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Doctor of Philosophy Thesis

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**印尼與台灣之間海洋保護區發展的法
律制度與控制：比較法研究**

THE LEGAL REGIME AND CONTROL FOR
THE DEVELOPMENT OF MARINE
PROTECTED AREAS BETWEEN
INDONESIA AND TAIWAN: A
COMPARATIVE LAW STUDY

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摘要

由於兩國社會經濟的快速發展，印尼和台灣擁有豐富生物多樣性的海洋環境目前正遭受令人震驚的退化。因此，需要採取適當的監管措施來保護兩國的海洋環境。本文“印尼與台灣之間海洋保護區發展的法律制度與管制：比較法研究”，研究了建立印尼與台灣海洋保護區的法律與管制措施的比較。

作者得出結論，印尼和台灣在建立和管理海洋保護區（MPA）方面做出了各種努力。可以在與兩國海洋保護區有關的各種國家法律制度中看到這一點。國家法律制度已經考慮了與海洋保護有關的各種國際安排，希望在兩個國家都可以採用國際最佳做法的例子。印尼發現的海洋保護區管理問題包括體制機制薄弱；在區域自治制度中的權力分配；與承諾實施海洋資源管理有關的社區法律文化問題；以及由於權限重疊而導致的海洋法執行不力。解決這些問題的解決方案包括改善機構協調機制；改善海洋保護部門權力下放的法律框架；加強社區法律文化；和優化海岸警衛隊進行執法。同時，在台灣發現的問題沒有關於海洋保護的具體規定；以及專門實施海洋保護的政府機構安排的模糊性。為解決台灣問題而製定的指令包括建立與海洋保護有關的特定法規，以及加強某些政府機構以實施海洋保護。本文的作者希望可以考慮使用這些解決方案來改善印尼和台灣地區 MPA 控制的法規和實施。

關鍵詞：控制，保護，印尼，法律制度，海洋保護區，台灣

Abstract

The marine environment which is rich in biodiversity in Indonesia and Taiwan is currently experiencing an alarming degradation due to rapid socio-economic development in both countries. Therefore, appropriate regulatory and control formulations are required to protect the marine environment in the two countries. This thesis, “The Legal Regime and Control for The Development of Marine Protected Areas Between Indonesia and Taiwan: A Comparative Law Study”, researches the comparison of legal and control measures to establish marine protected areas in Indonesia and Taiwan.

The author concludes that Indonesia and Taiwan have made various efforts in establishing and managing marine protected areas (MPAs). This can be seen in various national legal regimes related to marine protected areas in the two countries. The national legal regime has considered various international arrangements related to marine conservation and it is hoped that examples of international best practices can be applied in both countries. Problems in marine protected area management found in Indonesia include weak institutional mechanisms; distribution of authority in the regional autonomy regime; community legal culture problem related to commitment to the implementation of marine resource management; and weak enforcement of marine law due to overlapping authority. The solutions developed to resolve these problems include improving institutional coordination mechanisms; improving the legal framework for decentralization in the marine conservation sector; strengthen community legal culture; and optimizing Coast Guard in conducting law enforcement. Meanwhile, issues found in Taiwan include no specific regulations regarding Marine Conservation; and the obscurity of government institutional arrangements that specifically implement marine conservation. The directives developed to address Taiwan's issues include establishing specific regulations related to marine conservation and strengthening certain government authorities to implement marine conservation. The author of this thesis hopes that these solutions can be considered to improve regulations and implementation of MPAs control in Indonesia and Taiwan.

Keywords: Control, Conservation, Indonesia, Legal Regime, Marine Protected Areas, Taiwan

DECLARATION

This work has not previously been accepted in substance for any degree and is not concurrently submitted in candidature for any degree. This thesis is being submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy. This thesis is the result of my own independent work/investigation, except where otherwise stated. Other sources are acknowledged by explicit references. I hereby give consent for my thesis, if accepted, to be available for photocopying and for inter-library loans after expiry of a bar on access previously approved by the Graduate Development Committee.

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Signed:

A handwritten signature in black ink, appearing to be 'Adrian Nugraha', written over the 'Signed:' label.

LIST OF ABBREVIATIONS USED

ABNJ	: Areas Beyond the National Jurisdiction
ACAP	: Agreement on the Conservation of Albatrosses and Petrels
BRTF	: Blue Ribbon Task Force
CAMPAN	: Caribbean Marine Protected Area Managers Network
CBD	: Convention on Biological Diversity, 1992
CCAMLR	: Convention on the Conservation of Antarctic Marine Living Resources, 1980
CFF	: Coral Reefs, Fisheries and Food Security
CFGC	: California Fish and Game Commission
CGA	: Taiwan's Coast Guard Administration
CITES	: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975
CMH	: Critical Marine Habitats
CMS	: Convention on the Conservation of the Migratory Species and Wild Animals, 1979
CNPPA	: Commission on National Parks and Protected Areas of IUCN
COA	: Taiwan's Council of Agriculture
COP	: Conference of Parties
COREMAP	: Coral Reef Rehabilitation and Management Program
CPAMI	: Taiwan's Construction and Planning Agency Ministry of Interior
CSIRO	: Commonwealth Scientific and Industrial Research Organisation
CTI	: Coral Triangle Initiative
DSDG	: Division for Sustainable Development Goals of UNDESA
EA	: Ecosystem Approach
EAFM	: Ecosystem Approach to Management of Fisheries
EBSAs	: Ecologically or Biologically Significant Marine Areas
EEZ	: Exclusive Economic Zone
EPA	: Taiwan's Environmental Protection Agency
EU	: European Union

FA	: Taiwan's Fishery Agency
FADs	: Fish Aggregating Devices
FAO	: Food and Agriculture Organization
GBRMP	: Great Barrier Reef Marine Park
GEF	: Global Environment Facility
GSDR	: Global Sustainable Development Report
HELCOM	: Helsinki Commission
ICJ	: International Court of Justice
ICRI	: International Coral Reef Initiative
IMO	: International Maritime Organization
IMPAC	: International Marine Protected Area Congresses
IPOA	: International Action Plan of FAO
IUCN	: International Union for Conservation of Nature
IUU FISHING	: Illegal, Unregulated and Unreported Fishing
JICA	: Japan International Cooperation Agency
LMEs	: Large Marine Ecosystems
LMMA	: Locally Managed Marine Areas
MAB	: Man, and the Biosphere Programme
MARPOL 73/78	: International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978
MCBI	: US Marine Conservation Biology Institute
MCI	: Megafauna Conservation Index
MEDPAN	: Mediterranean Protected Area Network
MEOW	: Marine Ecoregions of the World
MLPA	: Marine Life Protection Act
MMAF	: Indonesian Ministry of Marine Affairs and Fisheries
MOTC	: Taiwan's Ministry of Transportation and Communication
MOU	: Memorandum of Understanding
MPAs	: Marine Protected Areas
NAMPAN	: North America Marine Protected Area Network
NAMR	: Taiwan's National Academy of Marine Research

NGO	: Non-Governmental Organization
NISPs	: National Implementation Support Partnerships
NMSs	: National Marine Sanctuaries
NOAA	: National Oceanic and Atmospheric Administration
NPOA	: National Plan of Action
OAC	: Taiwan's Ocean Affairs Council
OCA	: Taiwan's Ocean Conservation Administration
OBIS	: Ocean Biogeographic Information System
OSPAR CONVENTION	: Convention for the Prevention of Marine Pollution of the North East Atlantic, 1992
PEMSEA	: Partnership in Environmental Management for Seas of East Asia
PAN	: Protected Area Network
PERSGA	: Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden
POWPA	: Programme of Work on Protected Areas
PSSA	: Particularly Sensitive Sea Areas
RFMOs	: Regional Fisheries Management Organizations
RPOA	: Regional Plan of Action
SACs	: Special Areas of Conservations
SAP	: Structural Adjustment Package
SDGs	: Sustainable Development Goals
SOLAS CONVENTION	: Safety of Life at Sea Convention, 1974
SPAs	: Special Protection Areas
SPAW PROTOCOL	: Protocol Concerning Specially Protected Areas and Wildlife, 1990
SSC	: Species Survival Commission of IUCN
TFCAs	: Trans Frontier Conservation Areas
TNC	: The Nature Conservancy
TSPP CONFERENCE	: International Conference on Tanker Safety and Pollution Prevention, 1978
UK	: United Kingdom

UNCED	: United Nations Conference on Environment and Development, 1992
UNCLOS	: United Nations Convention on the Law of the Sea, 1982
UNDESA	: United Nations Department of Economic and Social Affairs
UNEP	: United Nations Environment Programme
UNESCO	: United Nations Educational, Scientific and Cultural Organization
UNGA	: United Nations General Assembly
UNTS	: United Nations Treaty Series
USA	: United States of America
VMEs	: Vulnerable Marine Ecosystems
WCMC	: World Conservation Monitoring Centre
WCPA	: World Commission on Protected Areas
WCS	: Wildlife Conservation Society
WDPA	: World Database on Protected Areas
WHC	: World Heritage Convention, 1972
WHSt	: World Heritage Sites
WOC	: World Ocean Conference
WWF	: World Wildlife Fund

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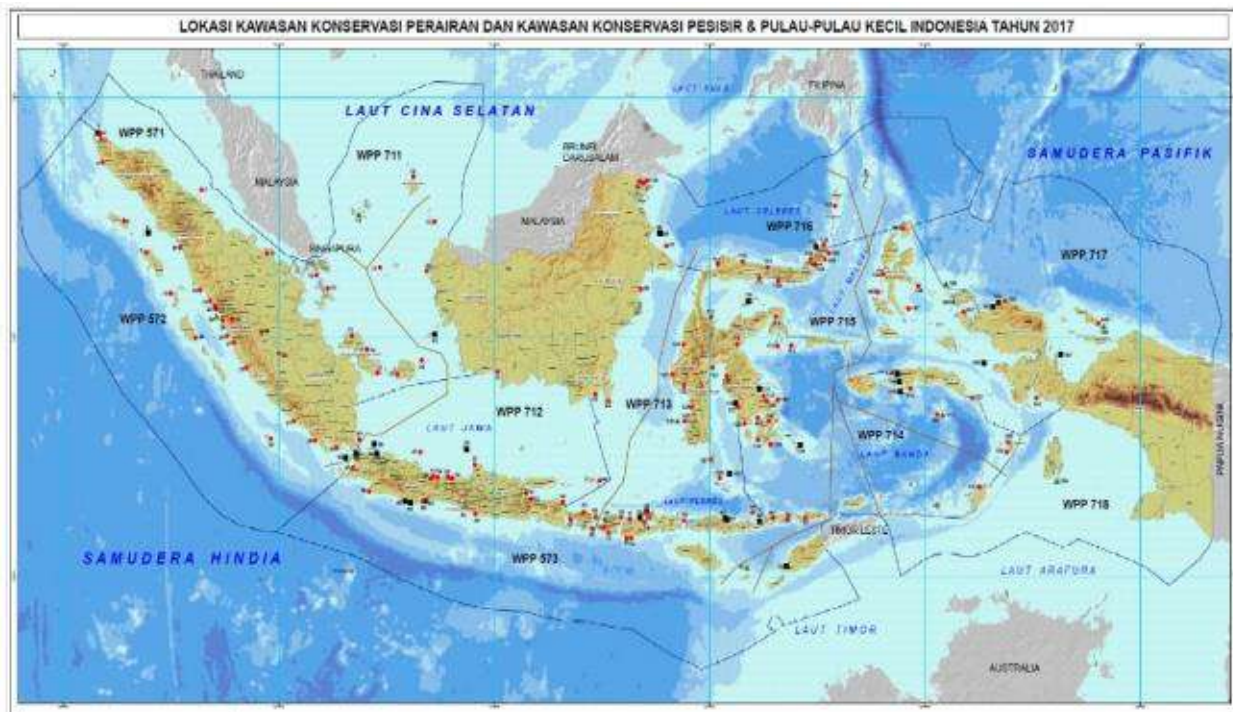
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Keelung, Taiwan
09 July, 2021

Adrian Nugraha

MAP OF MARINE PROTECTED AREAS IN INDONESIA AND TAIWAN

Map of Indonesian Marine Protected Areas



Map of Taiwan's Marine Protected Areas



TABLE OF CONTENTS

ABSTRACT (IN CHINESE).....	i
ABSTRACT (IN ENGLISH).....	ii
DECLARATION.....	iii
LIST OF ABBREVIATIONS USED	iv
ACKNOWLEDGEMENTS.....	viii
MAP OF MARINE PROTECTED AREAS IN INDONESIA AND TAIWAN.....	x
TABLE OF CONTENTS.....	xi
LIST OF TABLES.....	xxi
CHAPTER 1. INTRODUCTION.....	1
1.1. BACKGROUND.....	1
1.2. RESEARCH OBJECTIVES.....	5
1.3. AREA OF STUDY.....	6
1.4. RESEARCH METHODOLOGY.....	7
1.5. OUTLINE OF THE THESIS.....	17
1.6. CONTRIBUTIONS OF THE THESIS IN THE RECENT LITERATURE.....	20
CONCLUSION.....	22
CHAPTER 2. HISTORY, DEVELOPMENT AND CONCEPT OF MARINE PROTECTED AREAS.....	23
2.1. GLOBAL HISTORY AND DEVELOPMENT OF MARINE PROTECTED AREAS.....	23
2.1.1. The Beginning of MPAs.....	23
2.1.2. The Development of MPAs under the International Union for Conservation of Nature (IUCN) regime (1950s – 1970s).....	27
2.1.3. The Period of 1980s to 1990s.....	35
2.1.4. Marine Protected Areas in the Early Millennium (2000 to 2010).....	43
2.1.5. Current MPAs Developments.....	50

2.2. THE CONCEPT OF MARINE PROTECTED AREAS.....	55
2.2.1. Definitions.....	55
2.2.2. Objectives of the Establishment of Marine Protected Areas.....	62
2.2.3. Classification of Marine Protected Areas.....	68
CONCLUSION.....	71
 CHAPTER 3. INTERNATIONAL LEGAL REGIME RELATED TO MARINE PROTECTED AREAS.....	 72
3.1. INTERNATIONAL CONVENTIONS.....	73
3.1.1. International Convention for the Regulation of Whaling, 1946.....	74
3.1.2. Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971.....	76
3.1.3. Convention concerning the Protection of the World Cultural and Natural Heritage, 1972.....	82
3.1.4. Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973.....	85
3.1.5. International Convention on the Safety of Life at Sea, 1974.....	87
3.1.6. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978.....	89
3.1.7. Convention on the Conservation of the Migratory Species and Wild Animals, 1979.....	93
3.1.8. United Nations Convention on the Law of the Sea, 1982.....	95
3.1.9. Convention on Biological Diversity, 1992.....	98
3.2. INTERNATIONAL NON-LEGALLY BINDING INSTRUMENTS AND INITIATIVES.....	112
3.2.1. Major United Nations Conferences Related to the Environment.....	114
3.2.1.1. <i>United Nations Conference on the Human Environment, 1972</i>	115
3.2.1.2. <i>United Nations Conference on Environment and Development, 1992</i>	116
3.2.1.3. <i>World Summit on Sustainable Development, 2002</i>	118
3.2.1.4. <i>United Nations Conference on Sustainable Development, 2012</i>	119
3.2.1.5. <i>United Nations Sustainable Development Summit, 2015</i>	120

3.2.2.	World Charter for Nature, 1982.....	122
3.2.3.	United Nations Sustainable Development Goals.....	122
3.2.4.	United Nations General Assembly Resolutions on Oceans and the Law of the Sea and Sustainable Fisheries.....	124
3.2.4.1.	<i>Oceans and the Law of the Sea Resolutions</i>	125
3.2.4.2.	<i>Sustainable Fisheries Resolutions</i>	126
3.2.5.	Instruments of United Nations Food and Agriculture Organization related to Responsible Fisheries.....	128
3.2.5.1.	<i>The Code of Conduct for Responsible Fisheries</i>	129
3.2.5.2.	<i>The International Plans of Action</i>	129
3.2.5.3.	<i>Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem</i>	132
3.2.5.4.	<i>Technical Guidelines of FAO</i>	133
3.2.6.	Particularly Sensitive Sea Areas.....	134
3.2.7.	International Coral Reef Initiative.....	137
3.3.	INTERNATIONAL CUSTOMARY RULE RELATING TO THE ESTABLISHMENT OF MARINE PROTECTED AREAS.....	139
	CONCLUSION.....	144

**CHAPTER 4. BEST INTERNATIONAL PRACTICES OF MARINE
PROTECTED AREA ESTABLISHMENT AND
MANAGEMENT: LESSONS FROM GREAT BARRIER
REEF MARINE PARK ACT AND CALIFORNIA
MARINE LIFE PROTECTION ACT 145**

4.1.	BEST PRACTICES OF THE GREAT BARRIER REEF MARINE PARK ACT 1975.....	148
4.1.1.	Governance Practices Under the Great Barrier Reef Marine Park Act 1975.....	150
4.1.2.	Planning Processes and Public Input Practices Under the Great Barrier Reef Marine Park Act 1975.....	154
4.1.3.	Scientific Input Practices in the Great Barrier Reef Marine Park Act 1975.....	157

4.2. CALIFORNIA’S MARINE LIFE PROTECTION ACT 1999 BEST PRACTICES.....	159
4.2.1. California's Marine Life Protection Act 1999 Governance Practices.....	161
4.2.2. California’s Marine Life Protection Act 1999 Planning Processes and Public Input	165
4.2.3. California’s Marine Life Protection Act 1999 Scientific Input	168
4.3. LESSONS LEARNED FROM THE GREAT BARRIER REEF MARINE PARK ACT AND CALIFORNIA’S MARINE LIFE PROTECTION ACT	171
4.3.1. Governance Practices.....	171
4.3.2. Practices of Planning Process and Public Input.....	172
4.3.3. Practices of Scientific input.....	175
CONCLUSION.....	178
 CHAPTER 5. THE DEVELOPMENT, REGULATIONS AND MANAGEMENT PRACTICES OF MARINE PROTECTED AREAS IN INDONESIA.....	 179
5.1. THE DEVELOPMENT IN INDONESIA.....	179
5.2. REGULATIONS FOR MARINE PROTECTED AREAS IN INDONESIA	185
5.2.1. Act Number 05/1990 Concerning Conservation of Living Resources and Their Ecosystems	186
5.2.2. Act Number 31/2004 and amendment Act Number 45/2009 Concerning Fisheries.....	188
5.2.3. Act Number 27/2007 and amendment Act Number 01/2014 Concerning the Management of Coastal Areas and Small Islands.....	192
5.2.4. Act Number 32/2009 Concerning Environmental Protection and Management.....	197
5.2.5. Act Number 32/2014 Concerning Law of The Sea.....	200

5.2.6. Government Regulation Number 60/2007 Concerning Fish Resource Conservation.....	203
5.2.7. Ministerial Decree of Marine Affairs and Fisheries Number 17/MEN/ 2008 Concerning Conservation Areas in Coastal Areas and Small Islands.....	209
5.2.8. Ministerial Decree of Marine Affairs and Fisheries Number 02/MEN/ 2009 Concerning the Procedure for Establishing Marine Protected Areas.....	216
5.2.9. Ministerial Decree of Marine Affairs and Fisheries Number 30/MEN/ 2010 Concerning Management Plan and Zoning of Marine Protected Areas.....	222
5.2.10. Ministerial Decree of Marine Affairs and Fisheries Number 13/ PERMEN-KP/ 2014 Concerning Network of Marine Protected Areas.....	228
5.2.11. Ministerial Decree of Marine Affairs and Fisheries Number 21/ PERMEN-KP/ 2015 Concerning Partnership for Management of Marine Protected Areas.....	233
5.2.12. Ministerial Decree of Marine Affairs and Fisheries Number 14/ PERMEN-KP/ 2016 Concerning Criteria and Categories of Marine Protected Areas for Aquatic Nature Tourism.....	236
5.2.13. Ministerial Decree of Marine Affairs and Fisheries Number 47/ PERMEN-KP/ 2016 Concerning Utilization of Marine Protected Areas.....	240
5.3. MANAGEMENT PRACTISES OF MARINE PROTECTED AREAS IN INDONESIA	245
5.3.1. Institutional Arrangements of Marine Protected Areas in Indonesia.....	246
5.3.1.1. <i>Institutional Arrangements by the Government</i>	248
5.3.1.2. <i>Institutional Arrangements by the Community in Indonesia</i>	271
5.3.2. Planning Process for Marine Protected Areas in Indonesia.....	277

5.3.3.	Marine Protected Areas Implementations in Indonesia.....	281
5.3.3.1.	<i>Achievements</i>	281
5.3.3.2.	<i>Problems of the Implementation of MPAs in Indonesia</i>	284
5.3.3.2.1.	<i>Weak Institutional Mechanism</i>	285
5.3.3.2.2.	<i>Distribution of Authority in the Regional Autonomy Regime</i>	288
5.3.3.2.3.	<i>Community Legal Culture Problem Related to Commitment to the Implementation of Marine Resource Management</i>	291
5.3.3.2.4.	<i>Weak Enforcement of Marine Law Due to Overlapping Authority</i>	294
5.3.4.	Example Case Related to Management of Marine Protected Areas in Indonesia: The MV Caledonian Sky Ship Case	297
5.3.4.1.	<i>Profile of Raja Ampat Marine Protected Area</i>	297
5.3.4.2.	<i>Case Position</i>	298
5.3.4.3.	<i>Forms of Damage to Coral Reefs</i>	300
5.3.4.4.	<i>Calculating the Loss of Damage to Coral Reefs</i>	302
5.3.4.5.	<i>Case Analysis of the MV Caledonian Sky Incident</i>	303
5.3.4.5.1.	<i>Principle of State Responsibility in Providing Legal Protection for Coral Reefs</i>	303
5.3.4.5.2.	<i>Dispute Resolution Mechanisms for Coral Reef Damage</i>	305
CONCLUSION.....		308

**CHAPTER 6. THE DEVELOPMENT, REGULATIONS AND
MANAGEMENT PRACTICES OF MARINE
PROTECTED AREAS IN TAIWAN.....309**

6.1. THE DEVELOPMENT OF MARINE PROTECTED AREAS IN TAIWAN.....	309
6.2. MARINE PROTECTED AREAS REGULATIONS IN TAIWAN.....	314
6.2.1. Fisheries Act 1929.....	315
6.2.2. The Act for the Development of Tourism 1969.....	319
6.2.3. The National Park Law 1972.....	321
6.2.4. The Cultural Heritage Preservation Act 1982.....	324

6.2.5. Wildlife Conservation Act 1989.....	326
6.2.6. Law on the Territorial Sea and the Contiguous Zone of the Republic of China 1998.....	328
6.2.7. Marine Pollution Control Act 2000.....	329
6.2.8. Basic Environment Act 2002.....	330
6.2.9. Wetland Conservation Act 2013.....	332
6.2.10. Underwater Cultural Heritage Preservation Act 2015.....	336
6.2.11. Coastal Zone Management Act 2015.....	342
6.2.12. Spatial Planning Act 2016.....	349
 6.3. MANAGEMENT PRACTICES OF MARINE PROTECTED AREAS IN TAIWAN.....	 352
6.3.1. Institutional Arrangements in Taiwan.....	352
6.3.1.1. <i>Institutional Arrangements by the Taiwanese Government</i>	352
6.3.1.2. <i>Institutional Arrangements by the Community in Taiwan</i>	367
6.3.2. Planning Process for Marine Protected Areas in Taiwan	368
6.3.3. Marine Protected Areas Implementations in Taiwan.....	372
6.3.3.1. <i>Accomplishment</i>	372
6.3.3.2. <i>Implementation Problems of Taiwanese MPAs</i>	375
6.3.3.2.1. <i>No Specific Regulations Regarding Marine Conservation or MPAs</i>	375
6.3.3.2.2. <i>The Obscurity of Government Institutional Arrangements That Specifically Implement Marine Conservation</i>	377
6.3.4. Example Case Related to Management of Marine Protected Areas in Taiwan: Amorgos Vessel Oil Spill Incident in Kenting National Park	379
6.3.4.1. <i>Profile of Kenting National Park</i>	379
6.3.4.2. <i>Case Position</i>	380
6.3.4.3. <i>Response to the Case of the Amorgos Vessel Oil Spill</i>	382
6.3.4.4. <i>Lawsuits for Restoring the Marine Environment</i>	384
6.3.4.5. <i>Case Analysis of the Amorgos Oil Spill</i>	386

6.3.4.5.1. <i>Analysis Polluter Pays Principle in the Case of Amorgos Oil Spill</i>	386
6.3.4.5.2. <i>The Liability and Compensation Mechanism in the Case of Amorgos Oil Spill</i>	389
CONCLUSION.....	396
CHAPTER 7. IMPLEMENTATION OF THE INTERNATIONAL INSTRUMENTS IN THE INDONESIAN LEGAL REGIME RELATED TO MARINE PROTECTED AREAS.....	397
7.1. CONSERVATION OF BIODIVERSITY AND ECOSYSTEMS	397
7.2. PROTECTION OF FISHERY RESOURCES.....	401
7.3. INCREASING THE PROFILE OF AN AREA FOR MARINE TOURISM AND BROADENING LOCAL ECONOMIC OPTIONS	403
7.4. PROVIDING OPPORTUNITIES FOR EDUCATION AND PRESERVATION OF CULTURAL HERITAGE	405
7.5. PROVIDING BROAD BENEFITS AS A SITE FOR REFERENCE IN LONG-TERM RESEARCH	407
CONCLUSION.....	411
CHAPTER 8. APPLICATION OF THE PROVISIONS OF INTERNATIONAL INSTRUMENTS IN THE TAIWANESE LEGAL REGIME PERTINENT TO MARINE PROTECTED AREAS.....	412
8.1. CONSERVATION OF BIODIVERSITY AND ECOSYSTEMS	413
8.2. PROTECTION OF FISHERY RESOURCES.....	415
8.3. INCREASING THE PROFILE OF AN AREA FOR MARINE TOURISM AND BROADENING LOCAL ECONOMIC OPTIONS	419
8.4. PROVIDING OPPORTUNITIES FOR EDUCATION AND PRESERVATION OF CULTURAL HERITAGE	421
8.5. PROVIDING BROAD BENEFITS AS A SITE FOR REFERENCE IN LONG-TERM RESEARCH	424
CONCLUSION.....	427

CHAPTER 9. COMPARISON OF LEGAL REGIMES AND MANAGEMENT PRACTICES FOR MARINE PROTECTED AREAS BETWEEN INDONESIA AND TAIWAN.....	428
9.1. COMPARATIVE ANALYSIS OF MARINE PROTECTED AREA LEGAL REGIMES BETWEEN INDONESIA AND TAIWAN.....	428
9.1.1. Number and Extent of Marine Protected Areas	428
9.1.2. State Membership in the International Legal Frameworks and Organizations Relating to MPAs	432
9.1.3. Sources and Types of National Regulations Regarding MPAs	437
9.1.4. Period for the Enactment of MPA-Related Regulations	446
9.2. COMPARISON OF MARINE PROTECTED AREA MANAGEMENT PRACTICES BETWEEN INDONESIA AND TAIWAN	448
9.2.1. Comparison of MPAs Institutional Arrangements in Indonesia and Taiwan	448
9.2.2. Comparison of MPAs Planning Processes in Indonesia and Taiwan.....	451
9.2.3. Comparison of Implementation for MPAs Between Indonesia and Taiwan.....	454
CONCLUSION.....	457
CHAPTER 10. FUTURE DIRECTIONS FOR LEGAL REGIME AND CONTROL OF MARINE PROTECTED AREAS DEVELOPMENT IN INDONESIA AND TAIWAN.....	458
10.1. FUTURE DIRECTIONS FOR INDONESIA.....	461
10.1.1. Improving Institutional Coordination Mechanisms.....	461
10.1.2. Improving the Legal Framework for Decentralization in the Marine Conservation Sector.....	466
10.1.3. Strengthening Community Legal Culture.....	469
10.1.4. Optimizing Coast Guard in Conducting Law Enforcement.....	473
10.2. FUTURE DIRECTIONS FOR TAIWAN.....	476
10.2.1. Establishing Specific Regulation Related to Marine Conservation.....	476
10.2.2. Strengthen Certain Government Authorities to Implement Marine Conservation	485

CONCLUSION.....	497
CHAPTER 11. CONCLUSION.....	498
BIBLIOGRAPHY.....	503
PRIMARY MATERIALS.....	503
International Treaties and Agreements.....	503
Codes of Conduct, Declarations, Guidelines, Statements, Strategies, Programmes and Plans of Action.....	504
Directions, Meetings' Reports, Resolutions, Decisions and Recommendations.....	506
National Regulations.....	508
Cases.....	512
SECONDARY MATERIALS.....	513
Books.....	513
Journal Articles.....	519
Information Resources of International and National Institutions.....	538
Thesis, Technical Report and Research Papers.....	546
Workshop and Conference Proceedings	549
News and Press Statements.....	550

LIST OF TABLES

TABLE 1	SPECIAL AREAS UNDER MARPOL 73/78	91
TABLE 2	PARAMETERS OF ASSESMENT OF MARINE PROTECTED AREAS FOR AQUATIC NATURE TOURISM.....	237
TABLE 3	THE DATABASE ON MARINE PROTECTED AREAS IN INDONESIA.....	248
TABLE 4	GOVERNMENT INSTITUTIONS THAT MANAGE AND SUPERVISE MARINE PROTECTED AREAS INCLUDING THEIR NUMBER AND EXTENT.....	260
TABLE 5	THE ROLE AND RELATIONSHIP OF VILLAGE REPRESENTATIVE BODY, VILLAGE GOVERNMENT AND RELATED GOVERNMENT AGENCIES TO THE MANAGEMENT INSTITUTION OF THE MPA.....	276
TABLE 6	MARINE PROTECTED AREAS DATABASE IN TAIWAN.....	353
TABLE 7	MARINE PROTECTED AREAS REGULATION IN INDONESIA AND TAIWAN.....	439
TABLE 8	MATRIX OF COMPARISON OF LEGAL REGIME AND CONTROL OF MARINE PROTECTED AREAS BETWEEN INDONESIA AND TAIWAN	458

CHAPTER 1

INTRODUCTION

1.1. Background

Sustainable management of marine resources is a major challenge at this time. This is currently also approved and heavily embedded in the Sustainable Development Goals (SDG 14)¹, in addition to the Aichi Targets² under the Convention on Biological Diversity.³ From coral reefs and seagrass beds to mangrove forests and the deep sea, marine ecosystems provide human with incalculable benefits, including food, coastal protection, marine biodiversity and carbon sequestration. Yet these ecosystems and the services they provide are under severe pressure from a wide range of human activities. Furthermore, competing demands for marine space and resources are projected to rise.

Consists of 17,500 islands, Indonesia is the greatest archipelagic state and has tremendous biodiversity. Majority this country's populations are inhabiting in the coastal region. Plentiful of the settled littoral is subject to resources excessive exploitation and menaces to the circumlittoral and sea environment from pollution and baneful methods of fishing.⁴ Several researches show that obstacles to littoral sustainable development and sea resources are poorness and deficiency of sustainable incomes for community in circumlittoral. In several circumlittoral, the land cannot be

¹ The Sustainable Development Goals 14 aims to utilize the sea in a sustainable manner and conduct marine conservation to combat the adverse effects of overfishing, growing ocean acidification and worsening coastal eutrophication.

² Aichi target is defined as set of 20 global targets under the Strategic Plan for Biodiversity 2011-2020. They are grouped under five strategic goals: (1) Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society; (2) Reduce the direct pressures on biodiversity and promote sustainable use; (3) Improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity; (4) Enhance the benefits to all from biodiversity and ecosystem services; (5) Enhance implementation through participatory planning, knowledge management and capacity building. For more details see CBD Secretariat, 'Aichi Biodiversity Targets' available at <https://www.cbd.int/sp/targets/>; accessed 03 April 2018.

³ Convention on Biological Diversity (Rio de Janeiro, 05 June 1992, in force 29 December 1993) 1760 UNTS 79.

⁴ Gina Elliott et al., "Community Participation in Marine Protected Area Management: Wakatobi National Park, Sulawesi, Indonesia," *Coastal Management*, Vol. 29(4), 2001, pp. 295–316. See also Julia Arnscheidt, *Debating Nature Conservation: Policy, Law and Practice in Indonesia*, Vol. I (Leiden, Leiden University Press, 2009), p.36.

used as agricultural activities. Local societies depend on the fish trade and another sea product to help their incomes.⁵

In addition, fisheries in Indonesia used to be underexploited principally because of underexploited pelagic fisheries. Nevertheless, the quantity of motorized dory and overfishing has quickly increased. In particular, the impendence of overfishing is measurable to be advanced or average around Indonesia. Enamored by swift economic revert, local fishermen sometimes adhere illegal fishing practices introduced by outsiders notwithstanding being aware of the long-term impacts on the marine environment and resources.⁶ Fishing with cyanide, explosives and bottom trawl are the primary types of detrimental fishing.

Taiwan is an island nation located off the coast of mainland China. Mainly littoral is greatly expanded and populous. Therefore, the marine environment has a significant economic and environmental predispose over this state.⁷ Economic expansion has induced serious marine biodiversity and environmental issues in this state. Furthermore, with the accretion of Taiwan population, problems incorporating the degraded quantity of sea habitats and escalated marine pollution have prolonged to imperil sea bio resources and diversity. The littoral area is also susceptible to soil stalinization, land subsidence, tsunami, and sea water flooding. The breakage

⁵ Christophe Béné, Bjørn Hersoug, and Edward H. Allison., “Not by Rent Alone: Analysing the Pro-Poor Functions of Small-Scale Fisheries in Developing Countries,” *Development Policy Review*, Vol. 28(3), 2010, pp. 325-358. See also Daniella Ferrol-Schulte et al., “Sustainable Livelihoods Approach in Tropical Coastal and Marine Social–Ecological Systems: A Review,” *Marine Policy*, Vol. 42(6), 2013, pp. 253-258 and Calbert H. Douglas., “Small Island States and Territories: Sustainable Development Issues and Strategies – Challenges for Changing Islands in a Changing World,” *Sustainable Development*, Vol. 14(2), 2006, pp. 75-80.

⁶ P. J. Mous et al., “Policy Needs to Improve Marine Capture Fisheries Management and to Define a Role for Marine Protected Areas in Indonesia,” *Fisheries Management and Ecology*, Vol. 12(4), 2005, pp. 259-268. See also Gerd Winter, *Towards Sustainable Fisheries Law: A Comparative Analysis*, No.74 (IUCN, Gland, 2009), p.302.

⁷ Gerald A. McBeath and Tse-Kang Leng, *Governance of Biodiversity Conservation in China and Taiwan*, Vol. I (Edward Elgar Publishing Ltd, Cheltenham, 2006), p. 68. See also Timothy Ferry, ‘The Challenge of Preserving Biodiversity in Taiwan’ available at <https://topics.amcham.com.tw/2016/07/challenge-preserving-biodiversity/>; accessed 05 February 2018.

and inapt development caused by humans had affected in the demolition of Taiwan's peripheral coastal zone and marine area.⁸

As an effective system, Marine protected areas (MPAs) have been generally approved to protect biodiversity and fishery resources.⁹ Marine Protected Areas (MPAs) are also considerably effective as a strong tool to address menaces to coral reefs and preserve biodiversity, ecosystem services and habitats.¹⁰ MPAs could be calculated as a part of the attempts made towards ecosystem-based management and focusing in area planning in which such preserved areas help to lower cumulative impacts to the ocean.¹¹ MPAs may propose length of protection from comprehensive exclusion of human activity to lesser forms of limitation. A variety of matters could be used to depict the distinct variety of MPAs, including: fisheries reserve, ecological reserve, marine reserve, replenishment reserve, marine park, marine sanctuary, closed area, marine management area, marine and coastal protected area, nature reserve, sensitive sea area, coastal preserve, area of conservation concern, biosphere reserve, coastal park, national marine park, marine wilderness area and marine conservation area.¹²

⁸ Yi-Che Shih, "Coastal Management and Implementation in Taiwan", *Journal of Coastal Zone Management*, Vol. 20(1), 2017, pp.1-7.

⁹ Phillip S. Levin, "A Framework for Assessing the Biodiversity and Fishery Aspects of Marine Reserves," *Journal of Applied Ecology*, Vol. 46(4), 2009, pp. 735-742. See also Lucile Mesnildrey, Didier Gascuel and Olivier Le Pape, "Integrating Marine Protected Areas in Fisheries Management Systems: Some Criteria for Ecological Efficiency," *Aquatic Living Resources*, Vol. 26(1), 2013, pp. 159-170; Simon Jennings, "The Role of Marine Protected Areas in Environmental Management," *ICES Journal of Marine Science*, Vol. 66(1), 2009, pp. 16-21 and Philippe Goulletquer et al., *Biodiversity in the Marine Environment*, Vol. I (Springer, Berlin, 2014) p.59.

¹⁰ Rafael A. Magris et al., "Integrated Conservation Planning for Coral Reefs: Designing Conservation Zones for Multiple Conservation Objectives in Spatial Prioritization," *Global Ecology and Conservation*, Vol. 11(3), 2017, pp. 53-68. See also A. Abelson et al., "Expanding Marine Protected Areas to Include Degraded Coral Reefs," *Conservation Biology*, Vol. 30(6), 2016, pp. 1182-1191 and Rodney V. Salm, John R. Clark and Erkki Siirila, *Marine and Coastal Protected Areas : A Guide for Planners and Managers*, 3rd edition (IUCN, Gland, 2000) p.161.

¹¹ B.S. Halpern et al., "Managing for Cumulative Impacts in Ecosystem-Based Management through Ocean Zoning," *Ocean and Coastal Management*, Vol. 51(3), 2008, pp. 203-211. See also Kathryn Mengerink, Adam Schempp, and Jay Austin, *Ocean and Coastal Ecosystem-Based Management: Implementation Handbook*, Vol. I (Environmental Law Institute Publications, Washington, D.C, 2009) p. 30.

¹² Erich Hoyt, "Marine Protected Areas" in William F. Perrin, Bernd Würsig and J.G.M. Thewissen (eds), *Encyclopedia of Marine Mammals* (Academic Press, Massachusetts, 2009) pp. 696-705.

One of the primary infirmities identified in marine protected areas (MPAs) governance in this category is lack of political will and local country capacity for strong enforcement of MPAs regulations.¹³ It is debated that the reduction of circumlittoral and sea resources in Indonesia is in consequences of political problems, legal, economic, and social. However, the deficiency of legal framework, political commitment at the domestic level and inapt institutional arrangements has assisted to the problems with the management effectiveness development in the MPAs. Institutional structures development for managing MPAs as yet deal with particular problems. These include the government agencies overlapping jurisdictions, management capacity deficiency for implementation and lack of political will for implementation.¹⁴

On the other hand, Taiwan regulation more often than not lacks of mechanism that warrant the constant participation of the general public and interest groups in both the creation and operation phases of MPAs. In addition, laws do not decidedly specify the enforcement institution operating within MPAs. Given the regulatory and legislative issues MPAs creating a protected area generally requires new or increased regulations and restrictions on aspects like access to development activities and natural resources.¹⁵

Based on the statements in above, we can conclude that MPAs regulations have common issues about the legitimacy between environmental conservation and socio-economic

¹³ Victoria Y. Martin et al., "Doing the Right Thing": How Social Science Can Help Foster Pro Environmental Behaviour Change in Marine Protected Areas," *Marine Policy*, Vol. 81(7), 2017, pp.236-246. See also Peter J. S. Jones, Wanfei Qiu, Elizabeth De Santo, *Governing Marine Protected Areas : Getting the Balance Right*, Vol. I (Nairobi-Kenya, United Nations Environment Programme (UNEP), 2011) p.24.

¹⁴ L. Krueger, "Government Commitments for Protected Areas: Status of Implementation and Sources of Leverage to Enhance Ambition" in Lucas N. Joppa, Jonathan E. M. Baillie and John G. Robinson (eds), *Protected Areas: Are They Safeguarding Biodiversity?* (Chichester, John Wiley & Sons, Ltd., 2016), pp.13-33. See also Dirhamsyah, "Setbacks in the Development of Marine Protected Areas in Indonesia," *Australian Journal of Maritime & Ocean Affairs*, Vol. 8(2), 2016, pp. 87-100.

¹⁵ Chieh-Heng Sun, "A Comparative Study of the Designation Processes and Management Approaches of MPAs Between Taiwan and the United States: Cases of the Papahānaumokuākea Marine National Monument and the Dongsha Atoll National Park" (Master Thesis, National Sun Yat-Sen University, 2013).

development, and government coordination with stakeholder. To narrow the scope of this study, this thesis is focused on the comparative law study concerned the legal regime and control for Marine Protected Areas in Indonesia and Taiwan.

1.2. Research Objectives

The objectives of this study are to address the problems from the legislative and administrative perspectives, both at international and national levels, so as to inform the current development of laws, policies and management plans in Indonesia and Taiwan. This thesis has examined the current status of international and national initiatives so as to establish their contribution to the effectiveness of the governance of marine protected areas in Indonesia and Taiwan. Lessons learned at the international level (1975 Australia's Great Barrier Reef Marine National Park Act and 1998 California's Marine Life Protection Act in the United States) are used as one of the considerations for obtaining policy recommendations. At the national level, a comparative analysis of the regulation and management frameworks has been undertaken so as to provide a clear picture of the current status and challenges in the management of marine protected areas in Indonesia and Taiwan.

Specifically, this study objectives to obtain scientific novelty related to recommendations for establishing or improving regulations regarding marine protected areas in Indonesia and Taiwan. The specific objectives of this thesis are as follows:

- a. To highlight the historical background and development of marine protected areas concept.
- b. To identify and evaluate the international legal framework related to marine protected areas.

- c. To analyze international best practices in establishing and managing MPAs, namely from the 1975 Australia's Great Barrier Reef Marine National Park Act and the 1998 California's Marine Life Protection Act in the United States.
- d. To examine the development, regulations and management practices of MPAs in Indonesia and Taiwan.
- e. To analyze the application of international instruments in the legal regime related to MPAs in Indonesia and Taiwan.
- f. To examine the comparison of legal regimes and management practices of MPAs between Indonesia and Taiwan.
- g. To provides directions for legal regime and control of MPAs in Indonesia and Taiwan.

1.3. Area of Study

In this context, the following thesis “The Legal Regime and Control of Marine Protected Areas Development in Indonesia and Taiwan: A Comparative Law Study” identify legal actions to support the improvement of regulations concerning marine protected areas in the two states, Indonesia and Taiwan through legal comparative analysis. Such comparative law has been integrated in accordance with international law and other related rules, take into consideration lessons from other countries which relevant experiences and most importantly, be appropriate to characteristics of the regulation in Indonesia and Taiwan.

The Ecosystem Approach (EA) is a concept that states that humans are part of the global ecosystem and not detached from it, has appeared as the prominent model for managing marine ecosystems.

1.4. Research Methodology

This section explains the theoretical frameworks and research methods that have been used in this thesis for the building of its arguments. Main concepts used for building arguments in this thesis are the ecosystem approach and marine natural resources management. In addition, the regime theory also plays an influential role.

The Ecosystem Approach (EA) is a concept that states that humans are part of the global ecosystem and not detached from it, has appeared as the prominent model for managing marine ecosystems.¹⁶ Then, the 5th Conference of Parties (COP) of the 1992 Convention on Biological Diversity held that the ecosystem approach is “a strategy for the integrated management of land, water and living resources that promote conservation and sustainable use in an equitable way”. At the heart of the ecosystem approach is the opinion that coupled social, law and ecological systems can be learned and managed in a holistic method. This approach proposes new opportunities for marine sustainable use but needs better concept of how marine social-ecological methods operate, how they produce stuff and services, how well these advantages are captured, how human degradation of the systems influences human welfare and produces fees, and the complex social relations and value systems underpinning human governance of marine systems. The final aim of the EA is to encourage sustainable development. Its application encompasses the ecosystem integrity maintenance, functioning and health so that ascertain natural resources for today and future generations.

Even though not regarded yet as a core principle of national and international environmental law, the EA is obtaining spirit as it is acknowledged in several legal sources, including treaties and

¹⁶ Sue Kidd et al, ‘The Ecosystem Approach and Planning Management of the Marine Environment’ in Sue Kidd, Andy Plater and Chris Frid (eds), *The Ecosystem Approach to Marine Planning and Management* (Routledge, New York, 2011), pp. 1-33.

non-legally binding instruments such as plans of action (especially Ramsar Convention ¹⁷, Agenda ¹⁸ 21 and Convention on Biological Diversity). Connecting with the ecosystem of marine, the United Nations Convention on the Law of the Sea (UNCLOS) declare in its preamble that “the problems of ocean space are closely interrelated and need to be considered as a whole”.¹⁹ This convention also requires contracting parties, while taking actions to protect harvested species, consider “the interdependence of stocks”.²⁰ For fisheries, the United Nations Food and Agriculture Organization (FAO) declare that “an ecosystem approach to fisheries strives to balance diverse societal objectives, by taking account of the knowledge and uncertainties of biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries”.²¹ The FAO Code of Conduct in Responsible Fisheries, regarded the most comprehensive and operational reference for control, requires contracting parties while operating fisheries, among other things, to have “due regard” of the protection of the marine environment.²²

As learned further in this thesis, marine protected areas could be an instrument for the ecosystem approach implementation to fisheries as protected areas are prominent for the fish stocks development. For this reason, the ecosystem approach is a nucleus idea that guides the analysis and the suggested solutions offered in this thesis. Then, the next concept is marine natural resources management. Marine natural resource management is defined as a system of activities to manage the economically efficient use of natural resources and to produce an optimum regime

¹⁷ Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 02 February 1971, in force 1975) 996 *UNTS* 396.

¹⁸ Agenda 21, the United Nations Conference on Environment and Development (Rio De Janeiro, 03-14 June 1992), UNOR, Annex II, UN Doc.A/Conf.151/26/Rev.1 (Vol I) at 9.

¹⁹ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 *UNTS* 396. See the preamble.

²⁰ *Ibid*, see article 61.

²¹ FAO Technical Guidelines for Responsible Fisheries, No. 4, Suppl. 2 (Rome, FAO, 2003).

²² Code of Conduct for Responsible Fisheries, 28th FAO Conference, 31 October 1995 (Rome, FAO, 1995).

for their restoration, considering present and future interests of the marine economy.²³ The increasing scale of marine natural resources management was a trigger for creating national regulation and International Conventions for the management of the live and mineral resources of the ocean. Marine natural resources management can exist at international and national levels but in the context of this thesis, the marine natural resources management at Indonesia and Taiwan is the focus.

The management of marine natural resources must be harmonized with environmental protection, to preserve normal ecological cycles. Rational development of marine natural resources requires the establishment of collaboration between industry and the marine environment such that economic demands are met at the level of efficiency required by contemporary socio-economic development, ensuring at the same time the conservation of natural resources and a balanced state of the marine environment.

Finally, it could enhance the environment for improved decision-making and support management initiatives in Indonesia and Taiwan. From this perspective, marine natural resource management provides an indispensable support for the implementation of the ecosystem approach in Indonesia and Taiwan.

The last but not least, under the theory of regime, legal regime is defined as is a principles system and rules governing something, and which is created by law.²⁴ Rules are specific formula or prohibitions for action.²⁵ Legal regimes are made by communities and governments depending on how easy or difficult it is for social groups or individual or organized interests to obtain power

²³ Aleksandr V. Souvorov., "Marine Natural Resources Management: Ecology and Economics," *Developments in Environmental Economics*, Vol. 6(1), 1999, pp.7-32.

²⁴ William Hurst, *Ruling Before the Law: The Politics of Legal Regimes in China and Indonesia* (Cambridge University Press, Cambridge, 2018), p. 14.

²⁵ Anthony A. Peacock, *Freedom and the Rule of Law* (Lexington Books, Lanham, 2009), p. 7.

or influence and how readily and in what method nonjudicial state bodies or empowered actors intervene in legal institutions' handling of specific cases.²⁶

Several approaches have supported to illustrate the establishment of legal regime. The most prominent ones include a State's considerations based on the hegemonic power existence, the epistemic society development and egoistic self-interests. Integration of these three factors is used to identify the condition of the regime's emergence.²⁷ Different areas would need a divergent combination of those elements to illustrate the formation of a regime.²⁸ Other arguments of the formation of regime prompted by scholars are generally based on field research. They include traditions, intervention of organization, customary and norms.

Concerning for legal regime for marine protection, Frank illustrates, the protection of the marine is based on two separate but interdependent bodies of law that interact and complement each other to create a dynamic and effective system²⁹. First, an umbrella framework which sets out the general principles and rules of global application and second, a regulatory regime composed of tailored instruments with technical standards to implement the general principles or rules. In this thesis the formation of a legal regime is required in the context of the improvement of regulations of the marine environment and living resources in Indonesia and Taiwan.³⁰

²⁶ Volker Rittberger and Peter Mayer, *Regime Theory and International Relations* (Clarendon Press, Oxford, 1995), p. 12.

²⁷ Oran R. Young, 'Political Leadership and Regime Formation: On the Development of Institutions in International Society' *International Organization*, Vol. 45(3), 1991, pp. 281-308. See also Edward L. Miles et al, *Environmental Regime Effectiveness: Confronting Theory with Evidence* (MIT Press, Massachusetts, 2001), p. 32. and Jørgen Møller, *State Formation, Regime Change, and Economic Development* (Routledge, New York, 2017), p. 32.

²⁸ J. E. Alvarez, *The Public International Law Regime Governing International Investment* (Brill, Leiden, 2011), p. 5.

²⁹ V. Frank, *The European Community and Marine Environmental Protection in the International Law of the Sea* (Martinus Nijhoff Publishers, Leiden, 2007), p.11.

³⁰ *Ibid*, p. 12.

The research under this thesis involves the exploration, examination and evaluation of information from all primary, secondary and tertiary resources³¹ relevant to the research purposes in the earlier. This research has used comparative law comparative law as an intellectual activity with law as its object and comparison as its process for understanding and improving MPAs regulations. Comparative law is the comparison of legal systems and of the relationships of the law to the social sciences. Comparative law helps clarify the comparison of legal institutions deserved a systematic approach, in order to increase understanding of foreign cultures and to further legal progress. In addition, legal comparison is used to provide ideas for legal reform and regulation, fill gaps in the legal system and help harmonization of law.³² The comparative legal research method is divided into two roles: comparing the law and utilizing the outcomes.³³

This comparative legal research has suggested three main stages involved in the process of comparison which are the descriptive phase, the identification phase, and the explanatory phase. The descriptive phase includes description of norms, concepts, and institutions. The identification phase includes identification of differences and similarities including strengths and weaknesses of the MPAs regulations system and control in Indonesia and Taiwan. The explanatory phase identifies probable transplantation of law theories, ideas, concept and institution.

Besides conducting research using a comparative legal approach, this study also uses a multidisciplinary approach. Multidisciplinary approach is an investigation to a problem for confirming the hypothesis integrating several academic approaches, fields or methods.³⁴

³¹ For a definition of primary, secondary and tertiary resources, see Mike McConville and Wing Hong Chui, "Introduction and overview", in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh, Edinburgh University Press, Ltd., 2007), pp.1-15.

³² Mads Andenas and Duncan Fairgrieve, *Courts and Comparative Law* (Oxford University Press, Oxford, 2015), p. 28.

³³ Rodolfo Sacco., "Legal Formants: A Dynamic Approach to Comparative Law," *The American Journal of Comparative Law*", Vol. 39(1), 1991, pp.1-34.

³⁴ Multidisciplinary approach also could be interpreted as a quest for knowledge through systemic and objective method for a genuine contribution to the existing stock of knowledge implicate a combination of many disciplines

Multidisciplinary approach is a pursuit of validity with the support of many specialized fields of learning which objectives at reaching a mutual purpose with the help of science of other knowledges.³⁵ Research on MPAs involves various knowledges including the environment and ecology, management, marine spatial planning, and law sciences itself.

This thesis approaches the problem mainly from law perspective. For example, it elaborates what the law issues that might be proposed in the development of MPAs regulations in Indonesia and Taiwan and also reviews whether the existing legal framework, especially at international and regional levels, are adequate to deal with these issues. Nevertheless, it is preposterous to study on the development of legal regime and control of marine protected areas without having a specific level of knowledge on criteria, purposes, directions and useful steps for the development of regulation and management of MPA, which belong to the knowledges of environment, management and marine spatial planning.³⁶ In addition to the development of legal regime and control of marine protected areas has to be based on optimum available data and information, especially about the biodiversity and menaces to the marine environment and living resources, the thesis also reviews relevant information and data with regards to regulation and management of MPAs in Indonesia and Taiwan.

In addition to data collection from documents of the recent development of MPAs regulation and management practice of MPAs experience, interviews have been conducted with relevant government officials in Indonesia and Taiwan. This part of the study has used questionnaires addressed to relevant government authorities in both of states. Interviews have been conducted

and methods. For more details see Amy Reynolds and Brooke Barnett, *Communication And Law: Multidisciplinary Approaches to Research* (Routledge, New York, 2012), p.19.

³⁵ Jenő Szmodis., "On Multidisciplinary Legal Research," *ARSP: Archiv für Rechts- und Sozialphilosophie*", Vol. 98(4), 2012, pp. 483-493.

³⁶ Ana Ruiz-Frau et al., "A Multidisciplinary Approach in the Design of Marine Protected Areas: Integration of Science and Stakeholder Based Methods," *Ocean & Coastal Management*, Vol. 103(1), 2015, pp. 86-93.

with relevant government officials, as appropriate. Interviews have been conducted in two phases. First, interviews have been conducted with Taiwan government authorities who related to the establishment, management and supervision of marine protected areas. The institutions that have been studied include:

- a. Construction and Planning Agency, Ministry of the Interior.
- b. Fisheries Agency, the Council of Agriculture, Executive Yuan.
- c. Coast Guard Administration of the Executive Yuan.

Subsequently in the second phase, interviews were conducted with Republic of Indonesia government authorities. State institutions that have been addressed include:

- a. Directorate General of Marine Spatial Management, Ministry of Marine Affairs and Fisheries, Republic of Indonesia.
- b. Directorate General of Marine, Coastal, and Small Islands, Ministry of Marine Affairs and Fisheries, Republic of Indonesia.
- c. Directorate General of Surveillance for Marine and Fisheries Resources, Ministry of Marine Affairs and Fisheries, Republic of Indonesia.
- d. Directorate General Pollution Control and Degradation Environment, Ministry Of Environment and Forestry, Republic of Indonesia.
- e. Directorate General of Natural Resources and Ecosystem Conservation, Ministry Of Environment and Forestry, Republic of Indonesia.

The data has been obtained is analyzed with multiple sources of law such as treaties or Conventions, International Customary Law, International Non-Legally Binding Instruments, National Laws, general principles of rules, doctrines, also from the several researches were published internationally. Sources of law has been used to analyze, among others:

a. International Conventions

- International Convention for the Regulation of Whaling, 1946;
- Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971;
- Convention concerning the Protection of the World Cultural and Natural Heritage, 1972;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973;
- International Convention on the Safety of Life at Sea, 1974;
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978;
- Convention on Migratory Species of Wild Animals, 1979;
- United Nations Convention on the Law of the Sea, 1982;
- Convention on Biological Diversity, 1992;

b. International Non-Legally Binding Instruments

- United Nations Conferences Concerning to the Environment;
- United Nations General Assembly Resolutions on Oceans and the Law of the Sea and Sustainable Fisheries;
- World Charter for Nature, 1982;
- The World Network of Biosphere Reserves;
- United Nations Food and Agriculture Organization's Instruments relating to Responsible Fisheries;
- Particularly Sensitive Sea Areas;

- International Coral Reef Initiative.
- c. International Customary Rule Relating the Establishment of Marine Protected Areas
- d. Indonesian Regulations
- Act Number 05/1990 Concerning Conservation of Living Resources and Their Ecosystems;
 - Act Number 31/2004 and amendment Act Number 45/2009 Concerning Fisheries;
 - Act Number 27/2007 and amendment Act Number 01/2014 Concerning the Management of Coastal Areas and Small Islands;
 - Act Number 32/2009 Concerning Environmental Protection and Management;
 - Act Number 32/2014 Concerning Law of The Sea;
 - Government Regulation Number 60/2007 Concerning Fish Resource Conservation;
 - Ministerial Decree of Marine Affairs and Fisheries Number 17/MEN/ 2008 Concerning Conservation Areas in Coastal Areas and Small Islands;
 - Ministerial Decree of Marine Affairs and Fisheries Number 02/MEN/ 2009 Concerning the Procedure for Establishing Marine Protected Areas;
 - Ministerial Decree of Marine Affairs and Fisheries Number 30/MEN/ 2010 Concerning Management Plan and Zoning of Marine Protected Areas;
 - Ministerial Decree of Marine Affairs and Fisheries Number 13/ PERMEN-KP/ 2014 Concerning Network of Marine Protected Areas;
 - Ministerial Decree of Marine Affairs and Fisheries Number 21/ PERMEN-KP/ 2015 Concerning Partnership for Management of Marine Protected Areas;

- Ministerial Decree of Marine Affairs and Fisheries Number 14/ PERMEN-KP/ 2016 Concerning Criteria and Categories of Marine Protected Areas for Aquatic Nature Tourism;
- Ministerial Decree of Marine Affairs and Fisheries Number 47/ PERMEN-KP/ 2016 Concerning Utilization of Marine Protected Areas;

e. Taiwan Regulations

- Fisheries Act 1929;
- The Act for the Development of Tourism 1969;
- The National Park Law 1972;
- The Cultural Heritage Preservation Act 1982;
- Wildlife Conservation Act 1989;
- Law on the Territorial Sea and the Contiguous Zone of the Republic of China 1998;
- Marine Pollution Control Act 2000;
- Basic Environment Act 2002;
- Wetland Conservation Act 2013;
- Underwater Cultural Heritage Preservation Act 2015;
- Organization Act of Ocean Conservation Administration 2015;
- Coastal Zone Management Act 2015;
- Spatial Planning Act 2016;

Overall, this research's data collection, both literature studies and interview results, was performed in the period 01 November 2017 to 01 May 2019.

1.5. Outline of the Thesis

In order to achieve this purpose of research, it appears necessary to answer a number of critical questions. They include, what international law says about the historical development of marine protected areas, how the political conditions with regard to MPAs, how the historical development of the establishment of MPAs in Indonesia and Taiwan, what regulation that has been made by the Government of Indonesia and Taiwan regarding the MPAs, how current practices related to the management of marine environmental protection in Indonesia and Taiwan, what international legal frameworks can be used as a reference in establishing or improving regulation concerning MPAs in Indonesia and Taiwan, how is the current practice related to MPAs regulations in other countries ? What are the constraints faced by the Government of Indonesia and Taiwan regarding the practice of MPAs regulation and how they deal with it? Also, what recommendations can be given to establish the MPAs Act in Indonesia and Taiwan? To answer these questions and thus to suggest legal measure to support the development of MPAs regulation in Indonesia and Taiwan, the thesis comprises ten chapters after the introduction.

Chapter 2, entitled “History, Development and Concept of Marine Protected Areas”, provides the historical and development background of the concept of MPAs. It reviews the historical background of the establishment of the concept of MPAs. It reviews the definition, purposes and classification of MPAs and explains how the concept of MPAs came about. It also studies criteria, challenges and successful conditions for the establishment of MPAs.

Chapter 3, entitled “International Legal Regime Related to Marine Protected Areas”, this chapter reviews provisions under international law, especially in international texts, relevant to the development of MPAs, in particular provisions relating to protected areas, MPAs and protection of the marine environment. Texts studied comprise both international treaties and international

non-legally binding instruments such as international declarations, statements and plans of action. This Chapter looks at international texts adopted in different fields, namely the law of the sea, fisheries management, the preservation of biodiversity, protection of a particular habitat or species and prevention of marine pollution. It also discusses whether any international customary rule has emerged relating to the development of MPAs.

Chapter 4, entitled “Best international Practices of Marine Protected Area Establishment and Management: Lessons from the Great Barrier Reef Marine Park Act and the California Marine Life Protection Act.”. This chapter discusses the practices of two regulations in Australia and the USA, namely the Great Barrier Reef Marine Park Act 1971 and the California Marine Life Protection Act 1999. The best practices discussed from the two regulations include: Governance; Planning processes and public input; and Scientific input. The selection of these two regulation as best practices was based on consideration of recommendations from the IUCN and experts’ opinions. It can serve as an example in the blueprint of regulation concerning MPAs in Indonesia and Taiwan.

Chapter 5, entitled “The Development, Regulations and Management Practices of Marine Protected Areas in Indonesia”. This chapter has provided an introduction to the development, analysis of some regulations and management practices of Marine Protected Areas in Indonesia.

Chapter 6, entitled “The Development, Regulations and Management Practices of Marine Protected Areas in Taiwan”. It provides the development, analysis of some regulations and management practices of Marine Protected Areas in Taiwan.

Chapter 7, entitled “Implementation of the International instruments in the Indonesian Legal Regime Related to Marine Protected Areas”. This chapter discusses the implementation of international documents in the ratification of national laws using five parameters, namely,

conservation of biodiversity and ecosystems, protection of fishery resources, increasing the profile of an area for marine tourism and broadening local economic options, providing opportunities for education and preservation of cultural heritage, and providing broad benefits as a site for reference in long-term research.

Chapter 8, entitled “Application of the Provisions of International Instruments in the Taiwanese Legal Regime Pertinent to Marine protected Areas”. This chapter analyzes international instruments' various adoptions in Taiwan's national regulations, even though this country cannot join in several international treaties. The application of international instruments' adoption is discussed through five parameters, namely, conservation of biodiversity and ecosystems, protection of fishery resources, increasing the profile of an area for marine tourism and broadening local economic options, providing opportunities for education and preservation of cultural heritage, and providing broad benefits as a site for reference in long-term research.

Chapter 9, entitled “Comparison of Legal Regimes and Management Practices for Marine Protected Areas Between Indonesia and Taiwan”. This chapter discusses the analysis of legal regimes related to MPAs using four parameters: number and extent of MPAs, state membership in the international legal frameworks and organizations relating to MPAs, sources and types of national regulations regarding MPAs, and period for the enactment of MPAs related regulations. In addition, this chapter discusses comparison of marine protected area management practices between Indonesia and Taiwan. The elements of marine protected area management practices that are compared include institutional arrangements, planning processes and implementation.

Chapter 10, the concluding Chapter, entitled “Future Directions for Legal Regime and Control of Marine Protected Areas in Indonesia and Taiwan”. This chapter provides directions for regulation and control of MPAs in Indonesia and Taiwan. Directions for Indonesia include:

improving institutional coordination mechanisms, improving the legal framework for regional autonomy in the marine conservation sector, strengthen community legal culture, and optimizing Coast Guard in conducting law enforcement. Furthermore, Taiwan's directions include establishing specific legislation related to marine conservation and strengthening certain government authorities to implement marine conservation.

Chapter 11, is the conclusion. It summarizes the research contribution to the existing body of knowledge.

1.6. Contributions of the Thesis in the Recent Literature

A study of the literature on the comparison of regulations and controls related to MPAs is still infrequent, especially in Indonesia and Taiwan. Most of the research on regulations related to MPAs is limited to comparing regulations between countries, without taking lessons from other countries' regulations to provide guidance on improving regulations and management related to MPAs.³⁷

Thus, this thesis offers an important contribution to the law science, by conducting regulation research and control of MPAs in Indonesia and Taiwan. This research also reviews various international conventions and best practices from Great Barrier Reef Marine Park Act 1971 and California Marine Life Protection Act 1999. For this reason, this study suggests a series of legal actions to support the development of MPAs through the improvement of regulation and controls related to MPAs in Indonesia and Taiwan. It is expected that the results of this thesis between

³⁷ As an example of research written in a scientific article by Wen-Chen Shih. Shih only made comparisons of regulations related to MPAs in Taiwan and China without taking lessons that could be taken by the two States to make guidelines for improving regulation and management of MPAs in Taiwan and China. Full articles can be accessed at Wen-Chen Shih., "A Comparative Study on Marine Protected Area Legislation in Taiwan and China," *Vermont Journal of Environmental Law*, Vol. 14(1), 2012, pp.232-273.

Indonesia and Taiwan can learn from each other so that they can improve the regulations and controls of MPAs in both States.

Conclusion

This first chapter presents the essential background of the thesis. Specifically, it describes the thesis purpose, its main content, and its contribution to current legal research. This chapter also provides the theoretical and methodological approaches used in this legal research to establish arguments in this thesis. In addition, this chapter also provides information to readers so that they can understand the legal research framework in this thesis. Based on the research framework that has been established, the subsequent chapter analyzes essential issues related to the history, development, and concept of global marine protected areas.

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