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Small Islands Mineral Mining Licensing Disharmony and the Ministry of Marine Affairs and Fisheries' Authority

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Abstract

Small islands in Indonesia possess unique ecological characteristics yet are highly vulnerable to the destructive impacts of extractive industries, particularly mineral mining. Although the legal regime under Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands and its amendments (UU PWP3K) adopts a conservation paradigm, reality demonstrates a massive issuance of Mining Business Licenses (IUP) in these regions based on the regime of Law Number 4 of 2009 concerning Mineral and Coal Mining and its amendments (UU Minerba). The primary issue lies in the regulatory disharmony following the enactment of the Job Creation Law and the implementation of the Online Single Submission Risk-Based Approach (OSS-RBA) system, which systematically curtails the authority of the Ministry of Marine Affairs and Fisheries (KKP) as the guardian of coastal ecosystems. This research aims to examine the juridical implications of current licensing regulations for the principle of small island protection and to formulate measures to strengthen the KKP's authority. This study constitutes normative legal research utilising statutory and conceptual approaches. The results indicate that the current licensing system suffers from norm degradation by disregarding the standing of the UU PWP3K as lex specialis, as affirmed in Supreme Court Decision Number 403 K/TUN/TF/2024 and Constitutional Court Decision Number 35/PUU-XXI/2023. The absence of the KKP's substantive role results in the loss of ecological checks and balances mechanisms. This study concludes that the state must restore the KKP's authority by establishing technical regulations that make the Minister of Marine Affairs and Fisheries' recommendation an absolute prerequisite (conditio sine qua non) for the issuance of an IUP by the relevant agencies, thereby guaranteeing legal certainty and environmental sustainability.

INTRODUCTION

Indonesia, as the world's largest archipelagic state, has more than 17,000 islands that span the equator. Amongst said islands, most are small and have ecological, social, and cultural characteristics unique to one another. Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, which has been amended most recently by Law Number 6 of 2023 about Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law, defines “Small Island” as “an island with a width smaller or equal to 2.000 km^2 (two thousand square kilometres) along with its Ecosystem.” The importance of the existence of said small islands is not only in their size. Ecologically, these islands are the centre of marine and terrestrial biodiversity, with coral reef ecosystems, seagrass meadows, and mangroves that support coastal life. In a socio-cultural sense, these small islands are home to indigenous communities whose local wisdom grows and develops, guided by the belief that there is an obligation to respect the nature that lives alongside them. Aside from that, from a defence and security perspective, the outermost small islands also function as a "frontier point" of the Republic of Indonesia, marking the starting point of its sovereignty and serving as a vital national strategic area.

Unique characteristics of these small islands make them precious, but it also makes them vulnerable. Limited environmental carrying capacity, isolation, and dependence on freshwater resources affect the sensitivity of small island ecosystems to external influences and pressures. Large-scale extractive industries, especially mining, can pose a serious threat. Mining activities, especially those carried out under an open-pit mining concept, could permanently alter the topography, contaminate the already scarce freshwater resources on these small islands, destroy the coastal ecosystem, and threaten the sustainability of the communities that depend on these ecosystems. These vulnerabilities demand a different legal approach to managing natural resources outside coastal areas and small islands.

Considering that the environment of small islands is vulnerable to damage and pollution and considering that small islands have an important role and are seen as supporting the nation's sovereignty, the President of Indonesia, with joint agreement with the House of Representatives, stipulates Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (PWP3K Law) which has been amended most recently by Law Number 6 of 2023 about Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation

into Law. This law functions as *a lex specialis, stipulating the framework for managing coastal areas and small islands based on a different conservation concept (Consideration of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands,* letter b) compared to other sectoral laws. The core of this protective paradigm is set out in Article 23 paragraph (2), which determines the priority scale of utilisation, and Article 35 letter (k), which regulates conditional prohibitions on potentially damaging activities, including mining.

However, the protective legal framework within the PWP3K Law faces regulatory challenges. Its implementation in the field is hampered by clashes in norms (regulatory disharmony) with several strong sectoral legal regimes, such as Law Number 4 of 2009 concerning Mineral and Coal Mining which has been amended several times, most recently by Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) which gives authority to the Minister of Energy and Mineral Resources to issue Mining Business Permits (IUP) including on small islands. This normative conflict clearly occurred in the case of PT Gema Kreasi Perdana (GKP) on Wawonii Island(Supreme Court Decision Number 403/K/TUN/TF/2024). PT GKP holds a procedural IUP from the Ministry of Energy and Mineral Resources for mining activities on Wawonii Island. This situation creates a legal conflict because mining activities on small islands, which the PWP3K Law prohibits, are actually permitted under sectoral laws. This fact formed the basis of the lawsuit challenging PT GKP's IUP. The PT GKP IUP case dragged on for quite some time. Ultimately, after a lengthy and inconsistent legal process at the State Administrative Court (PTUN) and the appeals court (PTTUN), the Supreme Court, in Decision No. 403 K/TUN/TF/2024, finally established a crucial jurisprudence: that in conflicts of norms regarding small island locations, the PWP3K Law should be viewed as *lex specialis*.

This affirmation was strengthened at the constitutional level through the Constitutional Court (MK) Decision No. 35/PUU-XXI/2023 which rejected the judicial review filed by PT GKP. In its considerations, the Constitutional Court considered that the provisions in the PWP3K Law were formed to provide recognition, guarantees, protection and fair legal certainty, as well as equal treatment before the law by providing balance, protecting, conserving, rehabilitating, utilizing and enriching coastal and small island resources and their ecological systems in a sustainable manner(Decision in Case Number 35/PUU-XXI/2023). Based on that consideration, the Constitutional Court stated that the norms restricting and prohibiting mining on small islands

in the PWP3K Law are constitutional and align with the principles of sustainable development mandated by the 1945 Constitution of the Republic of Indonesia.

Although normative clarity has been achieved, these decisions have revealed two fundamental derivative problems at the implementation level. First, the substantive issue concerns the fate of hundreds of mining permits issued and still valid before these decisions, whose status now conflicts with the constitutionally affirmed principles of protecting small islands. Based on data from the Ministry of Marine Affairs and Fisheries (KKP), 226 IUPs operate on 477 small islands across 21 regencies/cities in Indonesia (Ambari, 2025). Second, procedural-institutional problems in the current licensing system undermine the authority of the Ministry of Marine Affairs and Fisheries, an institution mandated by law to manage coastal areas and small islands. The current licensing system, particularly in the mineral mining sector, does not provide sufficient scope for the Ministry of Marine Affairs and Fisheries to protect coastal and small-island ecosystems from activities that damage or threaten biodiversity.

Based on the background outlined above, this study will focus on discussing two issues in Business Licensing in the mineral mining sector on small islands. First, how does the disharmony in Business Licensing regulations in the mineral mining sector on small islands compare with the principles of coastal and island management and protection? Second, what is the model for harmonising regulations and revitalising the authority of the Ministry of Marine Affairs and Fisheries in Business Licensing in the mineral mining sector on small islands?

METHOD

This research uses a normative juridical research method, namely, research aimed at determining legal rules, legal principles, and legal doctrines to answer the legal issues faced (Diantha, 2017). This research uses a statute approach and a conceptual approach. This research utilises various types of legal materials, including primary, secondary, and tertiary sources. The legal material search technique uses the literature search method. The legal material analysis used in this study is descriptive, where the legal materials will be analysed using systematic and teleological interpretation, vertical and horizontal synchronisation of laws and regulations, and the principle of derogation, especially *lex specialis derogat legi generali*. This study shows the condition of the Business Licensing system in the mineral mining sector within the framework of coastal area and small island management in Indonesia which is currently still far from the ideals of the

formation of Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands and its amendments and provides suggestions for ideal regulations to the government regarding the authority of the Ministry of Marine Affairs and Fisheries in the Business Licensing system in the mineral mining sector on small islands which is one form of realization of the management and utilization of coastal areas and small islands.

DISCUSSION AND ANALYSIS

1. The Comparison of the Principles of Management and Protection of Coastal Areas and Small Islands with the Regulation of Business Licensing in the Mineral Mining Sector in Coastal Areas and Small Islands

To address the problem of disharmony in the regulation of Business Licensing in the mineral mining sector on small islands, the analysis cannot rely on whether the business actor has an IUP under the mineral mining regime. Mining permits on small islands must first be assessed against the specific legal regime governing coastal and small-island management. This is because small islands are not simply economic areas that can be treated the same as continental land areas, but rather ecological areas with very limited carrying capacity and social dependency, the characteristics of which are further described in the Explanation of Article 12 paragraph (1) letter b of the PWP3K Law (Explanation of Article 12 paragraph (1) letter b of Law Number 27, 2007). The characteristics of coastal areas and small islands indirectly call for special treatment compared with the management of other areas. That is why the PWP3K Law must be used as the primary parameter for assessing whether the Business Licensing regulation for mineral mining aligns with the management and protection principles for coastal areas and small islands (Law Number 27, 2007).

The PWP3K Law sets out principles for the management of coastal areas and small islands in Article 3, including sustainability, consistency, integration, legal certainty, partnership, equality, community participation, openness, decentralisation, accountability, and justice. These principles are chosen because each has a direct correlation with the mining permit issues, consisting of small islands' ecological carrying capacity, intersectoral integration, certainty of the relations between the mining regime and the coastal regime, and also regional government and locals' position on the coastal area usage decision-making process (Explanation of Article 3 of Law Number 27, 2007).

Comparison of said principles with the mineral mining sector Business Licensing regulation can be illustrated as below:

Table 1. Comparison of the Principles of the PWP3K Law with the Regulations on Mineral Mining Business Licensing on Small Islands

Management and Protection Principles	Normative Definition within the PWP3K Law	Existing Mineral Mining Business Licensing Regulation	Disharmony and Juridical Implication
Sustainability	The exploitation of coastal resources must not exceed the capacity for regeneration, must not sacrifice the needs of future generations, and must be carried out carefully if the impacts are not yet adequately known.	The Mineral and Coal Mining Law, especially following the latest amendments, states that mining is a business activity that can be granted through an IUP, provided it meets administrative, technical, environmental, and financial requirements. Under the Risk-Based Business Licensing system, business legality is processed through the OSS-RBA (Investment and Investment Management System), with a focus on simplifying and accelerating service delivery.	Disharmony arises because mineral mining is extractive and poses a high risk to small islands with limited carrying capacity, while the PWP3K Law actually requires low-impact, conservative utilisation. The legal implication is that an IUP that appears valid according to the mining regime can still be questioned if it conflicts with Article 23 paragraph (2) and Article 35 letter k of the PWP3K Law.
Integration	Management of coastal areas and small islands must integrate policies across sectors, levels of government, terrestrial and marine ecosystems, and among	The OSS-RBA system integrates licensing services electronically, but in practice it still treats mining sector permits, environmental approvals, and marine space utilisation instruments as	Administrative integration is not synonymous with ecological integration. Licensing may appear digitally integrated, but this does not necessarily mean that considerations of the Ministry of Marine Affairs and

	government, business, and the community.	administrative channels that are not yet fully interlocked in substance.	Fisheries, small-island carrying capacity, the RZWP3K/RTRW (Regional Spatial Planning), and coastal community protection are substantive prerequisites for issuing an IUP.
Legal Certainty	Management of coastal resources and small islands must be clearly and understandably regulated and adhered to, and decisions made must be accountable and not marginalise coastal communities.	Business actors can obtain an IUP under the mineral mining regime, while such activities may conflict with the norms of utilisation priorities and conditional prohibitions in the PWP3K Law.	Conflicting legal signals are emerging. An IUP may be deemed legal under the Mineral and Coal Mining regime but may be substantively flawed under the PWP3K regime. This situation creates uncertainty for business actors, coastal communities, local governments, and the Ministry of Marine Affairs and Fisheries.
Decentralization	Management of coastal areas and small islands requires recognition of the authority of local governments and the aspirations of local communities, as both are closest to these areas' ecological and social characteristics.	The Job Creation Law integrates the RZWP3K into the Provincial Spatial Plan (RTRW), and the OSS-RBA system places licensing within a centralised service framework. In the mineral mining sector, primary authority to issue IUPs also rests with the central government, through the relevant minister.	The role of regional governments and local communities may be weakened as specific marine and coastal instruments are absorbed into general spatial planning and centralised licensing mechanisms. As a result, the characteristics of small islands and the aspirations of coastal communities are not always the primary considerations when issuing permits.

Source: processed by the authors

Based on the matrix above, the starting point of the analysis is the position of the PWP3K Law as a special regime for managing coastal areas and small islands. This special status is not only formal, because the PWP3K Law regulates specific objects, but also material, as the law

contains a protection paradigm that differs from other sectoral licensing regimes. According to the PWP3K Law, a small island is an island with an area of less than or equal to 2,000 km^2, along with its ecosystem unit. The phrase "along with its ecosystem unit" indicates that a small island is not viewed as a separate piece of land but as an ecological system encompassing the relationships among land, coastal waters, communities, and the resources that sustain life.

This character has implications for the choice of norms. Article 23 paragraph (2) of the PWP3K Law stipulates the priority use of small islands for conservation, education and training, research and development, marine cultivation, tourism, sustainable fisheries and marine businesses, organic agriculture, animal husbandry, and/or national defence and security. Mineral mining activities are not placed on this priority list. The absence of mining on the priority list is not merely a matter of wording but rather an indication that lawmakers did not consider mining to be generally consistent with the carrying capacity of small islands (Law Number 27, 2007).

These restrictions are reinforced by Article 35 letter k of the PWP3K Law, which prohibits any person from directly or indirectly conducting mineral mining in areas that, in technical, ecological, social, and/or cultural terms, cause environmental damage, environmental pollution, and/or harm the surrounding community. Therefore, although the formulation of Article 35 letter k does not constitute an absolute prohibition in text, the standard of proof is very strict. On small, ecologically vulnerable islands, mineral mining activities must be carefully assessed from the licensing stage, not only after damage has occurred.

a. Disharmony with the sustainability principle

Sustainability under the PWP3K Law requires that coastal resource utilisation not exceed regeneration capacity, not sacrifice the needs of future generations, and be carried out cautiously when impacts are not yet fully understood. Within this framework, small islands are closer to strong sustainability than to weak sustainability. Strong sustainability views certain natural assets as critical natural capital that cannot be simply substituted by economic gain or man-made development (Pelenc et al, 2015).

Mineral mining activities differ in character from the priority activities in Article 23 paragraph (2) of the PWP3K Law. Mineral mining is an extractive activity that uses non-renewable resources and generally requires land clearing, landscape changes, waste management, water use, the development of supporting infrastructure, and the mobilisation of heavy equipment. In large land areas, these risks can still be assessed through carrying

capacity and environmental control instruments. However, on small islands, the same risks have greater consequences because the ecological space is narrow, freshwater sources are limited, and the connection between land and sea is very strong.

Disharmony with the principle of sustainability arises because the mineral mining licensing regime treats IUP as the primary legal basis for mining activities. In contrast, the PWP3K Law treats the use of small islands as subject to conservation priorities and prohibitions on destructive activities. The latest amendment to the Minerba Law, which continues to strengthen the mechanism for granting mining areas and permits through the central government, does not specifically classify small islands as objects requiring special ecological filtering before granting IUPs (Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining). When mining norms do not differentiate sharply between general land space and small islands, the principle of sustainability in the PWP3K Law loses its operational power. Constitutional Court Decision No. 35/PUU-XXI/2023 is important in this context because it affirms that restrictions on mining activities on small islands are based on the protection of coastal ecosystems and environmental sustainability. The Court's considerations also reinforce the view that small islands should be treated as ecologically vulnerable areas, so that mining permits cannot be assessed solely on the fulfilment of sectoral administrative requirements (Decision of the Constitutional Court of the Republic of Indonesia Number 35/PUU-XXI/2023). Thus, the disharmony with the principle of sustainability lies in a difference in basic orientation: the PWP3K Law is oriented towards ecological protection, whereas the mining regime and OSS-RBA tend to prioritise the legalisation of business activities as long as sectoral licensing requirements are met.

b. Disharmony with the integration principle

The integration principle in the PWP3K Law requires that coastal areas and small islands be managed by integrating the central government and regional governments; among regional governments; across sectors; between the government and the business world and the community; and between terrestrial and marine ecosystems, and by applying science and management principles. Therefore, the integration referred to in the PWP3K Law is not merely the unification of permit documents but rather the substantive integration of spatial, ecological, social, cultural, and economic considerations prior to permitting an activity.

The OSS-RBA system, regulated by Government Regulation 28 of 2025, is intended to provide faster and more integrated electronic Risk-Based Business Licensing. Its scope includes basic requirements, Business Licensing, Business Licensing to Support Business Activities, norms, standards, procedures, criteria, OSS system services, supervision, evaluation, policy reform, funding, problem resolution, and sanctions (Government Regulation Number 28, 2025). However, electronic integration does not automatically guarantee substantive integration as intended by the PWP3K Law. If the OSS-RBA merely combines cross-sectoral administrative processes without a lock-in mechanism that requires ecological validation by the Ministry of Marine Affairs and Fisheries before mining permits are issued, the system will only create procedural integration, not integrated coastal management.

In the context of mineral mining on small islands, the main weakness of the licensing system is the limited linkage among the Mining Business License (IUP), the Marine Spatial Utilisation Activity Suitability (KKPRL), environmental approvals, recommendations for small island utilisation, and coastal spatial planning. These instruments should not be treated as stand-alone parallel stages, but rather as a cumulative series. If any of these instruments is not met or substantively states that the activity is inconsistent with the carrying capacity of the small island, the mining permit application should not proceed.

Disharmony with the principle of integration is increasingly apparent when the mineral mining licensing system allows for dominant assessments to be placed on the Energy and Mineral Resources sector. At the same time, the Ministry of Marine Affairs and Fisheries (KKP), the institution mandated to manage coastal areas and small islands, is not always positioned as a decision-maker from the outset. KKP Ministerial Regulation No. 10 of 2024 regulates the use of small islands and their surrounding waters, including the procedures for issuing permits and recommendations (Regulation of the Minister of Marine Affairs and Fisheries Number 10, 2024). However, if these recommendations are not integrated as mandatory prerequisites into the OSS-RBA flow for mineral mining activities on small islands, the Ministry of Marine Affairs and Fisheries' function will shift to an administrative role. It will no longer serve as a substantive guardian of the small island ecosystem. Thus, the disharmony with the principle of integration lies not in the absence of a licensing platform but in the lack of a coherent intersectoral mechanism. The integration envisioned by the

PWP3K Law is grounded in ecosystem protection. In contrast, integration within the OSS-RBA still risks being interpreted as a service integration to expedite the issuance of business legality.

c. Disharmony with the legal certainty principle

The principle of legal certainty requires that regulations governing the management of coastal and small island resources be clear, understandable, adhered to by all stakeholders, and that decisions made be accountable. In the context of mineral mining permits on small islands, legal certainty should be interpreted not only to ensure that business actors obtain permits, but also to protect coastal communities from destructive activities and to ensure that the government enforces the specific legal regime of the PWP3K Law.

Problems arise because the applicable legal regimes are not fully aligned. Under the Mineral and Coal Mining Law, an IUP is a legal instrument that provides the basis for business actors to carry out mining activities. From the perspective of the PWP3K Law, mineral mining activities on small islands must first be assessed against the priority of small island utilisation and the very strict conditional prohibitions. When these two regimes are not operationally synchronised, business actors may find themselves in the position of having obtained sectoral permits that then face the specific restrictions of the PWP3K Law.

The Wawonii Island case illustrates the consequences of this disharmony. Supreme Court Decision No. 403 K/TUN/TF/2024 essentially confirms that mining activities on small islands must be interpreted within the protections of the PWP3K Law, not solely based on the legality of the mining sector(Supreme Court Decision Number 403 K/TUN/TF/2024). In other words, holding a mining permit does not automatically preclude testing the activity's compliance with small island protection norms. Supreme Court Decision No. 57 P/HUM/2022 also demonstrates that the exclusion of mining as a priority for small island utilisation is an important normative basis for rejecting mining activities inconsistent with the PWP3K Law (Supreme Court Decision Number 57 P/HUM, 2022).

From a legal certainty perspective, this situation presents a double uncertainty. On the one hand, business actors may consider themselves legitimate because they hold a Mining Permit (IUP). On the other hand, coastal communities and environmental organisations may consider such activities to violate the PWP3K Law. Regional governments may also find themselves in a dilemma because the central government issues permits, while the impacts

are felt directly in the regions. This uncertainty is not caused by a lack of norms, but rather by a disharmony between sectoral norms for mining and norms specifically for the protection of small islands.

Ideal legal certainty in this context should be established through the principle of *lex specialis derogat legi generali*. If mineral mining activities are conducted on small islands, the PWP3K Law should govern whether such activities may proceed. Mining permits (IUPs) remain important, but they should not be treated as the sole criterion for legality. Mining legality on small islands must be multi-layered: it is legal under the mining regime, in accordance with spatial planning and marine areas, with environmental approval, and not in conflict with the principles and prohibitions outlined in the PWP3K Law.

d. Inconsistency with the principle of decentralisation

The decentralisation principle in the PWP3K Law acknowledges that the management of coastal areas and small islands cannot be entirely determined centrally. Regional governments and local communities are closely tied to the ecological, social, cultural, and economic characteristics of small islands. Therefore, under the PWP3K regime, coastal spatial planning through the RZWP3K initially served as a crucial instrument for prioritising regional interests, local communities, and ecosystem protection in spatial planning decisions. The Job Creation Law changes this configuration by integrating the RZWP3K into the Provincial Spatial Planning Plan. Administratively, this integration can be understood as an effort to simplify and unify spatial planning. However, substantively, this integration risks reducing the specificity of coastal and small-island instruments, as considerations of marine resources, small-island carrying capacity, and ecosystem sustainability can be subsumed within the more general logic of land spatial planning (Amir & Watumlawar, 2022).

Disharmony with the principle of decentralisation is also evident in the centralisation of licensing authority in the mineral mining sector. Following the amendment to the Mineral and Coal Mining Law and the implementation of the OSS-RBA regime, the central government has a dominant role in determining zoning and granting mining permits. At the same time, regional governments and local communities, who are most directly affected by the ecological and social impacts of mining, do not always have a decisive role in issuing permits. This creates an accountability gap, as licensing decisions are made within a

centralised structure, while small island communities bear the risks of environmental damage and social conflict.

Thus, the issue of decentralisation in this context cannot be explained simply as a reduction in the formal authority of regional governments, but rather as a weakening of local functions as ecological filters. When the RZWP3K is integrated into the Provincial RTRW and the licensing process is implemented through the OSS-RBA, there must be assurance that the unique characteristics of small islands are not lost during standardisation. Without such assurance, mineral mining permits can be issued on a legal administrative basis, but lack ecological and social legitimacy.

Based on the comparison of the principles of sustainability, integration, legal certainty, and decentralisation, it can be concluded that the disharmony in the regulation of Business Licensing in the mineral mining sector on small islands is both normative and procedural. Normative disharmony is evident in the difference in orientation between the PWP3K Law, which positions small islands as ecological spaces to be protected, and the mining regime, which treats minerals as objects of exploitation subject to permits. Procedural disharmony is evident in the weak licensing mechanism, which ensures that consideration of the Ministry of Marine Affairs and Fisheries (KKP), marine space suitability, environmental approval, coastal planning, and local community aspirations is a cumulative prerequisite before a mining permit can be issued.

Thus, the regulation of Business Licensing in the mineral mining sector on small islands is not fully aligned with the principles of coastal and small island management and protection. The inconsistency lies primarily in four aspects. First, from a sustainability perspective, the mining licensing regime does not recognise small islands as critical natural capital requiring strict protection. Second, from an integration perspective, the OSS-RBA system does not guarantee substantive integration between sectors and licensing instruments. Third, from a legal certainty perspective, IUPs can create a false sense of legality if not tested by the PWP3K Law as lex specialis. Fourth, from a decentralisation perspective, the integration of RZWP3K into the Provincial RTRW and the centralisation of licensing risk weakening the role of regions and local communities as direct guardians of small island ecosystems.

Therefore, the focus of regulatory improvements should not be solely on accelerating licensing but rather on harmonising the mining regime, the risk-based business licensing regime, and the coastal and small-island management regime. This harmonisation must ensure that the

PWP3K Law serves as a regulatory standard for all mineral mining activities on small islands, ensuring that business licensing is not only administratively valid but also ecologically, socially, and constitutionally sound (Hidayatullah et al, 2025).

2. Institutional Marginalisation and Revitalisation of the Ministry of Marine Affairs and Fisheries' Authorities in Small Island Mineral Mining Governance

a. The Ministry of Marine Affairs and Fisheries' Legal Authorities and Its Progressive Marginalisation

Ateng Syafrudin treats authority as power derived from or conferred by statute, or in other words, known as *formal power.* Riawan Tjandra similarly understands authority as power regulated through legislation. At the same time, Prajudi Atmosudirjo defines authority as formal power emanating from the legislative or executive branch, exercised over a particular group of persons or a coherent field of administration(Tjandra, 2018). Article 1 paragraph 6 of Law Number 30 of 2014 concerning Government Administration, as amended by Law Number 6 of 2023 (AP Law), codifies this concept by defining authority (*kewenangan*) as the power of governmental bodies, officials, or other state administrators to act in the realm of public law.

Within authority reside specific powers (*rechtsbevoegdheden)*. Article 1, paragraph 5, of AP Law defines power (wewenang) as the right of governmental bodies or officials to make decisions or take actions in the conduct of government. Both authority and power originate from legislation and are derived from three sources: attribution, delegation, and mandate (Ibad, 2021). Attribution means that the authority is conferred directly by the 1945 Constitution or by Law. Delegation means that authority is transferred from a higher to a lower body, with responsibility and liability passing to the delegatee. In contrast, mandate means that authority is assigned from a higher to a lower body, with responsibility and liability remaining with the mandator. These distinctions are doctrinally essential because they determine where the legal responsibility for administrative action ultimately lies.

As a public body created by law, the Ministry of Marine Affairs and Fisheries derives its authorities from a layered set of legal instruments. Presidential Regulation Number 193 of 2024 concerning the Ministry of Marine Affairs and Fisheries, particularly Article 16 grants Ministry of Marine Affairs and Fisheries the authorities to formulate and implement policy;

to develop norms, standards, procedures, and criteria; to provide technical guidance; and to monitor, analyse, evaluate, and report on the management, conservation, rehabilitation, utilisation, and control of marine, coastal, and small island resources. In Addition, the Ministry of Marine Affairs and Fisheries' authority over coastal and small-island governance is derived from the PWP3K Law.

Two provisions of the PWP3K Law are pivotal. First, Article 53 of the PWP3K Law mandates that coordination of national-level coastal and small island management, including:

a. the assessment of every sectoral proposal in line with integrated coastal and small island management;
b. inter-provincial and strategic-area sectoral planning;
c. national accreditation programmes;
d. recommendation of activity permits in accordance with the authority of each governmental agency; and
e. the supply of data and information for cross-jurisdictional management and strategic purposes.

The recommendation of activity permits is the linchpin of this article. It is the legal channel through which the Ministry of Marine Affairs and Fisheries exercises substantive ecological oversight of sectoral licensing in coastal and small-island areas.

Second, Article 26 of the PWP3K Law authorises the Minister to regulate the utilisation of small islands and their surrounding waters by Ministerial Regulation. This mandate has been operationalised through Ministerial Regulation of Marine Affairs and Fisheries Number 10 of 2024, which restricts the Ministry of Marine Affairs and Fisheries' role to issuing permits for activities constituting foreign direct investment and issuing recommendations for the utilisation of small islands with an area below 100 km². This Ministerial Regulation is in direct contravention of its superior legislation, the PWP3K Law. Article 1 paragraph 3 of the PWP3K Law defines a small island as any island of 2.000 km² or less, but the implementing regulation reduces the operative threshold to 100 km². This means that the utilisation of small islands by domestic capital, or the utilisation of small islands with areas between 100 and 2.000 km², requires neither a permit nor a recommendation from the Ministry of Marine Affairs and Fisheries.

The Disharmony between the PWP3K Law and Ministerial Regulation of Marine Affairs and Fisheries Number 10 of 2024 generates legal uncertainty. Consequently, several administrative lawsuits challenging the validity of business licenses have resulted in court rulings that annulled licenses issued without the required ministerial recommendation. In Supreme Court Decision Number 403 K/TUN/TF/2024, the Court annulled the Forest Area Borrow-Use Permit (now Forest Area Use Approval) held by PT GKP, partly on the ground that the Minister of Marine Affairs and Fisheries, as the responsible coordinator for the management of outermost small islands, had never issued any permit or decision to PT GKP for the utilisation of Wawonii Island's natural potential, and no evidence existed that coordination or communication had taken place with the Ministry of Marine Affairs and Fisheries prior to the issuance of the forest permit(Decision of the Jakarta State Administrative Court Number 167/G/TF/2023/PTUN.JKT). This reasoning aligns with the doctrinal requirement articulated by Ridwan HR that a State Administrative Decision must be free of defects (*dwaling*, *bedrog*, *dwang*) and must not deviate from the relevant statutory framework(La Sensu, et al, 2024) and with Article 52 of the AP Law, which requires that a decision be issued by the competent authority, in accordance with proper procedure, and with substance conforming to legislation and the General Principles of Good Governance.

Supreme Court Decision Number 403 K/TUN/TF/2024 addresses that an IUP issued in a small island area without prior recommendation from the Ministry of Marine Affairs and Fisheries is procedurally defective and substantively unlawful. Critically, a substantial proportion of IUPs currently operating on small islands may lack the Ministry of Marine Affairs and Fisheries recommendation that constitutes a *conditio sine qua non* of their legality, rendering them void or voidable under the PWP3K Law and the AP Law. This issue stems from the prevailing regulatory disharmony governing small island management. Consequently, a comprehensive reformulation is urgently required to resolve these normative conflicts.

b. A Proposed Legal Framework for Regulatory Harmonisation and Ministry of Marine Affairs and Fisheries' Authorities Revitalisation

Article 50 of the PWP3K Law provides the foundational basis for sectoral Business Licensing on small islands by competent national or local government bodies. For mineral mining, primary licensing authority vests in the Ministry of Energy and Mineral Resources.

However, Article 53 of the PWP3K Law superimposes a mandatory coordinating layer. The Ministry of Marine Affairs and Fisheries' recommendation must be obtained before any sectoral license for activities on small islands may be legally issued.

Given that Article 35 (k) of the PWP3K Law prohibits mining activities that technically, ecologically, socially, or culturally cause environmental damage, pollution, or harm to surrounding communities, any licensing framework that fails to operationalise this prohibition as a binding sequential prerequisite is constitutionally and statutorily defective. The optimal regulatory harmonization framework must therefore be constructed with the following normative objectives: (1) alignment with the PWP3K Law's *lex specialis* status; (2) compliance with the judicial framework established by Supreme Court Decision Number 403 K/TUN/TF/2024 and Constitutional Court Decision Number 35/PUU-XXI/2023; (3) legal certainty for coastal communities and business actors; and (4) substantive ecological protection as a non-negotiable precondition.

This study proposes that harmonisation be operationalised through a dedicated Government Regulation (Peraturan Pemerintah) governing the procedure for the Ministry of Marine Affairs and Fisheries' issuance of small-island utilisation recommendations. Positioning the instrument at this level produces three doctrinal advantages. First, it occupies the same hierarchical tier as Government Regulation Number 28 of 2025 on the Implementation of Risk-Based Business Licensing, thereby creating a *lex specialis* relationship with the general OSS-RBA regime. Second, it provides binding force *vis-à-vis* sectoral ministries, which Ministerial Regulations alone cannot achieve. Third, it permits the construction of an interlock between Article 53 of the PWP3K Law and the procedural architecture of OSS-RBA.

Substantively, the proposed Government Regulation should embed the following core norms. First, the recommendation of the Minister of Marine Affairs and Fisheries should be expressly positioned as an absolute prerequisite *(conditio sine qua non).* This requirement must be strictly binding on all sectoral ministries, including the Ministry of Energy and Mineral Resources, before the issuance of an IUP for any mineral mining activity on a small island. The recommendation should be characterised juridically as a *preliminary administrative decision (beschikking)* rather than a non-binding advisory note, with the consequence that any

subsequent IUP issued without it would be substantively defective under Article 52 of the AP Law.

Second, the issuance of the recommendation should be conditioned upon the satisfaction of three cumulative conditions: (1) a deepened Environmental Impact Assessment *(AMDAL)* demonstrating, to the standard articulated in Constitutional Court Decision Number 35/PUU-XXI/2023, that the proposed mining activity will not technically, ecologically, socially, or culturally cause damage, pollution, or community detriment; (2) a genuine social consent of at least two-thirds of the affected community, obtained through documented socialisation and questionnaire procedures, and free from the defects of *dwaling*, *bedrog*, and *dwang*; and (3) full compliance with administrative, technical, environmental, and financial requirements set out in sectoral legislation.

Third, the Government Regulation should mandate that the OSS-RBA operate as a system interlock rather than a procedural aggregator. The absence of the Minister's recommendation must algorithmically prevent the issuance of an IUP in the small island. This systemic configuration transforms the OSS-RBA from a mere administrative gateway into a substantive ecological safeguard.

Fourth, the threshold of 100 km² in Ministerial Regulation Number 10 of 2024 should be revised to align with the statutory definition in Article 1 paragraph (3) of the PWP3K Law, which is 2.000 km². Thereby restoring the full normative scope of the Ministry of Marine Affairs and Fisheries authorities.

Table 2. Comparison of the Current and Proposed Scope of the Ministry of Marine Affairs and Fisheries' Authorities in Small Island Mineral Mining Licensing

No.	Dimension of Authority	Current Regime (Ministerial Regulation No. 10/2024)	Proposed Regime
1	Hierarchical level of instrument	Ministerial Regulation (subordinate to PP No. 28/2025).	Government Regulation, parallel to PP Np. 28/2025 and operating as *lex specialis*.
2	Scope of small islands covered	Limited to islands below 100 km², contrary to Article 1 paragraph 3 of PWP3K Law (≤ 2.000 km²).	
	Aligned with Article 1 paragraph 3 of PWP3K		

	Law (all islands ≤ 2,000 km² and their ecosystem units)		
3	Legal nature of Ministry of Marine Affairs and Fisheries' recommendation	Advisory and required only for foreign direct investment and islands < 100 km².	Absolute prerequisite (*conditio sine qua non*) and preliminary administrative decision binding all sectoral ministries.
4	Conditions for issuance	Administrative checklist and weak substantive verification.	Cumulative conditions: (1) deepened AMDAL, (2) ⅔ social consent free of *dwaling/bedrog/dwang*, (3) and sectoral compliance.
5	Integration with OSS-RBA	Parallel silos without effective interlock between ESDM and KKP pathways.	Algorithmic interlock: no KKP recommendation, no IUP issuance.
6	Source of authority	Attribution narrowed by implementing regulation	Attribution from PWP3K Law restored through aligned implementing regulation.

Source: processed by the authors

CONCLUSION

The comparison between the principles of coastal area and small island management under the PWP3K Law and the existing regulation of mineral mining Business Licensing shows that the current licensing framework remains substantively disharmonious. The disharmony is reflected in four main aspects: the mining licensing regime does not adequately accommodate the principle of sustainability because it treats small islands as ordinary economic spaces rather than vulnerable ecological units; the OSS-RBA system only provides administrative integration without ensuring substantive ecological integration; legal certainty becomes weakened because an IUP may be formally valid under the mining regime but materially inconsistent with the PWP3K Law as *lex specialis*; and the centralization of licensing authority reduces the role of regional governments and local communities in protecting small island ecosystems. Therefore, mineral mining Business Licensing in coastal areas and small islands must no longer be assessed solely through sectoral mining legality, but must be harmonized with the protective principles of the PWP3K Law so that every permit issued is not only administratively valid, but also ecologically, socially, and constitutionally justified.

The study has formulated an ideal restoration of the Ministry of Marine Affairs and Fisheries authority through the enactment of a Government Regulation specifically governing the granting of recommendations for the utilization of small islands. The Minister of Marine Affairs and Fisheries' recommendation must act as an absolute prerequisite (*conditio sine qua non*) binding all sectoral ministries before the issuance of any IUP on a small island. Its issuance must be conditioned upon a deepened Environmental Impact Assessment, a two-thirds genuine social consent of the affected community free from *dwaling*, *bedrog*, and *dwang*, and compliance with sectoral administrative, technical, environmental, and financial requirements. In Addition, its operational force must be secured through an algorithmic interlock within the OSS-RBA. The instrument must also restore the statutory threshold of 2.000 km².

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