PROPERTY RIGHTS FOR NATURAL RESOURCES MANAGEMENT IN INDONESIA:
HAVE THEY BEEN RULED UNCONSTITUTIONAL?

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Abstract
A new property right known as the coastal waters commercial use right
(Hak Pengusahaan Pengairan Pesisir (HP-3)) introduced by Law No. 27 of 2007 regarding the Management of Coastal and Small Island Areas
has been ruled inoperative by the Constitutional Court. The decision
raises a question as to whether the door has been closed to market-
based instruments that rely on property rights as a policy tool in natural
resources management. This concern is relevant as legal developments in
natural resources law internationally have moved away from traditional
forms of regulation to focus on the creation of new statutory property
rights such as fisheries rights, water use rights and rights associated
with carbon sequestration. An exploration of the Constitutional Court’s
decision suggests that a similar line of reasoning would not, and should
not, arise in relation to other forms of property rights that the Government
of Indonesia may seek to introduce in the future.

Keywords: Property right, natural resources management, Government
of Indonesia

I. INTRODUCTION

Law No. 27 of 2007 regarding the Management of Coastal and Small
Island Areas (Undang-undang No. 27 Tahun 2007 tentang Pengelolaan Wilayah
Pesisir dan Pulau-pulau Kecil) (Law 27/2007) was passed after more than five
years of consultation, deliberation and drafting activity. The main purpose and
driver for passing Law 27/2007 was to provide a legal basis for extending and
adapting the system of spatial planning that takes place on the land to coastal,
marine and small island areas under the jurisdiction of regional government.
In doing so, guidance was taken from the principles of integrated coastal
management also known as integrated coastal zone management (ICZM).²

As expressed by the European Commission in their recommendation
passed in 2002, the principles of ICZM endorse a broad, long-term perspective
to balance environmental, economic, social, cultural and recreational objectives
within the limits set by coastal and marine ecosystems (Recommendation of
‘Integrated’ in ICZM refers to integration of all relevant sectors and policy
areas (horizontally) and levels of administration (vertically).

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² Integrated Coastal Management is mentioned in the Elucidation to Law 27/2007 (1(3): Scope) and is reflected in the planning system introduced by the Law.