-VIII/2010, pp. 197-198.

<sup>43</sup> Hadjon, P. M. (1987). *Legal Protection for the People of Indonesia (A Study of the Principles, Handling by the General Courts and the Establishment of State Administrative Courts)*. Bina Ilmu, pp. 29-32.

<sup>44</sup> Khaerul Anwar, *Op.Cit.*

not take into account the rights of local communities<sup>45</sup>. Law Number 27 of 2007 concerning Coastal Zone and Small Island Management actually regulates the obligations of parties who damage coastal areas. Article 66 states that any person or legal entity that causes damage to coastal areas is obliged to carry out rehabilitation<sup>46</sup>. Furthermore, Article 34 of Minister of Marine Affairs and Fisheries Regulation No. 31 of 2021 requires the rehabilitation of marine areas if there is no valid permit<sup>47</sup>. This provision provides a legal basis for demanding environmental restoration and revocation of permits if violations are proven. From administrative sanctions perspective, Law No. 32 of 2009 concerning Environmental Protection and Management grants the government the authority to impose sanctions in the form of written warnings, government coercion, permit suspension, even permit revocation<sup>48</sup>.

### **Problems and implementation process in the construction of sea walls in Tangerang?**

The implementation of sea wall construction in Tangerang has given rise to a series of complex problems. Various findings in the field indicate that the construction of these sea walls occurred carried out in disregard of the basic principles of good governance, community participation, and consistent law enforcement.

#### **a) The problem of regulatory inconsistency and overlapping institutional authority**

In the case of the sea fence in Tangerang, data shows that 263 certificates have been issued, consisting of 234 SHGB certificates in the name of PT Intan Agung Makmur, 20 SHGB certificates in the name of PT Cahaya Inti Sentosa, 9 certificates in the name of individuals, and 17 Freehold Title Certificates<sup>49</sup>. This fact raises a serious question: how is it possible that hundreds of certificates could be issued for a water area that is not legally subject to land rights? From an institutional authority perspective, issuing of land certificates is the domain of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. However, for maritime areas, the authority to manage and grant permits should lie with the Ministry of Maritime Affairs and Fisheries in accordance with Law No. 32 of 2014 on Maritime Affairs. Article 15 of this law affirms that the state has full authority over Indonesia's maritime territory, including in terms of regulation and granting of utilization permits<sup>50</sup>. This overlap in authority reflects a lack of synchronization in the government administration system, which has resulted in issuing of administratively flawed decisions.

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<sup>45</sup> KPA. (2024). Annual Report on Agrarian Conflicts 2024. Jakarta: Agrarian Reform Consortium, pp. 45-52.

<sup>46</sup> Article 66 of Law Number 27 of 2007 concerning Coastal Zone and Small Island Management.

<sup>47</sup> Article 34 of Minister of Marine Affairs and Fisheries Regulation No. 31 of 2021 concerning Marine Space Management.

<sup>48</sup> Article 76 of Law No. 32 of 2009 concerning Environmental Protection and Management.

<sup>49</sup> Adhi, I. S. (January 22, 2025). The Journey of the Tangerang Sea Wall Case from Its Discovery to the Revocation of the SHGB. Kompas.com. <https://www.kompas.com/tren/read/2025/01/23/050000065/perjalanan-kasus-pagar-laut-tangerang-dari-awal-ditemukan-sampai-shgb>

<sup>50</sup> Article 15 of Law Number 32 of 2014 concerning Maritime Affairs.

Law No. 11 of 2020 concerning Job Creation has changed the licensing system to be centralized in the Investment Coordinating Board (BKPM). Under this system, every marine space utilization activity must obtain a Marine Space Utilization Conformity (KKPRL) as a primary requirement<sup>51</sup>. However, in the case of the Tangerang sea fence, there is no evidence that a KKPRL was issued, which means that the construction was carried out without a valid permit and can therefore be categorized as an unlawful act. Since the enactment of Law Number 11 of 2020 concerning Job Creation, there have been fundamental changes in the licensing system in Indonesia. Permitting authority, which was previously spread across various ministries, is now centralized in the Investment Coordinating Board (BKPM) through the Online Single Submission Risk-Based Approach (OSS-RBA) system. In the context of marine area utilization, every marine spatial utilization activity must obtain a Marine Spatial Utilization Activity Compliance Certificate (KKPRL) as a primary requirement before a permit is issued. However, in the case of the Tangerang sea fence, inter-agency coordination did not work as it should have due to structural problems in the Indonesian bureaucratic system, where each ministry works in its own silo without effective coordination.

This regulatory inconsistency is even more apparent when we see that the same area is regulated by several laws with different approaches. On the one hand, the Basic Agrarian Law regulates land rights with land as the object. On the other hand, Law Number 32 of 2014 concerning Maritime Affairs emphasizes that the maritime area is common property that cannot be privatized. Meanwhile, Law No. 27 of 2007 on Coastal Zone and Small Islands Management regulates the mechanism for coastal zone utilization through licensing, not through the granting of rights. Field research has revealed that coordination between ministries in coastal zone management is minimal. A similar case occurred on Pari Island, where the Ministry of Maritime Affairs and Fisheries was unaware that the Investment Coordinating Board (BKPM) had issued a permit in the area. This pattern was repeated in the case of the Tangerang sea fence, where the issuance of HGB certificates by the National Land Agency (BPN) was carried out without coordination with the KKP, which should have been the leading sector in maritime area management. The absence of an effective check and balance mechanism in the integrated licensing system is also a serious problem. Although OSS-RBA was designed to simplify and accelerate the licensing process, in practice this system has created loopholes for the issuance of problematic permits

#### **b) Legal Loopholes in the Licensing System After the Job Creation Law**

Enforcement Law Number 11 of 2020 concerning Job Creation has brought fundamental changes to the licensing system in Indonesia. There have been major changes in the licensing mechanism in Indonesia. Authority that was previously spread across various ministries is now centralized in BKPM<sup>52</sup>. Although the aim is to

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<sup>51</sup> Article 32 of Minister of Marine Affairs and Fisheries Regulation Number 31 of 2021 concerning Procedures for Issuing Conformity for Marine Spatial Utilization Activities.

<sup>52</sup> Law Number 11 of 2020 concerning Job Creation, Articles 15-25 concerning Improvement of the Investment Ecosystem.

cut bureaucracy and attract investment, in reality this centralization has opened loopholes for problematic projects. The main problem arises because the BKPM, as the licensing authority, does not always align with technical ministries such as the National Land Agency (BPN) and the Ministry of Marine Affairs and Fisheries (KKP), which have sectoral authority. What is more concerning is that the OSS-RBA system, which is supposed to expedite services, actually eliminates several crucial oversight stages. As a result, permits can be issued without verifying fundamental aspects such as spatial planning compliance, environmental impact, or the rights of local communities. In the case of the sea fence, there is no evidence that the KKPRL permit was issued, meaning the construction proceeded without a valid permit for the use of marine space

This is not an isolated incident. On Pari Island, for example, the KKP was not even aware that the BKPM had issued a permit. This proves that there is a systemic problem in our permit management. Poor coordination allows one agency to issue permits without confirming with other agencies that also have authority over the same area. But in practice, each agency uses its own maps and data, which are not always consistent<sup>53</sup>.

### c) **Absence of Community Participation and Violation of the Principle of Legal Certainty**

In essence, the community is the core of economic democracy as guaranteed by Article 33 paragraph (4) of the 1945 Constitution<sup>54</sup>. This article emphasizes that the national economy must be run with the principles of togetherness, equitable efficiency, sustainability, environmental awareness, independence, and maintaining the balance of national economic progress. When the community is excluded from decisions that directly impact their lives, the principle of economic democracy occurred ignored. The Constitutional Court in Decision No. 3/PUU-VIII/2010 has regulated in providing clear guidelines on community participation in natural resource management<sup>55</sup>. The Constitutional Court emphasized that the extent to which the people are involved in determining the benefits of natural resources is one of the parameters of whether such management has fulfilled the principle of “the greatest prosperity for the people.” In this case, the community was never asked for its opinion, there was no public forum, and decisions were made from above without involving the affected parties.

Violations of the principle of legal certainty are also very apparent. Article 28D paragraph (1) of the 1945 Constitution guarantees the right of every person to recognition, security, protection, and certainty of fair law<sup>56</sup>. However, coastal communities do not have legal certainty regarding their rights to the marine areas they have been utilizing. This case went viral on social media and received widespread

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<sup>53</sup> Marzuki, Peter Mahmud, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2016), pp. 156-158.

<sup>54</sup> 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (4).

<sup>55</sup> Constitutional Court Decision Number 3/PUU-VIII/2010, pp. 187-190.

<sup>56</sup> 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1).

public attention<sup>57</sup>. This reactive response pattern shows that law enforcement is not carried out proactively and consistently, but only when there is strong public pressure.

#### IV. CONCLUSION

The case of the sea fence on the coast of Tangerang illustrates how chaotic our agrarian regulations are at present. The issuance of 263 SHGB and 17 SHM in the sea area clearly contradicts the UUPA because the sea is not an object of land rights. This is in line with Constitutional Court Decision No. 3/PUU-VIII/2010, which rejects the privatization of sea areas. The construction of this fence violates the constitutional rights of coastal communities—ranging from the right to decent work (Article 28D paragraph 2 of the 1945 Constitution), the right to a healthy environment (Article 28H paragraph 1 of the 1945 Constitution), to the right to legal certainty. Fishermen have lost access to the sea, operational costs have risen, and productive time occurred drastically reduced. To make matters worse, coordination between institutions such as the National Land Agency (BPN), the Ministry of Maritime Affairs and Fisheries (KKP), and the Investment Coordinating Board (BKPM) is completely non-existent. Loopholes in the Job Creation Law have been exploited to issue permits without the required KKPRL. This is not just a technical issue; it is an act against the law. This case proves that Article 33 paragraph (3) of the 1945 Constitution regarding state control over natural resources for the prosperity of the people has not been implemented. Instead, the benefits are only enjoyed by corporations such as PT Intan Agung Makmur and PT Cahaya Inti Sentosa, which are suspected of being affiliated with the Agung Sedayu Group. Coastal communities, which should be the priority, have instead become victims. We need comprehensive agrarian law reform so that coastal management truly favors the people and the environment.

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<sup>57</sup> Hadjon, Philipus M., *Legal Protection for the People in Indonesia* (Surabaya: Bina Ilmu, 1987), pp. 45-47.

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