

Land Ownership for Tourism Business Investment

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ABSTRACT

As an agricultural country, Indonesia makes land the most crucial source related to economic and social aspects. Land as the primary resource was compared to capital and labor resources. Globalization makes land used for agricultural and plantation purposes and trading commodities, the mining industry, and tourism. The land position has become important until there have been more widespread disputes over land and the existence of land mafia because the economic value of land has also increased due to the population increasing, but the number of existing land remains. Formulation of the problem, How is land ownership for tourism business investment? This writing uses qualitative analysis using secondary data as main data and primary data as supporting data. Legal regulations and the results of literature studies are used as secondary data sources. The results of the research showed provisions regarding land ownership and tourism had been issued through laws, government regulations, presidential instruction decrees, ministerial decrees, director-general decrees, decisions of the land agency head (BPN), and joint ministerial decisions; however, those provisions have not been able to protect the interests of the community due to overlapping regulations issued by each related agency without consolidating with higher regulations even though it was adjusted in Law number 11 of 2020 concerning Work Creation (Omnibus Law). The Disharmony of Laws regulating the protection of investment law such as the Basic Agrarian, Tourism, and Investment Law still need to be integrated with the Umbrella Law and harmonized with existing statutory regulations.

Keywords: *Investment, Land Ownership, Tourism Business.*

1. INTRODUCTION

Globalization causes changes in people's lives; human life is getting closer in any part of the world with the internet of things, networking. Even millennials no longer need to work in the office but carry their laptops on trips to tourism while releasing their boredom from working in an office space. They need natural scenery to get their inspiration.

This change in living standards has encouraged people to work while traveling and no longer need a house to live in and an office to work. This tourism is now in demand by millennials, so the tourism industry is proliferating.

Tourism investors, both local and foreign, consider tourism a great opportunity. Tourism business investment is growing rapidly, making the land an essential source for investment related to economic and social aspects. The government also encourages the tourism business as an opportunity to improve the economy and people's welfare.

From the description above, the formulations of the problem that become the subject of the study/discussion in this research are: How land ownership for the tourism business investment?

2. METHOD

The focus of normative judicial research is to examine the application of rules or norms in positive law by checking library materials or secondary data composed of primary, secondary, and tertiary legal materials.

3. RESULT AND DISCUSSION

Changes in the world, with the changes in the global travel lifestyle, the government encourages the development of tourism in order to obtain benefits, and to meet the challenges of local, national and global life changes.

Nature, flora, fauna, artistic and cultural heritage are a resource and capital for the development of tourism in order to improve the well-being and well-being of people.

The development of tourism undoubtedly leads to land use, and the government undoubtedly manages the land sector, land ownership, ownership, business use rights, building use rights and use rights. , Lease rights, management rights, apartment ownership. A land right is the right to permit the owner of the right to use and use the land in which he or she has the right.

Property rights are the hereditary right and the most important and complete right possessed by people on land, who can be Indonesian citizens and legal entities designated by the government.

The right to use a business is the right to cultivate land directly managed by the state for agriculture, fishing, or agriculture, which is established under Indonesian law and is owned by Indonesian citizens and corporations residing in Indonesia.

The right to use a building is the right to build a building that can be extended for up to 30 years and up to 20 years on land that he does not own, and can be owned by Indonesian citizens and corporations established under Indonesia. Resident in law and Indonesia.

Indonesian citizens have the right to use, collect the proceeds from land that is directly controlled by the state or land owned by another person, which a foreign national can own in Indonesia. Foreign legal entities with representatives in Indonesia.

Lease Rights are the Rights of a person or a legal entity that has Rights to lease on land by paying the owner a certain amount of rent and which can be owned by Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law, and domiciled in Indonesia and foreign legal entities that have representatives in Indonesia.

Lease rights are the right to lease land by paying a fixed amount of rent to the owner, Indonesian citizens, foreigners residing in Indonesia, corporations established under Indonesian law, and residing in Indonesia, a foreign corporation with a representative in Indonesia.

There are secondary land rights like liens, dividend business rights, residence rights, agricultural leases. Since the implementation of the Agriculture Ministers Ordinance No. 9 of 1965 on the implementation of the conversion of state land ownership rights, it has been known that there are administrative rights and legal persons with administrative rights are Regency / City Governments, Public Enterprises (PERUM), National Housing Settlement (PERUMNAS), PT Pelabuhan Indonesia (Persero), PT Kereta Api Indonesia (Persero), PT Angkasa Pura (Persero), Batam Authority Agency, PD Pasar Surya Surabaya, PD Pasar Jaya DKI Jakarta, PD Sarana Jaya DKI Jakarta, PT Surabaya Industrial

Estate Rungkut (SIER), and PT Pasuruan Industrial Estate Rembang (PIER).

The Management Rights position is the State's Right to control land / land rights. Types of Management Rights came for Ports, Authorities, Housing, Local Governments, Transmigration of Government Agencies, Industry, Agriculture, Tourism, and Railways.

On top of Management Rights, there are Building Use Rights, Use Rights, Ownership Rights that can be granted to a third party or a Department, Bureau, Autonomous Region to carry out their duties.

The position of Management Rights in the National Land Law is divided into 2 (two) groups, namely:

1. Management Rights are State Controlling Rights over Land.
2. Management Rights are aligned with Land Rights [1].

Management rights are not granted to individuals, both Indonesian citizens and foreign citizens residing in Indonesia, private commercial organizations, legal entities established in accordance with Indonesian law and residing in Indonesia, and foreign legal entities with representatives in Indonesia, representatives foreign countries, representatives of international organizations. legal entities, religious and public organizations.

The requirement to own managed land is a legal entity with key obligations and functions related to land management. Management rights can be obtained in the following ways:

1. Conversion.

Management Rights that existed when the Basic Agrarian Law came into effect were derived from the conversion of control Rights or beheer Rights (Minister of Agrarian Regulation No. 9 of 1965). Through the confirmation of conversion, the state land control Rights owned by the Ministry, Directorate, and Autonomous Regions are converted into Management Rights.

2. Granting of Rights to State Land.

Government provisions under Article 1 (8) Minister of Agriculture Regulations/Secretary of the Land Agency No. 9 of 1999 regarding the granting of land rights is the State's rights to land, extension of the term of rights, renewal of rights, It is to give a change of rights, including the granting of land rights with control rights.

The strengthening of land in the Employment Creation Law and the Government Regulation on Management Rights are as follows [2] :

1. On land with Management Rights can be granted land Rights
2. Business Use Rights grant 35 years, the extension of 25 years, and renewal of 35 years.

3. Building Use Rights grant 30 years, the extension of 20 years and renewal of 30 years
4. Building Use Rights to Apartment Units on state land and Management Rights can be granted at the same time with specific conditions
5. Building Use Rights on Management Rights can be requested for extension and renewal with certain conditions
6. Building Use Rights grant 30 years, the extension of 20 years and renewal of 30 years
7. Commercial use rights, building use rights and use rights after the expiration of the grant, renewal and renewal of the land passes into the direct control of the state or HPL.
8. Land which directly controlled by the state after the granting, extension, and renewal finished can be given priority Rights to former Rights holders with certain conditions (P4T arrangement + certain conditions).

Management Rights have 2 (two) authority characteristics, namely:

1. Public Authority: planning the use and handing over part of the Management Rights to third parties.
2. Private Authority, the power to use the land only for the performance of its tasks, the primary purpose is to provide land for use by other parties who need it with a specific right.

Based on Article 2 paragraph (3) of Law no. 21 of 1997 concerning BPHTB, it mentioned that the Management Right and Ownership Right to the Apartments are the Right to land. Article 1 point 3 of Law no. 20 of 2000 stated that Rights to land and buildings are Rights to land, including Management Rights. In addition, section 2 (3) of Law No. 20 of 2000 also states that land rights include property rights, rights to use buildings, rights to use for commercial purposes, rights to use, property rights to apartments and management rights. Government Ordinance No. 40 of 1996 on commercial use rights, building use rights and use rights was issued, one of which is aimed at restoring understanding of the rights to administer public functions [3].

The right of the state to dispose of land is the authority provided for in paragraph (2) of Article 2 of the Basic Agrarian Law, namely:

- a) regulate and manage the purpose, use, supply and maintenance of land, water and space;
- b) defines and regulates the legal relationship between people and land, water and space;
- c) defines and regulates legal relations between people and lawsuits concerning land, water and space.

Also regulated in article 4 paragraphs 1 and 2 of the Basic Agrarian Law.

There are two types of Apartments ownership:

1. Apartment Ownership Certificate / Apartment SHM is the ownership of the apartment on the land that has the ownership, the right to use the business or the right to use the state-owned land, and the right to use the building or the right to manage the land. It's a proof.
2. Certificate of Ownership of the Apartment Building / SKBG Apartment Building is a proof of ownership of the apartment in a state / region property in the form of land for rent or land in Wakaf.

Property rights to apartments can be held by Indonesian citizens, Indonesian legal persons, foreigners who have a permit in accordance with the provisions of the legislation, foreign legal persons who are represented in Indonesia, representatives of foreign countries and international institutions that have or have a representation in Indonesia, are granted to Indonesia.

On the Law of Apartments for Apartment Units [2]:

1. Application of the Horizontal Separation Principle on Ownership of Apartments for Foreigners
2. Building Use of Apartments rights on state land can be extended at once after the issuance of the Letter of Appropriate Function (SLF)
3. Building Use of Apartments rights on the land with Management rights can be extended and renewed after the issuance of the Letter of Appropriate Function (SLF).

Legal protection against the booming tourism industry for the ownership of land rights and tourism investors because land rights described above are still considered too expensive for investors. Therefore, a new agreement model is needed, such as the Build Operate Transfer agreement. (BOT). Build Operate and Transfer (BOT) is a rental right so that the community does not lose its land rights. This new concept is not only Build Operate and Transfer (BOT), but there are other types such as Build Operate Own (BOO), Build Rent Operate Transfer (BROT), Joint Operations (KSO), joint ventures, ruislag. Build Private investors also carry out operations and Transfer (BOT) for hotels, offices, shops, and factories. The agreement in the Build Operate and Transfer (BOT) is a mixed agreement of 3 (three) types of agreement which is a combination of a lease agreement, a profit-sharing agreement, and a grant agreement after the end of the agreement period [4]. All of them still have 4 (four) conditions for the agreement's validity, as in Article 1320 of the Civil Code, namely agreement, competency, certain things, and a lawful cause.

Tourism business investment is growing with the advancement of the Internet of Things and Networking, which changes the way of life by making it possible to work, not having to be in the office but can travel while working. With a laptop, they can enjoy the beautiful

natural scenery to create new inspiration, not only to work in a confined space.

The utilization of land for the benefit of the tourism business turns land for agriculture into a tourism business. Nature, cultural heritage, and traditions support the tourism business so that land ownership also changes in increasing income for the community's welfare from the tourism sector.

The balance of interest theory helps strike a balance between understanding the tourism business and people's welfare. Roscoe Pound's law theory can be implemented as a tool of social engineering by enabling the law to organize the interests in society. In order to achieve a proportional and beneficial balance for the construction of a community structure in such a way as to achieve maximum satisfaction needs with minimum conflict and waste avoidance.

Pound divides into three interest groups: public interest, social interest, and personal interest [5]. The public interest consists of the state's interest as a legal entity and the interest of the state as the guardian of social interests.

Personal/individual interests are private, interests in household relations, substance interests include the protection of ownership rights. Social interests include:

1. Social interest in public safety issues
2. Social interest from the perspective of social system
3. Social interest in general morals
4. Social interest in the safety of social resources
5. Social interest in social progress
6. Social interest in personal life [5]

Tourism is an integral part of national development. It is conducted in a systematic, planned, integrated, sustainable and responsible manner, while still protecting the religious and cultural values living in society.

The development of the tourism industry needs to encourage the equal distribution of business opportunities, obtain benefits, and face the challenges of changing local, national and global lives (Review of Law No. 10 of 2009).

The utilization of land resources must balance understanding the tourism business and the welfare of the people, including public, social, and private interest groups.

- Every tourism entrepreneur is entitled to equal opportunities and legal protection in business and provides a service that is not discriminatory, ensures tourists' security and safety, and provides insurance protection in high-risk activities.
- The Government and Regional Governments are obliged to create a conducive climate for tourism

businesses, to facilitate and provide legal certainty.

- Every person is obliged to help create a safe atmosphere, orderly, clean, behave courteously and maintain environmental sustainability of tourism destinations.
- Every tourist is obliged to maintain and respect the rule of religion, tradition, culture, and values in the local community.

(Articles 22-26 of Law No.10 of 2009)

Land ownership for tourism business investment is sometimes still considered burdensome, so investors will choose land ownership that is not burdensome, namely by purchasing a Limited Liability Company for land with Building Use Rights, Use Rights, Management Rights because on land with Management Rights can be granted Business Use Rights, Building Use Rights, Certificate of Ownership of Apartments, and Lease Rights. This Lease right is what investors are more interested in to realize a tourism business with a Build Operate and Transfer (BOT) agreement model, and the community does not lose their land rights.

Although the Employment Creation Law contains substances regarding land, namely the Spatial Planning and Land Cluster, the Cluster for Strengthening the Concept of Management Rights, the Apartments Unit Cluster, the Cluster for the Establishment of a Land Bank, the Land Rights Cluster also provides support for improving the investment system and business activities, including simplifying business licenses with Online Single Submission (OSS) so that licensing can be done online.

The Employment Creation Act coordinates regulations in the area of land acquisition. However, some agreements have an effort called the Nominee Agreement, which is an agreement between foreigners and Indonesian citizens as a means of acquiring land ownership by foreigners, so Article 26 paragraph (2) of the Basic Agricultural Law. For the party who committed the serious breach, the substance is an indirect transfer of rights from Indonesian citizens to foreign citizens [6].

The tourism business provides confidence that this business is promising for investment or investing for the welfare of the people, which has national and international reach and is a business that has high uniqueness and moves continuously to follow the situation and conditions of the community to meet tourism needs [7].

Tourism is an overall activity related to tourism. It is multi-dimensional and multi-disciplinary. It appears as the embodiment of the needs of each person and each country, as well as the interaction between tourists, communities and entrepreneurs, and presents a good trend with governments and regional governments. So tourism is provided to provide the best service to tourists.

These services must regulate the interaction of all components of tourism, such as tourists, communities, entrepreneurs, government, and local governments, and each has a responsibility for the common good and welfare.

4. CONCLUSION

In the current era of globalization, land ownership has changed not only for the benefit of agriculture and plantations but also for trading commodities, mining, and the tourism industry. The importance of land causes many land disputes, the economic value of land increases, and the number of residents increases so that the land mafia has grown. However, the government has issued many provisions regarding land ownership and tourism through laws, government regulations, Presidential Instruction Decrees, Ministerial Decrees, Decrees of the Head of the Land Agency, and the Omnibus Law. There has been no harmonization between these regulations so that they have not regulated the protection of tourism investment. And land ownership. Land ownership for tourism business investment needs to be revised to balance land ownership and land use for tourism business interests.

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