

**THE SEA SAND EXPORT POLICY BASED ON GOVERNMENT  
REGULATION NUMBER 26 OF 2023 CONCERNING THE  
MANAGEMENT OF MARINE SEDIMENTATION PRODUCTS IN THE  
SEA FROM THE *SADD AL-ZARI'AH* PERSPECTIVE**

**THESIS**

**BY : ASHFA AZYAN ZULFANY**

**SIN 210202110045**



**SHARIA ECONOMIC LAW DEPARTEMENT**

**SHARIA FACULTY**

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG**

**2025**

## STATEMENT OF THE AUNTENTICITY

In the name of Allah, With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

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REGULATION NUMBER 26 OF 2023 CONCERNING THE  
MANAGEMENT OF MARINE SEDIMENTATION PRODUCTS FROM  
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Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 19 June 2025

Writer.



Ashfa Azyan Zulfany  
SIN 210202110045

## APPROVAL SHEET

After reading and correcting thesis of Ashfa Azyan Zulfany Student ID 210202110045, Department of Sharia Economic Law, Syari'ah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

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the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

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Acknowledged by,  
The Head Department of  
Sharia Economic Law



Prof. Dr. Fakhruddin, M.HI.  
NIP. 197408192000031002

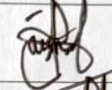
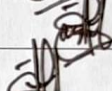
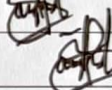

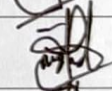

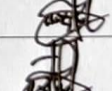
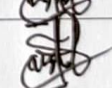
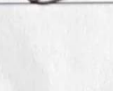
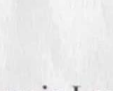
Supervisor,



Dr. H. Farshal Agil Al Munawar, Lc., M.Hum.  
NIP. 198810192019031010

## CONSULTATION PROOF

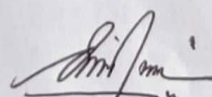
Name : Ashfa Azyan Zulfany  
Student Number : 210202110045  
Department : Sharia Economic Law  
Supervisor : Dr. H. Faishal Agil Al Munawar, Lc., M.Hum.  
Thesis Title : The Sea Sand Export Policy Based on Government Regulation Number 26 of 2023 Concerning the Management of Marine Sedimentation Products from the Sadd Al-Zari'ah Perspective

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Malang, 16 June 2025

Acknowledged by,

Head Department of Sharia Economic Law



Prof. Dr. Fakhruddin, M.HI.

NIP. 197408192000031002

## LEGITIMATION SHEET

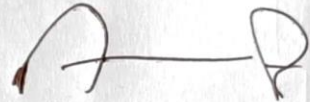
The Assembly Board of Thesis Examiners of Ashfa Azyan Zulfany (SIN 210202110045), student of Sharia Economic Law Department, Syari'ah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

**THE SEA SAND EXPORT POLICY BASED ON GOVERNMENT  
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Has been certified to pass in examination at 16 June 2025

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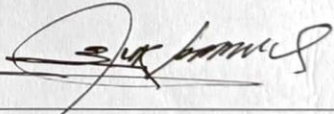
Dr. Noer Yasin, M.HI.  
NIP. 196111182000031001

  
Chairman

Dr. H. Faishal Agil Al Munawar, Lc., M.Hum.  
NIP. 198810192019031010

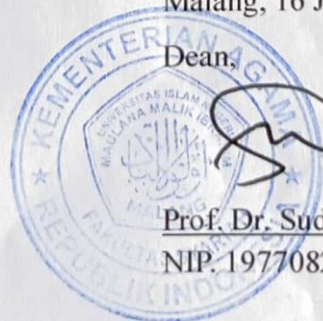
  
Secretary


Dr. Burhanuddin Susanto, S.HI., M.Hum.  
NIP. 197801302009121002

  
Main Examiner

Malang, 16 June 2025

Dean,



  
Prof. Dr. Sudirman, M.A., CAHRM.  
NIP. 197708222005011003

## MOTTO

وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا وَادْعُوهُ خَوْفًا وَطَمَعًا إِنَّ رَحْمَتَ اللَّهِ قَرِيبٌ مِّنَ الْمُحْسِنِينَ

Do not do any damage to the earth after it is well regulated. Pray to Him with fear and hope. Indeed, Allah's mercy is very near to those who do good deeds

**(Q.S. Al-A'raf verse 56)**

Vox populi vox dei

"the voice of the people is the voice of God"

**(Legal Adage)**

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This thesis was written as one of the requirements to obtain a Bachelor of Law degree at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang. The author hopes that this simple work can contribute thought to the policy discourse on natural resource management in the perspective of Islamic law, especially through the *sadd al-zari'ah* approach. The author is fully aware that the preparation of this thesis was not realized solely because of his own efforts. There are many parties who have provided support, guidance, and sincere prayers that are very meaningful. So, with all humility, the author would like to express his deepest gratitude to:

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step of the struggle, and tirelessly encouraged me to finish this thesis immediately. May this friendship last forever and always be a sweet memory throughout life.

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Malang, 21 May 2025  
Writer .



Ashfa Azyan Zulfany  
SIN 210202110045

## **TRANSLITERATION GUIDELINES**

### **A. Common**

Transliteration is the transfer of Arabic writing into Indonesian (Latin) script, not Arabic translation into Indonesian. Included in this category are Arabic names from Arab nations, while Arabic names from other nations other than Arabic are written as spelled in their national language, or as written in the book that is a reference. The writing of book titles in footnotes and bibliographies still uses this transliteration provision.

There are many options and provisions for transliteration that can be used in writing scientific papers, both national and international standards, and provisions that are specifically used by certain publishers. The transliteration used by the Faculty of Sharia, State Islamic University (UIN) Maulana Maulana Malik Ibrahim Malang uses EYD plus, namely transliteration transliteration based on the Decree of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543.b/U/1987, as stated in the Arabic Transliteration Guide, INIS Fellow 1992.

## B. Consonant

The list of Arabic letters and their transliteration into Latin can be seen on the following page:

Arabic	Indonesia	Arabic	Indonesia
ا	`	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	‘
ث	th	غ	Gh
ج	j	ف	f
ح	h	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	Dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	ه	h
ش	Sh	ي	‘
ص	ṣ		y

ض	ḍ		
---	---	--	--

Hamzah (ء) located at the beginning of the word follows the vowel without being marked with any mark. If the hamzah (ء) is located in the middle or at the end, then it is written with a sign (').

### C. Vocal

Arabic vowels, such as Indonesian vowels, consist of single or monophthongs and double vowels or diphthongs. Arabic singular vowels whose symbol is in the form of a sign or harakat, the transliteration is as follows:

Arabic	Indonesia	Arabic	Indonesia
ـَ	Fathah	A	A
ـِ	Kasrah	I	I
ـُ	Dammah	U	U

Arabic double vowels whose symbol is a combination of harakat and letters, the transliteration is in the form of a combination of letters, namely:

Sign	Name	Latin Letters	Name
ـَيَ	Fathah and yes	Ai	A and I
ـَوَ	Fathah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

هَوْلَ : *hawla*

#### D. Maddah

Maddah or long vowels whose symbols are in the form of harkat and letters, the transliteration is in the form of letters and signs, namely:

Letters and Harakat	Name	Letters and Signs	Name
اَ - ... .. Düsseldorf	Faḥah and alif or yes	ā	A and the line above
يَ	Kasrah and yes	ī	i and the line above
وُ	Ḍammah and wau	ū	u and the line above

Example:

قِيْلَ : *qiila*

يَمُوتُ : *yamuutu*

#### E. Ta Marbūṭah

There are two transliterations for ta marbūṭah, namely: ta marbūṭah who lives or has the dignity of faḥah, kasrah, and ḍammah, the transliteration is [t]. As for ta marbūṭah who dies or receives the dignity of breadfruit, the transliteration is [h].

If the word ending in ta marbūṭah is followed by a word that uses the verb al- and the reading of the two words is separate, then ta marbūṭah is transliterated with ha (h). Example:

الْمَدِينَةُ الْفَاضِلَةُ : *Al-Madīnah al-Fāḍilah*

رَوْضَةُ الْأَطْفَالِ : *Rauḍah al-aṭfāl*

الْحِكْمَةُ : *Al-Hikmah*

#### F. Syaddah (Tasydīd)

Syaddah or tasydīd which in the Arabic written system is denoted by a sign tasydīd ( ّ ), in this transliteration it is denoted by the repetition of letters (double consonants) which are marked with syaddah. Example:

If the letter ى is tasydīd at the end of a word and preceded by a letter with kasrah ( ِ ), then it is transliterated like the letter maddah (ī). Example:

رَبَّنَا : *Rabbina*

نَجِّنَا : *Najjina*

الْحَقُّ : *al-ḥaqq*

نُعَمَّ : *nu"ima*

عَدُوُّ : *aduwwwu*

#### G. Words

The adjective in the Arabic writing system is denoted by the letter ( لا ) alif lam ma'arifah). In this transliteration guideline, the word genang is transliterated as usual, al-, both when it is followed by the letter shamsiah and the letter qamariah. The verb does not follow the sound of the direct

letter that follows it. The verb is written separately from the word that follows it and is connected by a horizontal line (-). Examples:

الشَّمْسُ : *Al-Syamsu* (not *Ash-Syamsu*)

الزَّلْزَلَةُ : *Al-Zalzalah* (*az-zalzalah*)

الْفَلْسَفَةُ : *Al-Falsafah*

الْبِلَادُ : *Al-Bilādu*

## H. Hamzah

The rule of transliterating the letters hamzah into an apostrophe (') only applies to hamzah located in the middle and at the end of the word. However, if hamzah is located at the beginning of the word, it is not symbolized, because in Arabic writing it is in the form of alif. Examples:

تَأْمُرُونَ : *ta'murūna*

النَّوْعُ : *Al-Nau'*

شَيْءٌ : *Shai'un*

أُمِرْتُ : *umirtu*

## I. Writing Arabic Words Commonly Used in Indonesian

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are common and part of the Indonesian language, or have often been written in Indonesian writing, are no longer written according to the above transliteration method. For example, the words of the Qur'an (from the Qur'ān), sunnah, hadith, special and general. However,

if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

Fī ḡilāl al-Qur'ān

Al-Sunnah qabl al-tadwīn

Al-'Ibārāt Fī 'Umūm al-Lafḡ lā bi khuṣūṣ al-sabab

#### **J. Lafḡ Al-Jalālah (الله)**

The word "Allah" which is preceded by particles such as jarr and other letters or is positioned as muḡāf ilaih (nominal phrase), is transliterated without the letter hamzah. Example:

دِينُ اللهِ : *Dīnullāh*

بِالله : *Billāh*

As for ta marbūṭah at the end of the word which is attributed to lafḡ al-jalālah, it is transliterated with the letter [t]. Example:

هُم فِي رَحْمَةِ اللهِ : *hum fī raḡmatillāh*

#### **K. Capital Letters**

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration, the letters are subject to provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of one's name (person, place, month) and the first letter at the beginning of a sentence. If the personal name is preceded by the verb (al-), then what is written in capital letters is still the initial letter of the personal name, not the initial letter of the verb. If it is located at the beginning of a

sentence, then the letter A of the adjective uses a capital letter (Al-). The same provision also applies to the initial letter of the reference title preceded by the verb al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR). Example:

Wa mā Muḥammadun illā rasūl

Inna awwala baitin wuḍi'a linnāsi lallaẓī bi Bakkata mubārakan

Syahru Ramaḍān al-laẓī unzila fīh al-Qur'ān

Naṣīr al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

Al-Gazālī

Al-Munqiz min al-Ḍalāl

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## ABSTRAK

Ashfa Azyan Zulfany, 210202110045, 2025, Kebijakan Ekspor Pasir Laut Berdasarkan Peraturan Pemerintah Nomor 26 Tahun 2023 tentang Pengelolaan Produk Sedimentasi di Laut Dari Perspektif *Sadd al-zari'ah*., Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pengawas: Dr. H. Faishal Agil Al Munawar, Lc., M.Hum

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**Kata kunci:** Ekspor Pasir Laut, *Sadd al-zari'ah*, Hukum Lingkungan

Indonesia sebagai negara kepulauan dengan potensi sumber daya pasir laut yang besar menghadapi dilema antara pemanfaatan ekonomi dan perlindungan lingkungan. Pemerintah melalui Peraturan Pemerintah Nomor 26 Tahun 2023 tentang Pengelolaan Hasil Sedimentasi di Laut membuka kembali izin ekspor pasir laut, yang sebelumnya dilarang sejak 2003 karena dampak kerusakan ekologis dan aktivitas ilegal. Penelitian ini bertujuan untuk menganalisis kebijakan ekspor pasir laut berdasarkan PP No. 26 Tahun 2023 serta meninjau kebijakan tersebut dari perspektif *Sadd al-zari'ah* dalam hukum Islam, yang menekankan pencegahan mudarat lebih diutamakan dibandingkan pencapaian maslahat.

Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual, memanfaatkan bahan hukum primer berupa peraturan dan keputusan pemerintah, bahan sekunder seperti literatur akademik, serta bahan tersier seperti kamus hukum. Data dikumpulkan melalui studi kepustakaan dan sumber daring, kemudian dianalisis dengan metode deduktif dan deskriptif.

Hasil penelitian menunjukkan bahwa PP No. 26 Tahun 2023 bertentangan dengan Pasal 33 dan Pasal 28H UUD 1945 karena membuka ruang eksploitasi pasir laut yang mengabaikan prinsip keadilan ekologis dan keberlanjutan. Selain itu, PP ini tidak memiliki dasar delegasi yang sah dari UU No. 32 Tahun 2014 tentang Kelautan, cacat partisipatif karena minimnya pelibatan publik, serta bertentangan dengan teori kepastian hukum menurut Gustav Radbruch. Di sisi lain, analisis terhadap PP ini berdasarkan perspektif *Sadd Al-Zari'ah* menunjukkan bahwa kebijakan tersebut masuk dalam kategori *zari'ah* jenis ketiga menurut klasifikasi Ibnu Qayyim, yakni perbuatan mubah dengan niat baik yang menimbulkan mafsadah besar. Seluruh syarat penerapan *Sadd Al-Zari'ah* telah terpenuhi dimana terdapat mafsadah dominan, tidak ditemukan maslahat besar yang sah untuk membenarkan keberlanjutan kebijakan, dan tidak ada *nash syar'i* yang secara tegas mewajibkan atau membenarkan tindakan tersebut. Sehingga, PP No. 26 Tahun 2023 tidak hanya layak dicabut, tetapi pencabutan tersebut harus disertai dengan penyusunan ulang kebijakan yang lebih adil, ekologis, dan berkelanjutan, serta selaras dengan konstitusi nasional dan prinsip *Sadd Al-Zari'ah*.

## ABSTRACT

Ashfa Azyan Zulfany, 210202110045, 2025, Sea Sand Export Policy Based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the Perspective of *Sadd al-zari'ah*., Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Supervisor: Dr. H. Faishal Agil Al Munawar, Lc., M.Hum

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**Keywords:** Sea Sand Export, *Sadd al-zari'ah*, Environmental Law

Indonesia as an archipelagic country with a large potential for sea sand resources faces a dilemma between economic utilization and environmental protection. The government through Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea reopened the export permit for sea sand, which was previously banned since 2003 due to the impact of ecological damage and illegal activities. This study aims to analyze the sea sand export policy based on Government Regulation No. 26 of 2023 and review the policy from the perspective of *Sadd al-zari'ah* in Islamic law, which emphasizes the prevention of harm over the achievement of benefits.

This research uses normative juridical methods with a legislative and conceptual approach, utilizing primary legal materials in the form of government regulations and decisions, secondary materials such as academic literature, and tertiary materials such as legal dictionaries. Data was collected through literature studies and online sources, then analyzed by deductive and descriptive methods.

The results of the study show that Government Regulation No. 26 of 2023 is contrary to Article 33 and Article 28 H of the 1945 Constitution because it opens up space for the exploitation of sea sand that ignores the principles of ecological justice and sustainability. In addition, this PP does not have a valid basis for delegation from Law No. 32 of 2014 concerning Marine Affairs, is flawed in participation due to lack of public involvement, and is contrary to the theory of legal certainty according to Gustav Radbruch. On the other hand, the analysis of this PP based on the perspective of *Sadd Al-Zari'ah* shows that the policy is included in the category of the third type of *zari'ah* according to Ibn Qayyim's classification, which is the act of *mubah* with good intentions that causes great *mafsadah*. All the conditions for the implementation of *Sadd Al-Zari'ah* have been fulfilled where there is a dominant *mafsadah*, no valid large benefits are found to justify the sustainability of the policy, and there is no *nash syar'i* that expressly obliges or justifies such actions. thus, Government Regulation No. 26 of 2023 is not only worthy of being revoked, but the revocation must be accompanied by a fairer policy restructuring, ecological, and sustainable, and in line with the national constitution and the principles of *Sadd Al-Zari'ah*.

## ملخص البحث

أشفا عزيزان زلفاني، 210202110045، 2025، سياسة تصدير رمال البحر بناء على اللائحة الحكومية رقم 26 لسنة 2023 بشأن إدارة منتجات الترسيب في البحر من منظور سد/الزراعة، كلية الشريعة، مولانا مالك جامعة إبراهيم الإسلامية الحكومية. المشرف: د. فيصل عقيل المنور، م.هم.

الكلمات المفتاحية : تصدير الرمال البحرية، سد الزريعة، قانون البيئة

تواجه إندونيسيا كدولة أرخبيلية ذات إمكانات كبيرة لموارد الرمال البحرية معضلة بين الاستخدام الاقتصادي وحماية البيئة. أعادت الحكومة من خلال اللائحة الحكومية رقم ٢٦ لسنة ٢٠٢٣ بشأن إدارة منتجات الترسيب في البحر فتح تصريح تصدير رمال البحر ، والتي كانت محظورة سابقا منذ عام ٢٠٠٣ بسبب تأثير الأضرار البيئية والأنشطة غير القانونية. تهدف هذه الدراسة إلى تحليل سياسة تصدير الرمال البحرية بناء على اللائحة الحكومية رقم ٢٦ لسنة ٢٠٢٣ ومراجعة السياسة من منظور سد/الزريعة في الشريعة الإسلامية التي تؤكد أن منع الضرر له الأسبقية على تحقيق الفوائد.

يستخدم هذا البحث أساليب قانونية معيارية ذات نهج تشريعي ومفاهيمي، باستخدام المواد القانونية الأولية في شكل لوائح وقرارات حكومية، ومواد ثانوية مثل الأدبيات الأكاديمية، ومواد ثالثة مثل القواميس القانونية. تم جمع البيانات من خلال دراسات الأدبيات والمصادر عبر الإنترنت ، ثم تم تحليلها بالطرق الاستنتاجية والوصفية.

أظهرت نتائج الدراسة أن اللائحة الحكومية رقم ٢٦ لسنة ٢٠٢٣ تتعارض مع المادتين ٣٣ والمادة ٢٨ من دستور ١٩٤٥ لأنها تفتح المجال لاستغلال رمال البحر التي تتجاهل مبادئ العدالة والاستدامة البيئية. بالإضافة إلى ذلك، لا يوجد أساس صحيح لهذه اللائحة الحكومية للتفويض من القانون رقم ٣٢ لسنة ٢٠١٤ بشأن الشؤون البحرية، وهي معيبة في المشاركة بسبب عدم مشاركة الجمهور، وتتعارض مع نظرية اليقين القانوني وفقا لغوستاف رادبروخ. من ناحية أخرى ، فإن تحليل هذه اللائحة الحكومية المبني على منظور سد/الزريعة يبين أن السياسة مدرجة في فئة النوع الثالث من الزريعة وفقا لتصنيف ابن قيم ، وهو فعل المبة بحسن نية الذي يسبب المفسادة العظيمة. تم استيفاء جميع شروط تنفيذ سد/الزريعة حيث توجد مفسدة مهيمنة، ولم يتم العثور على فوائد كبيرة صالحة تبرر استدامة السياسة، ولا يوجد ناش سياري يتطلب أو يبرر صراحة هذه الإجراءات. وبالتالي فإن اللائحة الحكومية رقم ٢٦ لسنة ٢٠٢٣ لا تستحق الإلغاء فحسب، بل يجب أن يكون الإلغاء مصحوبا بإعادة هيكلة أكثر عدلا للسياسة. بيئية ومستدامة وبما يتماشى مع الدستور الوطني ومبادئ سد/الزريعة.

# CHAPTER I

## INTRODUCTION

### A. Background of the Problem

Indonesia is geographically known as a maritime country that has unique characteristics compared to many other countries in the world. With a sea area of more than 5.8 million square kilometers, which covers almost two-thirds of Indonesia's total sovereign territory.<sup>1</sup> So this country is naturally endowed with enormous marine wealth. This situation makes Indonesia the largest archipelagic country in the world, consisting of more than 17,000 islands spread from Sabang to Merauke.<sup>2</sup> As an archipelagic country, Indonesia holds the potential for very abundant marine resources, both biological resources such as fish and other marine life, as well as non-biological resources such as sea sand, minerals, and energy. In addition, the marine sector also holds great opportunities in the field of marine transportation, marine tourism, and the development of renewable energy such as ocean currents and waves. However, this potential has not been utilized optimally and sustainably.

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<sup>1</sup> Ministry of Energy and Mineral Resources, "Inauguration of Geomarine Vessel Operation III," Energy and Mineral Resources, August 4, 2009, accessed May 25, 2025, <https://www.esdm.go.id/id/media-center/arsip-berita/peresmian-pengoperasian-kapal-geomarin-iii>.

<sup>2</sup> Geospatial Information Agency (BIG), "Indonesian Island Increases to 17,380, Why Does the Number Change Every Year?," SIPULAU, May 13, 2025, accessed May 27, 2025, <https://sipulau.big.go.id/news/11>.

Within the framework of international law, Indonesia bears an important responsibility in managing its maritime areas as stipulated in the United Nations Convention on the Law of the Sea (UNCLOS) 1982. Indonesia has ratified this convention through Law Number 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea.<sup>3</sup> Thus, Indonesia is obliged to regulate, protect, and utilize marine resources in a sovereign manner throughout its territorial waters, including territorial seas, additional zones, exclusive economic zones (EEZs), and continental shelf. In addition, within the framework of UNCLOS, Indonesia also has the right to regulate shipping traffic and maintain security at sea. Not only that, another obligation that must be fulfilled is to protect the marine ecosystem from pollution and prevent violations of international maritime law.<sup>4</sup> All of these responsibilities affirm Indonesia's position as an archipelagic country that has a strategic role in maintaining sustainable marine governance.

The aspect of protecting the marine environment in Indonesian law has a strong constitutional basis. Article 28H paragraph (1) of the 1945 Constitution explicitly states that everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living

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<sup>3</sup> Putra, Hutomo, and Pratondo Ario Seno Sudiro. "The Implementation of UNCLOS 1982 on Efforts to Protect Underwater Historic Cultural Resources in Indonesian Waters and Jurisdictions: Problems, Challenges, and Solutions." *Proceedings of SENAMA AKPELNI*, no.1(2025): 48.

<sup>4</sup> Putra, Hutomo, and Pratondo Ario Seno Sudiro. "The Implementation of UNCLOS 1982 on Efforts to Protect Underwater Historic Cultural Resources in Indonesian Waters and Jurisdictions: Problems, Challenges, and Solutions." *Proceedings of the AKPELNI Namesake*, no.1(2025): 51.

environment.<sup>5</sup> This right is not only an individual right, but also a constitutional mandate for the state to realize it through sustainable policies and regulations. Furthermore, Article 33 paragraph (3) of the Constitution of the Republic of Indonesia states that "*The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.*"<sup>6</sup> This provision emphasizes the role of the state as the main manager of natural resources, including the sea, with the responsibility to regulate and protect the environment for the public interest and the survival of future generations.

The constitutional mandate related to environmental protection is elaborated in more detail through Law Number 32 of 2009 concerning Environmental Protection and Management, which is the main legal umbrella in this field. The law contains important principles such as prudence, state responsibility, intergenerational justice, and sustainable development. In the marine context, this regulation requires that every exploration and exploitation activity in the marine area is based on the principles of conservation, pollution prevention, and protection of marine ecosystems and biodiversity. One of the main principles carried out is sustainable development, which emphasizes a balance between economic, social, and environmental aspects.<sup>7</sup> This principle requires that the use of marine resources is carried out wisely without damaging the existing

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<sup>5</sup> Article 28H paragraph (1) of the Constitution of the Republic of Indonesia in 1945.

<sup>6</sup> Article 33 paragraph (3) of the Constitution of the Republic of Indonesia in 1945.

<sup>7</sup> Article 3 of Law Number 32 of 2009 concerning Environmental Protection and Management

ecosystem. The goal is to maintain the sustainability of resources while ensuring the rights of future generations to enjoy them.

In the Islamic perspective, the management of natural resources, including marine wealth, is seen as part of human moral and spiritual responsibility as *a caliph fil ardh*.<sup>8</sup> As stated in the Qur'an Surah Al-Baqarah verse 30, that humans are given the mandate to prosper the earth and maintain the balance of nature. Therefore, the use of resources must not be exploitative or destructive. Islam also affirms the prohibition against environmental destruction, as Allah says in the Qur'an Surah Al-A'raf verse 56, "*And do not make any damage on the earth after Allah has repaired it, and pray to Him with fear (of rejection) and hope (of being granted). Indeed, Allah's mercy is very near to those who do good.*" This verse shows that destroying the environment, including marine and coastal ecosystems, is a reprehensible act that is contrary to Islamic principles. Activities such as marine pollution, or neglect of marine conservation are tangible forms of damage that are forbidden in Islam.

Resource management in Islam contains the principle of trust, which is a responsibility that must be maintained and accounted for, both to fellow human beings and to Allah. Thus, every effort to explore and exploit natural resources must pay attention to the principle of intergenerational justice. This means that future generations are entitled to benefit from the same

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<sup>8</sup> Zawil Fadli, Muhammad Sarjan, "The Ethics of Sustainable Natural Resources Management in an Islamic Perspective," *Lambda: Journal of Mathematics and Natural Sciences Education and Its Application of the "Bale Literasi" Institute*, no.1(2024): 03.

resources without being harmed by the actions of the current generation. Sustainability ethics and prudence are an important part of realizing fair environmental management according to Islamic teachings. This principle requires that every resource utilization be done wisely and not excessively. In addition, management in accordance with Islamic values must always be oriented towards a balance between human interests and nature conservation.

The Government of Indonesia has again opened up opportunities for the legalization of sea sand exports, which had been banned for more than twenty years through Government Regulation (PP) Number 26 of 2023 concerning the Management of Sedimentation Products at Sea, which was stipulated on May 15, 2023.<sup>9</sup> This regulation expressly stipulates that the export of sea sand is only allowed if it comes from dredging and sedimentation and domestic needs have been met first. Article 9 in the Government Regulation emphasizes that sea sand can be exported if it is no longer needed for national interests such as coastal reclamation, shoreline strengthening, or restoration of coastal ecosystems.<sup>10</sup> With this policy, the government provides space for the use of marine resources more flexibly without neglecting the priority of national needs. This step is considered an effort to balance the management of natural resources and the economic

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<sup>9</sup> Jauhari, Arman, and Agus Surono, "The Effect of Sea Sand Sedimentation Export Permit Policy on Ecological Justice on the Welfare of Coastal Communities," *National Conference on Law Studies (NCOLS)*, No.1(2023): 71.

<sup>10</sup> Article 9 of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea.

interests of the country. However, strict supervision is still needed so that the use of sea sand runs sustainably.

As a follow-up to the Government Regulation, the Ministry of Trade issued Regulation of the Minister of Trade (Permendag) Number 20 of 2024 which is the second amendment to the Minister of Trade Regulation Number 22 of 2023 concerning goods that are prohibited for export. In addition, Trade Regulation Number 21 of 2024 was also issued as the second amendment to Trade Regulation Number 23 of 2023 concerning export policies and regulations.<sup>11</sup> These two regulations function as implementing instruments that regulate in detail technical export procedures, including requirements, licensing, supervision, and sanctions for violators. The policy reflects a change in strategy in the use of Indonesia's marine resources. However, this policy also sparked a debate about the balance between short-term economic interests and long-term environmental protection efforts. Therefore, the implementation of this policy requires careful and sustainable management.

This policy cannot be separated from the long history of the ban on sea sand exports which has been enforced since 2003 through the Decree of the Minister of Industry and Trade Number 117/MPP/Kep/2/2003.<sup>12</sup> The

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<sup>11</sup> Oyuk Ivani Siagian, "The Government Returns to Sea Sand Exports, Jokowi: Sedimentation Is Different, Despite the Form of Sand," *Tempo*, September 17, 2024, accessed May 27, 2025, <https://www.tempo.co/ekonomi/pemerintah-kembali-ekspor-pasir-laut-jokowi-sedimentasi-itu-beda-meski-wujudnya-pasir-8912>.

<sup>12</sup> Aliefia Shatila Diva Khairunnisa, Muhammad Sarjan, "The Relationship between Human Needs and Natural Resource Management: An Analysis of Sea Sand Export Activities in Indonesia," *Lambda: Journal of Mathematics and Natural Sciences Education and Its Application of the "Bale Literasi" Institute*, no.1(2025): 130.

ban came about in response to the rampant large-scale sea sand mining without adequate supervision, causing serious environmental damage. This illegal activity leads to coastal abrasion, damage to coral reefs, and even the loss of land on small islands. Based on data from the Ministry of Maritime Affairs and Fisheries, until 2009 there were 26 small islands in the Riau region that disappeared due to coastal abrasion due to massive sea sand mining.<sup>13</sup> In addition, records from the Indonesian Environment Forum (WALHI) show that about 20 small islands in the Riau, Maluku, and other archipelago areas have been submerged, while more than 115 other small islands face the same threat. This condition shows the serious impact caused by the uncontrolled exploitation of marine resources.<sup>14</sup>

This condition has a direct impact on the lives of coastal communities. WALHI data in 2023 recorded that around 35,000 fishing families lost access to marine resources that are their main livelihood due to ecosystem damage.<sup>15</sup> In Jepara, Central Java, Tri Ismuyati, a coastal woman from Bandungharjo Village, recounted how the lives of fishermen changed drastically after the sea sand in their area was dredged for industrial purposes. The damage to the seabed makes it difficult to find fish, so

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<sup>13</sup> Batamnow.com, Horror! Until 2009, 26 small islands have been lost due to sea sand mining," BatamNow, May 09, 2022, accessed May 27, 2025, <https://batamnow.com/ngeri-hingga-2009-sudah-26-pulau-kecil-hilang-akibat-penambangan-pasir-laut/>.

<sup>14</sup> Indonesian Environment Forum (WALHI), "Appeal of 28 WALHI Regional Executives throughout Indonesia to the President of the Republic of Indonesia," WALHI, February 9, 2022, accessed May 27, 2025, <https://www.walhi.or.id/seruan-28-eksekutif-daerah-walhi-se-indonesia-kepada-presiden-republik-indonesia.^1>.

<sup>15</sup> Indonesian Forum for the Environment (WALHI), "Protect 7,280 islands from the threat of climate crisis, ecological disasters and region-based industrial investment in Banusramapa," WALHI, February 20, 2023, accessed May 27, 2025, <https://www.walhi.or.id/lindungi-7-280-pulau-dari-ancaman-krisis-iklim-bencana-ekologis-dan-investasi-industri-berbasis-kawasan-di-banusramapa>.

fishermen have to go further to sea with greater risks.<sup>16</sup> Even though mining activities have stopped, the impact is still felt today. In Bangka Belitung, the practice of exporting sea sand to Singapore has been going on since 2001 with a shipping volume of 300,000 to 500,000 tons every month.<sup>17</sup> Two decades later, environmental damage is still very visible, while weak law enforcement has led to illegal practices continuing into 2012, especially in Karimun and the Riau Islands, with volumes reaching 250 million cubic meters per year.<sup>18</sup> Ironically, the sand is sold for twice as much as the price in Indonesia and is used to expand Singapore's mainland area by up to 25 percent.

Cases of illegal sea sand mining continue to occur in various regions. For example, on June 28, 2024, three ships that were illegally mining sea sand in Karimun Regency, Riau Islands, were successfully arrested by the Indonesian Maritime Security Agency.<sup>19</sup> In addition, on February 10, 2025 in Labuan Bajo, the Indonesian Navy Base arrested 16 fishermen from Rangko Hamlet who were involved in illegal sand mining for resort

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<sup>16</sup> Yasin Fajar A, "The Story of Mak Tri: Caring for the Sea, Empowering Women", KIARA, December 18, 2024, accessed May 27, 2025, <https://www.kiara.or.id/2024/12/18/kisah-mak-tri-merawat-laut-memberdayakan-perempuan/>.

<sup>17</sup> Indonesian Forum for the Environment (WALHI), "Coastal Communities and Women with WALHI Against Sea Sand Mining and Export," WALHI, September 19, 2024, accessed May 27, 2025, <https://www.walhi.or.id/masyarakat-dan-perempuan-pesisir-bersama-walhi-melawan-pertambangan-dan-ekspor-pasir-laut>.

<sup>18</sup> Pandu Wiyoga, "Apparatus Investigates Illegal Sea Sand Mining in Karimun", Kompas, July 3, 2024, accessed May 27, 2025, <https://www.kompas.id/baca/nusantara/2024/07/03/aparat-usut-tambang-pasir-laut-ilegal-di-karimun>.

<sup>19</sup> Alamudin Hamapu, "Bakamla Secures 3 Illegal Sand Mining Vessels in Karimun Waters," seconds North Sumatra, June 28, 2024, accessed May 27, 2025, <http://detik.com/sumut/berita/d-7413898/bakamla-amankan-3-kapal-pertambangan-pasir-ilegal-di-perairan-karimun>

reclamation.<sup>20</sup> This fact shows that despite the ban policy, its implementation has not been fully effective. Tensions had arisen between Indonesia and Singapore regarding the export of sea sand, because Singapore as the main importer used the sand for land reclamation. The export ban from Indonesia has been criticized because it is considered to limit the use of resources, thus triggering a rift in trade relations. However, this policy also increases awareness of the importance of maintaining coastal ecosystems for ecological defense and territorial sovereignty.

On the other hand, the government's policy to reopen sea sand exports is seen as a strategic step in encouraging national economic growth. The Minister of Maritime Affairs and Fisheries, Sakti Wahyu Trenggono, stated that Indonesia has the potential to get income of up to Rp 67 trillion from these export activities. This figure shows the government's optimism about the high demand for the international market, especially from Southeast Asian countries such as Singapore, Vietnam, and the Philippines.<sup>21</sup> These countries need a large supply of sand for reclamation and coastal infrastructure development. This policy is expected to make a significant contribution to state revenue as well as open up job opportunities

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<sup>20</sup> Nansianus Taris and Aloysius Gonsaga AE, "Illegal Sea Sand Mining for Resort Reclamation in Labuan Bajo Costs the State Rp 1.8 Billion," February 12, 2025, accessed May 27, 2025, <https://regional.kompas.com/read/2025/02/12/081752078/penambangan-pasir-laut-ilegal-untuk-reklamasi-resort-di-labuan-bajo-rugikan>.

<sup>21</sup> Dian Erika Nugraheny, Sakina Rakhma Diah Setiawan, "Indonesia Said to Be Able to Get Rp 67 Trillion in Income from Sea Sand Exports," November 21, 2024, accessed May 27, 2025, <http://money.kompas.com/read/2024/11/21/154242326/indonesia-disebut-bisa-dapat-pemasukan-rp-67-triliun-dari-ekspor-pasir-laut>.

for the community. However, strict supervision is needed so that export activities do not neglect environmental sustainability aspects.

Furthermore, economic and political observer, Algooth Putranto, assessed that this policy opens up opportunities to increase state revenue in the maritime sector.<sup>22</sup> The export of sea sand sediments is considered to provide great benefits, such as increasing the country's foreign exchange, creating jobs, and improving the welfare of coastal communities. In addition, wise export management can support the development of local infrastructure, such as ports and transportation facilities in coastal areas. The presence of this infrastructure has the potential to strengthen connectivity between coastal areas and increase Indonesia's competitiveness in the international market. Thus, the government views the sea sand export policy as part of the blue economy framework that prioritizes the productive and sustainable use of marine resources. This approach is expected to be able to integrate economic growth with environmental conservation.

The reopening of sea sand exports by the Indonesian government has caused controversy in the economic, geopolitical, and environmental fields. The policy has been widely rejected by environmental organizations and coastal communities who are concerned about threats to the sustainability of marine resources and the lives of local communities. The Indonesian Forum for the Environment (WALHI) has been one of the most

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<sup>22</sup> Eko Nordiansyah, "These are the Benefits of Sea Sand Sediment Exports for the National Economy," October 11, 2024, accessed May 27, 2025, <https://www.metrotvnews.com/read/NLMC2GgV-ini-manfaat-ekspor-sedimen-pasir-laut-bagi-perekonomian-nasional>.

vocal parties in opposing the policy. WALHI considers that sea sand exports are contrary to the principles of environmental protection and ecosystem sustainability. They highlight the negative impacts of mining, such as coastal abrasion, destruction of marine habitats, and loss of livelihoods for thousands of fishermen. In addition, WALHI criticized the lack of public participation in the decision-making process as well as weak oversight of illegal mining activities.<sup>23</sup> This condition shows the need for a thorough evaluation of the policy in order to maintain a balance between development and environmental sustainability.

Greenpeace Indonesia also condemned this policy and considered it a setback from Indonesia's commitment to sustainable development and climate change mitigation. According to Greenpeace, the impact of sea sand mining is cross-border and has the potential to disrupt the stability of marine ecosystems globally.<sup>24</sup> They urged a complete halt to the policy and proposed an economic alternative that focuses on marine conservation. The Save Small Islands Coalition, which is made up of various institutions, academics, and local communities, also rejected this policy. They assessed that sea sand exports can accelerate the sinking of small islands due to abrasion and land subsidence. These islands have a strategic role in

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<sup>23</sup> Indonesian Forum for the Environment (WALHI), "Coastal Communities and Women with WALHI Against Sea Sand Mining and Exports," WALHI, September 19, 2024, accessed May 27, 2025, <https://www.walhi.or.id/masyarakat-dan-perempuan-pesisir-bersama-walhi-melawan-pertambangan-dan-ekspor-pasir-laut>.

<sup>24</sup> Greenpeace Indonesia, "Sea Sand Exports Add to the Jokowi Regime's Ecological Sins at the End of Their Term," September 16, 2024, accessed May 27, 2025, <https://www.greenpeace.org/indonesia/siaran-pers-2/59171/ekspor-pasir-laut-menambah-dosa-ekologis-rezim-jokowi-di-penghujung-jabatan/>.

maintaining Indonesia's sovereignty and biodiversity. In addition, the Traditional Fishermen's Forum as a representative of the affected communities directly expressed their strong rejection due to the decline in catches and the increasing cost of going to sea due to ecosystem damage. They emphasized that this policy ignores the rights of coastal indigenous peoples and narrows their living spaces.

The reopening of sea sand exports raises serious concerns about ecological impacts, particularly in coastal areas and marine ecosystems. One of the main impacts is the change in the morphology of the coast, which is the disruption of the natural balance of the coastline due to massive sand removal. These conditions accelerate the erosion process and disrupt the overall dynamics of the coast. In addition, sand dredging activities damage the seabed habitat which is the habitat of various marine life.<sup>25</sup> The destruction of this habitat has the potential to reduce fish populations while threatening the livelihoods of traditional fishermen. Coral reefs also face serious threats due to increased water turbidity and sedimentation, which inhibit photosynthesis and accelerate the destruction of coral ecosystems. The risk of coastal abrasion also increases sharply due to the loss of a natural protective layer, making coastal land increasingly vulnerable to ocean waves.

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<sup>25</sup> Anggariani, et al., "Sand mining and the socio-economic impact of coastal communities." *SIGN Journal of Social Science*, no.1(2020): 22.

Sea sand exports have the potential to cause territorial conflicts in marine and coastal areas, which is a strategic issue involving aspects of international law, economy, security, and diplomacy.<sup>26</sup> This conflict is increasingly important because the exploitation of coastal resources can trigger maritime boundary disputes as well as overlapping territorial claims. In addition, claims to dredging areas also cause tension between administrative regions. The case of reclamation in Jakarta Bay and the export of sea sand in the Riau Islands are clear examples of this problem.<sup>27</sup> According to WALHI, these activities not only damage the environment, but also eliminate the livelihood of fishermen. In addition, this policy triggers a conflict of authority between the central and regional governments, which further complicates its handling. Therefore, better coordination efforts are needed to overcome these impacts.

The global market demand for construction materials, especially sea sand and land sand, is one of the main factors driving the large-scale exploitation of natural resources in Southeast Asia, including Indonesia.<sup>28</sup> Sand is an important raw material in various infrastructure projects such as reclamation, port development, airports, as well as industrial and residential areas. Several countries in the Asian region experience limited sand

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<sup>26</sup> Amri, et al., "Vertical Synchronization of PP No. 26/2023 with the 1945 Constitution of the Republic of Indonesia on the Legal Policy on Sea Sand Export," *UNES Law Review*, no.1(2023): 2344.

<sup>27</sup> Moh. Mufid, "Anthropocosmic-based marine fiqh reconstruction: a case study of reclamation in Jakarta Bay," *Al-Tahrir: Islamic Journal of Thought*, no.2(2017): 376-377.

<sup>28</sup> A. Asnawi, "Sea Sand Exports: Threats to Ecosystems and Communities, for Whose Benefit?", MONGABAY, October 28, 2024, accessed May 27, 2025, <https://mongabay.co.id/2024/10/28/ekspor-pasir-laut-ancam-ekosistem-dan-masyarakat-untuk-kepentingan-siapa/>.

resources in their regions so they depend on imports from other countries, including Indonesia. This condition has triggered an increase in sand mining activities to meet the needs of the international market. However, massive exploitation also poses challenges in sustainable resource management. Therefore, sand management policies must consider economic and environmental aspects. This step is important so that the use of sand does not damage the ecosystem and still supports long-term development.

From an economic point of view, the Indonesian government sees sea sand exports as a strategic commodity that has the potential to increase the country's foreign exchange income.<sup>29</sup> In an effort to recover the economy after the COVID-19 pandemic, optimizing the maritime sector and diversifying export products are top priorities, so that sea sand that was previously considered sedimentation waste is starting to be used as a new source of income. This strategy is expected to reduce dependence on traditional commodities while accelerating national economic recovery. However, from an ecological perspective, negative impacts such as coastal abrasion, loss of small islands, and damage to marine ecosystems are serious concerns that are difficult to fix. Tensions between national interests that prioritize economic growth and local communities that directly feel environmental damage and loss of livelihoods are the source of conflict. The difference of views between short-term gains and long-term losses muddles

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<sup>29</sup> Mochammad Ramzy Mubarrak, "The Perspective of Environmental Journalism in Reporting on the Legalization of Sea Sand Exports in Kompas Online Media. Com. Bs" (Undergraduate thesis, Syarif Hidayatullah State Islamic University, Jakarta, 2024), <https://repository.uinjkt.ac.id/dspace/handle/123456789/82760>.

this debate. Therefore, policies that are able to balance economic and environmental aspects are needed so that the use of sea sand can be carried out sustainably.

However, this policy not only triggered a strong reaction from environmental groups and coastal communities, but also caused controversy in the legal realm. Many people question the legality of Government Regulation Number 26 of 2023 because it does not have a clear delegation of authority from Law Number 32 of 2014 concerning Marine Affairs. In addition, the drafting process is considered closed and lacks public participation, contrary to the principles of openness and accountability in the formation of laws and regulations as mandated by Law Number 12 of 2011. This PP also causes overlap with other regulations, such as PP Number 5 of 2021, especially in terms of regulating AMDAL and restricting mining areas, so it has the potential to create legal uncertainty. This controversy shows the urgency to review the policy through a comprehensive legal approach, including an assessment from an Islamic legal perspective that prioritizes the principle of harm prevention.

Research on sea sand export policy from the perspective of Islamic law is very important because sea sand is a strategic natural resource that has a wide economic, environmental, and social impact. In Islamic law, resource management must be based on the principles of justice, environmental stewardship (*hifz al-bi'ah*), and sustainability.<sup>30</sup> Sea sand

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<sup>30</sup> Fitrian Noor, "Natural Resources Management Based on the Principles of Fiqh Al-Bi'ah,"

exports can increase the country's foreign exchange and support post-pandemic economic recovery, thereby providing significant economic benefits. However, these activities also have negative impacts, such as coastal erosion, destruction of marine habitats, and loss of biodiversity. This impact has the potential to damage ecosystems and threaten the livelihoods of coastal communities. Therefore, a balanced study is needed between economic benefits and ecological responsibility in accordance with the principles of Islamic law.

The *maslahah* and *mafsadah* approach in Islamic *fiqh* requires a thorough assessment of whether the economic benefits obtained are proportional to the social and environmental damage that occurs. Furthermore, the principle of *Sadd al-zari'ah* or prevention of potential damage becomes very relevant, as it emphasizes the importance of prudent policies, anticipating long-term impacts, and preventing harm before it occurs.<sup>31</sup> This approach also requires the protection of the public interest and harmonization of policies with all regulations related to sea sand exports. This research is important to provide policy recommendations that not only optimize the economic benefits of sea sand exports, but also maintain the environmental sustainability and social welfare of coastal communities, in accordance with the values and principles of Islamic law. Thus, this study focuses on **"The Sea Sand Export Policy Based on**

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*Scientific Journal of Pancasila and Citizenship Education*, no.1 (2018): 48.

<sup>31</sup> Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwaqqi'in*, 5th volume (Beirut; Daar Al-Kutub, 1996), 66.

**Government Regulation Number 26 of 2023 concerning the Management of Marine Sedimentation Products in the Sea from the *Sadd al-zari'ah* Perspective".**

**B. Problem Formulation**

Based on the background of the problem that has been described earlier, the researcher formulated the problems of this study:

1. How is the legality of the sea sand export policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea?
2. How is the sea sand export policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the perspective *of Sadd al-zari'ah*.

**C. Research Objectives**

Based on the formulation of the problem that has been explained earlier, the research objectives can be formulated, as follows:

1. Analyze and describe the legality of the sea sand export policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea.
2. Analyzing and elaborating on sea sand export policies based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the perspective *of Sadd al-zari'ah*.

## **D. Benefit of Research**

### **1. Theoretical Benefits**

- a. The results of this research can be a reference material for readers and parties related to legal science, especially in understanding the sea sand export policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the perspective of *Sadd al-zari'ah*.
- b. This research is expected to be a reference in resolving legal problems related to sea sand exports, especially in analyzing potential losses and negative impacts on the environment and economy, in accordance with the principles of *Sadd al-zari'ah* which focuses on damage prevention (mafsadah). (mafsadah).

### **2. Practical Benefits**

- a. For researchers

This research is useful for the author to deepen his understanding of the legal aspects of sea sand exports and the application of *the concept of Sadd al-zari'ah* in legal policy. In addition, this study provides valuable experience in analyzing regulations on the use of natural resources, which can be an important provision for the author in the development of science in the field of sharia economic law and environmental law.

b. For the community

The results of this study are expected to be able to provide understanding to the public about the sea sand export policy based on the principle of *Sadd al-zari'ah*. With this increased understanding, it is also hoped that awareness will grow of the importance of regulation on the exploitation of natural resources, so that the community can be more critical in responding to policies related to environmental sustainability and the use of sea sand.

c. For the next researcher

This research can be a reference for other researchers who want to further study environmental law issues, export policies, or the application of *Sadd al-zari'ah* in natural resource regulation. In addition, the results of this research are also expected to enrich the literature in the library of UIN Maulana Malik Ibrahim Malang, so that it is useful for students who want to research similar topics.

## **E. Operational Definition**

In this study, there are several words that need to be explained in more detail to make it easier for readers to understand, namely:

1. Sea Sand Exports

Indonesian sea sand exports, as referred to in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, is the activity of shipping or releasing goods from customs areas to be sold abroad, while still complying with the applicable

regulations in Indonesia.<sup>32</sup> Specifically, sea sand exports refer to the activity of shipping or selling sand originating from the seabed or coastline to other countries for commercial purposes. This activity includes the stages of mining, processing, transportation, and shipping sea sand from Indonesian territory to export destination countries. In its implementation, sea sand export activities must pay attention to environmental provisions and comply with regulations that have been set by the government. Therefore, this activity is not only related to economic aspects, but also concerns responsibility for the preservation of marine ecosystems and the sustainability of the use of natural resources.<sup>33</sup>

## 2. Sea Sand Export Policy

Sea sand export policy is a series of decisions and steps set by the government or related institutions to regulate and manage sea sand export activities from national waters. The policy covers various aspects, ranging from the granting of export permits, regulations related to environmental protection, supervision of sea sand mining activities, to the management of legal, economic, and social impacts that arise from these export activities. In the context of this research, the main focus is on policies regulated through Government Regulation Number 26 of

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<sup>32</sup> Article 1 of Law No. 17 of 2006 concerning Amendments to Law No. 10 of 1995 concerning Customs

<sup>33</sup> Sri Wahyuni Nurdin, Darwis, Imam Fadhil Nugraha, "Sea Sand Exports as a Threat in Realizing Indonesia's Opportunities as the World's Maritime Axis," *Triwikrama: Journal of Social Sciences*, no.7(2024): 7.

2023 concerning the Management of Marine Sedimentation Products.

This regulation is an important foundation in understanding how the government seeks to balance the use of natural resources with environmental sustainability.<sup>34</sup>

### 3. Government Regulation Number 26 of 2023

Government Regulation Number 26 of 2023 regulates the management of exports of marine sedimentation products, including sea sand, as long as domestic needs have been met,<sup>35</sup> by paying attention to environmental, economic, and sustainability aspects. The sea sand export policy in this study refers to the mechanism of permitting, supervision, and restricting mining activities and the sale of these products abroad in accordance with applicable regulations, with the aim of maintaining the balance of the ecosystem and providing legal protection against social and environmental impacts.

### 4. *Sadd al-zari'ah*

*Sadd al-zari'ah* is one of the methods of establishing law in Islam which in language means "closing the way" or cutting off the means to destruction. In the context of this research, the principle of *Sadd al-zari'ah* is understood as an effort to prevent an act that is basically permissible, but has the potential to cause damage (mafsadah) if left

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<sup>34</sup> Helena Dwi Yansen, Lulu Yuliana Putri, and Wangi Ramadhana, "Analysis of marine sedimentation (sea sand) export policy on Government Regulation number 26 of 2023 concerning the management of marine sedimentation products." *Lex Sharia Pacta Sunt Servanda: Journal of Islamic Law and Policy*, no.1(2023): 16.

<sup>35</sup> Article 9 of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea.

unchecked.<sup>36</sup> This principle is important to use as a basis for analyzing sea sand export activities from the perspective of Islamic law. Not only seen in terms of formal legality, but also considering the negative impacts that may occur, both on the environment and the socio-economic conditions of the community.

## **F. Research Methods**

Research method is an approach or technique that is systematically compiled and applied by researchers in collecting data and information relevant to the research being conducted.

### **1. Types of Research**

The type of research used in this study is normative juridical research. This approach focuses more on the study of doctrines and principles in law. Research on legal principles aims to find positive legal principles or doctrines that apply, which in legal research is known as doctrinal research.<sup>37</sup>

This normative research is a study of legal systematics, which is research whose main purpose is to identify definitions or bases in law.<sup>38</sup>

Normative juridical research is literature law research that is carried out by examining literature materials or secondary data. This type of research is used because the researcher will analyze the sea sand export

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<sup>36</sup> Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwaqqi'in*, 5th volume (Beirut; Daar Al-Kutub, 1996), 66.

<sup>37</sup> Bambang Waluyo, *Legal Research in Practice* (Jakarta: Sinar Grafika, 1996), 13.

<sup>38</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 48.

policy based on government regulation number 26 of 2023 concerning the management of marine sedimentation products.

## 2. Research Approach

The approach used in this study is the statute approach.<sup>39</sup> The legislative approach is carried out by examining various regulations related to the object of research, namely sea sand. In this study, the study of the legislative approach is focused on Government Regulation Number 26 of 2023 concerning the Management of Marine Sedimentation Products. This regulation is the main basis for analyzing how the government regulates the use of sea sand, both in terms of permits, governance, and supervision. This approach is important to understand the applicable legal limitations related to sea sand export activities.

In addition, the approach used in this study is a conceptual approach.<sup>40</sup> This approach is a type of approach in legal research that provides an analytical perspective in solving problems by reviewing the underlying legal concepts. The conceptual approach also looks at the values contained behind a regulation, especially related to its legal meaning or philosophy. In this study, a conceptual approach is used through the application of the concept of *Sadd al-zari'ah* as a perspective to analyze the legal policy of sea sand exports, especially

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<sup>39</sup> Peter Mahmud MZ, *Legal Research* (Jakarta: Prenada Media, 2005), 93.

<sup>40</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 56.

in considering the potential for environmental damage and the social impact it causes.

### 3. Legal Ingredients

In this study, three types of legal materials were used, namely primary, secondary, and tertiary legal materials.

#### a. Primary Legal Material

Primary legal material is an authoritative source of law. This material includes laws and regulations, official records or academic study minutes in the process of forming regulations, as well as judges' decisions.<sup>41</sup>

In this study, the laws and regulations used as a reference include:

- 1) Constitution of the Republic of Indonesia in 1945
- 2) Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations
- 3) Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands
- 4) Law Number 32 of 2014 concerning Marine Affairs

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<sup>41</sup> Soerjono Soekanto and Sri Mamudji, *Normative Law Research, A Brief Review*, (Jakarta: Radja Grafindo Persada, 1995), 13.

- 5) Government Regulation of the Republic of Indonesia Number 26 of 2023 concerning the Management of Sedimentation Products at Sea
- 6) Regulation of the Minister of Maritime Affairs and Fisheries Number 3 of 2025 concerning Amendments to the Regulation of the Minister of Maritime Affairs and Fisheries Number 33 of 2023 concerning the Regulation on the Implementation of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea
- 7) Regulation of the Minister of Trade Number 20 of 2024 as the second amendment to the Minister of Trade Regulation Number 22 of 2023 concerning Goods Prohibited for Export
- 8) Regulation of the Minister of Trade Number 21 of 2024 as the second amendment to the Minister of Trade Regulation Number 23 of 2023 concerning Export Policies and Regulations
- 9) Decree of the Minister of Industry and Trade No. 117 of 2003 concerning the Temporary Suspension of Sea Sand Exports
- 10) Decree of the Minister of Maritime Affairs and Fisheries Number 16 of 2024 concerning Planning Documents for the Management of Sedimentation Products at Sea

11) Decree of the Minister of Maritime Affairs and Fisheries  
Number 47 of 2024 concerning Specifications of Sedimentated  
Sand at Sea

b. Secondary Legal Materials

Secondary legal materials include all publications that do not have official binding power, but are still used as supporting materials in legal research.<sup>42</sup> These publications include books that discuss legal issues, theses, dissertations in the field of law, legal dictionaries, books that review the concept of *Sadd al-zari'ah*, and legal journals that examine aspects of the sea sand export policy.

c. Tertiary Legal Materials

Tertiary legal materials are sources that function to provide further explanations or understanding of primary and secondary legal materials. These sources include legal dictionaries, the Great Indonesian Dictionary, and foreign language dictionaries.<sup>43</sup> In this study, the tertiary legal materials used include legal dictionaries and the Great Dictionary of the Indonesian Language as a support to clarify the meaning of terms related to the research topic.

4. Legal Material Collection Techniques

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<sup>42</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 61.

<sup>43</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 62.

Based on this research, there are two techniques in the collection of legal materials, namely:

a. Library Research

Literature studies were carried out by collecting and studying primary, secondary, and tertiary legal materials related to the research theme regarding Sea Sand Export Policy.<sup>44</sup>

b. Internet

The second technique in collecting legal materials is to use the internet to access websites and journals published online.

In normative juridical research, this technique includes the study and analysis of laws and regulations, law books, the Qur'an, books, and hadith contained in various Islamic literatures, especially in the study of ushul fiqh related to the concept of *Sadd al-zari'ah*.

5. Legal Material Analysis

In this study, the analysis was carried out using deductive reasoning on legal materials that have been collected systematically, namely through a selection process of relevant legal materials.<sup>45</sup> In addition, this study also applies a descriptive method by describing government policies related to the Sea Sand Export Policy.

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<sup>44</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 65.

<sup>45</sup> Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 71.

## **G. Previous Research**

Several previous studies relevant to the topic of the legality of sea sand exports and the perspective of Islamic law have been carried out including:

1. Research by Enno Haya G N in the Journal of Transcendental Law in 2024 entitled "The Effect of Inconsistency in Sea Sand Export Policy on Natural Resources Management and Ecological Sustainability" discusses the problem of inconsistencies in sea sand export policies regulated by Government Regulation No. 26/2023. This research shows that there is a disharmony between government policies that allow the export of sea sand and efforts to maintain environmental sustainability and natural resource management. In his analysis, Enno uses a juridical descriptive approach and applies the concepts of Blue Economy and Green Economy. The Blue Economy emphasizes the sustainable use of marine resources, while the Green Economy focuses on the sustainability of the overall environment. Using these two concepts, this study shows that the current sea sand export policy is not in line with the principles of sustainability that should be carried out.

The results of this study show that there is a clear contradiction between the sea sand export policy and the government's commitment to maintaining environmental sustainability. This policy has the potential to damage marine ecosystems, as unplanned exploitation of sand can lead to habitat damage, environmental degradation, and threats

to various marine species.<sup>46</sup> However, one thing that is lacking in this study is the discussion of Islamic legal aspects, especially the concept of *Sadd al-zari'ah*. This concept is important because it relates to the prevention of damage and danger. Without including this perspective, the analysis conducted may miss an important dimension to assess the impact of such policies more comprehensively.

2. Research by Arman Jauhari and Agus Surono in the journal National Conference on Law Studies (NCOLS) in 2023 entitled "The Effect of Sea Sand Sedimentation Export Permit Policy on Ecological Justice on the Welfare of Coastal Communities" reviews how the sea sand export permit policy affects ecological justice and the welfare of coastal communities. With a normative approach, this study evaluates Government Regulation No. 26/2023 which regulates the export permit. The results show that this regulation does not fully reflect the principles of ecological justice contained in Article 28 H of the 1945 Constitution and Law No. 32 of 2009. This research also underlines the lack of clarity in the rules and the overlap of authority between the various institutions involved, which interferes with the implementation of policies. As a result, coastal communities that should benefit are at risk of losing their livelihoods due to environmental damage caused by sand mining activities.

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<sup>46</sup> Enno Haya G N, "The Effect of Inconsistency of Sea Sand Export Policies on Natural Resources Management and Ecological Sustainability," *Proceedings of the National Seminar of the Doctoral Program in Law*, no. 1(2024): 304-316.

Furthermore, although these policies are designed to harness the economic potential of exports, their impact on the environment and people's well-being is often overlooked. This research shows that the lack of supervision and firmness in the implementation of regulations can lead to adverse exploitation of natural resources, resulting in environmental damage that has an impact on the lives of coastal communities.<sup>47</sup> However, one shortcoming in this study is the absence of a relationship between the issues raised and the concept of *Sadd al-zari'ah* in Islamic law. *Sadd al-zari'ah* serves to prevent damage and avoid practices that can harm society. By adding this perspective, the analysis will be more complete and can provide better recommendations to improve policies, so that the balance between economic interests and environmental sustainability for coastal communities can be maintained.

3. Research by Ramli Hamid in the UMJ Repository journal in 2023 entitled "The Impact of Sea Sand Mining on the Economic Life of Fishing Communities in Riau Islands Province" focuses on how sea sand mining affects the economy of fishermen in the Riau Islands. In his study, Ramli used a qualitative descriptive method to gain a better understanding of the conditions faced by fishermen due to mining activities. He applies sustainability theory, which emphasizes the

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<sup>47</sup> Arman Jauhari and Agus Surono, "The Effect of Sea Sand Sedimentation Export Permit Policy on Ecological Justice on the Welfare of Coastal Communities," *National Conference on Law Studies*, no. 1 (2023): 68-86.

importance of maintaining a balance between the use of natural resources and environmental protection, as well as social responsibility, which highlights the obligation of companies and related parties to pay attention to the social impact of their activities.

The results of this study show that although sea sand mining can provide some economic benefits for mine workers, the negative impact felt by fishermen and the environment is much greater. Mining activities often cause significant damage to marine habitats, as well as resulting in pollution that damages the quality of the environment. This has a direct impact on marine ecosystems, reducing fish populations, and other resources that are the livelihood of fishermen. As a result, fishermen's catches have decreased, which is detrimental to the economy and welfare of coastal communities.

The study also noted that the lack of clear regulations and effective oversight of mining activities further worsens the situation for fishermen. They often do not get adequate protection in the face of the negative impacts of mining. So, while there are short-term benefits for mine workers, long-term losses for fishermen and environmental sustainability cannot be ignored.<sup>48</sup>

One aspect that is not discussed in this study is the concept of *Sadd al-zari'ah*. This concept is important in Islamic law because it focuses

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<sup>48</sup> Ramli Hamid, "The Impact of Sea Sand Mining on the Economic Life of Fishing Communities in Riau Islands Province," *UMJ Repository*, no. 2(2023): 01-13.

on the prevention of damage and harm. By incorporating these principles into the analysis, we can gain a new perspective on how mining policies should be structured so as not to harm ecosystems and communities. This opens up opportunities for further research that can explore the application of Islamic legal principles in marine resource management and fishermen protection.

4. Research by Kiki Amalia, Sri Dandi, and Yuyun Wahyuningsih d in the journal Polsight Public Knowledge in 2024 entitled "Environmental Policy Against Sand Mining Problems in Moro Riau Islands That Impact the Environment of the Moro Community" examines the impact of sea sand mining activities in the Riau Islands on the environment and the lives of coastal communities. In this study, the researchers used a qualitative descriptive approach, which allowed them to dig into in-depth information about the conditions faced by the people and ecosystems in the area. They also combine environmental policy concepts and environmental evaluation theory to analyze and understand existing problems.

The results of this study show that sea sand mining activities have caused serious damage to marine ecosystems. Researchers found that these activities contribute to coastal abrasion, which results in soil loss and damages coastal habitats, as well as leading to a decrease in the quality of life of fishing communities. This is because the destruction of ecosystems has a direct impact on the resources they rely on, such as

fish and marine plants, which are their livelihoods. In addition, this study highlights the importance of cooperation between the government and the community in managing natural resources. The researchers recommend that the government not only focus on the economic utilization of sand mines, but also pay attention to the environmental and social impacts it causes.<sup>49</sup> However, one thing that is not paid attention to in this study is the aspect of Islamic law, especially the concept of *Sadd al-zari'ah*. This concept is important in the context of natural resource protection, as it focuses on the prevention of damage and harm that can arise from human activities. Thus, this research opens up opportunities for further exploration of how Islamic legal principles can be applied in natural resource management policies in Indonesia, especially in the context of sustainability and environmental protection.

5. Research by Kristiawan Putra Nugraha in the journal *Quantum Juris: Journal of Modern Law* in 2024 entitled "Analysis of the Impact of the Implementation of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea: A Review of Environmental Impacts" discusses the impact of the policy on marine ecosystems and the lives of coastal communities, especially fishermen. In this study, Kristiawan uses a juridical normative approach, which aims to analyze legal regulations in the context of

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<sup>49</sup> Kiki Amalia, Sri Dandi, and Yuyun Wahyuningsih, "Environmental Policy on Sand Mining Problems in Moro Riau Islands That Impact the Environment of the Moro Community," *Journal Polsight*, No. 2(2024): 139-157.

people's rights to a good environment, as stipulated in the 1945 Constitution. This approach provides a solid foundation for evaluating whether the policy meets legal and human rights standards related to the environment.

Although the policy was designed with the aim of protecting marine ecosystems and supporting environmental sustainability, criticism emerged from the public. They expressed concern that this policy could lead to excessive exploitation of sea sands, which ultimately harms the livelihoods of fishermen. This research reveals that despite the good intentions in policy formulation, the impact that may arise for fishing communities and ecosystem health should be further considered.<sup>50</sup>

Unfortunately, one aspect that is less discussed in this study is the application of the concept of *Sadd al-zari'ah*, which is important in Islamic law to prevent the damage and negative impact of a policy. Without including this perspective, policy analysis becomes less comprehensive and does not consider approaches that can help protect the interests of society as well as the environment. This research highlights the need for further dialogue on how Islamic legal principles can be integrated in environmental policy to achieve a balance between natural resource management and the protection of marine ecosystems.

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<sup>50</sup> Kristiawan Putra Nugraha, "Analysis of the Impact of the Implementation of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea: A Review of Environmental Impacts," *Quantum Juris: Modern Law Journal*, No. 2 (2024): 42-61.

6. Research by Yusuf Kornelius in the journal *Innovative Law: Journal of Social Law and Humanities* in 2024 entitled "The Urgency of Revoking Permits for Sea Sand Mining Activities as an Effort to Preserve the Environment of Coastal Communities" discusses the importance of revoking sea sand mining permits to protect the environment of coastal communities. Using normative methods and impact analysis theory, this study focuses on the adverse impact of sea sand mining on marine ecosystems and the lives of local communities. The results of the study show that revoking mining permits can help protect marine ecosystems and reduce losses experienced by coastal communities, especially fishermen.<sup>51</sup>

Even so, this study does not discuss Islamic law, especially the concept of *Sad Al-Zari'ah*, which can actually be used as a legal basis to prevent environmental damage. *Sad Al Zari'ah* is a concept that emphasizes the prevention of actions that can cause damage, which is relevant in the context of environmental protection. Without alluding to this concept, the research has not fully explored the potential of Islamic law in strengthening environmental policies related to sea sand mining.

7. Research by Dwi Lestari Indah Sari in the journal *Innovative Law: Samudra Keadilan Law Journal* in 2023 entitled "Sea Sand Export Policy After the Promulgation of Government Regulation Number 26

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<sup>51</sup> Yusuf Kornelius, "The Urgency of Revoking Permits for Sea Sand Mining Activities as an Effort to Preserve the Environment of Coastal Communities," *Innovative Law: Journal of Social Law and Humanities*, No. 2 (2024): 01-16.

of 2023 Based on the Perspective of Legal System Theory" discusses the sea sand export policy after Government Regulation Number 26 of 2023 is enacted, seen from the theory of the legal system. This study uses a normative approach and finds that the export policy is not in line with Article 56 of the Marine Law, which should prioritize the protection of the marine environment. This policy is considered to be less concerned with environmental impacts, especially related to the sustainability of marine ecosystems that can be threatened.<sup>52</sup>

Although this study criticizes the incompatibility of policies with existing legal principles, there is no use of the concept of *Sad Al Zari'ah* as a basis for analyzing the prevention of environmental damage. In fact, this concept is very relevant in limiting activities that can have adverse impacts. So, while this research is critical enough, there is still a gap in linking it to Islamic law as a tool to prevent future environmental damage.

8. Research by Ibra Fulenzi Amri et al in the journal *UNNES Law Review* in 2023 entitled "Vertical Synchronization of Government Regulation No. 26/2023 with the 1945 Constitution of the Republic of Indonesia Legal Policy on Sea Sand Export" focuses on how Government Regulation Number 26 of 2023 is in line with the 1945 Constitution of the Republic of Indonesia regarding the sea sand export policy. With a

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<sup>52</sup> Dwi Lestari Indah Sari, "Sea Sand Export Policy After the Promulgation of Government Regulation Number 26 of 2023 Based on the Perspective of Legal System Theory," *SAMUDRA KEADILAN Legal Journal*, No. 2 (2023): 406-423.

juridical normative approach, the researcher analyzes the application of the principles of Pancasila and the 1945 Constitution in this policy. The results show that these regulations risk damaging marine ecosystems and negatively impacting the welfare of coastal communities.<sup>53</sup>

Although this study provides critical insight into the potential adverse effects of such policies, the researchers do not discuss the concept of *Sad Al-Zari'ah* as a way to prevent damage. In fact, this concept of Islamic law can be an important foundation to prevent potentially harmful actions. This opens up opportunities for further research exploring sea sand export policies from the perspective of Islamic law.

9. Research by Angelita Veronika Tinggogoy in the Journal of the Faculty of Law UNSRAT *Lex Privatum* in 2024 entitled "Juridical Review of Sand Extraction on Small Islands in Review from Government Regulation Number 23 of 2023" discusses sand extraction on small islands based on Government Regulation Number 23 of 2023. In this study, Angelita uses normative approaches and conventional theories to analyze existing problems. The results show that there is an overlap of authority in the management of marine sedimentation, which indicates regulatory challenges and weak legal protections for coastal communities affected by these activities.<sup>54</sup>

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<sup>53</sup> Ibra Fulezni Amri, et al, "Vertical Synchronization of PP No. 26/2023 with the 1945 Constitution of the Republic of Indonesia Legal Policy on Sea Sand Export", *UNNES LAW REVIEW*, No.01(2023): 2338-2350.

<sup>54</sup> Angelita Veronika Tinggogoy, Josepus J. Pinori and Nelly Pinangkaan, "Juridical Review of Sand

However, unfortunately, this study does not discuss the concept of Sad Al Zari'ah. This concept should be the basis for understanding how to prevent environmental damage from the perspective of Islamic law. By excluding this aspect, there is still an opportunity for further research that could enrich our understanding of environmental protection and community welfare in a broader legal context.

10. Research by Kana Kurnia in the journal *Legal Literacy* in 2023 entitled "Juridical Analysis Of The Formation Of Government Regulation Number 26 Of 2023 Concerning Management Of Sedimentation Products In The Sea". In this study, Kana uses normative methods and legislative and conceptual approaches to emphasize the importance of community involvement in the legislation process so that marine ecosystems can be maintained. The results of this study show that community participation is very important to ensure that the resulting policies are not only effective, but also support the sustainability of marine ecosystems. By involving the community, the policies taken can reflect local interests and needs.<sup>55</sup>

However, this study does not discuss the concept of Sad Al Zari'ah, which can be used as a basis for prohibiting activities that have the potential to damage the marine environment. The absence of discussion

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Extraction on Small Islands in Review from Government Regulation No. 23 of 2023," *Journal of the Faculty of Law UNSRAT Lex Privatum*, no. 5(2024): 01-10.

<sup>55</sup> Kana Kurnia, "Juridical Analysis of The Formation of Government Regulation Number 26 of 2023 Concerning Management of Sedimentation Products in the Sea," *Legal Literacy*, no. 1(2024): 53-67.

of this concept opens up opportunities for further research that can relate the perspective of Islamic law in environmental protection, thereby adding depth to the discussion on sustainable natural resource management.

**Table 1.1 (similarities and differences from previous research)**

No	Research Name and Title	Equation	Difference
1	Enno Haya G. N., "The Effect of Inconsistency of Sea Sand Export Policy on Natural Resource Management and Ecological Sustainability", Journal of Transcendental Law, 2024	Discussing Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea and focusing on the sea sand export policy and its environmental impact.	Using a juridical descriptive approach based on the concepts of Blue Economy and Green Economy, the focus is on the disharmony of policies with the principle of sustainability.  The imi research uses the <i>Sadd al-zari'ah</i> approach (Islamic jurisprudence) as an Islamic legal perspective that has not been used in the study, to assess the prohibition in order to

			prevent harm and ecological damage that may arise from the sea sand export policy.
2	Arman Jauhari and Agus Surono, "The Effect of Sea Sand Sedimentation Export Permit Policy on Ecological Justice on the Welfare of Coastal Communities", Journal of the National Conference on Law Studies (NCOLS), 2023.	Discussing Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea, and looking at the relationship between export policies and the welfare of coastal communities and ecological damage.	<p>It focuses on the analysis of environmental justice and the unclear regulation in terms of people's rights in accordance with the 1945 Constitution and Law No. 32 of 2009 and does not bring the perspective of Islamic law or fiqh doctrine such as <i>Sadd al-zari'ah</i>.</p> <p>This research offers novelty by combining Indonesia's positive legal normative approach (Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea) with a principle-based analysis of <i>Sadd al-zari'ah</i></p>

			to assess whether this policy is valid under Islamic law because it considers the impact of damage ( <i>sadd al-dzari'ah</i> ).
3	Ramli Hamid, "The Impact of Sea Sand Mining on the Economic Life of Fishing Communities in Riau Islands Province", UMJ Repository, 2023	Discuss the impact of sea sand mining on coastal communities/fishermen and see its relationship with economic and environmental aspects.	The main difference lies in the theory used. This study uses the theory of sustainability and social responsibility in assessing the economic impact on fishermen, while the researcher focuses on the concept of <i>Sadd al-zari'ah</i> to highlight the need for stricter prevention policies in natural resource management.
4	Kiki Amalia, Sri Dandi, and Yuyun Wahyuningsih, "Environmental Policy on Sand Mining Problems in Moro Riau Islands that	Similarities in discussing the impact of sea sand mining on the economy of coastal communities and the environment.	Focus on the destruction of ecosystems due to sea sand mining activities with a qualitative descriptive approach, without

	Impact the Moro Community Environment", Polsight Public Knowledge, 2024		touching on the concept of Islamic law.
5	Kristiawan Putra Nugraha, "Analysis of the Impact of the Implementation of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea: A Review of Environmental Impacts", Quantum Juris: Modern Law Journal, 2024	Similarities in Analyzing the impact of sea sand export policies on marine ecosystems and coastal communities with a juridical normative approach. Both also highlighted the role of regulation in environmental protection.	This study focuses on evaluating the implementation of Government Regulation No. 26 of 2023 based on human rights and environmental standards in the 1945 Constitution, while the researcher highlights this issue from the perspective of Islamic law, especially the <i>principle of Sadd al-zari'ah</i> which emphasizes the prevention of potential environmental damage.
6	Yusuf Kornelius, "The Urgency of Revoking Permits for Sea Sand Mining Activities as an Effort to	Similarities in discuss the negative impact of sea sand mining on ecosystems and coastal communities, as well as use normative	This research focuses on the urgency of revoking sea sand mining permits to protect the environment,

	Preserve the Environment of Coastal Communities", Innovative Law: Journal of Social Law and Humanities, 2024	methods in the analysis.	without analyzing with the framework of Islamic law.
7	Dwi Lestari Indah Sari, "Sea Sand Export Policy After the Promulgation of Government Regulation Number 26 of 2023 Based on the Perspective of Legal System Theory", Innovative Law: Samudra Keadilan Law Journal, 2023	Similarities in discussing Sea sand export policies that are not in line with the principles of environmental protection, and use normative methods.	This study uses legal system theory to evaluate the sea sand export policy without associating it with damage prevention in the perspective of Islamic law., while the researcher instead makes <i>Sad Al-Zari'ah</i> the main foundation in analyzing the sea sand export policy.
8	Ibra Fulenzi Amri et al., "Vertical Synchronization of PP No. 26/2023 with the 1945 Constitution of the Republic of Indonesia: Legal Policy on Sea Sand Export", UNNES Law Review, 2023	Similarities in Analyze the sea sand export policy from the perspective of laws and regulations, as well as highlight the risk of damage to marine ecosystems due to these policies.	Analyzing the sea sand export policy from the perspective of vertical synchronization with the 1945 Constitution without discussing the concept of <i>Sadd al-zari'ah</i> .

9	<p>Angelita Veronika Tinggogoy, "Juridical Review of Sand Extraction on Small Islands Reviewed from Government Regulation Number 23 of 2023", Faculty of Law UNSRAT Lex Privatum, 2024</p>	<p>Similarities in Highlighting the weak legal protection for coastal communities due to sea sand mining activities, as well as using normative methods in the analysis.</p>	<p>Discussing the regulation of sand extraction on small islands with a normative approach without linking it to Islamic law, especially <i>Sadd al-zari'ah</i>., while the researcher uses <i>Sadd al-zari'ah</i> as a basis in understanding the urgency of stopping sea sand exports.</p>
10	<p>Kana Kurnia, "Juridical Analysis of the Formation of Government Regulation Number 26 of 2023 Concerning Management of Sedimentation Products in the Sea", Legal Literacy, 2023</p>	<p>Similarities in Prioritize the importance of community participation in policies related to the management of marine sedimentation and its impact on the environment.</p>	<p>The focus of the research is more on the aspect of community involvement in making regulations, while the researcher focuses more on the application of <i>the Sad Al-Zari'ah principle</i> in preventing the exploitation of marine resources.</p>

In contrast to the previous ten studies that mostly focused on aspects of policy inconsistency, ecological justice, and direct socio-economic impacts on fishing communities, my research offers a distinctive approach using *the perspective of Sadd al-zari'ah*. This perspective focuses on the principle of preventing damage or mafsadat before it occurs,<sup>56</sup> which has not been explored in depth by previous studies. Using a normative juridical approach that combines the study of laws and regulations with doctrinal analysis, this study not only discusses the formal legal aspects of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea, but also criticizes it from the ethical point of view of Islamic law, especially in the context of maintaining environmental sustainability and preventing negative social impacts.

In addition, this study expands the study by juxtaposing the regulation of sea sand exports with the conceptual values of *Sadd al-zari'ah*, not only at the level of national positive law, but also at the philosophical dimension of Islamic law. This is a significant differentiator compared to previous research that tends to stop at policy analysis, environmental impacts, or community welfare alone, without bringing the Islamic ethical framework as a critical instrument to assess the export policy. Thus, this research makes a

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<sup>56</sup> Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwaqqi'in*, 5th volume (Beirut: Daar Al-Kutub, 1996), 66.

new contribution to the enrichment of maritime law discourse and natural resource policy in Indonesia.

## **H. Structure of Discussion**

In order to form a systematic systematic thesis, the researcher generally breaks it down into four chapters, namely:

### **CHAPTER I INTRODUCTION**

Introduction, comprehensively explaining the initial form of the research. The introduction contains the background, problem formulation, research objectives, benefit of research, operational definitions, research methods, previous research, and structure of discussion.

### **CHAPTER II LITERATURE REVIEW**

Contains ideas and/or juridical concepts as a theoretical basis for the study and analysis of problems and contains the development of data and/or information, both substantially and methods relevant to the research problem. The literature review contains sea sand exports, sea sand export policies, Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea, Hierarchy of Laws and Regulations, Principle of Legality, Legal Certainty Theory, and *Sadd al-zari'ah*.

### **CHAPTER III DISCUSSION OF RESEARCH FINDINGS,**

The results of the Research and Discussion contain data that have been obtained from the results of literature research which are then edited, classified, verified, and analyzed to answer the formulation of the problem

that has been determined. The results of the research and discussion contain the sea sand export policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea, as well as the sea sand export policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the perspective of *Sadd al-zari'ah*.

#### **CHAPTER IV CONCLUSION**

The concluding chapter contains a conclusion which is a brief explanation of the answers to the problem formulation in this study. This chapter also contains suggestions that include academic recommendations for institutions and researchers.

## CHAPTER II

### LITERATURE REVIEW

#### A. Sea Sand Exports

Discussions about sea sand export policies in Indonesia need to begin with an understanding of the basic definitions of exports and sea sands, both legally and technically. Based on KBBI, export means the delivery of merchandise abroad, while according to Law Number 17 of 2016 concerning Customs, export is the activity of removing goods from the customs area in accordance with applicable legal rules.<sup>57</sup> This means that exports are not only about trade, but also about administrative compliance and state supervision to maintain national interests, especially if what is exported is natural resources of ecological value.

Meanwhile, sea sand according to the Ministry of Maritime Affairs and Fisheries (KKP) is a sand excavation material from Indonesian waters that does not contain harmful minerals and is the result of natural sedimentation of the sea.<sup>58</sup> Presidential Decree Number 33 of 2002 also emphasizes that sea sand is not included in the strategic minerals of group A or B, so its management is different from other strategic mining commodities.<sup>59</sup>

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<sup>57</sup> Article 1 of Law Number 17 of 2016 concerning Customs

<sup>58</sup> Retno Ayuningrum, "KKP Bluntly Concerns Sea Sand Exports," *detikfinance*, 21 September 2024, accessed 27 May 2025, <https://finance.detik.com/berita-ekonomi-bisnis/d-7550666/kkp-blak-blakan-soal-ekspor-pasir-laut>.

<sup>59</sup> Article 1 of the Decree of the President of the Republic of Indonesia Number 33 of 2002

Thus, sea sand exports mean removing sea sand from Indonesia for foreign trade purposes while still complying with legal regulations. The practice is not only about trade transactions, but also demands licensing, government supervision, and ecological impact considerations. This understanding is an important basis for assessing whether the sea sand export policy is in accordance with the principles of legality and sustainability, as well as paving the way for deeper discussions regarding potential violations of the law and environmental protection efforts.

The policy regarding sea sand exports is officially regulated in Article 9 paragraph (2) of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea. This provision states that the use of sedimentation products in the sea in the form of sea sand can be used for four main purposes, namely domestic reclamation, government infrastructure development, infrastructure development by business actors, and exports as long as domestic needs have been met and in accordance with the provisions of laws and regulations. This means that the government expressly emphasizes that sea sand exports can only be carried out if domestic needs have been met. This policy is a form of control of national natural resources so that their use is not solely oriented to export profits, but also pays attention to the interests of domestic development.

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concerning the Control and Supervision of Sea Sand Exploitation.

As for the types of sea sand that can be exported and cannot be exported, it has been regulated in detail by the Indonesian government through the Regulation of the Minister of Trade of the Republic of Indonesia Number 20 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 22 of 2023 concerning Goods Prohibited for Export, Regulation of the Minister of Trade of the Republic of Indonesia Number 21 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 23 of 2023 concerning Export Policies and Regulations, as well as the Decree of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 16 of 2024 concerning Planning Documents for the Management of Sedimentation Products at Sea. Sea sand that is allowed for export includes natural sand from marine sedimentation cleaning with a grain size of less than 0.25 mm or more than 2.0 mm ( $D_{50} < 0.25$  mm or  $> 2.0$  mm). In addition, sand with shells or  $\text{CaCO}_3$  content of more than 15% is also in the category of exportable content.<sup>60</sup> Sand containing certain precious metals and minerals exceeds the limit of the provisions, as well as natural sand that has not undergone a processing process, including topsoil, are included in the allowable list. Not to forget, sand with heavy metal content and rare earth metals that exceed the predetermined threshold can also be exported.

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<sup>60</sup> Appendix Number XIX of Sedimentated Sand in the Sea Regulation of the Minister of Trade of the Republic of Indonesia Number 21 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 23 of 2023 concerning Export Policies and Regulations.

Meanwhile, there are also types of sea sand that are strictly prohibited from being exported by the government. Sand derived from marine sedimentation with grain sizes between 0.25 mm to 2.0 mm (D50) is included in the category that should not be exported. Likewise, sand has a maximum of 15% of shells or CaCO<sub>3</sub>, a maximum of 0.05 ppm of gold (Au) and silver (Ag), and a maximum of 0.05 ppm of platinum, palladium, rhodium, ruthenium, iridium, and osmium metals. In addition, sand with a maximum silica (SiO<sub>2</sub>) content of 95%, a maximum of 50 ppm of tin (Sn), a maximum of 35 ppm of nickel (Ni), and a maximum of 100 ppm of rare earth metals are also included in the prohibited list.<sup>61</sup> This provision was made to ensure that sea sand exports are only carried out for types of sand that do not interfere with the sustainability of the ecosystem and are not included in the national important raw materials. Thus, this policy is expected to be able to maintain a balance between economic needs and environmental sustainability.

As for the process and mechanism of sea sand export in Indonesia, companies that want to export sea sand are required to have a Mining Business License (IUP) issued by the Ministry of Maritime Affairs and Fisheries (KKP) and the Ministry of Energy and Mineral Resources (EMR).<sup>62</sup> This initial step is the main requirement for the company to be

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<sup>61</sup> Appendix Number VII Sedimentation Results at Sea Regulation of the Minister of Trade of the Republic of Indonesia Number 20 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 22 of 2023 concerning Goods Prohibited for Export.

<sup>62</sup> CHAPTER XI Exporters' Obligations Regulation of the Minister of Trade of the Republic of

able to carry out dredging activities and using sea sand legally. Without official permission, companies are not allowed to submit any export documents. With this provision, the government is trying to ensure that only companies that meet operational and legality standards can participate in export activities.

Before exporting, companies are also required to fulfill the Domestic Market Obligation (DMO) obligations. This means that some of the results of dredging sea sand must be allocated first to meet the needs of the domestic market. After the DMO is met, the company can apply as a Registered Exporter (ET) at the Ministry of Trade (Kemendag). The designation as an ET requires the company to have a Sea Sand Utilization Permit from the KKP, an IUP from Energy and Mineral Resources, and attach a sealed statement stating that the exported sand is taken from a location that complies with the permit. This process is designed to keep the flow of sea sand distribution controlled and in accordance with the applicable legal provisions.

After being registered as an ET, the company must submit an Export Approval (PE) to the Ministry of Home Affairs. PE will only be granted if the company has obtained export recommendations from the Ministry of Marine Affairs and is proven to have fulfilled the DMO obligations. In addition, companies are also required to attach a Surveyor's Report

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Indonesia Number 21 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 23 of 2023 concerning Export Policies and Regulations.

(LS) issued by the Ministry of Trade as proof that the sand to be exported is in accordance with the set specifications. This LS is important because it is a verification instrument that ensures that the sea sand does not contain harmful minerals or heavy metals that exceed the threshold. Without LS, the export process will not be able to continue, because this requirement is mandatory to protect environmental interests and public safety.<sup>63</sup>

Laboratory testing is also one of the important stages in the series of sea sand export processes in Indonesia. Each mining sand must be tested to ensure that the content of minerals and heavy metals does not exceed the maximum limit as stipulated in the Decree of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 16 of 2024 concerning the Sedimentation Product Management Planning Document at Sea. Sand that can be exported is only sedimentated sand with certain specifications, such as grain size, shellfish content, precious metals, and heavy metals that meet the standards. Meanwhile, natural sand that has not been processed, sand that does not meet the specifications, and sand that have not met DMO obligations are prohibited from being exported in accordance with the provisions of the Regulation of the Minister of Trade of the Republic of Indonesia Number 20 of 2024 concerning the Second Amendment to the

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<sup>63</sup> CHAPTER XI Exporters' Obligations Regulation of the Minister of Trade of the Republic of Indonesia Number 21 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 23 of 2023 concerning Export Policies and Regulations.

Regulation of the Minister of Trade Number 22 of 2023 concerning Goods Prohibited for Export.<sup>64</sup>

All of these provisions have a clear goal, which is to overcome sedimentation that can reduce the carrying capacity of coastal and marine ecosystems. In addition, this regulation supports the development and rehabilitation of the coastal environment, maintains the sustainability of marine natural resources, and ensures transparency and good governance in sea sand export activities. With comprehensive regulations, the government seeks to create a balance between economic interests and environmental protection. This sustainability is important so that sea sand resources can be used responsibly for the welfare of the community and the sustainability of the ecosystem in the future.

The economic impact of sea sand exports in Indonesia includes significant positive and negative sides. On the positive side, the government has set an export price of IDR 186,000 per cubic meter with a potential PNBP of IDR 3.25 trillion for a quota of 50 million cubic meters. The Celios report in 2024 noted that entrepreneurs can make a profit of around IDR 502 billion from this export.<sup>65</sup> Sea sand exports also open up international market opportunities, especially for offshore

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<sup>64</sup> Appendix Number VII Sedimentation Results at Sea Regulation of the Minister of Trade of the Republic of Indonesia Number 20 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 22 of 2023 concerning Goods Prohibited for Export.

<sup>65</sup> Annasa Rizki Kamalina, "Ministry of Finance Reveals Potential State Revenue from Sea Sand Exports," *Bisnis.com*, September 27, 2024, accessed May 27, 2025, <https://ekonomi.bisnis.com/read/20240927/9/1802900/kemenkeu-ungkap-potensi-penerimaan-negara-dari-ekspor-pasir-laut>.

coastal reclamation projects. This activity is considered to be able to increase state revenue while expanding domestic business opportunities. However, even though it seems profitable, these economic benefits still need to be carefully weighed.

On the negative side, the Celios study predicts that sea sand exports can reduce Indonesia's GDP by Rp1.22 trillion due to ecosystem damage.<sup>66</sup> This decline has an impact on the fisheries and tourism sectors which are also weakening. Fishermen's income is estimated to drop to Rp1.21 trillion because the fish catch is decreasing. In addition, fishery production could shrink by IDR 1.8 trillion with a gross added value that also decreased by around IDR 1.59 trillion.<sup>67</sup> The destruction of marine ecosystems, including the destruction of coral reefs and increased coastal erosion, exacerbates the threat to coastal communities. As a result, short-term profits from sea sand exports can actually cause greater socio-economic losses in the future.

## **B. Sea Sand Policy**

Regulations for sea sand management in Indonesia are regulated in layers with the aim of maintaining the sustainability of marine resources while minimizing negative impacts on coastal ecosystems. At the highest level, Law Number 32 of 2014 concerning Marine Affairs is the

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<sup>67</sup> Center of Economic and Law Studies, "Who Benefits from Ocean Sand Exports? Economic and Environmental Impacts of Ocean Sand Regulations," Celios, October 2, 2024, accessed May 27, 2025, <https://celios.co.id/who-benefits-from-ocean-sand-exports-economic-and-environmental-impacts-of-ocean-sand-regulations/>.

national legal umbrella that regulates the management of marine resources as a whole, including sea sand.<sup>68</sup> This law emphasizes the importance of preserving the marine environment and ensuring the sustainable use of marine resources. As a complement, Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands, specifically regulates the coordination and supervision of resources in coastal areas and small islands, and provides a basis for granting management permits to communities and local governments.

Based on the framework of the law, Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea takes an important role as the main regulation that regulates the use of sedimentation products in the sea, including sea sand. This regulation replaces the previous ban and regulates the legal and sustainable use of sea sand, with a focus on countering sedimentation that can threaten the carrying capacity of coastal ecosystems. As an implementing rule, the Regulation of the Minister of Maritime Affairs and Fisheries Number 3 of 2025 concerning Amendments to the Regulation of the Minister of Maritime Affairs and Fisheries Number 33 of 2023 concerning the Implementation Regulation of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea regulates in detail

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<sup>68</sup> Article 22 of Law Number 32 of 2014 concerning Marine Affairs

the technical standards for dredging sea sand, including environmental restrictions that must be complied with to protect coral reefs, mangroves, and seagrass meadows from damage.

Furthermore, the aspect of supervision and governance of sea sand exports is regulated by the Regulation of the Minister of Trade Number 20 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 22 of 2023 concerning Goods Prohibited for Export and Number 21 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 23 of 2023 concerning Export Policies and Regulations. These two regulations establish a strict licensing mechanism and ensure that sedimentated sea sand can only be exported after domestic needs are met and the entire process is transparent according to legal provisions. To strengthen product quality control, the Decree of the Minister of Maritime Affairs and Fisheries Number 47 of 2024 concerning Specifications of Sedimentated Sand in the Sea for Export stipulates technical specifications for sea sand that can be exported, including mineral content limits and grain sizes, so as to maintain the quality and sustainability of these resources.

Sea sand management in Indonesia involves several government institutions that have their own duties and authorities in regulating, supervising, licensing, and utilizing marine sedimentation products. The Ministry of Maritime Affairs and Fisheries plays a central role in this matter, as stipulated in Government Regulation Number 26 of 2023

concerning the Management of Sedimentation Products at Sea.<sup>69</sup> The regulation emphasizes that the Ministry of Maritime Affairs and Fisheries is responsible for issuing permits for the use of sea sand, setting quotas, and supervising the dredging process so as not to damage the environment. In addition, this regulation also repeals Presidential Decree (Keppres) Number 33 of 2002 concerning the Control and Supervision of Sea Sand Exploitation and reorganizes the management of sea sand more comprehensively. For the technical implementation,

The Ministry of Trade has special authority in regulating sea sand export activities. Through the Regulation of the Minister of Trade Number 20 of 2024 and Number 21 of 2024, the export mechanism is strictly regulated so that there is no misuse of natural resources. In the regulation, exporters are required to be officially registered as Registered Exporters, apply for export approval, and fulfill the obligation to meet the needs of the domestic market before sea sand can be exported.<sup>70</sup> This is done to maintain the availability of sea sand in the country while ensuring transparency in the export process.

In addition, the Ministry of Energy and Mineral Resources also plays a role in the management of sea sand through the issuance of Mining Business Licenses to companies that will utilize sedimentated sea sand.

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<sup>69</sup> Article of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea

<sup>70</sup> CHAPTER XI Exporters' Obligations Regulation of the Minister of Trade of the Republic of Indonesia Number 21 of 2024 concerning the Second Amendment to the Regulation of the Minister of Trade Number 23 of 2023 concerning Export Policies and Regulations.

This permit is an absolute requirement so that sea sand mining activities can run legally and in accordance with the provisions of mineral resource management in Indonesia's marine area. This authority ensures that the use of sea sand is monitored and follows the standards that have been set in order to maintain environmental sustainability.

The role of local governments is also very important in the management of sea sands, as stipulated in Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands. This law gives local governments the authority to supervise and manage coastal resources in their territory, including sea sand. Thus, sea sand management is not only the responsibility of the central government, but also supported by local governments that understand local conditions and are able to supervise more effectively.

In addition, technical supervision of the sea sand export process is carried out by supervisory agencies and surveyors appointed by the Ministry of Trade and the Ministry of Maritime Affairs and Fisheries. In accordance with the provisions of the Regulation of the Minister of Trade Number 20 of 2024 and Number 21 of 2024 and the Regulation of the Minister of Maritime Affairs and Fisheries Number 33 of 2023, surveyor institutions are required to supervise and make technical reports which are mandatory documents in the export process. This supervision aims to ensure that the exported sea sand meets applicable

environmental and technical standards so that sea sand utilization activities can run responsibly and sustainably.

Sea sand mining in Indonesia must go through a strict licensing process that begins with the application of a Mining Business Permit (IUP) for rocks. The IUP application is submitted by a business entity in the form of a Limited Liability Company in accordance with the mining area to be managed. For trans-provincial or marine areas that are more than 12 miles from the coastline, permits are submitted to the Minister of Energy and Mineral Resources. Meanwhile, for cross-district/city areas within one province and the sea at a distance of 4 to 12 miles from the coast, permits are submitted to the governor. As for areas within one district/city and the sea up to 4 miles from the coast, applications are submitted to the local regent or mayor. IUP is divided into two types, namely the Exploration IUP and the Production Operations IUP, which require the fulfillment of administrative, technical, environmental, and financial aspects. This provision refers to Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities.

In addition to the IUP from the Ministry of Energy and Mineral Resources, the company is also required to obtain a Permit for the Utilization of Sedimentation Products in the Sea from the Ministry of Marine Affairs and Fisheries. This provision is regulated in Government Regulation Number 26 of 2023 concerning the Management of

Sedimentation Products in the Sea. The Ministry of Maritime Affairs and Fisheries is tasked with verifying and assessing the feasibility of applicant companies, including evaluating technical capabilities, capital, and commitment to social and environmental responsibility.<sup>71</sup>

After obtaining an IUP and utilization permit from the Ministry of Maritime Affairs and Fisheries, companies that want to export sea sand are required to register as Registered Exporters at the Ministry of Trade and submit an Export Approval with the recommendation of the Ministry of Marine Affairs, fulfillment of Domestic Market Obligation, and Surveyor Reports according to standards. This provision is regulated in the Regulation of the Minister of Trade Number 20 and 21 of 2024, but until May 2025 no company has succeeded in obtaining export permits because the IUP licensing process and KKP permits are still long and complex. In addition, the role of local governments is very important in managing sea sand because since 2023 the authority to grant mining permits has mostly been delegated according to their region through the coordination of the Ministry of KKP and the Ministry of Energy and Mineral Resources. The local government not only gives permits, but also supervises the implementation of mining activities to comply with the rules and maintain sustainability. They are also tasked with ensuring that mining activities do not damage vulnerable coastal

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<sup>71</sup> Article 5 of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea

ecosystems. With this active role, local governments help to ensure that sea sand management runs responsibly and sustainably.

The supervision and control of sea sand exports in Indonesia is based on several important interrelated regulations. Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea is the main legal umbrella that regulates the management of sea sands, including export provisions that require the fulfillment of domestic needs first.<sup>72</sup> In addition, Regulation of the Minister of Trade Number 20 and 21 of 2024 regulates in detail the export mechanism, starting from the requirements to become a Registered Exporter (ET), the submission of an Export Approval (PE), to the obligation to attach a Surveyor's Report (LS) as proof that the quality and quantity of sea sand have met the provisions. On the other hand, the Decree of the Minister of Maritime Affairs and Fisheries Number 47 of 2024 stipulates the technical specifications of sand from marine sedimentation that can be exported, including mineral content limits and allowed sand grain sizes.

The mechanism for monitoring sea sand exports goes through several strict stages. Companies interested in exporting sea sand must first meet the requirements as a Registered Exporter (ET) set by the Ministry of Trade. After obtaining ET status, the company is required to

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<sup>72</sup> Article 9 paragraph (2) of Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea.

apply for an Export Approval (PE), which is only given if the company has received a recommendation from the Ministry of Maritime Affairs and Fisheries (KKP) and has fulfilled the Domestic Market Obligation (DMO) obligation, which is to ensure that the needs of the domestic market have been met. In addition, companies are required to attach a Surveyor's Report (LS) as a supporting document that ensures that the sea sand to be exported is in accordance with technical specifications. Not only that, the sand to be exported must also go through laboratory tests to ensure that the mineral or heavy metal content does not exceed the threshold according to the provisions of the Decree of the Minister of Maritime Affairs and Fisheries Number 47 of 2024 concerning the Specifications of Sedimentated Sand at Sea for Export.

**C. Government Regulation of the Republic of Indonesia Number 26 of 2023 concerning the Management of Marine Sedimentation Products**

Indonesia as an archipelagic country has a large sea area and is vulnerable to sand and mud sedimentation, which threatens coastal ecosystems and disrupts shipping. Previous sea sand management was poorly coordinated and lacked a clear legal umbrella, so export bans actually encourage illegal mining that damages the environment and causes social conflicts. To overcome these problems, the government issued Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea as the legal basis for

integrated management which directly revokes Presidential Decree Number 33 of 2002 concerning the Control and Supervision of Sea Sand Business. This regulation aims to maintain the sustainability of the ecosystem, optimize the use of sedimentation for development, and open up export opportunities with a strict and transparent mechanism. The Government Regulation is based on Law Number 32 of 2014 concerning Marine Affairs and regulates the stages of sedimentation management from planning to supervision. Despite being criticized for minimal public involvement and potential environmental damage, the government emphasized the importance of these regulations to maintain the health of the ocean and the sustainability of marine resources in a legal and controlled manner. This regulation is expected to maintain a balance between the use of marine resources and environmental conservation.

Government Regulation Number 26 of 2023 concerning Sedimentation Results at Sea regulates the management of sedimentation results at sea, which in article 1 states that the definition of Sedimentation Results at Sea is sediment in the sea in the form of natural materials formed by weathering and erosion processes, which are distributed by oceanographic dynamics and precipitation that can be taken to prevent ecosystem disturbances and shipping.<sup>73</sup> The results of sedimentation in the sea include natural materials such as sea sand and

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<sup>73</sup> Article 1 of Government Regulation Number 26 of 2023 concerning Sedimentation Results at Sea

mud formed from weathering, erosion, and oceanographic dynamics. The purpose of this management is mentioned in article 2 to overcome sedimentation that can reduce the carrying capacity and carrying capacity of coastal and marine ecosystems as well as marine health and optimize Sedimentation Results in the Sea for the sake of the development and rehabilitation of coastal and marine ecosystems.<sup>74</sup>

As for the Management of Sedimentation Results in the Sea as referred to in Article 4, it includes 4 stages, namely planning, control, utilization, and supervision.<sup>75</sup> The planning stated in the regulation includes the preparation of planning documents that are reviewed by the study team determined by the Minister. Then the control of sedimentation results in the sea is carried out by cleaning the sedimentation results in the sea which uses environmentally friendly means and separates valuable minerals or can be called suction ships. The intended use of sedimentation products in the sea is sea sand or other sedimentary materials in the form of mud which is used for reclamation, infrastructure, infrastructure development by business actors, and exports. This regulation also stipulates exceptions for sedimentation management in certain areas in article 3, namely:

- 1) Working environment areas, port interest neighborhoods, and special terminals

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<sup>74</sup> Article 2 of Government Regulation Number 26 of 2023 concerning Sedimentation Results at Sea

<sup>75</sup> Pasa 4 Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea

- 2) Mining business license area
- 3) Shipping Flow
- 4) The core zone of the conservation area except for the purpose of managing the conservation area, which is contained in the spatial plan and/or zoning plan (carried out by the conservation area management organizational unit in accordance with the authority).<sup>76</sup>

Before the activity of taking or utilizing sedimentation results is carried out, the government is obliged to prepare a mature planning document in accordance with article 5 in Chapter II of this Regulation. This document not only contains the locations to be dredged or the amount of material to be taken, but also covers much broader aspects such as the type of minerals contained, the volume of sedimentation results calculated based on the study, and the potential environmental impacts that may arise from these activities. Thus, planning cannot be made arbitrarily or unilaterally, but must consider various variables that affect marine ecosystems.<sup>77</sup>

Furthermore, the preparation of this planning document involves a study team consisting of

- 1) Ministries that organize government affairs in the marine sector
- 2) Ministry in charge of government affairs in the field of transportation

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<sup>76</sup> Article 3 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>77</sup> Article 5 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

- 3) Ministry in charge of government affairs in the field of energy and mineral resources
- 4) Ministries that organize government affairs in the field of environment
- 5) Agencies in charge of hydrography and oceanography
- 6) Local government
- 7) College
- 8) Other relevant ministries/agencies<sup>78</sup>

This means that there is multi-sector and interdisciplinary involvement so that the plan made is truly comprehensive and can be accounted for scientifically and legally. In addition, this document will be the basis for the next stage, namely implementation and supervision, so that it is crucial as a legal and technical foundation. The government also opens up space for further technical arrangements that will be outlined through Ministerial Regulations, so that the implementation in the field is in accordance with the agreed standards.

In CHAPTER III, it is stated that the stage of Sedimentation Results Control in the Sea must be carried out based on a pre-prepared planning document. This control covers various technical and administrative aspects. First, in article 6, it is stated that the implementation of activities such as dredging sand or sediment must follow the approved plan. There

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<sup>78</sup> Article 5 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

should be no addition of locations or changes of methods without going through the correct procedures, as any change can have an impact on the marine environment.<sup>79</sup> Then, article 7 emphasizes the importance of using technology or tools that do not damage the environment in control.<sup>80</sup> For example, suction vessels used to lift sediment must be designed so as not to damage marine life, coral reefs, or other coastal ecosystems. Even the safety aspect of shipping is considered so that this activity does not interfere with general shipping routes.

Interestingly, the government also regulates the use of ships in article 8. Priority is given to Indonesian-flagged ships, which means the government wants to ensure economic benefits and jobs continue to be enjoyed domestically. However, if there are no Indonesian-flagged ships that meet the specifications, then foreign-flagged ships may be used, of course, while still complying with applicable regulations. This shows an open attitude but still sides with the national interest.<sup>81</sup>

In article 9, chapter IV discusses the Sedimentation Results in the Sea that can be used in the form of sea sand and other sedimentary materials in the form of mud. As for the Utilization of Sedimentation Results in the Sea in the form of sea sand as referred to in the paragraph used for:

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<sup>79</sup> Article 6 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>80</sup> Article 7 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>81</sup> Article 8 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

- 1) Reclamation in the country
- 2) Government infrastructure development
- 3) infrastructure development by Business Actors
- 4) exports as long as domestic needs are met and in accordance with the provisions of laws and regulations.

Meanwhile, sedimentated sludge can be used to support coastal and marine ecosystem rehabilitation programs. The implementation of this rehabilitation must refer to the planning documents that have been determined and be the direct obligation of the business actors involved in this activity.<sup>82</sup>

Business actors who want to clean and utilize sedimentation products in the sea are required to have a Sea Sand Utilization Permit as mentioned in article 10. These activities include the collection, transportation, placement, use, and sale of sedimentation products in the form of sea sand. However, to be able to sell sea sand, business actors must first obtain a mining business license for sale. This permit is issued by the minister in charge of mineral and coal affairs or by the governor according to their respective authority, after a study by a special team and it is ensured that all requirements have been met in accordance with the provisions of applicable regulations. Meanwhile, for sludge,

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<sup>82</sup> Article 9 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

utilization activities are limited to its collection, transportation, and use without including sales.<sup>83</sup>

In the implementation of sedimentation cleanup, article 11 states that business actors have an obligation to ensure the sustainability of the lives of the surrounding community, maintain a balance in the preservation of the function of the coastal environment and small islands, and ensure that access to the surrounding community is not hampered. In addition, in the process of transporting sedimentation products,<sup>84</sup> article 12 states that business actors are obliged to report the realization of transportation volumes and the purpose of material placement, and are obliged to accept the presence of monitoring officers on board. This report must be submitted by the captain of the ship to the ministry periodically, precisely once every seven days, through the e-logbook system. Further technical provisions regarding this report will be regulated through ministerial regulations.<sup>85</sup>

The transport ship used to carry sedimentation products must comply with the rules that require the use of Indonesian citizen crew members in accordance with articles 13 and 14. However, in certain conditions where there is no national crew available, it can be used by foreign crews, provided that the implementation is in accordance with

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<sup>83</sup> Article 10 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>84</sup> Article 11 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>85</sup> Article 12 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

the provisions of the applicable law and obtains the approval of the relevant minister. The use of this foreign crew must be carried out proportionately, according to needs, and must not exceed the limits of reasonableness that have been set.<sup>86</sup>

As for the placement of sedimentation products in article 15, it is carried out at temporary shelter locations and at the final destination of utilization, with priority utilization to meet domestic needs. If the sedimentation results are used for export, business actors must obtain special permits from the ministry in charge of trade. Export permits can only be issued after receiving a recommendation from the relevant minister, and these export activities are also subject to export duties in accordance with applicable regulations. More detailed provisions regarding domestic and export demand will later be technically regulated through ministerial regulations.<sup>87</sup>

Article 16 regulates the announcement of the distribution of priority locations and volumes of sedimentation products in the sea that must be announced by the Minister through print or electronic media. The announcement must be made no later than 14 days after the planning document is determined. After the announcement, business actors can apply for a permit to use sea sand by attaching proposals and work plans that contain technical, environmental, and business capacity aspects.

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<sup>86</sup> Articles 13 and 14 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>87</sup> Article 15 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

Business actors must also meet certain criteria, such as being a limited liability company, using special equipment, and having adequate capital and human resources.<sup>88</sup>

The Minister will form a due diligence team tasked with verifying and evaluating the proposals and criteria of business actors. This process lasts a maximum of 21 days, and the results are the basis for the Minister to give approval or denial of permits. If the permit is approved, business actors are required to apply for a permit online through the Electronically Integrated Business System (Online Single Submission) in accordance with Article 17.<sup>89</sup>

After obtaining the permit, business actors must complete the administrative requirements and submit a fixed work plan that includes location coordinates, sedimentation volume, implementation time, and means of cleaning and transporting sedimentation products. This work plan must receive the approval of the Minister within a maximum of 20 days as stated in article 18. If there is no response within that time, the work plan is considered automatically approved. If the requirements are not met within six months, the permit to use sea sand will be canceled.<sup>90</sup>

The implementation of cleaning activities and the use of sedimentation must pay attention to oceanographic conditions, local

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<sup>88</sup> Article 16 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>89</sup> Article 17 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

<sup>90</sup> Article 18 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

wisdom, and potential environmental impacts that may occur. If the permit application is rejected, the Minister is obliged to provide a written review of the refusal to the business actor so that the basis for the decision is clear in accordance with article 19.<sup>91</sup> In addition, business actors are required to pay Non-Tax State Revenue (PNBP) and other levies in accordance with the provisions of laws and regulations in the marine and fisheries sector. The use of PNBP is further regulated by the regulation of the minister of finance so that the management of marine sedimentation products runs according to the rules, protects the environment, and ensures that business actors obey the law in accordance with article 20.<sup>92</sup>

Article 21 Chapter V explains the reporting obligation of business actors who have a permit to use sea sand. They are required to submit a report on activities to the Minister every three months from the start of the cleaning of sedimentation products and the use of sedimentation products in the sea. This report must contain at least information regarding the location and volume of sediment cleaned, the vessels used by both suction vessels and transport vessels, the time of implementation of the activity, the destination country of placement of sedimentation products, and evidence of the realization of PNBP payments and other

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<sup>91</sup> Article 19 of Government Regulation Number 26 of 2023 concerning Sedimentation Results at Sea.

<sup>92</sup> Pass1 20 Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

levies regulated in accordance with the provisions of laws and regulations.

The Minister has the authority to monitor and evaluate reports submitted by business actors. Not only limited to reports, monitoring and evaluation can also be carried out at any time if deemed necessary, to ensure the implementation of activities in accordance with applicable regulations. These monitoring and evaluation activities can be delegated to appointed officials, so that the supervision process runs more effectively.

The results of this monitoring and evaluation are not only administrative records, but can also be used as evaluation materials for sea sand utilization permits that have been issued. Thus, business actors are required to always maintain compliance with regulations so that their permits remain valid. The procedures for implementing monitoring and evaluation will then be regulated in more detail in ministerial regulations, which will be technical guidelines for business actors and related ministries.<sup>93</sup>

Article 22 Chapter VI discusses supervision of the implementation of permits for the use of sea sand to maintain coastal ecosystems, flow functions, and socio-economic interests of the community. Supervision is carried out by the Ministry periodically at least twice a year or at any

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<sup>93</sup> Article 21 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

time if needed, especially based on the results of monitoring and evaluation. The goal is to ensure the compliance of business actors and prevent environmental damage and protect the rights of coastal communities.<sup>94</sup>

Chapter VII regulates administrative sanctions for business actors who do not carry out their obligations in accordance with regulations. Administrative sanctions can be imposed if business actors violate the provisions of a number of articles, including reporting obligations, payment obligations, and technical provisions for the implementation of activities. These sanctions include written warnings, temporary suspension of activities, revocation of permits, termination of activities in the field, and administrative fines.

Sanctions in the form of written warnings are imposed for initial violations, with a seven-day deadline for settlement. If within seven days the violation is not corrected, the next sanction in the form of a temporary suspension of activities can be enforced, also with a deadline of seven days. If the violation is still not resolved, the business actor can be subject to severe sanctions in the form of revocation of the permit to use sea sand.

In addition, if violations are related to the payment of PNBP or other levies, business actors will be subject to sanctions in the form of

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<sup>94</sup> Article 22 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

administrative fines. The entire process of imposing administrative sanctions is carried out by the ministry, with more detailed procedures to be regulated through ministerial regulations. Thus, administrative sanctions are not only a form of punishment, but also a tool to encourage business actors' compliance in carrying out their responsibilities.

Article 30 Chapter VIII explains that risk-based licensing in KBLI 08104 for the extraction of sea sand outside certain areas is part of business licensing in the marine and fisheries sector. If the business actor already has a permit to use sea sand from the Minister, then the risk-based licensing requirements are considered to be met, without the need for other additional permits. The implementation of this licensing must follow the provisions of applicable government regulations in order to create harmony between sectors and avoid overlapping rules that can confuse business actors.<sup>95</sup>

#### **D. Hierarchy of Laws and Regulations**

The hierarchy of laws and regulations is a system of legal structures that show the position and relationship between one type of regulation and another. This system is very important to ensure that there is no conflict of norms and maintain the continuity of national law. Historically, this concept has emerged in the Indonesian legal system since the early days of independence.

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<sup>95</sup> Article 30 of Government Regulation Number 26 of 2023 concerning Sedimentation Results in the Sea.

The hierarchy of regulations was first regulated in Law Number 1 of 1950 concerning Types and Forms of Regulations Issued by the Central Government. Furthermore, this hierarchy is reaffirmed through MPRS Decree Number XX/MPRS/1966 concerning the Memorandum of the DPR-GR concerning the Source of Legal Order of the Republic of Indonesia and the Order of Laws and Regulations of the Republic of Indonesia. Major reformulation was carried out through the Decree of the People's Consultative Assembly Number III/MPR/2000 concerning Legal Sources and the Order of Laws and Regulations, which is a form of strengthening Indonesia's post-reform legal structure.<sup>96</sup>

Then, this system was outlined in Law Number 10 of 2004 concerning the Establishment of Laws and Regulations, which was later repealed and replaced by Law Number 12 of 2011. This regulation has undergone two changes: first through Law Number 15 of 2019, and finally through Law Number 13 of 2022, which until now has been the main legal basis in regulating the formation of laws and regulations.

In Article 7 paragraph (1) of Law Number 12 of 2011 which has been amended by Law Number 13 of 2022, it is stipulated that the hierarchy of laws and regulations consists of:

1. the Constitution of the Republic of Indonesia in 1945;
2. Decree of the People's Consultative Assembly (TAP MPR);
3. Laws and Government Regulations in Lieu of Laws (Perppu);

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<sup>96</sup>Fakhry Amin, et al., *Legal Science* (Banten: PT Sada Kurnia Pustaka, 2023), 54.

4. Government Regulation (PP);
5. Presidential Regulation (Perpres);
6. Provincial Regulations; and
7. Regency/City Regional Regulations.<sup>97</sup>

In addition to the regulations listed in Article 7, Article 8 of this Law also recognizes the existence of other regulations issued by high state institutions and institutions formed based on the orders of the law. This regulation includes regulations from the MPR, DPR, DPD, MA, MK, BPK, Judicial Commission, Bank Indonesia, Ministers, central bodies or commissions, local governments, as well as village heads or officials at the same level. Although it has legal force, this type of regulation is outside the official hierarchical structure and is referred to as legislation outside the hierarchy.<sup>98</sup>

Hans Kelsen's Stufenbau theory became the main theoretical basis for understanding the legal hierarchy. According to Kelsen, the legal system is in the form of a multi-tiered pyramid starting from the highest norm (*grundnorm*) to the norms of its implementation at the lower level. In this concept, the lower norm gains the force of enforceability from the higher norm. This structure ensures cohesion and consistency of law within a country.<sup>99</sup>

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<sup>97</sup> Article 7 paragraph (1) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

<sup>98</sup> Fakhry Amin, et al., *Legal Sciences* (Banten: PT Sada Kurnia Pustaka, 2023), 06.

<sup>99</sup> Fakhry Amin, et al., *Legal Science* (Banten: PT Sada Kurnia Pustaka, 2023), 20.

In the Indonesian context, Pancasila and the 1945 Constitution are seen as basic norms (*grundnorm*) that are the source of legitimacy of all laws and regulations. Therefore, all regulations must be subject to these basic values. As emphasized by Farida Indrati, the norm system in law is dynamic (*nomodynamics*), meaning that the law is always formed and abolished by the law-making authority. Therefore, recognition of the legal hierarchy is important in ensuring the supremacy of the constitution and preventing the clash of norms between regulations.

In the hierarchical system of laws and regulations in Indonesia, the applicability and position of a rule of law is not only determined by its level, but also subject to certain legal principles that function to regulate the relationship between norms in the event of a conflict. The principle of *lex superior derogat legi inferiori* states that a higher degree of regulation will override or cancel a lower regulation if there is a conflict of norms between the two. Furthermore, the principle of *lex specialis derogat legi generali* applies when there are two rules that govern the same thing, where the special rules will override the general rules. The principle of *lex posterior derogat legi priori* gives a higher position to newer rules than to older rules, as long as they are equal in the hierarchy. Finally, the *principle of non-retroactivity* or the principle of legality affirms that a regulation does not apply retroactively unless expressly stated in the provisions of the regulation itself. These four principles are

important references in assessing the validity and application of legal norms in a systematic and fair manner.<sup>100</sup>

In practice, understanding the regulatory hierarchy is crucial in ensuring that a new policy or regulation does not conflict with the regulations that are on it. For example, in the case of the formation of a Government Regulation (PP), it must be ensured that the PP does not deviate from the norms and material of the Law on which it is the delegative basis. If there is an inconsistency or a lower regulation is contrary to a higher norm, then legally the regulation can be canceled or considered invalid. The concept of hierarchy also helps in identifying the scope of authority between levels of government and between state institutions, as well as keeping from overlapping arrangements.

#### **E. Principle of Legality**

The principle of legality is a basic principle in criminal law that states that no single act can be considered a criminal act, and no crime can be imposed, unless there are provisions of laws and regulations that regulate it beforehand. This principle is known as adagium *nullum crimen, nulla poena sine lege*, which means "no crime, no punishment without law."

This principle aims to provide legal protection to individuals from arbitrary law enforcement actions and ensure legal certainty in society.

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<sup>100</sup> Fakhry Amin, et al., *Jurisprudence* (Banten: PT Sada Kurnia Pustaka, 2023), 42.

This principle emphasizes that criminal law cannot be applied retroactively, and it is not permissible to use legal analogies in assessing an act as a criminal act.

In Indonesia, the principle of legality is explicitly regulated in Article 1 paragraph (1) of the Criminal Code (KUHP), which states: "*No act can be punished, except on the strength of the criminal rules in the laws that existed before the act was committed.*" This provision emphasizes that criminal law only applies to acts that have been previously regulated and cannot be applied retroactively.<sup>101</sup>

The principle of legality was historically developed to counter the arbitrary legal system of the past, where a person could be punished without a clear legal basis. In the history of modern criminal law, this principle was formulated by Anselm von Feuerbach in *Zwang's theory of vom psychologischen*, and later became the basis for thinking about the criminal law system in European countries, such as Germany and the Netherlands, which also influenced the Indonesian legal system.

The principle of legality contains four main prohibitions, namely:

1. Nullum crimen, nulla poena sine lege scripta – it is not permissible to impose a crime based on unwritten law;
2. Nullum crimen, nulla poena sine lege certa – prohibition of vague or vague formulation of crimes;

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<sup>101</sup> Tofik Yanuar Chandra, *Criminal Law* (Jakarta: PT. Sangir Multi Usaha, 2022), 80.

3. Nullum crimen, nulla poena sine lege praevia – prohibition of retroactive enforcement of criminal law;
4. Nullum crimen, nulla poena sine lege stricta – prohibition of the application of criminal law analogies.<sup>102</sup>

In line with this, Moeljatno also explained that the principle of legality contains three important meanings, namely, no act can be considered a crime and subject to a criminal penalty if there is no legal regulation that regulates it first, it is not allowed to use analogy in determining an act as a criminal act, and criminal law cannot be applied retroactively.

The principle of legality also contains a guarantee function, which guarantees that every citizen cannot be subject to criminal sanctions unless based on the applicable and valid law. Thus, this principle plays a role as a protector of human rights, especially against potential abuse of power by law enforcement officials.

In the context of the Criminal Code, it is important to note that the use of the phrase "legislation" in Article 1 paragraph (1) shows that the source of criminal law is not only limited to laws in the formal sense (Law), but also includes derivative rules such as Government Regulations (PP) and Regional Regulations (Perda), as far as they contain formulations regarding criminal acts. This expands the scope of

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<sup>102</sup> Tofik Yanuar Chandra, *Criminal Law* (Jakarta: PT. Sangir Multi Usaha, 2022), 81.

criminal norms into the field of administrative law and civil law, as far as there are penal sanctions.

Although the principle of legality has been recognized as a universal principle in the modern criminal law system, its application in Indonesia is not free from debate. For example, Utrecht expressed its objection to the absolute application of this principle because it was feared that it could hinder the criminalization of acts that are morally punishable (*strafwaardigheid*), but have not yet been regulated in law. In addition, this principle is considered to limit the applicability of customary criminal law that is still alive and developing in several regions in Indonesia.

Nevertheless, in a modern legal system that upholds legal certainty and the protection of human rights, the existence of the principle of legality remains a fundamental non-negotiable element. Therefore, it is important for every formation and application of criminal law to always be based on this principle in order to create a fair, rational, and transparent legal system.<sup>103</sup>

## **F. Legal Certainty Theory**

Gustav Radbruch was one of the most influential legal philosophers in the European legal tradition, particularly in formulating the *theory of legal objectives* consisting of justice (*gerechtigheit*), utility

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<sup>103</sup> Fikriya Anika Fitri, et al., "A Theoretical Review of the Principle of Legality in Indonesian Criminal Law", *JIMMI: Multidisciplinary Student Scientific Journal*, no.2(2024), 206-207.

(zweckmäßigkeit), and legal certainty (rechtssicherheit). These three elements are the evaluative basis for the application of the law in society. According to Radbruch, when these three goals contradict each other, justice must be placed as the first priority, followed by utility, and finally legal certainty. Thus, unjust laws, even if formally legitimate, still lack moral legitimacy.

In Radbruch's view, legal certainty has a vital role because it concerns the ability of the law to provide reliable guidelines for individuals in society. Without certainty, the law loses its function as a normative system that governs common life. Radbruch views that laws must be positive, that is, established by state authorities through a legislative process, and that their enforceability does not depend on the moral judgment of each individual, but on its formal validity.

Radbruch put forward four fundamental principles that are at the core of the meaning of legal certainty:

1. Law is a positive norm

This means that the law applies because it is established through official procedures by the competent authority. In this context, law is understood as a formal product of state institutions that are outlined in the form of laws and regulations. Law is not just a social or moral norm, but a system of written rules that must be obeyed.

2. The law must be based on actual facts

Laws should not be abstracted or detached from social reality. Laws and regulations must be born from the real needs of the community, so that the substance has relevance and usefulness. Legal certainty can only be achieved if the law is in direct contact with the social context it regulates.

3. The legal formulation must be clear and unambiguous

Legal norms need to be formulated in firm, straightforward, and non-multi-interpreted language. The goal is for the public to understand concretely what is required, prohibited, or allowed. Legal certainty will be achieved if there is no room for conflicting interpretations in its implementation.

4. The law is not easily changed arbitrarily

Regulatory stability is an important requirement for the creation of legal certainty. Radbruch emphasized that changes in the law that are too frequent or do not go through a legitimate process can create uncertainty in society. Therefore, the law must maintain its consistency over a period of time, unless there is an urgent reason to revise it.<sup>104</sup>

Furthermore, Radbruch emphasized that legal certainty must be understood as part of the normative structure of the law itself. He explained that in the legal system, every lower legal norm must be sourced and based on a higher norm (*Stufenbau theory*), thus forming an

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<sup>104</sup> Satjipto Rahardjo, *Law* (Bandung: Citra Aditya Bakti, 2012), 19.

organized legal level. Legal certainty is achieved when this system runs consistently and does not overlap.<sup>105</sup>

However, Radbruch also realized that legal certainty can be a tool of injustice when formal rules are used to suppress basic human rights. The experience of the Nazi regime in Germany is a historical reflection that legal certainty alone is not enough, and that in extreme situations, substantive justice must trump positive law. This view came to be known as *the Radbruchsche Formel*, which stated that if a law is clearly and extremely positive in conflict with the principle of justice, then it no longer has binding power as a law.

Radbruch also explained that legal certainty has a protective function, namely providing protection guarantees to citizens so that they do not become victims of arbitrary actions by law enforcement officials. Thus, every legal action must be rooted in legal norms that are valid and applicable, not based on power without legal legitimacy. In conclusion, according to Gustav Radbruch, legal certainty is an essential element in the effective and fair administration of the law, but it should not be used as the only goal that ignores justice. In a democratic legal order, legal certainty must go hand in hand with social benefits and the protection of substantive justice values.

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<sup>105</sup> Satjipto Rahardjo, *Law* (Bandung: Citra Aditya Bakti, 2012), 20.

## G. *Sadd al-zari'ah*

### 1) Understanding

In the language *Sadd al-zari'ah* *Sadd al-zari'ah* consists of two words, namely *saddu* (سَدُّ) meaning to close, obstruct, and *Al-Zari'ah* (الذَّرِيعَةُ) means the way, the will, or the intermediary (mediator). In the language of *Sadd al-zari'ah*, namely:

الْوَسِيلَةُ الَّتِي يَتَوَصَّلُ بِهَا إِلَى الشَّيْءِ<sup>106</sup>

*Meaning: "It is the will that conveys something"*

The meaning of *Sadd Al-Zari'ah* in terms is a method of excavating Islamic law by preventing, prohibiting, closing the road or executing a work that was initially allowed because it could cause something that caused damage or something that was prohibited.

For example, a person who has been subject to zakat obligations, but before the haul (even a year) he gives his property to his child so that he is spared the obligation of zakat. Hibbah (giving something to others, without any bond) in Islamic shari'a is a good deed that contains fame. However, if the purpose is not good, for example to avoid the obligation of zakat, then the law is prohibited. It is based on the consideration that the law of zakat is obligatory while hibbah is sunnah.<sup>107</sup>

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<sup>106</sup> Wahbah Zuhayli, *Ushul Al-Fiqh Al-Islami* (Damascus: Daar Al-Fikr, 1986), 873.

<sup>107</sup> Andewi Suhartini, *Ushul Fiqih* (Jakarta: Directorate General of Islamic Education, Ministry of Religion of the Republic of Indonesia, 2012), 156.

M. Hasbi Ash-Shiddieqy said that *Sadd al-zari'ah* is one of the exceptions in the method of excavating Islamic law other than Istihsan. Whereas, Istihsan is an exception which is an ability and convenience while *Sadd al-zari'ah* is an exception which is prevention.<sup>108</sup>

In essence, all the purposes of the Shari'ah are to bring benefits to people and prevent harm (mafsadat) from them, and this cannot be achieved except through intermediaries or causes that lead us to it. Therefore, we are obliged to pursue these causes, because it is through that way that we can achieve the goals of sharia'. Thus, it can be affirmed that all deeds that lead to benefit must be done, while all deeds that lead to damage and mafsadat must be abandoned.

Ibn Qayyim is known as one of the great scholars who discussed the concept of *sadd al-zari'ah* in depth. This shows how broad his knowledge is in the field of fiqh and ushul fiqh. In various books and papers that discuss this concept, Ibn Qayyim's opinion is often the main reference. These writers understood that Ibn Qayyim had a distinctive and profound thought on the concept, which developed in the midst of the scientific tradition of fiqh of his time. Therefore, it is not surprising that they sought his original source to understand this concept more deeply.

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<sup>108</sup> M. Hasbi Ash-Shiddieqy, *Philosophy of Islamic Law* (Jakarta: Bulan Bintang, 1990), 320.

Even so, it is important to note that Ibn Qayyim was not the first to put forward the concept of *sadd al-zari'ah* in the study of fiqh. However, he managed to develop and explain this concept with various advantages and distinctive understanding. According to him, the discussion of *sadd al-zari'ah* is one of the four legal bases in Islam. In his view, Islamic law consists of commands and prohibitions that have certain goals and means of achievement. Therefore, it is important to understand that the commandments have two main aspects, namely the goals to be achieved and the means to realize those goals.

Ibn Qayyim also divided prohibitions in Islamic law into two types. First, the prohibition imposed because something contains the potential to damage and degrade dignity. Second, prohibitions that apply because something is a means or cause that causes damage. With this division, the concept of *sadd al-zari'ah* is present as a form of prevention against things that can bring damage. Therefore, this concept is considered one of the important bases in Islamic law to protect the benefit of the ummah.<sup>109</sup>

In order to strengthen the position of the concept of *sadd al-zari'ah* in Islamic law, Ibn Qayyim based his thinking on postulates derived from the Qur'an and Hadith. These postulates show that prevention of the causes of harm is an integral part of Islamic law.

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<sup>109</sup> Ibn Qayyim Al-Jauziyyah, *I'lâm Al-Muwaqqi'în volume 5* (Beirut: Daar Al-Kutub, 1996), 320.

Thus, the use of the concept of *sadd al-zari'ah* is not only theoretical, but also has a strong foundation from the main source of Islamic teachings. This approach makes the concept relevant and can be applied in various issues of Islamic law.

## 2) Legal Basis

Basically, there is no clear and definite evidence either according to the *nas* or *ijma'* of the *ulama* about whether or not it is permissible to use *Sadd al-zari'ah*. However, there are several *nas* that lead to it, both the Qur'an and As-Sunnah, as well as the rules of *fiqh*, including:

### a) The Qur'an

#### (1) Surah Al-An'am verse 108

وَلَا تُسَبِّحُوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

*And do not curse the gods that they worship other than Allah, for they will curse Allah by going beyond the limits of ignorance.*

#### (2) Surah An-Nur verse 31

وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَا الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ

*And let them not strike their feet so that the jewels they hide may be revealed. And repent to Allah, you who have believed, that you may be blessed.*

Insulting the worship of the Musyrikin is actually permissible, even containing benefits. But if it is done it will cause greater damage than the benefit itself, which is the retribution of the polytheists by insulting Allah.<sup>110</sup> Similarly, a believing woman who stomps her feet, although it is permissible but if it causes a stimulus to the men (other than the husband) who hears it, then it is forbidden.

b) As-Sunnah

From Al-Miqdad bin Al-Aswad that he reported that he had said:

*"O Messenger of Allah, what do you think if I meet one of the disbelievers and he fights me. Then he cut off one of my hands so that he actually managed to decapitate it. After that he took refuge from me under a tree while saying, 'I have declared Islam to Allah'. Am I (still) to kill him, O Messenger of Allah after he says that?"* The Prophet PBUH said, *"Thou shalt not kill him"*. Al-Miqdad said, *"I said, 'O Messenger of Allah, he has indeed cut off my hand. Only then did he say this (declaring Islam) after successfully cutting it. Am I (allowed) to kill him?'"* The Prophet PBUH said, *"Do not kill him. If you still kill him, then he is the same as you were before you killed him, while you are the same*

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<sup>110</sup> Abdullah bin Muhammad bin 'Abdurrahman bin Ishaq Alu Shaykh, *Lubaah At-Tafsir Min Ibn Katsir*, translator M. Abdul Ghoffar *Tafsir Ibn Katsir* (Jakarta: Pustaka Imam Ash-Shafi'i, 2008), 272.

*as his status before he uttered the sentence.*"<sup>111</sup>

The above hadith contains the prohibition of killing the disbelievers (hypocrites) after saying the sentence of monotheism, *In the name of God*, Even though it was only based on fear of being killed. Al-QadI 'Iyad explained that the meaning of the hadith| This is that the murderer is no different from the disbeliever in opposing the truth and practicing sinful deeds. Because there are so many types of sinful acts, the sins of the disbelievers are called kufr while the sins of the murderers are called immorality and wickedness.<sup>112</sup>

#### c) Fiqh Rules

مَا أَدَّى إِلَى الْخَرَامِ فَهُوَ حَرَامٌ

*What leads to what is haram is also haram in law.*

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جُلْبِ الْمَصَالِحِ

*Resisting damage takes precedence over attracting benefits.*<sup>113</sup>

The development of the above principle is that all deeds and words that Mukallaf that is prohibited by sharia' sometimes conveys itself to damage without intermediaries, such as adultery, theft, and murder. But sometimes he does not convey

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<sup>111</sup> Imam Al-Nawawi, *Sahih Muslim bi Al-Syarh An-Nawawi*, translator of Wawan Djunaedi Soffandi, Translation of Syarah Sahih Muslim (Jakarta: Mustaqim, 2002), 669.

<sup>112</sup> Imam Al-Nawawi, *Sahih Muslim bi Al-Syarh An-Nawawi*, translator of Wawan Djunaedi Soffandi, Translation of Syarah Sahih Muslim (Jakarta: Mustaqim, 2002), 673.

<sup>113</sup> Nashr Farid Muhammad Washil and Abdul Aziz Muhammad Azzam, *Al-Madkhal fi Al-Qawa'id Al-Fiqhiyyah wa Atsaruhā fi Al-Ahkām Al-Syar'iyyah*, translated by Wahyu Setiawan (Jakarta: Amzah, 2009), 21.

it by himself, but he becomes a testament to something else that conveys the damage, such as khalwat which is not the cause of the mixing of offspring, but he becomes an intermediary for adultery that causes damage.<sup>114</sup>

### **3) Distribution of *Sadd al-zari'ah***

According to Ibn Qayyim, everything that can lead to damage or *adz-dzari'ah* is divided into four levels. All of these levels must be prevented (*sadd*) so as not to plunge people into sinful and immoral acts. This division shows how Islam places preventive efforts as an important part of protecting the *ummah* from harmful things. By dividing the *adz-dzari'ah* into several types, Ibn Qayyim wanted to explain that not all means that lead to damage are the same, so they are handled differently. This also emphasizes the importance of understanding the intention and consequences of an action.

The first level is *adz-dzari'ah* as a means that directly causes damage. An example is liquor that makes the drinker drunk and loses consciousness. In addition, accusations of adultery without evidence can cause slander, while the act of adultery itself causes confusion of the *nasab* or lineage. Since all of these things are a source of sin and social damage, such means must be completely prevented. This division shows that there are things that are indeed haram from the

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<sup>114</sup> M. Hasbi Ash-Shiddieqy, *Philosophy of Islamic Law*, (Jakarta: Bulan Bintang, 1990), 322.

beginning and should not be done.

In the second level, *adz-dzari'ah* is a means that can actually be used, but the intention or purpose of its use leads to something that is not good. For example, a person who marries with the intention of getting divorced immediately, or buys and sells with the aim of gaining profits that contain elements of usury. In this case, bad intentions make a means that were originally allowed turn into something to be avoided. Therefore, prevention is also important to be carried out so that there is no misuse of these facilities for detrimental purposes.

The third level explains that there are means that can be used without bad intentions, but if it is done it causes more harm than benefit. For example, such as performing prayers at a forbidden time or insulting polytheists while they are still in that place. Likewise, a widow who is decorated during the *iddah* period, even though her intentions are not bad, the act brings more *mudharat*. Therefore, even though the intentions are good, this kind of action must still be prevented in order to maintain the good as a whole.

While the fourth level is *adz-dzari'ah* which is permissible to be used and can sometimes cause damage, but the benefits are much greater than the *mudharat*. In this case, the use of these facilities is still recommended as long as the benefits are more dominant. This attitude is called by Ibn Qayyim "*fath adz-dzari'ah*," which opens up

opportunities to use means to achieve the greater good. This division shows the flexibility in Islamic law in weighing between the benefits and harms of an action.<sup>115</sup>

From this division, it can be seen that Ibn Qayyim places the means that lead to sin as something that must be prevented, especially if it has been forbidden in the shari'a from the beginning. Liquor and adultery are clear examples of haram laws because the negative impact is very large. Furthermore, there are also means that depend on the intention of the perpetrator, where bad intentions can make the means of mubah something prohibited. In this case, prevention of misuse of facilities is very important to maintain public morality and order.

At the next level, Ibn Qayyim assessed that if the harm of a means exceeds its benefits, then it should be avoided. On the other hand, if the benefits are greater, then the means can be used wisely. This approach shows that the concept of *sadd al-zari'ah* is not only an absolute prohibition, but also a careful consideration between *maslahat* and *madharat*. Thus, this concept provides flexibility in Islamic law to maintain a balance between good and the prevention of harm.<sup>116</sup>

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<sup>115</sup> Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwaqqi'in*, 5th volume (Beirut: Daar Al-Kutub, 1996), 180.

<sup>116</sup> Ismail Jalili, *The Existence of Sadd al-zari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim al-Jauziyyah (d.751 H/1350 AD)* (Klaten: Lakeisha Publishers, 2020), 66.

#### **4) Conditions of *Sadd al-zari'ah* According to Ibn Qayyim Al-Jauziyah**

Ibn Qayyim extensively discusses the concept of *sadd al-zari'ah*, but he does not mention in detail the conditions for its implementation in detail and thoroughly. It is possible that these conditions are already contained in the division or types of *sadd al-zari'ah* that have been described in some of his works. Therefore, he may not want to repeat it explicitly in the same discussion. In several books written by Ibn Qayyim, the author found some important points that actually show the conditions of the concept of *sadd al-zari'ah* itself. In this article, the author would like to present some of the conditions of *sadd al-zari'ah* according to Ibn Qayyim Al-Jauziyah.

One of the first conditions is that the harm that may arise from a permissible act (*mubah*) must be completely clear and greater than the benefit produced. Ibn Qayyim explains this in the third part of the concept of *sadd al-zari'ah*, which is that a means can be used as long as it is not followed by an intention that leads to bad deeds. However, if the act actually causes more harm than benefit, then it should not be done. Examples are performing prayers at forbidden times, cursing the God of polytheists while they are still in that place, or a wife who is decorated during the 'iddah period after her husband dies. Ibn Qayyim emphasized that the Shari'ah prohibits something

because it can cause obvious damage, including the means, the way, and the cause that causes sin.<sup>117</sup>

The second condition is that the act that is permissible based on the concept of *sadd al-zari'ah* should not be done continuously or repeatedly. If the needs and benefits obtained outweigh the evils that may arise, then what needs to be considered is the cause, not just the end result. Ibn Qayyim gave an example that something that was initially forbidden for a certain reason can be turned into permissible if there is a greater benefit. For example, a man may wear silk or a suit with a protruding edge during war if there is a strong advantage. Another example is praying at times that are usually forbidden, such as before sunrise or after Asr, which is permissible if there is greater benefit, such as the funeral prayer or the mosque tahiyyatul prayer.

The third condition states that the rules of *sadd al-zari'ah* must not contradict the *nash shar'i* (clear sharia text). If there is a conflict between this rule and the *nash shar'i*, then the use of the rule in formulating the law becomes null and void. Logically and sharia, it is not permissible to propose postulates that contradict the postulates that have been agreed upon by the scholars. On the other hand, there is ample room to do good and gain benefits as long as it is based on *nash shari'i*, even if there are possible hidden subtle evils.

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<sup>117</sup> Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwaqqi'in*, 5th volume (Beirut: Daar Al-Kutub, 1996), 175.

Ibn Qayyim explained that the Shari'ah always prioritizes the greatest good and ignores the smaller, while at the same time abandoning the greatest of the two evils.

Furthermore, Ibn Qayyim emphasized that if the rules of *sadd al-zari'ah* are contrary to the nash shar'i, then nash shari'i must take precedence in determining Islamic law. In fact, the ijtiḥad of a mujtahid cannot be used when it is contrary to the nash syar'i, even if he is an expert and knowledgeable. He added that it is not permissible to carry out fatwas or laws that are contrary to nash shari'i, and this prohibition is based on ijma' ulama. For example, the disregard of the rule of *sadd al-zari'ah* because it is contrary to nash, there is a story when Umar bin Khattab forbade giving excessive dowry to women because it could be a burden and cause hatred. However, when there was a verse of the Qur'an that allowed the giving of dowry in a large amount, Umar lifted the prohibition. This shows that there is no truth in carrying out the rules of *sadd al-zari'ah* if there is nash syar'i that opens the way to benefit.<sup>118</sup>

##### **5) The Position of *Sadd al-zari'ah* in Islamic Law**

Among the Ushul scholars, there is a difference of opinion in determining whether or not it is permissible to use *Sadd al-zari'ah* as a proof of syara'. As explained by M. Quraish Shihab, Malikiyah

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<sup>118</sup> Ismail Jalili, *The Existence of Sadd al-zari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim al-Jauziyyah (d.751 H/1350 AD)* (Klaten: Lakeisha Publishers, 2020), 68-74.

scholars used Q.S. Al-An'am verse 108 and Q.S. An-Nur verse 31 which were used as reasons to strengthen their opinion about *Sadd al-zari'ah*.<sup>119</sup>

A number of scholars place the factors of benefits and mafsadat as considerations in establishing the law, one of which is in the method of *Sadd al-zari'ah*. The basis of the hold of many scholars to use this method is caution in doing charity when facing the clash between maslahat and mafsadat. If maslahat is dominant, then it can be done and bTheir MThe dominant afsadat, then it must be abandoned. However, if they are both strong, then to maintain caution, we must take the applicable principles.<sup>120</sup>

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Meaning: Rejecting damage takes precedence over attracting benefits.

When the halal and the haram are mixed, then the principle is formulated in the following rules:

إِذَا اجْتَمَعَ الْحَلَالُ وَالْحَرَامُ غُلِبَ الْحَرَامُ

Meaning: When the lawful and the haram are mixed, then the haram defeats the haram.<sup>121</sup>

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<sup>119</sup> M. Quraish Shihab, *Tafsir Al-Misbah Message of Impression and Harmony of the Qur'an Volume 4* (Jakarta: Lentera Hati, 2001), 237.

<sup>120</sup> Amir Syarifuddin, *Ushul Fiqh Volume 2* (Jakarta: Kencana, 2011), 429.

<sup>121</sup> Amir Syarifuddin, *Ushul Fiqh Volume 2* (Jakarta: Kencana, 2011), 430.

Meanwhile, the Zahiriyyah scholar, Ibn Hazm absolutely rejected this *method of Sadd al-zari'ah*. This is because Zahiriyyah scholars only use pure sources (Al-Qur'an and As-Sunnah) in establishing a certain law without the interference of the logic of human thought (*ra'yu*) as in *Sadd al-zari'ah*. The result of *ra'yu* is always closely related to the existence of suspicion (*Zan*), and it is unlawful to establish something based on conjecture, because punishing with conjecture is very close to a lie, and a lie is a form of falsehood.

However, the difference of opinion regarding the position of *Sadd al-zari'ah* in its development does not make *Sadd al-zari'ah* not used at all. Today's scholars also use *Sadd al-zari'ah* in certain activities to establish a certain law. One of the religious institutions that uses this method is the Indonesian Ulema Council (MUI).

The Indonesian Ulema Council (MUI) uses this method in establishing halal fatwas or providing halal certification for commercial products, be it food, cosmetics, or the use of product names that are circulating and sold in the market. Such as the prohibition of using phrases on cosmetic products that stimulate

orgasm, which is feared to cause orgasmic stimulation that leads to prohibited acts. So the use of that name is also prohibited.<sup>122</sup>

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<sup>122</sup> Usman, "Halal Certification of MUI with Principles on Saddudz Dzari'ah", LPPOM, January 30, 2012, accessed May 27, 2025, [http://www.halalmui.org/index.php?option=com\\_content&view=article&id=872%3Asertifikasi-halalbepinsip-pada-saddudz-dzariah&catid=1%3Alatest-news&Itemid=434&lang=en](http://www.halalmui.org/index.php?option=com_content&view=article&id=872%3Asertifikasi-halalbepinsip-pada-saddudz-dzariah&catid=1%3Alatest-news&Itemid=434&lang=en).

## CHAPTER III

### DISCUSSION OF RESEARCH FINDINGS

#### **A. Legality of Sea Sand Export Policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea**

Indonesia is the largest archipelagic country in the world that has a strategic position between the Asian continents and Australia as well as between the Pacific and Indian oceans. This position gives Indonesia an advantage in terms of very abundant natural resources, both from living (biological) and non-living (non-biological) things.<sup>123</sup> One of the important non-biological resources is the result of sedimentation in the sea. Marine sediments are made up of natural materials, both inorganic and organic, such as sand and silt, that are formed through weathering and erosion processes. The material is then dispersed by oceanographic dynamics before finally settling on the seafloor. The formation of deep sea sediments occurs through three main processes, namely:

1. Gravity-Driven Bottom Slope Resedimentation
2. Ground-current activity along the slope

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<sup>123</sup> Listiyono, Yudi, Lukman Yudho Prakoso, and Dohar Sianturi, "Maritime Defense Strategy in Securing the Sea Lanes of the Indonesian Archipelago to Realize Maritime Security and Defend Indonesian Sovereignty." *Journal of Education and Development*, no.2(2022): 320.

3. pelagic deposition in the direction of benthic.<sup>124</sup>

Sea sand is one of the inorganic components of marine sediments that has fine grains with sizes ranging from 0.063 mm to 2 mm. This sand is usually formed from the erosion process of rocks which are then carried away by water flows and eventually settle on the coast or seabed. The accumulation of marine sediment that is thick enough if left unchecked can reduce the carrying capacity and carrying capacity of coastal ecosystems and disrupt the marine life chain.<sup>125</sup> However, not all marine sedimentation products are suitable for reclamation. This marine sediment undergoes a natural process of compaction and hardening. Therefore, if used for reclamation, the sedimentation is at risk of subsidence or sinking after application.

Due to its considerable potential and impact, sea sand management needs to be strictly regulated through clear and comprehensive regulations. Without firm regulations, the exploitation of sea sand can cause serious damage to coastal ecosystems as well as threaten the sustainability of these natural resources. To answer this challenge, the Indonesian government issued Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea.

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<sup>124</sup> M Ambari, "The Various Adverse Impacts of Marine Sedimentation Mining", Mongabay, November 29, 2024, accessed May 27, 2025, <https://mongabay.co.id/2024/11/29/beragam-dampak-buruk-of-mining-marine-sedimentation/>.

<sup>125</sup> Amna Ulfah, "Marine Sediments Trigger 'Dead Areas', Endangered Oceans," April 26, 2025, accessed May 27, 2025, <https://www.rri.co.id/ipitek/1475979/sedimen-laut-jadi-pemicu-area-mati-lautan-terancam>.

However, the marine sedimentation management policy outlined in Government Regulation Number 26 of 2023 cannot be separated from the controversy and legal debate that follows. Behind the narrative of sustainable natural resource management, this Government Regulation actually opens up space for sea sand exploitation activities in export schemes, which has the potential to cause serious ecological and social impacts. In fact, as a state of law, every public policy must be in line with the basic principles in the constitution, the principle of legality, and higher legal norms.

In this context, it is necessary to conduct an in-depth study of the legality of the sea sand export policy based on Government Regulation Number 26 of 2023, by considering its relationship to the constitution, principles of environmental sustainability, the legal structure of the marine sector, as well as aspects of public participation and consistency between regulations. Therefore, the following discussion will be systematically elaborated into four subsections

### **1. Incompatibility of Sea Sand Export Policy with the Constitution and Sustainability Principles**

National development should always be based on the constitution as the highest legal foundation in the country. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia expressly states that the earth, water, and natural resources contained therein are controlled

by the state and used for the greatest possible prosperity of the people.<sup>126</sup> Furthermore, Article 33 paragraph (4) stipulates that the national economy must be held based on the principles of economic democracy, fairness, sustainability, environmental insight, and maintaining a balance of progress and national economic unity.<sup>127</sup> However, the sea sand export policy as stipulated in Government Regulation Number 26 of 2023 concerning Sedimentation Management in the Sea has caused controversy because it is considered not in line with the mandate of the constitution.

Substantially, this sea sand export policy provides space for the extraction and utilization of sea sand for commercial purposes, under the pretext of sedimentation management. However, in practice, this provision opens up opportunities for large-scale exploitation of marine natural resources, which has the potential to harm coastal communities and threaten the sustainability of ecosystems. If it is associated with the principles of justice and prosperity that should be the basis of natural resource management, then the policy is more oriented towards the interests of certain groups, especially capital owners or large corporations, rather than providing direct benefits to the wider community.

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<sup>126</sup> Article 33 paragraph (3) of the Constitution of the Republic of Indonesia in 1945.

<sup>127</sup> Article 33 paragraph (3) of the Constitution of the Republic of Indonesia in 1945.

In addition, this policy inequality can also be reviewed from the sustainability principle and the precautionary principle, which are explicitly contained in Article 2 and Article 22 of Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law). The principle of sustainability requires a balance between economic interests, environmental conservation, and social welfare for both current and future generations. Meanwhile, the precautionary principle requires preventive efforts against activities that have the potential to cause a large environmental impact, even though it has not been fully scientifically proven.<sup>128</sup>

The sea sand export policy has also not been equipped with adequate technical implementation standards as mandated in Article 37 of Government Regulation No. 26 of 2023. This shows that the principle of prudence has not been fully implemented by the government. In fact, sea sand extraction activities are very risky to damage coral reef ecosystems, seagrass beds, and mangroves, which are critical natural capital or natural capital that cannot be replaced by human technology.<sup>129</sup> This view is in line with the strong sustainability paradigm strengthened by the Constitutional Court Decision Number

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<sup>128</sup> Article 2 and Article 22 of Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law)

<sup>129</sup> Jauhari, Arman, and Agus Surono, "The Effect of Sea Sand Sedimentation Export Permit Policy on Ecological Justice on the Welfare of Coastal Communities," *National Conference on Law Studies (NCOLS)*, No.1(2023): 71. Jauhari, Arman, and Agus Surono, "The Effect of Sea Sand Sedimentation Export Permit Policy on Ecological Justice on the Welfare of Coastal Communities," *National Conference on Law Studies (NCOLS)*, No.1(2023): 71.

35/PUU-XXI/2023. The decision emphasizes that national development must be based on the principle of sustainability that has a strong tradition, namely recognizing that certain ecological functions are irreplaceable and must be maintained intact.

In practice, the government's approach to this policy reflects the weak sustainability paradigm, which assumes that natural damage can be balanced by artificial development or technological engineering. Policies that allow rehabilitation as a solution to ecosystem damage caused by sea sand mining show a compromising attitude that is harmful to long-term environmental conservation. In fact, the damaged mangrove and coral reef ecosystems cannot be fully restored, and will have an impact on the survival of coastal communities that depend on marine ecosystems for their livelihoods.<sup>130</sup>

This policy inconsistency is also evident when reviewed from Article 28H paragraph (1) of the 1945 Constitution which guarantees the right of every citizen to live a prosperous life in birth and mind, as well as to obtain a good and healthy living environment. If sea sand mining causes extensive ecological damage, then the state has neglected to fulfill its obligation to guarantee citizens' constitutional rights to a decent environment.<sup>131</sup>

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<sup>130</sup> Ramones Telaum Banua, "Sea Sand Exports: Short-Term Gains or Long-Term Damage?," Marine and Coastal Policy Research, February 22, 2025, accessed May 27, 2025, <https://mcpr.komitmen.org/2025/02/22/ekspor-pasir-laut-keuntungan-jangka-pendek-atau-kerusakan-jangka-panjang/>.

<sup>131</sup> Article 28H paragraph (1) of the Constitution of the Republic of Indonesia of 1945

The facts on the ground also reinforce this argument. Based on data from the Ministry of Maritime Affairs and Fisheries, until 2009 there have been 26 small islands in the Riau region due to coastal abrasion caused by massive sea sand mining practices.<sup>132</sup> This impact is permanent and cannot be reversed through rehabilitation alone. The loss of islands is not only an environmental issue, but also related to territorial sovereignty and the livelihood of coastal communities. Mongabay Indonesia's data in 2024 also recorded a drastic drop in fishermen's income with losses of nearly Rp 1 trillion and 36,400 people losing their livelihoods.<sup>133</sup> The destruction of marine ecosystems as their main source of livelihood has worsened economic conditions and magnified social powerlessness.

Data from the Marine and Coastal Policy Research in 2025 also confirms that the negative impact of sea sand exports, such as environmental and social damage, is estimated to reach Rp 128.8 billion per year. This figure far exceeds the economic benefits received by the local community, which is only around Rp 25.9 billion.<sup>134</sup> If this policy

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<sup>132</sup> House of Representatives of the Republic of Indonesia, "Sea Sand Export Policy Endangers State Sovereignty and the Environment," E-Media of the House of Representatives of the Republic of Indonesia, September 20, 2024, accessed May 27, 2025, <https://emedia.dpr.go.id/2024/09/20/kebijakan-ekspor-pasir-laut-bahayakan-kedaulatan-negara-dan-lingkungan/>.

<sup>133</sup> A. Asnawi, "Sea Sand Exports: Threats to Ecosystems and Communities, for Whose Benefit?", MONGABAY, October 28, 2024, accessed May 27, 2025, <https://mongabay.co.id/2024/10/28/ekspor-pasir-laut-ancam-ekosistem-dan-masyarakat-untuk-kepentingan-siapa/>.

<sup>134</sup> Ramones Telaum Banua, "Sea Sand Exports: Short-Term Gains or Long-Term Damage?," Marine and Coastal Policy Research, February 22, 2025, accessed May 27, 2025, <https://mcpr.komitmen.org/2025/02/22/ekspor-pasir-laut-keuntungan-jangka-pendek-atau-kerusakan-jangka-panjang/>.

is continued without a strong sustainability foundation, the risk of island loss and ecosystem degradation will increase.

By considering all these aspects, it can be concluded that the sea sand export policy in Government Regulation No. 26 of 2023 experiences serious inequality with the basic principles of the constitution, especially in the management of natural resources which should be oriented towards people's prosperity, intergenerational justice, and ecosystem sustainability. This policy also tends to ignore the principles of prudence and sustainability that have been regulated in the national legal framework, and displays the character of development that is more beneficial to the market and investors than the people as sovereign owners. Within the framework of democratic and environmentally sound national law development, this policy needs to be thoroughly reviewed and reorganized to be in line with constitutional values that prioritize natural preservation and social justice for all Indonesian people.

## **2. Juridical Problems in Government Regulation No. 26 of 2023 Reviewed from the Maritime Law**

In the Indonesian legal system which is based on the principle of the rule of law, the principle of legality is the main foundation for all government actions, including in the formation of public policy. This principle emphasizes that all forms of laws and regulations, especially those on a national scale such as Government Regulations (PP), must be

drafted based on clear orders or delegations from higher laws. In line with that, the principle of *lex superior derogat legi inferiori* is also a guiding principle in assessing the validity of a regulation where lower regulations must not conflict with higher regulations. In this context, the existence of Government Regulation Number 26 of 2023 concerning Sedimentation Management in the Sea poses significant juridical problems when reviewed from Law Number 32 of 2014 concerning Marine Affairs.

The "considering" consideration in Government Regulation 26/2023 states that Article 56 of Law 32/2014 is used as the legal basis for the issuance of this regulation. However, systematically, Article 56 is part of Chapter VIII Part Two of Law 32/2014 which discusses the Protection of the Marine Environment, precisely in the range of Article 50 to Article 57. Therefore, the understanding of Article 56 cannot be separated from the entire conceptual framework of the section, including the general provisions and article by article explanation in Law 32/2014.

Textually, Article 56 does not include a phrase that explicitly states that further arrangements must be made through Government Regulations. In fact, according to the provisions of Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (jo. Law No. 13 of 2022), an implementing regulation such as a PP can only be issued if there is an explicit order from the law to be further regulated. Therefore, from a legal-formal point of view, PP

26/2023 has violated the principle of legality because it was not formed on a valid and clear delegation from its parent law.

The next problem arises in the aspect of substance. Article 1 number 10 of Law 32/2014 defines Marine Environmental Protection as "a systematic and integrated effort to conserve Marine Resources and prevent pollution and/or damage to the marine environment." Meanwhile, Article 1 number 11 explains that Marine Pollution is "the entry or inclusion of living things, substances, energy and/or other components into the marine environment by human activities so as to exceed the quality standards of the marine environment." Meanwhile, marine sedimentation is not the result of human activities, but a natural process that is formed geologically and ecologically. Therefore, it is not appropriate for sedimentation to be positioned as marine pollution, let alone used as an object of countermeasures policies that lead to the exploitation and export of sea sand.

The four main pillars of marine environmental protection in Article 50 of Law 32/2014 include: (a) marine conservation; (b) marine pollution control; (c) marine disaster management; and (d) prevention and management of pollution, damage, and disasters. However, if studied more deeply, the management of marine sedimentation as stipulated in PP 26/2023 is not related to the four pillars. Marine conservation, for example, is geared towards protecting and preserving

marine biodiversity, cultural sites, and marine geomorphological features. Sedimentation is not included in the conservation object.

Similarly, the control of marine pollution requires human activities that cause the environment to exceed quality standards, as well as the polluter pays principle and the precautionary principle mentioned in Article 52 paragraphs (3) and (4) of Law 32/2014. Because sedimentation is a natural process, it does not meet the criteria for pollution. Meanwhile, marine disaster management in Article 53 of Law 32/2014 only covers disasters arising from natural phenomena (such as tsunamis), pollution (such as red tides and oil spills), or global warming. Again, sedimentation does not fall into this category.

In terms of environmental damage, Law 32/2014 states that marine damage means physical, chemical, and/or biological changes that have a detrimental impact on marine resources and human life. However, Article 5 of GR 26/2023 only requires an estimate of the impact on the environment, without stipulating that sedimentation is damage based on scientific indicators as required by law. This means that this Government Regulation simplifies environmental issues to mere administrative technicalities without an adequate scientific basis, and therefore contradicts the substance of Law 32/2014.

Furthermore, the protection of the marine environment in Law 32/2014 is systematic and integrated. Article 56 paragraph (2) uses the conjunction "and" when stipulating that the government is responsible

for the prevention, reduction, control of pollution, and handling of damage to the marine environment. The word "and" is cumulative, which means that all of these elements must be fulfilled together in one policy. However, PP 26/2023 only emphasizes the aspect of sedimentation management without including comprehensive measures for preventing, reducing, or handling environmental damage.

The inaccuracy of the placement of the functions of PP 26/2023 as a derivative of Article 56 of Law 32/2014 shows a substantial defect. Moreover, this regulation does not regulate the mechanism of responsibility, environmental restoration, or the involvement of the coastal communities who are directly affected. The impact not only gives rise to ecological inequality, but also social inequality. As reported by WALHI, sea sand export activities have caused more than 35,000 fishing families to lose access to marine resources due to the destruction of fish habitats.<sup>135</sup> This shows that this PP is not only contrary to positive law, but also ignores the principles of ecological and social justice.

From the perspective of the principle of *lex superior derogat legi inferiori*, PP 26/2023, whose position is under the law, must not deviate or contradict the provisions of Law 32/2014. The hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law No. 12 of 2011 confirms that the Law has a higher position than the PP. Therefore,

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<sup>135</sup> Indonesian Forum for the Environment (WALHI), "Coastal Communities and Women with WALHI Against Sea Sand Mining and Exports," WALHI, September 19, 2024, accessed May 27, 2025, <https://www.walhi.or.id/masyarakat-dan-perempuan-pesisir-bersama-walhi-melawan-pertambangan-dan-ekspor-pasir-laut>.

a violation of this principle means that PP 26/2023 loses normative legitimacy and must be declared legally invalid. So that both in terms of formality (legality) and substance (suitability of content material), PP 26/2023 fails to meet the criteria of legitimate implementing regulations. The issuance of this Government Regulation without explicit delegation from the Law, contradicts the four pillars of marine environmental protection, and ignores the principles of prudence, socio-ecological justice, and the right to a good environment.

### **3. Lack of Public Participation in the Formation of Government Regulation Number 26 of 2023**

Public participation is an essential component in the formation of law in a democratic country that upholds the principles of open government and legal legitimacy. In the context of the establishment of Government Regulation Number 26 of 2023 concerning Sedimentation Management at Sea, the absence of meaningful public participation not only hurts the process of legal democratization, but also threatens the principle of legality that should be the main foundation in a state of law (*rechtstaat*). The principle of legality not only demands formal conformity to the hierarchy of norms, but also demands that the formation of norms be carried out through legal, accountable, and participatory procedures.

Normatively, Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which has been updated with Law Number 13 of

2022, explicitly regulates that community participation is an obligation in every stage of regulatory formation, from planning to promulgation. This provision is not merely formalistic, but is an implementation of the principle of openness and accountability which are explicitly mentioned in the Explanation of Article 5 letter g of Law No. 12 of 2011. That is, it is not enough if a regulation is only set by the competent authority; It must be prepared through procedures that provide meaningful participation space to the public, especially affected groups.<sup>136</sup>

However, in the practice of forming Government Regulation Number 26 of 2023, this principle is actually ignored. There is no documentation or official report to show that the government has opened public consultation forums, workshops, or public hearings that allow the public to provide input on this draft policy. In fact, Article 96 of Law No. 12 of 2011 requires regulators to provide easy access to draft regulations and open up space for the expression of people's aspirations. The unavailability of academic manuscripts and the initial draft of PP 26/2023 to the public indicates the absence of procedural transparency. In fact, the Chairman of the Indonesian Marine Scholars Association (Iskindo), Riza Damanik, expressly stated that the scientific community and marine organizations were never invited to give their opinions in the preparation of this policy.

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<sup>136</sup> Article 5 letter g of Law Number 13 of 2022 Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

When viewed from the framework of Participatory Governance, the absence of public involvement in this policy is a form of failure in building an inclusive government. The government should be a facilitator of policy deliberations, not just a decision-maker.

The lack of public involvement is also contrary to progressive legal practices that emphasize the public's right to know, provide opinions, and get responses to inputs submitted. This is reflected in the Constitutional Court Decision Number 91/PUU-XVIII/2020 which substantively describes three conditions for meaningful participation, namely: the right to be heard, the right to be considered, and the right to be explained. These three principles were ignored in the process of forming PP 26/2023, as expressed by WALHI, Greenpeace Indonesia, and local fishermen who felt neglected.<sup>137</sup> In fact, the government's offer to involve several organizations in the Study Team actually came after the PP was established, which shows that the process of community involvement is only a political legitimacy, not a true practice of participation.

Furthermore, the non-inclusion of fishermen and civil society elements in the Study Team that compiled the planning document for the management of marine sedimentation products indicates a very technocratic policy exclusivity. In fact, Law No. 12 of 2011 does not

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<sup>137</sup> Indonesian Forum for the Environment (WALHI), "Coastal Communities and Women with WALHI Against Sea Sand Mining and Exports," WALHI, September 19, 2024, accessed May 27, 2025, <https://www.walhi.or.id/masyarakat-dan-perempuan-pesisir-bersama-walhi-melawan-pertambangan-dan-ekspor-pasir-laut>.

limit involvement only to those who have technical authority, but also prioritizes the right of the affected community to participate from the beginning. The Ministry of Maritime Affairs and Fisheries also continued the same pattern through Ministerial Decree No. 16 of 2024 which stipulated sand dredging locations without transparency and without consultation with local communities. This is a clear violation of the principle of transparency, because policies related to the environment and people's livelihoods are drafted behind closed doors.

The impact of this neglect of public participation is not only normative, but also practical and social. Without public involvement, policies become vulnerable to public rejection, create social resistance, and even give rise to potential legal conflicts. This loss of social legitimacy cannot be overcome simply through a formal argument that regulations have been established according to administrative procedures. The substance of the policy that is rejected by the public will weaken its implementation and effectiveness, because the public does not feel that they have the policy.

In the lens of the principle of legality, as interpreted in *rechtsstaat*, legality does not only mean "made by an authorized official", but must also be made through a lawful and fair procedure. When these procedures are violated, the moral, social, and juridical basis of the policy is also shaky. Therefore, PP 26/2023 deserves criticism not only for its controversial substance, but also for its serious procedural flaws.

So it can be concluded that the formation of Government Regulation Number 26 of 2023 has ignored basic principles in the formation of democratic laws. The lack of openness in the process, the absence of meaningful public involvement, and the neglect of the affected communities have made this PP not only socially and ecologically problematic, but also legally flawed. Within the framework of constitutional and participatory democracy, this situation is a serious threat to the principle of legality and should be the subject of fundamental evaluation in improving the governance of natural resource legislation in the future.

#### **4. Inconsistency in Sea Sand Export Regulations between Government Regulation Number 26 of 2023 and Government Regulation Number 5 of 2021**

The dualism of legal norms between Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea and Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing shows the government's failure to formulate consistent and operational regulations. Both regulate the same legal object, namely activities related to sea sands, but set different legal conditions, limits, and approaches. This creates significant legal uncertainty, especially in terms of implementation, supervision, and law enforcement of business actors and related technical agencies.

Government Regulation Number 5 of 2021 explicitly categorizes sea sand excavation activities (KBLI 08104) as activities with a high level of risk, which requires business actors to prepare Environmental Impact Analysis (EIA) documents and prohibits this activity from being carried out in certain areas that are ecologically important, such as outermost small islands and small islands with an area of less than 100 hectares. This is a concrete form of applying the precautionary principle in risk-based business licensing, in accordance with the mandate of Law Number 11 of 2020 concerning Job Creation and Law No. 32 of 2009 concerning Environmental Protection and Management.

However, Government Regulation Number 26 of 2023 actually provides different arrangements for similar activities. In the articles, there are no mandatory clauses for AMDAL or restrictions on exploration areas as mentioned in PP 5/2021. In fact, through Article 9 paragraph (2), this regulation opens up legal space for the export of marine sedimentation products, including sea sand, as long as domestic needs are considered to have been met. There are no provisions for limiting exploitation in small and ecologically sensitive areas, and there is no clarity on the mechanism for determining that national needs have been met. This difference in substance and regulatory mechanism proves that there is no continuity of hierarchy, legal logic, or harmonization of substance between the two regulations.

Juridically formal, this disharmony creates a void of interpretation in the implementation in the field. Business actors can easily choose which regulations are the most profitable, while law enforcement officials risk applying sanctions based on different regulations. This situation opens up a gap for the birth of legal injustice and complicates the process of supervision and enforcement. More than that, coastal communities and the surrounding environment are the most disadvantaged parties due to the weak ecological protection in PP 26/2023.

In this context, the problem must be studied in depth through the perspective of Gustav Radbruch's theory of legal certainty, which consists of three basic elements: legal certainty (*rechtszekerheid*), justice (*gerechtigheit*), and utility (*zweckmäßigkeit*). According to Radbruch, all three are absolute requirements for the law to have value, be enforceable, and be implemented fairly and rationally. When one of the elements is set aside, the law loses its moral legitimacy and functionality.<sup>138</sup>

First, the element of legal certainty in Radbruch's theory requires that the law must provide clarity, consistency, and enforceability. Legal provisions that are multi-interpreted, overlap, or even contradictory to each other directly violate the principle of legal certainty. In this case, the lack of synchronization between PP 26/2023 and PP 5/2021 has

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<sup>138</sup> Satjipto Rahardjo, *Law* (Bandung: Citra Aditya Bakti, 2012), 19.

caused uncertainty for stakeholders. One regulation regulates the prohibition of exploration in certain areas and requires an EIA, while the other does not regulate it, even allowing exports without adequate environmental instruments. This raises a fundamental question: which regulations should be guided when both are active?

Second, from the aspect of justice, regulations must provide balanced protection between the interests of the state, business actors, and the community. GR 5/2021 provides territorial boundaries and EIA requirements as a form of protection for the rights of vulnerable coastal communities, as well as maintaining ecological balance. On the contrary, Government Regulation 26/2023 ignores this principle by allowing the export of sea sand without clarifying the scheme for controlling environmental impacts and distributing benefits. There is no guarantee of compensation for affected communities, and there are no instruments to protect fishers and coastal habitats. This shows the state's alignment with economic orientation, not with the principles of ecological and social justice.

Third, from the aspect of utility, the law should create the greatest benefit for the wider community, not just for economic actors. In this case, PP 26/2023 has the potential to create short-term economic benefits through exports, but does not consider the risk of long-term damage to the marine and coastal environment. Countries such as Singapore and China have banned the export of sea sand considering its

large ecological impact. Indonesia itself has suffered severe damage due to sea sand exports in the 1999-2003 period, which became the reason for the export ban by the Decree of the Minister of Industry No. 117/MPP/Kep/2/2003. Therefore, reopening export permits without strict and synergistic regulations is contrary to the principle of legal utility that is oriented towards sustainability.

Using the analysis knife of Gustav Radbruch's theory of legal certainty, it can be said that PP 26 of 2023 fails to meet the three basic values of law. It is flawed in legal certainty because it is not synchronous and opens up a space for interpretation that is contrary to the regulations that existed earlier. It does not fulfill justice because it ignores the interests of the environment and coastal communities. It also does not create sustainable legal benefits, as it favors economic exploitation rather than resource conservation. This inequality shows a disorientation in the formation of regulations, which should be subject to the constitutional principles of environmental protection and social justice.

Thus, the existence of Government Regulation Number 26 of 2023 is not only contrary to Government Regulation 5 of 2021 in substance, but also reflects a violation of the theory of legal certainty according to Gustav Radbruch. The state has failed to guarantee a cohesive, fair, and beneficial legal system.

**B. Sea Sand Export Policy based on Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the perspective of *Sadd al-zari'ah***

The management of marine natural resources is a very crucial aspect in maintaining ecological balance while ensuring the welfare of the community, both for current and future generations. Therefore, any policy that regulates the use of marine resources must consider the ecological and social impacts as a whole.<sup>139</sup> One of the latest regulations is Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea, which regulates the export policy of sea sand as part of the use of these resources. However, this policy has caused controversy because it has the potential to ignore the principles of sustainability and environmental sustainability that should be strictly maintained.

In the context of Islamic law, the *Sadd al-zari'ah* method becomes very relevant for assessing policies like this. *Sadd al-zari'ah* is a legal istinbath approach that functions as a preventive effort to close all means that can actually or potentially lead to damage (mafsadat). Ibn Qayyim al-Jauziyyah asserts that although an act is basically permissible (mubah), if it is proven to bring greater harm than its benefits, then it must be prevented.<sup>140</sup> Therefore, *Sadd al-zari'ah's* analysis is crucial to assess whether the sea

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<sup>139</sup> Wati, et al., "Strategies for Efficient and Sustainable Use of Natural Resources." *Indonesian Journal of Economy and Education Economy*, no.1 (2024): 309.

<sup>140</sup> Ibn Qayyim Al-Jauziyyah, *I'lam Al-Muwaqqi'in*, 5th volume (Beirut: Daar Al-Kutub, 1996), 320.

sand export policy is worth continuing or should instead be stopped in order for greater damage to be prevented.

According to Ibn Qayyim, the analysis knife of *Sadd al-zari'ah* provides a systematic framework for assessing policies or actions based on the potential damage (mafsadah) and benefits (maslahat) it causes. This analysis emphasizes the division of the level of damage and the conditions of prohibition that must be met in order for an act to be prohibited according to sharia. The level of damage is divided into: damage that occurs immediately, bad intentions behind the action, the presence of more harm than benefit, and the dominant benefit as a consideration.<sup>141</sup>

If analyzed based on the classification of *Sadd Al-Zari'ah* according to Ibn Qayyim, the sea sand export policy as stipulated in Government Regulation Number 26 of 2023 is included in the category of *the third type of zari'ah*, which is a means that are originally permissible and are not accompanied by the intention to commit bad acts, but if these acts are carried out, they cause more real harm than the benefits produced. This type of *zari'ah*, although formally visible and neutral, in practice is often the way for widespread damage. In this context, the sea sand export policy is indeed claimed to be part of sedimentation management and the strengthening of the blue economy, but in its implementation it is actually a tool for legalizing

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<sup>141</sup> Ismail Jalili, *The Existence of Sadd al-zari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim al-Jauziyyah (d.751 H/1350 AD)* (Klaten: Lakeisha Publishers, 2020), 66.

the massive exploitation of marine natural resources which is contrary to the principles of sustainable development and ecological justice

In order to assess whether the prohibition of this policy is valid according to the rules of *Sadd Al-Zari'ah*, it is necessary to further analyze whether it meets the conditions set by Ibn Qayyim in applying this concept. There are at least three main conditions that must be met in order for an act of mubah to be prohibited in order to prevent mafsadah, namely related to the magnitude of mafsadah, the sustainability of the act, and its conformity with nash shar'i. The following discussion will outline the three requirements in detail in relation to the sea sand export policy in Government Regulation Number 26 of 2023.

### **1. Mafsadah That Is Greater than Maslahah**

The first condition in the rules of *Sadd Al-Zari'ah* according to Ibn Qayyim states that an act that is originally mubah or permissible can be prohibited if it is proven to cause greater and more real mafsadah than the maslahah that may be achieved. In this case, Islamic law considers not only the desired goal, but also the impact that the means of achieving that goal causes. Therefore, if a policy contains a strong potential for damage, then the path to the policy must be closed or prevented for the protection of the public interest. This concept is very relevant in assessing the sea sand export policy regulated in Government Regulation Number 26 of 2023.

a) Inconsistency with the Constitution and Sustainability Principles

The

sea sand export policy as stated in Government Regulation No. 26 of 2023 opens up space for the exploitation of coastal natural resources for short-term economic interests. This is contrary to the provisions of Article 33 paragraphs (3) and (4) of the 1945 Constitution which mandates the management of natural resources for the prosperity of the people in a fair, sustainable manner, and taking into account environmental aspects. This policy actually perpetuates exploitation that ignores ecological aspects, without considering the carrying capacity and carrying capacity of the environment. In the long term, these conditions lead to the degradation of marine ecosystems which have a systemic impact on the economic sustainability and lives of coastal communities.<sup>142</sup> Therefore, this policy can be said to be contrary to basic constitutional values, which in the perspective of *Sadd Al-Zari'ah*, is a form of neglect of means that cause great damage.

b) Violation of Formal Legality and Hierarchy of Legislation PP No.

26 of 2023 was formed without a clear delegation of authority from the parent Law, especially Law No. 32 of 2014 concerning Marine Affairs. The absence of an explicit mandate causes this Government

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<sup>142</sup> Wahyudi, "Estimation of Carbon Emissions from Sand Extraction Activities in Shallow Sea Sediments", *Journal of Environment and Climate Change*, No.1(2023): 45-58.

Regulation to exceed the authority of its formation (*ultra vires*) and causes a violation of the principle of legality as stipulated in Article 8 paragraph (1) and Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. This regulation also blurs the definition of marine pollution and environmental protection objects, giving rise to multiple interpretations. This ambiguity results in legal uncertainty that has the potential to nourish the practice of irregularities in the implementation of sea sand exports. In *Sadd Al-Zari'ah's* perspective, such a policy is a legally legitimate means, but in its implementation opens up opportunities for legal and institutional damage.

c) Threats to Marine Ecosystems and the Coastal Environment

The massive exploitation of sea sand legalized through Government Regulation No. 26 of 2023 has a direct impact on the destruction of coastal habitats such as coral reefs, seagrass beds, and mangrove forests.<sup>143</sup> These three elements are important components of marine and coastal life support systems. Damage to this element will disrupt the food chain, decrease water productivity, and exacerbate coastal abrasion. Worse, this damage is permanent and difficult to recover<sup>144</sup>, while the PP does not require a strict environmental

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<sup>143</sup> Dewi Anggarani, Santri Sahar, M. Syaiful, "Sand Mining and the Socio-Economic Impact of Communities on the Coast," *SIGn Journal of Social Science*, No.1(2020): 19.

<sup>144</sup> Yulianti, Siti Shofia, Sifa Urrohmah, and Wenny Eka Maulitya. "Sea Sand Mining Impacts Coastal Ecosystems in the Riau Islands Region." *Indonesian Conference of Maritime*, no.1(2024):

impact assessment (EIA). In the rules of *Sadd Al-Zari'ah*, the neglect of this principle of prudence is a form of neglect of the path that leads to great and lasting harm.

d) Social Inequality and Marginalization of Traditional Fishers

The sea sand export policy in Government Regulation No. 26 of 2023 grants exploration and exploitation permits to large companies without paying attention to their impact on local communities, especially traditional fishermen. As a result of this policy, more than 35,000 fishing families have the potential to lose their fishing areas, access to resources, and daily livelihoods.<sup>145</sup> This inequality creates real social injustice because profits are only felt by a handful of economic elites, while losses are borne by vulnerable groups.<sup>146</sup> In the context of *Sadd Al-Zari'ah*, such a policy clearly opens up the means that produce systemic social mafsadah, which must be prevented in order to maintain justice and mutual benefit.

e) Democratic Defects due to Lack of Public Participation

The preparation of Government Regulation No. 26 of 2023 was carried out without fulfilling the principle of meaningful public

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<sup>145</sup> Indonesian Forum for the Environment (WALHI), "Protect 7,280 islands from the threat of climate crisis, ecological disasters and region-based industrial investment in Banusramapa," WALHI, February 20, 2023, accessed May 27, 2025, <https://www.walhi.or.id/lindungi-7-280-pulau-dari-ancaman-krisis-iklim-bencana-ekologis-dan-investasi-industri-berbasis-kawasan-di-banusramapa>.

<sup>146</sup> Muhammad Karim, "Sea Sand Exports Harm Fishermen and Marine Ecosystems", Balairung Press, 01 February 2025, accessed 27 May 2025, <https://www.balairungpress.com/2025/02/muhammad-karim-ekspor-pasir-laut-rugikan-nelayan-dan-ekosistem-laut/>.

participation. In fact, Article 96 of Law No. 12 of 2011 and Constitutional Court Decision No. 91/PUU-XVIII/2020 have emphasized the importance of community involvement in every stage of policy formulation, including the preparation of government regulations. The absence of a public consultation process and information transparency in the preparation of this PP has led to social delegitimization and increasing public resistance. In the perspective of *Sadd Al-Zari'ah*, an undemocratic policy process is a means of generating socio-political damage and is contrary to the principle of prudence in the Shari'a.

- f) Inconsistencies with Other Regulations, PP No. 26 of 2023, overlap with PP No. 5 of 2021 related to the classification of KBLI 08104. These inconsistencies obscure the obligations of the EIA and the limits of exploration areas, thus creating a gap for business actors to carry out regulatory shopping practices. This weakens the government's supervision and control function and opens up space for systematic violations of the law.<sup>147</sup> In *Sadd Al-Zari'ah*, the formation of disharmonious regulations is a form of negligence in preventing means that lead to administrative and institutional damage.

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<sup>147</sup> M Ambari, "Various Adverse Impacts of Marine Sedimentation Mining", Mongabay, 29 November 2024, accessed 27 May 2025, <https://mongabay.co.id/2024/11/29/beragam-dampak-buruk-dari-penambangan-sedimentasi-laut/>.

g) Failing to Meet the Basic Values of Law According to Radbruch's

TheoryGustav Radbruch's theory emphasizes that good law must contain three main values: certainty, justice, and utility. Government Regulation No. 26 of 2023 fails to meet all three. From the aspect of certainty, this rule is multi-interpreted and collides with other regulations. From the aspect of justice, there is no real protection for the affected communities. From the aspect of benefits, short-term economic benefits actually come at the expense of the ecosystem and future generations. Policies that fail to meet these three values in the logic of *Sadd Al-Zari'ah* are a path to a broader mafsadah and must be closed immediately.

h) The weak harmonization and integration of policy policies shows the weakness of planning and integration between sectors. There is no clarity of coordination between environmental, marine, and investment agencies in the implementation of sea sand exports. A neatly structured legal structure leads to bureaucratic conflicts and administrative disorder. In *Sadd Al-Zari'ah*'s perspective, policies that open up space for overlap and institutional conflict are the means of undermining the legal order and good governance.

By looking at all the forms of mafsadah above, it is very clear that the sea sand export policy in Government Regulation No. 26 of 2023 meets the first requirement in the rules of *Sadd Al-Zari'ah*. The act that was

originally bad has clearly paved the way to multidimensional damage. Therefore, sharia rules require that these facilities be closed in order to maintain the public welfare, prevent environmental damage, and protect social justice in the long term.

## **2. The Absence of Strong Benefits to Justify Policy Sustainability**

The second condition in the concept of *Sadd Al-Zari'ah* according to Ibn Qayyim states that an act that is legally classified as *mubāḥ* (permissible) should not be carried out continuously or permanently repeated if the act has a greater potential for damage. In this case, the legal abilities can be lost when the *mafsadah* caused is proven to be real, systemic, and repetitive. However, the prohibition of the act of *mubāḥ* can be excluded if there is a large and powerful benefit that can legally defeat the damage that arises. This benefit must be truly proven in terms of its impact, purpose, and feasibility in protecting the public interest (*maslahah 'āmmah*), not just pseudo-sectoral or speculative benefits.

Ibn Qayyim gives a classic example in *ushul fiqh* to explain this rule. For example, the original law of wearing silk for men is *haram*, but when in a war situation the clothes made of silk are considered to be able to provide protection and effectiveness, then the law changes to permissible for reasons of strong benefits. Another example is the performance of prayers at a prohibited time, such as after *Asr*, which can be permissible if there is a great interest such as the funeral prayer or the *tahiyyatul* of the mosque. This shows that the sharia allows for powerful

benefits to change the legal status of certain acts, as long as those benefits outweigh the potential damages that follow.

However, in the context of Government Regulation Number 26 of 2023, which formally legalizes sea sand export activities, this second condition is not met. First, the activity of exporting sea sand legally as long as it is classified as a *mubah* act because there is no explicit prohibition in *nash shar'i*. However, this regulation is not just a temporary or incidental policy, but is prepared in the form of formal rules that are permanent and repeated. This means that the state legalizes and opens a wide path to the exploitation of sea sand indefinitely and without a termination mechanism based on periodic ecological impact evaluation.

Second, the damage or *mafsadah* of this policy has been proven to be real, not only in potential but also in implementation. Marine ecosystems including coral reefs, seagrass beds, and coastal habitats have been degraded due to sand suction activities.<sup>148</sup> On the other hand, tens of thousands of fishing families have lost their livelihoods, creating real social inequality.<sup>149</sup> In addition, this policy does not run within the framework of sustainability because it ignores the principle of prudence,

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<sup>148</sup> Center of Economic and Law Studies, "Who Benefits from Ocean Sand Exports? Economic and Environmental Impacts of Ocean Sand Regulations," Celios, October 2, 2024, accessed May 27, 2025, <https://celios.co.id/who-benefits-from-ocean-sand-exports-economic-and-environmental-impacts-of-ocean-sand-regulations/>.

<sup>149</sup> Surianti, Asrim Asrim, and Riko Wardana, "Analysis of the Impact of Sea Sand Mining on the Environment and Socio-Economic in Kamelanta Village, Kapontori District, Buton Regency," *Unidayan Civil Engineering Innovation Media Journal*, No.2(2023): 61.

and instead opens up a gap in regulatory overlap between PP 26 of 2023 and PP 5 of 2021 which leads to legal uncertainty.

Third, there are no great and valid benefits that can be a reason to maintain this policy. The government's claim that sea sand exports will bring in economic income or improve marine ecosystems through sedimentation management is not supported by valid academic data, and has been proven to be incompatible with long-term protection of the environment.<sup>150</sup> In fact, these justifications tend to be biased by sectoral interests, especially against extractive industries and certain economic elites.

Thus, according to the rules of *Sadd Al-Zari'ah*, sea sand export activities as stipulated in Government Regulation Number 26 of 2023 cannot continue because they are proven to cause systemic damage, and there is no major benefit that can justify it. Thus, the original law of *mubah* becomes null and void, because the main principle in the Shari'ah states that rejecting damage (*dar' al-mafāsīd*) takes precedence over attracting benefits (*jalb al-mashālih*). This policy should be stopped and fundamentally revised so that it does not become a means of legalization for greater damage in the future.

### **3. Not Contrary to Nash Syar'i**

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<sup>150</sup> Kiki Amalia, Sri Dandi, and Yuyun Wahyuningsih, "Environmental Policy on Sand Mining Problems in Moro Riau Islands That Impact the Environment of the Moro Community," *Journal Polsight*, No. 2(2024): 139-157.

The third condition in the rules of *Sadd Al-Zari'ah* according to Ibn Qayyim is that the prohibition of an act that is originally mubah (permissible) because it has the potential to cause damage (mafsadah) should not be contrary to nash shar'i which is qat'i (firm and explicit). That is, if there is evidence that clearly and definitively permits an act in all circumstances, then the prohibition against it through the approach of *Sadd Al-Zari'ah* cannot be enforced. However, if there is no nash that explicitly commands or obliges such acts, then the application of *Sadd Al-Zari'ah* becomes valid and valid as part of ijtihad to prevent greater damage.

In the context of the regulation of sea sand exports legalized through Government Regulation Number 26 of 2023, it is clear that this policy is not in the realm that is explicitly supported or ordered by nash syar'i. There is not a single verse of the Qur'an or the hadith of the Prophet that specifically encourages or requires sea sand export activities. Thus, this policy does not fall within the jurisdiction of the nash qat'i, and therefore does not belong to the category of acts whose abilities should not be disturbed by *Sadd Al-Zari'ah*.

On the contrary, it was found that many shari'i nash supported the prohibition of policies that opened the way for damage. For example, the word of Allah in QS. Al-A'rāf (7):56, "And do not make any damage to the earth after (Allah) has repaired it...", is a very clear prohibition against acts of exploitation that damage the ecological and social order.

Likewise in QS. Al-Baqarah (2): 205, Allah denounces those who "walk on the earth to cause damage and destroy crops and livestock," which is substantially relevant to the destruction of marine ecosystems due to the large-scale extraction of sea sand.

On this basis, the ban on the export of sea sand through the revocation or freezing of PP 26 of 2023 is not only not contrary to nash shar'i, but is even a direct implementation of the spirit of sharia to reject harm. Furthermore, the principle of fiqh states that if there is a conflict between the benefits and the mafsadah in a policy, then it must be preceded to reject the mafsadah. This rule reads:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جُلْبِ الْمَصَالِحِ

This means that if there is a clash between efforts to achieve benefits and prevent damage, priority is given to preventing damage.<sup>151</sup> In this context, the economic benefits from sea sand exports claimed by the government are not comparable to the large mafsadah that has been and will continue to occur.

Therefore, from the perspective of *Sadd Al-Zari'ah*, the closure of the damage gap through the revocation of Government Regulation Number 26 of 2023 is not a form of rejection of sharia provisions, but a reflection of compliance with Islamic sharia principles that uphold the

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<sup>151</sup> Nashr Farid Muhammad Washil and Abdul Aziz Muhammad Azzam, *Al-Madkhal fi Al-Qawa'id Al-Fiqhiyyah wa Atsaruhā fi Al-Ahkām Al-Syar'iyyah*, translated by Wahyu Setiawan (Jakarta: Amzah, 2009), 21.

protection of the earth, society, and just laws. This attitude is not only justified, but also a form of state responsibility to maintain the mandate of sustainable and equitable natural resource management.

Thus, in the framework of *Sadd Al-Zari'ah*, Government Regulation Number 26 of 2023 has opened a large gap to harm, and therefore juridical-normative and ethical Islamic law, the policy deserves to be rejected or revoked in order to protect the public interest and prevent wider damage.

## CHAPTER IV

### CLOSING

#### A. Conclusion

Based on the results of the research and discussion of the Sea Sand Export Ban Policy based on Government Number 26 of 2023 concerning the Management of Sedimentation Products in the Sea from the perspective of *Sadd al-zari'ah*, two conclusions can be drawn to answer two formulations of the problem in this study, namely:

1. Government Regulation Number 26 of 2023 concerning the Management of Sedimentation Products at Sea has various fundamental problems, both constitutional, juridical, procedural, and normative. This policy is contrary to Article 33 and Article 28H of the 1945 Constitution because it opens up space for the exploitation of sea sand that ignores the principles of sustainability and justice for coastal communities. Legally, this Government Regulation does not have an explicit delegation from Article 56 of Law No. 32 of 2014 concerning Marine Affairs and deviates from the substance of marine environmental protection as stipulated in the law. In addition, the process of its formation does not involve meaningful public participation, violating the principles of openness and accountability in the formation of laws and regulations. In addition, there are inconsistencies between PP

26/2023 and PP 5/2021 in terms of EIA requirements and territorial restrictions, which creates legal uncertainty and is contrary to Gustav Radbruch's theory of legal certainty. Therefore, PP 26/2023 needs to be thoroughly reviewed to be in accordance with the principle of legality, sustainability, and socio-ecological justice within the framework of national law.

2. According to the analysis based on the rules of *Sadd Al-Zari'ah* as formulated by Ibn Qayyim, the sea sand export policy in Government Regulation Number 26 of 2023 is included in the category of the third type of *Sadd Al-Zari'ah*, which is an act that is legally of mubah origin and is not accompanied by bad intentions, but in practice it actually gives birth to a greater and real mafsadah than its benefits. This policy has fulfilled all the conditions for the implementation of *Sadd Al-Zari'ah*: first, there are dominant and layered mafsadah, such as destruction of the coastal environment, violation of the constitution, marginalization of traditional fishermen, and regulatory conflicts, second, there is no large and powerful benefit that can justify the sustainability of the policy, because the economic benefits claimed are pseudo-nature and not proportional to ecological or social losses. And third, there is no Nash Syar'i that expressly allows such a policy, in fact, the values of Shari'a actually require the prevention of all forms of damage (IFSĀD). Therefore, from the perspective of *Sadd Al-Zari'ah*, Government Regulation Number 26 of 2023 must be revoked, but in the

future it is not only worthy of being revoked, but the revocation must be followed by a more holistic, fair, and policy reformulation based on the principles of ecological prudence and meaningful public participation, so as not to become a means of legalization of the exploitation of natural resources that is contrary to *maqāṣid al-syarī'ah*.

## **B. Suggestion**

As a follow-up to the findings of the dominant *mafsadah* in the sea sand export policy based on Government Regulation Number 26 of 2023, the government needs to immediately revoke or suspend the implementation of the regulation while drafting new regulations that are more based on the principles of sustainability, ecological justice, and legal certainty. In the perspective of *Sadd Al-Zari'ah*, any policy that opens up loopholes of damage must be closed and replaced with preventive mechanisms that are able to maintain long-term benefits. Therefore, the new regulations that are drafted should prioritize meaningful public participation, strict AMDAL obligations, exploitation quota restrictions, and business license transparency. For business actors, it is recommended to diversify the blue economy sector in a sustainable manner without exploiting vulnerable ecosystems, and to be committed to social and environmental responsibility. In addition, it is necessary to establish an independent cross-sector supervisory body that can ensure that marine sedimentation management is no longer used as a means of legalizing exploitation, but as an effort to restore ecosystems based on science and sharia values that reject all forms of damage (*ifsād*) on earth.

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