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Reconceptualization of Marine Rights Granting: Decentralizing Permits, Deconcentrating Rights Determination

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Abstract. *The Constitutional Court Decision No. 3/PUU-VIII/2010 abolished the Coastal Waters Cultivation Rights (HP-3) on the grounds that it contradicted the public trust doctrine. However, more than a decade after this decision, new forms of private control over marine spaces have emerged, including 263 Building Use Rights certificates and 4 Freehold Title certificates in Tangerang waters, as well as sea fences restricting access for traditional fishers. This normative-doctrinal legal research aimed to analyze the full decentralization design in Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands as a form of design error from the perspective of legislation formation. Using statute, conceptual, and case approaches, this research deconstructed the authority structure that conflates administrative and juridical functions, lacks vertical checks and balances, and ignores the character of the sea as public goods. The novelty of this research lies in offering a reconceptualization through the model of decentralization of permits and deconcentration of rights determination as an institutional firewall against conspirative practices. This research concluded that Law No. 1 of 2014 and the Job Creation Law only changed the nomenclature from "rights" to "permits" without fundamentally altering the defective authority structure. The proposed model separates location permits (administrative, temporary, decentralized to regional governments) from property rights determination (juridical, permanent, deconcentrated to central government apparatus in the regions), thereby creating vertical checks and balances while preserving legal certainty for investment and protecting the rights of local communities..*

Keywords: *Decentralization; Deconcentration; Legislation; Marine Rights; Public Trust.*

1. Introduction

The Constitutional Court of the Republic of Indonesia through Decision No. 3/PUU-VIII/2010 marked an important milestone in the management of coastal areas and marine spaces in Indonesia. In this decision, the Court annulled the concept of Coastal Waters Cultivation Rights (*Hak Pengusahaan Perairan Pesisir*/HP-3) as regulated in Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands. The Court affirmed that coastal areas and marine spaces constitute a shared living space that must be controlled by the state for the greatest prosperity of the people, and therefore cannot be subjected to absolute individual property rights (Indonesia, 2010). The Court's reasoning aligns with the public trust doctrine, which places the state as a trustee obligated to preserve natural resources for public benefit (Sax, 1970).

More than a decade after this decision, private control over marine spaces has paradoxically emerged in new forms no less problematic. The phenomenon of sea fences in various regions, along with the discovery of 263 Building Use Rights certificates (SHGB) and 4 Freehold Title certificates (SHM) over Tangerang waters, constitute concrete evidence that the spirit of the Constitutional Court decision has not been internalized into marine space governance (Maula et al., 2025). Ironically, these practices have occurred under the regime of legislation enacted after the Constitutional Court decision, such as Law No. 1 of 2014 and Law No. 11 of 2020 concerning Job Creation, which has led to ongoing authority overlaps between central and regional governments in coastal management (Setyawan et al., 2025).

This phenomenon indicates that the problem does not lie merely in implementation or law enforcement, but rather in a design defect within the legislation formation itself. The Constitutional Court decision annulled a norm, but it did not automatically repair the authority structure that produced that norm. Consequently, legal loopholes remain open and continue to be exploited. Previous studies have focused on analyzing the Court's legal reasoning, the impact of coastal management policies on traditional fishers' livelihoods, and authority conflicts between central and regional governments (Darwis, 2018). However, no research has specifically deconstructed the root problem at the level of legislation formation design or offered an institutional reconceptualization as a solution.

To understand the root of the problem, it is necessary to examine the institutional design constructed by Law No. 27 of 2007. This law adopted a full decentralization model in granting HP-3. Articles 50-51 of the law granted authority to governors and regents/mayors to issue HP-3 over marine waters within their jurisdiction, without any consultation or approval mechanism from the central government. This authority encompassed two matters simultaneously: the granting of permits (administrative-spatial aspect) and the determination of property rights (juridical-formal aspect). From the perspective of legislation formation, this design constitutes a design error because: first, it fails to distinguish between administrative and juridical authority (location permitting is technical and temporary, while property rights determination is juridical and permanent); second, it fails to provide vertical checks and balances (the absence of central government control effectively makes regions the "owners" of the sea within their territory); and third, it ignores the character of the sea as public goods, which unlike land requires strong national oversight (Ali et al., 2020).

This design error rendered the HP-3 law vulnerable not merely to misinterpretation but to systemic abuse of power. The concentration of authority in a single hand without adequate control creates opportunities for conspirative practices between investors and regional authorities. Law No. 1 of 2014 and the Job Creation Law only changed the nomenclature from "rights" to "permits" without altering the authority structure. Consequently, the Constitutional Court decision annulled the instrument of HP-3 but failed to repair the structure that produced it, enabling the re-emergence of marine privatization as evidenced by land rights certificates over marine waters.

The main objective of this research was to analyze the full decentralization design in Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands as a form of design error from the perspective of legislation formation. This research also aimed to offer a reconceptualization of rights granting in marine spaces through the model of decentralization of permits and deconcentration of rights determination as a solution to this design error. The novelty of this research lies in: first, using the perspective of legislation formation to dissect the design defect of the HP-3 law rather than merely analyzing its legal norms; second, offering a model of decentralization of permits and deconcentration of rights determination as an institutional firewall designed to complicate conspirative practices in marine space control; and third, conceptualizing the separation of administrative and juridical functions as a new framework for marine governance in Indonesia.

2. Research Methods

This research employed normative-doctrinal legal research as its main method. The subject of this research was the legal framework governing marine rights granting in Indonesia, specifically the authority structure for issuing Coastal Waters Cultivation Rights (HP-3) as regulated in Law No. 27 of 2007, Law No. 1 of 2014, and Law No. 11 of 2020 concerning Job Creation, as well as Constitutional Court Decision No. 3/PUU-VIII/2010. The primary legal materials consisted of the 1945 Constitution of the Republic of Indonesia, Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands, Law No. 1 of 2014 concerning Amendment to Law No. 27 of 2007, Law No. 11 of 2020 concerning Job Creation, and Constitutional Court Decision No. 3/PUU-VIII/2010. The secondary legal materials consisted of textbooks on legislation formation, administrative law, and marine law, as well as scientific journal articles and previous research results. Tertiary legal materials included news articles and media reports related to sea fence phenomena and land rights certificates over marine waters. Three approaches were used in this research: the statute approach to examine the normative structure of authority delegation; the conceptual approach to develop a theoretical framework regarding decentralization, deconcentration, and ideal institutional design; and the case approach to analyze the legal reasoning of the Constitutional Court in Decision No. 3/PUU-VIII/2010. Data collection was conducted through library study by collecting, identifying, and systematizing legal materials relevant to the research focus. The collected legal materials were then analyzed qualitatively using systematic interpretation (to understand the relationship between provisions within the HP-3 legal framework and other related regulations) and teleological interpretation (to examine the extent to which the full decentralization design aligned with the purpose of legislation formation, particularly the principles of prudence, legal certainty, and public benefit). As this was a normative-doctrinal legal study, it did not employ dependent and independent variables in the statistical sense; instead, the analysis focused on deconstructing the design defect in the authority structure and offering a reconceptualization through the separation of administrative and juridical functions. The strength of this research lies in its use of legislation formation theory as an analytical lens to deconstruct the design defect in Law No. 27/2007, unlike previous studies that focused only on legal implementation. The proposed "institutional firewall" model offers a concrete, implementable solution rather than mere critique. The weakness of this research is its purely normative-doctrinal approach, which does not include empirical validation of how the proposed model would operate in practice. Future research using socio-legal methods is needed to complement these findings.

3. Results and Discussion

This section presents the findings of the normative-doctrinal analysis structured into four interconnected parts. It begins by establishing the theoretical foundation of decentralization and deconcentration in administrative law, followed by a critical deconstruction of the authority construction in Law No. 27 of 2007 which adopted the full decentralization model. The discussion then examines Constitutional Court Decision No. 3/PUU-VIII/2010, arguing that while the Court successfully annulled the HP-3 instrument, it failed to repair the underlying defective authority structure. Finally, this section offers a reconceptualization through the model of decentralization of permits and deconcentration of rights determination as an institutional firewall against conspirative practices in marine space governance.

3.1. The Concept of Decentralization and Deconcentration in Administrative Law

In a unitary state such as Indonesia, the authority relationship between the central government and regional governments is based on three main patterns: decentralization, deconcentration, and co-administration (*medebewind*) (Indonesia, 2014). These three instruments embody the principles of governance administration aimed at achieving a balance between administrative effectiveness and democratization at the local level. A proper understanding of decentralization and deconcentration constitutes an essential foundation for analyzing the design defect in Law No. 27 of 2007 and for formulating the reconceptualization offered by this article.

Decentralization is normatively defined as the transfer of governmental affairs by the central government to autonomous regions based on the principle of autonomy. From a theoretical perspective, Cheema and Rondinelli formulated decentralization as the transfer of planning, decision-making, or administrative authority from the central government to regional organizations, local administrative units, and non-governmental organizations (Hadiz & Robison, 2017). Furthermore, decentralization can be distinguished into two types: territorial decentralization (the transfer of authority to regulate and manage one's own household with the region as the boundary of regulation) and functional decentralization (the transfer of authority to regulate and manage specific functions, such as education, health, or land affairs, with the type of function itself as the boundary of regulation).

The objectives of decentralization encompass three main dimensions. First, political objectives, namely creating a democratic political superstructure and infrastructure based on popular sovereignty, realized through direct elections for regional heads and legislatures. Second, administrative objectives, so that regional governments can perform their functions to maximize effectiveness, efficiency, equity, and economic value. Third, socio-economic objectives, namely realizing the utilization of social, intellectual, and financial capital of the community to create widespread prosperity (Lathifah et al., 2024). In the context of natural resource management, decentralization holds particular significance as it provides space for regions to adjust policies to local characteristics and community aspirations. However, as cautioned by Ramdani, decentralization is not merely about transferring authority but must ensure a balance between authority, accountability, funding, and institutional capacity. Without these, decentralization policies risk generating new problems, such as corruption at the regional level or the inability to resolve local ecological problems due to minimal resource support (Mahanani, 2017).

In contrast to decentralization, which creates autonomous regions, deconcentration produces central government apparatus in various regions. Government Regulation No. 7 of 2008 concerning Deconcentration and Co-Administration provides a clear definition: deconcentration is the delegation of authority from the Government to the governor as a representative of the Government and/or to vertical institutions in certain territories. The underlying considerations for implementing the deconcentration principle include: maintaining the integrity of the Unitary State of the Republic of Indonesia; realizing the implementation of national policies in reducing disparities between regions; achieving harmony in inter-governmental relations; identifying potential and preserving regional socio-cultural diversity; achieving efficiency and effectiveness in governance; and creating socio-community communication within the administrative system of the Unitary State of the Republic of Indonesia. The main characteristic of deconcentration is that this delegation of authority does not create autonomy as in decentralization. Officials who receive delegation exercise authority on behalf of the central government and are accountable to their superiors. In other words, deconcentration is a mechanism to shorten the administrative span of control without creating new autonomous power centers.

Understanding the difference between decentralization and deconcentration becomes crucial for the analysis in this article. There are at least three fundamental points of difference. First, in terms of the position of power: decentralization creates autonomous regions that have authority and power in policy-making for their own territory, while deconcentration only creates central apparatus in various regions that act on behalf of the center. Second, in terms of territorial boundaries: decentralization has clear jurisdictional boundaries of autonomous regions, while deconcentration creates boundaries of work territories, positions, or administration that are functional in nature. Third, in terms of the scope of authority: decentralization encompasses the transfer of governmental authority in political and administrative fields, while deconcentration involves the delegation of governmental authority generally only in the administrative field (Prabowo & Thahir, 2026).

In the context of natural resource management, particularly marine spaces, the choice of decentralization or deconcentration instruments has significant implications. Natural resources possess special characteristics: they are limited, public in nature, and concern the livelihood of many people. Therefore, not all aspects of their management can be fully decentralized like general governmental affairs. The public trust doctrine teaches that the state has a fiduciary obligation to protect certain natural resources for public benefit and cannot transfer them to private parties in a manner that harms the public interest (Sax, 1970). Within the framework of a unitary state, this obligation is inherent in the central government as the holder of the constitutional mandate. However, this does not mean that regions have no role at all. This is where the importance of a hybrid model that combines decentralization and deconcentration proportionally lies. A hybrid model in natural resource governance allows for a clear division of functions: affairs that are spatial-technical in nature and that engage with local communities can be decentralized, while affairs that are juridical-formal in nature and that give rise to property rights should be managed through deconcentration mechanisms (Utomo, 2025). This separation of functions becomes the foundation for the reconceptualization offered in this article, while simultaneously serving as the antithesis to the full decentralization model adopted by Law No. 27 of 2007.

3.2. Construction of Authority in Law No. 27 of 2007

Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands (WP3K Law) constituted the first comprehensive legal framework governing the management of coastal areas and small islands in Indonesia. This law emerged from the recognition that coastal areas possess distinct characteristics as transitional zones between terrestrial and marine ecosystems, thus requiring a separate legal regime different from the management of land or open seas. However, beneath its noble objectives, the WP3K Law contained a fundamental design defect in the construction of authority for granting rights over marine spaces, which subsequently became one of the main triggers for the issuance of Constitutional Court Decision No. 3/PUU-VIII/2010.

One of the most significant innovations in Law No. 27 of 2007 was the regulation concerning Coastal Waters Cultivation Rights (Hak Pengusahaan Perairan Pesisir/HP-3). Article 1 paragraph (18) of the law defined HP-3 as rights over specific portions of coastal waters for marine and fisheries businesses, as well as other businesses related to the utilization of coastal resources and small islands, encompassing the sea surface and water column down to the seabed surface within certain spatial limits. HP-3 was granted in the form of a certificate to three categories of legal subjects: individual Indonesian citizens; legal entities established under Indonesian law; and indigenous communities. The duration of HP-3 was set at 20 years and could be extended twice through two stages, each extension stage lasting 20 years. Thus, the maximum total period of control could reach 60 years, an exceptionally long duration for the control of public space.

Beyond being a mere utilization permit, HP-3 possessed characteristics as a strong property right. The provisions of the WP3K Law stipulated that HP-3 could be transferred, assigned, and used as debt security encumbered with mortgage rights. This meant that HP-3 not only provided authority to utilize but also created property rights that could be transferred and collateralized like land rights within the agrarian legal regime.

The most crucial aspect of the construction of Law No. 27 of 2007 was the distribution of authority for granting HP-3, which was fully decentralized. Articles 50 and 51 of the law regulated the distribution of authority as follows. The Minister had the authority to grant HP-3 in cross-provincial coastal waters and certain National Strategic Areas. The Governor had the authority to grant HP-3 in coastal waters up to 12 nautical miles measured from the coastline seaward and/or toward archipelagic waters, as well as cross-regency/city coastal waters. The Regent or Mayor had the authority to grant HP-3 in coastal waters covering one third of the provincial authority territory. From the above structure, it was evident that the largest portion of authority lay with regional governments (governors and regents/mayors), not the central government. Regions were granted authority to issue HP-3 in waters within their jurisdiction, without any requirement for consultation, coordination, or approval from the central government. This constituted a full decentralization model, where regions became the "owners" of authority to grant marine spaces to parties they deemed worthy.

Several characteristics of HP-3 as a property right made it a very powerful instrument, yet also highly vulnerable to abuse. Table 1 below presents these characteristics and their implications.

Table 1. Characteristics of HP-3 and Their Implications

Characteristic	Regulation in Law No. 27/2007	Implication
Long Duration	20 years, extendable twice (total 60 years)	Control of public space for a very long duration without rigorous periodic evaluation
Transferable	HP-3 may be transferred and assigned to other parties	Potential concentration of control by large investors through acquisition of HP-3 from communities
Can Be Collateralized	May be encumbered with mortgage rights	Marine spaces become collateral objects, risk of transfer to creditors in case of default
Certificate of Rights	Issued in the form of a certificate	Creates impression of "ownership" over marine spaces, even though conceptually the sea is collectively owned

Source: Author's analysis of Law No. 27 of 2007.

In the context of full decentralization, these characteristics became extremely dangerous. Regional heads who had the authority to issue HP-3 could easily "grant" marine spaces to certain parties, who then obtained strong property rights (transferable and collateralizable) for a very long duration. It was unsurprising that this policy subsequently faced strong opposition from traditional fishers and indigenous communities (Zougira et al., 2023) (Wijoyo, 2026).

From the perspective of legislation formation, the full decentralization design in Law No. 27 of 2007 contained at least four fundamental weaknesses.

First, the conflation of administrative and juridical functions. The granting of location permits (administrative function) and the determination of property rights (juridical function) should have been separated because they have different natures, legal consequences, and levels of seriousness. Location permits are temporary and can be evaluated, while property rights determination is permanent and creates absolute rights (*erga omnes*). Conflating the two within a single regional authority was a conceptual error.

Second, the absence of vertical checks and balances mechanisms. The lack of any requirement for consultation, coordination, or approval from the central government made regions uncontrolled centers of power. In the context of natural resource management that is cross-boundary and concerns national interests, this contradicted the principle of a unitary state.

Third, treating the sea no differently from land. The design of this law treated marine spaces as if they were land that could be "granted" through property rights mechanisms. Yet, the sea has special characteristics as an open space, common property resources, and concerns the livelihood of many people, thus requiring stricter oversight (Steinberg, 2001).

Fourth, minimal guarantee of public participation. Article 14 paragraph (1) of Law No. 27 of 2007 stated that the preparation of strategic plans, zoning plans, management plans, and action plans for coastal area management was carried out by regional governments and business entities, without involving coastal communities and traditional fishers. This provision drew sharp criticism because it explicitly placed business entities on an equal footing with government, while coastal communities were marginalized. The Secretary-General of the People's Coalition for Fisheries Justice emphasized that restricting fishers' access to strategic planning constituted a violation of the principles of a rule-of-law state, particularly the principle of recognition and protection of human dignity and the principle of legal certainty (Sari, 2025).

Another weakness in the design of Law No. 27 of 2007 was the potential overlap between the HP-3 regime and other permitting and property rights regimes. Article 23 paragraph (4) of this law stated that new utilization could only be carried out if requirements had been met and HP-3 was mandatory, issued by the government or regional government according to their authority. This provision was coercive and tended to disregard the existence of other legal regimes that existed previously. Practice to date has shown that in coastal areas, land rights have been granted based on Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA), such as Building Use Rights (HGB) for structures in coastal waters, docks, and fishers' houses, as well as Cultivation Rights (HGU) for coastal aquaculture, fish cages, seaweed cultivation, and pearl cultivation. The broad scope of HP-3 objects, encompassing the sea surface, water column, and seabed surface, created a very real potential for norm conflicts and overlapping authority. Such a design not only created legal uncertainty but also opened opportunities for conspirative practices between investors and regional officials. With the enactment of the HP-3 regime, virtually all access to marine resources had the potential to be controlled by capital owners capable of fulfilling all administrative and financial requirements, while coastal communities became spectators because they lacked the large capital and technology to compete.

3.3. Constitutional Court Decision No. 3/2010: Annulling the Content but Not Repairing the Design

The Constitutional Court, through Decision No. 3/PUU-VIII/2010, struck down the constitutionality of the Coastal Waters Cultivation Rights (HP-3) regime in Law No. 27 of 2007. This decision responded to a judicial review petition filed by traditional fishers and civil society organizations who felt that their constitutional rights were threatened by a policy that opened space for marine privatization. However, although this decision is viewed as a normative victory for coastal communities, a critical analysis from the perspective of legislation formation reveals that the Court only annulled the content of the norm but did not provide a new design for how the authority to grant rights over marine spaces should be distributed.

In its decision, the Court declared that the articles regulating HP-3 in Law No. 27 of 2007, including Article 1 paragraph (18), Article 16, Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23, Article 24, Article 50, Article 51, and Article 52, contradicted the 1945 Constitution of the Republic of Indonesia and had no binding legal force (Indonesia, 2010). The Court affirmed that coastal areas and marine spaces constitute a "shared living space" that must be controlled by the state for the greatest prosperity of the people, and therefore cannot be subjected to absolute individual property rights.

The Court's legal reasoning revealed several key arguments. First, HP-3 had transferred the state's responsibility for controlling the management of coastal waters and small islands to private parties through strong property rights mechanisms. Second, the provision in Article 14 paragraph (1) of Law No. 27 of 2007, which stated that the preparation of strategic plans, zoning plans, management plans, and action plans for coastal area management was carried out by regional governments and business entities without involving coastal communities, had negated the participation rights of local communities. The Secretary-General of the People's Coalition for Fisheries Justice at that time emphasized that restricting fishers' access to strategic planning constituted a violation of the principles of a rule-of-law state.

It is important to note that the Court did not annul the entire Law No. 27 of 2007. What was annulled were only the articles specifically regulating HP-3. Meanwhile, the institutional structure, division of governmental affairs, and other planning mechanisms, including Article 50 concerning the distribution of authority between central and regional governments, formally remained in effect as long as they were not directly related to HP-3. Consequently, a legal vacuum occurred in the aspect of instruments for utilizing marine spaces. Law No. 27 of 2007 lost the articles regulating how private parties could be granted access to utilize marine spaces, but the regional authority structure that served as the container for issuing such permits remained intact. This was the vulnerable point that remained unresolved.

As a follow-up to the Constitutional Court decision, the legislator issued Law No. 1 of 2014 concerning Amendment to Law No. 27 of 2007. The general explanation of this law explicitly mentioned Constitutional Court Decision No. 3/PUU-VIII/2010 as the basis for the amendment. However, the amendment made was merely nomenclatural: the term "Coastal Waters Cultivation Rights (HP-3)" was changed to "permit", but the authority structure for granting it underwent no fundamental change (Timur, 2025). Article 16 paragraph (1) of Law No. 1 of 2014 stipulated that every person conducting the utilization of space from a portion of coastal waters and the permanent utilization of a portion of small islands was required to possess a location permit. Furthermore, this location permit served as the basis for granting a management permit. The provisions of Article 50 concerning the distribution of authority for granting permits remained unchanged: governors and regents or mayors remained the primary authority for issuing permits in their respective territories. In other words, Law No. 1 of 2014 only changed the label from "right" to "permit", but did not change the authority structure that had been the root of the problem. Regions remained the center of authority, and vertical control mechanisms remained absent.

This problem was then exacerbated by the enactment of Law No. 11 of 2020 concerning Job Creation. Under the Job Creation Law regime, the phrase "permit" was changed again to "Business Licensing" with an investment facilitation orientation. Article 20 paragraphs (1) and (2) of Law No. 27 of 2007 as amended by the Job Creation Law regulated the obligation of the Central Government to facilitate "Business Licensing" related to marine utilization for Local Communities and Traditional Communities. This provision drew criticism because local and traditional communities were forced to manage business licensing like large corporations, which had the potential to create indirect discrimination. A coalition of civil society organizations in a recent judicial review petition (Case No. 168/PUU-XXIII/2025) asserted that marine utilization by local and traditional communities is not a grant in the form of a permit, but must be interpreted as a right that must be guaranteed and protected by the government. They referred to this provision as "HP-3 in a new form (neo-HP3)" which actually revived the practice of marine privatization that had been declared unconstitutional by the Constitutional Court.

From the perspective of legislation formation, Constitutional Court Decision No. 3/2010 left three structural problems unresolved.

First, the absence of a new blueprint for authority distribution. The Court annulled the norm but did not provide guidance on how the authority to grant rights over marine spaces should be distributed between central and regional governments. Yet, in legislation formation theory, Constitutional Court decisions that are final and binding should serve as a guide not only in the ruling but also in the legal reasoning (Rajab, 2020). Constitutional Justice Enny Nurbaningsih emphasized that "the legal reasoning is binding, so understanding Constitutional Court decisions must be comprehensive" (Indonesia, 2024) However, in practice, legislators often respond only to the ruling without fully grasping the spirit of the legal reasoning (Rajab, 2020).

Second, nomenclatural change without structural change. Changing the term "right" to "permit" without altering the authority structure that produced it was a half-hearted action. As cautioned in a workshop on the preparation of SOPs for the management of conservation areas, although Law No. 1 of 2014 changed the HP-3 concept to a permit, privatization and parceling of coastal resources continue because the permit concept does not ensure the consent rights of traditional fishers and coastal communities (Katiandagho, 2020) (Timur, 2025).

Third, conflict with Constitutional Court decisions at the implementation level. Practices on the ground have shown that the spirit of the Constitutional Court decision is often ignored. The case of the Cilincing sea fence built by PT Kawasan Citra Nusantara, for example, although it had obtained Approval of Conformity for Marine Space Utilization Activities (PKKPRL) from the Ministry of Marine Affairs and Fisheries, was deemed to contradict Constitutional Court Decision No. 3/2010 because it sacrificed the rights of small-scale fishers (Rmol.id, 2025). The Head of Advocacy at KPPMPI asserted, "Constitutional Court Decision No. 3/2010 firmly annulled the practice of marine privatization through the HP-3 scheme. However, with the presence of PKKPRL, similar practices have been re-legalized in a new form."

Constitutional Court Decision No. 3/2010 succeeded in annulling the instrument of HP-3, but failed to repair the structure that produced it. Like demolishing a building, the Court only knocked down the roof and walls, but left the foundation and supporting pillars standing. Consequently, new buildings (the post-2014 and post-Job Creation permit regimes) were constructed on the same defective foundation: full decentralization without vertical control. This design defect has subsequently been exploited in various forms: the issuance of Building Use Rights certificates (SHGB) and Freehold Title certificates (SHM) over Tangerang waters, exploiting the absence of coordination mechanisms between the National Land Agency (BPN) and the Ministry of Marine Affairs and Fisheries; the construction of sea fences in various regions that restrict access for traditional fishers; and the commodification of marine spaces for investment purposes that ignores the rights of local communities (Putri & Santoso, 2025). This failure demonstrates that the annulment of a norm by the Constitutional Court is only the first step. Without being followed by a reconceptualization of institutional design that fundamentally repairs the authority structure, Constitutional Court decisions will remain heroic documents without real impact on the ground.

3.4. Reconceptualization of the Decentralization of Permits and Deconcentration of Rights Determination Model

The preceding discussion has demonstrated that the root of the problem in marine space governance lies not merely in the HP-3 instrument annulled by the Constitutional Court, but rather in the institutional design defect that perpetuates a full decentralization model without vertical control mechanisms. Law No. 1 of 2014 and the Job Creation Law only changed the nomenclature without repairing the authority structure, consequently allowing marine privatization practices to continue in new forms. Therefore, a reconceptualization (rebuilding the framework of thinking) is required regarding how the granting of rights over marine spaces should be designed. This reconceptualization is insufficient at the level of norms alone; it must reach the level of institutional structure and distribution of authority between central and regional governments. This article offers a model of decentralization of permits and deconcentration of rights determination as an alternative to the demonstrably problematic full decentralization model.

The starting point of the reconceptualization is the awareness that not all aspects of marine space utilization should be decentralized, nor should all be centralized. Each function possesses different characteristics and legal implications, thus requiring different treatment (Utomo, 2025). In the context of granting rights over marine spaces, there are at least two conceptually distinct functions, as presented in Table 2.

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Table 2. Separation of Functions in Marine Space Governance

Function	Characteristics	Nature	Legal Implications
Location Permit	Spatial-technical, engages with local communities, temporary and evaluative	Administrative	Determines *where* and *who* may utilize space for a certain period
Rights Determination	Juridical-formal, creates property rights, permanent	Property Rights	Determines *what right* is created, *how strong* its protection is, and *how* it may be transferred

Source: Author's conceptual framework.

Conflating these two functions within a single authority, as occurred in Law No. 27 of 2007, was a conceptual error that has implications for the emergence of abuses of power. Therefore, the proper principle of authority distribution is to separate these two functions and place them in different institutions according to their respective characteristics.

The first aspect of the proposed model is the decentralization of authority to issue location permits to regional governments. This choice is based on the consideration that regional governments possess comparative advantages in terms of: knowledge of geographical and socio-economic conditions of coastal communities (regions better understand the characteristics of their territory, including zones that are the livelihood of traditional fishers); proximity to local communities (public consultation and community participation processes will be more effective if conducted at the regional level); and authority over regional spatial planning (regions already possess Coastal Area and Small Islands Zoning Plans or RZWP3K that serve as the basis for issuing location permits).

In this model, a location permit is defined as an administrative decision granting the applicant the right to utilize a specific location in marine space for a certain period, with certain obligations. The characteristics of a location permit include: temporary in nature (granted for an initial certain period, for example 5 years, and can be periodically evaluated); location-specific (precisely designates the location that may be utilized, with clear coordinates); contains social obligations (requires the permit holder to empower surrounding communities, maintain access for traditional fishers, and carry out rehabilitation in the event of damage); and revocable (if the permit holder violates obligations or if the public interest so requires, the permit may be revoked through a fair mechanism). Regional governments (Marine or Fisheries Service or relevant agencies) are authorized to issue these location permits based on RZWP3K prepared with public participation. The permit issuance process must be transparent, involve consultation with local fishers, and be accessible to the public.

The second aspect of the proposed model is the deconcentration of authority to determine property rights to central government apparatus in the regions. This choice is based on the consideration that property rights determination has broad and permanent juridical implications, thus requiring strong national oversight. Property rights (*zakelijk recht*) are rights that provide direct power over an object and can be enforced against anyone (*erga omnes*) (Basri et al., 2025). This characteristic distinguishes them from personal rights (*persoonlijk recht*), which can only be enforced against specific parties. In the context of marine spaces, the creation of property rights must be strictly controlled because it concerns control over limited public space.

In this model, property rights determination is defined as a juridical act that creates rights over marine spaces that are absolute, transferable, and usable as debt security. The characteristics of rights determination include: permanent in nature (the property rights created have a certain duration, potentially long, but their existence is more stable than permits); public in nature (registered in a public registration system, providing legal certainty for rights holders and third parties); and creates strong legal relationships (rights holders have strong legal protection against interference from other parties).

The authority to determine property rights is exercised by central government apparatus in the regions through deconcentration mechanisms. The authorized institution may be the Regional Office of the Ministry of Marine Affairs and Fisheries, the Regional Office of the National Land Agency or ATR, or a joint agency specifically established for this purpose. The tasks of this central apparatus include: final verification of property rights applications, including ensuring that the applicant possesses a valid location permit; reviewing compliance with the Constitutional Court Decision and laws and regulations, ensuring that property rights are not created in prohibited areas (sea lanes, conservation areas, shipping routes, etc.); issuing rights certificates in the name of the state, as strong evidence of property rights; and managing the rights registration database, including physical and juridical data, including recording transfers and encumbrances of mortgage rights (Suhariono et al., 2022). The deconcentration mechanism ensures that although physically located in the regions, the authority to determine rights remains under national control. This creates uniform standards and vertical control that have been absent in the full decentralization model.

Table 3. Schematic of the Proposed Model

Stage	Authority	Institution	Nature	Output
Location Permit	Decentralization	Regional Marine / Fisheries Service	Administrative, temporary	Location Permit Decision
Rights Determination	Deconcentration	Regional Office of ATR/BPN/KKP	Juridical, permanent	Rights Certificate
Rights Registration	Deconcentration	Regional Office of ATR/BPN	Publicity	Land Book/Extract

Source: Author's proposed model.

Specifically for the Community Marine Cultivation Right, the anti-absentee principle adapted from agrarian law needs to be applied. Under the Basic Agrarian Law (UUPA), owners of agricultural land are required to reside in the same district as their land, to prevent land control by investors without connection to the local community. The same principle can be applied to property rights over marine spaces: rights holders must reside or have a genuine business connection with the local cultivating community, so that property rights genuinely empower local communities rather than becoming instruments of control by outside investors.

The decentralization of permits and deconcentration of rights determination model offers several advantages compared to the previously adopted full decentralization model.

First, it separates functions that were previously conflated. This model firmly separates the administrative function (location permits) from the juridical function (rights determination). This separation is important because the two functions have different natures, legal consequences, and levels of seriousness. Regions are no longer "rights grantors" but "permit grantors" whose decisions are temporary and evaluable.

Second, it creates an institutional firewall. With two gates that must be passed (location permits at the regional level and rights determination at the central apparatus level), conspirative practices become much more difficult to execute. Conspiracies that previously could be conducted solely at the regional level (as in the alleged Tangerang case) must now penetrate two bureaucratic lines simultaneously. This creates a vertical check and balance mechanism that has been absent.

Third, it preserves the spirit of the Constitutional Court Decision. Constitutional Court Decision No. 3/2010 affirms that the sea is a shared living space that must be controlled by the state for the greatest prosperity of the people. This model realizes this spirit by placing property rights determination, which creates private control over public space, under national control through deconcentration mechanisms. The state serves as the ultimate guarantor that property rights are not created arbitrarily.

Fourth, it provides legal certainty for investment. Investors can still obtain strong property rights (collateralizable, transferable) through a more controlled process. This legal certainty is important to support investment in the marine sector, such as floating solar PV for energy security and floating net cages for food security (Marupa et al., 2022).

Fifth, it protects local communities. Location permits at the regional level enable the participation of fishers and coastal communities in decision-making processes. They can voice objections if a location is their traditional fishing ground. Meanwhile, rights determination at the central apparatus level prevents "gift-giving" by regional heads to certain investors without regard for the interests of local communities.

Sixth, it creates uniform national standards. With deconcentrated rights determination, the central government can ensure that standards for issuing property rights across Indonesia are uniform. This is important to prevent disparities in treatment between regions and to ensure that property rights over marine spaces do not conflict with national interests, such as sea lanes, security defense, and conservation areas.

4. Conclusion

This research identified a fundamental design defect in Indonesia's marine space governance: the full decentralization model adopted by Law No. 27 of 2007, which conflated administrative permitting with juridical rights determination, lacked vertical checks and balances, and treated the sea as private land rather than a shared public space requiring strong national oversight. Constitutional Court Decision No. 3/PUU-VIII/2010 annulled the HP-3 instrument but failed to repair this defective authority structure, and subsequent legislative responses (Law No. 1 of 2014 and the Job Creation Law No. 11 of 2020) merely changed the nomenclature from "rights" to "permits" without fundamentally altering the distribution of authority, thereby enabling the re-emergence of marine privatization practices as evidenced by 263 Building Use Rights certificates and 4 Freehold Title certificates in Tangerang waters and sea fences restricting traditional fishers' access. This research offered a reconceptualization through the model of decentralization of permits and deconcentration of rights determination, which firmly separates location permits (administrative, temporary, decentralized to regional governments) from property rights determination (juridical, permanent, deconcentrated to central government apparatus in the regions), thereby creating an institutional firewall that prevents conspirative practices, preserves the spirit of the Constitutional Court decision, provides legal certainty for investment, and protects local communities through participatory processes and the anti-absentee principle adapted from agrarian law. Therefore, this research recommends that the Indonesian legislature revise Law No. 27 of 2007, Law No. 1 of 2014, and the Job Creation Law No. 11 of 2020 by adopting the proposed model of decentralization of permits and deconcentration of rights determination, and that the central government issue implementing regulations that establish clear standard operating procedures for location permits at the regional level and rights determination through deconcentrated central apparatus in the regions, with mandatory public consultation mechanisms and periodic evaluation of permits to ensure that the spirit of Constitutional Court Decision No. 3/PUU-VIII/2010 is fully realized in practice.)

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