Archipelagic Approach in the Formulation of the Draft Law on the Islands Region

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Abstract. Indonesia is a unitary state with archipelagic characteristics. As an archipelagic state, the ocean is the dominant factor, with an estimated ¾ of Indonesia's territory (5.8 million km2) being ocean and a quarter (1.9 million km2) land, with enormous potential for coastal and marine resources. With an area as large as Indonesia cannot but adopt a decentralization system in governance to accelerate the community's welfare. This research uses normative legal research and socio-legal research. The policy of marine decentralization through territorial decentralization gains legality through Article 18 of the Indonesian Constitution, which is derived from Law of number 22/1999, Law of Number 32/2004, and Law of number 23/2014. Decentralization of marine management must refer to the 1982 Convention on the Law of the Sea (UNCLOS), a requirement of the rule of law. Therefore, it is necessary to synchronize Article 25A (Archipelago State) and Article 18 (1) (decentralization). Legal synchronization of Article 25A of the Constitution as an affirmation of the applicability of the 1982 UNCLOS, which is a product of international law ratified by Law of Number 17/1985.

1 Intoduction

Due to the extensive size of Indonesia, it is essential for to adopt a decentralized governance system to accelerate the attainment of public welfare. As noted by Bagir Manan, Decentralization is an essential element of the organizational structure of the state, which was accepted and endorsed by the founders of Indonesia.[1] The Indonesian Constitution establishes the Indonesia as a unitary state. This is clearly articulated in Article 1 (1) of the Constitution, which states, "Indonesia is a Unitary State in the form of a Republic." According to Jimly, the establishment of the organizational structure of the Unitary State is outlined in Chapter I, Article 1 (1).[2] This suggests that the regulations concerning this issue are considered very important and foundational, which is why they are prioritized before the creation of other rules. Additionally, the expression serves as an explicit declaration. This means that if it were not a Unitary State, it would not be identified as Indonesia.[2]

In a unitary state, the central government holds the primary responsibility for executing governmental duties. However, since Indonesia's governmental structure is rooted in Article 1 (1), and Article 18 (1) of the Constitution, it follows the unitary state principle while incorporating decentralization. Consequently, regional governments manage specific responsibilities independently, leading to a mutual relationship of authority and oversight between the central and local governments.

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Decentralization refers to the delegation of authority and responsibility for public services from the central government to lower-level or semi-independent governmental bodies, as well as to private sector entities and community organizations.[3] As stated in the 1962 U.N. Report, decentralization refers to "the transfer of authority based on geographic regions, either through deconcentration (i.e., delegation) of administrative power to field offices within the same government department or level, or by the political devolution of authority to local government entities or specific statutory bodies."[4]

Indonesia is classified as a unitary state with characteristics of an archipelago. Soekarno, the country's first president, famously described Indonesia as "a nation of seas sprinkled with islands."[5] This description aligns closely with the definition of an archipelago, which translates to "dominion of the sea" (where “arch/archi” means dominion and “pelage/pelages” refers to the sea). The term "archipelago" is widely used to represent the Indonesian state, highlighting its landmass comprised of 17,508 islands and a coastline stretching 81,000 km (this figure was adjusted following the independence of East Timor). Additionally, Indonesia boasts an ocean area of approximately 3.1 million km^2, which includes 0.3 million km^2 of territorial waters and 2.8 million km^2 of archipelagic waters. According to Kusumaatmadja, the term archipelago conveys not just a "cluster of islands," but also signifies "a sea marked by numerous islands."[6] The ocean is vital, covering an estimated three-quarters of Indonesia's area (5.8 million km^2), while islands make up one-quarter (1.9 million km^2). In addition, the potential of coastal and marine resources is substantial. According to Rokhimin Dahuri, marine resources, typically located in coastal and oceanic zones.[7] With these conditions, marine management is one of the accommodated in the decentralization policy in Indonesia, as contained in the Political Law of marine decentralization from the reform era through of Law of Number 22/1999, Law of Number 32/2004, Law of Number 23/2014.

In its development, 8 (eight) Islands Provinces urged (legislative institutions) to immediately ratify the Draft Law on the Islands Region, one of which was motivated by notes on the Law of Number 23/2014 which eliminated the basic concept of marine area management.[8] Apart from that, the concept of provinces with archipelagic characteristics introduced is not oriented towards managing marine areas or developing archipelagic regions but is only seen regarding natural resource management in the sea. The spirit of the formation of the Draft Law on the Islands Region was confirmed by the Ambon Declaration on 10 August 2005 which was motivated by the thought:[9] “The 1982 UNCLOS established the idea of the Archipelago State, which was widely accepted by the Indonesian government and populace. This established the Archipelago Province's territory as a standard for acknowledging this idea. The archipelagic state paradigm should be implemented regionally, particularly in island provinces.”

Archipelagic state principle is enshrined in the Indonesian Constitution and serves as a guideline for the development and reform of national law, particularly in shaping the concept of marine decentralization policy in Indonesia. This study will delve into the nature of Marine Decentralization within the context of Indonesian legal politics and highlight the necessity of implementing the archipelagic state principle in the creation of the Draft Law on the Islands Region. The anticipated legal outcome of applying the archipelagic state principle in marine decentralization is the achievement of legal synchronization between two principles that are essential to the constitutional framework of the Indonesia: the decentralization principle (Article 18 of the Indonesian Constitution) and the archipelagic state principle (Article 25A of the Indonesian Constitution). This legal synchronization aims to provide a solution in instances where the practice of marine decentralization may result in the 'enclaving' of the sea. Such a resolution ensures that the legal system operates effectively, in accordance with the archipelagic state principle, which serves as a foundational guideline for managing marine areas in Indonesia, highlighting the interconnectedness of land and sea. Furthermore, incorporating the archipelagic state principle into marine decentralization alleviates concerns from certain groups about how archipelagic regions, along with their marine management authority, might impede the fulfillment of international legal obligations.

2 Methods

This research uses normative legal research[10] and socio-legal research. Especially those related to decentralization and applying the 1982 Law of the Sea.

3 Results And Discussion

3.1 Marine decentralisation in Indonesian legal politics

The political framework for decentralization policy in Indonesia has been established through several laws, including Article 1 letter b Law of Number 5/1974 concerning the Principles of Regional Government, Article 1 letter e Law of Number 22/1999 on Regional Government, Article 1 Point 7 Law of Number 32/2004 on Regional Government, and Article 1 Point 8 Law of Number 23/2014 on Regional Government. Based on the formulation of decentralization in several regional government laws mentioned above, by emphasizing the formula 'region', the form of decentralization that is accommodated in the government system in Indonesia is only defined as territorial/regional decentralization, which is manifested in the form of bodies based on regions. In Indonesia, this approach to decentralization is implemented through a policy of Regional Autonomy [11].

The governance of territorial decentralization is outlined in several laws: Law Number 5 of 1974 concerning the Principles of Government in the Regions, Law of Number 22/1999 on Regional Government, Law of Number 32/2004 on Regional Government, and Law of Number 23/2014 on Regional Government. These regulations are a reflection of the stipulations found in Article 18 of the 1945 Constitution, applicable both prior to and following its amendment. As stated by Bagir Manan, the pre-amendment version of Article 18 of the Indonesian Constitution addresses only the implementation of territorial decentralization [1].

From the formulation of Article 18 of the Indonesian Constitution (before the amendment), Bagir Manan further outlines several principles contained therein [1]. The principles outlined above are highlighted by Bagir Manan [1]. as conditions that the legislator must adhere to without deviation or excess. The initial principal mandates that, in executing the stipulations of Article 18 of the Indonesian Constitution, the legislature is permitted to regulate only territorial decentralization [1].

The implementation of territorial decentralization persists following the amendment of the Indonesian Constitution, with the distribution of responsibilities between the central government and regional authorities remaining grounded in territorial factors, as outlined in Article 18 (1) of the Indonesian Constitution.

The framework for territorial decentralization outlined in the Indonesian Constitution, both prior to and following its amendment, carries significant implications for the execution of marine decentralization. The legal framework surrounding marine decentralization in Indonesia traces its origins to the reform era, specifically through Law of number 22/1999 (Article 3, Article 10 (2), Article 10 (3)), Law of number 32/2004 (Article 18 (1), Article 18 (3), Article 18 (5)), and Law of number 23/2014 ((Article 27 (1) and Article 28 (1)), (Article 27 (2)), (Article 27 (3)).

The responsibilities of the marine management authority, as outlined by the regional government law, can be explained as follows:

1. Recognition of regional territories at sea/regions owning sea areas.
2. Regions have marine management authority.
3. Differences in the concept of ocean management, the concept of 'management of the sea area' (Law of Number 22/1999 and Law of Number 32/2004) and 'introduced', and the concept of 'management of natural resources at sea' (Law of the Number 23/2014).
4. The sea management authority of the provincial Region is at most 12 (twelve) miles. The district/city area is 1/3 (one-third) of the provincial authority area (Law of the Number 22/1999 and Law of the Number 32/2004), while the sea management authority through Law of Number 23/2014 is only owned by the provincial Region at most 12 (twelve) miles.
5. The term 'Provincial Region with Islands Characteristics' was introduced through the Law of Number 23/2014.

With its vast territory, large population, and complex heterogeneity (ethnicity, religion, ethnicity, and certain groups), Indonesia requires local government units' involvement to carry out Government functions effectively. To carry out the functions of the Government in question, one of them requires decentralization, in addition to deconcentration, as confirmed by Bagir Manan, "Given the reality of the country's territory and the plurality that has been stated earlier, and the desire to provide the widest possible opportunity for regions and various legal community units to develop independently within the housing of the unitary state of Indonesia Merdeka, it is necessary to build a new, more suitable government administration joint, namely decentralization which has a core or rests on autonomy" [12].

Therefore, implementing a decentralization system in governance is essential, as it aims to enhance the achievement of public welfare (as stated in the consideration letter b of Law Number 23/2014). The existence of local government units within the governance framework of Indonesia serves not only as a necessity for efficient and effective administration but also represents one of the constitutional components of Indonesia [13].

3.2 The urgency of applying archipelagic state principle in the formation of the Draft Law on the Islands Region

The decentralization of marine management in Indonesia is intrinsically linked to the 1982 UNCLOS. Through the Djuanda Declaration, the Indonesian government emphasized the "Archipelagic State Principles," which recognize the sea and land areas as an interconnected whole based on the "Tanah Air" philosophy. The idea of an Archipelagic State arises from the concept of "archipelago," which refers to a body of water containing numerous islands. In this framework, the proportion of water exceeds that of land (islands), yet both are regarded as a single entity. Therefore, the key aspect of the archipelago concept is the unity between the sea and land (including the air above), with the area of the sea being greater than that of the land [14].

The factors that led the Government to proclaim the Djuanda Declaration include: (1) the unique geographical nature of Indonesia as an archipelagic nation, composed of thousands of islands, which necessitates specific regulations; (2) the necessity for all islands and the surrounding seas to be viewed as a cohesive unit to maintain the territorial integrity of Indonesia; (3) the territorial sea boundaries established during the colonial era, are no longer aligned with the safety and security interests of Indonesia; and (4) the inherent right and responsibility of every sovereign state to implement necessary measures to safeguard its territorial integrity and security [6].

To showcase its dedication to the 'archipelagic State concept,' Indonesia has integrated this idea into a national doctrine referred to as Wawasan Nusantara. This doctrine is characterized as “the viewpoint and disposition of the Indonesian nation towards itself and its surroundings, emphasizing national unity and territorial integrity in managing the life of society, nation, and state to attain national objectives” [15]. Wawasan Nusantara is a political concept that departs from the territorial concept of the “archipelagic State concept" [15]. The Archipelago Concept is a political idea rooted in the notion of territory, specifically the 'concept of the archipelago state.' According to Mochtar, there is a connection between the Archipelago Concept and archipelagic state principle. If the archipelagic state principle pertains to the conception of national territory, then the Archipelago Concept serves as a perspective on the political unity of a nation and its society, reflecting the geographical reality of an archipelago state [16].

The Archipelago Concept is a political idea rooted in territorial notions. Some legal scholars argue that the notion of an archipelagic State as a national doctrine, referred to as the Archipelago Concept, has implications for Indonesia's legal framework. B. Arief Sidharta suggests that the insight of the archipelago serves as one of the references within the paradigm of Indonesian National Law, alongside other references such as: Cita-Legal Pancasila, the objectives of legal protection, the conception of a Pancasila-based legal state, and the national legal order, all of which must incorporate archipelagic insight.[17] Furthermore, according to Mochtar Kusumaatmadja[18], Creating a legal system grounded in archipelagic perspectives involves developing national law that merges the aim of establishing a cohesive legal framework while also acknowledging the cultural diversity of the communities residing within an archipelago.

UNCLOS was adopted during the Third UNCLOS, held in New York on April 30, 1982. It was subsequently signed by Indonesia and 118 other countries in Montego Bay, Jamaica, on December 10, 1982. Following this, the Government of Indonesia engaged in a ratification process to formally commit to the convention, which is a standard legal procedure for international agreements. The ratification in Indonesia is documented in Law Number 17/1985, which pertains to the ratification of UNCLOS. Over time, the legal framework for the Archipelagic State established in UNCLOS has played a crucial role in reinforcing Indonesia’s status as an archipelagic nation. This is further enshrined in the Indonesian Constitution, specifically in the Fourth Amendment, which includes Article 25 A. archipelagic state principle has become an integral component of the constitutional framework of Indonesia. Moreover, this principle has formed part of Indonesia’s national philosophical perspective, mandating that all national legislation concerning maritime affairs, including regulations governing marine management authority in archipelagic contexts, must adhere to the archipelagic principles, as noted by Jimly [19], The inclusion in Chapter IXA Article 25A enhances the material content of the Indonesian Constitution, transforming it into a comprehensive document that encompasses fundamental norms concerning land, water, and air as components of Indonesia's territory, in alignment with Pancasila and the Indonesian Constitution. Jimly refers to the Indonesian Constitution as both the Blue Constitution and the Green Constitution, representing a unified vision of life. UNCLOS establishes general guidelines regarding maritime use. Concurrently, Indonesia, as a ratifying country, fulfills its obligations under UNCLOS by implementing legislation related to maritime issues, including Law of Number 6/1996 on Indonesian Waters and Law of Number 32/2014 on Maritime Affairs.

The concept of the Archipelago State has been recognized as Indonesia's national philosophical foundation even prior to the implementation of UNCLOS, and it is enshrined in Article 25A of the Indonesian Constitution. Consequently, all national laws and regulations in Indonesia concerning marine matters must adhere to the archipelagic state principle, including the marine decentralization policy [20]. This is due to the status of the

Indonesian Constitution as the highest legal authority within the hierarchy of laws and regulations, as stated in Article 7 (1) of Law Number 12 / 2011 regarding the Establishment of Laws and Regulations. This hierarchy has significant implications for the legal validity of laws and regulations, as noted by Bagir Manan and Susi Dwi Harijanti[21], According to the hierarchy of laws and regulations, the Constitution serves as the supreme source of state law, which entails the following: (a) all legislative measures must originate from the Constitution's principles, rules, fundamental ideals, and objectives; (b) the Constitution takes precedence over all other laws and regulations; (c) no other laws or regulations should contradict the Constitution. Therefore, archipelagic state principle, as articulated in the Indonesian Constitution, ought to guide the development and reform of national law. This includes shaping the framework for marine decentralization policy in Indonesia. This approach aligns with the principle of a rule-of-law state, establishing the law—especially the Constitution—as the foundational source that influences behavior, including the state's concepts and actions [21].

Archipelagic state principle (as outlined in Article 25A of the Indonesian Constitution) and decentralization/regional autonomy (Article 18 of the Indonesian Constitution) are fundamental components of the Indonesian constitutional framework. These principles must be implemented in conjunction, functioning as a mutually reinforcing system where the archipelagic state principle influences the decentralization/regional autonomy principle, and conversely, the principle of decentralization/regional autonomy impacts the archipelagic state principle. Both of these interrelated principles operate within the context of Indonesia.

In the context of marine management, regions characterized by a larger expanse of ocean than land include Maluku Province (with 92.6% ocean area), Riau Islands Province (96%), and Bangka Belitung Province (79.9%). In these areas, decentralized regional governance is anticipated to enhance the achievement of community welfare. Despite the vast potential of marine resources found in coastal and oceanic areas, the benefits have not yet been fully realized in these island regions. This is true even though the process of marine decentralization in Indonesia began during the reform era, following the implementation of various laws: Law of Number 22/1999 on Regional Government, Law of Number 32/2004 on Regional Government, and Law of Number 23/2014 on Regional Government.

In his study, Bismar highlighted the opportunity for marine management in Riau Islands Province through the implementation of anchoring fees. Given its strategic location, Riau Islands Province sees hundreds of thousands of cargo ships and tankers navigating the Singapore Strait annually. Data from 2017 estimated that between 80,000 and 90,000 vessels traverse the Malacca Strait each year, which directly borders the waters of Riau Islands Province. The heavy maritime traffic necessitates designated sea areas for anchoring, allowing ships to engage in various activities such as waiting for cargo contracts, conducting minor repairs, waiting for buyers (ships for sale), and performing transfers between vessels without docking. The anchorage potential in Riau Islands Province is significant, amounting to approximately Rp 6 trillion. To harness this substantial ship traffic and the increasing demand for anchoring, six designated sea spaces have been established for anchoring activities in the region [22].

The introduction of Law Number 23/2014 replaced the previously established "marine area management" concept outlined in Law Number 22/1999. This new law shifted the focus toward "natural resource management in the sea." Unlike the earlier concept, marine area management now encompasses a broader scope that extends beyond just the management of marine natural resources. Furthermore, the decentralization of marine management has implications for the sustainability of the marine environment, as highlighted by the UNCLOS. This approach to decentralization, which aligns with archipelagic state principle as defined in UNCLOS, is expected to affect environmental sustainability. It delegates responsibilities for marine conservation and ecosystem management to the islands themselves, as stressed in international maritime law. Despite the autonomy provided to local regions, the central government retains ultimate accountability for local governance. Therefore, in a unitary state, local government operates as a crucial component of the national government.

In recent developments, addressing ecological challenges is managed independently, establishing it as a completely regional responsibility. The United Nations Conference on Environment and Development (UNCED 1992) introduced principles of integrated ocean governance, as outlined in Agenda 21. In relation to the marine environment, this emphasizes a sustainable and integrated approach that remains aligned with archipelagic state principle. Additionally, the regulation of 'regional cooperation' in Law of Number 23/2014 practically supports this integrated approach to marine environmental preservation.

Besides the regional authority concerning the administration of maritime zones, there are apprehensions from various groups that the existence of archipelagic areas, along with their sea management powers, may technically hinder Indonesia's commitment to ensuring the right of innocent passage and the right to navigate the archipelagic sea routes for foreign vessels and aircraft as stipulated in the 1982 UNCLOS.[23] Kresno Buntoro's viewpoint supports this as well, stating that all outputs of the regional formation law, as mandated by the regional government law, exclude the territorial sea from being considered a region (or part of the territory) of the province.

The intention behind creating the draft law for the Islands Region of Indonesia is to strengthen the authority of the islands in maritime areas and establish their role in meeting international commitments as outlined in UNCLOS.

The decentralization system is regarded as the most appropriate approach for a country with extensive territory like Indonesia, particularly in terms of marine management. Consequently, the decentralization of marine management should adhere to archipelagic state principle as outlined in the 1982 UNCLOS. However, the challenge arises from at least two differing interpretations regarding how to implement the acknowledgment of the archipelagic State principle into regional governance (archipelagic provinces). This highlights the necessity of legally redefining the scope of marine management authority for island-based provinces in accordance with the Indonesian Constitution.

The first viewpoint is based on Law of Number 32/2014, which states that regions do not possess authority over marine areas. This is further supported by the research conducted by Rokhimin and Dhiana, who analyze the implementation of Law of Number 22/1999 and Law of Number 32/2004 as the legal foundations for marine management decentralization at that time. This situation has resulted in a "calling" of the sea that contradicts Indonesia's fundamental principles of marine management, particularly archipelagic state principle, which highlights the integration of land and sea areas.

Regarding the second perspective, the Ambon Declaration is reinforced by the Academic Paper of the Islands Region Bill, which offers an interpretation stating that the allocation of marine management authority to island regions serves as a reaffirmation of the connection between land and sea (homeland). This concept reflects the philosophy and viewpoint of the Indonesian nation, viewing the sea as a vital link that supports archipelagic state principle. The aspiration for the region to independently manage its marine areas is well-founded, as each region, functioning as an autonomous unit within the unitary state, has the right to engage in legal actions as a legal entity to regulate and oversee governmental functions related to its domestic affairs.

Law of Number 22/1999 and law of Number 32/2004 introduced the idea of 'marine area management.' However, their implementation has faced challenges. For instance, Government Regulation Number 25 of 2000, as noted by Rokhimin Dahuri[7], in its execution, this has resulted in a range of interpretations that hinder the economic activities associated with the boundaries of regional authority in maritime areas. The regulations specify that provincial authority extends up to 12 miles, while one-third of the authority belongs to the regency, and the central government holds jurisdiction beyond that 12-mile limit. Additionally, it is indicated that:

> "...the State's territory includes land and sea, is a single entity, and is not divided into areas of regional power. The sea area differs from the land area because of its "fluid" nature, making it impossible to create enclave boundaries that would negate the entire system mechanism within it."

The potential for regional 'enclaving' of sea areas would contradict the basic principle of an archipelagic state that places the sea as a unifier, not as a separator. Decentralizing authority to the regions should be seen as the granting of rights and obligations to exercise them responsibly and in the community's interests, not the granting of sovereignty resulting in sea enclosure.[7] In addition, the 'enclaving' of sea areas for the regions will certainly give birth to the nature of the 'state', which tends to lead to the granting of sovereignty to the regions, which reflects the practice of federalism, which is certainly not in line with the spirit of a unitary state, as confirmed by C.F. Strong[24], that the essence of a unitary State is a State whose sovereignty is not divided.

The critique of federalism warrants reconsideration because, as noted by Jimly, the evolution of state administration and the amendments to the Indonesian Constitution have led to a transformation in the interpretation of the Unitary State within state administration theory. This transformation shifts from a rigid conception of the Unitary State to what Jimly refers to as a dynamic form of the Unitary State[25]. Additionally, Jimly emphasizes that a key aspect to address when discussing regional autonomy within a unitary state is the "development of the federalism concept" [26].

As a replacement Law for number 22/1999, the presence of Law number 32/2004 does not make corrections to the material of Law 22/1999, especially those governing regional authority in the marine sector. In order to provide legal certainty related to the determination of regional boundaries (including 'regional boundaries at sea'), the Government, through the Ministry of Home Affairs, issued the Minister of Home Affairs Regulation No. 1/2006 on Guidelines for Regional Boundary Assertion. According to Ni'matul Huda[23], several additional articles in Law of number 32/2014 are very 'controversial', including of Article 18 (3), which regulates the details of regional authority in the management of marine resources that are difficult to implement, because the material can result in 'overlapping' with the authority of the Central Government and or provincial governments. Dhiana[20], in his findings at the time of the enactment of Law of number 32/2004, said that the regulation of decentralized marine areas/Dezentralised Coastal Zone Management clashed with or was not by Indonesia's commitment to archipelagic state principle which emphasizes territorial unity. The analysis is conducted to examine the compatibility of legal norms between the regulation of local government authority in managing coastal areas and oceans as stipulated in the Law of Number 32/2004 and the zoning of coastal areas stipulated in the Law of Number 27/2007, with the archipelagic state principle stipulated in international legal provisions.

In its evolution, Law of Number 23/2014 emerged as a substitute for Law of Number 32/2004, reflecting a policy shift towards the decentralization of marine management. This change transitioned from the 'Marine Territory Management Concept' to a new approach focused on 'natural resource management at sea.' However, the implementation of Law of Number 23/2014 in the archipelago has led to various challenges, including the emergence of conflicts. One notable example is the conflict between the Riau Islands Province (local government), which exercises its provincial authority over maritime areas and archipelagic zones, and the Ministry of Transportation (central government) regarding the management of anchorage facilities. Bismar et al.[27] states, it was revealed that the dispute between the two parties arose from overlapping and competing claims of authority regarding the use of maritime space for anchorage. The situation is exacerbated by the varying interpretations of anchorage management policies among nine government agencies. These discrepancies manifest both vertically and horizontally. The research highlights the increasing dominance of the central government during Indonesia's decentralization period, suggesting a shift in the decentralization pendulum toward re-centralization.

The dispute between the Riau Islands Province (regional government) and the Ministry of Transportation (central government) regarding anchor mooring management (a component of marine management) clearly illustrates the central government's lack of commitment to decentralization as an integral aspect of state organization within a legal framework. The Law of Number 23/2014 outlines the authority of provincial regions at sea (Article 27) and those with island characteristics (Articles 28 and 29). However, according to Article 30, the government has not yet fulfilled its obligation to issue government regulations that would serve as implementing provisions for the authority of provincial regions at sea and those with island characteristics, leading to legal uncertainty for these regions in exercising their decentralized marine management powers. Therefore, it is crucial for the government to promptly establish the necessary regulations to ensure legal certainty in marine management for island areas in accordance with Law of Number 23/2014, prior to the enactment of the Draft Law on Island Regions.

Establishing the Draft Law on the Islands Region is a momentum for the central government to provide affirmation as an archipelagic state through adopting archipelagic state principle into the archipelago.

Through the Draft Law on the Islands Region, efforts to reaffirm the concept of marine area management are outlined below:

a. The management area (Islands Region) consists of: a. land management area; and b. sea management area. (Article 9 letter b)
b. The Islands Province Regional Marine Management Area is between 4 (four) miles and 12 (twelve) miles (Article 11 (1) (2))
c. The Regional Marine Management Area of the Regency / City of Islands is at most 4 (four) miles (Article 11 (3))

The formulation of the aforementioned norms clearly reflects the intention to revitalize the fundamental concept of marine area management, replacing the current framework of marine resource management established by Law of number 23/2014. The power given to archipelagic areas, which have a more extensive oceanic area than land, under Law of 23/2014, emphasizes the significance of the Ambon Declaration and its impact on current legislative discussions about archipelagic provinces and marine management. This law confines the authority of these regions to managing natural resources only within their territorial waters, indicating that resources outside this scope do not fall under their jurisdiction. Furthermore, as stipulated in Article 27 (3) of Law Number 23/2014, the provincial jurisdiction to manage maritime natural resources is restricted to 12 miles. This situation does not provide equity for the islands. Law of number 23/2014 introduces the concept of 'Archipelagic Province' (Article 1, Point 19) to acknowledge the presence of an 'archipelago' region in legislation governing regional administration. However, its focus is not on comprehensive archipelago management, as it is restricted to natural resource management at sea. Through the Ambon Declaration, the eight Island Provinces that are part of the Island Province Cooperation Agency seek recognition for the archipelagic state principle to be incorporated into regional principles. This emphasizes the unity of land and sea (homeland) and represents the Indonesian nation's perspective on the sea as a vital link that supports archipelagic state principle. As a form of territorial autonomy within a unitary state, the archipelago has the right to undertake legal actions as a legal entity to regulate and manage governmental functions pertaining to its own affairs, extending beyond merely managing marine natural resources.

In the drafting of Article 11 of the Indonesian Draft Law on Island Regions, the distribution of authority over marine management areas for archipelagic provinces ranges from 4 (four) to 12 (twelve) miles. For Regency/City Island Regions, the limit extends up to 4 (four) miles from the coastal boundary of the outermost island to the high seas and archipelagic waters. The Ambon Declaration reflects a sense of mysticism in the creation of this Draft Law, emphasizing the recognition of the Island State principle, which should be integrated into the regional (island province) principle. It highlights the unity of land and sea (homeland) as a philosophical view of the Indonesian nation regarding the sea, serving as a vital link that underpins the concept of the Island State. Therefore, the legislature must ensure that the division of marine management areas (Province/City/Regency) does not lead to 'sea calling' practices or overlapping authority, which could result in sectoral conflicts that undermine the archipelagic state principle, which emphasizes the unity of land and sea.

Archipelagic state principle is crucial in shaping draft legislation related to maritime regulations. Additionally, the Draft Law regarding the Islands Region fails to address the role and status of this region in meeting international maritime obligations. In the territorial sea and archipelagic waters, Indonesia has over 30 international obligations that have yet to be specified, and it appears that the country has not thoroughly examined all these obligations. Fulfilling these international legal commitments is a result of adopting the archipelagic state principle for regions defined by islands. As Wirjono Prodjodikoro notes, a state's sovereignty over its territorial sea or maritime area involves not only the delegation of authority to the coastal state but also the imposition of responsibilities for anyone presents in those maritime areas.[28] On this basis, through the establishment of the draft law on the Islands Region, it is hoped that it can reinforce the authority of the archipelago in the sea area and place the role of the archipelago in fulfilling international obligations as stated in UNCLOS.

However, the problem is that the legal politics (its constituent) related to regional authority in the sea area as contained in the Islands Region Bill is different from what is desired in Law of Number 32/2014 concerning Maritime Affairs, which confirms that related to regional authority at sea, where regions only participate in managing marine wealth but do not have authority over sea areas, as described in point 17 (seventeen) of the scope of the Academic Manuscript of the Marine Law [29]. Through the Draft Law on the Islands Region, the regions (provinces characterized by islands) want the authority to manage marine areas; on the other hand, Law of Number 32/2014 states that the regions do not have authority over marine areas. There appears to be a difference in legal politics between the Draft Law on the Islands Region and Law Number 32 of 2014.

The policy of decentralization of marine management through territorial decentralization has gained legitimacy in Indonesia based on Article 18 of the Indonesian Constitution, which is then derived through Law of Number 22/1999, Law of Number 32/2004, and Law of Number 23/2014. Therefore, in the future, it is necessary to synchronize the norms related in the Indonesian Constitution, namely Article 25A (Principle of the Archipelago State), Article 1 (1) (Principle of the Unitary State), and Article 18 (1) (decentralization). As an affirmation of the 1982 UNCLOS's applicability as a product of international law, legal synchronization of Article 25A of the Indonesian Constitution is required and a logical outcome of the UNCLOS' ratification into Indonesian national law (which was accomplished by Law Number 17/1985).

The alignment of the principles of decentralization and the archipelagic state is achieved through a legal assessment of laws and regulations that serve as derivative rules for both legal principles outlined in the Indonesian Constitution, particularly concerning marine decentralization. This legal assessment includes the findings from an examination of pertinent laws and regulations that reflect the current legal landscape, the relationship between the draft law concerning the Islands Region and other laws, as well as both vertical and horizontal synchronization. It also addresses the status of existing laws and regulations, including those that have been revoked and declared invalid, alongside those still in effect as long as they do not conflict with the proposed law. The evaluation aims to ascertain the state of the laws or regulations governing the relevant substance or material to be addressed, allowing for clarity on the positioning of the draft law concerning the Islands Region.

Legal synchronization occurs through both vertical and horizontal synchronization. Vertical synchronization assesses the coherence among laws and regulations at various legislative levels. Conversely, horizontal synchronization focuses on the substance of regulations of equal rank, examining how well these regulations align with one another at the same level. Moreover, lawmakers should prioritize the principles of integration and sustainability in the management of marine areas as outlined in the Draft Law on the Islands Region, which is part of UNCED 1992. Therefore, the forthcoming Islands Region Law should embody the principles of a unitary state, decentralization, and an archipelagic state.

4 Conclusions

The decentralization system is deemed most appropriate for implementation in a vast country like Indonesia, particularly regarding marine management. Consequently, marine management decentralization must align with archipelagic state principle as outlined in the 1982 UNCLOS. The constitutional recognition of archipelagic state principles is articulated in Article 25 A of the Indonesian Constitution, indicating that the concept of an archipelagic state has not only been integrated into the legal framework but has also become a fundamental component of the constitutional structure of Indonesia, grounded in Pancasila and the Indonesian Constitution. However, there are at least two distinct perspectives on how to interpret the adoption of archipelagic state principles and their implementation at the regional level (specifically in island provinces). This necessitates a legal reassessment of the extent of marine management authority assigned to provinces that are predominantly composed of islands, as stipulated in the Indonesian Constitution. Moving forward, it is essential to harmonize the legal norms related in the Indonesian Constitution, specifically Article 25A (Archipelagic State Principle), Article 1 (1) (Unitary State Principle), and Article 18 (1) (decentralization principle). The legal alignment of Article 25A of the Indonesian Constitution as a confirmation of the applicability of the 1982 UNCLOS—an international law instrument—represents both an obligation and a logical outcome of incorporating UNCLOS into Indonesian national law, as ratified by Law Number 17/1985.

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