

DISTRIBUTION OF MANAGEMENT OF AUTHORITY IN MANAGEMENT OF MARINE NATURAL RESOURCES BASED ON REGIONAL ADMINISTRATION LAW

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Abstract

The enactment of Law Number 30 of 2014 concerning Government Administration, it certainly provides clear directions regarding the implementation of governance, encompassing the acquisition and exercise of authority, as well as prohibitions against the misuse of authority. The distribution of authority, finances, utilization of natural resources, and other resources are conducted fairly and harmoniously between the central government and regional governments. Similarly, the arrangement of authority distribution in the management of marine natural resources stipulates that the management of marine natural resources from the coastline up to a distance of 12 nautical miles beyond oil and natural gas falls under the jurisdiction of provincial regional governments. However, up to this point, the collection of fees for utilization remains under the control of the central government through technical implementation units in the region. This research employs a juridical-empirical method with a legislative approach, analyzing its effectiveness based on its implementation within the province of Riau Islands. The study is conducted using a qualitative method and described in a descriptive manner. The research findings indicate that the regional government does not benefit from the management of marine natural resources in the port sector, particularly concerning the collection aspects of the utilization of marine natural resources within the 0 to 12 nautical miles in the regional government's territory.

Keywords: *authority, marine natural resources, regional administration law*

A. Background

The management of marine space as part of natural resources represents a significant potential in archipelagic regions such as the Province of Riau Islands. This potential encompasses various areas, including marine and fisheries sectors as well as maritime transportation.¹ Particularly, in the maritime transportation sector, the strategic location and the vast number of islands in the region render it a pivotal role with substantial benefits, contributing significantly to the regional income.² Nevertheless, the extent to which the mandated authority in the

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¹ Ade Angga et al., "Governance of the Maritime Sector in Riau Island Province," *Journal of Survey in Fisheries Sciences* 10, no. 2 (2023): 776-96, <https://doi.org/https://doi.org/10.17762/sfs.v10i2S.555>.

² Yuanita F. D. Sidabutar and Edi Indra, "Maritime Potential Phenomenon in Improving the Welfare of the Riau Island Community," in *E3S Web of Conferences* (EDP Sciences, 2021), <https://doi.org/https://doi.org/10.1051/e3sconf/202132408001>.

aforementioned Law has been implemented remains a crucial question requiring further investigation and discussion.

Based on Law Number 30 of 2014 concerning Government Administration, it is affirmed that the authority exercised by government officials must adhere to legal regulations and the general principles of good governance. Every decision and/or action should be carried out by authorized government officials, and the abuse of authority is strictly prohibited.

Authority is obtained through attribution, delegation, and/or mandate, where according to their definitions: a) Attribution: is the granting of authority to government agencies and/or officials by the 1945 Constitution of the Republic of Indonesia or laws; b) Delegation: is the transfer of authority from higher-level government agencies and/or officials to lower-level government agencies and/or officials, with full responsibility and accountability transferred to the recipient of the delegation; c) Mandate: is the transfer of authority from higher-level government agencies and/or officials to lower-level government agencies and/or officials, with the responsibility and accountability still retained by the giver of the mandate.

Within the Amendment of the 1945 Constitution, a clear line has been provided regarding the implementation of local governance in Indonesia. This clear line pertains to granting extensive autonomy to regions for conducting their own governance authority and recognizing regions with special or unique characteristics, including indigenous communities, as long as they do not violate the principles of the Unitary State of the Republic of Indonesia. This implies that after the Amendment of the 1945 Constitution, the focal point of local governance lies solely on regional autonomy.

Furthermore, the implementation of regional governance is specifically regulated in Law Number 23 of 2014 concerning Regional Government, particularly addressing the Authority of Provinces in the Sea and Provinces with Archipelagic Characteristics. Article 27 of the law emphasizes the authority of provinces in the sea, which mentioned: "Provincial regions are given the authority to manage natural resources in the sea in their territory".

The management of marine natural resources from the coastline up to 12 nautical miles beyond oil and natural gas falls under the authority of regional government based on the Regional Government Law. Beyond the 12-mile limit, it becomes the responsibility of the central government.³ This arrangement has been mandated in the constitution and further elaborated in the regional government laws for the past 20 years. However, until now, all provincial regional governments have been unable to realize and effectively manage the delegated authority, thus, they have not gained any benefits

³ Maria Maya Lestari, "Potensi Dan Tantangan Pengelolaan Sumber Daya Kelautan Dalam Penciptaan Masyarakat Pesisir Yang Siap Menjawab Perkembangan Zaman," *Jurnal Selat* 1, no. 1 (2013): 8–12.

from the utilization of marine natural resources, particularly in the port sector.⁴

In practice, every vessel and business entity utilizing the waters within the 12 nautical mile limit will pay obligations for their usage, yet these payments do not contribute to the regional revenue. On the other hand, the responsibility for preserving and controlling the marine environment, including the coastline up to 12 nautical miles, and mitigating pollution resulting from vessel activities and business operations within these waters, solely falls upon the provincial regional governments.⁵ These responsibilities become a financial burden that must be borne annually using other sources of regional income.

Moreover, the collection of fees for utilization received by national government units within the region violates the principle of legality as stipulated in the legislation. If the revenue from the utilization of the sea up to 12 miles can be received by the provincial regional governments and shared with the relevant districts and municipalities, it will not only fulfill the constitutional mandate but also directly impact the regional revenue and the financing of services and responsibilities within the region.

However, in 2021, The Ministry of Transportation (Kemenhub) issued a regulation prohibiting the Riau Islands Provincial Government (Kepri) from collecting fees from the anchor sector.⁶ This decision was stated in letter number UM.006/63/17/DJPL/2021 concerning Settlement of Problems of Imposing Port Service Retribution by the regional government. The types of levy objects collected by the regional government are closed lists. Thus, local governments are not allowed to carry out any form of expansion of the objects stipulated in Law Number 28 of 2009 concerning Regional Income and Retribution,⁷ Arif Toha mentioned in the first point of letter a in a copy of the letter.

Previous research has been conducted, such as 1) *Implementasi Pengelolaan Sumber Daya Laut Nasional Terhadap Kebijakan Pemerintah Provinsi Kepulauan Riau*,⁸ Which analyze about how marine resource in Riau Islands has not been well-managed by local government by which took research in 2013, and shown that the poverty rate remains high. Also

⁴ Rokhimin Dahuri, "Pengelolaan Ruang Wilayah Pesisir Dan Lautan Seiring Dengan Pelaksanaan Otonomi Daerah," *Mimbar: Jurnal Sosial Dan Pembangunan* 17, no. 2 (2001): 139–71, <https://doi.org/https://doi.org/10.29313/mimbar.v17i2.38>.

⁵ Bambang Pramudyanto, "Pengendalian Pencemaran Dan Kerusakan Di Wilayah Pesisir," *Jurnal Lingkar Widyaiswara* 1, no. 4 (2014): 21–40.

⁶ Ogen, "Kemenhub Larang Pemprov Kepri Pungut Retribusi Jasa Labuh Jangkar," *AntaraLampung*, 2021, <https://lampung.antaranews.com/berita/537417/kemenhub-larang-pemprov-kepri-pungut-retribusi-jasa-labuh-jangkar>.

⁷ Ismail, "Larang Pungut Retribusi, Kepri Uji Surat Plt. Dirjen Perhubungan Laut-Kemenhub Ke MA," *Presmedia.id*, 2021, <https://presmedia.id/berita-37441/larang-pungut-retribusi-kepri-uji-surat-plt-dirjen-perhubungan-laut-kemenhub-ke-ma.html>.

⁸ Ahmad Chaidir Mirza, R. A. Rini Anggraini, and Iwan Rachmad Soetijono, "Implementasi Pengelolaan Sumber Daya Laut Nasional Terhadap Kebijakan Pemerintah Provinsi Kepulauan Riau," *Lentera Hukum* 4, no. 2 (2017): 81–96, <https://doi.org/https://doi.org/10.19184/ejlh.v4i2.4758>.

another previous research such as 2) *Pemetaan Konflik Pada Pengelolaan Labuh Jangkar Di Provinsi Kepulauan Riau*,⁹ which analyze the Dynamics and Jurisdictional Conflicts between Central and Regional Governments in Anchor Mooring Management in the Riau Islands Province during 2017-2020.

B. Identified Problems

Based on the background of the issue, the main focus and scope of this research are outlined through the following problem formulations:

1. How is the regulation concerning service charges in seaports related to the management of areas at the National and Regional Levels?
2. What are the challenges and potential solutions regarding the distribution of authority for service charges in regional seaports?

C. Research Methods

The chosen method for analyzing the identification problems is the juridical-sociological approach, which will be complemented by the statute approach.¹⁰ A literature research was conducted to compare regulations, provisions, and theories from reference books alongside the data obtained.¹¹ The qualitative analysis of this data aims to present a comprehensive understanding of the legal aspects pertaining to the studied problem.¹² The data used consists of both initial data and primary data, allowing for an examination of the effectiveness of a particular law. Furthermore, the research seeks to establish correlations between various symptoms or variables by utilizing methods such as document analysis from various regulations from national aspects and regional aspects such are Constitutions, Law No. 23 Year 2014 regarding Regional Administration, and Law No. 17 Year 2008 Regarding of Shipping.

In this research, a qualitative approach is employed for data analysis, which involves a combination of library research and field research discussions. Once the analysis is concluded, the outcomes will be presented in a descriptive narrative, providing a detailed account of the findings related to the studied issues. Subsequently, conclusions will be drawn, offering answers to the research questions raised in this study.

⁹ Bismar Arianto, "Pemetaan Konflik Pada Pengelolaan Labuh Jangkar Di Provinsi Kepulauan Riau," *KEMUDI: Jurnal Ilmu Pemerintahan* 6, no. 1 (2021): 53–62, <https://doi.org/https://doi.org/10.31629/kemudi.v6i01.3657>.

¹⁰ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2003).

¹¹ Vicky Septia Rezki, Rina Shahriyani Shahrullah, and Elza Syarief, "Regulasi Keinsinyuran Dalam Konteks ASEAN Mutual Recognition Agreement on Engineering Services," *Nagari Law Review* 6, no. 1 (2022): 36–54, <https://doi.org/https://doi.org/10.25077/nalrev.v.6.i.1.p.36-54.2022>.

¹² Chana Oktavia Harefa and Ampuan Situmeang, "Kebijakan Gubernur Kepulauan Riau Mengenai Taksi Berbasis Aplikasi (Online)," *Journal of Law and Policy Transformation* 6, no. 2 (2022): 72–84, <https://doi.org/http://dx.doi.org/10.37253/jlpt.v6i2.6316>.

D. Research Finding and Discussion

1. Regulation Concerning Service Charges in Seaport

First of all, Referring to the mandate of Article 18 A of the Constitution, further regulated in Law Number 23 of 2014 concerning Regional Government, the Provincial Government is granted a new authority in the form of the right to manage natural resources in the sea, from the coastline up to 12 nautical miles towards the open sea and/or towards island waters, with the exception of oil and natural gas. Alongside the authority for marine management, the Provincial Government also bears specific responsibilities as stipulated in Article 14 of Law Number 23 of 2014 concerning Regional Government, which are as follows:

- (1) *The implementation of matters related to forestry, marine, energy, and mineral resources is divided between the Central Government and the Provincial Government....;*
- (6) *The determination of producing district/city governments for revenue sharing in marine matters is based on marine products found within a 4 (four) miles distance measured from the coastline towards the open sea and/or towards island waters.;*
- (7) *In cases where the territorial boundaries of district/city governments as mentioned in paragraph (6) are less than 4 (four) miles, the boundaries are equally divided or measured according to the midpoint principle from the adjacent regions.*

Based on the regulation, Explanation of Paragraph (6) means: The term "coastline" refers to the boundary between the sea and the land during the highest tide. The use of "coastline" in this provision is intended for the determination of administrative regions in marine area management. The 4 (four) miles limit in this provision is solely for the purpose of calculating revenue sharing in marine matters, while the authority over marine affairs up to 12 (twelve) miles still remains with the Provincial Government.

In addition, Explanation of Paragraph (7) in the previous article means: The equal division or measurement of boundaries according to the midpoint principle between adjacent regions is solely for the purpose of calculating revenue sharing in marine matters, while the authority over marine affairs up to 12 (twelve) miles still remains with the Provincial Government.

Furthermore, the administration of regional governments is regulated in Law Number 23 of 2014 concerning Regional Government, which specifically governs the Authority of Provinces in the Sea and Provinces with Archipelagic Characteristics. Article 27 of the law explicitly emphasizes the Authority of Provinces in the sea, which includes the following provisions:

- a. Provinces are granted the authority to manage natural resources in the sea within their respective territories.

- b. The authority of Provinces to manage natural resources in the sea, as mentioned in paragraph (1), includes: i) exploration, exploitation, conservation, and management of marine resources excluding oil and natural gas; ii) administrative regulations; iii) spatial planning; iv) participation in maintaining security at sea; and v) participation in upholding state sovereignty.
- c. The authority of Provinces to manage natural resources in the sea, as mentioned in paragraph (1), extends up to 12 (twelve) nautical miles measured from the coastline towards the open sea and/or towards island waters.
- d. If the marine area between two Provinces is less than 24 (twenty-four) nautical miles, the authority to manage natural resources in the sea shall be equally divided or measured according to the midpoint principle between the two Provinces.
- e. The provisions mentioned in paragraphs (3) and (4) do not apply to the capture of fish by small-scale fishermen.

Furthermore, the special affirmation for the Provinces Characterized by Islands in Article 28 of Regional Government Law mentioned: 1) A Province with Archipelagic Characteristics has the authority to manage natural resources in the sea as referred to in Article 27; 2) In addition to having the authority as referred to in paragraph (1), the Province with Archipelagic Characteristics receives an assignment from the Central Government to carry out the authority of the Central Government in the maritime field based on the Co-Administration Principle; 3) The assignment as referred to in paragraph (2) can be carried out after the Regional Government of a Province with Archipelagic Characteristics fulfills the norms, standards, procedures and criteria stipulated by the Central Government.

This indicates that territorial boundaries are divided equally or measured according to the principle of the median line of neighboring regions. Such provision is solely for the purpose of calculating maritime revenue sharing, while jurisdiction over the maritime area up to 12 (twelve) nautical miles remains with the Provincial Government. Based on the aforementioned two main points, it can be concluded that the Provincial Government, in accordance with the authority stipulated in the 1945 Constitution and Law Number 23/2014, has the authority to manage the maritime area from 0 to 12 nautical miles within its jurisdiction. Meanwhile, the District/City Governments, also based on the authority stipulated in the 1945 Constitution and Law Number 23/2014, are entitled to revenue sharing from the management of the maritime area from 0 to 4 nautical miles by the Provincial Government.

2. General Overview of Seaports in Indonesia and the Management System

Based on Law Number 17 of 2008 concerning Shipping Article 1 number 16, a port is a place consisting of land and/or waters with certain boundaries as a place for government activities and business activities used as a place for ships to dock, board passengers, and / or loading and unloading of goods, in the form of ship terminals and berths equipped with shipping safety and security facilities and port supporting activities as well as places for intra- and intermodal transportation. Seaport management systems will start from the establishment of ports. Then a port in Indonesia can take the form of a place consisting of:

- a. Land and Water, for example, Tanjung Priok Port, Batam Center Port, Kijang Port;
- b. Only mainland, for example Cikarang Dry Port, Gede Bage Container Station - Bandung, Rambi Puji Container Terminal - Jember;
- c. Waters only, for example Nipah Anchor Labuh, Galang Anchor Labuh, Riau Strait Anchor Labuh.

Moreover, there are some requirements for establishing a port area are based on the Port Administration Document, which consists of¹³:

- a. Determination of the port location (at all hierarchical levels) set by the Minister of Transportation;
- b. For the establishment of the master plan for the port (RIP);
- c. The area of the port's working environment and the area of port's interests (*Daerah Lingkungan Kerja dan Daerah Lingkungan Kepentingan Pelabuhan DLKr/DLKp*);
- d. Permits for the construction and operation of the port.

Meanwhile, related to management, government agencies have a several division related to management authority of seaports, Government Administration Officers holding Attribution administrative authority who are tasked with issuing port administration documents, namely:

Table 1. Attribution Administrative Authorities in Seaport

Administration Document	Issuer Office	Annotation
Determination of the Location of All Ports	Minister of Transportation	Entire Harbor

¹³ Lampiran Keputusan Direktorat Jenderal Perhubungan Laut PP No. 1/5/2/DJPL-17, Dokumen Teknis Penyusunan Batas-Batas Daerah Lingkungan Kerja dan Daerah Lingkungan Kepentingan Pelabuhan

Port Master Plan	Minister of Transportation, Governor, Regent or Mayor	1. Major Port 2. Regional Port 3. Local Port
Port's Working Environment and Port's Interest	Minister of Transportation, Governor, Regent or Mayor	1. Major port 2. Regional Port 3. Local Port
Development and Operation Permit	Minister of Transportation, Governor, Regent or Mayor	1. Major port 2. Regional Port 3. Local Port

Referred to the description and explanation of the table above, determination of port locations, determination of port master plans, determination of DLKr/DLKp, issuance of permits for development and operation of ports by the Minister or Governor or Regent/Mayor is not a basis for ownership and/or management, but is an attribution of official authority. government administration only.

3. Seaports Service Charges and Classification of Service Tariffs at the Port

Facilities in the port encompass all the necessary facilities in the mainland and maritime areas, as planned and outlined in the Port Master Plan. The plan for facility needs in the mainland and maritime areas of the port includes:

Mainland Area:

Core facilities, comprising:

a) docks; b) first-line warehouses; c) first-line stacking yards; d) passenger terminals; e) container terminals; f) roll-on/roll-off terminals; g) waste storage and treatment facilities; h) bunker facilities; i) fire extinguishing facilities; j) warehouses for Hazardous and Toxic Materials (B3); and k) maintenance facilities for Navigation-Aids and Shipping Equipment (SBNP).

Supporting facilities, comprising:

a) office areas; b) postal and telecommunication facilities; c) tourism and hospitality facilities; d) water, electricity, and telecommunication installations; e) road and railway networks; f) wastewater, drainage, and waste management systems; g) port expansion areas; h) motor vehicle waiting areas; i) trade zones; j) industrial zones; and k) other public facilities.

Maritime Area

Core facilities, comprising:

a) navigation channels; b) berthing waters; c) port basins for berthing and ship maneuvering; d) waters for ship transfer; e) waters for vessels carrying hazardous and toxic materials (B3); f) waters for quarantine activities; g) intra-port connecting waterways; h) pilot waters; and i) waters for government vessels.

Supporting facilities, comprising:

a) waters for long-term port development; b) waters for ship construction and maintenance facilities; c) waters for ship testing (sea trials); d) waters for vessel scrapping; e) waters for emergency purposes; and f) waters for tourism and hospitality activities.

With the availability of core and supporting facilities in the mainland and/or maritime areas of the port, some of these facilities are utilized for commercial activities categorized as port services. Port services include the provision and/or servicing of ship-related services, passengers, and goods, which encompass as below:

1. Provision and/or berth services for mooring;	Ship Services
2. Provision and/or refueling services and clean water services;	Ship Services
3. Provision and/or service of passenger and/or vehicle boarding and alighting facilities;	Passenger Service
4. Provision and/or dock services for loading and unloading of goods and containers;	Goods Services
5. Providing and/or providing warehouse services and places for storing goods, loading and unloading equipment, and port equipment;	Goods Services
6. Provision and/or container terminal services, liquid bulk, dry bulk, and Interisland Ferry;	Goods Services
7. Provision and/or services for loading and unloading of goods;	Goods Services
8. Provision and/or service of distribution center and consolidation of goods; and/or	Goods Services
9. Provision and/or ship delay services.	Ship Services

Table 2. Types of Seaport Services

Thus, at the port there are services consisting of: Services in terms of land use in the port area; Services for the use of port waters; Services for the use of physical buildings provided. To find out the classification of tariffs, we can refer to the article in Law Number 17 of 2008 concerning Shipping that mentioned: “(1) *Tariffs related to the use of waters and/or land as well as port services provided by the*

*Port Authority are determined by the Port Authority after consultation with the Minister.*¹⁴ and Government Regulation Year 61 of 2009 concerning Ports which mentioned: “Further provisions regarding the type, structure, and class of port service tariffs, tariff setting mechanism related to the use of waters and/or land and port services as well as port service tariffs operated by Port Business Entities shall be regulated by a Ministerial Regulation.”¹⁵

4. **Seaport Service Charge on Anchorage in Kepulauan Riau dan Its Dualism Polemic**

The Anchorage fee began in 2015. At that time, PT Pelabuhan Indonesia (Pelindo) stated that it had stopped collecting the Labuh Anchor levy and was then taken over by the Ministry of Transportation (Kemenhub RI).¹⁶ Then, in 2017, the provincial government and the Riau Islands DPRD passed Perda number 9 regarding retribution. However, the Governor at that time, led by Nurdin Basirun, asked that before carrying out the collection, it was coordinated in advance with the relevant Ministries and institutions, If the Riau Islands were to collect anchor fees in accordance with the management authority of 12 nautical miles.

The Berthing Service is the use of safe and convenient maritime spaces by ships to anchor and moor for a specific period. Since its object involves maritime spaces, this service fee falls under the category of natural resource utilization. To understand the authority to collect berthing service fees, it is essential to examine the provisions of regulations related to shipping and the allocation of rights in managing natural resources, specifically Law Number 17 of 2008 concerning Shipping. In accordance with the direction stipulated in the Law of Shipping in Article 75 paragraph 5 and paragraph 6, it is necessary to provide guidance within the legal regulations governing the rights to manage marine natural resources. This guidance is as outlined in Law Number 23 of 2014 concerning Regional Governance.

5. **Challenges and Potential Solutions Regarding the Distribution of Authority for Service Charges in Regional Seaports**

The collection of anchorage dues by the regional authority, as stated in the Decree of the Acting Director General of Sea Transportation of the Ministry of Transportation, is a decision that lacks a basis and is not in accordance with the regulations and laws. Based on Law Number 30 of 2014, in the context of port services, law enforcement officials authorized to collect port services must comply with the provisions stipulated in the law.

¹⁴ Article 110 Law Number 17 Year 2008 of Shipping

¹⁵ Article 148 Government Regulation Year 61 of 2009 concerning Seaports

¹⁶ Ismail, “Larang Pungut Retribusi, Kepri Uji Surat Plt. Dirjen Perhubungan Laut-Kemenhub Ke MA.”

Referring to the Practice of Effectiveness of Law Theory,¹⁷ the legal effectiveness above provisions must be considered to ensure that law enforcement officials truly comply with the desired legal objectives. One of the special concerns is regarding the abuse of authority that has the potential to occur in the collection of port services. Collection of port services must be based on clear authorities and in accordance with applicable laws and regulations. If law enforcement officials collect services in areas that should not be part of their authority, this can be considered as an act of exceeding authority, which is a form of abuse of authority that is prohibited under Law no. 30 of 2014.

In addition, the legal effectiveness of this provision also depends on the awareness and understanding of law enforcement officers regarding the legal rules governing the implementation of port service collection. The better their understanding of these provisions, the lower the possibility of abuse of authority. In practice, the compliance of law enforcement officials with these legal provisions can be measured through periodic audits, monitoring and evaluation. If there are indications of violations or abuse of authority, appropriate corrective actions and sanctions must be applied to ensure that the law is implemented properly and on target.

In the context of collecting port services, law enforcement officials must comply with the legal objectives stipulated in Law Number 30 of 2014. Abuse of authority, such as exceeding authority or acting arbitrarily, must be avoided so that port services can run effectively and in accordance with the objectives desired law. Effective supervision and law enforcement is needed to ensure compliance with applicable legal provisions and avoid mistargeting in the collection of port services.

E. Conclusions

Based on the above description, the answer to the problem formulation, referring to Soerjono Soekanto's Theory of Legal Effectiveness, can be summarized as follows: The prevailing legal regulations for resolving the issues of natural resource management in ports state that the right to use the maritime space in ports, from the coastline to a radius of 12 nautical miles, belongs to the provincial government and is shared with the district/city governments. This new authority is acquired through the attribution of Law No. 23 of 2014, and therefore, its implementation should be guided by the instructions in Law No. 30 of 2014.

The actions of technical implementation units of the central government's officials in the regions that impose charges for the utilization of waters in ports, such as docking/parking services for ships within the 0-12 nautical mile area, constitute an abuse of authority by exceeding their

¹⁷ Soerjono Soekanto, *Efektivitas Hukum Dan Peranan Sanksi* (Bandung: Remaja Karya, 1988).



jurisdiction. This misuse needs to be restricted through further regulations set by the central government to fulfill the mandate of the law.

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