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# THE ARRANGEMENT AND SPECIAL TREATMENT

*by 5 Zainuri*

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## THE ARRANGEMENT AND SPECIAL TREATMENT OF ISLAND PROVINCE AREAS IN THE LOCAL GOVERNMENT SYSTEM

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### ABSTRACT

*Act 25 A of the Indonesian Fundamental Statute of 1945 then called as UUD NRI of 1945, stated that the Unity Country of Republic Indonesian is islands country characterized by archipelago with areas, borders and rights decided by statute. Indonesia is also known as coastal state consisted of lands, seas, and air space, where two-third of its areas is seas. In local autonomy era, the local governments have opportunity to develop their province areas based on: (a) There are 60% people or 140 million people live in coastal areas, where twenty two percent (22%) of them live in coastal villages and remote islands that far from governmental development; (b), The developmental policy approach in Indonesia has applied developmental approach of areas orienting on lands areas however in fact that Indonesia is islands country, thus it need different approach to develop the island provinces; (c), The difficulties in Areas Controlling pattern. In the province with land areas, communication is easier than communication in province with islands; (d), the difficulties of local government is in empowering small islands in this province especially the islands are in border areas; (e), the people of islands are isolated and far from development. The legal issue in this study covers the arrangement and special treatment of islands province in the local government system. The arrangement and special treatment on the islands province are based on what stated in the Statute No. 23 of 2014 on the Local Government has not arranged in special way of islands province.*

**Keywords:** Arrangement and Special Treatment

### INTRODUCTION

Act 25 A of the Indonesian Republic Fundamental Constitution of 1945, then known as UUD NRI of 1945, has stated that the Unity Country of Indonesian republic refers to Islands Country with characteristic of Archipelago covering areas, borders and its rights decided in the statute.<sup>5</sup> The existences of wide areas become the responsibility of Indonesian nation to manage and take the benefit of the lands, seas, and air including the contents in the proper way that it would give benefit for widely welfare and prosperity of Indonesian as stated in the Act 33 verse (3) UUD NRI of 1945 where the fourth change stated that land and water and the natural resources in them are occupied by the Country and used for widely welfare of the people.<sup>6</sup>

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<sup>5</sup> Pasal 25 A UUD NRI Tahun 1945.

<sup>6</sup> Pasal 33 Ayat 3 UUD NRI Tahun 1945.

Beside<sup>2</sup> as the islands country, Indonesia is also called as coastal state covering with lands, seas, and air space where two-third of all the areas of Indonesia are seas. Based on the natural characteristic, the Indonesian sea environment shows the integral characteristic between sea element and land, thus ecologically it is the scientific and natural bases for the concept of Archipelago as the realization of the geographical unity becoming unity fundamental of politic, economy, culture, defense and security<sup>7</sup>. In the act 1 verse (1) the Statute No. 43 of 2008 on the Country Areas, known as UU No. 43 of 2008, it states that the Areas of Indonesian republic or country areas refer to one of the country elements becoming one unity of lands, seas, remotes, island seas and territorial seas together with seas bases and lands below, air space above and also the resources in them.

Indonesia as the biggest archipelago state in the world covering 17.508 islands and coastal lines about 81000 km (the second longest in the world after Canada<sup>8</sup>) also territorial seas areas about 5.1 million km<sup>2</sup> or 63% of total Indonesian territorial plus Exclusive Economic Zone about 2.7 million km<sup>2</sup>, has greatly potential and various of coastal and sea natural resources from millions of islands, where most of them are small islands more than 10.000 islands.<sup>8</sup> In 2015, there was big change in the number of islands in Indonesia from 17.499 islands with details 13.466 named islands and 4.033 no-named islands. The sea width covers 3.25 million km<sup>2</sup> with 8 tails (a) Territorial width 0.30 million km<sup>2</sup> and (b) sea width of islands 2.95 million km<sup>2</sup>, Indonesian Exclusive Economic Zone width 2.55 million km<sup>2</sup>, lands area width 2.01 million km<sup>2</sup>, areas width of NRI 7.81 million km<sup>2</sup>, and the length of Indonesian coastal 80.791 km.<sup>9</sup>

The Indonesian Republic proclaimed at 17 August 1945, geographically, is islands country. Thus, at 13 December 1957 the Indonesian Republic announced declaration on its Sea Areas as stated below:

"That all seas surrounded, between and related the islands in Indonesian Country irrespectively the width and length are natural parts of Indonesian land areas and therefore parts of remote or national seas are absolutely in Indonesian authority. The peaceful traffic in remote seas for foreign ships are guaranteed as long as and in condition they do not in contradiction with/bother the Indonesian integrity and security. The decision of basic border of territorial sea (with width 12 miles) is estimated from the lines connecting the outer points of Indonesian islands. The provisions will be arranged immediately by the statute".

The declaration involves understanding that Indonesian country is a unity covering land, and sea not separated as "Islands Country". The islands country then is given legal fundamental in Indonesian governance system based on The Statute No. 4Prp. of 1960 on the Indonesian Seas. The declaration becomes basic change in area structure of Indonesian Republic because sea will not considered as islands separator, but it becomes united element that all of them refer to one whole unity.

## RESEARCH PROBLEM

Based on the background of study, this research analyzes on why the island province areas need to have arrangement and special treatment in the local government system.

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<sup>7</sup> Zochtar Kusumaatmadja, *Bunga Rampai Hukum Laut*, Jakarta: Bina Cipta, 1978, hal. 78.

<sup>8</sup> Made Sadhi Astuti dkk, *Telaah Kritis: Rancangan Undang-Undang Tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil*, dalam Prosiding Seminar Nasional "Peningkatan Pembangunan Regional di Era Otonomi Daerah", Penyelenggara Program Pascasarjana Perguruan Tinggi Negeri Se-Jawa Timur, 2002, hal. 217.

<sup>9</sup> Dikompilasi oleh *Tentara Nasional Indonesia Angkatan Laut*, Dinas Hidro-Oseanografi, Jakarta, Mei 2015.

## DISCUSSION

### The Definition of Island Country and Island Province

Island is land area formed naturally and surrounded by sea and still above the air surface when the sea level rose. The island country is a country where covers one or more islands and other islands. The meaning of "islands" is a group of islands, including part of island, sea between and other natural forms with tight relation one and another that the islands, seas, and other natural forms become unity of geography, economy, and politic authentically and historically.<sup>10</sup>

Thus, among one island (land) to another (land) and the seas are one unity. There is no free sea among the islands in Indonesia. It is called as principle of Archipelago, the principle of archipelago country.<sup>11</sup> Moreover, he stated, taken from opinion of Mochtar Kusumaatmadja said that we could not think that Indonesian country separated by the sea, but we should realize and thank to the God that Indonesia consisted of islands related by the seas.<sup>12</sup>

In chapter IV of sea legal convention of 1982, it involves provisions related to definition of island country, the way of taking island point line, legal status of island sea, peaceful crossing right and right of island pattern way.<sup>13</sup>

The definition of "island country" in the concept<sup>14</sup> of Indonesian island country based on above explanation is taken from the definition of *Nusantara* (archipelago). In daily life and ancient literatures, *Nusantara* is the name of Indonesia. *Nusantara* is formed from the word "nusa" meaning group (series) of islands, and "antara" meaninga placein between of other place. In line with the definition, the meaning of *Nusantara* is islands located between benua and between oceans. **Benua** at that time were India and China (*the realm of India the realm of China*).<sup>15</sup> In the present meaning, *Nusantara* is islands between Asia and Australia, and between oceans, Hindia and Pacific oceans. The definition of island country is taken from the definition of *Nusantara* meaning country consisting group of islands. Therefore, the definition of *Nusantara* has showed archipelagic state conception.<sup>16</sup>

The meaning of islands or archipelago is taken from the word *archipel*, from Italian word *archipelagus*, *archi* means important, *pelagus* means sea, thus literally *archipelagus* means "important sea". In line with times, the meaning of *archipel* has developed, or it is not only

<sup>10</sup> Endang Zaelani Sukaya, *Pendidikan KewargaNegaraan*, Yogyakarta: Paradigma 2002, hal. 36.

<sup>10</sup> Muhammad Alim, *Tanah Dan Air Dalam Perspektif Kepentingan Bangsa*. Tulisan Ini Merupakan Sumbangan Dalam *Liber Amicorum 70 Tahun Prof. Dr. Achmad Sodiki, S.H.*, Universitas Brawijaya Press, 2014, hal. 2. Muhammad Alim adalah Hakim Konstitusi Pada Mahkamah Konstitusi Republik Indonesia.

<sup>12</sup> Muhammad Alim, *Op.cit.*, hal. 2-3.

<sup>13</sup> Mochtar Kusumaatmadja dan Ety R. Agoes, *Konsepsi Negara Hukum Nusantara Pada Konferensi Hukum Laut Iii, Pusat Studi Wawasan Nusantara, Hukum Dan Pembangunan* bekerja sama dengan Penerbit Alumni, Bandung, 2003. Hal. 178. Terdapat dalam Didik Mohammad Sodik, *Hukum Laut Internasional Dan Pengaturannya di Indonesia*, PT Refika Aditama, 2011, hal. 41.

<sup>14</sup> Istilah "konsepsi" dalam konsepsi Negara kepulauan sep<sup>3</sup> diuraikan di atas, diartikan sebagai "pengertian", pendapat" (paham), rancangan (cita-cita) yang telah ada dalam pikiran, Departemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia. Cet. Keempat, Balai Pustaka, Jakarta, 1995, hal 520. Lihat juga John M. Echols dan Hassan Shadely, Jakarta, 1994, hal. 306, konsepsi, "conception of invention" diartikan *the formulation in the inventions mind of a definte and permanent idea of a complete invention that is thereafter applied in practice*". Istilah konsepsi digunakan oleh Mochtar Kusumaatmadja dalam bukunya yang berjudul: *Konsepsi Hukum Negara Nusantara pada Konfrensi Hukum Laut II*. Lihat dalam Indien Winarwati, op<sup>5</sup>it, hal. 3

<sup>15</sup> Munadjad Danasaputra, *Tata Lautan Nusantara dalam Hukum dan Sejarahnya*, Bandung: Bina cipta, 1980, hal. 4. Lihat juga dalam Indien Winarwati, op.cit, hal. 3

<sup>16</sup> Hasbullah F. Sjawie, *Negara Kepulauan Indonesia dan Hukum Laut Internasional*, Jakarta: Serambi Ilmu Semesta, 2001, hal. 20

sea considered being important, but also islands covered. Then, it appears the meaning of the word archipel that is sea area and islands in it.<sup>17</sup>

Based on the above definitions, there is an element that always exist in the meaning of 'archipel', that the islands create a unity. Thus, the sea among the islands is not breaker among them, but it appears to be connector of the group of islands.<sup>18</sup>The concept of archipelagic country plays as base believed it can be used as guidance or pattern in deciding sea zone borders for archipelagic countries.<sup>19</sup>

Archipelagic country is country consisted of one or more islands and may cover other islands. Archipelago is group of islands, including parts of island, and sea among the islands and other natural forms with firm connection one and another, thus islands, seas and other natural forms are one unity of geography, economy and politic or historical consideration too.<sup>20</sup>

The simple geographically definition of archipelago becomes more specific because it includes new conditions. Therefore, it does not mean that a group of islands can be considered as archipelago according to the convention meaning. Such as archipelago, the meaning of island is not as simple as its definition as a geographical conceptual. <sup>15</sup> In the juridical definition of island, Act 121 verse 1 sea legal convention of 1982, it defines island is a land formed naturally covered by water and anything above the water surface when the sea rose.<sup>21</sup> In other words, island is area of land naturally formed, surrounded by water and should above water at high tide.<sup>22</sup> Whereas, the meaning of province characterized by group of islands in line with act 1 verse (19) of the Statute No. 23 of 2014 on the Local Government states that Area of Province with Archipelagic Characteristics is Area of province that has geographic characteristics with more areas of sea than land where there are islands forming group of islands that it becomes a unity of geography and socio-culture.

### The Definition Of Local Government

The definition of Local Government is<sup>23</sup> affairs implementation of government, Local Government and Local Representative Board in line with autonomy base and delegation task using widely autonomy principle in system and principle of United Nation of Indonesian Republic as stated in the Fundamental Constitution of Republic Indonesia of 1945.

In the Act 18 verse (2) of UUD NRI of 1945 changing the fourth points out that the United Nation of Indonesia is divided among areas of provinces and the provinces consist of regencies and cities, in which each province, regency and city has local government ruled by the Statute. Then, Act 18verse (5) UUD NRI of 1945 states that Local Government is autonomy area which able to conduct governmental affairs widely and has right to conduct governmental authority except the governmental affairs that stated by The statute ad the affairs of central government.

Meanwhile, the definition of Local Government according to the Statute No. 23 of 2014 on Local Government Act 1 verse (1) defines that Local Government is implantation of governmental affairs by local government and local representative board according to

<sup>17</sup> 7

<sup>18</sup> Hasyim Djalal, *Indonesia and the Law of the Sea, Centre for Strategic and International Studies*, Jakarta, 1995, hal. 293

<sup>19</sup> Indien Winarwati, *Konsep Negara Kepulauan Perspektif Hukum Laut dan Penetapan Garis Batas Negara*, Malang: Setara Press, 2016, hal. 4.

<sup>20</sup> Mochtar Kusumaa Hadja dan Etty R. Agoes, *Ibid.*,

<sup>21</sup> 3 dik Mohammad Sodik, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, PT Refika Aditama, 2011, hal. 41.

<sup>22</sup> I Made Andi Arsana, *Batas Maritim AntarNegara (Sebuah Tinjauan Teknis dan Yuridis)*, Yogyakarta: Gadjah Mada University Press, 2007, hal. 65.

<sup>23</sup> Undang-undang No. 32 Tahun 2004 tentang Pemerintahan Daerah Pasal 1 Ayat 2 dan Ayat 3

autonomy base and delegation task using widely autonomy principle in the system and principle of the united nation of Republic Indonesia as stated in the Fundamental Constitution of Republic Indonesia of 1945.

Take a look at the definition of local government above; the Local Government is implementation of autonomy area and Local Government and local representative board according to decentralization base where the conductor of Local Government is Governor, Head of regency and Head of city as well as local apparatus.

### **The Arrangement and Special Treatment of Area of Islands Province in the Local Governmental System**

The need of arrangement and special treatment of province with islands characteristic in the system of Local Government basically has several principle reasons:

- 1) Objective reality shows that in scope of Republic Indonesia, some provinces have islands characteristic with their areas of water wider than their areas of lands.
- 2) The Implementation of local autonomy with orientation of development based on areas, special unique and local potential is determinant factor in the way of success in local development.
- 3) The developmental process and its advance should be conducted based on variety in many aspects, thus it needs different treatment toward each area (Province, Regency-City) to achieve optimum developmental results, based on national standard.
- 4) The constitutional fundamental in UUD NRI of 1945 guarantees unity of specific local government.<sup>24</sup>

The arrangement and special treatment toward province with islands characteristic are meant to quicken governmental implementation, developmental conduction and service to society. In this case, terrestrial local characteristic should be differentiated from aquatic terrestrial characteristic or both from terrestrial aquatic characteristic (archipelago). Only with implementing these different principles does the national justice create in order to keep the integrity of the United Nation of Republic Indonesia (NKRI). The implementation of uniform principle in arranging Province with islands characteristic is kind of discrimination, violating the human right (HAM). It relates to principles of democracy, equalization, and justice, and specialty, potential and local diversity.

The arrangement and special treatment on area of islands province are based on theory of geopolitics of Republic Indonesia, geographical condition of country or area becomes necessary and fundamental consideration of various policy, including in formulating arrangement of area of islands Province in the Local Government system. The form of Republic Indonesia is archipelagic country with in its totality becoming a unity of politic, economy, socio-culture and security defense to obtain national purpose and future of Indonesian struggle through national development with a whole potential of land, sea and space with integrity. Using the geopolitics theory, the government in controlling area of islands province needs to consider the nation geographical condition.

The arrangement and special treatment toward Islands Province in the Statute No. 23 of 2014 on the Local Government does not arrange specifically of islands province, however in act 28 the Statute No. 23 of 2014 states that area of province characterizing with islands has

<sup>24</sup> Abdul Muis, *Perspektif Pengelolaan Wilayah Kepulauan Era Otonomi Daerah*, Lembaga Administrasi Negara Pusat Kajian Kinerja Otonomi Daerah. Jurnal Desentralisasi Vol 9 No. 6 Tahun 2010.

authority to manage natural resources in the sea as discussed in Act 27 the Statute No. 23 of 2014. In line with Act 28 the Statute No. 23 of 2014, it states that arrangement on Area of Islands Province is the same as arrangement of area of Land Province, thus it is clear that the Statute No. 23 of 2014 has still oriented on the land. Moreover, there is still any discrimination of Act 28 the Statute No. 23 of 2014, in which province with islands is given only authority to manage natural resources in the sea, however Act 9 the Statute No. 23 of 2014 states that the governmental affairs consist of absolute, concurrent, and common governmental affairs. The Act 11 of the Statute No. 23 of 2014 states that concurrent governmental affairs stated in Act 9 verse (3) becoming local authority consist of mandatory governmental affair and optional governmental affairs. Based on Act 11 Verse (1) of the Statute No. 23 of 2014 showing that authority of local covers (1) the authority of mandatory governmental affairs and (2) authority of optional governmental affairs, it should be in Act 28 of the Statute No. 23 of 2014 that authority of area of province with islands characteristic has authority not only to manage natural resources in the sea but also have authority as stated in Act 11 verse (1) the Statute No. 23 of 2014 that the authority of mandatory governmental affair and optional governmental affairs. Furthermore, the authority of Area of Province with islands characteristic is only authority of optional governmental affairs and not more.

In Act 28 verse (2) of the Statute No. 23 of 2014, it says that besides having authority as stated in Verse (1), the Area of province with islands characteristic obtains task from Central Government to conduct authority of central government in maritime field based on delegation task. In line with decentralization concept, the Act 28 verse (2) of the Statute No. 23 of 2014 is not in harmony, or not reflect local autonomy, because area with island characteristic in managing the natural resources of the sea is not only conduct delegation task from the Central Government. The definition of local autonomy consists of right, authority and duty of autonomy area to arrange and manage itself the governmental affairs and society interest in the system of Republic Indonesia. Based on the above definition, it shows that local has right, authority and duty of autonomy area to arrange and manage itself thus the Local Government with islands characteristic has authority independently in managing natural resources including resources in the sea without any delegation task from the Central Government. Therefore, Act 28 verse (2) the Statute No. 23 of 2014 does not follow decentralization pattern (delegate authority to the local) but follow centralization one, that Act 28 verse (2) of the Statute No. 23 of 2014 does not reflect sense of justice, welfare and prosperity as stated in the purpose of country and nation stated in the preamble of the UUD NRI of 1945. Moreover, the Islands Areas should have authority as stated in Act 11 verse (1) the Statute No. 23 of 2014 on the Local Government, becoming Local authority consists of Mandatory Governmental Affair and Optional Governmental Affairs. In line with this Act, the Area of Islands Province should cover not only authority to manage Natural resources in the sea, but also authority to manage the Mandatory governmental affair and optional governmental affairs.

The Statute No. 23 of 2014 on the Local Government giving authority to the local government shows the same as or no quite different from the previous Statute of Local Government, such as the Statute No. 5 of 1974 on the Governmental Principles in Local, in which the Statute states that the authority of Local Government is only as agent or conductor of policy or representative of central government. all the action conducted by the Local Government should be based on agreement of Central Government.

The Statute No. 5 of 1974 discuss the principles of implementation the government becoming the duty of Central Government in the local. The principle or base using is not “real and widely autonomy”, but “real and responsible autonomy”. In other words, the local



autonomy principle using widely principle resulted in principle tending to danger the integrity of Republic Indonesia, and far from the meaning and purpose of autonomy delegation.

Thus, the Statute No. 5 of 1974 tend to apply "Limited Autonomy" not "wide Autonomy". As stated in Act 68 of the Statute No. 5 of 1974, all policies constructed by the Local Government in Local Provision or Decision of Local Head is given if only there is any agreement from authorized officer, therefore the Central Government can easily intervene the Local Government in making the policies.

According to the Statute No. 22 of 1999 on the Local Government, the authority of province covers only limited authority while regency and city have wide authority. Thus, it tends to apply relative autonomy model because local has been given wider authority in arranging and controlling its own affairs (Act 7 the Statute No. 22 of 1999). For example, local makes its own policy or affair that minimize the intervention from Central Government.

The Authority Division of governmental affairs, based on the Statute No. 22 of 1999, is stated in Chapter IV arranging of local authority. Act 7 of the Statute states that:

- 1) The local Authority covered authority in all fields of government, except authority in foreign politic, defense and security, justice, monitor and fiscalm religion, and other field of authority.
- 2) The other fields of authority, as tated in Verse (1), covers policy on national planning and controlling of development in macro, fiscal balance fund, state administrative system and state economy institution, training and empowering human resources, managing natural resources and high technology strategically, conservation, and national standardization.

The Statute No. 22 of 1999 dispose that local applying deconcentration and decentralization principles are province. Whereas, Regency and City apply decentralization principle. Structurally consequence, the province becomes administrative area and autonomy one while Regency and City become full autonym areas. Thus, in other words, the Statute No. 22 of 1999 applies "Wide, Real and responsible Autonomy" although wide and full local autonomy are applied in regency and city.

Based on Act 7 the Statute No. 22 of 1999 giving wide autonomy to autonym local, it shows application of "wide Autonomy".

The Statute No. 32 of 2004 no longer use term of authority but governmental affair. Different from the Statute No. 22 of 1999 that not specifically deciding the governmental affairs as its authority, the Statute No. 32 of 2004 decides clearly that the governmental affairs become the Province authority the same as governmental affairs becoming the authority of Regency/City. The difference is only its scope based on the criteria of externality, accountability and efficiency.

Principally, Autonomy concept applied by the Statute No. 32 of 2004 is almost the same as the Statute No. 22 of 1999 arranging that local using deconsentration and decentralization principles is Province. Structurally consequencey, Province becomes administrative and also autonomic area while Regency and City become full autonomic areas.<sup>25</sup> Thus, Autonomic Model applied tends to apply "Wide Autonomy". Because in the provision of the Statute arranges that local autonomy is "wide, real and responsible autonomy".

<sup>25</sup>Muhammad Fauzan "Hukum Pemerintahan Daerah. Kajian tentang Hubungan Keuangan Pemerintah Pusat dan Daerah" dalam Sigit Budhiarto, *Analisis Undang-Undang Tentang Pemerintahan Daerah Terkait "Model Hubungan Kewenangan Dan Model Otonomi Yang Dianut"* <http://www.pemerintahandaerah.com>. di akses tanggal 13 Mei 2016

- I. Wide Autonomy: local has autonomy to make local policy to give service, increase participation, idea, and empower society in order to increase people welfare.
- II. Real Autonomy : the management of governmental affairs conducted based on task, autonomy, and responsibility in reality exist and have potential to grow, live and develop in line with local potential and characteristic.
- III. Responsible Autonomy : in implementing autonomy, it should appropriate to the purpose and meaning of delegating autonomy, fundamentally to empower local, including to increase people welfare.

In the theory of Legal State according to Padmo Wahyono, law is a tool or mean to conduct the State life or orderness, and conduct social welfare. In other words, to conduct social welfare, Country has responsibility to create law in this case the arrangement and special treatment to Area of Island Province in order to give welfare to the people of islands that previously got the same arrangement as land areas, thus in reality these people have always experienced underdevelopment because of arrangement that generalize between Islands Province and Land Province, according to Padmo Wahyono called the function of Indonesian Law as aegis. Whereas, in theory of Legal State in Islamic concept is State gives welfare to the people.

### **CONCLUSION**

The existence of arrangement and special treatment toward Province with islands characteristic purposes to increase implementation of government, conduct development and service to the people. Thus, the local terrestrial characteristic is differentiated from aquatic terrestrial one or both from terrestrial aquatic characteristic (archipelago).

The arrangement and special treatment toward Archipelagic Province in the Statute No. 23 of 2014 on the Local Government has not arranged specifically toward this province, however in act 28 the Statute No. 23 of 2014 states that area of province with islands characteristic has autonomy to manage natural resources from the sea as stated in Act 27 the Statute No. 23 of 2014. In line with the Act 28 the Statute No. 23 of 2014, it states that Area of Islands Province is considered being the same as Area of Land Province, therefore it is clear that the Statute No. 23 of 2014 has still oriented to the land.

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