



## Provision of Business Permit for Utilization and Management of Raw Water in Coastal Areas (Study of Cooperation Agreement on Provision and Distribution of Clean Drinking Water between PDAM North Lombok Regency with PT. Tiara Cipta Nirwana)

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### **Abstract**

This study aims to analyze the issue of licensing raw water management in the coastal areas in the 3 dyke area in North Lombok Regency. This type of research is normative legal research with a statute approach approach and a case approach approach. West Nusa Tenggara Province is one of the provinces chosen in the implementation of the program with an entry point for tourism development, especially the provision of clean water for coastal areas and small islands, especially clean water crisis areas that cannot or have not been reached by the Regional Water Supply Company services. hereinafter referred to as PDAM. For this reason, in accordance with the provisions of Article 14 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 47/PERMEN-KP/2016 concerning Utilization of Water Conservation Areas which states that permits for the utilization of Water Conservation Areas. Synchronization of seawater management location permit arrangements in addition to energy is required between the central and local government regulations.

**Keywords:** *Utilization Permit; Raw Water*

### **Introduction**

North Lombok Regency (KLU) as an autonomous region which currently has a large and abundant supply of clean water has not felt too much the effects of water shortages. The position of the KLU that surrounds Mount Rinjani causes the region to feel the gift of nature with an abundance of clean water that is very large. Water shortages are only felt during the dry season and occur only in certain areas in a small scope. However, in the long run it can be predicted that the overflow of Mount Rinjani water will decrease along with population growth and increased development in all fields. The earthquake that took place since July 29, 2018, then drastically changed the availability of water resources in North

Lombok Regency. The presence of springs and other water sources was significantly reduced due to landfill caused by landslides caused by the earthquake.

In addition, the problem of water shortages has been and is being felt by the community in the small islands of KLU namely in the village of Gili Indah which consists of Gili Trawangan, Gili Meno, and Gili Air (Gili Tramen). The area which is included in the area of Pemenang District in North Lombok Regency (KLU) is a worldwide tourist area, so it is visited by many tourists, especially foreign tourists. Unfortunately, the small island area does not yet have an adequate source of clean water in terms of both volume and quality. Exploitation of ground water through the construction of a wellbore is seen to be able to damage the environment and the natural balance on the Gili, because it will provoke sea water to land. Until now, only Gili Air has been served by the KLU Regional Water Supply Company (PDAM) through clean water pipeline with clean water sourced from the mainland, while the two other dykes have not been tapped by KLU PDAM.

Therefore, to meet the needs of clean water in the area of North Lombok Regency, a source of water that has not been utilized and has been available is abundant. One of the sources of raw water is the use of sea water as raw water for clean water supply. This is also related to the availability of a strategic plan from the KLU PDAM which will soon be realized in the form of the Gili Meno SPAM Development Plan, Gil Trawangan with the Government and Business Entity Cooperation scheme (KPBU) in the provision of ready-to-drink clean water infrastructure in Gili Meno, Gil Trawangan with utilizing sea water with Reverse Osmosis technology;

However, until now it has not been clearly regulated regarding the use of sea water as a source of clean water raw water. This means there are no laws and regulations that explicitly regulate the use of sea water as raw water for clean water. Therefore, for the benefit of using seawater as a source of clean water, legal restoration efforts are needed (through discretion) so that the utilization of sea water has a clear and firm legal basis. The existence of regulations governing the use of seawater as a source of clean water will provide a guarantee for a business entity to conduct its business in processing seawater into clean, ready-to-drink clean water.

Considering the proposed business activity plan is in the waters of the National Conservation Area which is stipulated by a Ministerial Decree, which management and utilization of the potential of natural water resources in GILIMATRA must be guided by the Decree of the Minister of Maritime Affairs and Fisheries RI No. 57 of 2014 concerning Management and Zoning Plans for Aquatic Parks Gili Air, Gili Meno and Gili Trawangan and RI Minister of Maritime Affairs and Fisheries Regulation Number 47 / PERMEN-KP / 2016 concerning Utilization of Water Conservation Areas which only regulates fishing activities, sustainable aquaculture, development of aquatic tourism as well as education and research activities.

On the other side, the Gili Air, Gili Meno and Gili Trawangan and their surrounding waters in North Lombok Regency have also been designated as National Tourism Strategic Areas based on Government Regulation Number 50 of 2011. Therefore, due to the strategic position and potential of the 3 (three) dyke tourism destinations The investment interest is so high to invest their capital in various tourism infrastructure development activities such as the construction of jetties / jetties, installation of pipes / cables under the sea, the utilization of sea water into clean water suitable for consumption considering the 3 (three) Gilis there are no sources freshwater, as well as tourism-based floating building construction facilities.

Business activities that are of interest in investment in the 3 (three) Gili referred to in point (2) above, have been regulated in Article 19 of Law Number 1 of 2014 and Regional Regulation of the Province of West Nusa Tenggara Number 12 of 2017 and Regulation of the Governor of West Nusa Tenggara Number 18 Year 2018 concerning Water Location Permit and Management of Utilization of Coastal Resources and Small Islands. However, Article 50 of Law Number 1 of 2014 states that the Management of the National Water Conservation Area becomes the authority of the Central Government in this case the Ministry of Maritime Affairs and Fisheries, including in the case of licensing issuance.

Considering the current licensing process must be guided by Government Regulation Number 24 of 2018 concerning Electronic Business Licensing Services (OSS). Where Article 48 Paragraph (2) states that business actors who have obtained business licenses from OSS must fulfill their commitments by obtaining location permits for coastal waters and small islands to the Minister who organizes governmental affairs in the field of marine and fisheries or Regional Governments according to their respective authorities. -everyone. Furthermore, Article 49 of PP 24 of 2018 states that in the framework of completing the commitment of water permits, the minister who holds government affairs in the field of maritime affairs and fisheries or the Regional Government uses data on national sea spatial plans, zoning plans for coastal areas and small islands, zoning plans for national strategic areas, zoning plans for specific national strategic areas, zoning plans for regions between regions, and / or one map policy data. Of all the reference documents that are part of the business plan in the management of the Ministry of Maritime Affairs and Fisheries, up to now not yet available in the form of regulations that have been passed in the State Gazette, except NTB Provincial Regulation Number 12 of 2017 concerning NTZ Province RZWP3K in 2017-2037.

Presidential Regulation Number 3 Year 2016 concerning the Acceleration of National Strategic Implementation. Where Gili Trawangan, Gili Meno and Gili Air are one of the National Strategic Projects for Tourism Development of the 10 (ten) KSPNs in Indonesia as the directions are in the form of accelerated transportation development, electricity infrastructure and clean water supply. Therefore, for handling potential obstacles and pressing problems in order to accelerate the activities of the national project, the Government has been given space by Presidential Regulation Number 3 Year 2016 in Article 28 paragraph (2) to take discretionary steps because remembering electricity and clean water concerning living needs and public interest and the sustainability of the business of recovery and growth of tourism activities due to the impact of the earthquake that struck the NTB region some time ago.

There are regulations that are not synchronous, causing uncertainty in efforts to accelerate business in the area of Gili Trawangan, Gili Meno and Gili Air along with the surrounding waters in North Lombok Regency.

That the current licensing process must be guided by Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services (OSS), the reference documents required in the activation of business licenses contained in the Ministry of Maritime Affairs and Fisheries are not yet available and legislated.

From the description of the background above in this study, the writer will examine several issues, namely as follows:

1. How is the arrangement of licenses to try to be integrated electronically (OSS) based on Government Regulation Number 24 of 2018?
2. What is the arrangement of the rights and obligations of the parties in the water infrastructure development cooperation agreement in Gili Trawangan, North Lombok Regency?

## ***Result and Discussion***

One of the goals of forming an Indonesian state government is to advance public welfare. This mandate has been translated into Article 33 of the 1945 Constitution of the Republic of Indonesia and constitutes the constitutional mandate that underlies the formation of all laws and regulations in the economic field. The constitution mandates that national economic development must be based on democratic principles that are able to create Indonesian economic sovereignty through the administration of the national economy.

In this regard, investment must be part of the operation of the national economy and be placed as an effort to increase national economic growth, create jobs, increase sustainable economic development, increase national technological capacity and capabilities, encourage democratic economy, and realize the welfare of the community in a competitive economic system. The objectives of investment management can only be achieved if the supporting factors that hinder the investment climate can be overcome, among others through improved coordination between central and regional government agencies, creation of efficient bureaucracy, legal certainty in investment, high economic costs, and a conducive business climate in the field of employment and business security. With the improvement of various supporting factors, it is expected that investment realization will improve significantly.<sup>1</sup>

The election of the Province of West Nusa Tenggara in the development of tourism must certainly have the strengthening of policy makers in the region because the right and fair policies can open space for investors to be more controlled in carrying out their investment efforts. One example is in the form of Government Cooperation with Business Entities, hereinafter referred to as PPP. Related to the PPP, this has been explained in the rules related to Regional Cooperation with third parties as referred to in Article 363 paragraph (2) letter b of Law Number 23 of 2014 concerning Regional Government which includes cooperation in the provision of public services, cooperation in asset management to increase added value that provides income for the region, investment cooperation and other cooperation that is not in conflict with the provisions of the legislation. In this case, the provisions relating to government cooperation with third parties, especially in the field of investment can be carried out in accordance with the provisions of the legislation and do not conflict with applicable laws and regulations.

Law Number 7 of 2004 concerning Water Resources was canceled by the Constitutional Court in 2015. The cancellation was due to the aforementioned law which did not guarantee restrictions on water management by private parties so that it was considered to be in conflict with the 1945 Constitution of the Unitary State of the Republic of Indonesia. With the revocation of the water resources law, all forms of water management are regulated through Law Number 11 of 1974 concerning Irrigation. In the provisions of Article 11 paragraph (1) and (2) of Law Number 11 of 1974 concerning Irrigation, it is explained:

Article 11 paragraph (1): "Water exploitation and / or sources of water intended to increase its benefits for the welfare of the people are basically carried out by the Government, both Central and Regional".

Article 11 paragraph (2): "Legal Entities, Social Entities, and / or individuals conducting business in water and or water sources, must obtain a permit from the Government, based on the principle of joint and family business."

Then related to the definition of water, it can be seen in Government Regulation of the Republic of Indonesia Number 121 of 2015 concerning Exploitation of Water Resources where the definition of water is all water contained in, above, or below ground level, including seawater which is on land. In this case, special provisions related to underground sea water are not clearly explained in this regulation. The existing definition is related to Groundwater which explains that groundwater is water that is contained in a layer of soil or rock below the surface of the soil. So that the juridical normative can be concluded that sea water does not yet have a clear category of whether groundwater or not. So, for the distribution of ground water up to its limits there needs to be a further definition.

The existence of Law No. 7 of 2004 concerning Water Resources cannot provide a clear explanation of the status and position of water resources and even, the existence of various International Covenants has increasingly changed the orientation of the traditional view of water. The traditional view of water tends to be abandoned because water is not just Public Good, but has become an economic commodity that has market value and can be traded.<sup>2</sup> This traditional paradigm is in conflict with the paradigm of modern water management which is based on the intrinsic economic value (intrinsic value)

<sup>1</sup> Penjelasan Undang-Undang Nomor 25 tahun 2007 tentang Penanaman Modal

<sup>2</sup> Bunasor Sanim, *Sumber Daya Air dan Kesejahteraan Publik* (Suatu Tinjauan Teoritis dan Kajian Praktis), Cetakan I, IPB Press, Bogor, 2011, p. xviii-xix

of water, which is based on the assumption of limited and scarcity water and the need for investment or provision of clean water to fulfill the rights of every citizen Country.<sup>3</sup>

It should be understood together that Law Number 27 Year 2007 jo. Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands states that local governments are required to prepare Zoning Plans for Coastal Areas and Small Islands, hereinafter referred to as RZWP-3-K in accordance with their respective authorities. In Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands article 16 paragraph 1 states that the spatial use of some coastal waters and small islands permanently must have a location permit. Furthermore, article 17 explains that the location permit referred to is given based on the Zoning Plan for Coastal Areas and Small Islands (RZWP-3-K) that has been determined. Law Number 23 of 2014 concerning Regional Government article 14 also mentions that the administration of government affairs in the fields of forestry, maritime affairs, as well as energy and mineral resources is shared between the Central Government and the Provincial Regions. In addition, in Appendix Y, it is stated that the management of marine space up to 12 miles outside of oil and gas and the issuance of permits and utilization of sea space below 12 miles outside of oil and gas are the authority of the Provincial Government. This has implications for the Provincial Government's obligation to stipulate Regional Regulations on Coastal Areas and Small Islands Zoning Plans (RZWP-3-K). In addition, based on the results of the 2014 KPK study on the Management System of the Indonesian Ocean and Marine Resources which was conveyed in the activity of saving the Indonesian SDA Marine Sector, the Marine Sector showed a number of issues including the focus of the KPK Study:

1. Arrangement of sea space that is incomplete and still partial
2. Arrangement of marine and fisheries licensing
3. Data and information systems related to the sea area, the use of sea space and the utilization of resources contained therein, are incomplete and not integrated
4. No control of sea pollution and damage

Based on the KPK Study, it was agreed by the KPK and 20 Ministries, 7 institutions and 34 Provinces. To resolve the problems in the maritime sector, one of which was the preparation of RZWP3K in each province.<sup>4</sup>

As a result of the blurring of norms or the vacuum of norms in Article 56 paragraphs (2) and (3) of Law Number 12 of 2011 concerning Formation of Regulations and Regulations, at the level of implementation in the regions, there may be differences in understanding, interpretation and commitment to implement them by each regional government in the formation of regional regulations.<sup>5</sup> For this reason, the government needs to pay serious attention to this matter.

On the other hand, on the sidelines of the Panel Discussion of the Association of Indonesian Groundwater Experts with the theme "Where Do You Take To Manage Water Resources (Land) Indonesia" on January 10, 2019, the Chairman of the Board of Experts of the Indonesian Groundwater Experts Association, Prof. Ir. Lambok Hutasoit M.Sc., Ph.D stated that with the absence of the legal umbrella of Water Resources after Law no. 7 of 2004 concerning Water Resources was reinstated, it was difficult to carry out any movements or efforts related to water resources conservation. Instead, there is Law No. 11 of 1974 which is quite far from the present situation and is no longer comprehensive with the phenomena that occur at the present time. For example, in the field of groundwater drilling, requires

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<sup>3</sup> *Ibid*

<sup>4</sup>Tata Ruang Laut, Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil (RZWP3K) diakses pada <https://kkp.go.id/djprl/bpsplpadang/page/263-tata-ruang-laut>, accessed November 20, 2019

<sup>5</sup> Abdul Basyir. *Pentingnya Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan Untuk Mewujudkan Hukum Aspiratif dan Responsif*. Jurnal IUS UNRAM. Vol. II, Nomor 5. 2014. p. 305

permits that refer to the law. While the law itself does not apply. As a consequence of the deletion, the derivative rules do not apply.<sup>6</sup>

Article 1 paragraph (3) of Law No. 23 of 2014 concerning Regional Government states that the Regional Government as an element of regional government organizes and manages government affairs according to the principle of autonomy and assistance tasks. Syarif Saleh said that autonomy was the right to regulate and govern the region itself. On their own initiative and will, where the right is obtained from the Central Government.<sup>7</sup> Wayong argued that regional autonomy is the freedom to maintain and advance the special interests of the region, with its own finances, determine their own laws and govern themselves.<sup>8</sup> Sugeng Istanto stated that autonomy was defined as the right or authority to regulate and manage regional households.<sup>9</sup>

Departing from this, the core of the implementation of regional autonomy is the discretionary power of the local government to carry out self-government based on the initiative, creativity and active participation of the community in order to develop and advance the region.<sup>10</sup>

## Conclusion

Based on Presidential Instruction of the Republic of Indonesia Number 1 of 2016 concerning the Acceleration of the Implementation of the National Strategic Project is promoting the Investment and Acceleration of the Development of the National Strategic Areas and in the Appendix to the Presidential Regulation of the Republic of Indonesia Number 1 of 2016 concerning the Acceleration of the Implementation of the National Strategic Project, Nusa Tenggara Province West is one of the provinces chosen in the implementation of the program with an entry point for tourism development, especially the provision of clean water for coastal areas and small islands, especially areas of clean water crisis that cannot or have not been reached by the Regional Water Supply Company services, hereinafter referred to with PDAM. For this reason, in accordance with Article 14 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 47 / PERMEN-KP / 2016 concerning Utilization of Water Conservation Areas which states that permits for the utilization of Water Conservation Areas are issued by the Minister for National Water Conservation Areas.

In accordance with the cooperation agreement between the government and the Business Entity, the rights and obligations of the parties include:

1. The First Party has a location permit and a seawater management permit to be used as raw material for clean drinking water.
2. The second party has the financial capacity to build sea water processing infrastructure facilities that are ready to drink clean water.
3. It is agreed that Rp. 36,000 / m<sup>3</sup> with the distribution of Rp.34,000 for the Second Party and Rp. 2,000 / m<sup>3</sup> is the rights of the First Party (PDAM).

<sup>6</sup>Imam Herdiana. *Indonesia 5 Tahun Tanpa UU SDA. Pengelolaan Selama Ini Ilegal?*. Diakses pada laman : <https://kumparan.com/bandungkiwari/indonesia-5-tahun-tanpa-uu-sda-pengelolaan-air-selama-ini-ilegal-1547124887303796551>, accessed November 20, 2019

<sup>7</sup> Syarif Saleh, *Otonomi dan Daerah Otonom*, Endang, Jakarta, 1953, p. 31.

<sup>8</sup> J. Wayong, *Asas dan Tujuan Pemerintahan Daerah*, Jakarta: Jambatan, 1975, p. 5

<sup>9</sup> F. Sugeng Istanto, *Beberapa Segi Hubungan Pemerintah Pusat dan Daerah dalam Negara Kesatuan Indonesia*, Yogyakarta: Karyaputera, 1971, p. 24

<sup>10</sup> H.A.W. Widjaja, *Percontohan Otonomi Daerah di Indonesia*, Jakarta: Rineka Cipta, 1998, p. 36.

## Recommendations

1. Need to synchronize seawater management location permit arrangements other than energy between central and local government regulations.
2. The feasibility study from BPKP needs to be followed up as study material in the addendum.

## References

- A. Qirom Syamsudin Meliala. 1985. *Pokok-pokok Hukum Perjanjian Beserta Perkembangannya*. Yogyakarta: Liberty.
- Abdul Basyir. *Pentingnya Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan Untuk Mewujudkan Hukum Aspiratif dan Responsif*. Jurnal IUS UNRAM. Vol. II, Nomor 5.2014, p.305.
- Abdulkadir Muhammad. 2004. *Hukum dan Penelitian Hukum*. First edition. Citra Aditya Bakti, Bandung.
- Agus Yudha Hernoko. 2013. *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*. Jakarta: Kencana Predana Media Group.
- Ajeng Kartika et. Al. 2013. *Ekonomi Sumber Daya Air Perspektif Islam*. UB Press, Malang.
- Amiruddin and Zainal Asikin. 2014. *Pengantar Metode Penelitian Hukum*. Matter VIII. Rajawali pers, Jakarta.
- Andjar Pachta Wirana. 1995. Laporan Akhir Penelitian tentang Aspek Hukum Perjanjian Build Operate and Transfer BOT. Jakarta: BPHN.
- Anthon F. Susanto. 2010. *Ilmu Hukum Non Sistematis: Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia*. Genta Publishing, Yogyakarta.
- Badruzaman, Mariam Darus. 1993. *KUHPerdata, Buku III, Hukum Perikatan dengan Penjelasannya*. Alumni, Bandung.
- Budiono Kusumihamidjojo. 2004. *Filasafat Hukum, Problematik Ketertiban Yang Adil*. Jakarta, PT Gramedia.
- Bunator Sanim. 2011. *Sumber Daya Air dan Kesejahteraan Publik (Suatu Tinjauan Teoritis dan Kajian Praktis)*. First edition. IPB Press, Bogor.
- C.S.T. Kansil & Cristine S.T. Kansil. 2002. *Pokok-Pokok Badan Hukum Yayasan, Perguruan Tinggi, Kopersi, Perseroan Terbatas*. Pustaka Sinar Harapan, Jakarta.
- C.S.T. Kansil & Cristine S.T. Kansil. 1996. *Pokok-Pokok Hukum Perseroan Terbatas Tahun 1995*. Pustaka Sinar Harapan, Jakarta.
- Dewa Gede Atmadja, *Penafsiran Konstitusi Dalam Rangka Sosialisasi Hukum: Sisi Pelaksanaan UUD 1945 Secara Murni dan Konsekwen*, Speech Introduction to Professors in the Field of Constitutional Law at the Udayana University Faculty of Law 10 April 1996, p.2.
- E. Utrecht. 1983. Pengantar dalam Hukum Indonesia. Matter XI. PT Ichtar Baru, Jakarta.
- F. Sugeng Istanto. 1971. Beberapa Segi Hubungan Pemerintah Pusat dan Daerah dalam Negara Kesatuan Indonesia. Yogyakarta: Karyaputera.
- H. D. van Wijk/Willem Konijnenbelt. 1988. *Hoofdstukken van Administratief Recht*, Culemborg, Uitgeverij LEMMA BV.
- H.A.W. Widjaja. 1998. Percontohan Otonomi Daerah di Indonesia. Jakarta: Rineka Cipta.

- H.R. Daeng Naga. 2006. *Seri Keterampilan Merancang Kontrak Bisnis. Contract Drafting. Second Revised-Edition Edition*. PT. Citra Aditya Bakti, Bandung.
- Hans Kelsen. 2006. *Teori Hukum Murni*, terjemahan Raisul Mutaqien. Nuansa & Nusamedia, Bandung.
- Indroharto. 1993. *Usaha memahami Undang-Undang tentang Peradilan Tata Usaha Negara*. Pustaka Harapan.
- J. Wayong. 1975. *Asas dan Tujuan Pemerintahan Daerah*. Jakarta: Jambatan.
- J.J. Brugink. *Rechtsreflecties*, Translation Arif Sidartha. Citra Aditya Bakti, Bandung.
- Johanes Ibrahim. 2004. *Kartu Kredit Dilematis antara Kontrak dan Kejahatan*. Bandung: Refika Aditama.
- Juoro Umar. 1997. *Peran Swasta dan Kepentingan Masyarakat dalam Pembangunan Infrastruktur*. Jakarta: Koperasi Jasa Profesi.
- Kartini Mulyadi and Gunawan Wijaya. 2002. *Perikatan Yang Lahir Dari Perjanjian*. Jakarta: PT Raja Grafindo Persada.
- M. Yahya Harahap. 1986. *Segi-segi Hukum Perjanjian*. Alumni, Bandung.
- Mahmudi. 2010. *Manajemen Keuangan Daerah*. Jakarta: Erlangga.

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