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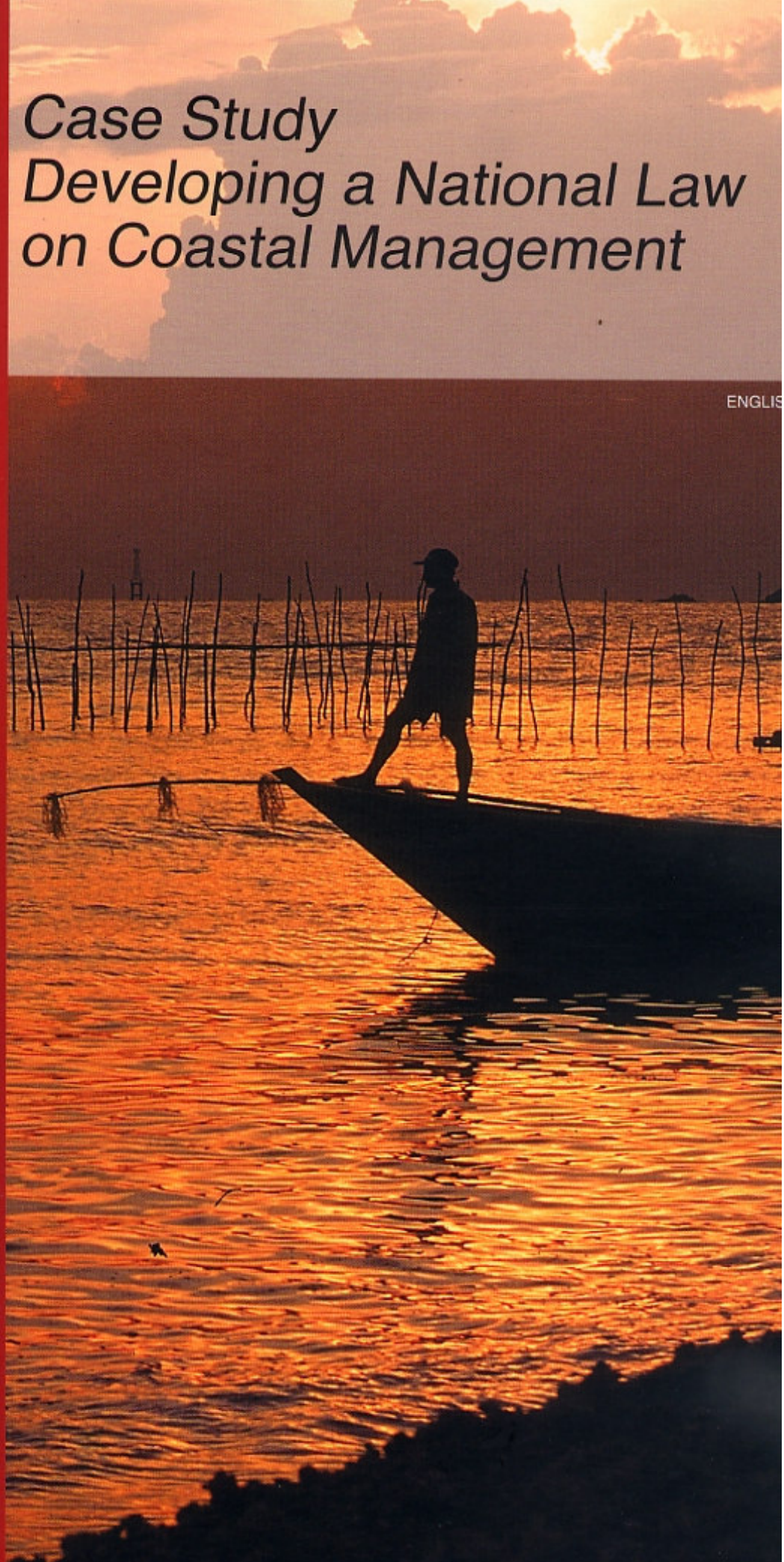


STUDI KASUS

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# *Case Study Developing a National Law on Coastal Management*

ENGLISH



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USAID - INDONESIA COASTAL RESOURCES MANAGEMENT PROJECT  
KOLEKSI DOKUMEN PROYEK PESISIR 1997 - 2003

# Koleksi Dokumen Proyek Pesisir 1997 - 2003

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# Koleksi Proyek Pesisir –Kata Pengantar

**S**elama lebih dari 30 tahun terakhir, telah terdapat ratusan program —baik internasional, nasional maupun regional— yang diprakarsai oleh pemerintah, serta berbagai organisasi dan kelompok masyarakat di seluruh dunia, dalam upaya menatakelola ekosistem pesisir dan laut dunia secara lebih efektif. USAID (The United States Agency for International Development) merupakan salah satu perintis dalam kerja sama dengan negara-negara berkembang untuk meningkatkan pengelolaan ekosistem wilayah pesisir sejak tahun 1985.

Berdasarkan pengalamannya tersebut, pada tahun 1996, USAID memprakarsai Proyek Pengelolaan Sumberdaya Pesisir (Coastal Resources Management Project—CRMP) atau dikenal sebagai Proyek Pesisir, sebagai bagian dari program Pengelolaan Sumberdaya Alam (Natural Resources Management Program). Program ini direncanakan dan diimplementasikan melalui kerja sama dengan Pemerintah Indonesia melalui Badan Perencanaan Pembangunan Nasional (BAPPENAS), dan dengan dukungan Coastal Resources Center University of Rhode Island (CRC/URI) di Amerika Serikat. Kemitraan USAID dengan CRC/URI merupakan kerja sama yang amat penting dalam penyelenggaraan program-program pengelolaan sumberdaya pesisir di berbagai negara yang didukung oleh USAID selama hampir dua dasawarsa. CRC/URI mendisain dan mengimplementasikan program-program lapangan jangka panjang yang bertujuan membangun kapasitas menata-keelola wilayah pesisir yang efektif di tingkat lokal dan nasional. Lembaga ini juga melaksanakan analisis dan berbagi pengalaman tentang pembelajaran yang diperoleh dari dan melalui proyek-proyek lapangan, lewat program-program pelatihan, publikasi, dan partisipasi di forum-forum internasional.

Ketika CRC/URI memulai aktivitasnya di Indonesia sebagai mitra USAID dalam program pengelolaan sumberdaya pesisirnya (CRMP, atau dikenal dengan Proyek Pesisir), telah ada beberapa program pengelolaan pesisir dan kelautan yang sedang berjalan. Program-program tersebut umumnya merupakan proyek besar, sebagian kecil di antaranya telah mencapai tahap implementasi. CRC/URI mendisain Proyek Pesisir untuk lebih berorientasi pada implementasi dalam mempromosikan pengelolaan wilayah pesisir dan tujuan-tujuan strategis USAID, seperti pengembangan ekonomi dan keamanan pangan, perlindungan kesehatan masyarakat, pencegahan konflik, demokrasi partisipatoris, dan perlindungan kelestarian lingkungan melalui pengelolaan sumberdaya pesisir dan air.

Kegiatan Proyek Pesisir menempatkan Indonesia di garis depan pengembangan model baru dan peningkatan informasi baru yang bermanfaat bagi Indonesia sendiri dan negara-negara lain di dunia dalam hal pengelolaan sumberdaya pesisir. Sebagai negara keempat terbesar di dunia, dengan kurang lebih 60 persen dari 230 juta penduduknya tinggal di dalam radius 50 kilometer dari pesisir, Indonesia secara sempurna berada pada posisi untuk mempengaruhi dan memformulasikan strategi-strategi pengembangan pengelolaan pesisir negara-negara berkembang di seluruh dunia. Indonesia juga merupakan negara kepulauan terbesar di dunia dengan lebih dari 17.500 pulau, 81.000 kilometer garis pantai, dan Zona Ekonomi Eksklusif (ZEE) seluas 5,8 juta



# *CRMP/Indonesia Collection*

## *–Preface*

**O**ver the past 30 years, there have been hundreds of international, national and sub-national programs initiated by government, organizations and citizen groups that attempted to more effectively govern the world's coastal and marine ecosystems. Among these efforts, the U.S. Agency for International Development (USAID) has been a pioneer since 1985 in working with developing countries to improve the management of their coastal ecosystem to benefit coastal people and their environment.

*Building on its experience, as part of its Natural Resources Management Program, USAID initiated planning for the Indonesia Coastal Resources Management Project (CRMP, or Proyek Pesisir) in 1996. This program was planned and implemented in cooperation with the Government of Indonesia through its National Development Planning Agency (BAPPENAS) and with the support of the Coastal Resources Center at the University of Rhode Island (CRC/URI) in the United States. USAID's partnership with CRC/URI has been central to the delivery of coastal resources management programs to numerous USAID-supported countries for almost two decades. CRC/URI designs and implements long-term field programs that work to build the local and national capacity to effectively practice coastal governance. It also carries out analyses and shares experiences drawn from within and across field projects. These lessons learned are disseminated worldwide through training programs, publications and participation in global forums.*

*When CRC/URI initiated work in Indonesia as a partner with USAID in its international Coastal Resources Management Program, there were numerous marine and coastal programs already ongoing. These were typically large planning projects; few projects had moved forward into "on-the-ground" implementation. CRC/URI designed Indonesia's CRMP to be "implementation oriented" in promoting coastal governance and the USAID strategic goals of economic development and food security, protection of human health, prevention of conflicts, participatory democracy and environmental protection through integrated management of coasts and water resources.*

*The CRMP put Indonesia in the forefront of developing new models and generating new information useful in Indonesia, and in other countries around the world, for managing coastal resources. Being the fourth largest country in the world, with approximately 60 percent of its 230 million people living within 50 kilometers of the coast, Indonesia is perfectly positioned to influence and shape the coastal management development strategies of other developing countries around the world. It is the world's largest archipelago state, with 17,500 islands, 81,000 kilometers of coastline, and an Exclusive Economic Zone covering 5.8 million square kilometers of sea –more than three times its land area. Indonesia is also the richest country in the world in terms of marine bio-*

kilometer laut persegi -lebih tiga kali luas daratannya. Indonesia menjadi negara terkaya di dunia dalam hal keragaman hayati (biodiversity). Sumber daya pesisir dan laut Indonesia memiliki arti penting bagi dunia internasional, mengingat spesies flora dan fauna yang ditemukan di perairan tropis Indonesia lebih banyak daripada kawasan manapun di dunia. Sekitar 24 persen dari produksi ekonomi nasional berasal dari industri-industri berbasis wilayah pesisir, termasuk produksi gas dan minyak, penangkapan ikan, pariwisata, dan transportasi. Beragam ekosistem laut dan pesisir yang ada menyediakan sumberdaya lestari bagi sebagian besar rakyat Indonesia. Hasil-hasil lautnya mencukupi lebih dari 60 persen rata-rata kebutuhan bahan protein penduduk secara nasional, dan hampir 90 persen di sebagian desa pesisir. Masyarakat nelayan pedesaan cenderung menjadi bagian dari kelompok masyarakat termiskin akibat eksploitasi berlebihan, degradasi sumberdaya, serta ketidakmampuan dan kegagalan mereka memanfaatkan sumberdaya pesisir secara berkelanjutan.

Di bawah bimbingan CRC/URI, Proyek Pesisir, yang berkantor pusat di Jakarta, bekerja sama erat dengan para pengguna sumberdaya, masyarakat, industri, LSM, kelompok-kelompok ilmiah, dan seluruh jajaran pemerintahan. Program-program lapangan difokuskan di Sulawesi Utara, Kalimantan Timur, dan Provinsi Lampung (sebelah selatan Sumatera) ditambah Provinsi Papua pada masa akhir proyek. Selain itu, dikembangkan pula pusat pembelajaran pada Pusat Kajian Sumberdaya Pesisir dan Lautan (PKSPL) di Institut Pertanian Bogor (IPB), sebagai perguruan tinggi yang menjadi mitra implementasi Proyek Pesisir dan merupakan fasilitator dalam pengembangan Jaringan Universitas Pesisir Indonesia (INCUNE).

Komponen program CRMP yang begitu banyak dikembangkan dalam 3 (tiga) lingkup strategi pencapaian tujuan proyek. Pertama, **kerangka kerja** yang mendukung upaya-upaya pengelolaan berkelanjutan, telah dikembangkan. Kemudian, ketika proyek-proyek percontohan telah rampung, **pengalaman-pengalaman dan teladan baik dari kegiatan-kegiatan tersebut didokumentasikan dan dilembagakan dalam pemerintahan**, sebagai lembaga yang bertanggung jawab dalam jangka panjang untuk melanjutkan hasil yang sudah ada sekaligus menambah lokasi baru. Kegiatan ini dilakukan lewat kombinasi **perangkat hukum, panduan, dan pelatihan**. Kedua, Departemen Kelautan dan Perikanan yang baru berdiri didukung untuk mengembangkan **peraturan perundangan dan panduan pengelolaan wilayah pesisir nasional untuk pengelolaan pesisir terpadu yang terdesentralisasi**. Pengembangan peraturan perundangan ini dilakukan melalui suatu proses konsultasi publik yang partisipatif, terbuka dan melembaga, yang berupaya mengintegrasikan inisiatif-inisiatif pengelolaan wilayah pesisir secara vertikal dan horisontal. Ketiga, proyek ini mengakui dan berupaya **memperkuat peran khas yang dijalankan oleh perguruan tinggi dalam mengisi kesenjangan kapasitas pengelolaan wilayah pesisir**.

Strategi-strategi tersebut didasarkan pada prinsip-prinsip:

- **Partisipasi** luas dari berbagai pemangku kepentingan (*stakeholders*) dan pemberdayaan mereka dalam pengambilan keputusan
- **Koordinasi** efektif berbagai sektor, antara masyarakat, dunia usaha, dan LSM pada berbagai tingkatan
- Penitikberatan pada **pengelolaan yang terdesentralisasi** dan kesesuaian antara pengelolaan/pengaturan di tingkat lokal dan nasional
- Komitmen untuk menciptakan dan **memperkuat kapasitas organisasi dan sumberdaya manusia** untuk pengelolaan pesisir terpadu yang berkelanjutan
- Pembuatan **kebijakan yang lebih baik yang berbasis informasi dan ilmu pengetahuan**

Di **Sulawesi Utara**, fokus awal Proyek Pesisir terletak pada pengembangan praktik-praktik terbaik pengelolaan pesisir terpadu berbasis masyarakat, termasuk pembuatan dan implementasi rencana daerah perlindungan laut (DPL), daerah perlindungan mangrove (DPM), dan pengelolaan pesisir tingkat desa, serta pemantauan hasil-hasil proyek dan kondisi wilayah pesisir. Untuk melembagakan kegiatan-kegiatan yang sukses ini, dan dalam rangka memanfaatkan aturan otonomi daerah yang baru diberlakukan, Proyek Pesisir membantu penyusunan peraturan pengelolaan wilayah pesisir, baik berupa Peraturan Desa, Peraturan Daerah (Perda) Kabupaten, maupun Perda Provinsi. Selain itu, dikembangkan pula perangkat informasi sebagai alat bagi pengelolaan wilayah pesisir, seperti pembuatan atlas wilayah pesisir. Dalam kurun waktu 18 bulan terakhir, kegiatan perluasan program (scaling up) juga telah berhasil diimplementasikan di 25 desa pesisir di Kecamatan Likupang

diversity. Indonesia's coastal and marine resources are of international importance with more plant and animal species found in Indonesia's waters than in any other region of the world. Approximately 24 percent of national economic output is from coastal-based industries such as oil and gas production, fishing, tourism and transportation. Coastal and marine ecosystems provide subsistence resources for many Indonesians, with marine products comprising on average more than 60 percent of the protein intake by people, and nearly 90 percent in some coastal villages. Rural coastal communities tend to be among the poorest because of overexploitation and degradation of resources resulting from their inability to sustainably and successfully plan for and manage their coastal resources.

Under the guidance of CRC/URI, the Jakarta-based CRMP worked closely with resource users, the community, industry, non-governmental organizations, academic groups and all levels of government. Field programs were focused in North Sulawesi, East Kalimantan, and Lampung Province in South Sumatra, with an additional site in Papua in the last year of the project. In addition, a learning center, the Center for Coastal and Marine Resources Studies, was established at Bogor Agricultural Institute, a CRMP implementation partner and facilitator in developing the eleven-member Indonesia Coastal University Network (INCUNE).

The many components of the CRMP program were developed around three strategies for achieving the project's goals. First, **enabling frameworks** for sustained management efforts were developed. Then, as pilot projects were completed, **experiences and good practices were documented and institutionalized within government**, which has the long-term responsibility to both sustain existing sites and launch additional ones. This was done through a combination of **legal instruments, guidebooks and training**. Second, the new Ministry of Marine Affairs and Fisheries (MMAF) was supported to develop a **national coastal management law and guidelines for decentralized integrated coastal management (ICM)** in a widely participatory, transparent and now institutionalized public consultative process that attempted to vertically and horizontally integrate coastal management initiatives. Finally, the project recognized and worked to **strengthen the unique role that universities play in filling the capacity gap for coastal management**.

The strategies were based on several important principles:

- Broad stakeholder **participation** and empowerment in decision making
- Effective **coordination** among sectors, between public, private and non-governmental entities across multiple scales
- Emphasis on **decentralized governance** and compatibility between local and national governance
- Commitment to creating and **strengthening human and organizational capacity** for sustainable ICM
- Informed and **science-based decision making**

In **North Sulawesi**, the early CRMP focus was on developing community-based ICM best practices including creating and implementing marine sanctuaries, mangrove sanctuaries and village-level coastal management plans, and monitoring project results and coastal conditions. In order to institutionalize the resulting best practices, and to take advantage of new decentralized authorities, the CRMP expanded activities to include the development of village, district and provincial coastal management laws and information tools such as a coastal atlas. In the last 18 months of the project, a scaling-up program was successfully implemented that applied community-based ICM lessons learned from four original village pilot sites to Likupang sub-district (kecamatan) with 25 coastal villages. By the end of the project, Minahasa district was home to 25 community coral reef sanctuaries, five mangrove sanctuaries and thirteen localized coastal management plans. In

Barat dan Timur. Perluasan program ini dilakukan dengan mempraktikkan berbagai hasil pembelajaran mengenai pengelolaan pesisir terpadu berbasis masyarakat dari 4 lokasi percontohan awal (Blongko, Benteran, Tumbak, dan Talise). Pada akhir proyek, Kabupaten Minahasa telah memiliki 25 DPL, 5 DPM, dan 13 rencana pengelolaan pesisir tingkat desa yang telah siap dijalankan. Sulawesi Utara juga telah ditetapkan sebagai pusat regional untuk Program Kemitraan Bahari berbasis perguruan tinggi, yang disponsori oleh Departemen Kelautan dan Perikanan dan difasilitasi oleh Proyek Pesisir.

Di **Kalimantan Timur**, fokus dasar Proyek Pesisir adalah pengenalan model pengelolaan pesisir berbasis Daerah Aliran Sungai (DAS), yang menitikberatkan pada rencana pengelolaan terpadu Teluk Balikpapan dan DAS-nya. Teluk Balikpapan merupakan pintu gerbang bisnis dan industri Provinsi Kalimantan Timur. Rencana Pengelolaan Teluk Balikpapan (RPTB) berbasis DAS yang bersifat inter-yurisdiksi ini merupakan yang pertama kalinya di Indonesia dan menghasilkan sebuah model untuk dapat diaplikasikan oleh pemerintah daerah lainnya. Rencana pengelolaan tersebut, yang dirampungkan dengan melibatkan partisipasi dan konsultasi masyarakat lokal secara luas, dalam implementasinya telah berhasil menghentikan konversi lahan mangrove untuk budidaya udang di sebuah daerah delta, terbentuknya kelompok kerja (pokja) terpadu antarinstansi untuk masalah erosi dan mangrove, terbentuknya sebuah Organisasi Non Pemerintah (Ornop) berbasis masyarakat yang pro aktif, dan jaringan Ornop yang didanai oleh sektor swasta yang berfokus pada isu-isu masyarakat pesisir. Selain itu, telah terbentuk Badan Pengelola Teluk Balikpapan, yang dipimpin langsung oleh Gubernur Kalimantan Timur berikut 3 Bupati (Penajam Paser Utara, Paser, dan Kutai Kartanegara), dan Walikota Balikpapan. Seluruh kepala daerah tersebut, bersama dengan Menteri Kelautan dan Perikanan RI, ikut menandatangani Rencana Pengelolaan Teluk Balikpapan tersebut. Rencana Pengelolaan Teluk Balikpapan ini telah mendorong pemerintah daerah lain untuk memulai program-program serupa. Kalimantan Timur juga telah ditetapkan sebagai pusat regional untuk Program Kemitraan Bahari berbasis perguruan tinggi, yang disponsori oleh Departemen Kelautan dan Perikanan, dan difasilitasi oleh Proyek Pesisir.

Di **Lampung**, kegiatan Proyek Pesisir berfokus pada proses penyusunan rencana dan pengelolaan strategis provinsi secara partisipatif. Upaya ini menghasilkan Atlas Sumberdaya Pesisir Lampung, yang untuk pertama kalinya menggambarkan kualitas dan kondisi sumberdaya alam suatu provinsi melalui kombinasi perolehan informasi terkini dan masukan dari 270 stakeholders setempat, serta 60 organisasi pemerintah dan non pemerintah. Atlas tersebut menyediakan landasan bagi pengembangan sebuah rencana strategis pesisir dan program di Lampung, dan sarana pembelajaran bagi Pusat Kajian Sumberdaya Pesisir dan Lautan (PKSPL) IPB, yang telah menangani program pengelolaan pesisir di Lampung. Sebagai contoh kegiatan pelaksanaan awal tingkat lokal dari Rencana Strategis Pesisir Provinsi Lampung, dua kegiatan berbasis masyarakat telah berhasil diimplementasikan. Satu berlokasi di Pematang Pasir, dengan titik berat pada praktik budidaya perairan yang berkelanjutan, dan yang lainnya berlokasi di Pulau Sebesi di Teluk Lampung, dengan fokus pada pembentukan dan pengelolaan daerah perlindungan laut (DPL). Model Atlas Sumberdaya Pesisir Lampung tersebut belakangan telah direplikasi oleh setidaknya 9 (sembilan) provinsi lainnya di Indonesia dengan menggunakan anggaran provinsi masing-masing.

Di **Papua**, pada tahun terakhir Proyek Pesisir, sebuah atlas pesisir untuk kawasan Teluk Bintuni - yang disusun berdasarkan penyusunan Atlas Lampung-telah diproduksi. Kawasan ini merupakan daerah yang lingkungannya sangat penting, yang tengah berada pada tahap awal aktivitas pembangunan besar-besaran. Teluk Bintuni berlokasi pada sebuah kabupaten baru yang memiliki sumberdaya alam melimpah, termasuk cadangan gas alam yang sangat besar, serta merupakan daerah yang diperkirakan memiliki paparan mangrove terbesar di Asia Tenggara. Proses penyusunan atlas sumberdaya pesisir kawasan Teluk Bintuni ini dilaksanakan melalui kerja sama dengan Ornop lokal, perusahaan minyak BP, dan Universitas Negeri Papua (UNIPA). Kegiatan ini mengawali sebuah proses perencanaan partisipatif dan pengelolaan pesisir terpadu, yang mengarah kepada mekanisme-mekanisme perencanaan partisipatif untuk sumberdaya pesisir di kawasan tersebut. Para mitra-mitra lokal telah menunjukkan ketertarikan untuk menggunakan Atlas Teluk Bintuni sebagai rujukan awal (starting point) dalam mengembangkan 'praktik-praktik terbaik' mereka sendiri, misalnya pengelolaan pesisir berbasis masyarakat dan pengelolaan teluk berbasis DAS bagi Teluk Bintuni.

the last few months, due to its significant capacity in coastal management, North Sulawesi was inaugurated as a founding regional center for the new national university-based Sea Partnership Program sponsored by the MMAF and facilitated by the CRMP.

In **East Kalimantan**, the principal CRMP focus was on introducing a model for watershed-based coastal management focusing on developing an integrated coastal management plan for Balikpapan Bay and its watershed. Balikpapan Bay is the commercial and industrial hub of East Kalimantan Province. The resulting inter-jurisdictional watershed-based Balikpapan Bay Management Plan (BBMP) was the first of its kind in Indonesia and provides a model for other regional governments. The BBMP, completed with extensive local participation and consultation, has already resulted in a moratorium on shrimp mariculture in one delta region, the creation of mangrove and erosion interdepartmental working groups, a new proactive community-based NGO and a NGO-network supported by private sector funding that is focused on coastal community issues. The BBMP also resulted in the formation of the Balikpapan Bay Management Council, chaired by the Provincial Governor and including the heads of three districts (Panajam Paser Utara, Pasir and Kutai Kartengara), the Mayor of the City of Balikpapan and the Minister of Marine Affairs and Fisheries, who were all co-signatories to the BBMP. The BBMP has already stimulated other regional governments to start on similar programs. In the last few months, East Kalimantan was also inaugurated as a founding regional center for the new national university-based Sea Partnership Program sponsored by the MMAF and facilitated by the CRMP.

In **Lampung**, the CRMP focused on establishing a participatory provincial strategic planning and management process. This resulted in the ground-breaking Lampung Coastal Resources Atlas, which defines for the first time the extent and condition of the province's natural resources through a combination of existing information and the input of over 270 local stakeholders and 60 government and non-government organizations. The atlas provided the foundation for the development of a Lampung coastal strategic plan and the program served as a learning site for Bogor Agricultural Institute's Center for Coastal and Marine Resources Studies that has since adopted the management of the Lampung coastal program. As a demonstration of early local actions under the Lampung Province Coastal Strategic Plan, two community-based initiatives - one in Pematang Pasir with an emphasis on sustainable aquaculture good practice, and the other on Sebesi Island in Lampung Bay focused on marine sanctuary development and management - were implemented. The atlas model was later replicated by at least nine other provinces using only provincial government funds.

In **Papua**, in the final year of Proyek Pesisir, a coastal atlas based upon the Lampung atlas format was produced for Bintuni Bay, an environmentally important area that is in the early stages of major development activities. Bintuni Bay is located within the newly formed Bintuni District that is rich in natural resources, including extensive natural gas reserves, and perhaps the largest contiguous stand of mangroves in Southeast Asia. The atlas development process was implemented in cooperation with local NGOs, the petroleum industry (BP) and the University of Papua and began a process of participatory planning and integrated coastal management that is leading to mechanisms of participatory planning for the coastal resources in the area. Local partners have expressed their interest in using the Bintuni Bay atlas as a starting point for developing their own set of "best practices" such as community-based coastal management and multi-stakeholder, watershed-based bay management for Bintuni Bay.



**Pengembangan Universitas** merupakan aspek penting dari kegiatan Proyek Pesisir dalam mengembangkan pusat keunggulan pengelolaan pesisir melalui sistem Perguruan Tinggi di Indonesia, dan memanfaatkan pusat ini untuk membangun kapasitas universitas-universitas lain di Indonesia. Pusat Kajian Sumberdaya Pesisir dan Laut (PKSPL) yang dikembangkan di Institut Pertanian Bogor (IPB) telah dipilih sebagai mitra utama, mengingat posisinya sebagai institusi pengelolaan sumberdaya alam utama di Indonesia. Selain mengelola Lampung sebagai daerah kajian, PKSPL-IPB mendirikan perpustakaan sebagai referensi pengelolaan pesisir terpadu nasional, yang terbuka bagi para mahasiswa dan kalangan profesional, serta menyediakan layanan peminjaman perpustakaan antaruniversitas untuk berbagai perguruan tinggi di Indonesia (situs web: <http://www.indomarine.or.id>). PKSPL-IPB telah memprakarsai lokakarya tahunan pembelajaran pengelolaan pesisir terpadu, penerbitan jurnal pesisir nasional, serta bekerja sama dengan Proyek Pesisir mengadakan Konferensi Nasional (KONAS) Pengelolaan Pesisir Terpadu, yang kini menjadi ajang utama bagi pertukaran informasi dan studi kasus pengelolaan pesisir terpadu di Indonesia. Kegiatan dua tahunan tersebut dihadiri 600 peserta domestik dan internasional. Berdasarkan pengalaman positif dengan IPB dan PKSPL tersebut, telah dibentuk sebuah jaringan universitas yang menangani masalah pengelolaan pesisir yaitu INCUNE (Indonesian Coastal Universities Network), yang beranggotakan 11 universitas. Jaringan ini menyatukan universitas-universitas di wilayah pesisir di seluruh Indonesia, yang dibentuk dengan tujuan untuk pertukaran informasi, riset, dan pengembangan kapasitas, dengan PKSPL-IPB berperan sebagai sekretariat. Selain INCUNE, Proyek Pesisir juga memegang peranan penting dalam mengembangkan Program Kemitraan Bahari (PKB) di Indonesia, mengambil contoh keberhasilan Program Kemitraan Bahari (Sea Grant College Program) di Amerika Serikat. Program ini mencoba mengembangkan kegiatan penjangkauan, pendidikan, kebijakan, dan riset terapan wilayah pesisir di berbagai universitas penting di kawasan pesisir Indonesia. Program Kemitraan Bahari menghubungkan universitas di daerah dengan pemerintah setempat melalui isu-isu yang menyentuh kepentingan pemerintah lokal dan masyarakat, serta berupaya mengatasi kesenjangan dalam kapasitas perorangan dan kelembagaan di daerah.

Proyek Pesisir mengembangkan usaha-usaha di tingkat **nasional** untuk memanfaatkan peluang-peluang baru yang muncul, seiring diberlakukannya Undang-Undang tentang Otonomi Daerah. Pada periode 2000-2003, Proyek Pesisir bekerja sama dengan Departemen Kelautan dan Perikanan, BAPPENAS, instansi nasional lainnya, pemerintah daerah, lembaga swadaya masyarakat (LSM), dan perguruan tinggi dalam menyusun rancangan undang-undang pengelolaan wilayah pesisir (RUU PWP). Rancangan undang-undang ini merupakan salah satu rancangan undang-undang yang disusun secara partisipatif dan transparan sepanjang sejarah Indonesia. Saat ini RUU tersebut sedang dipertimbangkan oleh Dewan Perwakilan Rakyat (DPR). RUU disusun berbasis insentif dan bertujuan untuk mendukung pemerintah daerah, LSM, dan masyarakat lokal dalam memperoleh hak-hak mereka yang berkaitan dengan isu-isu desentralisasi daerah dalam pengelolaan pesisir. Dukungan lain yang diberikan Proyek Pesisir kepada Departemen Kelautan dan Perikanan adalah upaya mengembangkan kapasitas dari para staf, perencanaan strategis, dan dibentuknya program baru yang bersifat desentralistik seperti Program Kemitraan Bahari.

Koleksi dokumen dan bahan bacaan ini bertujuan untuk mendokumentasikan pengalaman-pengalaman Proyek Pesisir dalam mengelola wilayah pesisir, memberikan kesempatan yang lebih luas kepada publik untuk mengaksesnya, serta untuk mentransfer dokumen tersebut kepada seluruh mitra, rekan kerja, dan sahabat-sahabat Proyek Pesisir di Indonesia. Produk utama dari koleksi ini adalah ***Pembelajaran dari Dunia Pengelolaan Pesisir di Indonesia*** yang dibuat dalam bentuk Compact Disc-Read Only Memory (CD-ROM), berisikan gambaran umum mengenai Proyek Pesisir dan produk-produk penting yang dihasilkannya. Adapun Koleksi Proyek Pesisir ini terbagi kedalam 5 tema, yaitu:

- **Seri Reformasi Hukum**, berisikan pengalaman dan panduan Proyek Pesisir tentang proses penyusunan rancangan undang-undang/peraturan kabupaten, provinsi, dan nasional yang berbasis masyarakat, serta kebijakan tentang pengelolaan pesisir dan batas laut
- **Seri Pengelolaan Wilayah Pesisir Regional**, berisikan pengalaman, panduan, dan rujukan Proyek Pesisir mengenai Perencanaan dan Pengelolaan Daerah Aliran Sungai (DAS), profil atlas dan geografis pesisir Lampung, Balikpapan, Sulawesi Utara, dan Papua

**University** development was an important aspect of the CRMP, and the marine center at Bogor Agricultural Institute, the premier natural resources management institution in Indonesia, was its primary partner, and was used to develop capacity in other universities. In addition to managing the Lampung site, the Center for Coastal and Marine Resources Studies established a national ICM reference library that is open to students and professionals, and provides an inter-university library loan service for other universities in Indonesia (Website: <http://www.indomarine.or.id>). The Center initiated an annual ICM learning workshop, a national peer-reviewed coastal journal and worked with the CRMP to establish a national coastal conference that is now the main venue for exchange of information and case studies on ICM in Indonesia, drawing over 600 Indonesian and international participants to its bi-annual meeting. Building from the positive experience with Bogor and its marine center, an Indonesia-wide network of 11 universities (INCUNE) was developed that tied together key coastal universities across the nation for information exchange, academic research and capacity development, with the Center for Coastal and Marine Resources Studies serving as the secretariat. In addition to INCUNE, the CRMP was instrumental in developing the new Indonesia Sea Partnership Program, modeled after the highly successful U.S. Sea Grant College Program, that seeks to develop coastal outreach, education, policy and applied research activities in key regional coastal universities. This program, sponsored by MMAF, connects regional universities with local governments and other stakeholders through issues that resonate with local government and citizens, and addresses the gap of human and institutional capacity in the regions.

**National** level efforts expanded to take advantage of new opportunities offered by new laws on regional autonomy. From 2000 to 2003, the CRMP worked closely with the Ministry of Marine Affairs and Fisheries, the National Development Planning Agency (BAPPENAS), other national agencies, regional government partners, NGOs and universities to develop a new national coastal management law. The National Parliament is now considering this law, developed through one of the most participatory and transparent processes of law development in the history of Indonesia. The draft law is incentive-based and focuses on encouraging local governments, NGOs and citizens to assume their full range of coastal management authority under decentralization on issues of local and more-than-local significance. Other support was provided to the MMAF in developing their own organization and staff, in strategic planning, and in creating new decentralized programs such as the Sea Partnership Program.

The collection of CRMP materials and resources contained herein was produced to document and make accessible to a broader audience the more recent and significant portion of the CRMP's considerable coastal management experience, and especially to facilitate its transfer to our Indonesian counterparts, colleagues and friends. The major product is **Learning From the World of Coastal Management in Indonesia**, a CD-ROM that provides an overview of the CRMP (Proyek Pesisir) and its major products. The collection is organized into five series related to general themes. These are:

- **Coastal Legal Reform Series**, which includes the experience and guidance from the CRMP regarding the development of community-based, district, provincial and national laws and policies on coastal management and on marine boundaries
- **Regional Coastal Management Series**, which includes the experience, guidance and references from the CRMP regarding watershed planning and management, and the geographical and map profiles from Lampung, Balikpapan, North Sulawesi and Papua

- **Seri Pengelolaan Wilayah Pesisir Berbasis Masyarakat**, berisikan pengalaman dan panduan Proyek Pesisir dan desa-desa percontohnya di Sulawesi Utara mengenai keberhasilan kegiatan, serta proses pelibatan masyarakat dalam pengelolaan pesisir
- **Seri Perguruan Tinggi**, berisikan pengalaman, panduan, dan rujukan Proyek Pesisir dan PKSPL-IPB mengenai peranan dan keberhasilan perguruan tinggi dalam pengelolaan pesisir
- **Seri Pemantauan Pesisir**, berisikan pengalaman, panduan, dan rujukan Proyek Pesisir mengenai pemantauan sumberdaya pesisir oleh masyarakat dan pemangku kepentingan, khususnya pengalaman dari Sulawesi Utara

Kelima seri ini berisikan berbagai **Studi Kasus**, **Buku Panduan**, **Contoh-contoh**, dan **Katalog** dalam bentuk *hardcopy* dan *softcopy* (**CD-ROM**), tergantung isi setiap topik dan pengalaman dari proyek. Material dari seri-seri ini ditampilkan dalam Bahasa Indonesia atau Bahasa Inggris. Sedianya, sebagian besar dokumen akan tersedia baik dalam Bahasa Indonesia maupun Inggris. Namun karena keterbatasan waktu, hingga saat koleksi ini dipublikasikan, belum semua dokumen dapat ditampilkan dalam dua bahasa tersebut. Masing-masing dokumen dalam tiap seri berbeda, tetapi fungsinya saling mendukung satu sama lain, yaitu:

- **Studi Kasus**, mendokumentasikan pengalaman Proyek Pesisir, dibuat secara kronologis pada hampir semua kasus, dilengkapi dengan pembahasan dan komentar mengenai proses dan alasan terjadinya berbagai hal yang dilakukan. Dokumen ini biasanya berisikan rekomendasi-rekomendasi umum dan pembelajaran, dan sebaiknya menjadi dokumen yang dibaca terlebih dahulu pada tiap seri yang disebutkan di atas, agar pembaca memahami topik yang disampaikan.
- **Panduan**, memberikan panduan mengenai proses kegiatan kepada para praktisi yang akan mereplikasi atau mengadopsi kegiatan-kegiatan yang berhasil dikembangkan Proyek Pesisir. Mereka akan merujuk pada **Studi Kasus** dan **Contoh-contoh**, dan sebaiknya dibaca setelah dokumen **Studi Kasus** atau **Contoh-contoh**.
- **Contoh-contoh**, berisikan pencetakan ulang atau sebuah kompilasi dari material-material terpilih yang dihasilkan atau dikumpulkan oleh proyek untuk suatu daerah tematik tertentu. Dalam dokumen ini terdapat pendahuluan ringkas dari setiap contoh-contoh yang ada serta sumber berikut fungsi dan perannya dalam kelima seri yang ada. Dokumen ini terutama digunakan sebagai rujukan bagi para praktisi, serta digunakan bersama-sama dengan dokumen **Studi Kasus** dan **Panduan**, sehingga hendaknya dibaca setelah dokumen lainnya.
- **Katalog**, berisikan daftar atau data yang dihasilkan pada daerah tematik dan telah disertakan ke dalam **CD-ROM**.
- **CD-ROM**, berisikan file elektronik dalam format aslinya, yang berfungsi mendukung dokumen-dokumen lainnya seperti diuraikan di atas. Isi CD-ROM tersebut bervariasi tiap seri, dan ditentukan oleh penyunting masing-masing seri, sesuai kebutuhan.

Beberapa dokumen dari Koleksi Dokumen Proyek Pesisir ini dapat diakses melalui internet di situs Coastal Resources Center (<http://www.crc.uri.edu>), PKSPL-IPB (<http://www.indomarine.or.id>), dan Proyek Pesisir (<http://www.pesisir.or.id>).

Pengantar ini tentunya belum memberikan gambaran detail mengenai seluruh kegiatan, pekerjaan, dan produk-produk yang dihasilkan Proyek Pesisir selama tujuh tahun programnya. Karena itu, kami mempersilakan pembaca untuk dapat lebih memahami seluruh komponen dari koleksi dokumen ini, sembari berharap bahwa koleksi ini dapat bermanfaat bagi para manajer pesisir, praktisi, ilmuwan, LSM, dan pihak-pihak terkait lainnya dalam meneruskan model-model dan kerangka kerja yang telah dikembangkan oleh Proyek Pesisir dan mitra-mitranya. Kami amat optimis mengenai masa depan pengelolaan pesisir di Indonesia, dan bangga atas kerja sama yang baik yang telah terjalin dengan seluruh pihak selama program ini berlangsung. Kami juga gembira dan bangga atas diterbitkannya Koleksi Dokumen Proyek Pesisir ini.

- **Community-Based Coastal Resource Management Series**, which includes the experience, and guidance from the CRMP and its North Sulawesi villages regarding best practices and the process for engaging communities in coastal stewardship
- **Coastal University Series**, which includes the experience, guidance and references from the CRMP and the Center for Coastal and Marine Resources Studies regarding the role and accomplishments of universities in coastal management
- **Coastal Monitoring Series**, which includes the experience, guidance and references from the CRMP regarding community and stakeholder monitoring of coastal resources, primarily from the North Sulawesi experience

These five series contain various **Case Studies**, **Guidebooks**, **Examples** and **Catalogues** in hard copy and in **CD-ROM** format, depending on the content of the topic and experience of the project. They are reproduced in either the English or Indonesian language. Most of the materials in this set will ultimately be available in both languages but cross-translation on some documents was not complete at the time of publishing this set. The individual components serve different, but complementary, functions:

- **Case Studies** document the CRMP experience, chronologically in most cases, with some discussion and comments on how or why things occurred as they did. They usually contain general recommendations or lessons learned, and should be read first in the series to orient the reader to the topic.
- **Guidebooks** are “How-to” guidance for practitioners who wish to replicate or adapt the best practices developed in the CRMP. They will refer to both the **Case Studies** and the **Examples**, so should be read second or third in the series.
- **Examples** are either exact reprints of key documents, or a compilation of selected materials produced by the project for the thematic area. There is a brief introduction before each example as to its source and role in the series, but they serve primarily as a reference to the practitioner, to be used with the **Case Studies** or **Guidebooks**, and so should be read second or third in the series.
- **Catalogues** include either lists or data produced by the project in the thematic area and have been included on the **CD-ROMs**.
- **CD-ROMs** include the electronic files in their original format that support many of the other documents described above. The content of the CD-ROMs varies from series to series, and was determined by the individual series editors as relevant.

Several of the documents produced in this collection of the CRMP experiences are also available on the Internet at either the Coastal Resources Center website (<http://www.crc.uri.edu>), the Bogor Agricultural Institute website (<http://www.indomarine.or.id>) and the Proyek Pesisir website (<http://www.pesisir.or.id>).

This preface cannot include a detailed description of all activities, work, products and outcomes that were achieved during the seven-year CRMP program and reflected in this collection. We encourage you to become familiar with all the components of the collection, and sincerely hope it proves to be useful to coastal managers, practitioners, scientists, NGOs and others engaged in furthering the best practices and frameworks developed by the USAID/BAPPENAS CRMP and its counterparts. We are optimistic about the future of coastal management in Indonesia, and have been proud to work together during the CRMP, and in the creation of this collection of CRMP (Proyek Pesisir) products.



Dalam kesempatan ini, kami ingin menyampaikan penghargaan yang setinggi-tingginya kepada seluruh mitra di Indonesia, Amerika Serikat, dan negara-negara lainnya, yang telah memberikan dukungan, komitmen, semangat, dan kerja keras mereka dalam membantu menyelesaikan Proyek Pesisir dan segenap kegiatannya selama 7 tahun terakhir. Tanpa partisipasi, keberanian untuk mencoba hal yang baru, dan kemauan untuk bekerja bahu-membahu -baik dari pihak pemerintah, LSM, universitas, masyarakat, dunia usaha, para ahli, dan lembaga donor-'keluarga besar' pengelolaan pesisir Indonesia tentu tidak akan mencapai kemajuan pesat seperti yang ada sekarang ini.



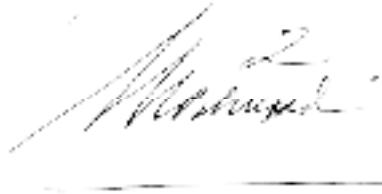
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25 Agustus 2003

*We would like to acknowledge and extend our deepest appreciation to all of our partners in Indonesia, the USA and other countries who have contributed their support, commitment, passion and effort to the success of CRMP and its activities over the last seven years. Without your participation, courage to try something new, and willingness to work together—government, NGOs, universities, communities, private sector, experts and donors— the Indonesian coastal family could not have grown so much stronger so quickly.*



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August 25, 2003

## DAFTAR KOLEKSI DOKUMEN PROYEK PESISIR 1997 - 2003 CONTENT OF CRMP COLLECTION 1997 - 2003

Yang tercetak tebal adalah dokumen yang tersedia sesuai bahasanya  
*Bold print indicates the language of the document*

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### **PEMBELAJARAN DARI PENGELOLAAN WILAYAH PESISIR DI INDONESIA** **LEARNING FROM THE WORLD OF COASTAL MANAGEMENT IN INDONESIA**

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- |           |   |
|-----------|---|
| 1. CD-ROM | Latar Belakang Informasi dan Produk-produk Andalan Proyek Pesisir |
| CD-ROM    | <i>Background Information and Principle Products of CRMP</i>      |
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### **SERI REFORMASI HUKUM** **COASTAL LEGAL REFORM SERIES**

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- |                |   |
|----------------|---|
| 1. Studi Kasus | Penyusunan RUU Pengelolaan Wilayah Pesisir  |
| Case Study     | <i>Developing a National Law on Coastal Management</i>  |
| 2. Studi Kasus | Penyusunan Perda Minahasa Pengelolaan Sumberdaya Wilayah Pesisir Terpadu Berbasis Masyarakat        |
| Case Study     | <i>Developing a District Law in Minahasa on Community-Based Integrated Coastal Management</i>       |
| 3. Studi Kasus | Batas Wilayah Laut Provinsi Sumatera Selatan dan Provinsi Bangka-Belitung                           |
| Case Study     | <i>The Marine Boundary Between the Provinces of South Sumatera and Bangka-Bilitung</i>              |
| 4. Studi Kasus | Konsultasi Publik dalam Penyusunan RUU  |
| Case Study     | <i>A Public Consultation Strategy for Developing National Laws</i>                                  |
| 5. Panduan     | Penentuan Batas Wilayah Laut Kewenangan Daerah Menurut Undang-Undang No.22/1999                     |
| Guidebook      | <i>Establishing Marine Boundaries under Regional Authority Pursuant to National Law No. 22/1999</i> |
| 6. Contoh      | Proses Penyusunan Peraturan Perundangan Pengelolaan Sumberdaya Wilayah Pesisir                      |
| Example        | <i>The Process of Developing Coastal Resource Management Laws</i>                                   |
| 7. Contoh      | Dokumen-dokumen Pendukung dari Peraturan Perundangan Pengelolaan Wilayah Pesisir                    |
| Example        | <i>Example from Development of Coastal Management Laws</i>  |
| 8. CD-ROM      | Dokumen-dokumen Pilihan dalam Peraturan Perundangan Pengelolaan Wilayah Pesisir                     |
| CD-ROM         | <i>Selected Documents from the Development of Coastal Management Laws</i>                           |
| 9. CD-ROM      | Pengesahan Perda Minahasa Pengelolaan Sumberdaya Wilayah Pesisir Terpadu Berbasis Masyarakat        |
| CD-ROM         | <i>Enactment of a District Law in Minahasa on Community-Based Integrated Coastal Management</i>     |

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**SERI PENGELOLAAN WILAYAH PESISIR DAERAH**  
**REGIONAL COASTAL MANAGEMENT SERIES**

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1. Panduan *Guidebook* Penyusunan Atlas Sumberdaya Wilayah Pesisir  
*Developing A Coastal Resources Atlas*
2. Contoh *Example* Program Pengelolaan Wilayah Pesisir di Lampung  
*Lampung Coastal Management Program*
3. Contoh *Example* Rencana Strategis Pengelolaan Terpadu Teluk Balikpapan dan Peta-peta Pilihan  
*Balikpapan Bay Integrated Management Strategic Plan and Volume of Maps*
4. Contoh *Example* Atlas Sumberdaya Wilayah Pesisir Pilihan  
*Selected Compilation of Coastal Resources Atlases*
5. CD-ROM *CD-ROM* Rencana Strategis Pengelolaan Terpadu Teluk Balikpapan  
*Balikpapan Bay Integrated Management Strategic Plan*
6. Katalog *Catalogue* Database SIG dari Atlas Lampung (Edisi Terbatas, dengan 2 CD)  
*Lampung Atlas GIS Database (Limited Edition, with 2 CDs)*
7. Katalog *Catalogue* Database SIG dari Atlas Minahasa, Manado dan Bitung (Edisi Terbatas, dengan 2 CD)  
*Minahasa, Manado and Bintung Atlas GIS Database (with 2 CDs) (Limited Edition, with 2 CDs)*
8. Katalog *Catalogue* Database SIG dari Atlas Teluk Bintuni (Edisi Terbatas, dengan 2 CD)  
*Bintuni Bay Atlas GIS Database (Limited Edition, with 2 CDs)*
9. Katalog *Catalogue* Database SIG dari Teluk Balikpapan (Edisi Terbatas, dengan 1CD)  
*Balikpapan Bay GIS Database (Limited Edition, with 1 CDs)*

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**SERI PENGELOLAAN SUMBERDAYA WILAYAH PESISIR BERBASIS MASYARAKAT**  
**COMMUNITY-BASED COASTAL RESOURCES MANAGEMENT SERIES**

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1. Studi Kasus *Case Study* Pengelolaan Sumberdaya Wilayah Pesisir Berbasis Masyarakat di Sulawesi Utara  
*Community Based Coastal Resources Management in North Sulawesi*
2. Panduan *Guidebook* Pengelolaan Sumberdaya Wilayah Pesisir Berbasis Masyarakat  
*Community Based Coastal Resources Management*
3. Panduan *Guidebook* Pembentukan dan Pengelolaan Daerah Perlindungan Laut Berbasis Masyarakat  
*Developing and Managing Community-Based Marine Sanctuaries*
4. Panduan *Guidebook* Pembersihan Bintang Laut Berduri  
*Crown of Thorns Clean-Ups*
5. Contoh *Example* Dokumen dari Pengelolaan Sumberdaya Wilayah Pesisir Berbasis Masyarakat di Sulawesi Utara  
*Documents from Community-Based Coastal Resources Management in North Sulawesi*
6. CD-ROM *CD-ROM* Pengelolaan Sumberdaya Wilayah Pesisir Berbasis Masyarakat  
*Community-Based Coastal Resources Management*



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**SERI PERGURUAN TINGGI KELAUTAN  
COASTAL UNIVERSITY SERIES**

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1. Studi Kasus      Pengembangan Program Kemitraan Bahari di Indonesia  
*Case Study*      *Developing the Indonesian Sea Partnership Program*
2. Contoh            Pencapaian oleh Proyek Pesisir PKSPL-IPB dan INCUNE (1996-2003)  
*Example*          *Proyek Pesisir's Achievements in Bogor Agricultural Institute's Center for Coastal and Marine Resources Studies and the Indonesian Coastal University Network (1996-2003)*
3. Contoh            Kurikulum dan Agenda Pelatihan Pengelolaan Sumberdaya Wilayah Pesisir Terpadu  
*Example*          *Curriculum and Agenda from Integrated Coastal Resources Management Training*
4. Katalog          Abstrak "Jurnal Pesisir dan Lautan" (1998-2003)  
*Catalogue*        *Abstracts from "Pesisir dan Lautan Journal" (1998-2003)*
5. CD-ROM          Dokumen Perguruan Tinggi Kelautan  
*CD ROM*          *Coastal University Materials*

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**SERI PEMANTAUAN WILAYAH PESISIR  
COASTAL MONITORING SERIES**

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1. Studi Kasus      Pengembangan Program Pemantauan Wilayah Pesisir oleh Para Pemangku Kepentingan di Sulawesi Utara  
*Case Study*        *Developing a Stakeholder-Operating Coastal Monitoring Program in North Sulawesi*
2. Panduan          Pemantauan Terumbu Karang dalam rangka Pengelolaan  
*Guidebook*        *Coral Reef Monitoring for Management (from Philippine Guidebook)*
3. Panduan          Metode Pemantauan Wilayah Pesisir oleh FORPPELA, jilid 1  
*Guidebook*        *FORPPELA Coastal Monitoring Methods, Version 1*
4. Panduan          Pemantaun Terumbu Karang Berbasis Masyarakat dengan Metode Manta Tow  
*Guidebook*        *Community-Based Monitoring of Coral Reefs using the Manta Tow Method*
5. Contoh            Program Pemantauan oleh Para Pemangku Kepentingan di Sulawesi Utara Tahun Pertrama, Hasil-hasil FORPPELA 2002 (dengan 1 CD)  
*Example*          *Year One of North Sulawesi's Stakeholder-Operated Monitoring Program, FORPPELA 2002 Results (with 1 CD-ROM)*

Untuk informasi lebih lanjut, silakan menghubungi:  
*For more information:*

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Phone: (021) 720 9596  
Website: <http://www.pesisir.or.id>

# Case Study

## Developing a National Law on Coastal Management

Jason Patlis  
Maurice Knight  
Sapta Putra Ginting  
Adi Wiyana  
Glaudy Hendrarsa  
Wilson Siahaan

## Case Study

### Developing a National Law on Coastal Management

Jason Patlis  
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Glaudy Hendrarsa  
Wilson Siahaan

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# Preface

The materials in this Law Reform Series represent part of a cumulative effort in law reform and governance in coastal management in Indonesia from 1997-2003. Over these seven years, the United States Agency for International Development (USAID) provided funds to support the Coastal Resources Management Project (CRMP) in a cooperative program with the Indonesia National Development Planning Agency (BAPPENAS), the Ministry of Marine Affairs and Fisheries (MMAF), and regional governments in the Provinces of Lampung, East Kalimantan and North Sulawesi, the City of Balikpapan, and the Districts of Penajam Paser Utara, Pasir and Minahasa, among others. Through this cooperative program, the CRMP engaged in law reform in a variety of ways that integrated lessons learned from each part of the program to inform the evolution of new legal and enabling frameworks.

Law itself is one of the foundations of society, and it shapes the behavior and activities of its citizens. In order to sustain and institutionalize the concepts and activities of coastal management and good governance, the CRMP sought to internalize these concepts and activities into the fabric of society through its legal system. Transparent and participatory legal reform ensures the legitimacy of laws and, as a result, increases the chance of their implementation.

Law reform in Indonesia has assumed even greater importance in light of the revolution in governance that has swept the country since 1998. A series of statutes in 1999 laid the seeds for a democratic form of government and at the same time shifted significant management authority from the central government to regional governments. Governments at all levels—central, provincial, district and village—are developing new laws and entirely new paradigms of thought to address these two trends. While the challenges to draft new laws in a new setting are most daunting, the rewards and opportunities are most profound. In Indonesia new laws now are being written that will establish the legal framework for many years to come.

Especially in the area of coastal management, governance and law reform have seen rapid and profound changes in recent years. The establishment of a new ministry within the central government—the Ministry of Marine Affairs and Fisheries—and the establishment of regional marine jurisdictions for provincial and district governments, create unique opportunities to develop new laws and policies regarding coastal management that can have lasting impacts within the country.

When one thinks of examples of law reform, one may think of the laws themselves. However, law reform is more a process than a product. It is not only the substance of new laws that is important. Equally important is the process through which laws are conceived, drafted, socialized, enacted and finally implemented. When done in a transparent,

participatory and inclusive manner, this process facilitates an evolution in thought as to how government and civil society interact with one another in mutual governance. This is the meaning of true law reform.

The CRMP invested significant resources into law reform at all levels of government and within all segments of society. This effort focused on two aspects of law reform: the process of developing and implementing new laws as well as the content of the laws. The CRMP helped create new paradigms for public consultations, drafting and negotiating, outreach and public relations that are now serving as models for a range of activities in a variety of regions across Indonesia. In addition, the CRMP helped enact a series of laws that have been landmarks in terms of natural resources management in Indonesia.

The CRMP assisted in the enactment of laws at each level of government, including village ordinances, district and provincial laws and a national law that is still pending. It assisted villages in Lampung and North Sulawesi to develop ordinances for formalizing the management of their marine protected areas and, more generally, managing their coastal resources. It assisted the District of Minahasa to develop and enact a law on integrated community-based coastal management that empowers and guides the district government as well as villages to undertake new coastal management initiatives. The CRMP worked with the Province of North Sulawesi through Sam Ratulangi University to develop and enact a law on coastal management focusing on broader provincial issues. In East Kalimantan, it is engaged with the District of Penajam Paser Utara and the City of Balikpapan in developing laws for coastal resources governance. The CRMP also assisted the Ministry of Marine Affairs and Fisheries to draft a law creating a national vertically nested coastal governance system that also encourages horizontal coordination in the regions. On the verge of enactment, this draft law, with the process through which it was developed, is the first of its kind in Indonesia's history.

Taken individually, each effort represents a successful example of law being developed in a collaborative, participatory and transparent manner. Each one represents a law that is specifically tailored to the needs of the jurisdiction for which it is written. Taken collectively, these laws represent something much greater, however. They represent a comprehensive, cohesive approach to law reform that reaches into all aspects of coastal management, a truly integrated, nested system of governance that flows in three directions: from bottom to top, top to bottom and horizontally across the sectors and stakeholders. These efforts also represent law reform as a living, iterative process that is continually being refined and improved.

The documents in this series illustrate the breadth and depth of the CRMP's efforts in law reform. This Series includes guidebooks, case studies and examples that address not only the text of enacted laws and regulations, but also the working documents consisting of studies, drafts, minutes of meetings, consultations, press releases, brochures, and so on, which underscore the basic fact that law reform is an interactive, evolving process.

The documents are presented in either Indonesian or English languages, and sometimes in both. Ultimately, most documents will be available in Indonesian. However, at the time of printing, the translations of some documents were not available. The documents and CDs included in the Series are:

1. **Case Study:** Developing a National Law on Coastal Management
2. **Case Study:** Developing a District Law in Minahasa on Community-Based Integrated Coastal Management

3. **Case Study:** The Marine Boundary Between the Provinces of South Sumatra and Bangka-Belitung
4. **Case Study:** A Public Consultation Strategy for Developing National Laws
5. **Guidebook:** Determining Marine Boundaries under Regional Authority Pursuant to National Law No. 22/1999
6. **Example:** The Process of Developing Coastal Resources Management Laws
7. **Example:** Examples from the Development of Coastal Management Laws
8. **CD-ROM:** Selected Documents from the Development of Coastal Management Laws
9. **CD-ROM:** Enactment of a District Law in Minahasa on Community-Based Integrated Coastal Resources Management

These documents should be read in conjunction with one another, and contain cross-references to each other. In particular, the CD of Selected Documents contains many of the supporting documents that were developed or used by the CRMP and its counterparts. The materials in this series represent not only successful models for coastal management in a decentralized Indonesia, but also models for management of other natural resources, in other governance systems, and in other countries. The issues discussed and challenges faced in these efforts apply in many other contexts and it is hoped that their availability in this set will maximize their value.

•••

**T**his case study is intended to offer a detailed descriptive look at one of CRMP's most significant endeavors: assistance to the Ministry of Marine Affairs and Fisheries (MMAF) in the development of a draft statute on integrated coastal management that is on the doorstep of enactment. The CRMP was involved with MMAF since the initial concept of a national coastal law was introduced through a study tour to the United States in September 2000. It has remained engaged through to the present, with the draft statute on the verge of being submitted to the Indonesia National Parliament (Dewan Perwakilan Rakyat or DPR) at the time of printing. During this period, CRMP assisted MMAF in developing innovative concepts for coastal management such as a voluntary, incentive-based program consistent with regional autonomy, as well as innovative strategies for law development such as an elaborate public consultation strategy lasting more than one year. These efforts, their inception, and their results are discussed in detail in this case study.

This case study is intended to document the process of development of a national coastal management law and discuss the results of this process. More importantly, it is intended to provide an example of legislative reform that has been highly successful. Although the statute has not yet been enacted, the processes and concepts developed in connection with the draft statute have served their own purposes in promoting open, transparent, participatory and accountable decision-making on the part of the MMAF and other participating agencies. This has helped to identify and support a core of decision-makers within the central government to foster vocal and concerned constituencies on coastal issues, who can work to establish priorities and agendas for management at the national level, and who can continue to create models for governance that will ultimately manifest themselves in future laws and policies. These benefits and capacity development within CRMP's institutional partners exist independent of the enactment of the law, and represent significant achievements even while the enactment of the draft law is still pending.

The case study is divided into four parts. The first part discusses the basic legal framework in terms of overall governance and in coastal management specifically. It is this framework that provides the background and basis for the new law on integrated coastal management. The second part discusses the evolution of the law, from the initial conceptual foundations to the final steps of presenting the draft statute to the Office of the President. The third part describes the substantive aspects of the draft statute. The fourth part looks briefly at political considerations in attempting to enact a draft statute.

Jakarta, August 2003

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# Abbreviations and Indonesian Terms

AMAN	: Indigenous Peoples Alliance of Nusantara Archipelago
BAPEDALDA	: Regional Environmental Impact Management Agency
BAPPEDA	: Regional Development Planning Agency
BAPPENAS	: National Development Planning Agency
BPD	: Village Representative Body
BPPK	: Coastal Management Council of Minahasa
BPPT	: Agency for the Assessment and Application of Technology
Bupati	: Regent, Head of Kabupaten
Camat	: Head of Kecamatan
CRC	: Coastal Resources Center
CRMP	: Coastal Resources Management Project
Desa	: Village
DMI	: Indonesia Maritime Council
DKP	: Ministry of Marine Affairs and Fisheries
DPK Minahasa	: Fisheries and Marine Affairs Office of Minahasa
DPL	: Marine Protected Area
DPR-RI	: Indonesia House of Representatives
DPRD	: Regional House of Representatives
Fraksi	: Faction in parliament (from political parties and other groups)
ICEL	: Indonesian Center of Environmental Law
ICM	: Integrated Coastal Management
IHSA	: Natural Resources Law Institute
Ijin Prakrasa	: Official Approval released by the Presiden to develop a National Law
IPB	: Bogor Agriculture Institute
Kabupaten	: District
Kecamatan	: Sub-district
KepMen	: Ministerial Decree
KepPres	: Presidential Decree
Kota	: Municipality
KTF	: Kabupaten Task Force
LIPI	: Indonesian Institute of Sciences
LSM	: Non Government Organization
MMAF	: Ministry of Marine Affairs and Fisheries
MPA	: Marine Protected Area
MPR	: People's Consultatives Assembly
Naskah Akademik	: Academic Draft on New National Law
NGO	: Non Government Organization
Pansus	: Special Commission within Parliament

Perda	: Regional Law
Perdes	: Village Ordinance
PP	: Government Regulation
RUU	: National Law or Statute Prior to approval by DPR
RUU PWP	: Draft Act on Coastal Management
Setneg	: State Secretariat
TNC	: The Nature Conservancy
UNSRAT	: University of Sam Ratulangi, Manado, North Sulawesi
URI	: University of Rhode Island
USAID	: United States Agency for International Development
UU	: National Statute or Law that has been approved by the DPR
Walikota	: Mayor, Head of Kota
WWF	: World Widelife Fund for Nature

# Legal Framework

The basic framework of Indonesia's legal system, both prior to reformasi in 1998 and subsequent to reformasi, has been well documented (MacAndrews 1986; ADB 2002), and is summarized here for background. The Republic of Indonesia is a unitary form of government, with one central government. The primary legislative body is the House of Representatives, or *Dewan Perwakilan Rakyat (DPR)*. The highest governing body is the Peoples' Consultative Assembly, or *Majelis Permusyawaratan Rakyat (MPR)*. Until January 2003, the MPR elected the President, who is the Head of Government. Since then, the Constitution and relevant statutes were amended to provide that the President and Vice President will be directly elected by popular vote starting with the election in 2004.

The Constitution of 1945 is the supreme law in the land, and all other laws emanate from it following a fairly straightforward hierarchy of laws, as follows: a People's Consultative Assembly Decision, or *Ketetapan MPR (Tap MPR)*, is enacted by the MPR, and provides direction, vision or guidance for the nation; an enacted statute, or *Undang-Undang (UU)*, is enacted by the National Legislative Parliament or *DPR*, and signed into law by the President; a regulation, or *Peraturan Pemerintah*, is signed by the President after interdepartmental review, to implement enacted statutes; a Presidential Decree, or *Keputusan Presiden (KepPres)*,<sup>1</sup> is issued by the President as an administrative directive; a Ministerial Decree, or *Keputusan Menteri*,<sup>2</sup> is an administrative directive signed by one or more Ministers.

The Indonesian government is divided into provinces and districts/municipalities.<sup>3</sup> There are 36 provinces within the country and approximately 420 districts (*kabupaten*) or municipalities (*kota*), with this number growing steadily as new districts are forming frequently. The governance system was most recently modified pursuant to the major decentralization statute, Act No. 22/1999. Each district/municipality and province has an elected legislative body (*DPR Daerah*, or *DPRD*), and an administrative branch, headed by an official (Governor for province), *Bupati* (for district) or Mayor (or *walikota* for municipality or *kota*) elected by the *DPRD*. Districts are subdivided administratively into sub-districts (*kecamatan*). Cities are generally subdivided into sub-districts also (*kelurahan*) but with different authorities. Villages (*desa*) are subdivisions of districts, with a village head and governing council.<sup>4</sup> Laws at the regional level are termed *Peraturan Daerah*

<sup>1</sup> Presidential Decree is issued by the President in his/her role as head of state ('Kepala Negara'). Compare this with an Instruksi Presiden, which is an internal order by the President in his/her role as cabinet chairman ('Kepala Pemerintah').

<sup>2</sup> Ministerial decrees are not identified as a source of law in TAP MPR III, although they were identified as such in TAP MPR No. V/MPR/1973. However, a letter issued by the Ministry of Justice provides that Ministerial Decrees still hold a position in the hierarchy of Indonesian law between Presidential Decree and Regional Regulation. Surat Dep. Kehakiman No. Mum.01.06-27, 23 Feb. 2001.

<sup>3</sup> The term 'district' is used throughout this paper and is intended to include 'municipality' as well. Act No. 22/1999 maintains the same roles, responsibilities and authorities for both districts and municipalities.

<sup>4</sup> With the enactment of Act No. 22/1999, such communities may go by different names based on local law, custom, preference. While *desa* is the most common term used in the majority of Indonesia, *kampung* is used in Papua and *nagari* is used in West Sumatera, for example.

(*Perda*), and can be enacted by both provinces and districts, approved by the respective regional parliaments (*DPRDs*) and signed by the respective heads of government.

While the Indonesian legal system is fairly straightforward in theory, there are a number of issues that make it exceptionally difficult to implement in practice. Even before reformasi and *otonomi daerah*, inherent issues in the Indonesian legal system, with respect to interpreting statutes and resolving statutory conflicts, were a major problem. In recent years, decentralization is perhaps the single biggest issue that has created an uncertain legal environment by fostering the creation of a legal system at the regional level operating for the most part independently of the legal system at the central level (ADB, 2002). Prior to 1998, statutes were established largely through the administrative machinery under the President, with final approval - largely a rubber stamp — by the *DPR*. Since 1998, two primary trends have been observed: at the national level the *DPR* is discovering its own voice, is changing statutes that have been submitted by the President, and is developing bills on its own without waiting for the President to submit them. At the regional level, local governments are discovering their own voices, and are developing laws (both administratively and legislatively) that do not necessarily conform with the policies, traditions, or even dictates of the central government in Jakarta. The difficulties are compounded in coastal resource management because of the competition for limited resources in limited space, which further strains the legal system.

For CRMP, the legal framework was viewed in the context of two basic perspectives: regional autonomy and integrated coastal management. The discussion below gives only a brief introduction to these two topics for readers who may not be familiar with them. It is not intended as a thorough analysis which is beyond the scope of this report. The discussion is rather intended to identify the issues and obstacles facing the Ministry of Marine Affairs and Fisheries in embarking on the development of a new law on coastal management. Specifically, the Ministry is working in the context of a system of governance that is still emerging from a highly centralized, highly regulatory form of governance, and is grappling with many uncertainties concerning the scope of recently changed authority and decentralization

## **1.1. General governance and regional autonomy**

With the enactment of two laws in particular - Act No. 22 on decentralization and Act No. 25 on regional revenue sharing in 1999 - regional autonomy has become a fast reality in Indonesia. These two laws - and their implementing regulations - create the legal and financial framework for governance primarily by the district, with assistance from both provincial and central levels of government (Alm and Bahl, 1999). In sum, the role of the central government has shifted from one of heavy-handed regulation and detailed management to one of guidance and policy direction. The role of the districts shifted overnight from one of central policy administration to primary management over their jurisdictions. Indonesia's unitary system of government is being challenged by the 'big bang' of regional autonomy (Hofman and Kaiser, 2002).

Act No. 22/1999 (Article 4) sets the general tone that the law is intended to arrange and organize local societies through their own decisions and based on their own aspirations. Article 7(1) provides that this authority covers every governance field except foreign affairs, defense and security, justice, finance and religion. The central government retains authority to develop policy regarding a host of subjects, including natural resource use and conservation. The primary regulation implementing the Act defines 'policies' - in addition

to guidelines, criteria, standards, and supervision - with language that conveys that subsequent, more specific action is required (Reg. No. 25/2000). Thus the role of the central government is primarily one of indirect action rather than direct regulation and control, with specific action to follow at the regional level.

The change in governance (and the difference between policy and management) is underscored in the treatment of coastal waters. Act No. 22/1999 (Article 3) establishes a local marine area under the jurisdiction of the province, up to 12 nautical miles from the island baseline, in which the province is given authority over exploration, exploitation, conservation, and management of the sea. Pursuant to Article 10(3), the district may establish jurisdiction over one-third of the provincial waters, seaward from the island baseline.<sup>5</sup> With respect to the maritime areas within the jurisdiction of the central government, specifically within the Exclusive Economic Zone (EEZ) beyond the twelve mile mark, the central government maintains direct responsibility for activities. According to Regulation No. 25/2000, (Art. 2(3)(2)(a)), it can determine conduct on exploration, conservation, processing and exploitation of natural resources in those waters. The difference between the role of the central government generally and its role within its own jurisdictional territory is illustrated by the language in Regulation No. 25 regarding natural resource conservation: generally, the central government is to “determine guidelines on management and protection on natural resources” (Art. 2(4)(g)); but within its own jurisdiction, the central government is to “manage and to implement protection of natural resources in maritime areas beyond twelve miles” (Art. 2(4)(h)).

While management authority has thus been shifted to the district, it is not absolute. Apart from the five areas of governance explicitly withheld for the central government, the central government can withhold other areas of governance through regulation (Act No. 22, Art. 7(2)). Districts must still abide by central government laws which the central government can still enforce. In addition, the provinces have certain managerial authority, although it is still largely undefined and vague. Specifically, according to Article 9 of Act No. 22/1999, the province maintains authority in three circumstances: (1) authority over intersectoral district government affairs, such as matters that affect two or more regencies; (2) in lieu of the district for matters not yet, or not able to be, handled by the district; and (3) administrative authority delegated from central government.

If Act No. 22/1999 is the vehicle for decentralization, then Act No. 25/1999 is the engine. It provides for a large shift of budgetary management from the central government to the regional government, particularly with revenues derived from natural resource consumption. The central government used to collect 80 percent natural resource revenues. Under the new formulas, the central government gets 20 percent of natural resource revenues, specifically forestry, fishing and mining, while the regional governments with jurisdiction over the resources get 80 percent (Art. 6(5)). Regulation 104 (Articles 9 and 10) elaborates upon those allocations, providing that of the 80 percent revenues that go to regional governments, 16 percent go to the provincial governments, and 64 percent goes to the regencies according to various distributions, with 32 percent going to the particular district in which the activity is taking place.

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<sup>5</sup> There are two notable exceptions to these new regional authorities. First, the seabed underneath the sea territory is not explicitly included in the maritime area, so that authority for management of the seabed remains under central government control. This includes rights to conduct activities on the seabed, such as oil, gas and mineral extraction. Second, traditional fishing rights are not restricted by the regional territorial sea delimitation.

Fisheries revenues<sup>6</sup> are handled differently. They are to be distributed to the regencies, but “in equal sums to regencies throughout Indonesia” (Reg. 104/2000, Art. 11(2)). This is a fundamental difference compared with regional revenues from other natural resource uses, which are distributed primarily to the district of origin. This difference highlights the fact that fisheries are treated as true commonly owned, national resources, to be shared by all. The result of this difference is that an individual district will receive significantly less revenue from fishing activities within its own jurisdiction than other natural resource activities. This provision removes much of the pecuniary interest - and the immediate incentive - for district governments to sell off fishing rights, as they are already doing with concessions in the forestry sector.

Act 25/1999 provides that the districts will receive most of the public revenues. However, as the bulk of income is derived from natural resource use, the revenue distribution will vary enormously from region to region (Brown, 1999). More importantly, the bulk of the income is to be used for administrative expenditures, such as operating new bureaucracies in the regions, and to support the transfer of thousands of civil servants from the central government to the regional governments (GTZ, 2003). Thus, very little new revenue will go to development projects and resource conservation.

While these four laws - Acts No. 22/1999 and 25/1999, and Regulations No. 25/2000 and 104/2000 - form the central pillars of decentralization, there are almost 1000 other regulations, decrees and guidelines that will need to be modified to be consistent with them (GTZ, 2003). Further still, numerous questions remain as to the extent of central and provincial authority, and exactly how the authority is to be exercised in light of the emphasis on district authority. Until recently, there was an effort by the central and provincial governments to revise the newly established system to restore some authority to themselves. For example, *DPR* recently commissioned a study to revise Act No. 22, which recommended that regional jurisdiction over territorial seas within twelve miles of the island baseline be revoked, with jurisdiction of those waters being returned to the central government (Hoessein, 2001). In March 2002, the President committed to maintain the current regional autonomy laws, and merely look to clarify or elaborate them, without revising or retracting them. With this recent commitment, the central and regional governments can now begin in earnest to implement the regional autonomy laws and develop policies and laws on their own, consistent with existing law.

## **1.2. Coastal management**

Indonesia is the largest archipelago state in the world, with the second longest coastline behind Canada. More than 140 million people - 60 percent of the population - live within 50 kilometers of the coastline (Idris, 2002). Indonesia's coastal resources are vital to the country: 24 percent of the Gross National Product is derived from coastal resources; 60 percent of the population's protein food source comes from fish, and 90 percent of the marine fish harvested come from within 12 miles of the shoreline (Idris, 2002). Indonesia's coastal resources are also vital to the world: Indonesia is home to 30 percent of the world's mangroves, and about 15 percent of the world's coral reefs (Hinrichsen, 1998). These resources are under great stress, and are being degraded and destroyed at an alarming rate. For example, 40 percent of Indonesia's mangroves have already been destroyed; roughly 70 percent of its coral reefs have been partially or totally destroyed (Hinrichsen, 1998).

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<sup>6</sup> Section (1) of Article 11, Regulation No. 104/2000, defines these revenues to include levies on fishery exploitation and levies on fishery production.

The existing legal regime governing coastal resources in Indonesia is, in a word, sectoral. There are approximately 22 statutes and hundreds of regulations and ministerial decrees that relate to these resources (Putra, 2002). These laws can be loosely grouped into six categories. Marine spatial laws relate to geographic delimitations of the ocean, and jurisdictional control over the maritime zone. Marine sectoral laws relate to uses of ocean resources and activities on the sea. Terrestrial spatial laws relate to general planning aspects on the land, as well as jurisdictional issues regarding land management, such as the agrarian and spatial planning laws. Terrestrial sectoral laws constitute the bulk of laws relating to coastal resource management, that relate to land-based impacts to the sea and land within the coastal area. In recent years, environmental legislation has sprung up relating to environmental protection and natural resource conservation. These laws are not sectoral, because they do not govern any one sector. Rather, they form a substantive and procedural overlay for all other sectors, and their requirements must be satisfied in the conduct of all activities. Finally, there is the legislation relating to decentralization, which also forms an overlay to all other laws. Table 1 identifies the 22 laws affecting coastal resources in Indonesia.

**Table 1: Statutes Affecting Coastal Resources**

Number/Year	Name/Subject	Category	
1	Act No. 5/1960	Basic Agrarian Law	Ter. Spatial
2	Act No. 11/1967	Basic Mining	Ter. Sectoral
3	Act No. 8/1971	Mining of Oil and Natural Gas	Ter. Sectoral
4	Act No. 1/1973	Continental Shelf	Mar. Spatial
5	Act No. 17/1974	Supervision of Offshore Oil	Mar. Sectoral
6	Act No. 20/1982	Defense Security	Ter. Sectoral
7	Act No. 5/1983	Exclusive Economic Zone	Mar. Spatial
8	Act No. 5/1984	Basic Industry	Ter. Sectoral
9	Act No. 9/1985	Fisheries	Mar. Sectoral
10	Act No. 17/1985	Ratification of UNCLOS	Mar. Spatial/Sectoral
11	Act No. 5/1990	Living Resource Conservation & Preservation	Env. Overlay
12	Act No. 9/1990	Tourism	Ter. Sectoral
13	Act No. 12/1992	Agriculture	Ter. Sectoral
14	Act No. 16/1992	Quarantine of Livestock, Fish and Plants	Ter. Sectoral
15	Act No. 21/1992	Navigation	Mar. Sectoral
16	Act No. 24/1992	Spatial Use Management Act	Ter. Spatial
17	Act No. 5/1994	Ratification of the Convention on Biodiversity	Env. Overlay
18	Act No. 6/1996	Water Management	Ter. Sectoral
19	Act No. 23/1997	Environmental Management	Env. Overlay
20	Act No. 22/1999	Regional Autonomy/ Decentralization	Gov. Overlay
21	Act No. 25/1999	Financial Equilibrium/ Regional Funding	Gov. Overlay
22	Act No. 41/1999	Basic Forestry	Ter. Sectoral

As a general rule, the laws enacted by the central government govern all activities at all levels - central, provincial, district or city. While the hierarchy of governance has been profoundly changed by the decentralization laws, for all practical purposes these 22 central laws still govern coastal resources in Indonesia. Thus, laws and policies at the central level that may conflict with each other will also be felt through the local implementation of those laws.



Among the 22 laws and six basic categories identified above, are a profound number of conflicts, gaps and overlaps. There are several reasons for this. First, Indonesian laws themselves are often vague and broad so that conflicts can arise even within a single law (i.e., one law may offer two or more broad goals or principles that may conflict when applied in specific circumstances).

Second, the rules of statutory construction for resolving differences among laws are not formally codified. As in most countries, Indonesia recognizes the premise that laws enacted later in time take priority over laws enacted earlier in time, and laws that are more specific take priority over more general laws. However, without codification of these rules there is no consistent application (Diantha, 2001). Furthermore, the laws contain only “implied repeals” of previous laws which are often very difficult to implement.

Third, where conflicts do arise they are generally not resolved through the judiciary, but rather with the issuance of a Presidential Decree or Ministerial Decree. This approach undermines the use of precedent in resolving conflicts and increasing legal certainty (Heydir, 1984).

Conflicts also exist with respect to enforcement. Different laws have different sanctions and liability for similar offenses. Sanctions, such as criminal versus civil penalties, vary widely. Different Acts also have different standards of liability, such as negligence, intentional or strict, for almost identical violations. This complicates enforcement and prosecution efforts (Patlis, 2003).

The jurisdiction of coastal and marine waters and the seabed below has seen a number of changes over the years. Article 33(3) of the Constitution of 1945 provides that all natural resources within Indonesian territorial lands and waters are managed by the state for the benefit of the people. From 1945 to 1960, regional governments had jurisdiction up to three nautical miles seaward from the low tide mark (Putra, 2002). With the enactment of Act No. 4 in 1960 relating to Marine Waters, the central government reclaimed jurisdiction over those waters. Two laws were enacted in the 1970s relating to village administration and local governance - Act No. 5/1974 and Act No. 9/1979 - which provided that village boundaries end at the coastline, reaffirming central jurisdiction over coastal waters. However, in 1992, Act No. 24 relating to Spatial Planning was enacted. Article 9 of this law provided that, in developing spatial plans, regional governments should take into account marine waters and use other laws in the regulation of marine waters. However, without specific provisions, it was little exercised.

As discussed above, Act No. 22/1999 explicitly establishes regional government jurisdiction over nearshore marine waters. Specifically, the province can establish jurisdiction up to 12 nautical miles seaward from the island baseline, while the district can assume management of up to one-third provincial waters. Regulation 25/2000 elaborates on the meaning of this jurisdiction, and discusses the authorities of each level of government in the various jurisdictions.

# The Evolution of a National Law

## 2.1. The Vision

The Ministry of Marine Affairs and Fisheries was established pursuant to Presidential Decree in 1999. First named the Ministry of Fisheries and Marine Exploration, its name changed to the Ministry of Marine Affairs and Fisheries in 2000 to more accurately reflect its mission to govern all affairs relating to marine and coastal resources. Its functions and mandate were established in their present form pursuant to Presidential Decree 165/2000 relating to Structure, Responsibility, Function, Organization and Work Plan of the Departments as amended by Presidential Decree 172/2000, and pursuant to Presidential Decree 177/2000 relating to Organization and Responsibility of the Departments. During this time, the Ministry was in the process of developing a vision and program to implement its mission.

It was also during this time that CRMP approached the Ministry to assist them in this effort. With CRMP support the Minister, accompanied by key officials from the Ministry and several officials from regional government offices, traveled to the United States during September 2000 on a study tour (Knight, 2001). During this tour, the Indonesian delegation met with officials of the U.S. National Oceanic and Atmospheric Administration and the U.S. Congress, and visited a number of sites with developed coastal management programs. The tour provided an opportunity for the Indonesian delegation to learn about an integrated coastal management program balanced between national priorities and local needs.

Immediately following this tour, CRMP hosted a major workshop in October 2000, in which Ministry officials discussed the concepts of coastal management, and its implementation in the context of the recently enacted laws on decentralization. Examples were provided of coastal management laws from around the world, including the U.S. and several states, Tanzania, Ecuador, and Sri Lanka. This meeting crystallized two major themes that have since shaped the vision of the Ministry: (1) the stakeholders and users of coastal resources - local communities, fishermen and other users of coastal resources, regional governments and other central government agencies - are in essence clients of the Ministry, to be served by efficient, balanced and integrated planning and management; (2) in order to accomplish this goal, to accommodate the new laws on decentralization, and to integrate the numerous sectoral laws governing coastal resources, the Ministry should strive for the *DPR* to enact a new statute, not merely enact a regulation or administrative decree.

The Ministry decided to push for new statute for both legal and political reasons. The legal reasoning was based on two issues: the established hierarchy of Indonesia laws; and the new governance structure under regional autonomy (Patlis et al., 2001). Given that the 22 laws governing coastal resources are statutes that have been enacted by the

*DPR* and signed by the President, a new law attempting to coordinate among them would need to be at least on par, or higher, with those existing laws, in order to have sufficient legal authority. Without operating on the same level, a new law, such as a regulation, would have little legal effect over higher laws, such as statutes. Thus, the Ministry made the decision to develop a draft statute (Rancangan Undang Undang—*RUU*), rather than a regulation (Peraturan Pemerintah —*PP*).

As for decentralization, the 22 sectoral statutes all predate Act No. 22/1999 (except for Act No. 41/1999 on Forestry). Consequently, if the MMAF wanted to develop an ICM program that was consistent with regional autonomy, it would need to enact a new statute rather than work to coordinate the existing statutes.

This political reasoning was based on promoting the importance of coastal resources for Indonesia in terms of economic, environmental, social and cultural aspects. As mentioned above, Indonesia is the world's largest archipelagic state with three times as much marine area as land area within its national boundaries, and boasts the second largest coastline in the world. Ministry officials considered it long overdue that Indonesia dedicate a new law to integrated management of its coastal resources.

It was with this vision that the Ministry, with the support of CRMP, developed a strategy for development and implementation of the a new national law. With this framework, the Ministry officials developed a time schedule of completing an academic review (*Naskah Akademik*) within one year i.e., by December 2001. The Minister convened a drafting team for both the academic review and the new national law, consisting of 28 Ministry staff, 6 non governmental representatives (NGO or LSM) and 3 CRMP advisors. The team was formally established by Ministerial Decree No. 40 Year 2000, signed on December 19, 2000. The team was to be divided into three components, on technical aspects, legal aspects, and for administration. The Ministerial Decree specifically mandates that the process engage consultations and participation among stakeholders.

## **2.2. Initial Requirements and Considerations**

The President, pursuant to Article 7(1) of the Constitution, is entitled to submit a bill to *DPR*. The *DPR*, in turn, has authority to consider and approve legislation. With respect to Article 22A of the Constitution provides that further provisions relating to establishment of laws shall themselves be established by law. Such was done in the case of Presidential Decree No. 188/1998, which relates to process of developing new laws, and Presidential Decree No. 44/1999, which relates to structure and form of new laws.

Thus a bill can be initiated by either the executive branch, or by the legislative branch. If it is an administrative initiative, the particular Ministry interested in proposing a bill takes the lead in developing it, drafting it, preparing the supporting documents, such as the academic study, and consulting with the public. The process must follow Presidential Decrees No. 188/1998 and No. 44/1999, and is described in greater detail below. If it is a legislative initiative, the process follows the rules of procedure adopted by *DPR*, also described in greater detail below. In either case, the bill must be formally submitted to the entire body of *DPR* for consideration. Once the submission is received, the Steering Committee of the *DPR* calls for a plenary session to distribute the bill and related documents and to consider several issues, including which Commission shall maintain jurisdiction over the bill, and whether the bill should be considered. The Steering Committee is responsible for maintaining a Priority List that it revises each session, which identifies all

bills that it has deemed a priority for that legislative session. Once the *DPR* approves it, the bill goes to the President for signature in order to become law.

Presidential Decree No. 188/1998 authorizes Ministers and agency heads to initiate draft statutes, or bills (*Rancangan Undang-Undang* or *RUU*). The bill must be submitted to the President for approval with supporting explanations for background and objective, goals and targets, and the vision, mission, scope and direction of the bill. Article 2 of the Decree requires the minister or agency head initiating the *RUU* to consult with the Minister of Justice and the relevant Ministers and heads of agencies.

The language is somewhat vague on the requirement to prepare a *Naskah Akademik*. Article 3 authorizes the Minister initiating the *RUU* to prepare a *Naskah Akademik*, but does not require one. If one is prepared, it must be done in conjunction with the Ministry of Justice. Article 3 also allows for preparation of the *Naskah Akademik* to be delegated to academic scholars and other third parties with expertise. These provisions lean towards a discretionary nature in the decision. However, Article 4 mentions that there may be instances when a *Naskah Akademik* is required, but does not specify the conditions for such instances. The general rule of thumb is to prepare one.

Consultations are required pursuant to Article 4, and are to be coordinated by the Ministry of Justice. These consultations, however, are very narrow in scope. They are to include government officials who are technical experts in the subject of the proposed law, and they may include experts from higher educational institutions and other social, political, professional organizations. There is no mention of the public, nor is there any notion of broader stakeholder engagement. To the extent that a *Naskah Akademik* is required (which again is not specified), it must be subject to the consultation process. This is a telling requirement: it indicates that the *Naskah Akademik*, to the extent one is required, must be developed before at least some consultations take place.

After consultations, the head of the initiating agency must officially submit a request to the President for approval of proceeding in the development and drafting of the *RUU*. After a meeting among relevant Ministry representatives, as convened and invited by the Ministry of Justice, the President will make a decision, through the State Secretariat, whether there is sufficient basis to warrant a new law. If there is, approval shall come in written form (*Ijin Prakarsa*) from the State Secretariat on behalf of the President, with a copy to the Minister of Justice, as provided in Articles 7 and 8.

Once the *Ijin Prakarsa* is issued, the Ministry must engage in a more formal interdepartmental review process. The timetable, pursuant to Article 9, is strict. The head of the initiating agency shall request membership by formal invitation to the head of each interested agency no later than seven days after issuance of the *Ijin Prakarsa*, and to which each agency must in turn respond no later than seven days after receipt of such invitation. The formal membership of the Interdepartmental Committee, to be chaired by an official appointed by the head of the initiating agency, is to be stipulated in a Ministerial Decree no later than 30 days after issuance of the *Ijin Prakarsa*.

Another round of consultation is prescribed pursuant to Articles 13-14. Again, consultations are viewed in a very narrow sense. Opinions and considerations are to be obtained first from other government agencies. Opinions and considerations can also be solicited from universities and other organizations. The head of the initiating agency must submit the request in writing, and recipients have 30 days after receipt to respond. Copies of all requests and responses must be submitted to Ministry of Justice and to the State Secretariat.

Final disposition of the bill is governed by Articles 15-18. The Ministry of Justice is to process all opinions and considerations, and provide its own. To the extent that there are disagreements among agencies, the Minister of Justice and the State Secretariat will seek to resolve them. If the President deems that a resolution cannot be reached, the State Secretariat will convene a meeting, to which it may invite academic institutions and other organizations. Any redrafting will be done between the head of the initiating agency and the State Secretariat, formally submitted by the head of the initiating agency to the State Secretariat. If it approves, the President makes a formal submission of the bill to *DPR* for its consideration. In discussions with *DPR*, pursuant to Articles 19 and 20, the head of the initiating agency will serve as the President's representative.

A bill that begins as a *DPR* initiative must follow the *DPR* Rules of Procedure. Before discussing the process, it is worth discussing the structure of *DPR* briefly. The *DPR* is organized in two manners: politically and structurally. Politically, activities revolve around political factions (*fraksi*). For the most part, political parties and *fraksi* coincide, but the smaller parties may unite into one *fraksi*. *Fraksi* are represented in all commissions and bodies of *DPR* in equal proportion to their representation in the *DPR* as a whole. Structurally, there are nine Commissions within *DPR*, with Commission III responsible for coastal, marine, fisheries, forestry and agriculture, and Commission VIII responsible for the related subjects of environment, energy, mineral resources and technology. Their functions are to review, revise, develop draft bills before being considered by the *DPR* as a whole (this can be either administrative- or legislative-initiated bills); and to conduct oversight of the executive branch. It is the Steering Committee (*Bamus*) that determines the Priority List for legislation each session, which determines which bills will be considered. Consideration of a bill is done by relevant Commission, unless the subject-matter crosses into the jurisdiction of other Commissions. In such cases, the Steering Committee appoints a Special Committee (*Panitia Khusus* or *Pansus*) to consider the bill. The *Pansus* is comprised of members of the interested Commissions, with *fraksi* representation on the *Pansus* also proportional to that of the Commissions.

Even though *DPR* has always held the authority to submit bills of first impression, it is a practice that did not occur traditionally and is a relatively new phenomenon (Sherlock, 2003). Consequently, a new legislative counsel (*badan legislasi* or *baleg*) was established in 1999 within *DPR* to specifically assist with legislative initiatives. With its 45 members, *Baleg* functions to assist *DPR* members and commissions in the drafting of bills, revise and assist with bills that are submitted by lobby groups, and hold consultations on drafts.

Before a bill can be considered to be a *DPR* initiative, it must be first signed by at least ten members. After distribution to all *DPR* members, the Steering Committee then determines whether to submit the draft bill to the full plenary, which will then decide whether to consider the bill as a *DPR* initiative. The bill's proponents present their arguments in favor, and the *fraksi* will present views. If the bill is accepted as is, it will go immediately to the President for consideration, via formal request by the head of *DPR*. If amendments are required, a Commission or *Pansus* will be assigned first. The Rules of Procedure of the *DPR* provide for steps that generally parallel the development of a bill by the executive branch, in terms of supporting materials and consultations. Once it is transmitted to the President, an agency will generally be responsible to negotiate with the *DPR* Commission or *Pansus*. At this point, the bill enters into several stages of reading.

Whether a bill is initiated by the President or the *DPR*, the stages of reading, or process for consideration within *DPR* is the same, pursuant to the Rules of Procedure. The consideration of a bill within *DPR* has been described as a multi-staged reading, with as

few as two stages and as many as four stages. The first stage is a formal presentation by the Minister in charge of the bill on behalf of the President. The second stage is the presentation of views by each *fraksi*, and response by the Minister. These views will center around a List of Issues (*Daftar Inventarisasi Masalah* or *DIM*). The third stage will be detailed negotiations within the Commission or *Pansus* regarding the bill. The fourth stage will be formal consideration of the Plenary, this time with a presentation by the head of the Commission. *Fraksi* will again express their views, as will the Ministerial representative of the executive branch. The stages can be collapsed so that there are only two formal stages: one stage that includes an initial presentation by the Minister, discussion of *fraksi* views and administration responses (which includes the *DIM*); and a second stage that represents the formal agreement by *DPR* and the President's representative.

## 2.3. The Academic Study

### 2.3.1. First draft and consultations

The drafting team met several times in December 2000 to discuss the scope and mechanics for the *Naskah Akademik*. The first decision was to develop a *Naskah Akademik* that offered a broad overview of coastal resource management in Indonesia - a treatise that discussed the status of coastal resources, threats facing them, and an analysis of the legal framework governing them. Up until that point, there did not exist any major treatise of that nature, and the drafting team decided that one was necessary to justify the new law.

The team worked collaboratively to assemble the most recent available data on coastal resources from a variety of sources, including from within the Ministry, within *LIPi*, from *LSMs*, donor projects and other stakeholders.

As a draft was being prepared, the Ministry held a series of public consultations, supported by CRMP, to solicit comments and information. Consultations were held in Manado, North Sulawesi, on December 8, 2000; in Balikpapan, East Kalimantan, on January 17, 2001; and in Lampung on February 6, 2001. The consultations were well attended. In Manado, a total of 54 participants consisted of 23 regional government representatives, including the Bupati of Minahasa, staff from the Governor's office, Bappeda provincial and district offices, the heads and staff of various sectoral offices such as fisheries and forestry; seven representatives from academic universities; 10 members of the LSM community and press; and 10 staff from CRMP. The Balikpapan consultation had 66 participants, including four members of provincial and district *DPRD*, 32 representatives of regional government agencies (*Bappeda*, *Bapedalda*, Fisheries, Forestry, Tourism, Mining, etc.), six representatives from the private sector (the regional Port Authority and several companies), one academic representative, seven *LSMs* and press members, four officials from the Ministry of Marine Affairs and Fisheries, two officials from the Ministry of Home Affairs, and 10 CRMP staff. The Lampung consultation had 108 participants, including three members of regional *DPRD*, 52 officials from various regional government agencies (*Bappeda*, *Bapedalda*, Fisheries, Forestry, Transportation, Water, Forestry, etc.), seven representatives from regional universities, 12 representatives of *LSMs*, 16 representatives of the private sector, two staff of Ministry of Home Affairs, and 16 staff of the Ministry of Marine Affairs and CRMP.

These one-day consultations were designed to provide a two-way flow of information. The morning sessions entailed presentations by MMAF and regional government officials, and the afternoon sessions were open discussions, broken into different groups.

In addition to these three consultations, a two-day consultation/workshop was held in Bogor, attended by 95 participants. The participants included 2 *DPRD* members of Bogor, 23 officials from regional government agencies, 3 university representatives, 5 LSM representatives (*Terangi, Kehati, AMAN, and IMA*), 33 staff from the Ministry of Marine Affairs and 20 CRMP staff. This workshop featured some presentations on coastal management in the United States as well as in Indonesia, for comparative purposes, and provided an opportunity for detailed comments on the draft *Naskah Akademik*.

With these consultations, the drafting team began working in earnest on compiling and writing the first major draft of the *Naskah Akademik*. An intensive series of drafting sessions and internal meetings were held during the period April through June 2001. These meetings engaged staff of other agencies as well, such as the Maritime Council, *BAPPENAS, Bapedal* and LIPI, as well as other stakeholders. The first draft offered a comprehensive picture of the status of coastal resources in Indonesia, the users of the resources, and threats facing the resources. It provided only a brief overview of the legal framework governing the resources, and a basic picture of the issues to be tackled in a new law.

A second round of consultations was held during June through August 2001. The first, a return to Balikpapan on June 6, 2001, was attended by 63 participants, including three *DPRD* representatives (East Kalimantan Province, East Kutai District, Nunukan District), 30 representatives of regional government agencies, four representatives from universities, six LSMs (*Yayasan Kalbu, YBAIL, Bestari, Yayasan Padi, BIKAL, and LPMA*), four members of private sector companies (*ITCI Kartika Utama, Pelindo IV, Total FinaELF*), and 13 MMAF and CRMP staff.

In Manado, on June 21, 2001, 115 participants took part, including 59 officials of more than 20 regional government agencies from 4 districts/municipalities and the province; nine representatives from five universities; four members of the press, 21 representatives of NGOs (*WCS, Pro Hukum, LBH Manado, Kelola, PARUL, Walhi, WWF* and others), one business representative, and 19 staff from MMAF and CRMP.

In Jakarta, on August 15, 2001, another consultation was held, with 83 participants, including 26 officials from MMAF, 35 officials of other central and regional government agencies, three representatives of universities, four representatives of various business, and 11 CRMP staff.

In addition to these consultations, the Ministry established a list-serve via the Internet in order to foster comments online. There was a robust discussion among 15 or so academics with Ministry staff over the course of several months.

CRMP held several meetings with LSMs on July 12 and July 19. During these meetings, LSMs stated that they wanted to discuss coastal management issues, especially development of the *RUU*, directly with MMAF rather than with CRMP. These meetings served to shape the nature of the relationship among MMAF, CRMP and the LSMs for the coming months: CRMP from that point forward moved into the role of facilitator rather than initiator. This shift in role provided a complementary shift in the role of MMAF as well, in which the Ministry steadily took a stronger and more active lead in initiating consultations and developing the overall strategy.



For the next several months, from August to November 2001, the drafting team finalized the *Naskah Akademik*. In particular, it convened a special ad-hoc legal team to prepare a chapter on the legal framework governing coastal resources. It also developed a framework for the *RUU* and summarized the public consultation process. The final version was published in November 2001 (DKP, 2001). It is reproduced on the CD on Materials relating to Legal Reform in the CRMP Legal Reform Series.

### 2.3.2. Final document

The *Naskah Akademik* is intended to be the conceptual and legal foundation for the *RUU*. The final document provides a comprehensive overview of coastal resources in Indonesia. It discusses the status and threats to those resources. Until this document, there was no definitive compilation of this data. In this regard, the *Naskah Akademik* provides a valuable reference document for academic scholars, governmental decision makers, and stakeholders.

The *Naskah Akademik* also contains a chapter dedicated to the legal framework governing coastal resources in Indonesia. This chapter discusses the existing sectoral laws, as well as the international conventions to which Indonesia is a party. It also discusses some of the key legal concepts governing coastal resources in the country, such as the archipelagic concept, which was first developed by Indonesia in the negotiations on the U.N. Convention on the Law of the Sea, as well as other principles relating to good governance and sustainable development.

Another chapter of the *Naskah Akademik* describes the mechanism for the *RUU*, which in essence is the blueprint for the draft law. It outlines the various management alternatives that the Ministry would consider for the *RUU*. It then provides a recommended alternative and a justification for the recommendation. Issues considered include the establishment of a central coordinating body, and its roles and functions. For example, questions such as whether it should be advisory or decision-making in function, and whether it should be headed by the President (similar to the Indonesian Maritime Council, *Dewan Maritim Indonesia*) or by the Minister of Marine Affairs and Fisheries, were discussed. Other issues considered included the relationship of central, provincial and district governments; the promulgation of voluntary, incentive based standards or mandatory, obligatory standards; the nature of incentives to be provided; and the nature of sanctions to be mandated.

Lastly, a chapter is dedicated to a discussion of the public consultation process. This chapter summarizes the consultations, and analyzes the comments received. This includes comments from all sources, including the public consultations as well as email exchanges.

The *Naskah Akademik* is unique in the context of Indonesia law development, for a number of reasons. Rather than take a perfunctory approach to an otherwise bureaucratic requirement, the Ministry took an innovative and productive approach to this exercise. First, rather than merely present the issues in a cursory manner, the Ministry made the decision to develop a comprehensive treatise on coastal resource management in Indonesia. One reason for this was to help justify the need for a new *RUU* on integrated coastal management. Another, equally important reason was to create a reference source on the subject, which previously did not exist. The *Naskah Akademik* is now used in academic institutions, *LSMs*, and central and regional government agencies as such a reference.

Second, the *Naskah Akademik* expressly identifies issues what the Ministry intends to

address in the *RUU*, and discusses alternatives in how to address them. It then selects a preferred alternative and offers a justification. It does not merely present the decisions of the Ministry as a *fait accompli*, or decisions already final, without explanation of how the Ministry arrived at those decisions. Rather, it offers descriptions of the wide ranges of management choices considered by the Ministry, and descriptions of the pros and cons of each choice. This type of discussion provides a snapshot into the thinking of the Ministry, opens the door onto the decision-making process of the Ministry, and makes for a transparent and participatory process.

Third, the *Naskah Akademik* summarizes and analyzes the public consultations held during preparation of the *Naskah Akademik*, so that the public has insight into the comments of other stakeholders, and can learn how the Ministry responded to those comments. This approach makes for not only a transparent and participatory process, but one that is accountable, as well.

Fourth, the *Naskah Akademik* was distributed widely, across all stakeholders and regions. It was available in hardcopy, on CD, and via the Internet on the MMAF website. More than 600 printed copies were distributed to regional government officials, officials of other central government agencies, members of *DPR*, representatives of academic institutions, LSMs, and other stakeholders. This level of distribution was a precedent.

## **2.4. Initial Drafting of the *RUU***

Shortly after publication of the *Naskah Akademik* on December 10, 2001, the Minister of Marine Affairs and Fisheries submitted a formal request to the President of the Republic of Indonesia (via the Minister of Justice and the State Secretariat) for the *Ijin Prakarsa*. This letter briefly discussed the background, need and purpose of a new law, and provided an outline.

While a response was pending, the drafting team shifted from its role as researchers for the *Naskah Akademik* into the role of legislative drafters for the *RUU*. The first step was the preparation of a Regulatory Objective, or *Obyek Pengaturan*, completed in February 2002. This four page document served as a bridge between the *Naskah Akademik* and the *RUU*, and is reproduced on the CD on Materials relating to Legal Reform in the CRMP Legal Reform Series. It sought to take the most important points of the *Naskah Akademik*, and the principles and goals of the law, and highlight them in a short document that would serve as the guide for the *RUU* itself. While it is not a legal requirement, it can assist the drafters.

The drafting team began meeting in earnest in early February through March 2001. During this time, the team held 10 full-day or multi-day meetings, which was an extraordinary commitment for civil servants who held significant responsibilities and functions outside the *RUU* process. Many of these meetings took place in meeting rooms at local hotels, in order to secure dedicated blocks of time and attention for drafting.

The team made a conscious decision to not attempt to immediately begin drafting an *RUU* in the sense of a document in chapters and articles. Rather, it began by developing a broad outline of issues, and developing some basic concepts and needs relating to those issues. It further identified the sources of authority and guidance for those issues, that would serve as reference points during actual drafting. By early April, it had assembled a matrix that highlighted the issues, identified sources of materials for those issues, and

discussed broad ideas to be drafted into legal terms. This matrix would serve as the basis for the early stakeholder meetings.

It wasn't until March 4, 2002 that a hearing was scheduled by the Justice Department, and MMAF officials made a formal presentation before the other departments. At that meeting, many questions were raised regarding the need for a new law, in light of the vast array of existing sectoral laws, and the concern for a loss of authority if a new coastal law were to regulate other sectors. These issues were also discussed in the stakeholder meetings.

## 2.5. Early Stakeholder Meetings

In early April, a series of stakeholder meetings were held, to seek input into the *RUU* issue matrix. Minutes of these meetings are included on the CD on Materials relating to Legal Reform in the CRMP Legal Reform Series. These included a two-day stakeholder meeting in Jakarta, April 25-26, 2002, consisting 50 representatives from 13 local, national, and international NGOs; and a one-day stakeholder meeting, also in Jakarta, April 1, 2002, consisting of 58 participants, including leaders and representatives from the private sector who invest in coastal and marine areas in the country. These meetings sought comments through several hours of open discussion and through written questionnaire and statements.

In addition, the Ministry held a three-day stakeholder meeting in Lembang (April 10-12, 2002) consisting of more than 30 representatives from government (national and regional) and LSMs, and the private sector. Specifically, six LSMs attended over the three days - Kehati, Telapak, AMAN, International MarineLife Alliance, the Indonesian Center for Environmental Law, and Conservation International. It was at this meeting that the NGO representatives made a series of presentations on the public consultation process that was being developed for an *RUU* on natural resource management. This process was strongly endorsed by the NGO community, and was extremely sophisticated in design. Ministry officials expressed a willingness to apply to the process in developing the *RUU* on coastal management.

It was also at this meeting that the Ministry staff made a decision to combine two major subjects into this one law - coastal management and small island management. This decision was made largely on the basis of the organizational structure of the Ministry. Coastal management and small island management are both under the same Directorate General within the Ministry. This decision resulted in the establishment of a new chapter to the *RUU* to be dedicated to issues relating to small island management. The decision to combine these two issues would be questioned by stakeholders throughout the process, even up to the present.

There were also several informal meetings by MMAF staff who visited North Sulawesi, and discussed the issues with the School of Law of Sam Ratulangi University, local NGOs, the *DPRD* of Kabupaten Minahasa, and the local community of Desa Talise.

The next major consultation was in Bali, May 19, 2002, in concert with the Third National Conference on Coastal Management (Konas). More than 120 participants attended, including several members of *DPR*, central and regional government agencies, LSMs, private sector representatives, and academics. The Minister of Marine Affairs and Fisheries delivered the keynote address that discussed the justification and need for a new law.

Other presentations during the morning session discussed greater detail of the process and substance of the *Naskah Akademik* and the *RUU*. The afternoon session entailed participants to break out into five working groups to solicit open discussion and detailed comments on five major issues of the *RUU*: (1) institutions; (2) community empowerment; (3) sanctions; (4) coastal management criteria; and (5) a voluntary, incentive-based certification program. Facilitators led the discussions in each group, and minutes were kept of each group discussion.

This consultation structure proved extremely effective. It allowed for a very efficient use of time during the course of a day, ensuring maximum information exchange. The morning session was dedicated to presentations by various government officials, usually MMAF officials, on coastal management. This provided background and introduction to the concept of integrated coastal management, and an opportunity for the participants to learn about the Ministry's endeavors up until that point. The morning closed with a question-and-answer period. The afternoon session was dedicated to information flow in the other direction: the solicitation of comments from participants on specific topics that formed the heart of the *RUU*. By breaking into working groups, discussion flowed much more freely, and many more topics could be covered in greater detail than if the consultation remained in one group all day. The structure of the Bali consultation would form the basis for all future consultations.

In addition to this consultation, MMAF and CRMP convened meetings with the LSMs on May 20 and May 22, 2002, to discuss public outreach and participation. The discussions of Lembang were reviewed, and a formal decision to proceed along the same manner was made. A three-track consultation strategy was developed, and MMAF, CRMP and several LSMs each made commitments to collaborate on the process.

## **2.6. Public Consultation Process**

### **2.6.1. General approach and overall structure of consultation process**

The commitments made on May 20 and May 22 underscored the creation of a partnership in which all parties would be encouraged to participate in an active and effective manner. Only through an open, transparent and inclusive process would the *RUU* represent a consensus among members of society. Many of the LSMs that were engaged in the ongoing development of an *RUU* on natural resource management — AMAN, Telapak, ICEL and Kehati — strongly encouraged that MMAF adopt the same type of consultation strategy for the *RUU PWP*. The three-track strategy was discussed in greater detail, and a schedule was developed, at a meeting hosted by MMAF in June 2002. The schedule, presentations, press releases, brochures and other materials relating to the consultation process can be found on the CD on Materials relating to Legal Reform in the CRMP Legal Reform Series.

The first track was a formal one satisfying legal requirements for consultations, in which members of the drafting team met with members of other government agencies, regional representatives and the public, to provide information and to seek comments. The second track was a more informal consultation process, in which the NGOs and other constituents, such as universities, businesses, community leaders, would help coordinate public meetings among community members throughout Indonesia. The last track was a mass media campaign to raise public awareness through television, print and radio media.

The formal track constituted compliance with the relevant existing laws and regulations. It began with the consultations required in development of the *Naskah Akademik*, and continued through the early stages of drafting the *RUU*. The Ministry collaborated with local governments, non-governmental organizations and universities in setting up and coordinating public consultations throughout the country. The process took place in a series of steps. First, the Ministry, with assistance by CRMP, developed a comprehensive schedule over five months that included consultations, drafting sessions, and public outreach. The Ministry selected ten cities to host public consultations. The cities included: Jakarta, Lampung, Manado, Makassar, Balikpapan, Surabaya, Padang, Semarang, Kupang and Ambon. The criteria for selection of sites for public consultations included: regions with rich coastal resources; frequency and level of seriousness of conflicts among stakeholders upon management and use of coastal resources; level of threats towards coastal resources; capacity of local institutions and/or networks supporting the conduct of public consultations in the regions; and strength of local stakeholder forum in the regions.

Second, once the schedule was developed, an advance team of 2-3 MMAF and CRMP staff traveled to the site of the next consultation, approximately 10 days before the scheduled consultation, in order to work with the regional fisheries agency and offices of the Bupati and Governor to set up the consultation. Logistics would be arranged, stakeholders would be identified, invitations would be mailed, and documents would be prepared, including copies of the *Naskah Akademik*, copies of minutes of previous consultations, press releases, and brochures. The package to be distributed to each participant thus included a combination of legalistic, formal documents containing all relevant material, and political, easy-to-read documents consisting of slide presentations and short summaries.

Third, the consultations themselves were modeled on the one at Bali. The morning session was dedicated to information flow from the Ministry to the participants, with staff leading a broad discussion on coastal issues generally, and a broad overview of both the process and substance of the *RUU*. The afternoon session was dedicated to information flow from participants to the Ministry, with different working groups addressing a particular subject of import discussed in the *RUU*. These working groups were led by a facilitator (MMAF or CRMP staff), and each group elected a chair and a note-taker.

Fourth, once the consultations were completed, the reporters would compile all the notes and prepare minutes for the consultations. The minutes were widely distributed, some via the MMAF web site, some by CD distribution, and some by hardcopy.

Fifth, MMAF and CRMP staff maintained an executive summary and analysis of the minutes of the consultations. This summary was regularly updated to include information from recent consultations. This document was exceedingly important for two reasons. It summarized the important points of each consultation, so that stakeholders would not need to sift through thousands of pages of notes. In addition, it analyzed comments by subject-matter, rather than by location. Thus, this document could be used to determine all comments on the certification program, regardless of their origin.

The informal, or constituent, track was led by various NGOs and academics who have interests in managing coastal resources in a sustainable manner are expected to undertake public consultations for their constituencies. In undertaking public consultations, they generally desired to use their own funds. The collaborators were also free to choose the sections of the draft law for public consultations in accordance with the interests of their constituencies. Several consultations were actually held by NGOs relating to the *RUU*. A

local LSM (*Gerakan Masyarakat Kelautan dan Perikanan*) in Semarang hosted the consultation there, although the costs were borne by the MMAF and CRMP. The Nature Conservancy and the World Wildlife Fund split the costs of a consultation in Kupang, East Nusa Tenggara. In addition, AMAN hosted meetings in various provinces with its members, distributed copies of the *RUU* and supporting documents, and solicited comments.

Both electronic and print mass media played an important role in undertaking public consultations for the *RUU*. Each consultation, for example, was promoted with press releases to both national and regional media outlets. Press members were also directly invited to the consultations. At almost all locations, news clips were presented on the evening news shows, and articles appeared in newspapers the following day. On two occasions, in Ambon and Manado, a 30-minute special TV show was aired the night of the consultation.

In direct support of the *RUU*, the Ministry printed, with financial support by CRMP, an array of brochures, pamphlets, and booklets. These described the process and substance of the *RUU*. The *Naskah Akademik* itself was made widely available in printed version, on compact disc and over the internet. More than 1,000 copies of the CD were produced, which contained the *Naskah Akademik*, the most recent version of the *RUU* at the time, and the minutes from all the consultations held up until that time. The website of the Ministry maintained copies of the *Naskah Akademik*, the *RUU*, and summaries of the consultations.

In addition, a number of other activities through the mass media were taken to support public consultations on a broader scale, including seminars, discussions, and workshops. At Konas, for example, four presentations were delivered on the subject of the *RUU*. Presentations have also been made at international symposia and conferences on coastal management and governance as well.

### 2.6.2. Chronology and scope of consultations

Including the public consultation in Bali on May 19-20, 2002, where the overall strategy was first discussed, a total of 12 consultations were held in 10 provinces throughout Indonesia, with more than 1,100 participants. These participants represented many additional provinces and districts, as consultations were designed to reach surrounding jurisdictions, as follows:

Consultation Location	Targeted Jurisdictions
Lampung	Lampung South Sumatera Jambi Bengkulu
Padang	West Sumatera Riau North Sumatera
Semarang	Central Java Yogyakarta West Java
Surabaya	East Java Central Java

Balikpapan	East Kalimantan West Kalimantan Central Kalimantan
Manado	North Sulawesi Gorontalo
Makassar	South Sulawesi Southeast Sulawesi Central Sulawesi
Kupang	West Nusa Tenggara East Nusa Tenggara
Ambon	Maluku North Maluku Papua
Bali ( <i>Konas</i> )	Bali East Java Central Java West Java Jakarta Papua South Sulawesi North Sulawesi

In addition to the consultations, through other projects managed by the MMAF, in particular the Marine and Coastal Resource Management Project (MCRMP) funded by the Asian Development Bank, several hundred regional government staff across 15 provinces and 43 districts were also involved in indirect consultations and outreach. In each of these consultations, CRMP provided funding for intra-province travel while MMAF provided funding for local travel. The total cost of each consultation ranged from approximately 25 to 40 million rupiah, which included air travel for 3-5 Ministry staff, accommodations, meeting facilities, regional and local travel reimbursement for participants, and incidentals.

The Lampung consultation was held on July 15-16, 2002, and the local secretariat was the Provincial Fisheries Department. Participation was strong, with 103 attendants the first day and 43 attendants the second day. These included: nine regional government representatives (Provincial Departments of Fisheries, Transportation, Forestry, Water, Planning, Economic Bureau, Kanwil BPN, Provincial *DPRD*, Bappeda); 23 NGOs (ALAS Indonesia, FMPPLL, Handal, Wanacala, Bina Sejahtera, Walhi, LP2M, LPSM Yasadhana, Yayasan Mitra Bentala, Watala); five representatives from universities; seven members of the press; three members of the private sector; and seven MMAF and CRMP staff.

The Manado consultation was held on July 25-26, 2002. The local secretariat was again the North Sulawesi Provincial Fisheries Department and 103 participants attended. These included 42 regional government representatives from Minahasa District, and Municipalities of Bitung and Manado, and the Province. Both legislative and administrative officials were present. Sectors represented included Fisheries, Forestry, Mining, Bappeda, Bapedalda, and National Park Conservation. There were also three LSMs, 10 academic representatives, two press and 15 MMAF and CRMP staff.



The Makassar consultation followed directly on July 31, 2002, hosted by the South Sulawesi Provincial Fisheries Department, and attended by 63 participants. These consisted of: 29 regional government representatives (*DPRD*, Departments of Fisheries, Forestry, Spatial Planning, Mining, Tourism, the Police, *Balitbangda*, *Bapedalda*, *Bappeda*), three representatives of LSMs, 16 faculty members of local universities, three members of the private sector, two members of the press, and seven MMAF and CRMP staff.

The consultation in Surabaya on August 9, 2002, targeted primarily academics, to discuss one aspect of the *RUU* concerning Sea Grant, or *Kemitraan Bahari*, a new cooperative grants program that the law would establish. Unlike previous consultations, the secretariat that hosted and organized this consultation was not the regional Fisheries Department, but the Institute of Technology (ITS). Of the 82 in attendance, there were 25 regional government officials, and 24 faculty members of ten regional universities, 27 others from LSMs, private sector and press, and ten from MMAF and CRMP.

A consultation was held in Padang on August 29, 2002, in which the Provincial Fisheries Department served as secretariat. Of the 97 participants, 52 were from regional government agencies (*BAPPENAS*, Depts. of Fisheries, Justice, Transportation, Forestry, Military, Environment), four representatives from LSMs (*Yayasan Laksana Samudra*, *Kaliptra*, *Poster*, *Yayasan Citra Mandiri*), 21 faculty members of regional 4 universities, 11 from the private sector, press and other projects, and ten from MMAF and CRMP.

The consultation in Semarang on September 10, 2002 was also unique. It was the first one in which an LSM acted as the secretariat to organize and host the consultation. Attendance among the 111 participants reflected this fact: there were 24 representatives from regional government agencies; 50 representatives from a dozen NGOs (*Jaring Pela*, *Walhi*, *LPWP Jepara*, *Kompak*, *Tennala*, *GMKP*, *Balai TN Karimunjawa*, *Alam Bahari*, and others); 20 faculty members from regional universities; eight members of the press and private sector; seven MMAF and two CRMP staff.

For the Balikpapan consultation on October 10, 2002, both a university (*Universitas Mulawarman*) and the Provincial Fisheries Department served as secretariat. Participants numbered 115, including: 49 representatives of regional government agencies (*Bappeda*, *Bapedalda*, *DPRD*, Fisheries, Mining, Forestry, Transportation, etc.); 32 representatives from LSMs; 11 others from press, private sector, donor projects; and 20 from MMAF and CRMP.

The consultation held in Kupang on January 11, 2003 was funded by two NGOs - World Wildlife Fund and The Nature Conservancy - and organized by the Provincial government offices. There were 68 participants, including: 47 representatives of regional government agencies (Provincial and District Departments of Home Affairs, Transportation, Fisheries, Forestry, Environment, Spatial Planning, Agriculture, *DPRD*, Police, etc.); seven representatives of LSMs (*Jaring Pela*, WWF, OISCA, *PIKUL*, *Yasmara*, etc.); five faculty members of regional universities; press members, and four from MMAF and CRMP.

The consultation in Ambon was held on August 14, 2003 with the regional Fisheries Department serving as secretariat. A total of 81 participants attended from Papua, North Maluku and Maluku. Approximately 20 represented regional government agencies, including the Departments of Fisheries, Forestry, Tourism, Justice, *Bappeda*, and the Water Police. Almost 40 participants represented four different universities. Other participants included four LSMs, three village heads, two business groups, and two members of the press.

A matrix detailing the participation of each of the consultations, together with the minutes of each consultation and overall analyses of the comments, can be found on CD on Materials relating to Legal Reform in the CRMP Legal Reform Series.

## 2.7. Drafting Revisions

Drafting sessions were held frequently during several periods in 2002. During March and April, leading up to Bali, the drafting team met repeatedly for full-day sessions. A total of 10 internal sessions were held prior to the public stakeholder meetings, and another 6 meetings were held leading up to the Bali consultation. During June and July, another series of full-day drafting sessions was held leading up to the public consultation process. This included meetings on June 11-14, June 18-20, and July 1-3. Each of these were attended by 4-8 members of the drafting team, and 1-3 representatives of LSMs.

The original premise of the drafting strategy was to enter the initial series of stakeholder meetings without a formal draft *RUU*, but rather with a broad outline of issues and statements on addressing those issues. The Ministry desired a document that did not resemble a polished, final law. It was afraid that such a document would discourage forthright comments, as stakeholders might assume that the law was near completion, and perhaps read it with a less critical eye. A document that was merely a sketch of a law, on the other hand, might generate greater comments. Indeed, this was the case in most circumstances: stakeholders preferred the outline. However, there were still several stakeholders, particularly in the academic world, that believed the meetings were premature given the status of the draft *RUU*. Over these sessions, the *RUU* changed dramatically, going from a rough outline of broad concepts, to a draft law with subjects divided into chapters and provisions written loosely as articles. Nevertheless, by the time the consultations began in June 2002, a draft *RUU* had been prepared and distributed.

After the first series of public consultations in Jakarta, Lampung, Manado, Makassar and Surabaya, the drafting team reconvened for a series of meetings in late August 2002. These sessions were also attended by at least one LSM. The draft was changed to address comments from those consultations.

In October 2002, a special legal drafting team was convened to polish the language and put the text into more appropriate language for purposes of the *RUU*. They developed the substantive aspects of enforcement and conflict resolution.

During that same month, a larger stakeholder meeting was held in Jakarta on October 22, 2002, to discuss the *RUU* and the concept of the Sea Grant (*Kemitraan Bahari*) Program. The consultation was largely for the benefit of staff within the Ministry, as well as related central government agencies and stakeholders. There were 89 participants, of which 31 were from the Ministry, and 20 were from other central and regional government agencies, including *BAPPENAS*, *Bappeda*, and *DPRD*.

After the final two consultations in eastern Indonesia in the beginning of 2003, the drafting team prepared to make final revisions. However, several LSMs were still dissatisfied with the content of the *RUU*, specifically as it related to coastal fisheries and more generally as it related to the livelihood of coastal communities. Several LSMs, including *Jaring Pela* and *Telapak*, met with Ministry staff in April 2003, and an agreement was reached to hold another stakeholders' forum for four days in late May 2003.

The stakeholders' forum was held in Depok, and was hosted by several LSMs, including Jaring Pela and Telapak. Funding was provided by CRMP. There were 81 participants, including: 15 MMAF staff; 15 officials from other central and regional government agencies (Depts. of Home Affairs, Justice, Forestry, LIPI, the Water Police, 31 representatives from various LSMs (*Telapak, AMAN, Jaring Pela, Kelola, Terangi, KPI, Yayasan Jari, Nelayan Bali, Lembaga Bantuan Hukum*); five academic representatives; and 26 from various private sector businesses and groups, such as local fishing organizations.

As of publication, the drafting team is working with a consortium of lawyers, including IHSA, ICEL and HUMA, to revise the draft based on the comments received at the Depok meeting, and to finalize the draft for submission to *DPR*.

## **2.8. On the Doorstep of Enactment**

As the consultations and drafting sessions have progressed, MMAF has engaged in the necessary prerequisites for endorsement by the President and enactment by the *DPR*. The Ministry has been involved in a series of meetings and consultations to satisfy the requirements for developing an *RUU*, as specified in Presidential Decree No. 188/1998.

As mentioned, the formal process began on December 10, 2001, when the Minister sent to the President an official request for an Ijin Prakarsa, or permission to proceed with the *RUU*. The reply from the Cabinet Secretariat came on March 3, 2002, calling for an interdepartmental meeting on March 4. At that meeting, MMAF officials made a presentation for the need of a new law to coordinate management of coastal resources in an integrated manner, and presented the *Naskah Akademik* to the participants. It was decided that the MMAF could proceed with development of a *RUU*, although issuance of the Ijin Prakarsa was still pending.

In order to facilitate the process, and in seeking interdepartmental support for the Ijin Prakarsa, a number of interdepartmental meetings were held. The first one was held July 9, 2002, under the auspices of the Justice Department. Even though a number of agencies were skeptical of the need for a new *RUU* on coastal management, MMAF succeeded in demonstrating the need to proceed further in exploring this issue. That meeting produced a letter dated August 14, 2002, in which the Minister of Justice wrote to the President, named the agencies to be included in the process, and identified the important issues. The agencies included the following: Depts. of Justice, Fisheries, Agriculture, Home Affairs, Transportation, Housing and Regional Infrastructure, Forestry, Energy and Mineral Resources, Environment, Culture and Tourism, Finance, Research and Technology, the High Court, National Development Planning Council, and the Institute of Scientific Research. The two major issues identified were the relation of the *RUU* to implementation of the law of the sea, and the relation of the *RUU* to the authority of other departments, in particular Mining, Forestry, Environment, Spatial Planning and Transportation.

A second interdepartmental meeting was hosted by *BAPPENAS* in Bogor on October 14, 2002. There was wide attendance. During the meeting, many questions were raised regarding the perceived nature of this *RUU* as 'an umbrella law,' and the need for a coastal management law in light of separate laws regulating individual sectors. The meeting ended inconclusively, with an understanding that the issue will continue to be explored.

On November 15-16, 2002, there was another informal, interdepartmental meeting that was organized by MMAF, in Bogor. There were approximately 20 participants, including

representatives from the Depts. of Energy and Mineral Resources, Home Affairs, Environment, Justice and *BAPPENAS*. In addition, three NGO representatives attended from *Jaring Pela*, *Telapak* and *AMAN*.

The most recent meetings were held on July 9 and July 23, 2003, at the offices of the State Secretariat (*SetNeg*). Many similar questions as previous meetings were raised again. While each meeting represents another step in the process, the MMAF is still waiting for the *Ijin Prakarsa* to be issued, at which point the *RUU* will formally be referred to the President, who will request that it be placed on the *DPR* priority list and transmitted to *DPR* for consideration.



# The Framework of the National Law

**A**s it is developing, the draft law has focused on four major areas: (i) a complementary set of voluntary and mandatory standards and guidelines for regional governments to ensure that they engage in integrated coastal management pursuant to generally accepted criteria for sustainable management and good governance; (ii) development of an institutional framework for coordination, integration and consistency in management and planning decisions at the central level of government, including establishment of a new coordinating body; (iii) the creation of an accreditation program - a new voluntary, incentive-based program to encourage adherence to the voluntary ICM standards and criteria, through which, if regional governments choose to follow criteria and standards, they would receive financial and technical assistance as incentives; and (iv) general provisions relating to outreach, administration and implementation, such as creation of a new educational and extension grants program (*Kemitraan Bahari*), monitoring and evaluation, conflict resolution, and funding.

Given that the draft law is still draft, and subject to change, this section offers only a broad overview of each of the major areas of the *RUU*, as of July 2003, which incorporates changes made based on the stakeholders' forum in Depok held in May 2003. The structure of the *RUU* is as follows:

Chapter I	General Provisions (definitions)
Chapter II	Goals, Principles, and Scope
Chapter III	Integrated Coastal Management Planning
Part 1	Integrated Planning
Part 2	Spatial Planning and Zoning
Chapter IV	Implementation of Integrated Coastal Management Planning
Part 1	Management of Small Islands
Part 2	Coastal and Small Island Conservation Areas
Part 3	Benefits and Enhancement of Conservation Areas
Chapter V	Recognition of Rights, Responsibilities and Empowerment of Communities
Part 1	Rights
Part 2	Responsibilities
Part 3	Community Empowerment
Part 4	Public Participation
Chapter VI	Authorities for Government, Province and District/ Municipality
Part 1	Government Authority
Part 2	Provincial Authority
Part 3	District/Municipality Authority
Part 4	Village Authority

Chapter VII		Institutions
	Part 1	Government Institutions
	Part 2	Regional Institutions
Chapter VIII		Accreditation Program
	Part 1	General Provisions
	Part 2	National Accreditation
Chapter IX		Program for Special Activities
	Part 1	General Provisions
	Part 2	Process
	Part 3	Criteria
Chapter X		Incentives
Chapter XI		Program Marine Partnership (Sea Grant)
Chapter XII		Permits
Chapter XIII		Finances
	Part 1	General Provisions
	Part 2	Financial Assistance
	Part 3	Matching Grants for Financial Assistance
Chapter XIV		Monitoring and Evaluation
Chapter XV		Conflict Prevention and Resolution
	Part 1	Conflict Prevention
	Part 2	Conflict Resolution
	Part 3	Conflict Resolution Outside the Court
	Part 4	Judicial Resolution
Chapter XVI		Enforcement
	Part 1	Administrative sanctions
	Part 2	Traditional sanctions
	Part 3	Criminal sanctions
Chapter XVII		Investigation
Chapter XVIII		Transitional Provisions
Chapter XIX		Closing Provisions

### 3.1. Standards and Guidelines

The first several chapters of the *RUU* provide for the goals, visions and scope of the law, and refers to many of the principles of 'good governance,' such as integration, sustainability, consistency, decentralization, participation, transparency, legal certainty, and equity. Coastal management is intended to improve the status of the resources, the socio-economic condition of coastal communities, and strengthen the capacity of implementing agencies. The scope of the *RUU* is based on administrative boundaries, and defines the coastal area as such: from the boundary of a coastal kecamatan (sub district), to 12 miles seaward as provided in Act No. 22/1999.

The *RUU* contains a number of standards and guidelines for activities associated with coastal management. These include standards for integrated coastal management planning, which establish a hierarchy of a strategy plan, spatial plan, management plan, and action plan. Public participation is mandated in completion of these plans. Plans can also be submitted as an initiative by an NGO, and the relevant government agency must respond. The *RUU* also provides for spatial plans, and offers some guidelines on how to complete them.

There are a large number of standards and guidelines relating to conservation of coastal resources. It provides for each level of government to establish its own marine conservation areas, either at the national, provincial, district or village level. Each level has different priorities: national areas, for example, relate to nationally protected species and international conventions; village areas relate to local needs, cultures and specific sites for marine bio-diversity. Also established are types of conservation areas, including areas for sustainable use, special habitat conservation, and ecosystem management. Each area may be zoned for its main conservation function and restricted uses.

In addition, there are standards and guidelines relating to community empowerment and traditional rights. Traditional rights must be recognized by all levels of government insofar as those rights are consistent with the principles of the *RUU*. They are to be encouraged through the accreditation program. All levels of government are to engage in public participation, which will solicit, consider and respond to comments received on their decisions relating to coastal management.

### **3.2. Institutional Arrangements**

The *RUU* also spells out the various authorities and responsibilities for central, provincial and district governments. The central government, for example, is responsible for developing the criteria for regional government management, and for maintaining the accreditation program to encourage regional governments to follow those criteria. It is also responsible for coordination of policy at the central level, and among provinces. It is also responsible for broad planning guidance, including the development of a network of marine protected areas. The province, in keeping with Act No. 22/1999 and Regulation 25/2000, is responsible for cross-district coordination. It is also responsible to coordinate the accreditation program among districts within its jurisdiction. The district maintains significant planning and management authorities for coastal management, including the issuance of permits for coastal resource use to communities and private sector.

At the central level, the *RUU* establishes a new coordinating body for coastal management, to be headed by the Minister of Marine Affairs and Fisheries. The function of the body is to coordinate policy among all 22 statutes and 14 agencies affecting coastal resources. It is to be advisory in nature. The main task is to review policies, decisions and permit approvals of specific agencies, and to provide recommendations regarding those actions as to their impacts on integrated and sustainable coastal management. In addition, it would be authorized to develop policies and recommendations on its own. It would also oversee a program to promote awareness and outreach regarding coastal management, and to monitor and report on activities and data.

### **3.3. Accreditation Program**

The accreditation program in the *RUU* provides the engine for voluntary implementation of the standards and guidelines discussed above. The system of accreditation of local programs addresses the two main obstacles of implementation faced by the MMAF. The first obstacle is a question of authority to impose mandatory requirements under the new decentralization laws. The second obstacle, even if there was clear authority, is difficulty in enforcement including lack of funding, manpower and capacity (Patlis, Knight and Benoit, 2003). Consequently, the Ministry developed a voluntary, incentive-based program to



encourage regional governments to conform to standards and guidelines that it was promulgating. Such a program would remove both obstacles in implementing regional ICM programs that conform to national priorities and standards. Programs or activities for accreditation can be initiated by all parties - provincial or district governments, villages, communities, or businesses.

In addition to, or really as part of the accreditation program, a special program is included to approve individual activities independent of the general requirements of the accreditation program and to provide incentives for local action under certain conditions. This program is designed to recognize good ICM projects even where an applicant may otherwise not qualify for accreditation. This special program will provide incentives to encourage and recognize site-specific initiatives for improvement of resource conditions or improvements in local resource management programs.

### **3.4. Outreach, Capacity Building and Implementation**

The *RUU* establishes several specific programs to promote effective and efficient implementation of ICM. The main one is *Program Kemitraan Bahari (PKB)*, or Coastal Partnership Program, which is modeled on the U.S. Sea Grant Program. This program would establish a matching grants program for applied research, education policy and extension in collaboration with MMAF, regional governments, academic institutions, and regional stakeholders such as communities and small businesses. The program is already being implemented, and the *RUU* would formally establish it and provide a mandate for additional funding resources for the matching grants.

The *RUU* also provides several articles on permits for activities that affect coastal resources. In general, these provisions are carefully worded so as not to encroach on existing authorities of sectoral agencies in issuing permits, but to ensure that such permits are issued consistent with the principles, direction and provisions of the *RUU*. This balance is crucial both for the political viability of the law - agencies will not cede their permitting authorities - as well as for the effectiveness of the law - in reality, permits must be coordinated in succeeding in ICM. Specific language provides that permits must be consistent with the goals and principles of the *RUU*, and must be reviewed by the coordinating body. The coordinating body can offer recommendations to the decision-making agency, but one provision expressly states that the ultimate decision rests with that agency.

# Political Considerations in Developing the Law

## 4.1. Engagement with stakeholders

**M**MAF began its political engagement internally. It solidified an internal core team consisting of key staff within the agency that formed the heart of the drafting team. This was done through a series of workshops with the same staff, and the formal establishment of the drafting team through a Ministerial Decree. At the same time, the core team included several stakeholders from NGOs and officials of other agencies that could lend support and serve as liaisons to additional groups. However, there was still not significant contact with NGOs and other stakeholders at this point. This was primarily due to the real lack of resources - time and financial resources - to meaningfully engage with NGOs during the early part of the process. Both project staff and MMAF staff were over tasked in managing the process of the *RUU* development along with all the other project and agency tasks that continues to demand resources.

Several attempts were made by CRMP to actively engage the NGO community in the development of the *RUU*. Financial resources were offered to conduct a national consultation process completely independent of CRMP. However, because relationships had not been sufficiently developed with NGO representatives, this offer was refused because it was initially read as an attempt to influence NGO perspectives on the *RUU* itself. During this same time, the relationship between the MMAF and NGOs specifically concerning the development of the *RUU* was not overwhelmingly positive.

In an effort to provide a bridge for NGO involvement in the *RUU* development, and to engage the NGOs in the writing of the *Naskah Akademik*, CRMP held a meeting with 12 NGOs in September 2001. The meeting was poorly received. While NGOs desired to be involved in the process they expressly stated that the proper point of contact was MMAF directly and not through an international donor project. At the same time, it served as a valuable opportunity for CRMP and the NGOs to begin their own relationship, independent of MMAF, and this relationship proved extremely valuable in a wide range of activities both related to and beyond the development of the *RUU*.

It wasn't until March 2002 that MMAF began actively working with the NGOs. This decision was made with significant deliberations. Some within the Ministry did not believe it was appropriate or warranted to engage stakeholders early in the process before a law was drafted. Others believed that stakeholders should be included from the beginning and viewed as partners. It was this latter view that ultimately prevailed. This decision led to the stakeholder meetings in Jakarta and Lembang in March and April, and the series of meetings held among stakeholders in Bali, May 19-22.

These meetings served to strengthen the base of support among several key NGOs, and

to promote the MMAF's bona fide intentions among the other remaining NGOs. The meetings also allowed stakeholders to provide valuable expertise and insights, and begin building political support. These meetings, in essence, made the stakeholders partners in the process. They became fully engaged as members of the drafting and consultative teams for developing text of the *Naskah Akademik* and the draft law. Their inputs were solicited on technical and substantive issues and they were supported in consulting with their members and affiliates to keep them informed. This was one of the significant turning points in the development of the draft law. These activities not only contributed to gaining political support, but they also improved the quality of the law by bringing in non-institutional perspectives on specific aspects and articles of the law. This engagement may have been late in coming for a number of reasons, but the final contributions to the law itself are immeasurable.

The last phase of building a constituency took the form of the public consultations. As the public consultations were being held over the course of almost 12 months, minutes and analyses of the consultations were simultaneously developed and published. On several occasions, NGOs requested copies of the results and MMAF's ability to produce them quickly drew strong praise. The ability of MMAF to present records of comments, and track how these comments were or were not incorporated in the draft law, went a long way toward continuing to strengthen NGO and public support. Such actions demonstrated the MMAF's commitment to a process that was transparent and accountable. The continuing NGO support translated directly to broadening political support among other agencies and within certain political parties, as well as an increasing number of NGOs. MMAF remained committed to this new openness throughout the process. Even when substantive concerns were raised among community-based fishermen's groups after the consultation process was largely completed, MMAF convened an additional forum in Depok in May 2003 to hear and address the concerns raised. NGOs continued to be important partners and played the lead role in convening this discussion.

## **4.2. Coordination within the Executive Branch**

Coordination within the executive branch took place over many months. Although the formal interdepartmental process called for by Presidential Decree 188/1998 is not triggered until the issuance of the *Ijin Prakarsa*, MMAF was proactive by convening, with the assistance of BAPPENAS, a series of meetings with officials from other departments and institutions within the central government. The Ministry began the process with a formal request via letter from the Minister of MMAF to other ministers requesting they select a representative for meetings relating to the *RUU*. This request resulted in the identification of specific persons with whom the MMAF could interact on issues of concern over the new draft statute.

The next interdepartmental meeting was held at the offices of the Ministry of Justice on July 9, 2002, as previously mentioned. It was attended by members of the Ministries of Justice, Transportation, Agriculture, Mining, Forestry, Tourism, the State Ministry of the Environment, BAPPENAS, and the National Research and Technical Board (*Badan Pengkajian dan Penerapan Teknologi-BPPT*). Only BPPT openly supported the *RUU* at that time, with other agencies expressing skepticism as to the need for a new *RUU* focused on integrated coastal management. However, MMAF presented sufficient argument and demonstrated significant basis, through the *Naskah Akademik* and other supporting documents, for proceeding with the development of the draft law.

MMAF pushed to continue the interdepartmental process, as it continued the consultations and the legislative drafting. BAPPENAS sponsored one meeting on October 14, 2002. This was a critical initiative, as it demonstrated that the process was not being managed exclusively by MMAF. This meeting showed that there was a larger effort behind the *RUU*, and that MMAF had an important ally in BAPPENAS. At the meeting, in addition to MMAF and BAPPENAS officials, were representatives from the State Ministry of Environment, several directorates within Ministry of Home Affairs, Ministry of Agriculture, Ministry of Forestry, National Land Board, and others.

Another two-day meeting was held November 15-16, 2002 in Bogor, which also included NGOs. In attendance were representatives from a number of different Directorates within the Ministry of Home Affairs, including the Directorate of National Spatial Planning, and the Directorate General of Regional Development. Other Ministries present were the State Ministry for the Environment; the Ministry of Justice; the Ministry of Energy and Mineral Resources, and BAPPENAS. NGOs present were the Indonesian Center for Environmental Law (ICEL), Telapak, Jaring Pela, and Aliansi Masyarakat Adat Nusantara (AMAN). Discussions focused on a critique of the six major sections of the *RUU*, with emphasis on law enforcement.

For a period of time, MMAF explored the possibility of moving the *RUU* as a legislative initiative (see discussion below). The decision was made recently, however, to return to the administrative route, as that process had been well underway. Since that decision, interdepartmental meetings were held on July 9 and July 23, 2003 to support MMAF in its search for State Secretariat approval through issuance of the Ijin Prakarsa.

### **4.3. Overtures to the Legislature**

Officials of MMAF and CRMP began engaging members of National Parliament last year in preparation for eventual consideration of the *RUU*. Whether the *RUU* is developed as an executive initiative or a legislative initiative, in both cases it will ultimately be considered by the *DPR* for vote and approval. MMAF and CRMP thus began efforts to inform members of *DPR*, especially of Commission III which maintains jurisdiction over coastal, fisheries and other natural resources, of the need for integrated coastal management, and MMAF's initiatives to address that need.

Engagement began by inviting *DPR* members directly into the process of the *RUU* development. Several members of Commission III attended the *RUU* public consultation and the National Coastal Management Conference (Konas) in Bali, May 19-21. One member of Commission III attended the consultation in Minahasa, North Sulawesi on July 25-26, 2002.

In addition, MMAF and CRMP initiated a number of outreach efforts. A study tour to the United States for MMAF officials and several *DPR* members was conducted in October 2002. The tour visited coastal management projects in Hawaii and North Carolina, met with U.S. government officials in Washington D.C., and met with University of Rhode Island (URI) faculty and staff at URI's Coastal Resources Center, through which the CRMP program was implemented. In addition, meetings were held regularly during which *DPR* members were briefed on coastal management issues, and specifically on the progress of the *RUU*. This outreach and involvement will ultimately facilitate consideration of the *RUU* by *DPR* and will be vital to the overall success of the *RUU*.



# Conclusion

This case study seeks to document the process of developing a new national law on integrated coastal management in Indonesia. It demonstrates the significance of this effort by first describing the legal framework currently governing coastal issues. It then seeks to describe, in great detail, the process that ensued for undertaking an initiative of this magnitude - from the initial conceptual designs, to the mechanics, to the legal and political strategies developed. It then gives a brief description of the substantive aspects of the draft law, recognizing that it is still pending. Lastly, it depicts the political issues that MMAF has addressed in seeking to enact a new law.

In documenting this process, the case study also seeks to highlight the innovations and profound advancements in governance that has been part of this effort. This includes the development of the *Naskah Akademik* - the manner in which it was developed, the unusual depth of its structure, content, analysis, and distribution to stakeholders. These innovations also include the extensive public consultation process initiated by MMAF with CRMP support, and later expanded through adoption of a three-tiered nationwide public consultation strategy which had its origins within NGO engagement in the development of a natural resource *RUU*, but was fully embraced by MMAF. It also includes the substantive innovations of the *RUU* itself — specifically the creation of a voluntary, incentive-based accreditation program that fits comfortably within the new paradigm of decentralized governance.

These innovations, and the overall success of the effort are the result of Ministry of Marine Affairs and Fisheries's initiatives at every step along the way. MMAF has exhibited the leadership and creativity to first conceive and then implement these innovations. It has also demonstrated political sophistication in reaching out to NGOs, collaborating with regional governments, and negotiating with other agencies. It has succeeded in maintaining both administrative and legislative tracks for law development, convening interdepartmental meetings and working with the State Secretariat, while also engaging members of *DPR*. This multi-path approach has allowed MMAF to remain open to several courses of action and to respond quickly to unexpected political exigencies. Altogether, its proactive approach positions the MMAF on the verge of enacting Indonesia's first-ever national integrated coastal management law through a process that has set achieved many milestones along the way, and established many precedents in terms of participatory legal reform.

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**BAPPENAS**

