

The Legal Responsibility of the Management Company on the Economic Rights of Local Residents in Special Economic Zones (SEZ) for Tourism in Indonesia

Tina Amelia

Borobudur University

Corresponding author. Email: tinaamelia3009@gmail.com

ABSTRACT

The Special Economic Zone (SEZ) of the Tourism Zone, which embodies the growth and implementation of national economic development, has determined its area. This process will not be created if the development and management companies and residents do not cooperate. Fulfilling the economic rights of residents is a legal way of accountability for companies with rights and authorities. A firm form of responsibility is needed in obtaining legal certainty by residents. This research was conducted using a legal research method *juridical-normative* with a literature study. The study results show that the management company's legal responsibility for the economic rights of residents in the Special Economic Zones (SEZ) for tourism in Indonesia has been regulated in the tourism legislation and not yet in the regulations SEZs. Criminal and civil sanctions are needed to provide firm legal obligations to building and managing companies for the welfare of citizens.

Keywords: *Development and Management Companies, Economic Rights, Local Residents, Special Economic Zones, Tourism.*

1. INTRODUCTION

Economic development that is advancing day by day is a reality of the impact of industrial globalization that cannot be ignored. The Republic of Indonesia, which is part of this, has long carried out the growth and implementation of national economic development to prosper justice and prosperity for the nation and its people. The goal of welfare is stated in the Constitution of the Republic of Indonesia, namely the preamble to the 1945 Constitution stating the purpose of the state of the Republic of Indonesia is to "*...protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare, educate the nation's life, and participate in carrying out the order. world... "*

In fulfilling this welfare, the state represented by the government has carried out programs and activities to accelerate national economic development based on economic democracy. One form of this commitment is the presence of Special Economic Zones (SEZs). Based on Article 1 number 1 of Law Number 39 of 2009 concerning Special Economic Zones, that "Special Economic Zones, hereinafter referred to as SEZs, are areas with certain boundaries within the legal territory of the Unitary State of the Republic of Indonesia which are

determined to carry out economic functions and obtain certain facilities. ". According to <https://kek.go.id/>, in its development, this SEZ is divided into two (2), namely the Tourism zone SEZ and the Industrial zone SEZ.

The Tourism Zone SEZ is an area designated for tourism business activities to support the implementation of entertainment and recreation, meetings, incentive trips, exhibitions, and related activities. The importance of the role of tourism in economic development in various countries is no longer harmed. Since the last few years, many countries have taken tourism seriously and have made tourism a sector for job acquisition and poverty alleviation. The purpose of tourism activities or tourism itself is in line with the constitutional mandate of the 1945 Constitution of the Republic of Indonesia. In Article 4 of the Law of the Republic of Indonesia, Number 10 of 2009 concerning Tourism, Tourism aims to: a. increase economic growth; b. improve people's welfare; c. eradicating poverty; d. overcoming unemployment; e. conserving nature, environment, and resources; f. promote culture; g. raise the image of the nation; h. foster a sense of love for the homeland; i. strengthen national identity and unity, and J. strengthen international friendship.

Meanwhile, tourism is a variety of activities supported by various facilities and services provided by the community, businessmen, government, and local governments. The tourism development principles do not escape from upholding religious norms, cultural values, human rights, cultural diversity, the environment, natural preservation, and local wisdom. The entrepreneur, as one of the business actors in tourism economic development, will be involved. It is hoped that it will give its role in realizing economic independence that impacts the community's welfare. Based on Article 33 of the 1945 Constitution of the Republic of Indonesia refers to the principles of the national economy based on kinship, namely togetherness, efficiency, justice, sustainability, environmental insight, independence by maintaining a balance of progress and national economic unity and tourism principles.

The process of developing the Exclusive Economic Zone (SEZ) of the Tourism Zone, hereinafter referred to as the Tourism SEZ, will not escape the development process until its management is handed over to the entrepreneurs. This is based on the provisions of the regulations on Special Economic Zones, which in the initial process of formation, development, and management include the nomenclature of "Business Entities," which can be said to be actors directly involved in building Tourism SEZs. Although the appointment of a business entity to build and manage a Tourism SEZ is based on the provisions of the applicable legislation. Regulations that can be used as references include 1. Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, 2. Law Number 39 of 2009 concerning Special Economic Zones, 3. Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning the Implementation of Economic Zones Special.

It is well known that in a state administration, accountability will indeed be attached to every person, whether the head of government, officials, companies, and other legal subjects who have the authority to carry out activities of a public nature. The theory of legal responsibility reads *geenbevegedheid Zonder verantwoordelijkheid; there is no authority without responsibility; la sulthota if mas-ulyat* (no authority without accountability). The management company in the Tourism SEZ is, of course, a legal entity and has legal protection by the state and the rights that cover it. The development and management process will get their authority if the obligations written in the applicable regulations are carried out correctly.

Because this will later be related to the welfare of the local community in the Tourism SEZ that is built and managed, until the middle of 2021, it is known that as many as seven (7) Tourism SEZs have been established by the government, complete with regulations and managing companies. These seven SEZs are spread over different areas, including Tanjung Lesung SEZ (Banten), Mandalika SEZ (NTB), Tanjung Kelayang SEZ (Bangka Belitung), Morotai SEZ (North Maluku), Singhasari SEZ

(East Java), Likupang SEZ. (North Sulawesi) and the Nongsa SEZ (Riau Islands).

The distribution in developing areas will raise the question of how to improve the welfare of the local community there? Moreover, what guarantees or even legal sanctions can be imposed if the objectives of the development of the Tourism SEZ do not fulfill the economic rights of the people there?. Of course, these questions will be pinned to business entities that are one of the proposers for determining a Tourism SEZ area and are given authority in the development and management process by the state (government).

The economic rights of local communities are closely related to existing legal principles, human rights, and tourism development norms. As regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that: "Every citizen has the right to work and a decent living for humanity" and Article 28D paragraph (2) which stipulates that: "Everyone has the right to work and get fair and proper remuneration and treatment in an employment relationship." Furthermore, Article 19 of the Tourism Law states that the community has priority rights: a. Become a worker; b. Consignment; and/or; c. Management. It can be said that the economic rights of the local people of the Tourism SEZ are not impossible to be vulnerable to violations of norms and laws if the stages of benefit and legal justice that have been promulgated are not fulfilled later. For this reason, this study will analyze what legal certainty should be obtained by the local community of the Tourism SEZ in legal liability by the management company.

The research method used in this research is law research *juridical-normative*, with library materials that include primary legal materials, namely the 1945 Constitution, the Republic of Indonesia Law Number 19 of 2003 concerning State-Owned Enterprises, the Republic of Indonesia Law Indonesia Number 11 of 2005 concerning Ratification of the *International Covenant On Economic, Social and Cultural Rights International Covenant on Economic, Social and Cultural Rights* (), Law Number 40 of 2007 concerning Limited Liability Companies, Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, Law Number 39 of 2009 concerning Special Economic Zones, Law Number 11 of 2020 concerning Job Creation, Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning Implementation of Special Economic Zones, Government Regulation Number 26 of 2012 concerning Special Economic Zones of Tanjung Lesung , Government Regulation of the Republic of Indonesia Number 50 of 2014 ng Morotai Special Economic Zone, Government Regulation of the Republic of Indonesia Number 52 of 2014 concerning Mandalika Special Economic Zone, Government Regulation of the Republic of Indonesia Number 6 of 2016 concerning Tanjung Kelayang Special Economic Zone, Government Regulation of the Republic of Indonesia Number 68 of 2019 concerning Singhasari Special Economic Zone, Regulation Government of the Republic of Indonesia

Number 84 of 2019 concerning the Likupang Special Economic Zone, Government Regulation of the Republic of Indonesia Number 68 of 2021 concerning the Nongsa Special Economic Zone. Then secondary legal materials, including previous legal studies, legal books, scientific journals, and other legal materials, then tertiary legal materials, including Indonesian language dictionaries and encyclopedias.

The problem formulation that can be discussed in this research is What is the Legal Responsibility of the Management Company on the Economic Rights of Local Residents in Special Economic Zones (SEZ) for Tourism in Indonesia?

2. RESULT AND DISCUSSION

2.1. The Legal Responsibility of the Management Company on the Economic Rights of Local Residents in Special Economic Zones (SEZ) for Tourism in Indonesia

Responsibilities of managing companies' regulations related to tourism SEZ management companies can be seen in several related regulations. *First*, before knowing about the legal responsibility for its management. In advance, it is necessary to know the relationship between the responsibilities of the SEZ management company, which will not be separated from the rights and obligations that already exist on the development side. The name "Business Development and Management Agency" became an inseparable unity in building the Tourism SEZ itself. This can be seen from the seven (7) Tourism Economic Zones (KEK) regulated by: a. PP. No. 26 of 2012, b. PP. No. 50 of 2014, c. PP No. 52 of 2014, d. PP No. 6 of 2016, e. PP. No. 68 of 2019, f. PP. No. 84 of 2019, and g. PP. No. 68 of 2021. They all use the nomenclature of "Business Development and Management Entities" in developing the Special Economic Zones (SEZ) for Tourism in each region. The birth of the term came from a higher regulation, namely Law Number 39 of 2009 concerning Special Economic Zones, which was last amended by Law Number 11 of 2020 concerning Job Creation in Article 10 CHAPTER IX concerning Economic Zones, the second part concerning Special Economic Zones which contains, that after the SEZ is established:

- a. Business Entities that propose SEZs are designated as builders and managers;
- b. As the proposer, the Central Government or Regional Government shall determine the Business Entity to build and manage the SEZ.

Article 26 number (1) further informs about the duties of the business entity, namely:

- a. Build and develop facilities and infrastructure within the SEZ;
- b. Administering the management of facilities and infrastructure services to Business Actors; and

- c. Conducting promotions.

Business Entities are companies with legal entities in the form of State-Owned Enterprises, Regional-Owned Enterprises, cooperatives, private companies in the form of limited liability companies, and joint ventures or consortia to carry out SEZ business activities. Considering legal entities as legal subjects. So, rights and obligations are attached to them. Regarding rights, there is Article 22 of the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism which stipulates that every tourism entrepreneur has the right to:

- a. Get equal opportunities in doing business in the tourism sector;
- b. Form and become a member of a tourism association;
- c. Get legal protection in doing business; and
- d. Obtain facilities by the provisions of the legislation.

Then, Article 26 regulates the obligations of tourism entrepreneurs in:

- a. Maintain and respect religious norms, customs, culture, and values that live in the local community;
- b. Provide accurate and responsible information;
- c. Provide non-discriminatory services;
- d. Provide comfort, friendliness, security protection, and safety of tourists;
- e. Provide insurance protection for tourism businesses with high-risk activities;
- f. Develop partnerships with local micro, small and cooperative enterprises that need, strengthen and benefit each other;
- g. Prioritizing the use of local community products, domestic products, and providing opportunities for local workers;
- h. Improve the competence of the workforce through training and education;
- i. Take an active role in efforts to develop infrastructure and community empowerment programs;
- j. Participate in preventing all forms of actions that violate decency and activities that violate the law in the environment where the business is located;
- k. Maintain a healthy, clean and beautiful environment;
- l. Maintain the preservation of the natural and cultural environment;
- m. Maintain the image of the Indonesian state and nation through responsible tourism business activities; and
- n. Apply business standards and competency standards by the provisions of laws and regulations.

Although the Tourism Law does not regulate the responsibility of managing companies and a different

term, namely tourism entrepreneur, it can be interpreted the same function and behavior because both must carry out business activities or activities in the tourism zone. A tourism area business is a business whose activities are to build and/or manage an area with a specific area to meet tourism needs. In practice, the tourism entrepreneur is the tourism management company itself, widely known as a business entity. Referring to the term corporation related to the company by A. Abdurahman, a corporation is a legal entity or a moral entity created according to the laws of a country to carry out a business or activity or other legitimate activities.

Furthermore, two on the letters f, g, h, and i above can be regarded as a form of responsibility of the management company Tourism in fulfilling the right to local community economy in KEK Tourism constructed and managed, given no rights priorities for residents around the place of business or activity tourism is done. Residents or local communities live in tourism destination areas and are prioritized to benefit from implementing tourism activities in those places. It was looking at the perception of the broader legislation regarding corporate responsibility. The term is known, *Corporate Social Responsibility (CSR)*, a form of contribution from the business world in helping the state fulfill the community's economic rights. CSR itself is regulated in several laws and regulations in Indonesia. As in Law no. 25 of 2007 concerning Investment, Law no. 40 of 2007 concerning Limited Liability Companies, and Law no. 4 of 2009 concerning Mineral and Coal Mining. Although these rules still do not concretely "oblige" all business entities or classifications that are legal or non-legal entities and separate what business activities are required to carry out CSR and not.

Back to the right to the economy, which is a state's responsibility in fulfilling its citizens. Indonesia has carried out the ratification of the rules regarding the right to the economy through Law no. 11 of 2005 concerning the Ratification of the ICESCR. It can be seen in Part II of Articles 6 and 7, which regulates the role of the state in charge of fulfilling the economic rights of its citizens, such as the right to work, the right to earn a living, and rights that are and favorable in working conditions to ensure a decent living. The fulfillment of the economic rights of residents in the tourism SEZ by the Management Company is a "form of responsibility that must be fulfilled" by them from the author's point of view. Look at the table below:

From the table above, several things can be drawn that support the strengthening of the argument about the responsibility of the management company for the economic rights of residents in the Tourism SEZ that is being/has been built as follows:

- 1) All the development and management process is carried out by business entities with legal entities, both private and state and regional,

which have been stipulated by the government using a government regulation.

- 2) Article 5 of the Employment Creation Law concerning Exclusive Economic Zones stipulates that the elements of SEZ formation are proposed to the National Council by Business Entities or Regional Governments. Look at each Government Regulation table above. Business entities in the Tourism SEZs 1 to 3 are the proponents of the SEZ determination there. While the National Council proposed the Tourism SEZ numbers 4 to 6 and the last number 7 because the area is located in the Free Trade Area and Free Port (KPBPB).
- 3) The operating status has been fully operational except for the Nongsa SEZ, which has just been promulgated. Revocation and cancellation of Zones can be carried out in tourism SEZs by the National Council for Special Economic Zones, which are not ready to operate until the time specified in the relevant regulations. Moreover, it can even replace the business entity if it is still not operating.

Finally, the realization of legal certainty can be guaranteed for the economic rights of residents of the Tourism SEZ if there are binding sanctions regulations in the relevant laws and regulations. Legal certainty can be achieved if:

1. There are clear, consistent, and accessible legal rules;
2. Ruling agencies (government) apply these legal rules consistently and are also subject to and obey them;
3. Citizens, in principle, adjust their behavior to the rules.
4. Independent and impartial judges (judicial) apply these legal rules consistently whenever they resolve disputes;
5. Judicial decisions are concretely implemented;

Regarding the sanctions in Article 63 of the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, it is regulated:

- (1) Every tourism entrepreneur who does not meet the provisions as referred to in Article 15 and/or Article 26 is subject to administrative sanctions.
- (2) The administrative sanctions as referred to in paragraph (1) are in the form of:
 - a. written warning;
 - b. limitation of business activities; and
 - c. temporary suspension of business activities
- (3) The written warning as referred to in paragraph (2) letter a shall be imposed on the entrepreneur at most (three) times.

- (4) Sanctions for limiting business activities are imposed on entrepreneurs who do not comply with the warning, as referred to in paragraph (3).
- (5) The sanction of temporary suspension of business activities is imposed on entrepreneurs who do not meet the provisions as referred to in paragraphs (3) and (4). This regulation on Tourism only regulates administrative sanctions. As Article 34 paragraph (1) of Law no. 25 of 2007 concerning Investment also regulates administrative sanctions on business entities in the form of:
 - a. written warning;
 - b. limitation of business activities;
 - c. freezing of business activities and/or investment facilities; or d. revocation of business activities and/or investment facilities.

Civil and criminal sanctions need to be regulated to provide a sense of legal protection both preventively and repressively to the injured party. Because the tourism management companies in this SEZ are all legal entities, it can be ascertained that even though no related regulations govern the matter of civil sanctions due to his responsibility as a legal subject. Suppose there is a violation of the law. In that case, an unlawful act can be imposed by referring to the provisions of Article 1365 of the Civil Code, "Every act that violates the law and brings harm to others, requires the person who caused the loss because of his mistake to replace the loss." While in Article 74 number (3) The Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies only regulate the existence of sanctions imposed on companies that do not carry out obligations related to CSR without providing clarity on what sanctions and in what form. Criminal sanctions themselves as a *last resort* should be regulated in a particular law or in a law/PERPU/perda to make or change the existing one. As for the provisions for criminal acts against the law of a general nature/public nature, there is a violation of the public interest (the possibility remains of a violation of individual interests) as long as it is regulated in the regulations governing criminal law.

Article 66 points 1 and 2 of the Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning the Implementation of Special Economic Zones regulates the following: (1) The managing Business Entity as referred to in Article 65 shall carry out SEZ management based on the SEZ management agreement between the Business Entity and the Regency/Municipal Government, Provincial Government, or National Council/ministry/non-ministerial government agencies. (2) The agreement referred to in paragraph (1) shall at least contain a. scope of work; b. period; c. service performance standards; d. sanctions; e. implementation of SEZ services in the event

of a dispute; f. termination of the agreement by the Regency/City Regional Government, provincial. Regional Government, or the National Council/Ministry/Non-Ministerial Government Agencies in some instances; g. SEZ operational management; h. termination of the agreement; i. accountability for state/regional property; and j. handover of assets or infrastructure by the managing Business Entity to the ministry/non-ministerial government agency, provincial, regional government, or regency/municipal, regional government after the management cooperation ends.

An *agreement* is a legal activity that is civil because it will also have a legal impact on the parties. Then, the conditions for the agreement's validity must be by Article 1320 of the Civil Code. According to the author, as long as the terms of "sanctions" are included in the management company agreement, the provisions can be justified as long as the sanctions that regulate must be by existing laws and regulations and do not include criminal sanctions into them (made by themselves by violating the principle of criminal legality) so that the realization Because by the provisions of the formation of legislation that has the right to include criminal sanctions only local laws and regulations.

3. CONCLUSION

Based on the analysis above, the conclusions of this research can be described as follows:

- (1) The legal responsibility of the management company for the economic rights of residents in the Special Economic Zones (SEZ) for tourism in Indonesia. It has been constitutionally regulated in the 1945 Constitution of the Republic of Indonesia in the Preamble, Articles 27 and 33. Although it does not regulate management companies, in a broader sense, everyone (all legal subjects) realizes "general welfare" with a sustainable national economy. It is based on family and economic democracy.
- (2) Special Economic Zones (SEZ), a national priority agenda to accelerate national economic development, is not alone in carrying it out by focusing on Tourism zones. The determination of the Business Entity as the developer and management company by the government in building the 7 Tourism SEZs, including the Tanjung Lesung SEZ (Banten), Mandalika SEZ (NTB), Tanjung Kelayang SEZ (Bangka Belitung), Morotai SEZ (North Maluku), Singhasari SEZ (East Java), SEZ Likupang (North Sulawesi) and SEZ Nongsa (Riau Islands) which are based on Law Number 39 of 2009 concerning Special Economic Zones which was last amended by Law Number 11 of 2020 concerning Job Creation CHAPTER IX

concerning Areas The second part of Economics is about Special Economic Zones, and Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning the Implementation of Special Economic Zones and also Government Regulations in each region.

- (3) With the authority given, the rights and obligations of the business entity and the responsibilities attached to it are born. In terms of the economic rights of residents in the Tourism SEZ, this is due to the priority rights of residents. It starts from the responsibility for developing MSMEs, the absorption of local workers, community empowerment, and Corporate Social Responsibility (CSR). However, the existing obligations are not complete with criminal and civil sanctions, which are the legal binding function to achieve legal certainty in fulfilling the economic rights of the residents. Only administrative sanctions have been promulgated, and even then, it is still in the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism. By taking into account the rights and material benefits obtained by the management company of the 7 Tourism SEZs. There is a need for a policy requirement by the government either by regulating, making, or amending the Law on KEK/Perda in which the provisions of "Sanctions" are enacted, both criminal (preferred), civil, as well as reviewing administrative sanctions concretely and straightforwardly. In order to create a just and prosperous Indonesian society.

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