LEGAL PROTECTION FOR ENVIRONMENT AND COASTAL COMMUNITY FROM MARINE ECOSYSTEM DEGRADATION AND CLIMATE CHANGE IMPACT

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ABSTRACT

Objective: This research aims to explore international and Indonesian legal framework in environment and coastal community protection from marine ecosystem degradation and climate change impact, further examining its application through empirical examination.

Theoretical Framework: Diversified legal approaches by international law and its harmonization to Indonesian law for protecting the environment and coastal community and the implementation of regulations for legal protection and access to justice for the environment and coastal communities.

Method: This article utilizes a combination of normative and empirical legal research, which applies various legal instruments and field observation as primary data and secondary legal materials to be descriptively analyzed in order to reveal the legal issues.

Results and Conclusion: The main findings show that the current laws, regulations, and policies are not yet able to effectively provide legal protection for the environmental degradation and coastal community to mitigate and adapt with climate change impacts, due to the lack of implementation and absence of a harmonized legal framework on climate change mitigation and adaptation from national, regional, to local level.

Originality/value: This paper recommends to encourage key stakeholders, especially public sector to empower its intervention tool by regulating strategic development plans which are in line with mitigation and adaptation from climate change and will not contribute to any environmental degradation.

Keywords: climate change, coastal community, Indonesia, legal protection, marine environment.

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RESUMO

Objectivo: Esta investigação visa explorar o quadro jurídico internacional e indonésio na proteção do ambiente e das comunidades costeiras contra a degradação dos ecossistemas marinhos e o impacto das alterações climáticas, examinando ainda mais a sua aplicação através de exame empírico.

Enquadramento Teórico: Abordagens jurídicas diversificadas pelo direito internacional e sua harmonização com a legislação indonésia para a proteção do ambiente e da comunidade costeira e a implementação de regulamentos para a proteção jurídica e acesso à justiça para o ambiente e as comunidades costeiras.

Método: Este artigo utiliza uma combinação de pesquisa jurídica normativa e empírica, que aplica diversos instrumentos jurídicos e observação de campo como dados primários e materiais jurídicos secundários a serem analisados descritivamente a fim de revelar as questões jurídicas.

Resultados e Conclusão: As principais conclusões mostram que as leis, regulamentos e políticas actuais ainda não são capazes de fornecer eficazmente proteção legal à degradação ambiental e à comunidade costeira para mitigar e adaptar-se aos impactos das alterações climáticas, devido à falta de implementação e ausência de um quadro jurídico harmonizado sobre a mitigação e adaptação às alterações climáticas, desde o nível nacional, regional até ao local.

Originalidade/valor: Este documento recomenda encorajar as principais partes interessadas, especialmente o sector público, a capacitar a sua ferramenta de intervenção, regulamentando planos estratégicos de desenvolvimento que estejam em linha com a mitigação e adaptação às alterações climáticas e não contribuam para qualquer degradação ambiental.

Palavras-chave: alterações climáticas, comunidade costeira, Indonésia, proteção legal, ambiente marinho.

1 INTRODUCTION

Climate change poses greater existential threat to coastal ecosystem in four nexuses: environment; social; economic; health (IPCC, 2014; Weatherdon et al, 2016). Triggered by rise in temperature, several phenomena rising due to climatic change such as intense disaster frequency, sea level rise, and marine ecosystem degradation (Burden et al, 2020; Sandifer et al, 2021). Given that Indonesia is a part of Small Islands and Developing States (SIDS) with 80.000km coastline and 17,000 islands consisting of 42 million people living in altitude of >10m above average sea level (Moedirta and Stalker, 2007), its coastal community are in the front line of vulnerability from climate change
Legal Protection for Environment and Coastal Community from Marine Ecosystem Degradation and Climate Change Impact

Nevertheless, legal protection for marine ecosystem and access of coastal community to environmental justice remains a challenge. Therefore, Indonesia shall prepare legal strategies to address climate change and protecting the environment and marine ecosystem from degradation and climate change impacts.

Figure 1. Observed Human Vulnerability

Climate change impacts are exacerbated by certain infrastructural development projects including sea sand mining, reclamation piers which are potentially harmful to the marine environment, destabilizing the chain of ecosystem, further weakening the ability of sea as a carbon sink to absorb carbon emissions (OECD, 2017). These phenomena will lead to a detrimental socio-economic effect to coastal community which urgently require to seek mitigation and adaptation pathways from climate change. Therefore, the role of key stakeholders, particularly public sector is pivotal to establish rule of law granting legal protection and certainty to the marine environment and coastal community.

This research aims to outline and normatively elaborate international and Indonesian legal framework in providing legal protection for the environment (particularly in marine component) and coastal communities from degradation and
climate change impact, which the legal analysis will provide a legal basis to sharpen the
analysis based on highlighted cases in areas affected by climate change. Focusing on
Indonesia, this research objective will examine the coherency of Indonesia’s relevant
statutory regulations and public policies with current implementation and empirical
observation in selected coastal society.

2 THEORETICAL FRAMEWORK

Endangering marine environment will contribute to destruction of marine
biodiversity, threatening the marine environment, and accelerating climate change
(OECD, 2017). Several international legal instruments aimed to protect marine
environment, including the United Nations Convention on the Law of the Sea
(UNCLOS), Convention on Biological Diversity (CBD) and SDGs 14 (Life Below
Water). UNCLOS is a legal framework obliging states to protect and preserve marine
environment (European Commission, 2022). Such obligation includes (UNCLOS, 1982):

1) To protect and preserve marine environment;
2) To prevent, reduce and control pollution of marine environment;
3) To utilize best practicable means at their disposal and in accordance with
   their capabilities, shall endeavor to harmonize policies in this connection;
4) To protect and preserve rare fragile ecosystems and depleted, threatened
   or endangered species and other forms of marine life.

The obligation to protect and preserve marine environment covers the area of
developing regional and international cooperation, monitoring environmental risk
assessment, enforcing obligations. Along with these obligations, state shall be held
responsible for any conduct of an act or omission violating UNCLOS attributable to the
state is a breach of international law (Moira and Gold, 1991). States are obliged to take
all necessary measures by using their best practical means and analogously to their
capabilities. Therefore, the economic and infrastructure level cannot be the exception to
not preventing, reducing, and controlling marine pollution, since the UNCLOS has only
focused on the efforts of the State in carrying out its obligations in terms of protection
and preservation of the marine environment.

By ratifying the UNCLOS and CBD, the scope of marine pollution and the
obligation to protect and preserve the marine environment will give a new legal
implication towards a state. The substantial context in the CBD will give a significant
impact on how UNCLOS interprets the marine environment. Therefore, in the terms of marine pollution as a climate change contributor, it may be necessary to consider States parties obligations under UNCLOS in Part XII given the widespread acceptance that climate change poses a serious threat to biodiversity. Furthermore, in the livelihood aspect over the marine and coastal diversity, marine pollution also has a crucial impact on both of the environmental and economic sectors (United Nations, 2023).

The international community recognized the urgent need to address climate change issues, leading into establishment of key principles including “common but differentiated responsibilities” under Paris Agreement (United Nations, 2015), legal and policy frameworks including the United Nations Framework on Climate Change (UNFCCC) ratified by Indonesia (Law No. 16 Year 2016). Therefore, Indonesia is obliged to take precautionary measures to anticipate, prevent or minimize causes and impact of climate change. Other instruments ratified by Indonesia includes the SDGs, Paris Agreement, Glasgow Climate Pact, Sharm El-Sheikh Implementation Plan, to Sendai Framework.

There are four key pillars of global climate action (mitigation, adaptation, climate finance, loss and damage) and ambitious targets to reduce greenhouse gas (GHG) emission which includes:

a. Mandating state parties to implement and updating Nationally Determined Contributions (NDC) (UNFCCC, 1992);

b. Reaffirming $100 billion/year fund pledge mobilization to developing nations for climate mitigation and adaptation (Glasgow Climate Pact, 2021);

c. Calling upon phasedown of unabated coal power and ending inefficient fossil fuel subsidies.

The arrangement of loss and damage funds introduced through the Sharm el Sheikh Implementation Plan, includes commitments from rich countries to provide financial assistance to developing countries to help they recover from the economic damage and losses caused by the ongoing impacts of climate change, realizing that the impacts of climate change have caused irreversible damage ranging from economic to non-economic damage, including loss of ecosystems caused which resulted from rapid-onset impact such as flooding, and slow onset impacts such as sea level rise (UNFCCC, 2013). The Sendai Framework emphasizes the integration of disaster risk reduction into climate change adaptation and mitigation strategies (Maini et al, 2017) aiming to protect
communities, economies, and ecosystems from the devastating impacts of disasters divided into two sections:

a. Substantial reductions: aiming to decrease the number of deaths, affected people, and economic losses caused by disasters. It also aims to reduce the damage to critical infrastructure and disruption of basic services;

b. Substantial increases: aiming to increase the number of countries with national and local disaster risk reduction strategies. It encourages the implementation of risk-informed development plans, the enhancement of early warning systems, and the availability of disaster risk information.

3 METHODOLOGY

This research uses normative-empirical legal research methods that focus on the legal protections available within Indonesia’s positive legal framework for the environment and coastal communities facing the threat of degradation of marine ecosystems and the impacts of climate change. The primary data obtained from authoritative legal regulations including relevant laws and data taken from field observation to the research location to Lae-Lae Island. The secondary data will complement and strengthen the analysis from the obtained primary data, in which the secondary data consists of related literatures including governmental and non-governmental literary sources.

Table 1. Index of Authoritative Legal Material

<table>
<thead>
<tr>
<th>Level</th>
<th>Instrument</th>
<th>Year</th>
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<tbody>
<tr>
<td></td>
<td>Convention on Biological Diversity</td>
<td>1992</td>
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<tr>
<td></td>
<td>United Nations Framework Convention on Climate Change</td>
<td>1992</td>
</tr>
<tr>
<td></td>
<td>Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts</td>
<td>2013</td>
</tr>
<tr>
<td></td>
<td>Paris Agreement</td>
<td>2015</td>
</tr>
<tr>
<td></td>
<td>Sendai Framework for Disaster Risk Reduction (Sendai Framework)</td>
<td>2015</td>
</tr>
<tr>
<td></td>
<td>Sustainable Development Goals (SDGs)</td>
<td>2015</td>
</tr>
<tr>
<td></td>
<td>Glasgow Climate Pact</td>
<td>2021</td>
</tr>
<tr>
<td></td>
<td>Sharm El-Sheikh Implementation Plan</td>
<td>2022</td>
</tr>
<tr>
<td></td>
<td>Constitution of Indonesia</td>
<td>1945</td>
</tr>
<tr>
<td></td>
<td>Law No. 32 of 2009 concerning Environmental Protection and Management (Law 32/2009)</td>
<td>2009</td>
</tr>
<tr>
<td></td>
<td>Law No. 1 of 2014 concerning amendment of Law No. 27 of 2007 of Management of Coastal Zone and Small Islands (Law 1/2014)</td>
<td>2014</td>
</tr>
<tr>
<td></td>
<td>Law No. 23 of 2014 concerning Local Government (Law 23/2014)</td>
<td>2014</td>
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</table>
The research analysis will start examining the normative legal sphere using the legislative inventory of primary legal materials, then matched with field observations by looking at the physical impact of climate change on the ecosystem of coastal communities primarily in Lae-Lae Island. The results of the analysis and assessment of this study using a juridical approach aims to review coherence of the implementation of existing regulations and the direction of policies in efforts to enforce legal protection and providing access to justice for the environment and coastal communities.

4 RESULTS AND DISCUSSION

Indonesia’s legal framework under the Law 27/2007 aimed to protect, conserve, rehabilitate and enrich coastal resources and small islands and sustainable ecosystem. This law recognizes, respect and protects indigenous and traditional people, including coastal area local wisdoms (Law 27, 2007). Under 2014 amendment, local communities including fisherfolks are entitled to contribute in traditional fisheries area planning (Law 1, 2014).

The Law 1/2014 affected by the enactment of Omnibus character of Law 6/2023, which adds mandate to policymaker for considering existing marine area utilization, socio-economic and cultural aspect of maritime including traditional fishing area granted through participative planning (MOFMR Regulation No. 28, 2021). If such mandate can be successfully implemented, the law will accommodate traditional fishing area without obliging fisherfolks submitting advisory, therefore positions government to actively identify such area. The identification and legal recognition of traditional fishing area will
strengthen legal protection upon fisherfolk’s right to life and minimizing areal conflict between traditional fisherfolks and business entities aiming for a particular area to develop economic gain.

Significant amendments under Law 32/2009 in post Law 6/2023 includes the amendment of “environmental permit” to “environmental approval” (Law 32, 2009). Such amendment gives effect to the “environmental approval” by weakening the document’s weight of authority (Helmi, 2021), given that the nature of such environmental permit document is not symbolizing government intervention by prior approval which fulfills obligatory compliance and established standards (Hadjon, 1993). Furthermore, the environmental approval is no longer considered as State Administrative Decisions (KTUN) able to be filed for dispute in the Administrative Court. This Law 6/2023 amends the Law 32/2009 by excluding environmental campaigner involvement in society participation as a prerequisite of Environmental Impact Assessment (EIA). Therefore, the only pathway for environmental campaigner to involve is through consolidation and advocacy to potentially impacted society.

The establishment of marine infrastructure must acknowledge the existence of, and aim to grant protection to local and traditional society, living area and access to small fisherfolks (Government Regulation No. 20, 2021). Nevertheless, the implementation is a huge challenge for 2,000 inhabitants of Lae-Lae Island located in Makassar city, South Sulawesi province with major occupation as fisherfolks and boat service providers (papplimbang) crossing daily in Kayubangkoa pier to survive amidst the Centre Point of Indonesia (CPI) reclamation project. Enacted through Regional Planning Regulation No. 3 Year 2022 (RPR 3/2022), article 100(2) regulate that this reclamation project will reclaim Lae-Lae Island to substitute remaining 12,11 hectare of agreed reclamation land for CPI project (Makassar Legal Aid, 2023).
Figure 2. Comparison of Makassar coastal area in 2009 and 2020 (a) Makassar coastal area in 2009 before reclamation; (b) Makassar coastal area in 2020 after reclamation

![Figure 2: Comparison of Makassar coastal area in 2009 and 2020](image.png)

Source: (a) Google Earth (2009); (b) Google Earth (2020).

The CPI reclamation harmed the marine environment which led to decreasing marine biota that previously known to inhabit coastal areas and exacerbating sea level rise and abrasion as climate change impact. The increasing sea level proven from the damage to sea wave embankment which contribute to coastal communities’ greater vulnerability to experience coastal flooding. By January to July 2023, Lae-Lae Island society have experienced two rob/flash flood events in separate month, such flash floods never occur before the CPI reclamation construction. As identified that Makassar will experience highest consequence of climate change impact from sea level rising to 56cm in 2050 and rising temperature (United Nations Habitat, 2014), public sector shall prioritize legal protection to be given to Lae-Lae Island coastal community living in the frontier of Makassar through adaptation and mitigation legal strategy which simultaneously contributing to the achievement of SDGs.

The national government have mandated provincial government to be bound by SDGs principles through President Regulation Number 111 of 2022. Therefore, the CPI reclamation purposed for tourism shall adhere and enforce SDG 8 (Sustainable tourism) and SDG 14 (Marine Ecosystem) specified below.
Table 2. SDG 8 and 14 indicator Mapping

<table>
<thead>
<tr>
<th>No.</th>
<th>Target</th>
<th>Indicator</th>
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<tr>
<td></td>
<td></td>
<td><strong>SDG 8: Sustainable Tourism</strong></td>
</tr>
<tr>
<td>1.</td>
<td>8.3</td>
<td>Policy shall be oriented to develop and encourage productive activities, job creation,</td>
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<td></td>
<td></td>
<td>Implemented policy shall promote sustainable tourism and encouraging job creation,</td>
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<tr>
<td></td>
<td></td>
<td>promoting local culture and product, which measured through indicator 8.9.1 (direct</td>
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<tr>
<td></td>
<td></td>
<td>tourism GDP as a proportion of total GDP and growth number)</td>
</tr>
<tr>
<td>2.</td>
<td>8.9</td>
<td>Protecting and managing marine and coastal ecosystem sustainably to prevent</td>
</tr>
<tr>
<td></td>
<td></td>
<td>significant negative impact, including by strengthening resilience and taking</td>
</tr>
<tr>
<td></td>
<td></td>
<td>restorative actions to achieve a healthy and productive marine ecosystem measured</td>
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<tr>
<td></td>
<td></td>
<td>through indicator 14.2.1 (numbers of ecosystem-based approach to manage sea area)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Enhancing economic gain to small island and developing states from sustainable</td>
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<tr>
<td></td>
<td></td>
<td>marine resource utilization, including by sustainable fisheries, aquaculture and</td>
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<tr>
<td></td>
<td></td>
<td>tourism management, measured through indicator 14.7.1 (sustainable fisheries as</td>
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<tr>
<td></td>
<td></td>
<td>GDP proportion in SIDS and all states)</td>
</tr>
<tr>
<td>3.</td>
<td>14.2</td>
<td>Providing access to small-scale fisherfolks to market and marine resources through</td>
</tr>
<tr>
<td></td>
<td></td>
<td>indicator 14.b.1 (institutional/regulatory/legal framework implementation</td>
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<tr>
<td></td>
<td></td>
<td>recognizing and protecting right of access for small-scale fisherfolks).</td>
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</tbody>
</table>


There are three major roadblocks for the implementation of SDGs in CPI reclamation project:

1) Makassar City have not yet developed any SDGs legislation, inconsistent to the provincial mandate of each city and regency in South Sulawesi to enact SDGs regulation (Provincial Regulation no. 15 Year 2022);

2) CPI reclamation project will only lead to decreasing number job creation for fisherfolks due to marine degradation which minimize fisheries yield, and potentially bringing negative impact to the continuity of boat driver service (pappalimbang) in Kayubangkoa pier;

3) Lack of access to public information of vital documents and society participation in consultation session prior to reclamation project establishment, which is inconsistent to the GR 22/2021 which oblige to document and consider advices, response and opinions of impacted society in the Environmental Feasibility Test (UKL) as a guideline in examining Environmental Impact Assessment (AMDAL), Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL).

Simultaneously, there are three potential impacts if the roadblocks for implementation are not alleviated: 1) Protection and management of coastal and marine ecosystems will not be implemented in a sustainable manner to avoid significant adverse impacts of activities; 2) Reclamation will not ensure access for small-scale fishers to marine resources and markets; 3) will not encourage sustainable tourism that creates jobs,
promotes local culture and products. Ultimately, legal protection of coastal communities through regulatory instruments without being accompanied by effective implementation will only result in ineffective policies, tend to benefit one party and harm the community, and not achieve the fulfillment of SDGs 14 and 8.

Figure 3. Damaged and Partially Submerged Sea Water Embankment

The impact of climate change has been experienced directly by Lae-Lae Island community, but minimum public sector intervention through regulation and implementation action in adaptation and mitigation for building society resilience to climate change poses significant issue. The PR 87/2020 have clearly recognized the fact that Indonesia is facing disaster risk due to climate change and mandated cities/regencies to: 1) establish climate change disaster resilience capacity, and; 2) improving vital climate mitigation and adaptation infrastructure quality. If such disaster risks are not mitigated and no planned adaptation strategy, then such disaster would increase mortality, environmental destruction, bringing detrimental impact to social, economy and culture (Presidential Regulation 87, 2020).

Further flash floods and extensive abrasion will put Lae-Lae Island coastal community due to lack of legal protection and resilience infrastructure. This circumstance led to the failure to achieve SDG 13 (addressing climate change) which encourages countries to strengthen resilience and adaptation capacity to disasters related to climate change and natural disasters (UNEP, 2023) carried out through the integration of climate
change considerations in national planning policies and strategies. Furthermore, absence of educational efforts aimed at raising climate change awareness, building the capacity of populations and institutions for adaptation, mitigation and reduction of the impacts of climate change will bring two consequences: 1) SDG 13 will not be achieved; 2) Indonesia’s vision in Presidential Regulation 87/2020 to implement a disaster-resilient Indonesia for sustainable development will not be achieved.

Figure 4. Damage To Sea Water Embankment Due to Abrasion and Rob/Flash Flood

Source: Personal Documentation (2023)

The circumstances experienced by Lae-Lae Island communities pitch a discourse on climate justice implementation due to uneven impact of climate change putting vulnerable communities at greater risk (Shue, 2014). Exclusion of Lae-Lae Island communities’ participation and hindering access to public information pertaining reclamation project demonstrates the portrayal of climate injustice. Therefore, a litigation and non-litigation pathways shall be accessible for society to access justice and requesting for legal protection. There are several challenges if society chooses litigation path: 1) Society require counsel to provide legal representation and advisory; 2) The Plaintiff have to provide evidence which establish that the reclamation project exacerbates climate change and destructs Lae-Lae Island living environment through scientific evidences. These challenges have been mirrored in several cases in many countries including the Bushfire Survivors v. Environmental Protection Agency [2021] adjudged in New South Wales Land and Environment Court which successfully compel Defendant to be held responsible as the evidence exhibited by Plaintiff validly proved the relation of current phenomena to climate change through scientific affidavit (New South Wales Land and Environment Court, 2021). Quasi-judicial pathway can be pursued, but it costs greater and require both parties’ agreement to proceed into tribunal.
Non-litigation pathways can highly be pursued by Lae-Lae Island community to access climate justice by negotiation, mediation, conciliation or agreed pathways by both parties (United Nations, 1945). *Sipitangarri* culture as a non-litigation method may provide platform for society, government agencies and key stakeholders to discuss and negotiate concerning reclamation and urgent situations experienced by society, thus finding amicable solutions to resolve the issue (Hakim, 2020). If the deliberation reaches a consensus decision, the community may request for responsibility if the decision is not implemented in accordance with the agreement that has been agreed in the *sipitangarri* process.

Both pathways are options for the Lae-Lae islanders to access environmental justice, ensuring that justice is done in every endeavor (Rulli, 2014). Coastal communities are among the vulnerable groups to have their rights violated and ignored due to unequal power relations between vulnerable groups, governments, and businesses, which directly affect environmental protection and fulfillment of human rights (Wiens, 2014). Therefore, the Lae-Lae Island community's access to justice must be accompanied by a stringent law enforcement which acknowledges and protects the community.

5 CONCLUSION

There are two conclusions taken from the analysis: 1) The international legal framework in protecting marine environment and coastal community from marine ecosystem degradation and climate change impact have been interpreted to national legislation. However, coherence to regional and local legislation remains a challenge; 2) The implementation of the legal framework needs to be amplified, especially for coastal community to gain equitable access to climate justice.

Key stakeholders, especially public sector shall be encouraged to empower its intervention tool by regulating strategic development plans which are in line with mitigation and adaptation from climate change, and will not contribute to any environmental degradation. Finally, a clear and harmonized legal framework focusing on protecting environment and coastal community through mitigation and adaptation from climate change impact that is optimally enforced is the key to a successful legal framework.
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