



# The Legal Certainty of Right to Manage the Mandalika Special Economic Zone

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**Abstract.** A Special Economic Zone is a zone under the authority of the Republic of Indonesia's Unitary State that is designated for the execution of economic obligations and the receipt of certain amenities. Mandalika Special Economic Zone was established as a tourism zone in Punjut District, Central Lombok Regency, West Nusa Tenggara Province by Government Regulation 52 of 2014. The purpose of this research is to determine the legal status of management rights in the Mandalika Special Economic Zone. The normative legal research technique was used, and secondary data was qualitatively assessed. The findings of the study indicated that the land status of the Mandalika Special Economic Zone was compliant with national land legislation, particularly land tenure of right to manage by Indonesia Tourism Development Corporation as the official holder of the right to manage certificate. In contrast, Gema Lazuardi claimed ownership of a 60-acre block of property in this Special Economic Zone. The land issue was finally resolved in court. The land at issue in the dispute has been acknowledged legal right to administrate by the Indonesia Tourism Development Corporation, according to the Decision of the Supreme Court of the Republic of Indonesia Number 634 K/Pdt/2022. Because it provided legal certainty, the certificate of right to manage was the most important proof of land ownership.

**Keywords:** land · right to manage · special economic zone · legal certainty

## 1 Introduction

It is vital to carry out sustained national economic growth in order to establish a fair and affluent society. The passage of Law Number 25 of 2007 on Capital Investment establishes restrictions to hasten the attainment of national economic growth. A plan is required to accelerate economic growth in certain sectors that have a favorable influence on national economic development.

Article 31 of the Law No. 25 of 2007 on Capital Investment emphasizes the need of establishing Special Economic Zones. According to Special Economic Zones Law Number 39 of 2009, special economic zones are areas with specific limits within the Republic of Indonesia unitary state that are designated to carry out economic duties and acquire certain benefits. This zone was established to boost Indonesian industrial, export, and import activities.

The establishment of a Special Economic Zone (SEZ) is proposed to the National Council by a) business entity, b) district/city government, or c) provincial government. The proposed site must meet some criteria, including;

1. Adheres to the regional spatial plan and has no potential to disrupt the protected area,
2. The appropriate provincial/district/city government supports the sez,
2. Be positioned near international trade routes or international shipping lanes in indonesia, or be located in locations with higher resource potential, and
3. Have defined borders.

The requirements for proposed SEZ locations under Law Number 11 of 2020 for Job Creation are as follows:

1. Are permitted by the Regional Spatial Plan and have no potential to disrupt the protected area
2. Establish clear limits
3. At least 50% of the projected SEZ land has been totally or partially controlled.

If the proposed SEZ establishment is approved by the National Council, it submits a recommendation to the President. Furthermore, the establishment of SEZ is stipulated by a Government Regulation. Once established, the SEZ must be ready to operate within three years from the date of stipulation. Currently there are 19 SEZs, those are: 1) Sei Mangkei SEZ; 2) Tanjung Lesung SEZ; 3) Palu SEZ; 4) Mandalika SEZ; 5) Galang Batang SEZ; 6) Arun Lhokseumawe SEZ; 7) Tanjung Kelayang SEZ; 8) Bitung SEZ; 9) Morotai SEZ; 10) Maloy Batuta Trans Kalimantan (MBTK) SEZ; 11) Sorong Each of these SEZs governs the commercial activities that can be carried out in SEZs, namely: a) production and processing; b) logistics and distribution; c) technology development; d) tourism; e) education; f) health; g) energy; and/or h) other economies.

The author concentrates especially on the Mandalika SEZ, a tourism zone with diverse types of tourism activities backed by various facilities and services, in this research. The provision of land for the Mandalika SEZ is carried out in a variety of methods, depending on the available land and the parties that want the land. In this scenario, it is important to recall that there is a concept in Land Law that states that "land tenure must have a foundation of rights by anyone, and for any purpose," which implies that land tenure must be legitimate in the sense that the basis for its control is legal. As a result, prior to the Mandalika SEZ's development, the Indonesia Tourism Development Corporation (business) purchased property for the SEZ, among other things, by ceding land rights.

The Mandalika SEZ's property is now managed by that corporation, but various parties have launched a case in court challenging the company's ownership of the site. In this regard, the study questions in this article are how the land for the Mandalika SEZ is classified under national land law and how the legal certainty of the right to administer the Mandalika SEZ is based on the Decision of the Supreme Court of the Republic of Indonesia Number 634 K/Pdt/2022.

## 2 Method

This study employs a normative legal research design, with secondary data evaluated qualitatively. The author employs the legislative method and the case approach in her study. Because the research is analytical descriptive in character, the author presents the Legal Certainty of the Mandalika SEZ's Right to Manage by documenting the conflicts that are addressed through the courts.

## 3 Result and Discussion

### 3.1 Land Status for Mandalika SEZ in Terms of National Land Law

#### 3.1.1 Mandalika SEZ

Mandalika SEZ was formed based on Government Regulation number 52 of 2014. It is located in the Pujut District, Central Lombok Regency, West Nusa Tenggara Province, with an area of 1,035.67 hectares and with the following boundaries:

1. In the north, it is bordered by Kuta Village, Sukadane Village, and Mertak Village.
2. In the east, it is bordered by Mertak Village and Sengkol Village.
3. In the south, it is bordered by Kuta Bay, Serenting Bay, and Aan Bay.
4. In the west, it is bordered by Kuta Village, Pujut District.

The Mandalika SEZ Management Business Entity is the Indonesia Tourism Development Corporation (company), which is in charge of establishing and developing facilities and infrastructure inside the SEZ, as well as managing facility and infrastructure services for business actors and arranging promotions. Given that the Mandalika SEZ is a tourism zone, the Indonesia Tourism Development Corporation focuses on tourist attractions, tourist transportation services, travel services, food and beverage services, lodging provision, entertainment and recreational activities, tourist information services, tourism consulting services, tour guide services, water tourism, and organizing meetings, incentive trips, conferences, and exhibitions. For example, the Grand Prix Motorcycle Racing (MotoGP) was staged in Mandalika in 2022 and was deemed a success. In addition, various additional events in Mandalika have been well-organized and favorable.

The development of the Mandalika SEZ has contributed to regional economic development, increased community welfare, and regional income. It is projected that the Mandalika SEZ will be able to contribute Rp. 7.5 trillion and contributes to the tourism sector's GDP of Rp. 16.69 trillion. However, it is necessary to anticipate that the environmental dimensions of the Mandalika SEZ can impact pollution and the availability of clean water.

Mandalika SEZ, as a special economic zone for tourism, especially marine tourism, has been prepared since Law No. 39 of 2009, specifically with Government Regulation 52 of 2014, but has experienced problems acquiring land. Initially, in 1990, land acquisition was carried out by PT Rajawali Indonesia (state-owned enterprises). However, when a monetary crisis hit Indonesia, all files of PT Rajawali Indonesia, including land assets, were taken over by the Minister of Finance. As a result, the land was used for the Mandalika SEZ with the managing business entity, the Indonesia Tourism Development Corporation.

### **3.1.2 Land Acquisition for Mandalika SEZ**

Basically, the acquisition of land for development has been regulated in the National Land Law. If the available land is state land, then the land acquisition is carried out by applying for rights. Meanwhile, if the available land is private land, it is necessary to pay attention to what types of land rights are available, who needs the land, and the willingness of the land owner to relinquish his land rights or not. This means, if the land is available with private land, then the method of obtaining the land can be done by agreement with the land owner, transfer of rights, relinquishment of rights, or revocation of rights, as long as the provisions are met.

At the time the Indonesia Tourism Development Corporation carried out land acquisition activities, the available land was in dry and arid conditions. There is land that is controlled by the population based on pipil or girik (land tax certificate), there is also based on a Village Certificate. Recognition of land ownership by community members appeared when the location was being developed into the Mandalika SEZ.

The Indonesia Tourism Development Corporation's land purchase method takes into account the state of available land. The corporation has filed an application for rights to property directly held by the state. Meanwhile, in the event of available land with proprietary rights, land purchase is accomplished by the release of rights, also known as relinquishment of rights. The agreement on the value of compensation is one of the hurdles encountered while abandoning rights. Furthermore, for property rights that may be possessed by legal companies, the Indonesia Tourism Development Corporation obtains land through land rights transfer, i.e. purchasing and selling.

### **3.1.3 Land Control of the Mandalika SEZ with Right to Manage**

The constitution governs the ease with which land for the Mandalika SEZ may be obtained. Given that the SEZ was created by preparing an area with geoeconomic and geostrategic advantages and functions to accommodate activities with high economic value and international competitiveness, land acquisition for the SEZ's development was necessary. Mandalika has been designated as the subject of a national strategic project in accordance with Government Regulation No. 3 of 2016, Government Regulation No. 58 of 2017, Government Regulation No. 56 of 2018, and Government Regulation No. 109 of 2020 concerning the Acceleration of the Implementation of National Strategic Projects. So, land purchase is standardized by Law Number 2 of 2012 about Land Purchase for Public Interest, however under this Law, SEZ development does not include public interest initiatives. However, special economic zones initiated and/or controlled by the central government, regional governments, business entities state-owned or regionally-owned enterprises, including public interest, have been established since the enactment of Government Regulation No. 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest, which is an implementing regulation of Law Number 11 of 2020 concerning Job Creation.

Land acquired for the Mandalika SEZ has been granted Right to Manage under Government Regulation Number 96 of 2015 in conjunction with Government Regulation Number 12 of 2020 concerning Facilities and Ease in Special Economic Zones, which

must be followed by registration of land rights of management at the Land Office so that a certificate of right to manage can be issued.

According to Boedi Harsono, the right to manage is the mastery of the state's right to control. The term right to manage comes from the Dutch language, namely *beheersrecht*. The authority of the holder of the right to manage is to prepare a plan for the allocation, use, and utilization of land according to the spatial plan; use and utilize all or part of the land with right to manage for their own use or in cooperation with other parties, and determine the annual obligatory rate and/or money from other parties in accordance with the agreement. In this case, the right to manage of the Mandalika SEZ can be cooperated with other parties, namely business actors with right to build or right to use.

According to the preceding definition, the Mandalika SEZ's land status is suitable for management, with its subject being the Indonesia Tourism Development Corporation. In line with the norms of national land law, the Indonesia Tourism Development Corporation has controlled the land; the power to manage on behalf of the Indonesia Tourism Development Corporation has been verified.

### **3.2 The Legal Certainty of the Right to Manage the Mandalika Special Economic Zone According to the Decision of the Supreme Court of the Republic of Indonesia Number 634 K/Pdt/2022**

#### **3.2.1 The Description of the Case and the Verdict**

Land tenure can be given legal certainty by written land law and land registration. Given that the Indonesia Tourism Development Corporation already possesses a Right to Manage certificate number 88 on land under its control, legal certainty should have been achieved. However, this is not yet the case, because, in addition to the Indonesia Tourism Development Corporation's Right to Manage, another party, Gema Lazuardi, claims to hold 60 acres of property in Dusun Ujung, Kuta Village, under the Indonesia Tourism Development Corporation's Right to Manage. Gema Lazuardi claimed that the Indonesia Tourism Development Corporation's inclusion of Gema Lazuardi's land in Certificate of Right to Manage number 88 was an illegal act.

Through the evidence in court, the Praya District Court Decision number 102/Pdt.G/2020/PN Praya dated May 6, 2021, decided that Gema Lazuardi had committed an unlawful act and the documents owned by Gema Lazuardi were declared legally defect and invalid. Then Gema Lazuardi appealed to the Mataram High Court; Mataram High Court Decision number 136/Pdt/2021/PT MTR dated July 27, 2021 reinforced the Praya District Court Decision number 102/Pdt.G/2020/PN Praya. Furthermore, Gema Lazuardi filed an appeal to the Supreme Court. The Supreme Court number 634 K/Pdt/2022 rejected the cassation of the applicant Gema Lazuardi and sentenced the applicant to pay court fees. The Supreme Court declared valid the right to manage land number 88 for the Indonesia Tourism Development Corporation.

#### **3.2.2 The Legal Certainty of the Right to Manage the Mandalika SEZ**

Supreme Court Decision number 634 K/Pdt/2022 has declared valid the right to manage land number 88 for Indonesia Tourism Development Corporation. It shows the legal certainty of Right to Manage number 88, but as mentioned earlier that the Mandalika

SEZ is located on a land area of 1035.67 ha, then Indonesia Tourism Development Corporation must take care of land registration until it is completed, so that all the land is Right to Manage certified. The certificate serves as proof of rights as a strong evidence. As long as the opposite cannot be proven, the physical data and juridical data are accepted as correct data. The existence of legal certainty obtained from the existence of a certificate, then the right holder gets legal protection.

Lon Fuller in his book *The Morality of Law*, argues that legal certainty is certainty over the law itself. That is, the law must contain regulations that can be understood, announced, and the regulations must not be retroactive. The rules made must not conflict and must not change frequently. Then it is important to apply, that the implementation of the regulations is in accordance with the promulgated regulations.

The Indonesia Tourism Development Corporation as a business entity that organizes SEZ business activities is required to control the right to manage with the strongest evidence, because on the right to manage land will be carried out in collaboration with business actors. If the land where the business actor carries out their activities but there is no clear legal certainty regarding the land, it will certainly reduce investment interest in the Mandalika SEZ. This can result in the goal of establishing SEZs to accelerate regional development, economic growth and creating jobs, not being achieved.

## 4 Conclusion

The status of land controlled by the Indonesia Tourism Development Corporation is in accordance with national land law, which is controlled with Right to Manage. According to the Supreme Court Decision number 634/K/Pdt/2022, Indonesia Tourism Development Corporation has obtained legal certainty of land tenure of right to manage with the certificate of Right to Manage number 88 in facing a lawsuit from Gema Lazuardi. To increase the investment interest of business actors in the Mandalika SEZ, not only infrastructure is needed, but also legal certainty is important to realize.

## Bibliography

1. Satrio, Muhammad Arief (2021). Upaya Pemerintah Indonesia dalam Meningkatkan Pariwisata Mandalika Melalui Kerangka Branding 'Wonderful Indonesia'. *Indonesian Perspective*, Vol. 6, No. 1 retrieved from [ejournal.undip.ac.id](http://ejournal.undip.ac.id).
2. Sibuea, Harris Y.P. (2019). Legal Aspect of The Implementation of Land Acquisition for Development on Tourism Special Economic Zone. *Jurnal Negara Hukum*, Vol. 10, No. 2 retrieved from <http://download.garuda.kemdikbud.go.id/article.php>.
3. Harsono, Boedi (2013). *Hukum Agraria Indonesia Sejarah Pembentukan Undang Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Penerbit Universitas Trisakti.
4. Hayati, Sri.,et.al (2022). *Politik Hukum Pertanahan Di Indonesia*. Jakarta: Penerbit Kencana.
5. Fadli, Muhammad (2021). The Essence of National Legislation Program to Realize The Good Establishment Planning of Laws in Indonesia Hasanuddin University, Makassar retrieved from [repository.unhas.ac.id/id/eprint/5335/2/B013172010](http://repository.unhas.ac.id/id/eprint/5335/2/B013172010).

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