

# Beach Border Violations in West Nusa Tenggara, Indonesia

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The purpose of this study is to identify violations of coastal spatial law, and reveal its causal roots in West Nusa Tenggara, Indonesia. This research utilises a social-legal research method. To investigate the ineffectiveness of the structural components, substances, and culture, the researchers conducted observation, and interview methods. The results showed that the invisible component that caused the ineffectiveness of the law was the capital that dictated the structural, content, and cultural components, so that they did not work effectively. In this regard, the following is recommended. Firstly, change the paradigm in a transformative way. These changes must be fundamental to the philosophical aspects, such as the values and perspectives, which underlie the spatial legal paradigm. Secondly, the paradigm shift must be dialectical; the coastal border previously considered that the public space — such as passive public space/inanimate objects/objects — becomes the public sphere, in which active subjects speak. Thus, the public space is not only passive in physicality, but also in public opinion and control over spatial planning.

**Keywords:** *Violation, Beach borders, Beach, Coastal spatial law.*

## Introduction

The law constructs the coastline as a public space (Sanjiwani, 2016). The law states that coastal areas are public spaces and cannot be privatised (Nazzal & Chinder, 2018). In the tourist area, it can be said that, after all the space has been commercialised, living in the



border area of the coast is the last space left for the public (Belward & Skjøien, 2015). In the first instance, spatial law is unable to lay out and maintain the coastal border area as public space (Beriatos & Papageorgiou, 2011). In a number of places, the tourism industry treats the coast as if it were part of their property (Suta & Mahagangga, 2018).

Violations of spatial planning for coastal areas seem to be common problems and are underestimated (Sugito & Sugandi, 2016). However, if it is reflected, it is a special laboratory to observe the gap between the laws that are in the code (the law as it is in books), and how the law actually works (the law in action) (Silbey, 2005). The impotence of the law that constructs the coastline as a public space is interesting to study, not only to assess the effectiveness of spatial law, but also the pathology of the law making the law ineffective, and the forces that transcend the law (Philippopoulos-Mihalopoulos, 2011).

There are several reasons why this research is important to conduct. First, public space is simply understood as public space that can be freely accessed and used by the general public, without any binding restrictions, such as charging entrance fees or other economic rates (Supriadi, 2017). In terms of appearance in various places in West Nusa Tenggara, tourism investment occupies this defined coastal boundary, as if it is part of commercial property that can be commercialized, so that it can only be enjoyed by limited communities who have commercial capabilities.

In some cases, public access is limited to certain areas, and in others, public access is completely closed. For example, on the island of Moyo-Sumbawa, the sea around the Amanwana hotel, which has a radius of up to 1.6 kilometres from the edge, is a restricted area for fishermen who fish. However, according to the fishermen, the beach does not belong to a specific person, but is a common property. Along the coast of Senggigi, dozens of hotels openly occupy the beach without warning, let alone legal sanctions.

Secondly, the coastal border area is not only a meeting and interaction area between land and sea, but also a grey area because it is not clear who owns the coast (Jurasinski et al., 2018). Due to its uniqueness, the border area of the coast is misunderstood as a 'no man's land' because it cannot be owned and managed by individuals (Sugito & Sugandi, 2016). If meaning cannot be owned, it does not mean that the area is 'no man's land', but rather, is a public space. Based on Presidential Regulation Number 51 of 2016 concerning Coastal Boundaries, it is stated that the coastal boundary is the land along the coast whose width is proportional to the shape and physical condition of the beach. Specifically, at least 100 meters from the point of the highest tide to a country (Regulation, 2016).



In preliminary field observations, the shoreline or coastline does not show clear boundary lines, only in the form of imaginary lines defined by local conditions. This lack of clarity offers all parties the opportunity to freely interpret the boundaries of the coastal zone based on their interests. The number of parties involved in the use of coastal areas with each of their associated interests is subject to conflict (Mujio, Adrianto, Soewardi, & Wardianto, 2016). Likewise, coastal exploitation will also threaten coastal ecosystems with different habitats in them, as well as their function as a protective fortress for the edge of the land (Asyiwati & Akliyah, 2011).

Third, in the concept of 'equality before the law', everyone is equal in law (Sihombing, 2013). In fact, it is believed that the law applies equally to every Indonesian citizen, in reality it is not the same. The validity of spatial law that the election of people who are not the same, needs to be examined more deeply into the root cause, whether the problem lies in the regulatory and policy components, structural components or legal culture components. In addition to these components, it is also necessary to investigate whether there are other invisible components that are determinants, so that they paralyse the substance, structure, and legal culture components.

The ineffectiveness of spatial laws and forms of privatisation of the coastal borders are understood as symptoms that surface (Aminah, 2016). Deeper, of course, there are core and root causes of the problem. The researchers investigated the problem with the formula: "why does the law not effectively regulate and protect the coastline as public space?"

To answer this fundamental question, it is not enough just to study the legal text scripturally, but also to examine the legal system and its components that make the law ineffective. For the sake of theoretical analysis, Friedman in Banakar (2015) explained the three components of the legal system that affect the effectiveness of the operation of the law: the content of the law, the organisational structure and law enforcement, and the legal culture.

## **Method**

The method employed in this research is social-legal research, which is legal research that shows the relationship between the context in which the law is located; an interface with a context in which the law exists (Banakar, 2015). To investigate the ineffectiveness of the structural components, substances, and culture, the researchers also conducted observation, and interview methods. The researchers completed field observations to ascertain violations regarding the layout of the existing coastal boundaries of West Nusa



Tenggara as the Research Object. The researcher also conducted interviews with authorities, such as local government, police, business people or hotel managers, fishermen, and local residents around the hotel. The research sites were in Senggigi, Lombok, and Moyo, Sumbawa, West Nusa Tenggara, Indonesia.

## Discussion

Lawrence Friedman assumes the law as a system: “A legal system in actual operation is a complex organism in which structure, substance, and culture interact” (Friedman, 1975). These components do not stand alone but interact with each other to determine the effectiveness of the operation of the law. Friedman criticised the perspective of the nineteenth century, which assumed that it is part of the legal substance, such as laws and regulations, as a guide regulating all or almost all life situations. The content of the law determines how a person should behave. Friedman asks questions in this context: “How do we know, however, that the rules “caused” the behavior?” (Friedman, 1975). According to Friedman, it appears on the surface that some people obey certain rules at some point or maybe it seems like everyone is following certain rules at some point (Friedman, 1975).

Legislation, in order to be complied with and to be effective, usually involves the construction of the formation with sanctions (Setiadi, 2009). A growing assumption is that the law is not effective, and can be caused by the content of the laws and regulations. For example, the construction of light sanctions which are too light-handed (Anindyajati, Rachman, & Onita, 2016). Assuming that sanctions can be a hard law, it can prevent people from breaking the law (Harahap, 2006). A rule of law threatens ‘behaviour X’ with sanctions, so if sanctions are increased, ‘behaviour X’ will decrease (Friedman, 1975). The threat of sanctions can make the law effective, if it creates fear (Windayani, 2018). The problem is, what if the sanctions are only listed on paper? For example, because the structure has no serious commitment to uphold the law?

Under spatial law, if we examine the content of the law, sanctions are not only administrative but are also accompanied by criminal sanctions (Peraturan, 2007). However, why do violations of the law still openly occur? If the land certificate is issued on the coast, and is in conflict with the national spatial planning, provincial national spatial planning or city national spatial planning, the certificate is in violation of the spatial planning law. The individuals, companies, and government officials who obtain or issue permits that are in violation of spatial planning law (National Spatial Planning Card) may be subject to sanctions, through both administrative, and criminal penalties.



In fact, with relatively high sanctions, there are still violations of coastal spatial planning. That is, the threat of high sanctions does not guarantee that a law will work effectively. If so, legal content is not the only part that determines the effectiveness of the law. We simplify it if efforts to make the law effective focus only on improving or modifying the content of the legislation, without establishing the structure of law enforcement organisations, and taking into account the cultural basis of the community.

The content of the law will malfunction if there is no structural commitment (law enforcement officers) to apply and enforce it. The structure plays a key role, so that the regular perspective becomes analogous to a giant machine or computer that handles millions of legal problems that are brought to it:

*“The heart of the system is the way it turn input to output. The structure of the legal system is like some gigantic computer program, coded to deal with millions of problems that are fed daily into the machine. Rules of organization, jurisdiction, and procedures are part of the coding. Equally important are the substantive rules of law. They are output of the system, but one that serves to cut future outputs to shape” (Friedman, 975).*

Implicitly, Friedman seems to disagree if the structure or law enforcement is analogous to a giant machine that moves mechanically by asking questions:

*“...What difference does structure make? What difference do the legal professionals make? What independent role does the system play in bending social forces and changing society? Social forces turn into demands which flow in at one end of the system; decisions and rules flow out at the other. How much shall we attribute to the black box in the middle? How does the machine work, and what does it do? Does it act like a membrane through which forces pass without changing form? (Friedman, 975).*

Friedman asked these questions to show that the structure of the law enforcement device was not a machine that moved mechanically with exactly the same results. This research will become relevant to see the role of structure in relation to the effectiveness of law enforcement.

In a broader horizon perspective, Friedman invites us to look at the effectiveness of law by not only limiting the components of content and structure, it must also enter context (law in context), the cultural base of the community on which the law is based and works.

Legal culture is an element of attitudes and values that live in society, which is an important determinant of whether or not the law is in everyday life, as Friedman explains:

*“Social forces are constantly at work on the law—destroying here, renewing there, invigorating here, deadening there, choosing what parts of “law” will operate, which parts will not, what substitutes, detours, and bypasses will spring up, what changes will take place openly or secretly. For want of a better term, we can call some of these forces the legal culture. It is the element of social attitude and value. For want of better term, we can call some of these forces the legal culture” (Friedman, 975).*

This legal culture is part of the general culture; it can take the form of habits, beliefs, and ways of thinking and acting that are internalised in the realm of thoughts, feelings, and judgments in society, which determine whether or not they deviate from law (Duve, 2018). Therefore, Friedman in van der Walt (2006) stated that legal culture provides fuel to drive justice.

Indeed, this legal system theory makes it easy to analyse the effectiveness of legislation. The theory of the legal system is very helpful in explaining why the law does not work effectively (Gico, 2020). This theory is often cited in various theses and dissertations. Even for conceptual needs, the Indonesian legal analysis tools are always adapted to Friedman's thoughts on the theory of legal systems. For example, the Outline of State Policy (GBHN), and Medium Term Development Plan (RPJM), in the field of law, almost always follow the author of “The Legal System: a Social Science Perspective” (1975), namely the legal structure, content, and legal culture.

The challenge of this research is not only to use this legal system theory as a knife of analysis, but more importantly, to provide a new perspective by broadening the perspective of this legal system theory, as legal issues continue to develop that may differ from the time and place where the theory was born. As legal reality develops, it is not legal reality that theory should follow, but rather offers a more holistic perspective. The new perspective sees the legal system by optically expanding to analyse the components of the legal system, and explore other possibilities that are not visible on the surface, which affect the effectiveness of the law.

Friedman paid too much attention to the three components of fabric, structure, and culture, but forgot to check for the ‘invisible components’ that prevented the three components from working effectively. This study found that there are other components that are not legally in power legally, but the determinant determines whether the law



works, namely, a gigantic company whose power (hegemony) exceeds bureaucracy, and law enforcement.

This study showed how the 'invisible components' simply prevent substances, structures, and cultures from working. The final product in the form of a spatial plan does not always deliver effective spatial planning without the support of managers and law enforcement. Institutionally, there are three main bodies that influence the effectiveness of the operation of the legal substance: the legislative and governmental bodies that specialise as the bodies charged with issuing written laws, and bodies that also specialise as institutions that implement laws, such as the police, prosecutors, and courts. Specifically, for coastal borders, it is necessary to add different bodies, such as those in charge of the implementation and use of laws, such as the provincial/regency/city administrations, civil service officers of the Marine and Fisheries Service, the Agrarian and Spatial Planning (ATR) / National Land Agency (BPN), police, and bureaucracy that are authorized to issue permits.

We usually assume that the authority to enforce the law in a society is in the hands of the structure, law enforcement officers, and government bureaucracy. That assumption seems increasingly outdated because the claim that government and law enforcement officers are empowered to enforce the law in society, is a paperless claim that has no substance. The strength of companies becomes an 'invisible component', a locus in determining power relations (Kotler & Pfoertsch, 2010). The question of law enforcement is not only a question of powerless law enforcement officers, but also a question of how corporate power can easily dictate law enforcement officers, and government bureaucracy, so that law enforcement eventually becomes toothless.

At Senggigi Beach, all the hotels built along the coast occupy part of the coastline, such as: Jeeva Klui, Katamaran, Holiday Inn, Qunci Villas, Verve Resort and Club Bahari, Puri Mas Beach, Sudamala, Pacific, Sentosa, Kila, Sheraton, Lotus Bay View/Complex Psr. Art, Aruna Hotel, The Paragon, Alberto Hotel, Sunset House and Restaurant, Batu Bolong Hotel, Transit Hotel, JO-JO Beach Bar, Bintang Senggigi Hotel, Batu Layar Hotel, Warung Menega, The Jayakarta Lombok Hotel, and dozens more. Some have even built villas on the edge of a coastal cliff with a high fence next to the Senggigi Highway, such as Rajavilla.

A number of hotels openly 'plot' the coast, with some using rope chains, creating permanent fences, holding restaurant chairs, hotel guards prohibit vendors from selling, and even construct breakers so that fishing boats cannot stop. Other forms of beach privatisation are also carried out by installing concrete in the beach area opposite the sea



view of the tourism industry to prevent fishermen from sidling or stopping a boat on the beach.

The situation is even more exclusive on Moyo Island, Sumbawa. One of the business actors who receives the 'exclusive rights', is the Amanwana Resort. The local people, and tourists, who are not customers, are not allowed to enter or cross the border of the coast directly next to their business location Aman wana, is said to have 'exclusive rights' The 50-hectare resort prohibits local people and foreign or domestic tourists who are not hotel guests from traveling through the area, even within a two kilometre radius of the hotel building Even the seconded police guard the hotel in one place and drive away when there are traditional fishermen fishing on the beach one mile from the resort's location. This is reminiscent of the Mare Clausum principle used in international law to declare that seas, oceans or navigable waters under the jurisdiction of one country are closed areas that cannot be entered by other countries. If this is true, it means that companies that have the power to close borders and seawater are like 'states' that can prohibit other parties from entering their territorial waters.

This 'invisible component' relationship is intertwined between space and capital, so that the legal structure does not have the will to take the legal substance seriously or otherwise benefits if it compromises. The findings of this study highlight that the authority and structure of the legal value of spatial planning products are highly fragile, especially considering business interests. In terms of content, spatial legislation requires local governments to make detailed spatial plans, but some regions (including in this research area) are secretly 'disobedient' by not making detailed spatial plans. The lack of a detailed spatial plan makes it difficult to prove and act on spatial violations.

Likewise, the legal culture relied upon as the 'fuel' of the law, apparently does not work either. Local people, fishermen, and tourists know the coastline as a public space, but that knowledge is not linear. For example, local people have no options and negotiating positions, and are even 'dependent' on the company.

The attitude of local residents, when it is prohibited to use the beach adjacent to the hotel. For example, on Moyo Island, out of 46 respondents, none (zero percent) responded to the protests, village officials or claws.

The author tries to ask more deeply: why be afraid or remain silent? In terms of the locals attitudes when they are forbidden to use the beach border next to the hotel, all respondents (100 per cent) indicated they remained silent or were frightened. From the results of the in-depth interviews, the attitude of silence and/or fear was caused by several reasons,



including: (1) there are many hotel staff who came from the local area; (2) concerns the protest will affect the villagers working in the hotels; (3) there are families who work in the hotel, so they must maintain good relations with the hotel; (4) the sites are guarded by police and security services; (5) local residents know that the shoreline adjacent to the hotel is an area that the hotel prohibits from being used by local residents, and is valid for a long time; and (6) since local residents cannot do anything, village officials, in particular, support the existence of the hotels.

At first sight, coastline violations are considered trivial problems. However, beyond that, the coastal border violation is a special laboratory to see how the violations of the law are carried out openly, and the authorities not only allow, but also participate in these violations. The legal text clearly states that the boundary of the beach as a public space appears to be a fact that the corporation is also privatising it. What a clear law, the violation was carried out openly without any meaningful legal action. If left unchecked, this will gradually not only render the law ineffective, but the effect will also be deeper, that is, the 'decline' of the legal system itself.

## **Conclusion**

The results of the study found that the 'invisible component' that caused the ineffectiveness of the law was the 'capital' that dictated the structural, content, and cultural components, so that they did not work effectively. What should be done after knowing the 'invisible component', as the locus, and the cause of ineffective legislation is, in fact, the power of the company?

First, there must be a transformative paradigm shift. These changes must be fundamental to the philosophical aspects, such as values and perspectives, which underlie the spatial legal paradigm. If previously spatial planning was a state-based authority, then after the 'state' does not work effectively because it is being held hostage by companies, it is necessary to change the paradigm to a participation-oriented 'state-based' authority. The idea of this new paradigm change scheme hits a level that is yet to be translated into the realm of reality. For example, if it is not easy to reduce the impact of enterprise determination upon coastal spatial planning policy, then the step that can be taken is 'small punctures' as a strategy to address the spatial violations at the preventive level. For example, if spatial planning is currently stronger in regard to physical, and visual aspects, including land use, and road networks, the future spatial planning should emphasise the aspects of community planning (socio-cultural), and planning participatory resources.



Secondly, the paradigm shift must be dialectical. That is, the shoreline, formerly considered a 'public space' has become the 'public sphere', in which active subjects speak. Thus, the public space is not only a passive physicality, but is also subject to public opinion and control over spatial planning. If spatial planning becomes a 'public sphere', then any company that influences and dictates the structure becomes 'visible' because the public has positioned it as a social control.

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