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The Legal Regulation for the Management of the Coastal Area in Lima Island by the Traditional Law Community Unity in *Ohoi Warbal*

Victor Juzuf Sedubun¹, Marthinus Johanes Saptanno², Vica Jillyan Edsti Saija³

¹ Faculty of Law Universitas Pattimura. Email: v.j.sedubun@gmail.com

² Faculty of Law Universitas Pattimura. Email: sap-tenno@yahoo.com

³ Faculty of Law Universitas Pattimura. Email: vicasaija@gmail.com

Orcid ID: 0000-0002-4759-6724

Abstract

The MHA Unity in Ohoi Warbal as a community entity that lives together in an alliance as a traditional village (called Ohoi) has the right to manage the other four islands. These islands are Lik Island, Labulin Island, Waha Island, Tarwa Island and Warbal Island. Historically, these four islands belonged to Ohoi Warbal to manage. In the management of Lima Island, there are two islands, namely Lik Island and Tawa Island, which are rented as pearl cultivation sites. However, this management is not undertaken by the customary law community, thus, the research problem is how the management rights of the coastal area of Lima Island are implemented by the customary law community unit in Ohoi Warbal, and how the legal protection for management rights of the coastal area of Lima Island is implemented by the MHA unit in Ohoi Warbal. This study was conducted using empirical legal research methods with interview and observation instruments to obtain primary data. The conclusion is that the implementation of the management rights of the Lima Island coastal area by the MHA in Ohoi Warbal is undertaken by individuals or groups independently and it is used for the welfare of the Ohoi Warbal customary law community. The regulation of legal protection for the management rights of the Lima Island coastal area by the customary law community unity in Ohoi Warbal is hampered by the absence of written law in Ohoi.

Keywords: Lima Island Coastal Area, Warbal

1. Introduction

The Constitutional Unity of Customary Law Communities (hereinafter abbreviated as MHA) in Indonesia has been recognized in the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia), and has been described in the provisions of the legal and regulatory products in Indonesia. The recognition, respect and promotion of MHA unity in the 1945 Constitution of the Republic of Indonesia, is contained in the provisions of Article 18B paragraph (2), which regulates:

“The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.”

The regulation of Article 18B paragraph (2) can be understood as constitutional recognition of the existence of the MHA unit in the context of relations with the state. This constitutional recognition is also a constitutional basis for state administrators in relation to the MHA unity. This basis is basically about how the state should treat the MHA unit. Referring to the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, there is a declaration that:

1. The state is constitutionally obliged to recognize, respect and promote the unity of the MHA, and also
2. The MHA unit constitutionally has the right to obtain recognition and respect for the traditional rights of the MHA unit.

The constitutional mandate in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia is an obligation for the state to obey and implement it in the administration of state government. In this regard, the state regulates the recognition, respect and promotion of the existence of the MHA unity by establishing laws and other implementing regulations. The regulation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia also means that the state recognizes, respects and promotes the MHA unity as well as the original and traditional rights of the MHA unity as long as it is still alive and does not conflict with the Republic of Indonesia and statutory regulations.

Further regulations regarding MHA unity as an elaboration of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are contained in Law Number 6 of 2014 concerning Villages (hereinafter abbreviated to Law Number 6 of 2014). Law Number 6 of 2014 specifically regulates MHA units in the provisions of Chapter , by fulfilling certain requirements, as regulated in Law Number 6 of 2014 Article 97. Furthermore, regulations regarding MHA unity are also contained in the Minister of Home Affairs Regulation Number 52 of 2014 concerning Recognition and Protection of Customary Law Community Units (hereinafter abbreviated as *Permendagri* Number 52 of 2014) which firmly and clearly regulates the substance and technicalities regarding the MHA unity and its recognition in the regent/mayor's decision.

Recognition, respect, protection and promotion of MHA unity is also found in coastal area management. This recognition, respect, protection and promotion is contained in Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (hereinafter abbreviated to Law Number 27 of 2007). MHA units in Indonesia mostly depend on farming and fishing. Since ancient times, the ancestors of the Indonesian people have been famous in the maritime sector, exploring the seas.

The MHA unit in Maluku has a slightly different character from other MHA units in Indonesia. This is because the majority of MHA units in Maluku live and reside and carry out activities in coastal and marine areas. In fact, ownership of coastal areas by MHA units is a right that has been passed down from generation to generation since their ancestors. In the Kei Islands, the MHA unit is a community of people who live in a living association in a traditional village called Ohoi. The unitary ownership of the MHA does not only cover the coast, ownership also of islands and coasts, which are owned by an association of several Ohoi, (such as Nguhufit who has the right to Manir Island, in Kei Kecil) or ownership by one particular Ohoi. One of them is the ownership of Lima Island by the MHA unit in Ohoi Warbal. Lima Island consists of Lik Island, Waha Island, Labulin Island, Tarwa Island and Warbal Island itself.

Management of Lima Island by the MHA unit in Ohoi Warbal has many tourist attractions and pearl cultivation sites. Pearl cultivation is found on Lik Island and Tarwa Island, while on Waha Island there is a tourist spot that is well known abroad, namely the *Ngurtavur* beach tourist attraction (in Indonesian it means raised sand). In Ohoi Warbal there is also a beautiful beach which has not been developed as a tourist attraction. Coastal management in Ohoi Warbal is still managed independently by MHA unitary groups in Ohoi Warbal. So sometimes there is a conflict of interest between MHA in Ohoi Warbal and MHA in other Ohoi. The customary

law which is used as a benchmark by the MHA unit in Ohoi Warbal often cannot have binding force on other parties, for the reason that it is not a written law. So other parties feel that this customary law only applies and has binding force to the MHA unit in Ohoi Warbal, apart from that it does not apply to other parties. This writing raises legal issues to be studied and analyzed, namely:

1. How are the management rights of the Lima Island coastal area implemented by the MHA unit in Ohoi Warbal?
2. How are the legal protection arrangements for the management rights of the Lima Island coastal area by the MHA unit in Ohoi Warbal?

2. Method

Regarding to the substance of the legal issues to be studied namely examining the implementation of management rights for the coastal area of Lima Island by the MHA unit in Ohoi Warbal, this study was empirical legal research, namely research based on field data by collecting data according to samples and carry out studies of positive legal provisions and legal principles. It is due to this research is legal research in which the legal science has a special character (it is a *sui generis* discipline) (Philipus M. Hadjon 1997). Thus, the aim of this study was to analyze the form and legal protection in the management of the coastal area of Lima Island by the MHA unit in Ohoi Warbal.

The approach used was a statutory approach and a conceptual approach. According to Peter Mahmud Marzuki, the legislative approach is carried out by examining all laws and regulations relating to legal issues (Peter Mahmud Marzuki 2019). The conceptual approach departs from the views and doctrines that develop in legal science to find ideas that give rise to legal concepts, legal understanding and legal principles needed to complete research.

3. Discussion

3.1 *The Implementation of Management Rights for the Lima Island Coastal Area by the Customary Law Community Unit in Ohoi Warbal*

The term MHA comes from the term indigenous peoples. The term indigenous people in Indonesia are not translated as "original people, however it is also translated as "Indigenous People". Because it is feared that the use of the term indigenous people could give rise to strong polemics, and could even cause or become a source of conflict. The use of the term indigenous peoples in terms of its use is considered more popular. The Alliance of Indigenous Peoples of the Archipelago in its First Congress held in March 1999, agreed that Indigenous Peoples are groups of people who have hereditary ancestral origins in certain geographical areas, and have a system of values, ideology, economics, politics, culture, social and territorial itself (Indigenous Community Alliance of the Archipelago 1999).

The existence of the MHA unit was further described in the constitution by the founding father of the Unitary State of the Republic of Indonesia (hereinafter abbreviated to NKRI). The 1945 Constitution (hereinafter abbreviated to the 1945 Constitution) explains the recognition of the existence of the MHA unit in Explanation Number II Article 18 of the 1945 Constitution which states:

"In the territory of Indonesia there are 250 "*Zelfbesturende landschappen*" and "*Volksgemeenschappen*", such as villages in Java and Bali, lands in Minangkabau, hamlets and clans in Palembang and so on. These areas have an original structure, and therefore can be considered as special areas.

The Republic of Indonesia respects the position of these special regions and all State regulations regarding these regions will remember the rights of the origin of these regions."

The explanation of Number II Article 18 of the 1945 Constitution above shows that the Republic of Indonesia recognizes that there are 250 "*Zelfbesturende landschappen*" and "*Volksgemeenschappen*", as in Java and Bali they are known as villages, in Minangkabau they are known as hamlets, and in Palembang they are known as

clans or in Maluku (especially in Ambon and Central Maluku) is known by the term Negeri as well as other terms known in other areas. These areas have an original structure, and therefore can be considered as special areas. The Republic of Indonesia respects the existence of these special regions and all regulations made by the State regarding these regions will remember and respect and recognize the rights of origin of these regions.

With the decentralization of authority to regions, regions implement regional autonomy in accordance with the mandate of the law. The implementation of regional autonomy is closely related to the management of all available regional potential, including the sea which is an integral part of management. The authority of regional governments in the context of regional autonomy itself is reflected in the autonomous rights attached to villages or other names as genuine autonomy from local communities based on customs and traditions that are deeply rooted in that community.

The MHA unit in Maluku has a slightly different character from other MHA units in Indonesia. This is because the majority of MHA units in Maluku live and reside and carry out activities in coastal and marine areas. In fact, ownership of coastal areas by MHA units is a right that has been passed down from generation to generation since their ancestors. In the Kei Islands, the MHA unit is a community of people who live in a living association in a traditional village called Ohoi. One of them is Ohoi Warbal, which has ownership of Lima Island, if referring to Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, then as MHA residing in Ohoi Warbal they are constitutionally obliged to be recognized, respected and promoted as MHA unity by the state. and the MHA Ohoi Warbal unit constitutionally has the right to obtain recognition and respect for the traditional rights of the MHA unit.

Most of the population of Southeast Maluku Regency lives in coastal areas, so the ocean is the main priority in earning a living, and so does MHA Ohoi Warbal. This is of course inseparable from the characteristics of the islands that Maluku has, apart from that, the MHA unity in Indonesia is largely dependent on fishermen apart from farming. Remembering that since ancient times, the ancestors of the Indonesian people were famous in the maritime sector, exploring the seas. The unitary ownership of the MHA does not only cover the coast, ownership also of islands and coastlines, which are owned by an association of several ohoi, (such as Nguhufit who has the right to Manir Island, in Kei Kecil) or ownership by one particular Ohoi. One of them is the ownership of Lima Island by the MHA unit in Ohoi Warbal. Lima Island consists of Lik Island, Waha Island, Labulin Island, Tarwa Island and Warbal Island itself. Management of Lima Island by the MHA unit in Ohoi Warbal has many tourist attractions and pearl cultivation sites.

Regulations related to coastal area management are based on Law Number 27 of 2007, where in Article 1 Number 2 of Law Number 27 of 2007, coastal areas are defined as transitional areas between land and sea ecosystems which are influenced by changes on land and at sea. . Furthermore, based on Article 1 Number 1 of Law Number 1 of 2014 concerning Amendments to Law Number 7 of 2007 concerning Management of Coastal Areas and Small Islands (Law Number 1 of 2014), the Management of Coastal Areas and Islands Small is a coordination of planning, utilization, supervision and control of coastal and small island resources carried out by the Government and Regional Government, between sectors, between land and sea ecosystems, as well as between science and management to improve people's welfare. In order to improve people's welfare, of course marine factors, if utilized as optimally as possible, can be beneficial for development and Indonesian society. Article 60 of Law Number 1 of 2014 states that in the Management of Coastal Areas and Small Islands, the Community has the right to:

- a. obtain access to parts of Coastal Waters that have been granted Location Permits and Management Permits;
- b. propose traditional fishing areas into RZWP-3-K;
- c. propose the territory of Indigenous Peoples into RZWP-3-K;
- d. carry out management activities for Coastal and Small Island Resources based on applicable customary law and do not conflict with the provisions of statutory regulations;
- e. obtain benefits from the implementation of Management of Coastal Areas and Small Islands;
- f. obtain information regarding the Management of Coastal Areas and Small Islands;
- g. submit reports and complaints to the authorities regarding losses that befell him related to the implementation of Management of Coastal Areas and Small Islands;

- h. express objections to the management plan that has been announced within a certain period;
- i. report to law enforcement due to suspected contamination, pollution and/or destruction of Coastal Areas and Small Islands which is detrimental to their livelihoods;
- j. file a lawsuit with the court regarding various problems in Coastal Areas and Small Islands which are detrimental to their lives;
- k. obtain compensation; and
- l. receive assistance and legal assistance regarding problems faced in the Management of Coastal Areas and Small Islands in accordance with the provisions of statutory regulations

Thus, the community is given the right to obtain benefits from coastal area management, and indigenous communities can carry out management activities based on applicable customary law and do not conflict with statutory provisions.

To manage the Maluku coastal area, the provincial government issued Regional Regulation Number 10 of 2013 concerning Management of Coastal Areas and Small Islands (Regional Regulation Number 10 of 2013). This Regional Regulation states that in accordance with Regional Regulations concerning Management of Coastal Areas and Small Islands, autonomous regions obtain broad, real and responsible authority, which is realized in the regulation, distribution and use of regional resources. It was also explained that one of the biggest challenges in the era of globalization and regional autonomy is the rapid development of information in accordance with developments in science and technology as well as high mobilization of human resources (Elsa Rina Maya Toule, Deassy Jacomina Anthoneta Hehanussa, Vica Jillyan Edsti Saija).

Regional Regulation Number 10 of 2013 regulates that autonomous region obtain broad, real and responsible authority, which is realized in the regulation, distribution and use of regional resources. Based on Article 35 of Regional Regulation Number 10 of 2013, it is stated that the rights of indigenous communities to cultivate coastal areas and small islands which have been used for generations and sustainably are still recognized, respected and protected. The rights of local communities who are not included in indigenous communities can be recognized as long as they have demonstrated management that is in accordance with the principles of sustainable management. Marine water exploitation rights are granted to communities in coastal areas and small islands allocated for public use, except in marine conservation areas, fisheries reserves, shipping lanes and certain areas. Furthermore, the rights of coastal and small island communities in the context of managing coastal areas and small islands are further regulated in Article 36 of Regional Regulation Number 10 of 2013 as mandated by Article 60 of Law Number 1 of 2014. Therefore, there is a guarantee of management of the coastal areas and small islands of Lima Island by the MHA unit in Ohoi Warbal, Southeast Maluku Regency, which has been used for generations and continues to be recognized, respected and protected.

The sea waters around Southeast Maluku Regency are useful as life-givers because they provide a source of protein for the community. The management and use of the sea is always based on rules and values that regulate the position, function and role of each member of society in accordance with the agreements made by the Kei indigenous people who inhabit the area. The use of marine resources in a region is not only utilized by community groups that inhabit the region but also involves certain community groups outside the territorial area (Hellen Nanlohy, Natelda S. Timisela).

Likewise, on Lima Island, in terms of managing and utilizing the coast and sea, there are several tourist attractions and also pearl cultivation sites. Pearl cultivation is found on Lik Island and Tarwa Island, while on Waha Island there is a tourist spot that is well known abroad, namely the Ngurtavur beach tourist attraction (in Indonesian it means raised sand). In Ohoi Warbal there is also a beautiful beach which has not been developed as a tourist attraction. Meanwhile, coastal management in Ohoi Warbal is still managed independently by MHA unitary groups in Ohoi Warbal.

These five islands are owned by Ohoi Warbal, so they are managed by the Ohoi Warbal community to benefit the welfare of the village community. This ownership cannot be separated from history or genealogy, where the Tethol family was the landowner in Ohoi Warbal, then people from Kei Besar, such as Ohoingan, came and

settled in Warbal. Apart from that, the ancestors who stopped at Debut had disagreements so they came to Warbal. Ownership in Warbal was not through war but because when the island was still empty, the ancestors sailed from Warbal Island to the other four islands to check the results on these islands, so that Warbal had five islands, and Debut had ten islands. The management of the five islands is given to all MHA Warbal, whether they are landowners or immigrants, who have settled in Warbal (Semuel B E Masbaitubun 2023). This is in accordance with the statement from Chief Ohoi Warbal (Village Head), that the management process has not yet been implemented. well organized, but sasi had previously been carried out (Semuel B E Masbaitubun 2023). Sasi is local wisdom, in the form of a tradition in carrying out efforts to conserve the environment, natural resources and the ecosystem within it, which is carried out traditionally, and has been continuously implemented from generation to generation until now. The Sasi tradition is a customary law that prohibits the harvesting of certain natural resources in customary areas, as a form of nature conservation and protecting the ecosystem within it. Sasi is a customary regulation that prohibits people from taking specified natural resource products in a customary area within a certain period of time until the ritual of opening the Sasi. This prohibition aims to protect the environment, natural resources and ecosystems within it from extinction so that they can still be enjoyed by the following generations. Within this time period, it is hoped that living creatures will have sufficient time to reproduce well so as to produce more harvests (Benjamin Carel Picauly, Jemmy Jefry Pietersz, Victor Juzuf Sedubun, Vica Jillyan Edsti Saija).

Currently the Ohoi government is currently partnering with the World Wide Fund (WWF), an international non-governmental organization that handles issues regarding conservation, research and environmental restoration, and is also collaborating with the Maluku Protestant Church Classis and coordinating with the District Government's Legal Department to designing village legal products that are related to regional management. Collaboration was built between the Ohoi government, together with the church, WWF and universities (Tual State Fisheries Polytechnic), to sow sea cucumber seeds. According to Chief Ohoi, the distribution of seeds must be organized using sasi so that it is maintained, with the first step being outreach to the community regarding sasi, so that it can increase community knowledge in managing natural resources (SDA) in the form of sea cucumbers whose seeds will be distributed, so that the community can look after them. until harvest time. As for sasi in Ohoi Warbal, it is carried out by three hearth stones known in traditional villages, namely elaborating between custom, government and church.

The utilization of the results on Lima Island is carried out freely by all MHA Warbal, for the sake of their welfare. The other four islands are not inhabited except for Warbal and there are immigrants in Tarwa which is a place for pearl cultivation. Apart from sea products in the form of sea cucumbers, previously there were also many sea products in the form of jelly, lola, seven eye, bia and fish (Manu Renjaan 2023). The products used by MHA Ohoi Warbal include coconuts (produced by two islands), apart from that there are three islands which are used for gardening. On average, all five islands have good marine products, such as sea cucumbers, fish, pearls and marine products as well as a very famous emerging sand tourist attraction (Semuel B E Masbaitubun 2023). Currently, this tourist attraction is managed by the church to help in building the Warbal Congregation Pastory.

3.2 Rules for Legal Protection of the Management Rights of the Lima Island Coastal Area by the Customary Law Community Unity in Ohoi Warbal

Regarding to the cultural roots of the Maluku people, which are a unit of indigenous communities, their inherent authority to manage the sea from a cultural perspective, better known as customary rights, requires organic regulations under the law that are able to answer significantly and firmly regarding social phenomena. so that they are able to regulate their marine area management authority, and at the same time avoid management disputes which often arise as quite complex problems. This is because most of the area consists of sea areas that separate one land area from another, which is different from almost all other areas which have land areas that are wider than sea areas (Maluku Provincial Government 2004).

Our national legal instruments regulate the protection of coastal area management, where the rights, obligations and roles of the community are regulated in Law Number 27 of 2007, after which it was amended by Law Number 1 of 2014, which is in Article 60 of the Law. -Law Number 1 of 2014 states that in the Management of

Coastal Areas and Small Islands, the Community has rights, such as carrying out activities for managing Coastal Resources and Small Islands based on applicable customary law and not in conflict with the provisions of statutory regulations; obtain benefits from the implementation of Management of Coastal Areas and Small Islands. The latest changes regarding protection arrangements for coastal area management can be found in Law Number 11 of 2020 concerning Employment Creation (Law Number 11 of 2020), where in one of the regulations on community obligations it is stated that implementing coastal area management programs and small islands agreed at the village level. In this way, villages are given authority by attribution to implement agreed programs relating to coastal area management.

In regional legal instruments, related to the protection of the management of the Maluku coastal area, the Provincial Government issued Regional Regulation Number 10 of 2013. This Regional Regulation states that autonomous regions have broad, real and responsible authority, which is manifested in the regulation, distribution and use of resources. regional power, where based on Article 35 of this regulation it is stated that the rights of indigenous peoples to cultivate coastal areas and small islands which have been used for generations and sustainably remain recognized, respected and protected. The rights of local communities who are not included in indigenous communities can be recognized as long as they have demonstrated management that is in accordance with the principles of sustainable management. Marine water exploitation rights are granted to communities in coastal areas and small islands allocated for public use, except in marine conservation areas, fisheries reserves, shipping lanes and certain areas. Furthermore, the rights of coastal and small island communities in the context of managing coastal areas and small islands are further regulated in Article 36 of Regional Regulation Number 10 of 2013 as mandated by Article 60 of Law Number 1 of 2014.

In line with this, in accordance with the mandate of Law Number 6 of 2014 concerning Villages (Law Number 6 of 2014), the Village Head and Village Consultative Body (BPD) or other designations can make Village Regulations which constitute the legal and policy framework in the implementation of Village Government and Village Development. One of the things that can be regulated in Village Regulations is regarding the management of coastal areas, this is important considering that the use of resources in coastal areas can result in resource use conflicts and dangers for the coastal environment that must be faced by the people living around them, it is expected that this regulation will also protect coastal areas.

Regarding the management of coastal areas in Ohoi Warbal in terms of their use, it turns out that they are still managed independently by each person or MHA unitary groups in Ohoi Warbal. So sometimes there is a conflict of interest. The customary law which is used as a benchmark by the MHA unit in Ohoi Warbal often cannot have binding force on other parties or from outside Warbal, for the reason that there is no written law. So other parties feel that this customary law only applies and has binding force to the MHA unit in Ohoi Warbal, apart from that it does not apply to other parties.

According to historical accounts, there was a conflict over the management of Lima Island with neighboring Ohoi, because they claimed ownership of the other four islands, but it ended over time without any resolution process (Semuel B E Masbaitubun). For example, the problem between Warbal and Wab, where people from Wab made *sasi* on Lik and Tarwa Islands, which are pearl cultivation areas, then the *sasi media* was revoked by the Warbal people and provided provisions for them to pay a fine in the form of *lela*. However, until now the *sasi* has been left until it is damaged and there is no further resolution. Even though there are no Ohoi Regulations or Village Regulations that regulate the management of coastal areas, their protection has so far been carried out by *sasi*, which still uses customary sanctions, namely paying *lela*. With the hope that casual payments will be accommodated in the regulations so that they are strictly binding on everyone, both MHA Warbal and everyone who comes from outside Warbal and carries out activities on the Lima Island *petuanan*. Apart from that, there was a conflict with Dullah Island in the past, and then it was agreed that Lima Island belonged to Warbal and Dullah was given the right to eat (Manu Renyaan 2023).

Recognition by MHA who live in Kei Besar and Kei Kecil, that Lima Island is under Ohoi Warbal Ownership, but up to now there is no Ohoi Regulation for the management of Lima Island. If regulations are made later, the focus will be on managing marine resources, which includes the five islands. With these regulations it is hoped

that they can prevent damage caused by outsiders from Ohoi Warbal. Thus, these regulations are generally binding on anyone who carries out activities on the Lima Island petuanan. Apart from regulations to prevent undesirable actions, regulations will also be made using customary sanctions for violators, such as lela fines (ancient cannons), and also other fines, thereby providing a deterrent effect for violators and preventing repeat violations. For this reason, cooperation and synergy with the District Government are highly expected.

4. Conclusion

Dealing with the description above, the conclusions of this research include:

1. The implementation of the rights to manage the coastal area of Lima Island by the customary law community unit in Ohoi Warbal is undertaken by individuals or groups independently to be utilized for the welfare of the Ohoi Warbal customary law community. Currently, the Ohoi Government is building cooperation with the World Wide Fund (WWF), the Church, and the Regional Government of Southeast Maluku Regency for the management of coastal areas on Lima Island.
2. The regulation of legal protection for the management rights of the coastal area of Lima Island by the customary law community unit in Ohoi Warbal is hampered by the absence of written law in Ohoi, which can result in a conflict of interest regarding the management of Lima Island. The regulation has used to Provincial Laws and Regional Regulations.

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