

**LEGALITY OF GRANTING PERMITS FOR THE CONSTRUCTION OF
SEA FENCES TO BUSINESS ENTITIES IN INDONESIA A POSITIVE
LEGAL PERSPECTIVE AND *HIFDZU AL-BI'AH***

THESIS

BY:

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SHARIA FACULTY
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM
MALANG
2025**

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2025**

STATEMENT OF AUTHENTICITY

In the name of Allah,

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

**LEGALITY OF GRANTING PERMITS FOR THE CONSTRUCTION OF
SEA FENCES TO BUSINESS ENTITIES IN INDONESIA A POSITIVE
LEGAL PERSPECTIVE AND *HIFDZU AL-BI'AH***

Is truly the writer's original work which can be legally justified. If this thesis is proven to be the result of duplication or plagiarism from another scientific work, it as a precondition of degree will be declared legally invalid.

Malang, 23th June 2025



St. Suraisya Mahapati
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APPROVAL SHEET

After reading and correcting the thesis of St. Suraisya Mahapati Student ID 210202110040, Sharia Economic Law Department, Syari'ah Faculty, Maulana Malik Ibrahim State Islamic University Malang entitled:

**LEGALITY OF GRANTING PERMITS FOR THE CONSTRUCTION OF
SEA FENCES TO BUSINESS ENTITIES IN INDONESIA A POSITIVE
LEGAL PERSPECTIVE AND *HIFDZU AL-BI'AH***

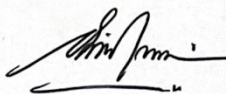
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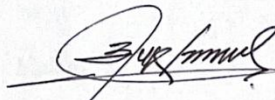
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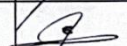
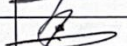
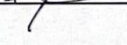

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1.	Monday, April 3, 2025	Writing a thesis proposal.	
2.	Friday, April 7, 2025	Thesis proposal revision.	
3.	Monday, April 10, 2025	Revised chapter 3.	
4.	Friday, April 14, 2025	Authorship revision.	
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6.	Monday, May 5, 2025	Writing chapters 4-5.	
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8.	Wednesday, May 14, 2025	Revised chapter 4.	
9.	Wednesday, May 21, 2025	Revised abstract.	
10.	Monday, May 26, 2025	Accepted Thesis draft.	

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LEGAL PERSPECTIVE AND *HIFDZU AL-BI'AH***

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MOTTO

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَلَدِ وَالْأَلْبِ حُرًّا وَفَضَّلْنَاهُمْ

God bless you

Meaning: "Indeed, We have glorified the children and grandchildren of Adam and

We carried them on land and in the sea. We also bestowed upon them good fortune and We preferred them above the many creatures We created with perfect advantages." (QS. Al-Isra verse 70)

Nullum Delictum Noela Poena Sine Praevia Lege Poenali

A rule of law cannot be applied to an event that arises before the rule of law governing the event is made.

ACKNOWLEDGEMENT

Alhamdulillahirabbil'alamin, have given His grace and service, so we can finish this thesis entitled "Legality Of Granting Permits For The Construction Of Sea Fences To Business Entities In Indonesia A Positive Legal Perspective And Hifdzu Al-Bi'ah". Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (uswatun hasanah) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amen.

From all the teaching, advice, guidance, and help of service for us to finish this thesis, then with all humility the writer will express the gratitude which is unequalled to:

1. Prof. Dr. M. Zainuddin, MA, as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang..
2. Prof. Dr. Sudirman, MA., CAHRM., as the Dean of Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Prof. Dr. Fakhruddin, M.HI., as the Head of Sharia Economic Law Department of Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
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5. Dr. Burhanuddin Susanto, S.HI, M.Humas as the author's supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.
6. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT..
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9. Both brothers and sisters of the author, I have high hopes that you can pursue education as high as possible.
10. Friends of Sharia Economic Law 2021 UIN Malang, thank you for these four years, thank you for the closeness, the adventure, the togetherness during college, of course it will be a valuable experience, a story that sticks with the author while in Malang.
11. IKAMI SULSEL Cabang Malang, which has served as a space for learning and a home to return to, may it always be blessed.
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The author hopes that the knowledge gained during his time as a student of Islamic Economic Law at the State Islamic University of Maulana Malik Ibrahim Malang can be useful for the author herself and for others. The author is aware that she is only an ordinary human being who is never free from mistakes, therefore if there are sentences that are impolite and offensive to the reader, the author apologizes profusely. The author is also aware that this thesis certainly has shortcomings. Therefore, the author hopes for criticism and suggestions from all parties for the sake of improvement efforts in the future.

Malang, 23th June 2025
Writer,

St. Suraisya Mahapati
SIN 210202110040

TRANSLITERATION GUIDELINES

In writing scientific papers, the use of foreign terms is often unavoidable. In general, according to the General Guidelines for Unified Indonesian Language, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following is a table of transliteration guidelines as a reference for writing scientific papers. The Arabic-Indonesian transliteration of the Faculty of Sharia, UIN Maulana Malik Ibrahim Malang is guided by the Library if Ongress (LC) model of the United States as follows:

Arab	Indonesia	Arab	Indonesia
ا	`	ط	t
ب	b	ظ	z
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	هـ	h
ش	sh	أ/ء	’
ص	s	ي	y
ض	ḍ		

To indicate a long vowel sound (madd), the method is to write a horizontal streak above the letter, such as ā, ī and ū. (آ, إ, و). Arabic double vowels are transliterated by combining the two letters “ay” and “aw” such as layyinah, lawwāmah. Words ending in tā' marbūṭah and functioning as an adjective or muḍāf ilayh are transliterated with “ah”, while those functioning as muḍāf are transliterated with “at”.

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ABSTRAK

St Suraisya Mahapati, 210202110040, 2025, **Legalitas Pemberian Perizinan Pembangunan Pagar Laut Kepada Badan Usaha Di Indonesia Perspektif Hukum Positif Dan *Hifdu Al-Bi'ah***, Skripsi, Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Skripsi: Dr. Burhanuddin Susanto, S.HI, M.Hum

Kata Kunci: Pagar Laut, Hukum Positif, *Hifdul Al Biah*

Kemunculan pagar laut di kawasan pesisir Kabupaten Tangerang yang membentang sepanjang 30,16 kilometer meliputi sedikitnya 6 kecamatan pagar laut yang dimaksud sebenarnya merupakan tanggul bambu yang dipasang. Struktur ini terdiri dari susunan bambu yang diikat dan dipasang di tengah laut dengan bagan apung. Pagar laut menimbulkan polemik di kalangan ahli hukum dan pegiat lingkungan. Hal ini disebabkan karena Menteri Agraria dan Tata Ruang Kepala Badan Pertanahan Nasional menyatakan bahwa terdapat Sertifikat Hak Guna Bangunan dan Sertifikat Hak Milik yang terbit di kawasan pagar laut Tangerang, Provinsi Banten. Menurut Menteri Agraria Tata Ruang/Kepala Badan Pertanahan Nasional, setidaknya terdapat 263 bidang tanah dalam bentuk Sertifikat Hak Guna Bangunan. Selain itu terdapat Sertifikat Hak Milik sebanyak 17 bidang. Penerbitan sertifikat Hak Atas Tanah dalam bentuk Sertifikat Hak Guna Bangunan dan Sertifikat Hak Milik kepada korporasi maupun perorangan di wilayah laut memunculkan kontroversi karena terdapat dua pakar hukum yang berbeda pandangan.

Penelitian ini membahas terkait legalitas pemberian izin pembangunan pagar laut yang ada di Tangerang. Dengan menggunakan elemen pendekatan hukum positif di Indonesia dan hukum Islam melalui perspektif *Hifdul Al Biah* yaitu onsep dalam Islam yang berarti menjaga atau memelihara lingkungan hidup.

Metode yang digunakan dalam penelitian ini adalah yuridis nomatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Penelitian ini menggunakan sumber data primer dan sekunder serta tersier. Data primer diperoleh dari peraturan perundang-undangan; data sekunder diperoleh dari skripsi dan jurnal yang relevan; serta bahan hukum tersier yang digunakan dalam penelitian ini berupa berita.

Hasil dari penelitian ini adalah pemberian izin pembangunan pagar laut kepada beberapa badan usah yang mendapatkan sertifikat pada akhirnya dicabut hal tersebut didasari oleh sejumlah pelanggaran administratif dan dampak sosial-ekologis. Pagar-pagar tersebut dipasang tanpa izin resmi, melanggar ketentuan pemanfaatan ruang laut (KKPRL), serta berada di zona perikanan tangkap yang seharusnya bebas dari struktur permanen. Pagar laut yang dipasang secara ilegal dan menghalangi akses publik serta merusak lingkungan tidak sesuai dengan prinsip *hifdhul al-bi'ah* karena bertentangan dengan kewajiban menjaga kelestarian lingkungan dan hak bersama atas sumber daya laut dalam Islam.

ABSTRACT

St Suraisya Mahapati, 210202110040, 2025, *Legality Of Granting Permits For The Construction Of Sea Fences To Business Entities In Indonesia A Positive Legal Perspective And Hifdzu Al-Bi'ah*, Thesis, Sharia Economic Law Department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Dr. Burhanuddin Susanto, S.HI, M.Hum.

Key Words: Sea Fences, Positive Law, *Hifdzu Al Biah*

The appearance of sea fences in the coastal area of Tangerang Regency which stretches for 30.16 kilometers covers at least 6 sub-districts of sea fences in question are actually bamboo embankments that are installed. This structure consists of a bamboo arrangement that is tied and installed in the middle of the sea with a floating chart. The sea fence has caused a polemic among legal experts and environmental activists. This is because the Minister of Agrarian Affairs and Spatial Planning, the Head of the National Land Agency, stated that there is a Building Use Rights Certificate and a Property Rights Certificate issued in the Tangerang sea fence area, Banten Province. According to the Minister of Agrarian Spatial Planning/Head of the National Defense Agency, there are at least 263 plots of land in the form of Building Rights Certificates. In addition, there are 17 Certificates of Property Rights. The issuance of Land Rights certificates in the form of Building Rights Certificates and Property Rights Certificates to corporations and individuals in the sea area has caused controversy because there are two legal experts with different views.

This research discusses the legality of granting permits for the construction of sea fences (pagar laut) in Tangerang. The study employs the elements of positive legal approaches in Indonesia and Islamic law through the perspective of *Hifz al-Bi'ah*, an Islamic concept that emphasizes the protection and preservation of the environment.

The method used in this research is normative juridical, with a statute approach and a conceptual approach. The research utilizes primary, secondary, and tertiary legal sources. Primary data is derived from laws and regulations; secondary data is obtained from relevant theses and journals; while tertiary legal sources include news articles.

The result of the research shows that the permits granted to several business entities for the construction of sea fences were ultimately revoked, based on a number of administrative violations and socio-ecological impacts. These sea fences were installed without official permits, violated the provisions of marine spatial use (KKPRL), and were located in capture fisheries zones that should remain free from permanent structures. The unauthorized installation of sea fences, which obstruct public access and harm the environment, contradicts the principle of *Hifz al-Bi'ah*, as it opposes the Islamic obligation to preserve environmental sustainability and the collective rights to marine resources.

الخالصة

ست سورابسيا مهافاتي، الرقم الجامعي ٢١٠٢٠٢١١٠٠٤٠، سنة ١٤٤٦ هـ / ٢٠٢٥ م، رسالة جامعية بعنوان "مشروعية منح تصاريح إنشاء الأسوار البحرية للجهات التجارية في إندونيسيا: منظور القانون الإيجابي وحفظ البيئة (حفظ البيئة)" إلى قسم قانون الاقتصاد الشرعي، كلية الشريعة، بالجامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج، تحت إشراف الدكتور برهان الدين سوسامتو، س.ه.إي، م.هم

الكلمات المفتاحية: الأسوار البحرية، القانون الإيجابي، حفظ البيئة

يغطي ظهور الأسوار البحرية في المنطقة الساحلية من تانجيرانج ريجنسي ، والتي تمتد لمسافة ٣٠.١٦ كيلومترا ، ما لا يقل عن ٦ مناطق فرعية من الأسوار البحرية المعنية هي في الواقع سدود من الخيزران تم تركيبها. يتكون هذا الهيكل من ترتيب من الخيزران يتم ربطه وتثبيتته في وسط البحر بمخطط عائم. تسبب السياج البحري في جدال بين الخبراء القانونيين والنشطاء البيئيين. وذلك لأن وزير الشؤون الزراعية والتخطيط المكاني ، رئيس الوكالة الوطنية للأراضي ، ذكر أن هناك شهادة حقوق استخدام البناء وشهادة حقوق الملكية الصادرة في منطقة السياج البحري تانجيرانج ، مقاطعة بانتين. ووفقا لوزير التخطيط المكاني الزراعي / رئيس وكالة الدفاع الوطني، هناك ما لا يقل عن ٢٦٣ قطعة أرض في شكل شهادات حقوق البناء. بالإضافة إلى ذلك ، هناك ١٧ شهادة حقوق ملكية. أثار إصدار شهادات حقوق الأرض في شكل شهادات حقوق بناء وشهادات حقوق ملكية للشركات والأفراد في المنطقة البحرية جدلا بسبب وجود خبيرين قانونيين مختلفين في وجهات نظرهم.

يناقش هذا البحث شرعية منح تصاريح لبناء الأسوار البحرية في تانجيرانج. توظف الدراسة عناصر المقاربات القانونية الوضعية في إندونيسيا والشريعة الإسلامية من خلال منظور حفظ البيئة ، وهو مفهوم إسلامي يؤكد على حماية البيئة والحفاظ عليها.

الطريقة المستخدمة في هذا البحث هي معيارية قانونية ، مع نهج قانوني ونهج مفاهيمي. يستخدم البحث مصادر قانونية أولية وثانوية وثالثية. البيانات الأولية مستمدة من القوانين واللوائح. يتم الحصول على البيانات الثانوية من الأطروحات والمجلات ذات الصلة ؛ بينما تشمل المصادر القانونية الثالثة المقالات الإخبارية.

وأظهرت نتائج البحث أن التصاريح الممنوحة لعدة جهات تجارية لبناء الأسوار البحرية قد ألغيت في نهاية المطاف، بناء على عدد من المخالفات الإدارية والآثار الاجتماعية والبيئية. وقد أقيمت هذه الأسوار البحرية دون تصاريح رسمية، وانتهكت أحكام الاستخدام المكاني البحري، وتقع في مناطق مصائد الأسماك الطبيعية التي ينبغي أن تظل خالية من الهياكل الدائمة. إن تركيب الأسوار البحرية غير المصرح به، الذي يعيق وصول الجمهور ويضر بالبيئة، يتناقض مع مبدأ حفظ البيئة، لأنه يتعارض مع الواجب الإسلامي بالحفاظ على الاستدامة البيئية والحقوق الجماعية في الموارد البحرية.

CHAPTER I

INTRODUCTION

A. Background Of The Problem

The area of Indonesia's sea reaches more than 70% of the entire territory of Indonesia and has 17,509 islands. The region is located in the tropics and is crossed by the equator with a sea area of 5.8 million km² (consisting of 3.1 million km² of territorial waters and 2.7 million km² of Exclusive Economic Zone waters). This makes Indonesia the country with the second largest water area in the world after Canada. The vastness of this water area plays a vital role in the lives of coastal communities who depend on marine resources, especially fishermen.¹

Most of the population in coastal areas, such as in Java, Sulawesi, and Sumatra, rely on marine products as their main livelihood. Based on data from the Ministry of Marine Affairs and Fisheries (KKP), the number of fishermen in Indonesia in 2023 reached 3,205,512, and 85% were small fishermen, utilizing the sea as a source of food and economic livelihood.² In addition to fishing, many are also involved in processing marine products, which is an important economic sector in several coastal areas. Therefore, the sustainability of marine ecosystems greatly influences the social and economic life of fishing communities in Indonesia.

¹Decree of the Coordinating Minister for Maritime Affairs and Investment of the Republic of Indonesia Number 169 of 2020 concerning the Strategic Plan of the Deputy for Coordination of Maritime Sovereignty and Energy for 2020-2024

²Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, KKP Fishermen Data Portal 2023 <https://portaldata.kkp.go.id/portals/data-statistik/nelayan/summary>

Marine space is part of the marine area that has a strategic function in supporting various human activities, both in the economic, environmental, and socio-cultural fields. In Indonesia, the use of marine space includes activities such as fisheries, shipping, marine tourism, marine conservation, and the development of marine infrastructure such as ports, ponds, coastal reclamation and business activities.³

Permanent use of marine space in coastal areas and water jurisdictions must have a KKPRL (Marine Space Utilization Suitability Agreement). This is regulated in Article 1 paragraph 28 of the Regulation of the Minister of Maritime Affairs and Fisheries No. 28 of 2021 concerning the Implementation of Marine Spatial Planning, which states that marine space utilization can only be carried out after obtaining a Marine Space Utilization Activity Suitability Approval (PKKPRL), Marine Space Conformity Confirmation, and business permits related to utilization at Sea⁴and the implementation procedures are regulated in the Decree of the Director General of Marine Spatial Management No. 15⁵and No. 50 of 2023.⁶

The construction of sea fences is one form of utilization of sea space carried out by business entities or governments, with certain objectives such

³ Wiwit Handayani Laole Laole, MA Riandyka, RMBalazam, "Mapping the Utilization of Marine Space for Floating Restaurant Business Actors in Ambon Bay," Journal Of Social Science Research 3 (2023): 2, <https://j-innovative.org/index.php/Innovative/article/view/2433>.

⁴Regulation of the Minister of Maritime Affairs and Fisheries No. 28 of 2021 concerning the Implementation of Marine Spatial Planning

⁵Decree of the Director General of Marine Spatial Management Number 15 of 2023 Concerning Implementation Guidelines for Facilitating Approval of Suitability of Marine Spatial Utilization Activities for Local Communities in Coastal Areas and Small Islands

⁶Decree of the Director General of Marine Spatial Management No. 50 of 2023 concerning Technical Guidelines for the Implementation of Compliance with Marine Spatial Utilization Activities

as reclamation, coastal protection, or securing business areas. In general, sea fences are artificial structures built in coastal areas or waters to limit or control access to certain parts of the sea. However, the construction of sea fences also raises various problems, both from a legal, social, and ecological perspective. In practice, such construction is often carried out without involving local communities who have so far depended on the sea for their livelihoods.⁷

The emergence of a sea fence in the coastal area of Tangerang Regency which stretches 30.16 kilometers (km) covering at least 6 sub-districts sea fence what is meant is actually a bamboo embankment that is installed. This structure consists of bamboo arrangements that are tied and installed in the middle of the sea with a floating chart. The sea fence has caused polemics among legal experts and environmental activists.

This is because the Minister of Agrarian Affairs and Spatial Planning (ATR)/Head of the National Land Agency (BPN) stated that there are Building Use Rights Certificates (SHGB) and Ownership Rights Certificates (SHM) issued in the sea fence area of Tangerang, Banten Province. According to the Minister of ATR/Head of BPN, there are at least 263 plots of land in the form of SHGB with ownership of 234 plots of land in the name of PT Intan Agung Makmur and 20 plots of land in the name of PT Cahaya Inti Sentosa and 9 plots of land in the name of individuals. In addition, there are 17 SHM plots. The issuance of Land Rights Certificates (HAT) in the

⁷ Andriana Ita, "THE IMPACT OF SEA FENCES ON FISHERMEN'S LIVELIHOODS," nd, 4.

form of SHGB and SHM to corporations and individuals in the sea area has raised controversy because there are two legal experts with different views.⁸

Law expert from the Faculty of Law, Jenderal Soedirman University, Hibnu Nugroho explained that in the law there is no term for a form of fence at sea because the sea is in the public domain owned by the state, which can be private property is land, land or former ponds and so on. As in Article 20 of Law No. 5 of 1960 concerning the Principles of Agrarian (UUPA) it is explained that ownership rights are hereditary, strongest, and most complete rights that can be owned by people over land. Article 35 of the UUPA states that HGB (Building Use Rights) is the right to build and own buildings on land that is not one's own. SHM and SHGB are only issued for control over land not with water or sea water.⁹

On the other hand, an expert in agrarian law from the Faculty of Law, Gadjah Mada University, Prof. Nurhasan Ismail, has the opposite view. According to him, water land can be attached to the legal basis for land rights. Nurhasan refers to the definition of land in Article 1 paragraph (4) of the UUPA, not only land on land, but also land under the water column. Nurhasan firmly stated that land rights, including HGB and SHM, can be obtained for parts of land under water.¹⁰

⁸ Hendrik Yaputra, "The Polemic of Sea Fences Having HGB Certificates, What is the Difference with HGU and SHM?," Tempo, 2025.

⁹ Aisha Amalia Putri, "https://www.kompas.tv/regional/569328/terkendal-cuawat-pembongkaran-pagar-laut-di-tangerang-dihentikan-sementara-pagar-laut," Kompas, 2025.

¹⁰ Bolivia, "Case of HGB Certified Sea Fence, UGM Agrarian Expert Assesses There is a Lack of Regulation and Legal Compliance," Universitas Gadjah Mada, 2025.

With the existence of different interpretations of laws by legal experts, this can cause legal ambiguity, which can have an impact on the unclear laws in force. If legal experts or law enforcers have different interpretations of a law, then its application can be inconsistent. This can confuse the public about the applicable rules, resulting in inhibiting certainty and legality, for example in terms of licensing, namely the difficulty in understanding licensing procedures, so that it is possible to accidentally violate the law due to different interpretations.

Legal ambiguity is a condition in which a phrase in legislation does not provide an explanation of the exact meaning and therefore cannot be used as a legal basis/the law cannot be applied. As in the explanation of land rights in the UUPA which resulted in multiple interpretations among legal experts. This causes legal uncertainty regarding the granting of permit certificates for the rights to build sea fences that are issued.¹¹

In line with the concept of *Hifdul Al Biah* as one of the CONCEPTS in environmental lawIslam, it requires the importance of licensing in accordance with existing procedures and conformity with Islamic law in dealing with environmental problems, *Hifdul Al Biah* which means "maintaining the environment."¹² This method is used to prevent acts that are initially permissible but have the potential to have negative impacts in the

¹¹ Desi Arianing Arrum, "Legal Certainty in Electronically Integrated Business Licensing (Online Single Submission) in Indonesia," *Jurist Diction Law Journal* 2 (2019): 1632, <https://doi.org/https://doi.org/10.20473/jd.v2i5.15222>.

¹² Ismail Jalili, *The Existence of Sadd Adz-Dzari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim Al-Jauziyyah* (KLatén: Lakeisha, 2020).

future in terms of protecting the environment. In the context of licensing, *Hifdul Al Biah* can be applied to prevent abuse or manipulation of the licensing process that can cause damage or harm to other parties. Because if the permit for the construction of a sea fence is issued without proper procedures, it will cause various problems that will arise in the future, so it is not in accordance with the concept of *Hifdul Al Biah*, which is to protect the environment by paying attention to the aspect of nature itself and its relationship with humans or in this case society.

The focus of the study that will be discussed in this study is about the legality of granting permits for the construction of sea fences to business entities in Indonesia using a positive legal perspective and *the perspective of Hifdul Al Biah*, as a way to explore Islamic environmental law to prevent the occurrence of something that causes damage.

Therefore, this study aims to examine the legality of granting permits for the construction of sea fences to business entities in Indonesia, because the impact of legal ambiguity on the construction of sea fences can allegedly result in the emergence of illegal certificates. So that it is hoped that this research can provide legal certainty and licensing which will later be issued in accordance with procedures and provide legal protection for business entities. The author also adds the perspective of *Hifdul Al Biah* as one of the concepts of environmental law in Islam to expand the study and explore Islamic law in this study.

B. Problem Limitation

In order for the research to be more focused in the discussion, this thesis limits the scope of the research to the legality of granting permits for the construction of sea fences in Tangerang to business entities.

C. Problem Formulation

The formulation of the problems raised in this research is as follows:

1. How is the Positive Law Regarding the Legality of Permits for the Construction of Sea Fences for Business Entities in Indonesia?
2. How is Hifdul Al Biah's Perspective on the Legality of Permits for the Construction of Sea Fences for Business Entities in Indonesia?

D. Research Objectives

The objectives of this research are as follows:

1. To analyze the legal certainty of the legality of permits for the construction of sea fences for business entities in Indonesia from a Positive Law perspective.
2. To analyze the perspective of Hifdul Al Biah on the legality of permits for the construction of sea fences for business entities in Indonesia.

E. Benefits of Research

In conducting this research, the researcher hopes that all parties who read and are directly involved in this research can gain the following benefits:

1. Theoretical Benefits;

Theoretically, the results of this research are expected to provide benefits in the form of sources of knowledge, insight, information and as a reference regarding:

- a. Development of Sadd Al's theory in assessing the legality of permits for the construction of sea fences. And also enriching the study of contemporary ushul fiqh by applying the criteria of Hifdul Al Biah.
- b. Conceptualization of regulation based on maqashid sharia by providing an analytical framework to determine the suitability of licensing policies with sharia objectives (hifzh al-bi'ah/environmental protection).

2. Practical Benefits

- a. Propose an integrated monitoring system to prevent abuse of authority in issuing permits.
- b. Promoting transparency in marine space allocation
- c. Recommend limits on business ownership in coastal areas based on the principle of "Hifdul Al Biah" (protecting the environment).
- d. To be a basis for legislators and legal practitioners to design marine regulations that are responsive to ecological, economic and social justice aspects.

F. Operational Definition

1. Granting of Permission

Licensing is one of the instruments that can be used by the government to control community activities, especially related to the impacts caused by various activities in various sectors. In the context of regional autonomy, local governments have the authority to manage and regulate their own government affairs. This authority provides flexibility to

district or city governments to handle various potential problems and challenges that may arise in their areas in the future. Therefore, it is important for local governments to continue to improve and enhance the quality of public services, including licensing services that are directly related to community activities.¹³

2. Sea Fence

A sea fence is a construction built parallel to the coastline or shoreline, which aims primarily to protect coastal areas from the risk of abrasion, seawater intrusion and large waves. The materials used in its manufacture vary, from bamboo to concrete, depending on the design and specific function to be achieved.

The importance of sea fences lies in their ability to prevent soil erosion due to the effects of tidal sea water.¹⁴ Without this protective structure, the land on the coast will be slowly eroded by waves that come at any time, which can eventually cause damage to the land area. Coastal erosion can also threaten existing infrastructure, such as highways, buildings, or even settlements located near the coastline. In addition to dampening wave energy, sea fences also play a role in supporting the sediment deposition process, which is expected to help form new land or strengthen existing coastal structures.

¹³ et al. Herlangga Putra Mahendra, Lianintan Suci, Annabila Fatimah, "The Impact of Granting Building Permits in Cisarua District in Terms of Spatial Planning Law," *Jurnal Rectum* 6 (2024): 313, <https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v6i2.4374>.

¹⁴ Setyo Amirullah, "Legal Review of the Construction of Sea Fences from the Perspective of Environmental Protection and Public Participation," *Journal of Social Sciences and Law* 3 (2025): 732, <https://doi.org/https://doi.org/10.61104/alz.v3i2.1140>.

On the other hand, the presence of new land in an area that used to be sea can give rise to the possibility of a reclamation area emerging by expanding the land and narrowing the sea area.¹⁵

However, the construction of sea fences is not without controversy. The installation of sea fences on a large scale can disrupt coastal ecosystems, such as coral reefs, mangroves, and other coastal vegetation that serve as habitats for many species. The long-term impacts of sea fence construction can affect biodiversity and change the natural character of the coast itself. Therefore, the design and selection of sea fence materials must take into account the ecological impacts that may arise.¹⁶

Overall, sea fences have a very important role in protecting coastal areas from damage caused by natural activities such as erosion and sea storms. However, their implementation must be adjusted to local environmental conditions so as not to cause further damage to coastal ecosystems. In this case, in-depth research and careful planning are needed to create a balanced solution between coastal protection and environmental sustainability.

3. Business Entity

A business entity is an entity that legally and economically collects various production factors with the aim of gaining profit or providing

¹⁵ Surur Roiqoh, "The Role of Agrarian Law in Coastal Land Management: Case Study of Sea Fences in Tangerang," *Jurnal Hukum* 1 (2025): 74, <https://doi.org/https://doi.org/10.58540/jih.v1i2.762>.

¹⁶ Ade Darajat Martadikusuma, "Legal and Ecological Oddities in the Construction of the Tangerang Sea Fence: A Study of Regulations and Their Impacts," *Al-Zayn: Journal of Social Sciences & Law* 3 (2025): 431, <https://doi.org/https://doi.org/10.61104/alz.v3i2.1050>.

services to the community. It is called a legal entity because in general a business entity has the status of a legal entity. Meanwhile, it is called an economic entity because a business entity combines production elements such as natural resources, capital, and labor to generate profit or provide services to the public. Some business entities are legal entities and some are not legal entities. A legal entity is a business entity that is legally recognized as an entity separate from its owner. Where the business entity has its own rights and obligations, and can carry out legal acts in its own name. So that a legal entity business entity is also included in the legal subject in addition to humans.¹⁷

4. *Hifdul Al Biah*

The words *Hifdul Al Biah* (حِفْظُ الْبَيِّئَةِ), which means “to guard or protect the environment.”¹⁸ This concept has a strong basis in the Qur'an and Hadith, and is ethically in line with the principles of modern ecology. When associated with marine ecology, *ḥifẓ al-bi'ah* requires humanity to maintain the balance and sustainability of the marine ecosystem as part of the Divine mandate. Etymologically, the word “*ḥifẓ*” means to guard, maintain, or protect, while “*al-bi'ah*” means the environment or place where living things live. Thus, *ḥifẓ al-bi'ah* generally means “maintaining the sustainability of the environment.”

¹⁷ et al. Sri Budi Purwaningsih, Noor Fatimah Mediawati, Lailul Mursyidah, “Forms of Legal Entities of Village-Owned Enterprise Business Units,” *Journal of Social Sciences and Humanities* 6 (2023): 843, <https://doi.org/https://doi.org/10.37329/ganaya.v6i4.2555>.

¹⁸ Muhamad Alwi, Transformation of the Concept of Hifdzul Bi'ah to the Rampant Illegal Burning in Indonesia, *Jurnal Al-Jina'i Al-Islami*, no. 2 (2024), 68

G. Research Methods

1. Types of Research

The type of research used by the author to discuss and analyze the problems in this study uses a normative legal research methodology. This study focuses on the study of legal norms, laws and regulations, legal principles, legal doctrines, and legal systematics that are relevant to the legal problems discussed related to the legality of granting permits for the construction of sea fences.¹⁹This is relevant to examine the controversy over the legality of granting permits for the construction of sea fences to business entities in Indonesia because it focuses on the study of legal norms and applicable laws and regulations.²⁰

2. Research Approach

- a. The research approach is a view used by researchers in understanding the problem. The approach used in this study is the statutory approach (Statute Approach) this approach is carried out by examining and reviewing the laws and regulations related to because this approach focuses on an in-depth review of all laws and regulations related to the legal issues being studied.²¹The laws related to the subject of the research are Law Number 27 of

¹⁹ Muhamad Azhar Kornelius Benuf, "Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems," *Jurnal Gema Keadilan* 7 (2020): 22, <https://doi.org/https://doi.org/10.14710/gk.2020.7504>.

²⁰ Pujiati, "Normative Juridical Research Methods in the Legal Field," October 21, 2024.

²¹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017).

2007 concerning Management of Coastal Areas and Small Islands and Law Number 32 of 2014 concerning Marine Affairs. These regulations are used to understand the problems regarding the case of sea fences located on the coast.

- b. The case approach in normative legal research refers to the use of analysis of the application of applicable laws and regulations, as well as legal norms to analyze an event or legal problem.²²In the context of the sea fence case, the case approach in normative legal research is used to analyze the existing legal basis related to the construction of permanent structures in coastal or marine areas.

3. Types and Sources of Legal Materials

This research uses primary, secondary and tertiary legal materials.

a. Primary Legal Materials

Primary legal materials are the main legal sources that have authority and become the normative basis in normative legal research. Primary legal materials consist of laws and regulations; official records or academic study minutes used in making laws and regulations and judges' decisions.²³In this study, the primary legal materials used are Law Number 5 of 1960 concerning Basic Agrarian Regulations, Law Number 27 of 2007 in conjunction with Law Number 1 of 2014

²² Legal Research Methods (Sukoharjo, 2024).

²³ Zainuddin Ali, Legal Research Methods (Jakarta: Sinar Grafika, 2011).47

concerning Management of Coastal Areas and Small Islands, Law Number 32 of 2014 concerning Marine Affairs Regulating the management of marine resources and marine space, including the government's authority in regulating licensing as the main reference in managing coastal areas and granting permits to third parties in utilizing marine space. The above regulations are used to assess the validity of granting permits for the construction of sea fences, both from the perspective of positive law in Indonesia and Islamic law (Sadd al-Dzari'ah).

b. Secondary Legal Materials

Secondary legal materials are all publications on law which are unofficial documents including: Books that describe a legal problem including theses, legal dissertation theses; legal dictionaries; legal journals on the construction of sea fences and other sources that are relevant to the research.²⁴

c. Tertiary Legal Materials

Tertiary (supporting) legal materials used in this study are in the form of news; legal dictionary; big Indonesian dictionary; encyclopedia and others.²⁵

4. Legal Material Collection Techniques

²⁴ Zainuddin Ali, Legal Research Methods.54

²⁵ Zainuddin Ali, Legal Research Methods57

Based on research conducted by the author, there are two techniques for collecting legal materials, namely:²⁶:

a. Literature Study

Literature study was conducted by collecting primary, secondary and tertiary legal materials related to the research theme "Legality of granting permits for the construction of sea fences".

b. Internet

The second technique for collecting legal materials is using internet facilities to access websites and journals published online, which are relevant to the researcher's theme.

In normative legal research, the technique of collecting legal materials is by studying; reviewing laws and regulations, law books, websites and from various internet sources, especially regarding the construction of sea fences or the use of sea space.

5. Legal Material Analysis Techniques

In this study, deductive reasoning was used to systematically collect legal materials, namely by selecting the collected legal materials. Furthermore, the author also uses a descriptive method, namely by describing and reviewing whether the practice of granting permits is in

²⁶ Zainuddin Ali, Legal Research Methods107

accordance with relevant legal concepts and does not deviate from the administrative process of granting permits for the construction of sea fences.²⁷

H. Previous Research

Research on the Legality of Granting Permits for the Construction of Sea Fences in Indonesia from the Perspective of *Hifdul Al Biah* has not been widely studied because the phenomenon of sea fences is something that is still new, so there are not many studies that directly discuss sea fences, so the author took several previous research references that are still related to the topic to be discussed, such as the following studies:

1. Research conducted by Setyo Amirullah (2025) in his research entitled "*Legal Review of the Construction of Sea Fences from the Perspective of Environmental Protection and Public Participation*" discusses analyzing the legal provisions governing the construction of sea fences from the perspective of environmental protection in Indonesia, and evaluates the extent to which the principle of public participation is applied in the planning and implementation process of sea fence construction in coastal areas. Setyo uses the normative legal method, namely a type of research that focuses on the study of legal documents by analyzing laws and regulations as the main source (law in books), and viewing law as a set of norms that serve as guidelines for behavior that is considered appropriate

²⁷Cornelius Benuf, Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems, Jurnal Gema Keadilan, Volume 7 (2020), 27

in society. The results of this study indicate that the construction of sea fences in coastal areas has significant legal implications, especially in the context of environmental protection and the fulfillment of public participation rights.²⁸ Legally, this practice not only has the potential to damage coastal ecosystems and disrupt traditional fishermen's activities, but also reflects the weak implementation of the principles of caution, prevention, and intergenerational justice that should be the basis for sustainable development policies. The absence of a valid AMDAL document and violations of the licensing mechanism are indicators of serious violations of the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management. In terms of public participation, there is a disregard for the rights of the community to be involved in all stages of development, from planning to supervision. The absence of meaningful consultation and the lack of transparency of information further increase the inequality of access to environmental justice, thus harming local communities, especially vulnerable groups such as traditional fishermen. However, this study has not comprehensively touched on the legality of the construction of sea fences, the author only focuses on the impacts caused without delving further into the fundamentals of the construction of sea fences, this study also does not discuss the construction of sea fences from an Islamic law perspective

²⁸ Setyo Amirullah, "Legal Review of the Construction of Sea Fences from the Perspective of Environmental Protection and Public Participation."

using the *Hifdul Al Biah* perspective, this can help identify the potential negative impacts of installing sea fences before bigger problems arise. This approach is also in line with the principles of Islamic justice, namely avoiding harm, maintaining community welfare, and protecting the environment.²⁹

2. Further research by Surur Roiqoh and Navirta Ayu (2025) entitled "*The Role of Agrarian Law in Coastal Land Management - Case Study of Sea Fences in Tangerang*" examines coastal land management in Indonesia, especially in Tangerang, using agrarian law to analyze coastal land management. The results of this study indicate that coastal land management in Indonesia, especially in Tangerang, faces major challenges related to the legal status of land and control that is often not formally registered. Coastal land is often a source of conflict between local communities, entrepreneurs, and the government due to unclear land rights. Agrarian law, which is regulated in the Basic Agrarian Law No. 5 of 1960 (UUPA), has an important role in providing a legal basis for coastal land management, including in resolving disputes and mapping land rights. The overlapping interests between the various parties involved add to the complexity of the problems in coastal land management.³⁰This study has discussed sea fences in detail through the perspective of agrarian law, but the deficiency in this study is that it does

²⁹Setyo Amirullah, "Legal Review of the Construction of Sea Fences from the Perspective of Environmental Protection and Public Participation," (2025): 731. <https://doi.org/10.61104/alz.v3i2.1140>

³⁰ Roiqoh, "The Role of Agrarian Law in Coastal Land Management,"74.

not examine it from an Islamic perspective, especially Hifdul Al Biah, where this perspective would provide a more in-depth analysis from an Islamic legal perspective, especially in preventing the potential for greater damage (mafsadat) in the future.

3. Further research was conducted by Bono Budi (2025) entitled "*Legal-Normative Analysis of the Facts and Legal Framework and Policy Related to the "Mysterious Sea Fence" on the North Coast of Tangerang*" discussing the issue of the "mysterious sea fence" which went viral on social and conventional media in Indonesia in early 2025. It is said that a 30 km long sea fence appeared mysteriously in the sea off the north coast of Tangerang, from Kronjo to Kosambi, which sparked public debate. Bono Budi used normative or doctrinal law as a research method. This research opens up broader insights that the problem of sea fences if viewed more deeply is actually how the legality and legal suitability of the PSN (national strategic project) Tropical Coastland, TIC, PIK-2, and/or PIK-2 expansion, the application of the Integrated Coastal Zone Management (ICZM) concept, namely management is carried out comprehensively by considering economic, social, environmental, and technological aspects. The results of this study conclude that the reclamation of the northern coast of Jakarta, sooner or later, tomorrow or the day after, these projects will certainly become physical realities, although they may not be entirely in accordance with what was originally planned. The government, both central and regional, seems to simply

follow the initiative and wishes of large investors by fulfilling their needs for legal and governmental administration.³¹

4. Research conducted by Wildan Fikaruddin et al. (2025) entitled "*Legal Review of the Sea Fence Case in Tangerang Regency from a Progressive Law Perspective*" analyzes the legal practice of installing sea fences and identifies its legal implications for the parties involved, both in terms of laws and regulations and its impact on coastal communities. This study uses a normative legal method with a descriptive analysis approach supported by progressive legal theory. In addition, the study also uses supported by progressive legal theory, this study found that the practice is contrary to Article 33 paragraph (3) of the 1945 Constitution and the values of social justice in Pancasila, and shows the weak implementation of Law Number 27 of 2007 and Law Number 32 of 2014. It was also found that weak supervision, overlapping regulations, and abuse of authority by certain officers are the main factors in the proliferation of this illegal practice. The results of this study emphasize the importance of firm, transparent and participatory policy reforms, to ensure that marine space remains a shared asset managed for the prosperity of the people and to guarantee the protection of coastal communities' rights in a fair and sustainable manner.³²

³¹ Bono Budi Priambodo, "Legal-Normative Analysis of the Facts and Legal Framework and Policy Related to the 'Mysterious Sea Fence' on the North Coast of Tangerang," *Unes Law Review* 7 (2025): 1221, <https://doi.org/https://doi.org/10.31933/unesrev.v7i3.2412>.

³² Sandy Yudha Wildan Fikarudin, Ade Darajat, "Legal Review of the Sea Fence Case in Tangerang Regency from a Progressive Law Perspective," *Journal of Social Sciences and Law* 3 (2025): 382, <https://doi.org/https://doi.org/10.61104/alz.v3i2.1035>.

5. Further research by Rizca Aulia et al. (2025) entitled "*Legal Analysis of Sea Fencing on the Tangerang Coast in the Framework of International Maritime Law*" identifies the legal aspects of sea fencing using the approach of international maritime law and Indonesian national law. The method used is a literature study by analyzing various legal sources, scientific journals, and similar case studies in other countries. Descriptive-analytical analysis was conducted to assess the suitability of sea fencing with the principles of UNCLOS and its impact on the rights of coastal communities and the environment. The results of the study indicate that sea fencing on the Tangerang coast has the potential to violate the principles of UNCLOS 1982 and harm coastal communities who depend on the sea as a source of life. In addition, this action also risks causing ecological impacts that can disrupt the balance of the coastal environment. Therefore, stricter regulations and effective supervision are needed to ensure that marine area utilization policies remain in line with international and national laws and do not harm the public interest.³³

Table 1.1
Similarities and Differences in Previous Research

No.	Name, Research Title and Methods Used	Research result	Equality	Difference

³³ Sintong Arion Rizca Aulia, Yadifa Mesya, Ernawati, "Legal Analysis of Sea Fencing on the Tangerang Coast in the Framework of International Maritime Law," *Journal of Law, Education and Social Humanities* 2 (2025): 90, <https://doi.org/https://doi.org/10.62383/aliansi.v2i2.823>.

1.	The Greatest “Legal Review of the Construction of Sea Fences from the Perspective of Environmental Protection and Public Participation”	The construction of sea fences, which is often carried out without AMDAL documents and valid marine space utilization permits, is contrary to the principles of caution, prevention and sustainable development as regulated in Law Number 32 of 2009 and other coastal regulations.	The main similarity between the two studies is the issues studied, both of which highlight the problems of permits, environmental impacts, and community rights related to development in marine areas.	The difference in this research lies in the theory used, where this research uses an environmental law perspective and the principle of public participation, while the research conducted by the author uses a positive law perspective and also the <i>Hifdul Al Biah</i> perspective.
2.	Surur Roiqoh and Navirta Ayu “The Role of Agrarian Law in Coastal Land Management: Case Study of Sea Fences in Tangerang”	Coastal land management in Indonesia, especially in Tangerang, faces major challenges related to the legal status of land and ownership that is often not formally registered. Coastal land is often a source of conflict between local communities, entrepreneurs, and the government due to unclear land rights.	These two studies have similarities in that they both examine the roles and responsibilities of government and business entities in the construction of sea fences.	The main difference between the two studies lies in the type of research, namely an empirical/normative legal study of coastal land use conflicts, while the method used by the author is a juridical- normative study.
3.	Bono Budi “Legal- Normative	The sea fence is indeed a form of current	Similarities in research Both	Both studies use a positive legal approach, but in

	Analysis of the Facts and Legal Framework and Policy Related to the “Mysterious Sea Fence” on the North Coast of Tangerang”	city expansion through sea reclamation which has been planned since 1995, as happened on the north coast of Jakarta.	highlight the legal issues of building sea fences as well as government policies and related permits.	this study the author added the Hifdul Al Biah perspective in analyzing the sea fence problem.
4.	Wildan Fikarudin, Ade Derajat Martadikusuma, and Sandi Yudha Pratama Legal Review of the Sea Fence Case in the Regency Tangerang from a Progressive Law Perspective	the importance of firm, transparent and effective policy reforms participatory, to ensure that marine space remains a common property that is managed for the prosperity of the people and to ensure the protection of the rights of coastal communities fairly and sustainably.	The main similarity of these two studies is that both discuss the case of the sea fence in Tangerang Regency, especially the construction that gave rise to legal controversy.	The difference in the two studies lies in the legal approach used, namely that this study uses national positive law and progressive legal theory, while the author uses positive law and an Islamic perspective, namely <i>Hifdul Al Biah</i> .
5.	Rizca Aulia, et al. Legal Analysis of Sea Fencing on the Tangerang Coast in the Framework of International Maritime Law	The fencing of the sea on the coast of Tangerang has the potential to violate the principles of UNCLOS 1982 and harm coastal communities who depend	The similarity between these two studies lies in the topic discussed, namely the case of the sea fence in Tangerang.	The difference in research lies in the legal perspective used, namely in the research conducted by Rizca using the perspective of international maritime law, so

		on the sea as a source of life.		that the focus is on the aspects of sovereignty, jurisdiction, and freedom of the sea. While in the research conducted by the author, it is assessed from the perspective of Islamic law, especially by using the <i>Hifdul Al Biah</i> principle, which focuses on preventing policies that have the potential to harm society or damage the environment.
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From the previous research table above, this study has differences in terms of the focus of the study and the sources used as references for data collection. The focus of this study is directly on granting permits for the construction of sea fences to business entities using the *Hifdul Al Biah* perspective.

I. Writing system

To facilitate this research, the author has divided the description into four interrelated chapters, and each chapter has sub-chapters consisting of the following:

CHAPTER I :INTRODUCTION

This chapter contains the background of the problem, problem formulation, scope of research, objectives and benefits of the research, research

methods, theoretical framework and conceptual framework, and writing systematics.

CHAPTER II: LITERATURE REVIEW

This chapter contains a description of the concepts and theoretical frameworks that aim to study and analyze problems, especially those related to the legality of granting permits for the construction of sea fences, especially to business entities.

CHAPTER III: RESEARCH RESULTS AND DISCUSSION

In this chapter there is a discussion that will present and analyze research data that is in accordance with the formulation of the problem, namely outlining the analysis of legislation related to the topic that the author uses.

In addition, this discussion will also identify *Hifdul Al Biah's* perspective in viewing the phenomenon of building sea fences, whether it is in accordance with the implementation *Hifdul Al Biah*.

CHAPTER IV: CLOSING

This chapter contains conclusions and suggestions. This chapter is the last chapter of writing a thesis, so the researcher draws several conclusions from the results of this study to answer the formulation of the problem, and provides suggestions that are considered necessary.

CHAPTER II

LITERATURE REVIEW

A. Licensing Law

1. Understanding Licensing

In the context of administrative law, permission becomes an essential instrument used by the government to control the behavior of citizens through legal mechanisms. Permission can be understood as approval given by the authorities based on legal provisions, which allows someone to deviate from the prohibitions stipulated in the legislation in certain circumstances. The granting of this permission signifies official recognition of an action that is basically prohibited, but is given in the public interest with special supervision.³⁴

By applying a licensing system to various forms of action, legislators or law makers can achieve various specific goals, including:

- a. Attempts to regulate and control certain types of activities;
- b. Prevent negative impacts on the environment;
- c. The purpose is to provide protection for certain objects;
- d. Managing the distribution of limited resources;
- e. Conduct selection of individuals and activities to be carried out.³⁵

A permit is basically a form of legal determination that functions as a dispensation from the prohibition provisions stipulated in laws and regulations. In this context, activities such as establishing, running,

³⁴ Anik Tri Sigit Sapto Nugroho, OSS (Online Single Submission) Based Licensing Law (KLatén: Lakeisha, 2021).

³⁵ English: Mr. Sapto Nugroho.

expanding, or changing a business that has the potential to cause harm, loss, or disruption, cannot be carried out without permission from the competent authority. Thus, a permit can be understood as a legal mechanism that provides a legitimate exception to normative prohibitions, in order to allow individuals or business entities to carry out certain actions that are generally not permitted by law.

2. Nature of Licensing

In principle, a permit is a form of decision issued by an official or state administrative body that has the authority, where the content or substance of the decision has certain characteristics, including:³⁶

- a. A free permit refers to a form of state administrative decision issued without direct binding to written legal provisions. In this case, the authorized official or organ has considerable discretion in determining whether the permit will be granted or not, based on subjective considerations within the scope of its authority.
- b. A binding permit is a state administrative decision whose issuance must be in accordance with the provisions of the law, both written and unwritten. The level of freedom and authority of the official or agency issuing the permit depends on the extent to which the laws and regulations regulate it. Examples of this type of permit include Building Construction Permit (IMB), Disturbance Permit (HO), and industrial business permit.

³⁶ Sigit Sapto Nugroho, 36.

- c. A beneficial permit is a decision that provides direct benefits or advantages to the party receiving the permit. This type of permit is basically the granting of rights or the fulfillment of a demand that would not be obtained without the decision. Examples of permits included in this category include a Driving License (SIM), a Trade Business License (SIUP), and a Business Premises License (SITU).
- d. A burdensome permit is a decision that contains provisions that are burdensome to the related parties. In addition, this type of permit also creates a burden or negative impact on individuals or the surrounding community. For example, granting a permit to a company can be a burden for residents living around the business location because they suffer losses due to the permit.
- e. Temporary permits are permits related to the implementation of actions or activities that have a limited time period or end in a relatively short time. An example is the Building Construction Permit (IMB), which is only valid during the construction process and will end after the building is completed.
- f. Long-term permits are permits related to the implementation of actions or activities that are valid for a long time or end in a relatively long period of time. Examples of this type of permit include industrial business permits and permits related to environmental aspects.
- g. Personal permits are permits whose contents depend on the characteristics or qualities of the individual applicant. An example of

this permit is a Driving License (SIM), which is granted based on the applicant's personal ability and eligibility.

- h. Material permits are permits whose contents depend on the nature and object of the permit, for example, Hinder Ordannantie HO (Disturbance Permit), SITU Business Premises Permit, and others.

3. Licensing Elements and Organs

A permit can be understood as a single action carried out by the government based on the provisions of laws and regulations, which are applied to a concrete case or event by following procedures and meeting certain requirements. From this definition, there are several important elements inherent in the licensing process, including the following:³⁷

- a. As a legal instrument in an effort to realize public welfare, the government is given authority in the field of regulation. From this regulatory function, various legal instruments emerge that are used to handle individual and concrete events, one of which is in the form of a decree, where a permit is one of the real forms of the decree.
- b. The creation and issuance of a permit is a legal action carried out by the government. As a legal action, this requires the existence of authority granted through statutory regulations or based on the

³⁷ English: Mr. Sapto Nugroho.

principle of legality. Without such a basis for authority, the legal action does not have valid legal force.

- c. The granting of permits is carried out by various government organs that have authority at various levels of administration, both at the central and regional levels. This authority is inherent from the highest officials such as the President to officials at the lowest administrative level, such as village heads. Each of these officials has the capacity to issue permits according to their respective positions and scope of duties. Thus, the mechanism for granting permits involves various government officials who act based on their structural positions in the government hierarchy, both at the central and regional levels.
- d. Concrete events refer to events that occur at a certain time, individual, location, and legal fact. Because concrete events have various forms that vary along with the dynamics of societal development, the types of permits issued also vary. These variations are reflected in the process and procedures for issuing permits that depend on the authority of the permit issuer, the type of permit requested, and the organizational structure of the agency issuing the permit.
- e. In general, permit applications must go through a series of procedures that have been determined by the government as the party granting the permit. In addition to following these procedures, applicants must also meet certain requirements determined unilaterally by the government or authorized agency. The procedures and requirements in this

licensing process vary, depending on the type of permit, the purpose of the permit, and the agency issuing the permit.

Granting a permit is necessary to regulate and determine whether or not the permit application can be granted. Of course, it is necessary to pay attention to matters relating to the issuance of the permit. In accordance with its nature, which is part of the stipulation, a permit is always made in written form. As a written stipulation, a permit generally contains the following:³⁸

a. Competent organ

In the permit it is stated who gives it, usually, from the letterhead and the signing of the permit it will be clear which organ gives the permit. In general, the rule maker will appoint an authorized organ in the permit system, the organ that is most equipped with the material and tasks concerned, and almost always the related organ is a government organ. Therefore, if in a law it is not stated explicitly which organ from a certain government layer is authorized, to avoid doubt, then in most laws at the beginning a definition provision is included.

b. To whom it is addressed

The permit is addressed to the interested party who applies for it. Therefore, the decision containing the permit will also be addressed to the party requesting the OSS (Online Single Submission) based

³⁸ English: Mr. Sapto Nugroho.

licensing law. This is usually experienced by individuals or legal entities. In certain cases, decisions about permits are also important for interested parties. This means that the government as the permit giver must also consider the interests of third parties who may be related to the use of the permit.

c. Dictum

A decision containing a permit, for the sake of legal certainty, must contain as clear a description as possible of what the permit is for. The part of this decision, where the legal consequences caused by the decision are, is called a dictum, which is the core of the decision. At least this dictum consists of a definite decision, containing the rights and obligations aimed at by the decision.

d. Terms, Restrictions, and Conditions

As with most decisions, they contain provisions, restrictions and conditions, so too does the decision containing this permit. The provisions are obligations that can be attached to a favorable decision. The provisions of the permit are widely found in administrative law practice.

e. Giving reasons

The provision of reasons in a decision can cover several aspects, including mentioning statutory provisions, legal considerations, and establishing facts. The mention of statutory provisions serves as a guideline for all parties involved, both the governing body and the

interested parties, in assessing the decision. In addition, these provisions also serve as the basis for the evaluation process for related parties to determine their attitude, especially when approving the decision taken.

Legal considerations play a crucial role for government organs in determining whether a permit application can be granted or rejected. These considerations are usually the result of the government organ's interpretation of the applicable legal provisions. Meanwhile, the determination of facts is closely related to these aspects, where the interpretation of the relevant rules is based on established facts. In some conditions, government organs can use data provided by the permit applicant, in addition to utilizing information from experts or bureau consultants to support their assessments.

f. Additional notices

Notification Additional notifications usually contain an explanation to the intended party regarding the possible consequences of violating the permit conditions, including sanctions that may be imposed for non-compliance. In addition, this notification can serve as a guide on the steps that should be taken when submitting an application in the future, or as general information from the government body regarding current or future policies. The additional notification is basically a form of additional consideration that is outside the dictum, which is the core of the decision. Therefore, this notification is not included as

a formal part of a decision, so that legally it cannot be sued through an administrative court.

4. Business licensing in Indonesia

Business licensing is a registration given to business actors to start and run a business and/or activity and is given in the form of approval stated in the form of a letter/decision or fulfillment of requirements and/or commitment.³⁹The development of the business licensing system in Indonesia is as follows:

a. Manual system

Before 2018, the licensing system was manual, partial, and overlapping. Business actors had to visit various agencies to take care of documents such as:

- SIUP (Trade Business License)
- TDP (Company Registration Certificate)
- Location permits, environmental permits, building permits, etc.

This is considered inefficient and is a major obstacle to improving the investment climate in Indonesia.

b. Online single submission (OSS)

OSS was first introduced in 2018 through Government Regulation of the Republic of Indonesia Number 24 of 2018 concerning

³⁹Government Regulation of the Republic of Indonesia Number 29 of 2021 concerning the Implementation of the Trade Sector, Article 1 paragraph 33

Integrated Electronic Business Licensing Services. The main objective is to simplify and accelerate the business licensing process with an integrated digital system. OSS introduced the Business Identification Number (NIB) which replaced SIUP and TDP, and functions as a national business identity. In 2025, the business licensing process can be done through OSS (Online Single Submission). You need to register first on the OSS portal to get a Business Identification Number (NIB). This NIB is a company's legal identity that is used to process other business permits.

Business licensing certainly requires a permit for a place to do business so that a building permit or the like is also needed by business actors. The construction of a sea fence in the Tangerang coastal area has caused controversy because the construction of this sea fence is above sea level, where construction permits on the coast in Indonesia are strictly regulated through several types of permits, especially based on the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 54 / Permen-Kp / 2020 concerning Location Permits, Management Permits, and Location Permits at Sea. A Location Permit at Sea is a permit granted to utilize space permanently in part of the sea area which includes

the sea surface, water column, seabed surface within a certain area.

B. Ecological Justice

1. Definition

Ecological Justice is composed of 2 (two) terms, namely justice and ecology. Meanwhile, the root word justice itself comes from the word 'justitia' which refers to the moral concept of giving rights and obligations in accordance with the norms. The concept of justice itself is a fundamental foundation in the legal system that aims to maintain balance and certainty in society. Justice is not only related to law enforcement, but also includes the moral and ethical dimensions that underlie every regulation. In this context, justice ensures that every individual is treated equally, without discrimination, and has equal access to legal protection. One of the theories of justice in question is Plato's theory of justice which emphasizes harmony or alignment. Plato defines justice as "the supreme virtue of the good state", while a just person is "the self-disciplined man whose passions are controlled by reason". For Plato, justice is not directly linked to law.⁴⁰ For him, justice and legal order are the general substance of a society that creates and maintains its unity. In Plato's concept of justice, there is individual justice and justice in the state. To find the correct understanding of individual justice, we must first find the basic characteristics of justice

⁴⁰Tiara Salman and Arrie, Analysis of the Concept of Justice in the Perspective of Aristotle's Legal Philosophy and Its Relevance in Indonesia, Journal of Justice Reasoning, No. 2, (2024), 52 <file:///C:/Users/Naufal%20Aqiel/Downloads/Jurnal+Filsafat+Hukum.pdf>

in the state, for that Plato said: "let us enquire first what it is the cities, then we will examine it in the single man, looking for the likeness of the larger in the shape of the smaller. Although Plato said so, it does not mean that individual justice is identical to justice in the state. It is just that Plato saw that justice arises because of adjustments that give harmonious places to the parts that form a society. Justice is realized in a society when each member performs well according to his ability the function that is appropriate or harmonious for him.

2. Forms of Justice

In addition, Aristotle was the first philosopher to formulate the meaning of justice. He said that justice is giving everyone what is their right, *fiat iustitia brevit mundus*.⁴¹ Next he divided justice into two forms, namely:

- 1) Distributive justice is justice determined by the law maker, the distribution of which includes services, rights and benefits for members of society according to the principle of proportional equality.
- 2) corrective justice, namely justice that guarantees, monitors and maintains this distribution against illegal attacks. The corrective function of justice is in principle regulated by the judge and re-stabilizes the status quo by returning the property of the victim concerned or by compensating for his

⁴¹Melisa, Legal Position in Realizing Justice and Welfare in Indonesia, *Al-Manhaj: Journal of Islamic Law and Social Institutions*, no. 1 (2023), 245, [https://jdih.lampungprov.go.id/uploads//files/1/document%20\(2\).pdf](https://jdih.lampungprov.go.id/uploads//files/1/document%20(2).pdf)

lost property (Ansori, Abdul Gafur, 2006). Or in other words, distributive justice is justice based on the amount of service provided, while corrective justice is justice based on equal rights) Plato, according to him, justice can only exist in laws and regulations made by experts who specifically think about it. Justice concerns human relations with others.

Justice can be achieved if, first, the state upholds the principle of justice by providing equal opportunities for every citizen to obtain basic freedoms. Second, the state provides regulation of social and economic class differences so as to provide benefits to the disadvantaged.

Lexically, the word ecology comes from Greek, oikos which means residence and logos which means science. Ecology is a study of the reciprocal relationship (interaction) between organisms (between living things) and between organisms (living things) and their environment. As a relatively new branch of biology, ecology becomes very important as a study material after humans have awareness of the environment and feel like they are part of or are one of the components of their environment. In our constitution, the discourse around the concept of a green constitution, constitutional ecology and ecocracy can be said to be reflected in the idea of power and human rights as well as the concept of economic democracy in the 1945 Constitution.⁴² Article 28H paragraph (1) of the 1945

⁴² Mukhlis, *Ekologi Konstitusi: Antara Rekonstruksi, Investasi Atau Eksploitasi Atas Nama Nkri*, *Jurnal Konstitusi*, Volume 8, Nomor 3(2011), 167

Constitution regulates the right of every person to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment. This right includes the right to have a decent place to live, as well as the right to a clean and healthy environment to live in.

On the other hand, that awareness of the importance of ecological issues from time to time continues to grow, so that finally humanity finds the fact that our ecosystem is not local, but also mondial and global. In the ecosystem, every living thing plays a role in maintaining balance. For example, plants carry out photosynthesis and produce oxygen, animals spread seeds, and microorganisms decompose organic matter. When one component is damaged or lost, there will be a disruption to the system as a whole.⁴³

However, human activities often cause such imbalances. Unfriendly development practices, excessive exploitation of resources, and unsustainable consumption are the main factors causing the ecological crisis.

Marine ecosystems play an important role in maintaining global ecological balance. The sea is not only a habitat for various species of marine biota, but also a provider of natural resources such as fish, salt, petroleum, and environmental services such as carbon absorption and climate regulation. However, excessive use of the sea, pollution, and

⁴³ Mukhlis, *Ekologi Konstitusi: Antara Rekonstruksi, Investasi Atau Eksploitasi Atas Nama Nkri*, *Jurnal Konstitusi*, Volume 8, Nomor 3(2011), 169

conflicts of interest over marine space have caused massive degradation of marine ecosystems.

It is in this context that the concept of sea fencing emerged—traditional practices or local policies that restrict access to certain sea areas for a specific period of time or purpose. Sea fencing is essentially a socio-ecological mechanism that has a direct influence on the dynamics of marine ecology, both at local and regional scales.

C. *Hifzul bi'ah*

1. Definiton

Environmental issues have become a global concern, especially in the context of the worsening damage to marine ecosystems due to over-exploitation, pollution, and climate change. In the Islamic perspective, environmental protection is part of the moral and spiritual responsibility of humans as caliphs on earth. One important concept in the treasury of Islamic thought that is relevant to this issue is *ḥifẓ al-bi'ah* (حِفْظُ الْبِيْعَةِ The Lord of the worlds), which means “to guard or protect the environment.”⁴⁴

This concept has a strong basis in the Qur'an and Hadith, and is ethically in line with the principles of modern ecology. When associated with marine ecology, *ḥifẓ al-bi'ah* requires humanity to maintain the balance and sustainability of the marine ecosystem as part of the Divine

⁴⁴Muhamad Alwi, Transformation of the Concept of Hifdzul Bi'ah to the Rampant Illegal Burning in Indonesia, *Jurnal Al-Jina'i Al-Islami*, no. 2 (2024), 68

mandate. Etymologically, the word "ḥifẓ" means to guard, maintain, or protect, while "al-bi'ah" means the environment or place where living things live. Thus, ḥifẓ al-bi'ah generally means "maintaining the sustainability of the environment."

Within the framework of maqāṣid al-syar'ah (objectives of the Shari'a), classical scholars mentioned five main things that must be protected: religion (ḥifẓ al-dīn), soul (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), descendants (ḥifẓ al-nasl), and property (ḥifẓ al-māl). However, along with the development of the era and the emergence of the global environmental crisis, contemporary thinkers have proposed the addition of a new objective, namely ḥifẓ al-bi'ah, because protecting the environment is as important as protecting life itself.⁴⁵

So hifdzul bi'ah gives the understanding that maintaining something on this earth is a must for every living human being. Because hifdzul bi'ah gives the understanding of all aspects on earth, if all of them are damaged then of course something cannot be used properly as before.

2. Legal basis

The Qur'an contains many verses that emphasize the importance of maintaining the balance of nature and prohibiting causing damage, such as:

a. QS. Al-A'raf verse 56

وَلْ تُفْسِدُوا فِي الرُّضِ بَعْدَ إِصْلَاحِهَا وَادْعُوهُ خَوْفًا وَطَمَعًا إِنَّ رَحْمَتَ هَالِكٍ قَرِيبٌ مِّنَ الْمُحْسِنِينَ

⁴⁵A. Yusuf al-Qaradawi, *Ri'ayah al-Bi'ah fi Sharia al-Islam* (Cairo: Dar al-Shuruq, 2001)

Do not do mischief on the earth after it has been set in order. Pray to Him with fear and hope. Indeed, Allah's mercy is near to those who do good.

b. Qs. Ar-Rum verse 41

يَظْهَرُ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ يَٰرَاقُونِ
 God willing, God willing, God willing
 Yaraguiny َلَعَلَّهُمْ God willing, God willing

Corruption has appeared on land and in the sea because of what the hands of men have earned, and Allah will make them taste some of the consequences of their deeds, so that they may return to the right path.

c. Qs. Al-Maidah verse 32

مَنْ أَجَلَ ذَلِكَ كَتَبْنَا عَلَىٰ يَٰسْرَءِيلَ
 God willing God willing God willing
 جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ مِنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

Therefore We decreed for the Children of Israel that whoever kills a person not in return for killing another person or for causing corruption in the land, it is as if he has killed all mankind. But whoever saves the life of a person, it is as if he has saved the life of all mankind. Indeed, Our messengers came to them with clear proofs. Then, indeed, many of them transgressed in the land after that.

Al-Maidah verse 32 has explained that a human being should continue to care for the environment around him, lest humans as caliphs actually damage it. Of course, with this kind of phenomenon, there is a shift in the meaning of human nature as caliphs. In terms of meaning, the caliph given to humans must actually maintain and encourage them to always uphold religious law. Hifizul biah should be a form of human implementation to always continue to maintain the environment in the present and the future.

These verses show that environmental damage, including the sea, is not only an ecological problem, but also an ethical and spiritual violation.

CHAPTER III

RESULTS AND DISCUSSION

A. The Legality of Permits for the Construction of Sea Fences for Business Entities in Indonesia Positive Legal Perspective

1. Positive legal basis for sea fence licensing

In Indonesian positive law, the regulation of permits for the use of marine space is regulated in several regulations, including:

- a. Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that the Sea and the natural resources contained therein are controlled by the state and utilized as much as possible for the prosperity of the people. This provision provides a constitutional mandate to the state to manage natural resources, including the sea, with the main orientation on the benefit of the people in general, not just for the interests of a handful of parties or business entities.⁴⁶

The existence of sea fencing activities that, if carried out not in accordance with administrative procedures, should result in restrictions on public access to marine resources. In practice, the construction of sea fences by business entities that do not go through official licensing procedures and do not involve coastal communities can be considered to violate this provision of the

⁴⁶Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia

constitution.⁴⁷ These activities have the potential to create a form of private control over marine space that should belong to the public. This not only violates positive legal norms, but also damages social justice and widens the gap in access to marine resources.⁴⁸

- b. Law No. 7 of 2016 concerning the Protection and Empowerment of Fishermen, Article 25 paragraph 3 letter b small fishermen have the right to gain access to fishery resources. If there is a sea fence that limits their space for movement⁴⁹, then the state is obliged to evaluate business permits and protection for affected communities. In this context, the construction of sea fences without public consultation and environmental studies can violate the principles of coastal community protection.

In the literature of constitutional law, Jimly Asshiddiqie⁵⁰ explains that the concept of state control over natural resources is not interpreted as absolute ownership, but rather management carried out for the greatest prosperity of the people. Therefore, the state must not ignore the abuse of authority

⁴⁷ Raja Eben, "30 Kilometers of 'Mysterious' Sea Fence on Tangerang Coast, Is Jakarta's Reclamation Project Continuing?," BBC News, 2025, <https://www.bbc.com/indonesia/articles/cdd6dpeym10o>.

⁴⁸ Agil Septiyan, "Fishermen vs. Sea Fences, Unraveling the Knot of Social Inequality in Tangerang Waters," Kompasiana, 2025, <https://www.kompasiana.com/agilshabib/678f1a81c925c43d353380b3/nelayan-vs-pagar-laut-mengurai-simpul-ketimpangan-sosial-di-perairan-tangerang>.

⁴⁹ Andriana Ita, "THE IMPACT OF SEA FENCES ON FISHERMEN'S LIVELIHOODS," 5.

⁵⁰ Yance Arizona, "The Development of the Constitutionality of State Control over Natural Resources in Constitutional Court Decisions," *Constitutional Journal* 8 (2011): 259.

in granting permits that have the impact of limiting public access to the sea.

- c. Law Number 32 of 2014 concerning Maritime Affairs Article 22 paragraph 1 which reads Management and utilization of coastal resources and small islands including biological resources, non-biological resources, artificial resources, and environmental services are carried out in accordance with the provisions of laws and regulations. This confirms that the state has full authority over Indonesia's sea territory and regulates the prohibition of activities that hinder public access such as shipping lanes and access for fishermen without permission.⁵¹

Law Number 32 of 2014 concerning Marine Affairs provides a legal framework for the management of marine space, marine resources, and marine economic activities in Indonesia. This law was born as a response to the importance of maintaining sovereignty, sustainability, and the welfare of coastal communities amidst increasing exploitation of marine space. One of the issues of concern in the context of this Law is the phenomenon of the construction of sea fences by business entities that can limit community access to the sea.⁵²

⁵¹Article 1 of Article 22 of Law Number 32 of 2014 concerning Maritime Affairs

⁵² Rhama Purna, "No Title," Kompas, 2025, <https://www.kompas.id/article/tercepat-menutup-akses-publik-pagar-laut-besar-segera-dibangun>.

Article 14 and Article 15 of this maritime law also emphasizes that the government has the authority to regulate and manage Indonesia's sea areas in a sustainable and inclusive manner. Marine spatial planning as referred to in Article 14 is carried out through coastal and small island zoning policies. In this context, the construction of sea fences must be in accordance with the coastal and small island zoning plan (RZWP3K) as stated in Article 43 paragraph 1, namely Marine spatial planning as referred to in Article 42 paragraph 2 includes:

- a. national marine spatial planning;
- b. coastal and island zoning planning
small; and
- c. zoning planning of marine areas.

If a sea fence is built in an area that is not designated for such activities, it can be categorized as violating national marine spatial planning regulations.

In addition, Article 32 paragraph 3 of the Maritime Law emphasizes that the utilization of marine space must comply with the marine space utilization permit which is further regulated in implementing regulations. This means that every form of marine utilization, including marine fencing by business entities, must be based on official permits from the government. Activities that do not comply with these licensing provisions can be considered

administrative violations and can be subject to sanctions in accordance with laws and regulations.

The Marine Law emphasizes the importance of protecting the sustainability of marine ecosystems and the interests of coastal communities. The state is responsible for preventing conflicts of interest in the use of marine space. If a sea fence is built by a business entity without considering sustainability and community access rights, the government has the authority to review the permit and even cancel it if it is proven to be detrimental to the community.⁵³

In the national legal framework, the construction of sea fences without permission or in violation of the marine spatial plan also has the potential to violate the principles of state administrative law. According to Philipus M. Hadjon, the principle of legality is the main principle in administrative law, which means that every action of the government or business entity must be based on applicable law. Without a clear legal basis, sea fences can be categorized as a form of illegal control of marine space.⁵⁴

⁵³ SAFRIN LAMUSRIN, "The Problem of Sea Fences in Indonesia: A Challenge for Social Justice and Ecosystem Sustainability," Student of Gorontalo State University, 2025, <https://mahasiswa.ung.ac.id/221422004/home/2025/1/26/masalah-pagar-laut-di-indonesia-sebuah-tantangan-untuk-keadilan-sosial-dan-keberlanjutan-ekosistem.html>.

⁵⁴ Tomy Michael Hadi, Syofyan, "Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration," *Jurnal Cita Hukum*. Faculty of Sharia and Law UIN Jakarta 5 (2017): 385, <https://journal.uinjkt.ac.id/index.php/citahukum/article/download/8727/pdf>.

Law No. 32 of 2014 concerning Marine Affairs firmly regulates licensing obligations, protection of marine space, and community participation in coastal area management. Therefore, the construction of sea fences by business entities must be carried out with the principle of caution, compliance with marine spatial planning, and protection of coastal community rights. The state through its regulatory authority needs to ensure that the use of the sea is not exclusive and remains in line with the principles of justice and sustainability.

- d. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), provides a legal basis for the control, ownership, use, and utilization of land and natural resources, including coastal areas and coastal zones that are transitional between land and sea. In the context of building sea fences, the relationship between agrarian law becomes relevant, especially when the development activities are carried out in coastal areas that fall into the category of coastal waters or state land that has not been attached to rights.⁵⁵Based on Article 4 of the UUPA, land and water controlled by the state can be given rights to individuals or legal entities to manage. However, such management must still be subject to the principles of public

⁵⁵ Danar W, "Sea Fence, New Paradigm of Land Law," KRJogja, 2025, <https://www.krjogja.com/opini/1245598814/pagar-laut-paradigma-baru-hukum-pertanahan>.

benefit and social justice. This means that business entities that build sea fences must obtain legal management rights from the state through a specified legal process.⁵⁶

- e. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, as a derivative of the UUPA, in Article 65 Paragraph 2 stipulates that the use of coastal space must consider state land rights that have not been attached to rights. If a business entity builds a sea fence above the area without a valid permit, it can be categorized as a form of illegal physical control over state land and violates agrarian provisions.⁵⁷
- f. Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation

Article 14 paragraph (5) states that in the event that a Business Actor obtains information that the planned location of his/her business activities as referred to in paragraph (3) is in accordance with the RDTR, the Business Actor shall submit an application for the suitability of the spatial utilization activities for his/her business activities through the electronic Business Licensing system as referred to in paragraph (4) by filling in the desired location coordinates to obtain confirmation of the

⁵⁶ Surur Roiqoh, "The Role of Agrarian Law in Coastal Land Management: Case Study of Sea Fences in Tangerang," 77.

⁵⁷ Article 2 of Article 65 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration

suitability of the spatial utilization activities. Then in Article 16 paragraph (1) the Utilization of Coastal Waters must be carried out in accordance with the spatial plan and/or zoning plan. And in paragraph (2) Every Person who utilizes the space of Coastal Waters as referred to in paragraph (1) must fulfill the Business Licensing related to utilization at sea from the Central Government. Furthermore, it is known that the sea fence built without KKPRL (Conformity of Marine Space Utilization Activities) violates the provisions of the Job Creation Law which requires every development in marine space to have a permit for the suitability of marine space utilization activities or KKPRL.

In practice, the construction of sea fences that close access to coastal areas can cause legal conflicts between coastal communities that have used the area for generations and business entities that own permits. This conflict becomes more complex if there is no clear boundary between agrarian areas and maritime authority. Therefore, coordination is needed between the Ministry of Agrarian Affairs and Spatial Planning/BPN and the Ministry of Maritime Affairs and Fisheries in issuing permits and utilizing marine and land spaces that directly border the sea.

The case of the sea fence in Tangerang shows the lack of synchronization between land and maritime regulations. The Building Use Rights (HGB) Certificate issued by the Ministry of Agrarian Affairs and

Spatial Planning/National Land Agency (ATR/BPN) for the sea area is an action that is contrary to the provisions of maritime law which prohibits the exploitation of coastal waters by private parties or individuals. The issuance of the HGB certificate at sea is considered an error in objecto because the sea is not an object that can be granted land rights under positive law. As a result, the certificate is null and void and can be categorized as an illegal product that has the potential to cause criminal acts such as encroachment on public space, fraud, and abuse of authority.⁵⁸

2. Case of the Sea Fence Off the Coast of Tangerang

A sea fence is a barrier built offshore, often using wood or bamboo that is embedded parallel. Its main function is to minimize coastal erosion in muddy areas and as an alternative breakwater to concrete. Sea fences can also function as sedimentation supports, which are expected to form new land or strengthen existing coastlines. The issue of installing sea fences that has emerged in the waters of Tangerang Regency is not just an administrative or technical issue in managing natural resources. This phenomenon has become a symbol of the crisis of justice in the governance of public spaces that should belong to all.

In the Law and regulations, there is no specific mention of sea fences, but sea fences can be categorized as structures or buildings built in

⁵⁸ Muhammad Iqbal, "Facts about the SHGB for the Tangerang Sea Fence Revoked by the Minister of ATR," CNN Indonesia, 2025, <https://www.cnnindonesia.com/ekonomi/20250123093744-92-1190510/fakta-fakta-shgb-pagar-laut-tangerang-yang-dicabut-menteri-atr> .

coastal or marine areas as stated in Article 16 paragraph 2 letter I concerning marine buildings, what is meant by "marine buildings and installations" is every construction, whether above and/or below the sea surface, which is attached to land.

1. The purpose of building a sea fence

Sea fences have various functions depending on their intended use. In the context of maritime security, sea fences are used to prevent unauthorized access to certain areas, such as military installations, ports, or marine conservation areas. On the other hand, in traditional fishing practices, sea fences are used as an aid to increase catches in an environmentally friendly manner.

2. Impact of sea fence construction

The implementation of sea fences, especially those that are artificial and permanent, must consider their impact on the marine ecosystem. Sea fences installed without environmental assessment can disrupt the migration routes of marine biota and change water flow patterns. In addition, from a social perspective, the construction of sea fences in coastal areas can also cause conflict between local communities and management, especially if access to marine resources is limited. If the installation is carried out without involving the fishing community, sea fences can be considered a form of deprivation of living space. The impact is very real: the living space and livelihoods of residents are displaced, economic inequality is deepening, and the law seems to have lost its bias

towards the common people. The sea, which has long been a source of livelihood, a place to fish, and a socio-cultural space for coastal communities, has now turned into a restricted area that can only be accessed by a handful of parties who have power and capital.

At the end of 2024, the public was surprised by the emergence of a sea fence, precisely on August 14, 2024, the Indonesian Fishermen's Association (HNSI) of Tangerang Regency reported to the Banten Province Maritime Affairs and Fisheries Service (DKP Banten) regarding the discovery of a "sea fence" along the coast of several villages in Tangerang Regency.⁵⁹ Following the report, the Banten Marine and Fisheries Department and the local Marine Resources and Fisheries Surveillance (PSDKP) patrol of the Ministry of Marine Affairs and Fisheries (KKP) conducted checks in the area where the sea fence was built. However, until the end of 2024, there was no significant movement made by the relevant agencies regarding reports from a number of fishermen regarding the sea fence.

Until early 2025, when the sea fence case spread and became a national topic, related agencies and the central government only took swift action. Where the Directorate General of Marine and Marine Space Management (DJP KRL) of the Ministry of Marine Affairs and Fisheries together with the Indonesian Navy sealed the 30.16-kilometer sea fence.

⁵⁹ Ayu Cipta, "Illegal Sea Fencing in Tangerang Regency Allegedly Involves a Figure with the Initials T, What is His Role?," October 5, 2025, 2025, <https://www.tempo.co/lingkungan/pemagaran-laut-ilegal-di-kabupaten-tangerang-ditengarai-melibatkan-sosok-berinisial-t-apa-perannya--2490> .

Not long after that, the President of the Republic of Indonesia (RI) Prabowo Subianto also intervened and directly ordered the dismantling of the fences.⁶⁰

However, on the other hand, the main focus in this case is the emergence of the Building Use Rights Certificate in the area of the construction of this sea fence, it is known that most of the SHGB sea fence is controlled by the company PT Intan Agung Makmur which has 234 plots and PT Cahaya Inti Sentosa which has 20 plots, Both of these real estate development companies are affiliated with the Agung Sedayu Group which is also the owner of the elite Pantai Indah Kapuk area.⁶¹

With this, the sea fencing carried out in the Tangerang area was not entirely carried out to avoid abrasion or sea waves but also included commercial objectives in it, namely coastal reclamation using natural reclamation methods. Finally, on January 22, 2025, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) revoked some of the SHGB and SHM certificates for the sea fence because from the results of the review and examination carried out, the SHGB and SHM were outside the coastline and under the sea, where the area had not yet become land and in reality the land did not exist so that it was not

⁶⁰ Kurniawan Fadilah, "Tangerang Sea Fence Dismantled on Prabowo's Orders, for Fishermen's Access," January 18, 2025, 2025, <https://news.detik.com/berita/d-7738311/pagar-laut-tangerang-dibongkar-atas-wenang-prabowo-untuk-akses-nelayan> .

⁶¹ Uswah Sahal, "ANTARA PHOTOS Polemic of Sea Fence, Legal Expert of UM Surabaya: Violates Rules and Contradicts Sustainability Principles," January 27, 2025, 2025, <https://www.tempo.co/video/arsip/pagar-laut-tangerang-tak-lagi-misterius-perusahaan-aguan-kuasai-saham-majoritas-pemilik-hgb-di-sana--1199362> .

permitted to become individual or business entity ownership so that it could not be certified and was null and void. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) Nusron Wahid stated that the certificates issued did not go through an administrative process in accordance with the regulations or in other words the issuance of the certificates was revoked due to procedural or administrative defects because the sea could not be certified.

In line with the view of the legal expert of the Faculty of Law, Jenderal Soedirman University, Hibnu Nugroho, who explained that in the law there is no term for a form of fence at sea because the sea is in the public domain owned by the state, which can be private property is land, land or former ponds and so on. As in Article 35 of the UUPA states that HGB (Building Use Rights) is the right to build and own buildings on land that is not one's own. SHM and SHGB are only issued for control over land not with water or sea water.

With the case of the sea fence off the coast of Tangerang, this proves that in the context of the use of marine space, business entities have an important role as the main actors who submit and carry out activities based on official permits. The controversial construction of sea fences in coastal areas of Indonesia, especially in Tangerang, raises deep questions about the role and responsibilities of business entities in obtaining and complying with applicable permits. The role of business entities and their legal and administrative responsibilities in the process of issuing and

implementing sea fence permits. Business entities as applicants for permits are required to submit permit applications in accordance with the provisions of laws and regulations governing the use of marine space.⁶² This licensing process includes submitting a Marine Space Utilization Activity Suitability (KKPRL) permit as regulated in the Regulation of the Minister of Maritime Affairs and Fisheries Number 28 of 2021.

This permit aims to ensure that the use of marine space does not damage the coastal ecosystem and does not disrupt the activities of traditional fishing communities. Therefore, business entities must ensure that all technical, administrative, and environmental requirements have been met before carrying out sea fence construction activities. In addition, business entities are responsible for coordinating with relevant agencies, such as the Ministry of Marine Affairs and Fisheries (KKP) and local governments, in order to obtain valid permits and in accordance with coastal spatial plans. Failure to carry out this procedure has the potential to cause the activities carried out to be illegal and risk administrative or criminal sanctions up to the revocation of certificates that have been issued to business entities for not following the proper procedures. Business entities are not only responsible for submitting permits, but also for carrying out activities in accordance with the provisions of the permits

⁶² Kartika Paramita, "These Are the Permits Required for the Utilization of Marine Areas," Hukum Online, 2021, <https://www.hukumonline.com/klinik/mitra/international-business-law-program-universitas-prasetiya-mulya-lt5d6de7fcce564/kartika-paramita--sh--llm-lt5dad71fac1c6e/>.

granted. If a business entity builds a sea fence without a permit or violates applicable provisions, then the business entity may be subject to legal sanctions, including demolition of illegal buildings, administrative fines, and revocation of permits.⁶³

The removal of sea fences in the coastal areas of Tangerang, especially in Tangerang, was based on a number of administrative violations and socio-ecological impacts. The fences were installed without official permission, violated the provisions on the use of marine space (KKPRL), and were located in fishing zones that should be free from permanent structures. Their existence also hampers the activities of local fishermen, because they block fishing routes and make it difficult to use traditional fishing gear.⁶⁴

Furthermore, the installation of the sea fence was carried out without clear ownership, but was later discovered to involve local village officials. This resulted in administrative sanctions from the Ministry of Maritime Affairs and Fisheries. In addition, the Ministry of ATR/BPN revoked hundreds of certificates of rights to illegal sea land, as a form of correction against the misuse of sea space for personal interests.⁶⁵The

⁶³ Akhmad Fahrurrizkianur Hafiz, Brian, Resa Piska, "Analysis of the Importance of Business Legality (List of Business Permits) for Companies," *Indonesian Legal Media* 2 (2024): 298, <https://ojs.daarulhuda.or.id/index.php/MHI/article/download/882/933>.

⁶⁴ Irawan Sapto Adhi Aditya Priyatna Darmawan, "The Journey of the Tangerang Sea Fence Case from the Beginning of Its Discovery Until the SHGB was Revoked," *Kompas.com*, 2025, <https://www.kompas.com/tren/read/2025/01/23/050000065/perjalanan-kasus-pagar-laut-tangerang-dari-awal-ditemukan-sampai-shgb>.

⁶⁵ "Cancellation of Revocation of SHGB and SHM in Pagar Laut Tangerang," *konsultanperizinan.co.id*, 2025, https://konsultanperizinan.co.id/pembatalan-pencabutan-shgb-dan-shm-di-pagar-laut-tangerang/?utm_source=.com.

installation of sea fences without permission has been proven to disrupt coastal ecosystems and limit access for traditional fishermen, thereby violating the principles of justice and sustainability stipulated in maritime legislation.

Law enforcement on sea fence cases is the responsibility of law enforcement officers such as the police, water police, and the Ministry of Maritime Affairs and Fisheries and the Minister of Agrarian and Spatial Planning/National Defense Agency. The government is also required to ensure transparency and honesty in issuing permits to prevent collusion and abuse of authority, such as what happened in the issuance of HGB certificates at sea.⁶⁶The cancellation of illegal certificates by the Minister of ATR/BPN and the instruction to revoke sea fences by the President show the government's steps in enforcing positive law and restoring sea access for small fishing communities. From a positive law perspective, sea fence permits must be based on statutory provisions governing the use of marine and coastal space.

University of Muhammadiyah Surabaya Legal Expert Satria Unggul Wicaksana explained that fencing off sea areas that block access for the public, especially fishermen, or damage ecosystem functions without permission clearly violates applicable regulations.⁶⁷Issuance of

⁶⁶ Hariyantana Aygy Yolanda, Aries Sudiarso, and IB Putra Jhandana, "Implications Of Illegal Sea Fence Construction On Maritime Security, Environment, And Welfare Of Coastal Communities" 5, no. 1 (2025): 810–19.

⁶⁷ Uswah Sahal, "ANTARA PHOTOS Polemic on Sea Fence, UM Surabaya Legal Expert: Violates Rules and Contradicts Sustainability Principles."

permits or certificates that do not comply with these provisions constitutes a violation of the law that can result in administrative and criminal consequences. The case of the sea fence in Tangerang illustrates the importance of regulatory harmonization and strict law enforcement to protect the public interest and preserve the marine environment.

B. Legality of Permits for the Construction of Sea Fences for Business Entities in Indonesia *Hifdul Al Biah's* Perspective

The phenomenon of sea fence construction by business entities in coastal areas of Indonesia, especially in Tangerang, has raised controversy regarding the legality of permits and their socio-ecological impacts. In the study of Islamic law, the concept of *Hifdul Al Biah* or "protecting or preserving the environment" is relevant to assess the validity and legal consequences of the permit. *Hifdul Al Biah's* perspective on the legality of sea fence construction permits granted to business entities, emphasizing the need to protect the environment by preventing negative impacts that are detrimental to society and the environment of course. *Hifdul Al Biah* This concept is considered an important part of the *maqāṣid al-sharī'ah* (objectives of sharia) in Islam, which places environmental protection as one of the main principles in addition to protecting the soul, mind, property, descendants, and religion.⁶⁸

⁶⁸ Hifdhotul Munawaroh, "SADD AL-DZARI'AT AND ITS APPLICATION TO CONTEMPORARY FIQIH PROBLEMS."

This principle is based on the objectives of sharia (maqasid al-shariah) to protect five main things: religion, soul, mind, lineage and property.⁶⁹In the context of licensing, *Hifdul Al Biah* requires that regulations and implementation of permits not only refer to formal legal aspects, but also consider social and ecological impacts so as not to cause greater losses to the wider community. From *Hifdul Al Biah's* perspective, the legality of permits for the construction of sea fences is not only seen from the existence of formal permits issued by the government, but also from the aspect of justice and the welfare of coastal communities.⁷⁰

In the context of sea fences, if a business entity builds such infrastructure without considering community access, or without going through transparent and participatory permits, then it becomes a 'dzari'ah' (path) to social and ecological damage. Therefore, the implementation of *Hifdul Al Biah* requires the government and policy makers to consider the potential for long-term damage before granting a development permit.

In other words, even though the construction of sea fences has an administrative basis from positive law, if in practice it causes injustice or environmental damage, then the principle of *Hifdul Al Biah* can be a moral

⁶⁹ M. Najich Syamsuddini, "The Concept of Al-Maslahat Al-Murlah According to Imam Al-Ghazali and Imam Malik (Exclusive and Inclusive Studies)," *Al Yasini: Islamic, Social, Legal and Educational Journal* 7, no. 1 (2022): 103, <https://doi.org/10.55102/alyasini.v7i2.4691>.

⁷⁰ Jalili, *The Existence of Sadd Adz-Dzari'ah in Ushul Fiqh: A Study of Ibn Qayyim Al-Jauziyyah's Thought*, 48.

and ethical consideration to review the legality. This is also in line with *maqashid al-syari'ah* which aims to maintain public interest.⁷¹

Sea fences built without considering the impact on traditional fishermen and coastal ecosystems are contrary to the principles of *Hifdul Al Biah* because they open up opportunities for social and environmental harm.⁷² This principle requires that business entities that obtain permits must first conduct an in-depth study of the impacts of their activities, and ensure that the permit does not become a means that actually hinders the community's right to access marine resources that are common property (*musya'*). If the permit issued ignores this, then the issuance of the permit can be categorized as a violation of the *Hifdul Al Biah* principle which justifies the cancellation or review of the permit in order to prevent further damage.

⁷¹ Syamsuddini, "The Concept of Al-Maslahat Al-Murlah According to Imam Al-Ghazali and Imam Malik (Exclusive and Inclusive Study)."

⁷² Hifdhotul Munawaroh, "Sadd Al- Dzari'at and its Application to Contemporary Fiqh Problems," 64–67.

CHAPTER IV

CLOSING

A. Conclusion

1. The construction of sea fences by business entities in Indonesia is regulated by various positive legal regulations, which emphasize the importance of managing sea space for the prosperity of the people. Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia mandates that the sea and its natural resources are controlled by the state for the benefit of the people, so that any activity that hinders public access to the sea, such as the construction of sea fences without valid permits, has the potential to violate this principle. Building Use Rights and Ownership Rights permit certificates issued in coastal areas where sea fences are built are null and void and can be categorized as illegal products that have the potential to cause criminal acts such as encroachment on public space, fraud, and abuse of authority, because this does not have a permit for the suitability of sea space utilization that should be owned before carrying out activities or erecting structures above the sea.
2. *Hifdul Al Biah* is a principle in Islamic law which functions as a preventive mechanism so that an action that is not directly prohibited but has the potential to cause harm is better prevented or stopped. Marine fences that are built without paying attention to the impact on traditional fishermen and coastal ecosystems are contrary to *Hifdul Al Biah's* principles, because they open up

opportunities for social and environmental harm in the future. Therefore, it would be better if the permit issuance were canceled or reviewed in order to prevent further damage, emphasizing the need to prevent detrimental negative impacts.

B. Suggestion

1. Clarifying and strengthening regulations governing the construction of sea fences. The government needs to set more detailed standards regarding the types of permits required, as well as the procedures that must be followed by business entities that will build sea fences or building structures at sea. This includes regulations concerning environmental, social, and economic aspects. Establishing these standards will help reduce ambiguity and minimize the potential for abuse of authority or confusion of applicable regulations.
2. The government needs to consider the Hifdhul Al-Bi'ah approach as a principle of preserving and protecting the environment. Sea fences that are installed illegally and block public access and damage the environment are not in accordance with the principle of hifdhul al-bi'ah because they are contrary to the obligation to preserve the environment and the common right to marine resources in Islam. Therefore, the installation of sea fences must meet official permits and not harm the community and the environment in order to comply with sharia principles in protecting the environment.

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