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CONFLICT BETWEEN PUBLIC TRANSPORTATION AND LOCAL COMMUNITY RIGHTS IN THE SEA

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Abstract

This study aims to analyze the conflict between public access rights and the rights of local communities on Cempedak Island in managing marine areas. The method used is socio-legal, through an analytical approach to national legal frameworks, doctrines, and case studies. The study results show that this conflict creates a dilemma between the interests of local communities and public access rights. The 1945 Constitution and related regulations provide a legal basis for public access rights, but local communities also have rights set out in policies and regulations. This paper critically presents a model of conflict resolution, regulatory, and resource processes that often ignore local community participation. Evaluations of previous Government policy procedures show a lack of consultation and involvement of local communities and public access in policy processes that can result in gaps and prolonged conflicts. This research emphasizes the need for a participatory-collaborative approach. Innovation is the gradual application of the need for community identification to implement comprehensive methods that integrate positive legal analysis with the social and local communities' cultural realities. Conflict techniques on Cempedak Island actively involve communities in decision-making to encourage sustainability, protection, community interests, and public access rights, ultimately creating new policies and rules.

1. Introduction

Article 25A of the 1945 Constitution (1945 Constitution) emphasizes that Indonesia is an archipelagic country. As an archipelagic country, Indonesia must focus on managing its stunning marine resources to realize a sovereign maritime state [1] . Maritime sovereignty supports the national economy and plays an important role in maintaining important political and national defense and security stability [2]. However, behind this potential, various challenges can threaten Indonesia's maritime sovereignty, both from Indonesia's actors related to threats to national defense and security [3] and internal factors involving economic, political, and socio-cultural complexities that, if not addressed immediately, have the potential to trigger conflicts that can lead to the disintegration of the nation [4]. Therefore,

1 (Ayunita et al., 2020).
2 (Sereda et al., 2021).
3 P. (eds.) D. Caverley, J., & Dombrowski, "Security Studies in a New Era of Maritime Competition (1st ed.)," in Global Development, Law, Politics & International Relations, ed. Peter Dombrowski Jonathan D. Caverley, 1st ed. (London, 2023), 230, https://doi.org/https://doi.org/10.4324/9781003390121.
4 Sabeth Häublein et al., "Disintegration and Discourse: Cross-Sectoral

new policies are needed to reduce conflicts that benefit the community on Cempedak Island and not ignore public access rights.

Regarding the topic of previous research that has been researched by several authors, including Keisha Angeli Saputra, who focuses on this research, aims to find out the role of human rights (HAM) in distributing transportation facilities with a focus on justice. Justice in transportation access is a basic right that affects every individual's life. The article states that an individual's life is tied to the equitable distribution of transportation facilities. The article also analyzes the legal framework that governs access to transportation and efforts to ensure that the distribution of means of transportation correlates with human rights. This study uses normative juridical research methods in the literature. [5]. The next authors are Egidia Saviri and Azhar Abbas, who focus on the analysis using the dimension of public service quality, where accessibility connects how people obtain sea transportation services by looking at the dimensions of service quality, namely: 1) Reliability, to provide appropriately and correctly, the type of service that the community has promised. 2) Responsiveness, awareness, or desire to help and provide fast service to the community, or willingness to help customers and carry out services sincerely. 3) Certainty, knowledge or insight, politeness, governance, respect for the community, and ethical and moral attention in providing services. 4) Empathy, the government's willingness to approach and try to find out the wants and needs of the community, is characterized by the willingness to know the wants and needs of consumers. 5) Form, physical appearance means that the services provided manifest in physical appearance, such as buildings, equipment, and other facilities [6]. Similarly, the next author is Putu Bayu Aji Krisna et al., who focus on understanding spatial conflict and its implications for using coastal areas on Gili Trawangan. This research began by identifying interest groups using the Gili Trawangan coastal area [7]. Then the next researcher is Mohammad Mahrus Ali et.al, who focuses on juridical and sociological aspects related to protecting the constitutional rights of coastal communities after the Constitutional Court decision Number 3/PUU-VIII/2010 [8]. The final authors are Esti Pramestiari et al., who focus on describing the complex history of economic growth, cultural diversity, and social conflict on the island. In the context of economic development conflicts, the Rempang Eco City project has become a source of tension, especially related to the land ownership rights of indigenous peoples.

However, in contrast to previous research, the author will focus on the public interest in this case, which is related to the socio-economic rights of the Cempedak island community and the right of public access, which must obtain the same protection rights. Thus, the interests and rights of the local community and the right of public access should not be harmed [9]. The conflict between public access rights and the rights of local communities in using marine resources is a crucial issue in managing coastal areas in Indonesia. This case also occurred in Southeast Sulawesi. Practically, this situation creates a dilemma, caused by public passenger ships that want to pass through the path of local people living on the coast of Cempedak Island. This statement means that communities refuse to be crossed and passed by public passenger ships because they interfere with the livelihoods of local communities that depend on marine products, cultural practices, or economic activities such as fishing.

Storylines in the German Water and Forest Debate," Environmental Science and Policy 156, no. April (2024), https://doi.org/10.1016/j.envsci.2024.103743.and deemed beneficial especially in face of cross-cutting issues. As there is little research addressing the ideational integration of two sectors, we introduce a new framework to discursively analyze horizontal policy integration (HPI

5 Keisha Angeli Saputra, "Justice & Transportation: Discussing Human Rights in the Distribution of Transportation Facilities," JOURNAL OF LAW, POLITICS AND SOCIAL SCIENCES 2, no. 4 (October 2023): 216–22, https://doi.org/10.55606/jhpis.v2i4.2683.

6 Egidia Savitri and Azhar Abbas, "Accessibility of Sea Transportation Services for the Rural Community of Batam City (Case Study in Bulang District)," Scienta Journal 1, no. 2 (2019).interviews, and documentation. Interviews were conducted to Head UPT Transportation Service, Private Boat Owner in the Bulang sub-district. This study was analyzed using the Dimension quality of public services, where accessibility is connecting how people obtain service marine transportation by seeing of service quality dimensions, are: 1

7 Ida Bagus Gde Wirawibawa Putu Bayu Aji Krisna, Syamsul Alam Paturusi, "Spatial Conflict in the Coastal Region of Gili Trawangan, Lombok, West Nusa Tenggara," Journal of Architecture and Planning 4 (2021).

8 Mohammad Mahrus Ali, Zaka Firma Aditya, and Abdul Basid Fuadi, "Protection of Constitutional Rights of Coastal Communities: The Urgency of Harmonization of Integrated Coastal Management Regulations," Constitutional Journal 17, no. 4 (January 2021): 799–827, https://doi.org/10.31078/jk1745.

9 Wendy Ayu Melati Esti Pramestiari, Jefry Khasogi, Kahfi Permana, Rangga Arif Mahadeli, "Legal Certainty and Environmental Protection on Rempang Island: The Dilemma between Economic Development and Conservation," IKAMAKUM 3, no. 2 (2023): 273–83.

On the other hand, if the public passenger ship does not pass and cross Cempedak Island, then the public passenger ship must rotate further. Such conditions, of course, result in and require longer journeys and fuel losses for general passenger ships. This conflict is increasingly occurring on the island of Cempedak, which has an ecosystem that depends on the local wisdom of its people. Meanwhile, the interests of public passenger ship rights must also be accommodated.

The gap in this is that there has not been a model for conflict resolution that exists by analyzing in depth on Cempedek Island. The socio-legal approach is used to bridge the gap between the needs of the coastal community of Cempedak Island related to resources and livelihoods, as well as the access rights of public passenger ships passing through the community area. Thus, this study seeks to identify the root of the problem, the dynamics of community needs and passenger ship access rights, and potential solutions aligned with collaborative participation and sustainability principles.

The main objective of this study is to create critical policy procedures in the form of applicable rules and resources, focusing on the extent of local community participation and the interests of general passenger vessels, including the interests of third parties. This analysis will resolve conflicts that can result in gaps and prolonged conflicts, as well as formulate more inclusive policy recommendations through the Forum Group Discussion, starting from identifying local communities in stages, multi-story, which accommodates the needs of hamlets, villages, and sub-districts on Cempedak Island. Conflict resolution between the Cempedak community and public passenger ships uses participatory-collaborative methods through bottom-up-top-down approaches and is oriented towards community empowerment. Then, the meeting results were used to draft concrete rules for the Southeast Sulawesi Government.

The resolution of conflicts in the future can be minimized because Southeast Sulawesi Province consists of several islands that connect one district to another. Almost 50% of these routes and access are passed by sea. The routes and public access rights that must be put forward, both land and sea, are prone to conflicts between local communities and users, including sea transportation routes. Therefore, policies and rules must be made in the form of Regional Regulations to minimize conflicts by applying the participatory-collaborative doctrine and ultimately the importance of the Southeast Sulawesi Regional Government.

2. Methods

The study adopts a qualitative research design as outlined by John Creswell, combining doctrinal and socio-legal approaches. The selection of Cempedak Island is based on the intensity of the conflict as reported in several verified media sources between April and May 2024. This case study is based on several strategic considerations relevant to the objective that Cempedak Island represents a miniature of the complexity of conflict resolution issues, where there is a clash of interests between public access rights driven by economic interests and the traditional rights of local communities dependent on marine resources. Cempedak is a clear example of how the policy process often ignores the participation of local communities, potentially leading to prolonged conflicts. The legal texts analyzed include the 1945 Constitution as the basis of the constitution and sectoral laws and regulations through interpretation carried out by socio-legal methods with participatory-collaborative doctrines that combine bottom-up and top-down. This study distinguishes between normative legal obligations and socio-legal realities experienced by coastal communities.

3. Findings and Discussion

3.1. Marine Public Transport Rights

Public access rights in the sea area is rooted in Article 33, paragraph (3) of the 1945 Constitution, which affirms that "*The land, water, and natural resources con" aimed therein are controlled by the state and used for the greatest prosperity of the people*." This provision shows that the state has a" obligation to manage and utilize natural resources, including marine areas, for the public interest [10] In legal considerations Decision No. 001-021-022/PUU-I/2003 related to the Testing of Law No. 20 of 2002 concerning Electricity, the Constitutional Court (MK) interpreted that the phrase "controlled by the state" includes the sovereignty of the Indonesia" people over all resources [11] So that the management and utilization of natural resources must be carried out based on

10 (Puluhulawa & Harun, 2017).

11 (Harvelian et al., 2023).

the principle of public ownership by the people collectively [12] Returning to the case of the Cempedak Residents Dispute to prohibit passenger ships, it gives birth to a paradox at the level of legal problems, especially in terms of balancing the proportionality of legal recognition of public access rights to marine areas and the need to maintain the quality of the marine regions by local communities. On the other hand, local communities also have the right to preserve traditions and environmental sustainability based on customary rights recognized by the state. If examined carefully, there is a conflict between the community and the ship passengers who want to go to Kendari [13]. Therefore, the right to use the sea has not been realized in terms of efficiency. These rights include public access to marine resources and using the ocean as a means of transportation. Research shows that using the ocean must be carried out using humanitarian and sustainability principles so that people can enjoy the benefits without damaging the marine ecosystem.

Conflicts between the people on Cempedak Island and the government often arise due to dissatisfaction with policies implemented without involving the voices of the local community. The government must openly dialogue with the public to address this problem. Through inclusive meetings, all parties can express their opinions and concerns. By listening to input from the public, the government can understand their needs and expectations, so that the policies taken can be more appropriate and fairer. In addition, involving the community in the decision-making process is essential to create a sense of belonging and responsibility. The government needs to ensure that the policies implemented benefit one party and consider the local community's interests. By providing appropriate dispute resolution mechanisms and monitoring policy implementation, it is hoped that the relationship between the community and the government can be improved, resulting in harmonious and mutually beneficial cooperation.

In this case, the Indonesian people, through the 1945 Constitution, give a mandate to the state to carry out policy formulation (*beleid*), carry out management actions (*bestuursdaad*), regulations (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudendaad)*). All these actions aim to ensure that the use of natural resources is carried out for the prosperity of the people. In short, control by the state is not intended as ownership by a particular individual or group, but as collective ownership intended for the public good [14].

In addition to the provisions in the 1945 Constitution, regulations regarding public access rights in the sea area are also regulated in various laws and regulations. Although the term "public access rights" is not explicitly mentioned, the principle" is reflected in rules on the use and management of marine space [15] This regulation is spread across various organic regulations, among others, Law Number 26 of 2007 concerning Spatial Planning (Law 26/2007), Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands (Law 27/2007), Law Number 6 of 1996 concerning Indonesian Waters (Law 6/1996), Law Number 17 of 2008 concerning Shipping (Law 17/2008), and Law Number 32 of 2014 concerning Marine Affairs (Law 32/2014).

Furthermore, the derivative regulation of the law also strengthens the regulation of public access rights in marine areas. For example, Government Regulation Number 32 of 2019 concerning Marine Spatial Planning (PP 32/2019), Regulation of the Minister of Maritime Affairs and Fisheries Number 28 of 2021 concerning the Implementation of Marine Spatial Planning (Permen KP 28/2021), and Regulation of the Minister of Maritime Affairs and Fisheries Number 54/Permen-Kp/2020 concerning Location Permits, Management Permits, and Location Permits at Sea (Permen KP 54/2020), as well as Presidential Regulation Number 16 of 2017 concerning Indonesian Marine Policy (Presidential Regulation 16/2017). All these regulations, explicitly and implicitly, govern how public access rights in marine areas should be accommodated in managing aquatic resources [16].

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12 (Soedomo, 2020).

13 La Welendo et al., "Analysis of Passenger Characteristics of Sea Transportation at Kendari Nusantara Port," GSC Advanced Engineering and Technology 1, no. 2 (August 30, 2021): 042–048, https://doi.org/10.30574/gscaet.2021.1.2.0038. which is an archipelagic country consisting of islands, sea transportation is an absolute necessity for those living in the archipelago. The port terminal is a tool for the process of moving goods and passengers to transfer modes of movement either through sea transportation or land transportation. The purpose of this study was to determine the characteristics of sea transportation users at the Kendari Nusantara port terminal. The method in this study uses a qualitative descriptive by distributing questionnaires to users of the Nusantara Kendari port terminal who want to travel between islands. The results of the study based on the characteristics of sea transportation users through the Kendari Archipelago port were obtained based on the characteristics of sea transportation users (passengers

14 (Disyon & Sibarani, 2023).

15 (Pratama et al., 2024).

16 Expanded Type and Title Package, "At-Risk-Marine-Biodiversity-Face-Extensive-Expanding-and-Intensifying-Human-Impacts_2021_American-Associations-for-Advanced-Science," 2022; Guilherme Baggio, Manzoor Qadir, and Vladimir Smakhtin, "The Status of Nationwide Freshwater Availability for Human and Ecosystem Needs," Total

The concept of public access rights in the context of regulating the use and management of marine space is intended to avoid *the tragedy of common property* in the management of natural resources [17] As is known, in the field of environmental law, the doctrine *of common ownership* [18] of the Sea as common *property* or common resources is rooted in the principle that certain individuals or groups do not own natural resources including the sea, but by the community collectively [19] This principle is in line with Article 33 paragraph (3) of the 1945 Constitution which emphasizes that natural resources are controlled by the state and used for the greatest possible prosperity of the people[20].

In this context, the sea is considered a common property whose benefits must be enjoyed by all, and the state acts as a manager to ensure that its use does not only benefit some parties [21]. In economic theory, the Sea as *a common property* is vulnerable to overexploitation if it is not well-regulated[22]. Therefore, the role of the Government of Southeast Sulawesi is very important to ensure a fair and sustainable arrangement so that the sea and its resources can be utilized without harming the public interest or the marine ecosystem itself [23]. Relevant laws and regulations, as mentioned above, have provided restrictions to regulate the use of marine space. Through these various arrangements, the state is expected to maintain a balance between economic utilization and preserving marine ecosystems and respect the rights of people who depend on the sea as a source of life [24]. In this view, public access to the ocean is not only about the right of individuals to use or access the sea, but also about maintaining the sustainability of these resources for future generations. Every citizen has the right to benefit from the sea, but they must respect the limits and rules set by the state for the ocean to remain a sustainable resource for all people [25].

In foreign literature, many countries have explicitly regulated the concept of the right of public access or *Ease of Public Access* as a legal instrument to protect people's right to access coastal and marine areas. For example, countries like the United States have clear public access rights regulations[26]. In the United States, the right of public access to the coast and marine area is regulated through *the Doctrine of Public Trust* in the state constitution ([27]the concept of the Public Trust Doctrine (PTD) has strong relevance in controlling public access rights in marine and coastal areas. One example of the implementation of PTD occurred in the case of Lucas v.

Environmental Science 792 (2021): 148230, https://doi.org/10.1016/j.scitotenv.2021.148230; Tianan Deng, Kwok Wing Chau, and Huan Feng Duan, "Machine Learning-Based Seawater Quality Prediction for Coastal Hydro-Environmental Management," Journal of Environmental Management 284, no. December 2020 (2021): 112051, https://doi.org/10.1016/j.jenvman.2021.112051.

17 (Govella, 2023).

18 (Amaransinghe, 2020b).

19 (Muin & Rapower, 2023).

20 (Utomo & Heliaantoro, 2024).

21 (H. Ö. et al, 2023).

22 K. Benabderrazik et al., "Climate Resilience and Human-Water Dynamics. The Case of Tomato Production in Morocco," Environmental Science Total 849, no. February (2022): 157597, https://doi.org/10.1016/j.scitotenv.2022.157597; Shaima Malik and Sabir Bin Muzaffar, "Determination of Biologically Accumulated Potentially Toxic Elements in Commercially Important Pelagic Fish Spanish Narrow-barred Fish (Scomberomorus Commerson)," Marine Pollution Bulletin 201, no. January (2024): 116281, https://doi.org/10.1016/j.marpolbul.2024.116281.

23 (Muthmainna et al., 2024).

24 Georgina G. Gurney et al., "Equity in Environmental Governance: Perceived Justice from Principles of Distribution Justice in Marine Joint Management," Environmental Science and Policy 124, no. May (2021): 23–32, https://doi.org/10.1016/j.envsci.2021.05.022; Mark R. Payne et al., "Skillful Decadal Scale Predictions of Fish Habitats and Distribution Shifts," Nature Communications 13, no. 1 (2022), https://doi.org/10.1038/s41467-022-30280-0; Robert Y. Fidler et al., "Participation, Not Penalties: Community Engagement and Equitable Governance Contribute to More Effective Multipurpose Protected Areas," Science Advances 8, no. 18 (2022), https://doi.org/10.1126/sciadv.abl8929.

25 Pamela M. Buchan et al., "Ocean Citizenship: The Right to Participate in the Transformation of Human-Sea Relations for Sustainability," PLoS ONE 18, no. 3 March (2023): 1–23, https://doi.org/10.1371/journal.pone.0280518.

26 Barbara Cobo, Claudia Cruz, and Paulo C. Dick, "Gender and Racial Inequality in Brazilian Access and Use of Healthcare," Ciencia e Saude Coletiva 26, no. 9 (2021): 4021–32, https://doi.org/10.1590/1413-81232021269.05732021; Margit Endler et al., "How the 2019 Coronavirus Disease Pandemic Affected Sexual and Reproductive Health and Rights and Responses: Results from a Global Survey of Providers, Researchers, and Policymakers," Acta Obstetricia et Gynecologica Scandinavica 100, no. 4 (2021): 571–78, https://doi.org/10.1111/aogs.14043.

27 Lyness, 2024),

South Carolina, where the government did not allow Lucas to erect buildings on coastal land he owned[28]. In the United States, the right of public access to the coast and marine area is regulated through *the Doctrine of Public Trust* in the state constitution [29](the concept of the Public Trust Doctrine (PTD) has strong relevance in controlling public access rights in marine and coastal areas. One example of the implementation of PTD occurred in the case of Lucas v. South Carolina, where the government did not allow Lucas to erect buildings on coastal land he owned[30].

In such cases, the government prohibits development in coastal areas because of environmental impacts, such as the risk of abrasion, which can damage coastal ecosystems. Lucas sued, arguing that the government had taken over his property without compensation. As a result, the court ruled that even if the purpose of environmental protection based on PTD was justified, the government's takeover of land should still be accompanied by appropriate compensation. Further, in this case, the Court affirmed that PTD can conventionally be applied to rivers, land, sea, and public open spaces, aiming to protect the right of communities to access and maintain the sustainability of ecosystems in the area [31].

The application of this doctrine is important in the context of the management of marine areas as *shared property*. In this case, the state not only acts as a manager who ensures the use of resources in the public interest, but also as a party responsible for maintaining a balance between environmental protection and economic utilization[32]. The rights of local communities in the sea area are groups of people who traditionally live in an area and have socio-economic relations with the surrounding environment, including the sea area. Meanwhile [33] , indigenous peoples are part of local communities that have customary laws and value systems and norms that are passed down from generation to generation, which are specifically recognized by the state [34] In Indonesia, the recognition of indigenous peoples is explicitly regulated in Article 18B paragraph (2) of the 1945 Constitution, while local communities are recognized in various more general laws, such as Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands[35]. In the context of customary rights, indigenous peoples have rights to the marine areas that they traditionally manage and use based on their customary laws[36]. The rights of indigenous peoples are often more strongly recognized because they are related to the identity and customary law recognized by the state. However, local communities, especially those dependent on marine resources for their livelihoods, like traditional fishermen, also have the right to manage the area under more general legal [37]arrangements. Customary rights are not only limited to land areas but also include sea areas. The basis for recognizing customary rights of the sea lies in the traditional concept of customary rights, which consists of all territories managed by indigenous peoples, both land and water. [38] [39] Article 3 of the Basic Agrarian Law (UUPA)

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28 hak (Callies, 2023).

29 Lyness, 2024),

30 hak (Callies, 2023).

31 (Rahmawan & Cetera, 2020).

32 (Litvinenko et al., 2023).

33 (Katiandagho, 2020).

34 (Ilmu et al., 2024).

35 (Arisandi & Pareke, 2024).

36 Aleksander Panjek, "The Land Will Tear Us Apart: The Family Farming Division and the Real Estate Market in Slovenia (Sixteenth to Eighteenth Centuries)," Family History 27, no. 1 (2022): 54–81, https://doi.org/10.1080/1081602X.2021.2005654; Chao Wang, Jing Ning, and Xiaohan Zhang, "International Investment and the Environment of Indigenous Peoples: A Case Survey of ISDS from 2000 to 2020," International Journal of Environmental Research and Public Health 18, no. 15 (2021), https://doi.org/10.3390/ijerph18157798; Jae Joseph Russell B. Rodriguez et al., "Ethical Challenges in Genetic Research among Indigenous Peoples of the Philippines: Insights from Fieldwork in Zamboanga and the Sulu Islands," Frontiers in Genetics 13, no. October (2022): 1–13, https://doi.org/10.3389/fgene.2022.901515.

37 Maya Riantini et al., "Vulnerability to Household Livelihoods of Household Fishers Due to Climate Change in Lampung Province, Indonesia," PLoS ONE 19, no. 12 (2024): 1–20, https://doi.org/10.1371/journal.pone.0315051; Lázaro Dias Alves et al., "Meteorological Forecasting and Artisanal Fishing: Filling the Knowledge Gap for Safety at Sea," Environmental Science and Policy 124, no. June (2021): 217–25, https://doi.org/10.1016/j.envsci.2021.06.020; Aniruddha Ghose et al., "Survey on Sea Snake Bites and Related Morbidity and Mortality among Bangladeshi Fishermen in Bay of Bengal: A Pilot Study," Toxicon 234, no. August (2023): 107273, https://doi.org/10.1016/j.toxicon.2023.107273.

38 (Prasetio, 2024).

39 Elisabeth Miltenburg, Hannah Tait Neufeld, and Kim Anderson, "Relationality, Responsibility, and Reciprocity: Fostering Indigenous Food Sovereignty in Urban Environments," Nutrition 14, no. 9 (2022): 1–16, https://doi.org/10.3390/nu14091737; Mojtaba Shafiee et al., "The Food Security Status of Indigenous Peoples in Canada According to the 4

Number 5 of 1960, although it does not explicitly mention maritime customary rights, implicitly provides space for recognizing customary rights if they are alive and by the development of society, and do not contradict the national interest[40].

Furthermore, Boedi Harsono argued that although the UUPA does not regulate customary rights in detail, these rights cover all areas used by indigenous peoples, including waters ([41] Thus, if customary land rights are recognized, then water areas such as the sea must also be recognized automatically, considering the importance of the sea for the life and local wisdom of the community [42]custom. In some regions, such as Maluku, customary rights in the sea are recognized through the system, where indigenous peoples have the authority to manage their marine areas from generation to generation. Therefore [43] , recognizing maritime customary rights is an integral part of indigenous rights, and naval territories should be considered part of the living space of indigenous peoples recognized by law, even though they have not been explicitly regulated in the UUPA. In the context of marine area management, local communities, especially coastal communities that live as traditional fishermen, also have the privilege of utilizing the natural resources in the area. Regulations regarding these rights can be found in Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands (Law 27/2007), which was later amended by Law Number 1 of 2014. The law recognizes the right of indigenous peoples to manage coastal and marine resources they have exploited for generations, but also protects broader local communities, including traditional fishermen. [44]

In addition, local communities, especially those directly related to the sea, are entitled to the protection and preservation of the culture and environment related to the sea. They not only utilize the sea as a source of livelihood, but also maintain the balance of marine ecosystems through local wisdom passed down from generation to generation [45] The rights of local communities in marine areas are also linked to their right to be involved in decision-making that affects their lives, especially in terms of permitting the use of aquatic resources by parties [46] third, Government Regulation Number 32 of 2019 concerning Marine Spatial Planning (PP 32/2019) emphasizes the importance of community participation in the preparation of marine spatial plans that cover the traditional areas they manage[47]. Not only within the scope of national law, the rights of indigenous peoples are also recognized in international legal instruments, such as *the United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which emphasizes the right of indigenous peoples to manage their natural resources and maintain spiritual, cultural, and economic ties with their territories including territories [48]sea. The implementation of the recognition of these rights in Indonesia is part of a broader effort to protect the rights of indigenous peoples,

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Pillars of Food Security: A Scoping Review," Nutrition Advances 13, no. 6 (2022): 2537–58, https://doi.org/10.1093/advances/nmac081.

40 (Sherly Meilintan Surya Nia Kurniati & Priyanta, 2024).

41 Lakburlawal & Matuankotta, 2023).

42 Teshia G. Arambula Solomon et al., "The Generational Impact of Racism on Health: Voices from the American Indian Community," Health Affairs 41, no. 2 (2022): 281–88, https://doi.org/10.1377/hlthaff.2021.01419; Autumn Nesdoly, Douglas Gleddie, and Tara Leigh F. McHugh, "Exploring Indigenous Peoples' Physical Literacy Perspectives," Sports, Education, and Society 26, no. 3 (2021): 295–308, https://doi.org/10.1080/13573322.2020.1731793.

43 (Soselisa et al., 2024).

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45 (Azaria et al., 2024).

46 (Radovich, 2023).

47 Jordan Gacutan et al., "Continental Patterns in Marine Debris Revealed by a Decade of Citizen Science," Environmental Science Total 807 (2022): 150742, https://doi.org/10.1016/j.scitotenv.2021.150742; Charles Loiseau et al., "Cumulative Impact Assessment Highlights the Benefits of Integrating Land-Based Management with Marine Spatial Planning," Environmental Science Total 787 (2021): 147339, https://doi.org/10.1016/j.scitotenv.2021.147339.

48 Stephanie Russo Carroll et al., "Using Indigenous Standards to Apply CARE Principles: Setting Expectations through Tribal Research Codes," Frontiers in Genetics 13, no. March (2022): 1–10, https://doi.org/10.3389/fgene.2022.823309; Laura Matson et al., "Transforming Research and Relationships through Tribe-University Collaborative Partnerships in Manoomin (Wild Rice)," Environmental Science and Policy 115, no. May 2020 (2021): 108–15, https://doi.org/10.1016/j.envsci.2020.10.010.

who are often marginalized in the process of economic development[49]. However, in practice, the rights of local communities and indigenous peoples in marine areas usually face various challenges, especially when commercial interests or large-scale development enter areas traditionally managed by them. Conflicts between the rights of local communities and indigenous peoples and development projects, such as mining or tourism, often arise and require a fair legal settlement and recognition of their traditional rights [50]. Through its legal apparatus, the state must protect local communities and indigenous peoples by maintaining a balance between development interests and the protection [51]of indigenous rights. [52]

Thus, the rights of indigenous and local peoples in marine areas should be seen as an integral part of sustainable aquatic resource management policies. Recognizing these rights protects people's lives and helps maintain people's ability to manage marine ecosystems through management practices based on local wisdom that have been proven effective for centuries.

3.2. Socio-Economic Impact of Marine Access Conflict

This study assesses the real economic losses arising from the conflict of sea access, as well as its impact on the lives of the people of Cempedak Island on public transportation routes and the livelihoods of the local community. Restrictions on traditional fishing areas, for example, directly result in a loss of income for communities, potentially worsening livelihoods. At the same time, this study assesses the impact of public transportation routes when faced with the interests of the community, the increase in the operational costs of public passenger ships due to detours or modified routes, and the potential damage to local community facilities and infrastructure due to unresolved disputes. Ultimately, this analysis aims to solve the problems inherent in ocean access conflicts. This statement seeks to determine whether the claimed economic benefits of increased public transport outweigh the financial costs imposed on local communities through losses suffered by local communities and disruptions to traditional economic activities. By providing a clear assessment of the interests of the local community of Cempedak Island and the resulting public access rights, this study seeks to apply a participatory collaborative model in a more equitable and sustainable decision-making process that minimizes the impact of disparities and maximizes shared sustainability in coastal areas.

Tensions arise when large waves generated by general passenger ships disrupt coastal ecosystems and pose a safety risk to people around the waters. The local community felt that the preservation of the environment and their lives were threatened. At the same time, legally, the ocean is a public domain that cannot be restricted to the benefit of only a few groups. The Southeast Sulawesi Regional Government resolved the conflict between the Cempedak community and public passenger ships by using a participatory collaborative method through a bottom-up concept oriented towards community empowerment. Then, the meeting results were used to draft concrete rules for the Southeast Sulawesi Government.

To assess the economic impact of ocean access conflicts, the first step that needs to be taken is to conduct a thorough analysis of all stakeholders involved. This statement includes local communities, fishermen, tourism entrepreneurs, and governments. Through open dialogue, all parties can express their views and interests. In this way, the government can understand the community's needs, formulate more inclusive policies that benefit all parties, and consider the well-being of local communities that depend on marine resources. Additionally, it is important to develop clear and transparent regulations regarding the use of marine space. These regulations should include clear restrictions on the right of access and utilization of marine resources, thereby reducing the uncertainty that is often a source of conflict. Strict enforcement of laws against violations is also needed to protect local communities' rights and maintain the sustainability of marine ecosystems. With reasonable regulations, it is hoped that a balance can be created between economic needs and environmental protection. Finally, governments and communities must work together to implement sustainable resource management practices. These points include setting quotas for sustainable fishing and monitoring activities that damage the environment. Through this ap-

49 (JB et al, 2019).

50 Marcela Castro Garrido and Ana María Alarcón, "Commoditization of Ecosystems in the Mapuche Region of Chile: Violations of the Human Rights to Health," Health and Human Rights 25, no. 1 (2023): 95 – 103; Roger Merino and Maria Therese Gustafsson, "Localizing Indigenous Environmental Stewardship Norms: Conservation and Territorial Rights Making in Peru," Environmental Science and Policy 124, no. May 2020 (2021): 627–34, https://doi.org/10.1016/j.envsci.2021.07.005.

51 Garrido and Alarcón, "Commoditization of Ecosystems in the Mapuche Region of Chile: Human Rights Violations of Health."

52 (Nugroho, 2022).

proach, it is hoped that the economic impact of marine access conflicts can be minimized, and local communities can continue to benefit from marine resources without sacrificing ecosystem sustainability.

As stipulated in Article 33, paragraph (3) of the 1945 Constitution, the state controls natural resources, including the sea, for the greatest possible prosperity of the people. The concept emphasizes that the state has a role to ensure public access to the sea within the framework of shared welfare. Related laws and regulations, such as Law No. 17 of 2008 concerning Shipping, also regulate the importance of sea routes as public transportation that the wider community must access to support economic, tourism, and trade activities in coastal areas, as well as being an important pillar in Indonesia's maritime economic development. However, the policy of granting public access rights to the sea is a key cornerstone in national development oriented towards the financial well-being of many people. The concept of "*shared tragedy*" reminds us of the risk of "overexploitation" of marine resources if public access is not properly regulated [53]. In the context of Cempedak Island, the conflict arises due to the clash between the principle of public access rights controlled by the state and the rights of local communities traditionally associated with marine areas. Through its laws and regulations, the state supports using the ocean for public interest and access. However, in this case, the fast boat route that crosses the waters of Cempedak has caused serious disruption to the lives of coastal communities. The resulting waves damage coastal infrastructure and disrupt local communities' comfort and safety. However, the right of local communities to defend their territory and traditions also intersects with the public interest to maintain public access in the marine area. If local communities restrict public access, it could create a precedent leading to similar conflicts in other coastal regions [54].

Given the complexity of the conflict between public access rights and the rights of local communities on Cempedak Island, an approach is needed to accommodate these two interests in a balanced manner. The principle of proportionality is a relevant solution in dealing with this problem.[55] Kai Möller, a lecturer in law at the London School of Economics and Political Science, came up with the idea of systematizing the application of the doctrine of proportionality. According to him, this principle is a doctrine that can resolve conflicts between conflicting rights or interests, focusing on the balance between the two. The application of the principle of proportionality must consider four indicators, namely the existence *of a legitimate legal objective*, rational achievement, need, and[56]

In a case analysis of the conflict between the right of public access and the rights of local communities on Cempedak Island, the application of the four proportionality indicators by Kai Möller above can help understand how these two interests can be better accommodated. The analysis is as follows:

a) Legitimate Legal Purposes

First, it is necessary to establish the legitimate legal objectives of the policy governing public access to the sea. In the context of Cempedak Island, the goal is not only to facilitate transportation and community mobility but also to consider the protection and welfare of local communities that depend on marine resources. The state must ensure that the policies set benefit all communities, including fishermen and seaweed farmers in the region. By identifying more comprehensive objectives, policies can be formulated to balance better the public interest and the rights of local communities.

b) Rational Achievement

Furthermore, the actions taken must be able to achieve these goals rationally. In this case, the government needs to conduct an in-depth impact study related to fast shipping routes, including an analysis of the impact of large waves produced on coastal ecosystems and local community activities. Policies must be based on clear data and evidence to provide effective solutions to reduce disruption to the community without eliminating the necessary public access. For example, reviewing shipping routes or setting fast ship sailing times can be a rational step to balance public access and local communities' survival.

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53 Govella, "Avoiding and Exploiting the Tragedy of the Commons: Fishing, Crime, and Conflict in the South China Sea."

54 Yulai Wan, Leonardo J. Basso, and Anming Zhang, "Strategic Investments in Accessibility under Port Competition and Inter-Regional Coordination," Transportation Research Part B: Methodological 93 (2016): 102–25, https://doi.org/10.1016/j.trb.2016.07.011.

55 Faiq Tobroni, 'The Principle of Proportionality as a Moderation of the View of Diometric Law', *Judicial Journal*, 11.3 (2018), 307–25 https://doi.org/10.29123/jy.v11i3.313.

56 equilibrium (Möller, 2012).

c) Necessity

Third, the principle of necessity demands that the action taken is the most appropriate step to achieve the desired goal, considering lighter alternatives. In this context, the government should explore other options to minimize negative impacts without sacrificing public access. For example, implementing stricter regulations on fast shipping, such as speed restrictions or using vessels with more environmentally friendly designs, could be a better alternative. This point requires carefully evaluating existing policies and ensuring that every step taken is the most effective and does not harm the relevant parties.

d) Balance

Finally, balancing is a key component in applying the principle of proportionality. Where the negative impact of an action must be proportional to the expected benefit. In the conflict on Cempedak Island, the parties need to assess the extent to which public access to the sea can be done without damaging the lives of local communities. The government should facilitate dialogue between local communities and stakeholders to find mutually beneficial solutions. For example, the implementation of compensation mechanisms that compensate local communities for the losses they suffer due to public access, while maintaining the right of communities to use the sea. Such an approach will help to ensure that the decisions made comply with legal norms and respect and protect local communities' rights.

Considering the four proportionality indicators above, it is hoped that the conflict between public access rights and the rights of local communities on Cempedak Island can be better managed to ensure that all parties can contribute and benefit from existing marine resources. Applying the principle of proportionality is beneficial in resolving such conflicts and provides a foundation for more responsible and sustainable management of natural resources.

Based on the results of this study, it is empirically revealed that the conflict between public access rights and the rights of local communities on Cempedak Island is manifested in several concrete forms. First, there is a restriction on public access rights due to the local community's rejection of the public passenger route that passes through Cempedak Island. Second, it was found that there was damage to community infrastructure due to public passenger ship transportation routes that threatened the sustainability of people's livelihoods. Third, existing policymakers have not been able to balance the interests of local communities and public access rights.

The conflict resolution model proposed in this study is based on a participatory-collaborative model that integrates positive legal analysis with local communities' social and cultural realities. This approach emphasizes the importance of identifying community needs gradually, starting from the hamlet, village, to sub-district levels, including shipping companies as a third party. By actively involving local communities in the decision-making process, it is hoped that policies and regulations can be created that are more inclusive, sustainable, and fair, alleviate conflicts, and improve community welfare. Therefore, this study offers a model for conflict resolution by applying a top-down, bottom-up approach whose goal is to create new policies and regulations in the form of Southeast Sulawesi Regional Regulations.

Several countries have successfully resolved conflicts between coastal communities and public access rights through a participatory and collaborative approach. For example, in Norway, the government implements a marine resource management model involving local communities in decision-making [57]. Through regular consultation forums, fishermen and coastal communities can voice their opinions on fisheries policy and marine management [58]. This approach reduces conflict and improves the sustainability of resources, as the decisions taken reflect local needs and knowledge [59]. In addition, coastal land management programs involving indigenous peoples in

57 Jahn Petter Johnsen and Bjørn Hersoug, "Local Empowerment through the Creation of Coastal Space?," *Ecology and Society* 19, no. 2 (2014): art60, https://doi.org/10.5751/ES-06465-190260.

58 Sierra Ison et al., "Participatory Research in Complex Marine Conservation Settings: A Review of Recent Trends and Lessons for the Future," *Ocean & Coastal Management* 253 (July 2024): 107053, https://doi.org/10.1016/j.ocecoaman.2024.107053.

59 Ana Carolina Esteves Dias et al., "Participatory Monitoring of Small-Scale Coastal Fisheries in South America: Use of Fishers' Knowledge and Factors Affecting Participation," *Reviews in Fish Biology and Fisheries* 30, no. 2 (June 2, 2020): 313–33, https://doi.org/10.1007/s11160-020-09602-2; Kimberly Baldwin and Hazel A. Oxenford, "A Participatory Approach to Marine Habitat Mapping in the Grenadine Islands," *Coastal Management* 42, no. 1 (January 28, 2014): 36–58, https://doi.org/10.1080/08920753.2013.863725.

Australia have shown positive results [60]. The government has successfully created a balance between public access rights and local interests by recognizing indigenous peoples' rights to land and sea and peoples' empowerment in resource management [61]. This model provides space for communities to actively participate in decision-making actively, thus creating a sense of ownership and responsibility for the resources they manage [62]. These successes show that collaboration between the government and local communities can effectively resolve conflicts in coastal areas. In the Philippines, conflict resolution between coastal communities and public access rights often involves a community-based approach that gives local fishers a voice [63]. Programs such as "Co-Management Agreements" allow local communities to participate in managing marine resources. Cooperation between local governments and fishing communities can minimize conflicts by building an understanding of boundaries and access rights [64]. In addition, education and training for the community on sustainable fisheries practices also raise awareness of the importance of protecting marine ecosystems, thereby reducing tensions between public and local interests. Similarly, in Vanuatu, traditional approaches that prioritize local wisdom play an important role in resolving conflicts related to marine resource management. Through a system of "customary law," indigenous peoples have the right to regulate access to and use of marine resources in their territories [65]. The local government supports this initiative by providing legal recognition of the rights of indigenous peoples, thereby creating cooperation between customary law and national law. A similar approach is seen in merging environmental policy and local communities' rights in the Netherlands and Australia [66]. In Australia, for example, recognition of the rights of indigenous peoples in coastal land management has been successful in creating harmonious cooperation, reducing conflict, and improving resource sustainability [67].

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60 Chelsey A. Crandall et al., "Meaningful Action Gives Satisfaction: Stakeholder Perspectives on Participation in the Management of Marine Recreational Fisheries," *Ocean & Coastal Management* 179 (September 2019): 104872, https://doi.org/10.1016/j.ocecoaman.2019.104872.

61 Richard Le Heron et al., "Non-Sectarian Scenario Experiments in Socio-Ecological Knowledge Building for Multi-Use Marine Environments: Insights from New Zealand's Marine Futures Project," *Marine Policy* 67 (May 2016): 10–21, https://doi.org/10.1016/j.marpol.2016.01.022.

62 Hampus Eriksson et al., "An Ecosystem Approach to Small-Scale Fisheries through Participatory Diagnosis in Four Tropical Countries," *Global Environmental Change* 36 (January 2016): 56–66, https://doi.org/10.1016/j.gloenvcha.2015.11.005.

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64 Raphael Carlos De Leon and Sohee Minsun Kim, "Stakeholder Perceptions and Governance Challenges in Urban Protected Area Management: The Case of the Las Piñas – Parañaque Critical Habitat and Ecotourism Area, Philippines," *Land Use Policy* 63 (April 2017): 470–80, https://doi.org/10.1016/j.landusepol.2017.02.011; Corrine Cash, "Creating the Conditions for Climate Resilience: A Community-Based Approach in Canumay East, Philippines," *Urban Planning* 6, no. 4 (December 16, 2021): 298–308, https://doi.org/10.17645/up.v6i4.4536.

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66 E. Timár, "Improving Environmental Performance of Local Land Use Plans: An Experiment with Sustainable Urban Planning in Amsterdam," in *Urban Environmental Planning* (Routledge, 2017), 109–20, https://doi.org/10.4324/9781315235301-10; Gert de Roo, *Environmental Planning in the Netherlands: Too Good to Be True* (Routledge, 2017), https://doi.org/10.4324/9781315256276; Dana Kamphorst, "Integration of Environmental Policy and Urban Renewal at the Local Level: How Local Environmental Discourses Influence the Outcomes of National Requirements," *Nederlandse Geografische Studies*, no. 344 (2006): 171 – 179, https://www.scopus.com/inward/record.uri?eid=2-s2.0-33750426237&partnerID=40&md5=0e94ad8a579d23a583e0ee26feb03340.

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Conclusion

The conclusion of this study shows that the conflict between public access rights and the rights of local communities on Cempedak Island is a complex issue and requires serious attention. The analysis results indicate that while existing policies and regulations provide a legal basis for public access rights, the rights of local communities are often neglected in managing marine areas. Lack of consultation and involvement of local communities in decision-making creates long-standing gaps and conflicts, potentially disrupting the sustainability of marine resource management. Based on the analysis conducted in this study, it is suggested that the marine area management policy on Cempedak Island adopts a participatory-collaborative approach by implementing a top-down, bottom-up approach that actively involves local communities in each decision-making stage. This decision is important to ensure that the rights of local communities are recognized and protected, while public access rights are maintained. The Southeast Sulawesi Government needs to build an effective consultation mechanism called the Coastal Community Forum, so that the community's voice can be heard and considered in policymaking, leading to the Southeast Sulawesi Regional Regulation. In this way, it is hoped that a balance can be created between the interests of local communities and public access, reduce the potential for conflict, and support the sustainability of fair and inclusive management of marine resources.

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