

Sharing Authority Between Licensing Decentralization and Rights Deconcentration in Water Space Management

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Abstract. *This study aims to analyze the problem of authority over the management of water space in Indonesia, which is caught between the tension of licensing decentralization and the need for decentralization of rights determination. The research method used was normative legal research with a legislative, conceptual, and study approach of Constitutional Court Decision Number 3/PUU-VIII/2010. The novelty in this research is the proposed model of authority sharing that clearly distinguishes between administrative licensing decentralization and property rights determination deconcentration, accompanied by institutional synchronization, integrated digital licensing systems, improved central-regional incentive structures, and strengthened mechanisms for community rights recognition and meaningful public participation. Based on the research, it is concluded that: first, decentralization of licensing is important for efficiency and proximity of services, but must be selective because it risks policy fragmentation, elite capture, and inter-regional conflicts; second, the establishment of exclusive property rights over water areas that have long-term impacts and affect public access requires stronger state control through deconcentration mechanisms, as emphasized by the Constitutional Court Decision that invalidated the HP-3 concept. The research recommends an authority-sharing model with institutional synchronization between the Ministry of Marine Affairs and Fisheries and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the development of an integrated digital licensing system, improvement of the central-regional incentive structure, and strengthening of community rights recognition and meaningful public participation.*

Keywords: Decentralization; Licensing; Property; Rights.

1. Introduction

Aquatic spaces, particularly marine and coastal areas, have become a new arena in global and national development dynamics. Increased economic activities such as aquaculture, marine tourism, ports, reclamation, and offshore renewable energy indicate that pressure on aquatic spaces is intensifying (Satria & Matsuda, 2020). This phenomenon is a global concern, given that the sea holds great economic potential while being vulnerable to environmental damage (Kittinger et al., 2021). In Indonesia,

the complexity of marine spatial management is further compounded by the intersection of two different legal regimes the maritime regime and the spatial planning regime. as well as the division of authority between central and regional governments (Patlis, 2019) .

The need for integrated maritime spatial planning is imperative. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) mandates coastal states to manage their marine resources sustainably. Indonesia, as the largest archipelagic country with a water area of 6.4 million km², has a constitutional responsibility to regulate the use of maritime space for the greatest prosperity of its people (Kusumastanto, 2021). However, this mandate faces serious challenges when confronted with the institutional complexity of the post-reform era, which emphasizes the decentralization of authority.

The core problem of authority over marine space management in Indonesia stems from the tension between the spirit of decentralization, which grants broad autonomy to regions, and the need for state control over strategic resources. Law No. 23 of 2014 on Regional Government has divided maritime affairs between central and regional governments, but its implementation reveals overlapping authorities and conflicts of interest (Mulyani & Vidhiyanty, 2022). On one hand, regions have the authority to issue permits for maritime space use up to 12 nautical miles. On the other hand, the dynamic nature of maritime space, which lacks clear physical boundaries and impacts wider ecosystems, requires more centralized state control (Fachriansyah, 2021).

The tension between decentralization and state control became more prominent after Constitutional Court Decision Number 3/PUU-VIII/2010, which invalidated the concept of Coastal Water Use Rights (HP-3). This ruling affirmed that coastal and marine resources are state assets controlled by the state and cannot be absolutely owned by individuals or private entities. Consequently, the mechanism for granting rights to water areas must be reformulated while still considering the principle of state control and providing legal certainty for investment.

Previous studies have extensively examined decentralization in marine resource management. For instance, Kusumaatmadja and Purwaka (2018) highlighted the importance of harmonizing central-regional authorities, while Sari and Wahyuni (2020) found policy fragmentation in regional licensing. Asshiddiqie emphasized strengthening state control for social justice (Farhani, 2019), and Santoso et al. (2021) identified institutional problems in implementing coastal zoning plans. However, no comprehensive study has simultaneously analyzed the tension between decentralization of licensing for water space utilization and the need for centralization (through deconcentration) in determining property rights over water space. The critical distinction between administrative permits (flexible, delegable) and property-based rights (exclusive, long-term, affecting public access) has different legal and institutional implications (Wulansari, 2022).

This article aims to fill this gap by critically analyzing institutional problems in aquatic space management in Indonesia. Specifically, the objectives are: first, to analyze the role and implications of decentralization in the current licensing system for aquatic space use; second, to analyze the urgency and need for a deconcentration mechanism in determining rights to aquatic space that have a material dimension. This article is expected to contribute both theoretically and practically to the renewal of water space

management policies in Indonesia toward a more equitable and sustainable framework.

2. Research Methods

This study employed a normative legal research method that focused on the analysis of positive law and court decisions related to the authority to manage water space. The main object of the study was Constitutional Court Decision Number 3/PUU-VIII/2010, which was examined in relation to the provisions of laws and regulations governing the management of sea space, decentralization of authority, and the determination of property rights. Legal materials were collected through a literature study, which included an examination of primary legal materials such as the 1945 Constitution, Law No. 27 of 2007 concerning Coastal Zone and Small Islands Management and its amendments, Law No. 23 of 2014 on Regional Government, Law No. 32 of 2014 on Maritime Affairs, Law No. 11 of 2020 on Job Creation, related Government Regulations, and Constitutional Court Decision No. 3/PUU-VIII/2010. Secondary legal materials in the form of academic literature, scientific journals, and previous research results were also used to enrich the analysis. The tools for collecting legal materials consisted of document analysis and legal text review. The analysis was conducted qualitatively using a legislative approach, a conceptual approach, and a case approach, which were supported by legal interpretation methods, including grammatical, systematic, and teleological interpretations, to evaluate the consistency of the regulation of authority over the management of water areas with the principles of legal certainty and the mandate of the constitution.

3. Results and Discussion

3.1. The Concepts of Decentralization and Deconcentration in the Government System

The discussion of authority over the management of aquatic space could not be separated from the theoretical framework of decentralization and deconcentration as the two main models of governance. These two concepts formed the basis for understanding how state power was distributed between the central government and local governments, as well as how control and coordination mechanisms were implemented (Bennett, 2021). A proper understanding of the characteristics, objectives, and scope of decentralization and deconcentration served as a tool for analyzing the current regulations on the authority to manage water areas and for formulating an ideal model that could accommodate the interests of decentralized licensing and the need for centralized rights determination.

In the tradition of governance and constitutional law, decentralization was defined as the transfer of governmental authority by the central government to autonomous regions to regulate and manage governmental affairs within the Unitary State of the Republic of Indonesia (Amirullah, 2026). This definition emphasized that decentralization was not a separation of powers, but rather a transfer of authority within the framework of a unitary state while maintaining full sovereignty for the central government.

Hoessein (2019) explained that decentralization had three important dimensions. *First*, political decentralization provided space for community participation in decision-making at the local level through the establishment of regional representative institutions.

Second, administrative decentralization related to the delegation of authority to carry out governmental functions to regional government units. *Third*, fiscal decentralization gave regions the authority to manage their own financial resources to finance government administration and development.

The main objectives of decentralization in the Indonesian context, as stated in Law No. 23 of 2014 on Regional Government, were to realize efficiency and effectiveness in government administration, to improve public services, to empower communities, and to increase regional competitiveness (Republic of Indonesia, 2014). Furthermore, Rondinelli and Cheema (2020) in their comparative study found that decentralization was appropriate when: (1) government affairs were local in nature and did not have broad externalities; (2) proximity of services to the community was required; (3) vast geographical conditions required policy adaptation according to local characteristics; and (4) there was a need to increase community participation in development.

However, decentralization also had limitations. In the context of natural resource management, unrestricted decentralization could lead to policy fragmentation, excessive resource exploitation, and inter-regional conflicts (Agrawal & Ribot, 2021). A study conducted by Larson and Soto (2019) in several developing countries showed that decentralization of natural resource management often strengthened the power of local elites rather than empowering the community. Therefore, decentralization needed to be designed by considering the characteristics of the objects being managed and the potential impacts.

Unlike decentralization, deconcentration was defined as the delegation of authority from the central government to governors as representatives of the central government and/or to vertical agencies in certain regions (Koswara, 2020). In the concept of deconcentration, only administrative authority was delegated, while final responsibility remained with the central government. Officials who received delegated authority remained part of the central bureaucratic structure and were accountable to their superiors at the center, not to the community in the region.

Marbun (2019) distinguished between decentralization and deconcentration based on several criteria. *First*, in terms of the subject, decentralization involved the formation of autonomous public legal entities (autonomous regions), while deconcentration only involved central government apparatus placed in the regions. *Second*, in terms of the nature of authority, decentralization granted the authority to regulate and administer (*regelen en besturen*), while deconcentration only granted the authority to implement (*besturen*). *Third*, in terms of accountability, regional governments were accountable to the community through the Regional People's Representative Council (DPRD), while vertical agencies were accountable to their superiors at the central level.

Deconcentration was considered necessary in several situations. Smith (2020) identified four such situations: *first*, when government affairs were of a national strategic nature and required uniform service standards across all regions; *second*, when policies in one region had the potential to cause significant cross-border impacts; *third*, when intensive vertical coordination was needed to ensure consistency in national policy; and *fourth*, when the matter concerned state sovereignty or property rights that required a single authority.

In the Indonesian context, the instrument of deconcentration was regulated in Article 1 point 9 of Law Number 23 of 2014. This provision defined decentralization as the

delegation of some government affairs that were under the authority of the central government to governors as representatives of the central government, to vertical agencies in certain regions, and/or to governors and regents/mayors as persons in charge of general government affairs. The implementation of deconcentration was realized through the establishment of vertical agencies such as the Regional Office of the Ministry of Law and Human Rights, the Regional Office of the Ministry of Religious Affairs, and the National Land Agency in the regions.

The division of authority between the central government and regional governments was a central issue in the administration of a unitary state that adhered to decentralization. According to Logemann, as quoted by Sjachran Basah (2018), authority could be divided into attribution, delegation, and mandate. Attribution was the granting of new authority by the legislature to a government agency. Delegation was the transfer of authority from a higher government organ to a lower one. Meanwhile, a mandate was an order from a superior to a subordinate to exercise authority on behalf of the superior (Wibisana, 2021).

Law No. 23 of 2014 divided government affairs into three categories: absolute government affairs, concurrent government affairs, and general government affairs. Absolute government affairs were entirely the authority of the central government and could not be decentralized or deconcentrated. These included foreign policy, defense, security, justice, national monetary and fiscal affairs, and religion. Concurrent government affairs were divided between the central and regional governments, and their implementation could be decentralized or deconcentrated. Meanwhile, general government affairs were the authority of the president as the head of government, implemented by governors and regents/mayors.

In the context of marine space management, the division of authority became even more complex because it intersected with various legal regimes. Article 14 of Law Number 32 of 2014 concerning Maritime Affairs stipulated that the central government and local governments, in accordance with their respective authorities, were obliged to manage marine space in a sustainable manner. Meanwhile, Article 16 of Law Number 1 of 2014 concerning Coastal Zone and Small Islands Management granted local governments the authority to issue permits for the utilization of maritime space up to 12 nautical miles.

This phenomenon indicated overlapping norms and potential conflicts of authority that required reorganization. Fachriansyah (2020) identified at least three main problems in the division of authority for marine space management. *First*, there was ambiguity regarding the boundaries of authority between the central and regional governments in relation to marine zones. *Second*, there was inconsistency between the maritime regime and the spatial planning regime. *Third*, there was a lack of clarity in the coordination mechanism between levels of government and between sectors.

Integrating the concepts of decentralization and deconcentration into water space management required an understanding of the unique characteristics of water space, which differed from those of land space. Aquatic space was dynamic, had no clear physical boundaries, and its ecosystems were interconnected beyond administrative boundaries (Warner et al., 2020). These characteristics meant that policies in one region could easily affect other regions, requiring more intensive coordination.

The concept of *nested governance* developed by Ostrom (2019) offered an interesting perspective in this context. According to Ostrom, the management of common-pool resources such as marine space required a layered governance system that integrated local, regional, and national authorities simultaneously. No single level of government could claim to have the full capacity to manage effectively, so a clear division of roles based on the characteristics of each issue was necessary.

In the context of licensing for the use of marine space, decentralization could be applied to activities that were local in nature, had limited impact, and did not change the status of rights to space. Conversely, for the establishment of rights with a material dimension, a deconcentration mechanism was considered more appropriate because it concerned the sole authority of the state in creating material rights that applied *erga omnes* (to anyone) (Wulansari, 2022). This model of authority sharing would be analyzed further in the following sections.

3.2. Decentralization of Water Space Utilization Licensing

The decentralization of authority in the maritime sector, particularly in the issuance of permits for the use of water space, was one of the main agendas in Indonesia's regional autonomy policy. This authority was explicitly granted to local governments through various legal instruments, particularly Law No. 23 of 2014 on Regional Government and Law No. 1 of 2014 on Coastal Zone and Small Islands Management. This section critically analyzed the implementation of decentralization of permits for the utilization of water space, highlighting both the benefits and risks, as well as evaluating the extent to which decentralization was in line with the characteristics of water space as a shared resource that required integrated management.

The decentralization of licensing authority for the use of water space had a strong legal basis in the Indonesian legal system. Article 14 of Law Number 32 of 2014 concerning Maritime Affairs emphasized that the management of maritime space was the authority of the central government and local governments in accordance with their respective authorities. This provision was reinforced in Law No. 23 of 2014, which divided maritime affairs into concurrent government affairs that could be carried out by provincial and regency/city governments.

More specifically, Article 16 paragraph (1) of Law Number 1 of 2014 concerning Coastal Zone and Small Islands Management stipulated that local governments had the authority to issue permits for the utilization of marine space in waters and coastal areas. This authority covered sea areas up to 12 nautical miles measured from the coastline towards the open sea and/or towards archipelagic waters for provinces, and one-third of the provincial authority area for regencies/cities.

Further implementation was regulated in Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. This regulation integrated marine spatial utilization licensing into an integrated electronic business licensing system or Online Single Submission (OSS). In this system, local governments were given the authority to issue Marine Spatial Utilization Activity Conformity Agreements (PKKPRL) for activities of a certain scale.

Kusumaatmadja and Purwaka (2018) noted that the decentralization of maritime space licensing was a response to the failure of the centralistic model during the New Order era, which was considered slow, unresponsive to local needs, and ignorant of the

participation of coastal communities. Decentralization was expected to bring services closer to the community, accelerate the licensing process, and encourage economic growth in the regions (Vierros, 2020).

The implementation of decentralization of water space utilization licensing had produced a number of significant benefits, both from the perspective of governance and regional economic development. Based on empirical studies and literature reviews, at least three main benefits could be identified.

The first benefit was proximity to the people. Decentralization brought decision-makers closer to coastal communities, who were both the subjects and objects of marine spatial use policies. Satria and Matsuda (2020), in their study on the decentralization of fisheries management in Indonesia, found that this geographical proximity enabled local governments to better understand the socio-economic characteristics of coastal communities. This understanding resulted in policies that were more aligned with local needs. Coastal communities, which had long felt marginalized in decision-making at the central level, gained greater access to voice their interests.

The second benefit was service efficiency. Decentralization shortened the bureaucratic chain in the issuance of marine space utilization permits. A study conducted by Sari and Wahyuni (2020) in South Sulawesi Province showed that the time required to issue seaweed cultivation permits in the region decreased significantly compared to when the authority was still at the central level. This efficiency not only benefited business actors but also encouraged the formalization of economic activities that previously operated informally due to complicated licensing procedures.

The third benefit was local adaptation. The geographical, ecological, and socio-economic conditions of coastal areas in Indonesia were very diverse. Uniform policies from the central government were often not aligned with local realities. Decentralization provided space for local governments to adapt marine spatial use policies in accordance with the characteristics and development priorities of their regions. Fachriansyah (2021) gave an example of how regions with great marine tourism potential could develop licensing schemes that encouraged investment in this sector, while regions with aquaculture potential could prioritize licensing for the fisheries sector.

In addition to the three benefits above, research conducted by Pomeroy and Rivera-Guieb (2019) showed that decentralization also had the potential to increase community ownership of development programs in coastal areas. When communities felt involved in decision-making through their representatives in the region, they were more motivated to participate in policy implementation and oversight.

Despite offering various benefits, decentralizing licensing for the use of aquatic space also carried a number of risks and challenges that should not be ignored. The experiences of various countries in decentralizing the management of natural resources, including marine space, showed that decentralization without proper institutional design could actually create new and more complex problems (Larson & Soto, 2019). In the Indonesian context, at least three main risks required serious attention.

The first risk was policy fragmentation. When each region had the authority to regulate the use of marine space in its own territory, there was a potential for policy

fragmentation between neighboring regions. Agrawal and Ribot (2021), in their comparative study, found that policy fragmentation in the management of shared resources such as the sea could lead to inefficient resource allocation, conflicts between regions, and ecosystem damage because policies in one region did not consider their impact on other regions.

In Indonesia, the overlapping Coastal Zone Management Plans (RZWP3K) between neighboring districts/cities at sea was a clear example of this risk. Santoso et al. (2021), in their study in the Riau Islands Province, found that the RZWP3K of Bintan Regency and Tanjungpinang City were inconsistent in determining cultivation and conservation zones in adjacent waters. This inconsistency created legal uncertainty for business actors and the potential for conflicts of authority between regions.

The second risk was elite capture. This referred to the control of policies and resources by local elites, whether political, bureaucratic, or economic. Decentralization, which aimed to empower the community, often strengthened the position of local elites who had greater access to policy makers in the region. Hadiz (2020), in his analysis of local politics in Indonesia after the reform, showed that decentralization had created "little kings" in the regions who used their authority to enrich themselves and their groups, including in the management of natural resources.

In the context of maritime spatial licensing, elite capture could take the form of granting licenses to certain groups close to power without going through a transparent and participatory process. Coastal communities, which should have been the main beneficiaries of maritime spatial management policies, were marginalized because their access to space and resources was taken over by large investors with political connections (Patlis, 2019).

The third risk was inter-regional conflict. Marine spaces, unlike terrestrial areas, lacked clear physical boundaries. Marine ecosystems were dynamic and interconnected, meaning that utilization in one area almost invariably impacted other areas. When each region competed to utilize marine space to boost its local revenue (PAD), conflicts of interest became unavoidable. Mulyani and Vidhiyanty (2022) documented several cases of inter-regional conflicts related to the utilization of marine space, such as the dispute over fisheries management areas between East Java Province and Bali Province, and the maritime border conflict between Kutai Kartanegara Regency and Bontang City in East Kalimantan. These conflicts not only created legal uncertainty but also hindered investment and harmed communities that depended on marine resources.

Evaluating the appropriateness of decentralizing maritime space licensing required an understanding of the unique characteristics of maritime space and the types of activities that were permitted. Not all aspects of maritime space management were suitable for decentralization. Ostrom (2019), in her framework of design principles for the management of common resources, reminded that decentralization was effective when: (1) the boundaries of resources and user communities were clear; (2) utilization rules were appropriate to local conditions; (3) decision-making mechanisms were participatory; and (4) an effective monitoring system existed.

In practice, several types of marine space utilization in Indonesia might have met these criteria. Examples included small-scale seaweed cultivation permits or traditional marine tourism permits. However, for large-scale activities that had cross-border

impacts and the potential to change the status of space (such as reclamation, large ports, or large-scale pond concessions), decentralization could actually cause problems.

Warner et al. (2020) argued that marine spatial management required a multi-level governance approach that integrated various levels of government. In this approach, decentralization of licensing for small-scale and local activities remained relevant, while authority for strategic and wide-impact activities remained in the hands of the central government with the involvement of local governments through coordination mechanisms.

Further evaluation showed that the main problem lay not in decentralization itself, but in the unclear division of the types of authority that were decentralized. Law No. 23 of 2014 and Law No. 1 of 2014 granted general licensing authority without clearly distinguishing between administrative permits (short-term, non-exclusive use) and the establishment of property rights (long-term, exclusive, impacting public access) (Wulansari, 2022). As a result, regions had the authority to issue permits that in practice implied the creation of exclusive rights to water areas, such as location permits for reclamation or large-scale pond concessions. In fact, the establishment of property rights should have been an authority that was strictly controlled by the state through a more centralized mechanism (deconcentration) because it had the potential to create rights that applied to anyone and had a long-term impact on public access.

Based on the critical evaluation above, a selective decentralization model was needed in licensing the use of water space. This model clearly distinguished between the types of authority that could be decentralized and the types of authority that should remain at the center or be implemented through a deconcentration mechanism.

Kusumastanto (2021) proposed a division based on the scale and impact of activities. Small-scale marine spatial utilization activities with limited impact and no change in spatial rights status could be fully decentralized to local governments. Meanwhile, medium-scale activities required a co-management mechanism between the central and regional governments. Large-scale activities that had a strategic impact and the potential to create exclusive rights should be the authority of the central government, with the involvement of regional governments in the decision-making process.

This distinction was in line with the principle of subsidiarity in administrative law, which taught that authority should be exercised at the level of government closest to the community, unless there were strong reasons that required such authority to be exercised at a higher level due to considerations of efficiency, effectiveness, or cross-border impact (Amirullah, 2026). The implementation of this selective decentralization model required revisions to existing laws and regulations, particularly in formulating clear criteria regarding the types of activities that could be permitted by the regions and those that required central government involvement. In addition, it was necessary to strengthen the capacity of local governments in exercising decentralized licensing authority, as well as to develop effective coordination and oversight mechanisms to prevent the negative impacts of decentralization.

3.3. Determination of Rights to Water Space and the Need for Deconcentration

The previous section had outlined the dynamics of decentralization of water space utilization licensing with all its benefits and risks. In this section, the focus of the

analysis shifted to a more fundamental aspect, namely the establishment of rights to water space that were of a property nature (*zakelijk recht*). The main argument to be developed was that the characteristics of property rights, which were exclusive, had a long-term impact, and affected public access to space that was jointly owned, necessitated stronger state control through a mechanism of deconcentration. This section outlined the characteristics of property rights, analyzed the implications of Constitutional Court Decision Number 3/PUU-VIII/2010, drew analogies with the land system, and formulated arguments as to why deconcentration was necessary in determining rights to aquatic space.

Understanding the fundamental difference between a license (*vergunning*) and a right was an important starting point in analyzing the problem of authority over the management of water space. In the traditions of administrative and civil law, these two concepts had significantly different legal implications (Wulansari, 2022).

A license was an administrative legal instrument, in the form of a decision by a state administrative official that allowed a person to perform an act that was in principle prohibited unless a dispensation was obtained. A license was relative in nature, could be revoked at any time in the public interest, and did not create a property right that was attached and could be defended against anyone.

In contrast, property rights gave direct authority to the subject of the right over an object, were absolute (*erga omnes*), could be defended against anyone, and could generally be transferred and used as collateral for debt (Mamahit et al., 2025).

In the context of water areas, the establishment of property rights had specific characteristics that distinguished them from ordinary permits.

First, property rights over water areas created exclusive rights that closed off access to the area and its resources to other parties. When a person or legal entity obtained property rights over a water area, they legally had the authority to control, utilize, and exclude other parties from that area. This was different from utilization permits, which were non-exclusive and could be granted to many parties simultaneously as long as they did not interfere with each other (Li & al., 2025).

Second, property rights had a long-term impact and tended to be permanent. Unlike permits, which generally had a limited duration and could be evaluated periodically, property rights such as Building Use Rights (HGB) or Water Space Use Rights could be granted for decades and could be extended. This long-term impact had the potential to lock in space allocation for future generations and reduced the flexibility of the state in responding to policy changes or environmental conditions.

Third, property rights affected public access to spaces that were common property. Water spaces, especially the sea, were traditionally understood as **res communis** that could be accessed by everyone. UNCLOS 1982 affirmed the principle that the high seas were the common heritage of mankind. When property rights were granted inappropriately, there was a privatization of public spaces that should have been accessible to the wider community for navigation, traditional fishing, and other activities.

Constitutional Court Decision Number 3/PUU-VIII/2010 on the review of Law Number 27 of 2007 concerning Coastal Zone and Small Islands Management was an important

milestone in the reform of the maritime spatial management paradigm in Indonesia. This decision invalidated the concept of Coastal Water Use Rights (HP-3) previously regulated in Articles 16 to 23 of Law No. 27/2007.

In its ruling, the Constitutional Court emphasized that coastal and marine resources were state assets controlled by the state and could not be absolutely owned by individuals or private entities. The concept of HP-3, which allowed the exploitation of coastal waters with transferable property rights that could be used as collateral for debt and inherited, was considered to be in conflict with Article 33 paragraph (3) of the 1945 Constitution. This constitutional provision mandated state control over natural resources for the greatest prosperity of the people.

Winarsi (2025) explained that Constitutional Court Decision Number 3/PUU-VIII/2010 reformed the old paradigm of marine space management. Previously, the paradigm was based on property rights through the HP-3 instrument, which could be transferred, gifted, exchanged, included as company capital, used as collateral, and even inherited. After this decision, the paradigm shifted towards a licensing approach, whereby the utilization of maritime space was carried out through a licensing mechanism that did not create property rights.

The legal implications of this ruling were fundamental. *First*, it confirmed that the sea and all its resources were under state control and were managed for the greatest prosperity of the people. *Second*, the mechanism for coastal water exploitation could not use property rights instruments, but had to go through a licensing mechanism. *Third*, granting permits to private parties could not be interpreted as reducing the state's authority to make policies (*beleid*), to regulate (*regelendaad*), to administer (*bestuursdaad*), to manage (*beheersdaad*), and to supervise (*toezichthoudensdaad*) for the purpose of the greatest prosperity of the people.

However, the implementation following this ruling had revealed new problems. Although HP-3 had been normatively revoked, in practice there were still various forms of maritime space control that implied the creation of exclusive rights. One example was the issuance of Building Use Rights Certificates (SHGB) and Ownership Rights Certificates (SHM) over maritime space. Mamahit et al. (2025) noted that the issuance of land rights certificates in Indonesian waters raised significant administrative legal issues, due to the lack of harmony between land law and maritime law.

This phenomenon reached its peak with the revelation of a 30.16 km long sea fence off the coast of Tangerang Regency in early 2025. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency confirmed the existence of 263 SHGB land parcels and 17 SHM parcels in the maritime zone (Hukumonline, 2026). The Minister of Maritime Affairs and Fisheries firmly stated that building use rights certificates located in maritime zones were illegal because Indonesian regulations stipulated that everything in maritime zones was public property.

This case highlighted the tension between two different legal regimes: the land regime, which tended to be permissive towards the issuance of rights over maritime space, and the maritime regime, which affirmed the status of maritime space as an area that could not be owned. Furthermore, this case also indicated an institutional problem where the authority to determine property rights was exercised without adequate coordination between institutions.

The land management system in Indonesia offered valuable lessons that could be reflected in the management of aquatic space. In agrarian law, there was a clear distinction between property rights to land and administrative permits. Ownership rights, cultivation rights, building rights, and usage rights were examples of property rights over land that were issued by the National Land Agency (BPN) as a central government agency, although the process could be decentralized to regional land offices (U. Santoso, 2021).

An interesting aspect of the land system was the decentralization mechanism that was applied. Although the Land Office was physically located in the region and interacted directly with the community, institutionally it was a vertical agency responsible to the Minister of ATR/Head of BPN in Jakarta. Land Deed Officials (PPAT) and surveyors in the regions carried out their duties on behalf of the central government, not as administrators of regional autonomy. Thus, even though there was proximity of service to the community, state control was maintained because policies, standards, and supervision were carried out centrally (Harsono, 2020).

This model was relevant for adaptation in the management of aquatic space. Several important principles of the land system that could be applied included:

First, centralization of normative policies. The establishment of norms, standards, procedures, and criteria (NSPK) related to the determination of rights to aquatic space should be the authority of the central government to ensure uniformity and consistency of policies throughout Indonesia. This was important given the interconnected nature of water areas and their cross-border impact.

Second, decentralization of administrative services. Technical services such as measurement, mapping, document verification, and certificate issuance could be carried out by vertical agencies in the regions. In this way, service efficiency and proximity to the community were maintained, while the state's control over the determination of property rights was preserved.

Third, separation of regulatory and operational functions. The central government functioned as a regulator that set policies and standards, while vertical agencies in the regions functioned as operators that implemented these policies. The supervisory function was inherent at both levels with intensive vertical coordination.

Fourth, an integrated registration system. The administration of registration and documentation of rights to water areas should be carried out in a single nationally integrated system, such as the Land Office Computerization System (KKP) developed by the National Land Agency (BPN). This would prevent overlapping and conflicts of authority between regions.

Based on an analysis of the characteristics of property rights, the implications of Constitutional Court Decision Number 3/PUU-VIII/2010, and analogies with the land system, three main arguments could be formulated as to why the establishment of property rights over water areas required stronger state control through a mechanism of deconcentration.

The first argument related to the potential exclusivity inherent in property rights. When property rights were granted over a water space, the space that was previously public was automatically privatized. Other parties lost access to utilize the space, including

indigenous peoples and traditional fishermen who had long depended on resources in the area.

Li et al. (2025), in their study on mechanisms for registering rights to marine resources, warned that granting property rights without adequate control could lead to the "takeover of public space" that was detrimental to the wider community. In the Indonesian context, this concern was particularly relevant given the weak protection of coastal communities' rights in various sectoral regulations.

If the authority to determine property rights was fully decentralized to the regions, the risk of elite capture identified in the previous section became even more apparent. Local elites who had access to policy makers in the regions could use this authority to obtain exclusive rights to strategic water areas, sacrificing the interests of the wider community for personal or group gain (Hadiz, 2020). Therefore, strong state control through a deconcentration mechanism was needed to ensure that every granting of property rights over water areas had gone through a rigorous evaluation process and considered its impact on public rights. This control included feasibility verification, environmental impact analysis, social impact assessment, and public consultation involving the affected communities.

The second argument related to the long-term impact of granting property rights. Unlike permits, which generally had a limited duration and could be evaluated periodically, property rights tended to create long-term obligations that bound the state and future generations.

Kusumastanto (2021) reminded that marine ecosystems had limited carrying capacity and were highly vulnerable to permanent damage. Granting property rights for activities such as reclamation, large port construction, or large-scale aquaculture concessions could cause irreparable ecological damage. Once these rights had been granted, the state faced great difficulty in correcting its policies because it was bound by the principles of legal certainty and protection of acquired rights.

The long-term social impacts were no less important. The establishment of property rights over water areas could cause permanent displacement of communities, loss of traditional livelihoods, and social disintegration of coastal communities. A study conducted by WALHI (2026) on the Draft Regional Islands Law showed that the strengthening of regional authority in marine spatial management was not accompanied by mechanisms for the recognition and protection of community management rights in island regions.

Through a mechanism of deconcentration, the central government could ensure that every determination of property rights had taken into comprehensive consideration aspects of ecological and social sustainability. The central government also had more adequate capacity and resources to conduct cross-border impact analyses that might not be optimally carried out by local governments due to technical and resource limitations.

The third argument related to the implications of establishing property rights on public access and state sovereignty. Water spaces, especially the sea, had a strategic dimension related to state sovereignty, national security, and broader public interests.

UNCLOS 1982 granted coastal states the right to manage marine resources within their jurisdiction, but also imposed an obligation to guarantee public access and protect the marine environment. Within this framework, states could not simply transfer management rights to private parties or regions without maintaining adequate control. Hammarskjöld, in his statement at the 2025 UN Ocean Conference, emphasized that in areas under national jurisdiction, no single country had absolute sovereignty; all shared responsibility for protecting the sea as a common heritage. This statement underscored the importance of state control in the management of maritime space, including in the establishment of property rights.

In the context of Indonesia, Article 33 paragraph (3) of the 1945 Constitution gave the state a constitutional mandate to control natural resources and use them for the greatest prosperity of the people. This mandate was non-delegable, meaning that although its implementation could be delegated, the final responsibility remained with the state. Therefore, any policy that had the potential to transfer state control over natural resources, including the granting of property rights over water areas, must be under strong state control (Amirullah, 2026).

The deconcentration mechanism allowed the state to retain normative and strategic control, while technical implementation could be carried out in the regions with community participation. This model was in line with the principle of *nested governance* developed by Ostrom (2019) for the management of shared resources, in which different levels of government had different but coordinated roles in an integrated management system.

Based on all of the above arguments, a model of authority sharing was needed that clearly distinguished between administrative licensing for the use of water space and the establishment of property rights.

For administrative permits for the use of aquatic space (such as permits for small-scale seaweed cultivation, traditional marine tourism permits, and small-scale fishing permits), decentralization to local governments remained relevant and needed to be maintained. The considerations were: (1) these were local-scale activities with limited impact; (2) they required proximity to the community; (3) they allowed for policy adaptation in line with local characteristics; and (4) they did not create exclusive rights that changed the status of the space. However, this decentralization had to be accompanied by strengthening the capacity of local governments, developing an integrated information system, and establishing effective monitoring mechanisms from the central government to prevent negative impacts such as policy fragmentation and elite capture.

For the establishment of rights to aquatic space that were tangible in nature (such as long-term rights of use for reclamation, large-scale pond concessions, marine energy exploitation rights, or other forms of rights that were exclusive and had a long-term impact), a deconcentration mechanism was required.

Table below summarizes the distinction between licensing and property rights in water space management.

Table Distinction Between Licensing and Property Rights in Water Space Management			
Aspect	License (Permit/Vergunning)	Property Right (Zakelijk Recht)	
Legal nature	Administrative decision	Civil law right	

Exclusivity	Non-exclusive (can be granted to multiple parties)	Exclusive (<i>erga omnes</i>)
Duration	Limited, periodic evaluation	Long-term, tends to be permanent
Revocability	Can be revoked in public interest	Difficult to revoke (protected rights)
Transferability	Generally non-transferable	Transferable, inheritable, can be used as collateral
Impact on public access	Minimal (public access remains)	Significant (privatization of public space)
State control	High (flexible)	Limited (binding)
Appropriate authority level	Decentralization (local government)	Deconcentration (central government through vertical agencies)
Examples in water space	Small-scale seaweed cultivation permit, traditional marine tourism permit	Building Use Rights (SHGB), Ownership Rights (SHM) over marine space

4. Conclusion

This study concluded that decentralization of water space utilization licensing played an important role but had to be implemented selectively. The analysis demonstrated that decentralization brought benefits such as closer services to coastal communities, bureaucratic efficiency, and policy adaptation to local characteristics. However, without clear restrictions, decentralization also posed serious risks: policy fragmentation between regions, elite capture by local interests, and horizontal conflicts between neighboring regions. These risks were exacerbated by the dynamic nature of water areas and their interconnected ecosystems. Therefore, this study concluded that decentralization of licensing was only appropriate for local-scale activities with limited impact that did not alter the status of rights to space. The establishment of property rights over water areas required stronger state control through a deconcentration mechanism, as property rights were exclusive, created privatization of public space, had long-term impacts, and affected public access and state sovereignty. Constitutional Court Decision Number 3/PUU-VIII/2010 had confirmed that the sea was controlled by the state for the greatest prosperity of the people, and drawing an analogy with the land system, this study found that the deconcentration mechanism could be effectively adapted for water space management. Based on these findings, this study recommended an authority-sharing model that clearly distinguished between administrative licensing decentralization and property rights determination deconcentration, institutional synchronization between the Ministry of Marine Affairs and Fisheries and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the development of an integrated digital licensing system, improvement of the central-regional incentive structure, and strengthening of mechanisms for community rights recognition and meaningful public participation.

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