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Legal Inconsistencies in Sea Sand Export Re-permits: A Constitutional Perspective on Regulatory Hierarchy

Article

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Abstract

Government Regulation No. 26 of 2023 on Marine Sedimentation Management has sparked significant legal and ecological controversy by re-authorizing sea sand exports. This study examines the regulation's compatibility with Law No. 32 of 2009 on Environmental Protection and Management, the Sustainable Development Goals (SDGs), and constitutional principles regarding the hierarchy of norms. Employing a normative juridical method with statutory and conceptual approaches, the research identifies a clear conflict of norms (*lex superior derogat legi inferiori*). The findings demonstrate that the regulation substantively permits activities inconsistent with the ecological protection mandates established in Law No. 32 of 2009. This dualism, combining ecological justification with commercial export interests, creates legal uncertainty and violates the principle of normative hierarchy. Furthermore, the policy manifests as ecological injustice, characterized by inadequate protection of coastal communities, limited public participation, and a lack of transparency. The study concludes that these inconsistencies constitute a structural legal defect rather than a mere policy shift. Consequently, legal reform at the statutory level is necessary to ensure conformity with superior legal norms, strengthen legal safeguards for affected communities, and realign environmental governance with constitutional principles and international sustainable development commitments.

Keywords: Coastal community Protection; Constitutional right; Sea sand export; Sustainable Development Goals (SDGs)

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INTRODUCTION

Within two months before ending his term of office, Indonesia's 7th President, Joko Widodo, enacted Government Regulation Number 26 of 2023 on the Management of Marine Sedimentation (PP 26/2023), reopening the door for sea sand mining that had previously been closed. As a maritime nation with an extensive coastline, Indonesia holds significant potential in this industry, particularly given the high demand from neighboring countries such as Singapore and Malaysia. Sea sand, which serves as a backbone for the construction and reclamation industries, offers lucrative economic opportunities. However, uncontrolled exploitation will inflict catastrophic environmental damage and irreversibly harm coastal

ecosystems, with consequences that far outweigh any short-term economic gain (Han et al., 2023). In the past, Indonesia once allowed the export of sea sand, but the policy was halted due to its unavoidable environmental impacts. Now, with this new regulation, the question is not only about economic benefits but also about ensuring that the profits gained are not paid for with even greater environmental damage.

The export of sea sand has been carried out since the 1970s, with a primary focus on three provinces: the Riau Islands, Bangka Belitung, and West Kalimantan. The Riau Islands Regency is the most frequently mined area due to its proximity to Singapore, the primary market (Purwaka, 2014). At that time, the government targeted state revenue of Rp50.35 billion per year for eight years, with supervision initially carried out by the Department of Mining and Energy (1970–1990 and 1998–2000), the Batam Authority (1991–1997), and later transferred to the Regional Government in 2001 based on Law Number 22 of 1992 concerning Regional Government. Implementation in the field was far from ideal, as numerous permits were traded, sea sand mining became uncontrolled, and the government's benchmark export price regulations were ignored.

In addition, environmental issues have increasingly emerged, such as murky seawater caused by Singapore's sand mining using foreign dredger vessels that were environmentally unfriendly. There were also alarming reports of sinking islands, such as Nipah Island, and the shrinking of Indonesia's territorial boundaries as a result of massive sea sand dredging (Purwaka, 2014). As a result, in 2002, the government imposed a three-month suspension of marine mining activities through a Joint Decree of the Minister of Industry and Trade Number 89/MPP/Kep/2/2002, the Minister of Marine Affairs and Fisheries Number SKB.07/MEN/2002, and the Minister of Environment Number 01/MENLH/2/2002. An evaluation was then conducted by forming the Sea Sand Mining Control and Supervision Team (TP4L), but it yielded no results. Finally, based on the Decree of the Minister of Industry and Trade Number 177/MPP/Kep/2/2003, the government indefinitely suspended sea sand exports. After twenty years of this ban, Joko Widodo revoked the regulation and reinstated the export of sea sand.

During the suspension of sea sand exports, the government enacted several regulations on environmental management, particularly Law Number 32 of 2009 on Environmental Protection and Management, which explicitly mandates protecting ecosystems from damage and unsustainable exploitation. In addition, the government issued regulations within the maritime sector, namely Law Number 32 of 2014 on Marine Affairs, aimed at protecting and preserving the marine environment. Article 56 of this law emphasizes the government's responsibility to safeguard marine ecosystems. This responsibility subsequently served as the juridical basis for the issuance of Government Regulation Number 26 of 2023, as reflected in its legal considerations.

With the enactment of Government Regulation Number 26 of 2023, which serves as the basis for the reinstatement of sea sand exports, the government claims that this regulation provides a solution to bridge the challenges and opportunities in managing marine sedimentation in accordance with Law Number 32 of 2014. Under this framework, the government argues that sedimentation can be effectively managed, as excessive sedimentation may disrupt coastal ecosystems, reduce environmental carrying capacity, and threaten the health of aquatic environments (Bhuyan et al., 2025) Furthermore, effective sediment management can be a valuable asset for development and ecosystem restoration, offering tangible benefits for both the environment and coastal communities.

However, concerns arise regarding the substance of Government Regulation Number 26 of 2023 in relation to higher-level regulations. This regulation is considered to contradict the spirit embodied in Law Number 32 of 2009. Furthermore, it is not explicitly mandated as an

implementing regulation under Law Number 32 of 2014, raising questions about its function and legitimacy as a subordinate regulation. Notably, for over two decades, sea sand exports have been suspended due to their ecological impacts, while Indonesia's environmental legal framework has been progressively strengthened during that period. Therefore, any regulatory inconsistency reflects, in essence, the state's failure to uphold the principles of the rule of law. According to Hans Kelsen's theory, legal norms must be structured hierarchically, with each norm deriving its validity from a higher norm. This process continues until it reaches the highest norm, which is hypothetical and abstract, known as the Grundnorm or basic norm (Muhtadi, 2014).

Therefore, under the hierarchy of laws and regulations in Indonesia, as stipulated in Law Number 12 of 2011 on the Formation of Laws and Regulations, government regulations rank below statutes and serve as implementing regulations. Within this hierarchy, lower-level regulations must not contradict higher-level laws. Accordingly, if the utilization of marine sediment under Government Regulation Number 26 of 2023 is interpreted as commercial exploitation of sea sand, particularly for export, such a policy not only contradicts the principle of sustainability but also creates inconsistency within the legal framework.

Moreover, rather than providing sound legal reasoning for addressing marine sedimentation, Government Regulation Number 26 of 2023 raises concerns due to its potential inconsistency with Indonesia's environmental legal framework. Data from the Forum Lingkungan Hidup Indonesia (WALHI) indicates that approximately 70 out of 120 islands in the Spermonde Archipelago have disappeared due to sand exploitation (WALHI, 2025). Furthermore, this ecological degradation disrupts fish habitats, thereby affecting coastal communities, particularly fishermen (Daris et al., 2023). This issue not only raises concerns regarding regulatory conflicts at the national level but also has implications for compliance with global standards under the Sustainable Development Goals (SDGs), particularly those related to the protection of marine and coastal ecosystems, as reflected in Law Number 32 of 2009

This issue not only raises concerns regarding regulatory conflicts at the national level but also has implications for compliance with global standards under the Sustainable Development Goals (SDGs), particularly those related to the protection of marine and coastal ecosystems, as reflected in Law Number 32 of 2009 (Christmas & Aminah Aminah, 2019). Since 2016, the SDGs have played a crucial role in guiding countries toward achieving a more sustainable global vision by 2030, emphasizing the balance between economic development and environmental preservation principles, principles likewise embedded in the substance of Law Number 32 of 2009.

In this context, this research is urgent in filling the legal research gap by specifically analyzing the granting of sea sand export permits under Government Regulation 26/2023 in relation to Law 32/2009 and their compliance with the SDGs. Several related studies, including those by Jauhari and Agus Surono, highlight the need for ecological justice for coastal communities. They argue that the implementation of Government Regulation 26/2023 is not based on evidence of sedimentation that disrupts navigation, making sea sand dredging a violation of the principle of ecological justice and national legal norms, and even potentially conflicting with higher-level laws (Jauhari & A. Surono., 2023).

Meanwhile, a study by Yansen et al. examines the policy on sea sand exports from the perspective of impacts and corporate responsibility for the submergence of small islands, as well as the importance of solutions such as reclamation efforts arising from sea sand export activities (Yansen et al., 2023). Furthermore, research by Hidayat and Taufik focuses on the implementation of Government Regulation Number 26 of 2023, particularly its advantages and disadvantages. They argue that revenue from Non-Tax State Revenue derived from sea sand exports is not proportional to the ecological losses incurred (Hidayat & Taufik, 2024). From

these studies, it can be observed that their focus is primarily limited to revenue implications and ecological impacts of sea sand exploitation. In addition, Tobias's research in the Indonesian context examines Law Number 3 of 2020 on Mineral and Coal Mining, which expands the scope of mining areas to include the seabed (Tobias, 2022). However, this expansion is considered insufficient, thus requiring a specific law to regulate seabed mining. Consequently, this study does not rely on that law as the legal basis for the implementing regulation of Government Regulation Number 26 of 2023.

In a broader context, a study by Yuen et al. analyzes sea sand mining practices within the Association of Southeast Asian Nations (ASEAN), finding that most countries utilize sea sand primarily for domestic needs (Yuen et al., 2024). This suggests that managing sea sand for national purposes is both common and appropriate. In contrast, research by Yasmin et al. highlights that freshwater sand governance should be understood as a complex, multi-scalar resource regime. Sand mining is shaped by the interaction between formal law, social norms, and various actors, including the state, private sector, and local communities, making policy intervention essential (Yasmin et al., 2024). This study emphasizes the importance of community involvement, particularly in coastal communities, and the role of effective policy. Furthermore, a global study by Marschke and Rousseau notes that countries such as China and India are projected to require large quantities of sand, yet this demand is not supported by strong global regulation, leading to widespread illegal mining practices (Marschke & Rousseau, 2022). While these studies address global dynamics and regulatory weaknesses, none specifically examine constitutional or administrative law issues, particularly violations of the hierarchy of laws and regulations in environmental governance.

Therefore, this study aims to determine whether the policy on sea sand exports is consistent with Law Number 32 of 2009, which embodies principles of environmental protection, the precautionary principle, and ecological justice. In addition, to address the conceptual gap in previous studies, this research also examines Supreme Court Decision Number 5/P/HUM/2025 and its relationship with the Sustainable Development Goals (SDGs) as a basis for developing a national legal framework in accordance with the hierarchy of laws and regulations. This study further elaborates on environmental protection principles, particularly emphasizing public participation, as mandated by Law Number 32 of 2009, to ensure legal protection for coastal communities, the most affected group. This is essential to assess whether the policy truly reflects the objectives of sustainable development and the fulfillment of the right to a good and healthy environment.

Based on this urgency, the research focuses on two main problems. First, is Government Regulation Number 26 of 2023, as an implementing regulation, consistent with the Sustainable Development Goals (SDGs) as reflected in Law Number 32 of 2009? Second, what forms of legal protection are provided to the public in the process of granting permits for sea sand exports under the applicable laws and regulations? Accordingly, this study is expected to make an academic contribution by evaluating sea sand export policies from an environmental law perspective that upholds justice and sustainability.

RESEARCH METHOD

This research employs a normative juridical method that examines legal norms by analyzing authoritative legal materials. As a prescriptive form of legal research, it is not limited to describing legal issues but also aims to formulate legal arguments and solutions based on applicable laws, principles, and doctrines (Marzuki, 2010). Operationally, the research is conducted through a structured sequence of stages, beginning with the identification and formulation of legal issues, particularly concerning the inconsistency between environmental

protection objectives and the policy on sea sand export. This is followed by the collection and classification of legal materials, including primary, secondary, and tertiary sources, selected for relevance, credibility, and accessibility. Primary legal materials include binding regulations such as Law No. 32 of 2009 on Environmental Protection and Management, Law No. 32 of 2014 on Maritime Affairs, Government Regulation No. 26 of 2023, and Supreme Court Decision No. 5 of 2025. Secondary legal materials include textbooks, peer-reviewed journal articles, and expert opinions, while tertiary materials, such as legal dictionaries and encyclopedias, support understanding of legal terminology.

The analysis is carried out using three main approaches. First, the statutory approach is applied by systematically examining and interpreting relevant laws and regulations through systematic and contextual interpretation, to assess their coherence, hierarchy, and implementation in practice. Second, the conceptual approach uses legal doctrines, theories, and scholarly opinions to clarify key concepts, construct legal arguments, and evaluate the consistency of the regulation with fundamental principles such as sustainable development and environmental protection. Third, the comparative approach examines regulatory frameworks in several countries with experience in managing or restricting sea sand exports, to provide broader perspectives and evaluate alternative regulatory models.

Data collection is carried out through document study, involving the review and extraction of relevant norms, principles, and legal arguments from the selected materials. The analysis of legal materials uses a qualitative method, supported by various legal interpretation techniques, including grammatical, systematic, and teleological interpretation, to ensure a comprehensive and contextual understanding of the legal provisions and their objectives. Finally, the conclusions are formulated using deductive reasoning, deriving specific legal conclusions from general legal principles and higher norms, thereby ensuring logical consistency and strengthening the research's normative and analytical character.

ANALYSIS AND DISCUSSION

The Objectives of Sea Sand Export Permits in Relation to the SDGs under Law No. 32/2009

The policy on sea sand export, as regulated under Government Regulation No. 26 of 2023, must be examined through a single, coherent analytical framework: the alignment between Indonesia’s environmental legal regime and the Sustainable Development Goals (SDGs), particularly Goal 14 (Life Below Water). Within Indonesia’s legal hierarchy, environmental protection is not merely a policy preference but a binding constitutional and statutory obligation. Article 28H, paragraph (1), of the 1945 Constitution guarantees the right to a good and healthy environment, thereby elevating environmental protection to the level of a fundamental right. Therefore, the constitution recognizes a causal relationship between environmental rights and human rights, namely that without environmental health, the existence of personal liberty in an unhealthy environment cannot be achieved (Fadli et al., 2025) This is further operationalized under Article 1 paragraph (3) of Law No. 32 of 2009, which defines sustainable development as an integrated approach balancing environmental, economic, and social dimensions to ensure intergenerational justice. In the marine context, Article 56 of Law No. 32 of 2014 imposes a specific obligation on the state to protect and preserve marine ecosystems, including controlling marine sedimentation. Consequently, the legal framework establishes a clear normative hierarchy, in which ecological sustainability must serve as the primary benchmark for evaluating any policy concerning the utilization of marine resources.

At the regulatory level, Government Regulation No. 26 of 2023 appears to adopt this ecological orientation. Article 2 explicitly frames marine sedimentation management as a mechanism to maintain ecosystem resilience, restore environmental balance, and prevent degradation of marine carrying capacity. From the perspective of the SDGs, this provision reflects an attempt to operationalize Goal 14, particularly targets related to preventing marine pollution, protecting ecosystems, and ensuring sustainable use of ocean resources. However, a closer, more systematic interpretation reveals normative fragmentation within the regulation. Article 9 paragraph (2)(d), in conjunction with Article 15, allows the utilization of marine sedimentation products, including sea sand, for export purposes once domestic needs are fulfilled. This provision introduces a structural dualism, in which ecological protection coexists with economic-commercial exploitation within a single regulatory framework, without clear prioritization.

Within the SDGs framework, such dualism is not merely a technical inconsistency but represents a substantive deviation from the principle of sustainability. Sustainable development requires not only the formal inclusion of environmental objectives but also the subordination of economic activities to ecological limits. In the case of sea sand, export-oriented utilization inherently transforms sedimentation management from an ecological corrective measure into an extractive economic activity. This transformation has significant implications. First, it alters the scale of exploitation, as export demand often drives large-scale extraction beyond local ecological needs. Second, it creates economic incentives that may weaken regulatory enforcement and encourage overexploitation. Third, it risks shifting the policy orientation from environmental protection to revenue generation, thereby undermining the integrity of the sustainability framework.

From a scientific-ecological perspective, the risks associated with sea sand extraction are both cumulative and systemic. Empirical studies demonstrate that large-scale dredging contributes to coastal erosion, degradation of seabed morphology, disruption of marine habitats, and loss of biodiversity (UNEP, 2014). These impacts are not easily reversible, as marine ecosystems often require long recovery periods and may not fully return to their original state. In the SDGs analytical framework, this indicates that the environmental pillar bears disproportionate externalities, while the economic benefits are short-term and unevenly distributed. Such an imbalance contradicts the core principle of sustainable development, which requires the equitable integration of environmental, social, and economic dimensions.

From a legal-theoretical perspective, the dualism embedded in Government Regulation No. 26 of 2023 reflects a failure to fully internalize key principles of environmental law. The precautionary principle requires that in situations involving potential environmental harm, preventive measures must be prioritized even in the absence of complete scientific certainty. In this context, the well-documented risks of sea sand extraction should justify stricter regulatory control, not the reopening of export channels. Furthermore, the principle of intergenerational equity mandates that current resource utilization must not compromise the ecological rights of future generations. Export-oriented exploitation, which accelerates resource depletion and environmental degradation, is inherently difficult to reconcile with this principle. Additionally, the principle of sustainable use requires that natural resource use remain within the regenerative capacity of ecosystems, a condition unlikely to be met under export-driven extraction regimes.

A comparative analysis further reinforces the normative critique of Indonesia’s regulatory approach. Jurisdictions such as China, Cambodia, and Thailand. China, for instance, has long prohibited sea sand exports through regulations issued in the Ministry of Commerce, General Administration of Customs Announcement (MOFCOM), and GAC Announcement No. 26 of 2007 (Catalog of Prohibited Export Goods, Batch IV), which allows exports only for manufacturing and distribution companies with a significant export record to Hong Kong or

Macau within the previous three years. To qualify, companies were required to demonstrate a minimum capital threshold and meet an average annual export quota, effectively blocking new entrants lacking the mandated export history. Beyond these material requirements, companies seeking to export were required to submit a license application to China's Ministry of Commerce, along with a sales contract, an end-user certificate, and proof of sand availability. Export licenses were granted on a per-shipment basis and remained valid for only 60 days after issuance.

In Cambodia, the government restricted exports to reduce dredging through Sub-Decree No. 195 on the Management of Mine Export. This regulation governs general mineral export policies, including sea sand as a non-metallic mineral, which requires quota approval from the Minister of Mines and Energy, as well as export approval from the Minister of Economy and Finance. The regulation serves as a general framework for the subsequent rule issued in 2017, namely Prakas No. 236, which permanently prohibits the export of construction sand and silt sand from Koh Kong Province, except for silica sand. Under this provision, dredging is only allowed for small-scale local needs. Thailand has further tightened its ban on sea sand exports through Customs Department Regulation type 25.05, allowing only minimal exports of less than two kilograms, specifically for experimental purposes only (Pattaya, 2023)

In contrast, Indonesia's approach retains both objectives without establishing a clear hierarchy, resulting in normative ambiguity and regulatory inconsistency. This divergence indicates that Indonesia's policy is less aligned with emerging global standards in marine environmental governance and may weaken its commitment to the SDGs.

The Supreme Court Decision No. 5 of 2025 plays a crucial role in addressing this inconsistency. By annulling provisions related to the commercialization of sea sand, the Court effectively reasserts the primacy of higher legal norms, particularly the obligation to protect marine ecosystems. Within the SDGs framework, this decision can be understood as a form of judicial harmonization, aligning subordinate regulations with overarching principles of sustainability and environmental protection. However, the impact of this decision remains limited by its reactive and case-based nature, as it does not automatically eliminate the structural dualism embedded in the broader regulatory framework.

Therefore, achieving genuine alignment with the SDGs requires a fundamental reorientation of policy objectives by synchronizing the three pillars of development so that they can be aligned with the 17 goals of the SDGs (Disemadi & Cory, 2021). To achieve that, Government Regulation No. 26 of 2023 needs to be restructured to eliminate its dualistic character and establish a single, coherent normative direction: environmental protection and sustainable marine resource management. The restructuring of rules is part of legal development, which is an essential requirement for ensuring that economic, social, and environmental development can be implemented in a concrete and well-directed manner (Yorisca, 2020). Without a clear legal basis, the three pillars will lose their normative foundation in implementation, as reflected in the dualism of Government Regulation No. 26/2023, which contradicts Law No. 32/2014.

The restructuring of sea sand regulations can be firmly established by removing export provisions that incentivize large-scale exploitation and by strengthening regulatory mechanisms to ensure that any permitted utilization remains within ecological limits. Domestic use of sea sand may still be justified, particularly for national development needs. Still, it must be strictly regulated through comprehensive environmental impact assessments, clear ecological thresholds, robust monitoring systems, and effective enforcement mechanisms.

Legal Protection of the Community in the Policy of Sea Sand Export

Legal protection for society in the context of granting sea sand export permits is a necessity in a state governed by law that upholds human rights, ecological justice, and the principle of environmental sustainability. Within the framework of the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the state is obliged not only to guarantee the civil and political rights of its citizens but also their economic, social, and cultural rights, including the right to a good and healthy environment. The exploitation of natural resources, such as sea sand, carries significant ecological and social risks, ranging from marine ecosystem degradation and coastal erosion to the loss of livelihoods for coastal communities (Ambari, 2023). Therefore, the state is obliged to formulate and implement export policies that are not only oriented toward short-term economic gains but also prioritize the protection of society.

Before the enactment of Government Regulation Number 26 of 2023, legal protection for communities, particularly coastal communities, had already been established under Law Number 27 of 2007 on the Management of Coastal Areas and Small Islands, as amended by Law Number 1 of 2014. This law explicitly regulates the rights of local communities to participate in the management of coastal resources. Article 60A of Law Number 1 of 2014 stipulates that coastal area management must take into account ecosystem sustainability and the livelihoods of local communities. It also recognizes the rights of indigenous and local communities to access, manage, and sustainably benefit from marine resources. Consequently, any exploitative policy that potentially excludes communities from access to their livelihoods, such as sea sand export, constitutes a violation of the legal protection guaranteed within this normative framework.

Legal protection for communities is further strengthened by Law Number 32 of 2009, which emphasizes the principle of public participation in policies with significant ecological impacts. Article 65, paragraph (2) of Law Number 32 of 2009 provides that every person has the right to participate in environmental decision-making that may affect their lives. In this context, coastal communities, as the most affected stakeholders, must be involved both in the preparation of documents and in the decision-making process (Maskun et al., 2021).

Furthermore, Article 70 of Law Number 32 of 2009 normatively affirms that the public has the right to submit objections, provide opinions, or even initiate legal action in cases of activities that violate environmental protection principles. In the context of granting permits for sea sand exports, public participation should be reflected in the preparation of Environmental Impact Assessments (EIA or AMDAL), which are mandatory for activities with high environmental risks. The preparation of EIA is not merely a technical procedure, but also a crucial forum for accommodating public aspirations, voicing concerns, and ensuring that social and ecological aspects are properly considered in the final decision (Nurul et al., 2025).

However, the enactment of Government Regulation Number 26 of 2023 reopens permits for sea sand exports without requiring EIA or involving affected communities in the licensing process. As a result, the legal protections that were previously clearly regulated now come into conflict with this implementing regulation. The omission of these requirements represents a regression in law and weakens the preventive protection guaranteed under Law Number 32 of 2009.

The absence of norms regarding public participation, including mechanisms for objections, public consultation, and obligations to provide compensation for ecological damage, further highlights the weakness of legal protection in terms of implementation and

practical application within this policy (Menini et al., 2022). In this context, the state neglects the principle of inclusive governance, instead prioritizing the economic interests of elites or state-owned enterprises assigned to carry out sea sand export activities

Criticism of this weak legal protection is reinforced by findings from the Indonesian Ocean Justice Initiative (IOJI) in its November 2024 research report. IOJI notes that the technical regulations accompanying Government Regulation Number 26 of 2023, namely Minister of Marine Affairs and Fisheries Regulation Number 33 of 2023 and Minister of Trade Regulations Numbers 20 and 21 of 2024, fail to provide adequate technical standards for the protection of marine ecosystems, do not enable meaningful public participation, and do not establish compensation schemes for affected communities (IOJI, 2024). These findings are contrary to the principles of environmental protection, particularly the principle of non-regression, which prohibits any decline in previously achieved standards, including in lawmaking (Mitchell & Munro, 2023).

Furthermore, legal protection within the framework of modern environmental law should ideally encompass three main aspects: (1) preventive protection, in the form of mandatory EIA, transparency of information, and public participation; (2) repressive protection, in the form of sanctions against environmental violations and the provision of access to justice for communities; and (3) restorative protection, in the form of compensation and recovery for damages that have occurred (Nafi', 2024). If the government fulfills these three aspects, it can be said to have effectively implemented the principles of good governance. These principles are particularly crucial in this context, as the protection of coastal environments largely depends on the government's role as *bestuur*, or governing authority, to prevent the emergence of opportunistic regulations that violate constitutional rights, particularly the right of coastal communities to a healthy environment. In this regard, the fulfillment of environmental objectives in line with the principles of good governance is commonly referred to as good environmental governance.

Good Environmental Governance emphasizes the quality of decision-making processes, institutional arrangements, and stakeholder interactions that shape the formulation and implementation of environmental policies. This principle also adopts the general principles of good governance (*Asas-Asas Umum Pemerintahan yang Baik*, or AUPB) as set out in Article 10 of Law Number 30 of 2014 on Government Administration. However, this law is not the sole source of AUPB. Within this provision, several principles closely related to good environmental governance are legal certainty and due care, public interest and impartiality, and transparency (Pawara & Aslinda, 2026). From the perspective of good governance, the fulfillment of these principles would inherently ensure environmental legal protection for civil society. However, this stands in contrast to Government Regulation Number 26 of 2023 regarding the application of these principles. The principles of legal certainty and due care are not fulfilled, as this implementing regulation is fundamentally inconsistent with Law 32 of 2009. Moreover, the existence of Supreme Court Decision Number 5 of 2025, which annulled several provisions, further indicates the lack of legal certainty regarding the validity of this regulation

In line with the principles of public interest and impartiality, good governance requires the implementation of collaborative initiatives that involve local communities, non-governmental organizations, and the private sector, thereby fostering democracy. Such approaches have been widely applied in various fields, including climate change mitigation and coastal area management (Pawara & Aslinda, 2026). Democracy within good governance is understood as meaningful public participation, which is closely linked to the principle of

transparency. The disclosure of information by the government influences the level of participation of local communities, ensuring that policies adopted do not automatically face rejection, as they align with the community's right to a healthy environment

In the context of Government Regulation Number 26 of 2023, legal protection can also be understood more broadly through judicial protection, as reflected in Supreme Court Decision Number 5 of 2025, which annulled Article 10 paragraphs (2), (3), and (4) of the regulation on the grounds of inconsistency with Article 56 of Law Number 32 of 2014. This decision reaffirms the judiciary's role in safeguarding public rights and ensuring environmental sustainability. However, the decision does not constitute a comprehensive solution for protecting coastal communities from the impacts of sea sand exports, as its case-based nature means it is neither preventive nor sustainable. Nevertheless, as Indonesia is a state based on the rule of law, where legal sources are not limited to statutes alone, jurisprudence can serve as a source of law to fill legal gaps and provide guidance in law enforcement (Firmansyah et al., 2024). Accordingly, within the framework of *ius constituendum*, such jurisprudence may serve as a substantive legal foundation for future regulatory development.

To prevent future violations, a strategic step is to draft a new law that explicitly prohibits the export of sea sand. Such legislation is essential to avoid policy inconsistency, as illustrated by the repeated shifts in government policy, such as the three-month suspension of sea sand export permits under the Joint Decree of the Minister of Industry and Trade No. 89/MPP/Kep/2/2002 and the Minister of Marine Affairs and Fisheries No. SKB.07/MEN/2002, and the Minister of Environment No. 01/MENLH/2/2002; followed by the reopening of export through Presidential Decree No. 33 of 2002; then its indefinite suspension under the Decree of the Minister of Industry and Trade No. 177/MPP/Kep/2/2003; and finally its reauthorization through Government Regulation No. 26 of 2023.

This fluctuating policy pattern demonstrates an urgent need for a permanent regulation at a higher level of the legal hierarchy, namely a statute, to ensure ecological sustainability and legal certainty. Such a law must be grounded in the Constitution of the Republic of Indonesia, namely the 1945 Constitution (UUD NRI 1945), as a form of the contractual relationship between the government and its citizens. Referring to Article 28H paragraph (1) of the Constitution, the right to a healthy environment constitutes a constitutional right that the state must fulfil. This obligation is further reinforced by Article 33 paragraphs (2) and (3), which stipulate that natural resources and sectors of production essential to the public interest are controlled and managed by the state. These provisions not only establish state responsibility but also reflect state sovereignty over natural resources for the benefit of its people. Ultimately, such arrangements serve to fulfill the most fundamental right of citizens, namely the right to life and its preservation, as guaranteed under Article 28A of the Constitution.

These constitutional rights have been further elaborated in subordinate legislation, particularly Law Number 32 of 2009, which provides a broader framework for environmental rights and the mechanisms to realize them. The existence of these environmental standards indicates that, both constitutionally and statutorily, Indonesia already possesses a comprehensive framework aligned with good environmental governance. Consequently, future regulations must not adopt a regressive approach. This is in line with the principle of environmental protection, namely non-regression. Therefore, to address the shortcomings arising from Government Regulation Number 26 of 2023, it is necessary to establish a more moderate statutory framework that adheres to the established standards of good environmental governance. Accordingly, any regulatory regression, such as the policy permitting sea sand exports, would not only violate the principle of non-regression but also constitute a breach of constitutional principles.

The existence of a statute is essential to ensure legal certainty, protect human rights, prevent arbitrariness, and maintain public trust in the law, which can only be achieved through statutory regulation rather than merely implementing regulations. The formulation of such a law must also align with the commitments of Law Number 32 of 2009 to the Sustainable Development Goals (SDGs), particularly those aimed at protecting marine ecosystems. This is necessary not only to avoid violating the norms of Law Number 32 of 2009, but also to prevent legal conflict with the intent of Article 56 of Law Number 32 of 2014.

Accordingly, the proposed law should serve as a general norm explicitly prohibiting the export of sea sand, while allowing limited domestic use within a strictly regulated framework. The notion of domestic needs acknowledges that Indonesia needs sea sand for development. This is in line with Article 33, paragraph (3), of the 1945 Constitution, which mandates that natural resources be utilized for the greatest benefit of the people, such as for construction materials that contribute to safer, more durable infrastructure. However, such development must be subject to strict regulation. This strictness refers to environmental standards, particularly the requirement for sustainable development in accordance with the SDGs, as reflected in Law Number 32 of 2009. Therefore, the necessary regulatory framework must include detailed provisions, beginning with ecological requirements that must be fulfilled before any utilization.

Regarding ecological requirements, they are explicitly stated in Government Regulation Number 26 of 2023; however, the provisions remain general and more akin to principles than detailed regulatory standards. By comparison, other implementing regulations, such as Government Regulation Number 96 of 2021 on the Implementation of Mineral and Coal Mining Activities, provide far more detailed requirements. For instance, Article 22 stipulates: “In the implementation of the auction of WIUP for metallic minerals or coal as referred to in Article 20, prospective bidders must fulfill the following requirements: a. administrative; b. technical and environmental management; and c. financial.” Furthermore, paragraph (3) elaborates: “The technical and environmental management requirements as referred to in paragraph (1) letter b shall at least include: a. experience of the business entity, cooperative, or individual company in the field of mineral or coal mining, or for new companies, support from another company engaged in mining; b. personnel with at least three years of experience in mining and/or geology; c. a statement of commitment to comply with laws and regulations in the field of environmental protection and management; and d. an annual work plan and budget (RKAB) during the exploration stage.”

In contrast, Article 7 paragraphs (1) and (2) of Government Regulation Number 26 of 2023 provide: “The cleaning of marine sedimentation results as referred to in Article 6 paragraph (1) must utilize environmentally friendly equipment and possess facilities to separate valuable minerals.” “The environmentally friendly equipment as referred to in paragraph (1) must at least meet the following criteria: a. not endangering marine biota; b. not causing permanent damage to marine habitats; c. not endangering navigation safety; and d. not altering designated spatial functions.” This comparison highlights a regulatory deficiency, as an implementing regulation should provide more detailed and technical provisions than the higher-level law it derives from. Notably, Government Regulation Number 26 of 2023 does not include any quantitative parameters, such as limits on area, duration, volume, or extraction percentages of sea sand.

Therefore, these considerations establish a benchmark for the ideal future law on sea sand management. At a minimum, the law should require public disclosure of information. This disclosure must be timely, comprehensive, clear, and delivered directly to coastal communities near sea sand dredging sites (Harjasoemantri, 2002). So, the law should include: clearly defined ecological requirements; prior establishment of implementing regulations before enforcement;

and a clear prioritization of domestic needs supported by transparent, structured regional planning. Accordingly, until these conditions are fulfilled, sea sand management, particularly export activities, should be suspended to prevent harm to the environmental rights of coastal communities.

Legal development of this kind is necessary to prevent regulations from reopening export channels, as frequent regulatory changes would undermine legal certainty. This approach is in line with the principle of the morality of law, which holds that laws altered too frequently cannot be relied upon by society. Therefore, the law to be established must be oriented toward environmental protection, not only to regulate prohibition, but also to provide legal safeguards for the rights of both present and future generations to live in a sustainable environment.

CONCLUSION

The most important finding of this study is that Government Regulation No. 26 of 2023 embodies a fundamental dualism of objectives, where it is formally justified as an ecological instrument for managing marine sedimentation, yet substantively enables the commercial export of sea sand; this dualism, when examined through a juridical framework, reveals a clear normative inconsistency on three grounds: (i) hierarchical conflict of norms, as the export provisions contradict higher legal mandates under Article 56 of Law No. 32 of 2014 and the constitutional guarantee of the right to a good and healthy environment under Article 28H paragraph (1) of the 1945 Constitution; (ii) incompatibility with the principle of sustainable development under Law No. 32 of 2009 and the Sustainable Development Goals (SDGs), particularly Goal 14 (Life Below Water), due to the failure to prioritize environmental sustainability over economic exploitation; and (iii) deviation from principles of good governance and AAUPB, reflected in limited transparency, weak public participation, inadequate objection mechanisms, and the absence of clear compensation frameworks, which collectively undermine legal certainty and environmental justice for coastal communities. These inconsistencies have been legally validated by Supreme Court Decision No. 5 of 2025, which annulled provisions on commercialization, confirming their incompatibility with higher legal norms and reinforcing the regulation's structural weakness. Accordingly, the conclusion that Government Regulation No. 26 of 2023 must be revised or revoked arises not merely as a policy recommendation but as a necessary legal consequence of its inconsistency within the legal system; therefore, legal reform should be directed toward establishing a coherent statutory framework that eliminates the dualism of objectives, explicitly prioritizes environmental protection, and ensures regulatory consistency. In terms of implementation, such reform may take the form of a statutory-level law that prohibits sea sand exports, restricts utilization to strictly controlled domestic needs, and incorporates mandatory environmental impact assessments, transparent and accountable licensing mechanisms, meaningful public participation, and clear compensation schemes, thereby ensuring alignment with constitutional mandates, strengthening legal protection, and fulfilling Indonesia’s commitments to sustainable development.

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AUTHORS CONTRIBUTION

Erly Aristo, S.H., M.Kn. served as the senior author and academic supervisor of this research. As a lecturer at the Faculty of Law, Universitas Surabaya, he provided substantial guidance on conceptualizing the study and critical insights into the legal framework and theoretical foundations. His expertise played a crucial role in ensuring the research's academic quality and coherence.

Davelyn Melvern and Johanes Senjaya, as students of the Faculty of Law, Universitas Surabaya, contributed as co-authors of this manuscript. They were responsible for conducting primary research, including legal analysis, data collection, and review of relevant laws and regulations. Additionally, they were actively involved in drafting and developing the manuscript.

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