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Usage of land and coastal waters of the outermost small islands for marine tourism in Indonesia

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Abstract. Investment in maritime tourism business opens opportunities for the outermost small islands to be explored in appropriate ways. To control the usage of the land, it must be regulated by various regulations such as the requirements for business licenses, location and management permits, as well as the provision of right to build for use of land and coastal waters, which is important in marine tourism activities. One of the outermost small islands is Kepa Island in Alor District, East Nusa Tenggara, which is controlled by NuhaKepa Kai Limited Liability Company. The focus of this study is to emphasize the status of the land rights of the Kepa Island community, the legality of the control and usage of land and coastal waters for water tourism business by foreigners, and the role of the local government in granting permission and supervision to the foreigners. The research collected primary data through observation and interviews and secondary data through literature studies. The data then analyzed descriptively. The results of the study are the status of community land rights in the Kepa island involves individual land rights certificates; PT NuhaKepa Kai already has location and management permits but has not yet obtained right to build for land; and the issuance of permits and supervision by the local government are still inadequate and have not been coordinated with the relevant agencies.

1. Introduction

Indonesia, the largest archipelagic state in the world, is situated in a strategic position since it is flanked by two oceans (Indian and Pacific) and two continents (Asia and Australia) and has a coastline of 81,000 kilometers (the second longest in the world). It has a land area of 1,919,440 square kilometers and an area of about 3,273,810 square kilometers [1]. Indonesia consists of about 17,500 islands, most of which are small islands. Among the small islands are several outermost small islands. There are 92 outermost small islands, and 31 are inhabited, while the rest are not inhabited [1]. The 92 outermost small islands are spread across 18 provinces and border the sea and 10 neighboring countries [1].

The outermost small islands have several functions, including border function. According to Guo in Wahid A and Subagio A, it has a legal function because there is a boundary line that enforces the boundaries of an area based on an applicable jurisdictional standard and state regulations. Based on the border function, the approach taken by the government is more focused on the aspects of defense and security and not yet on the aspects of management and development of border areas [2]. The aspects of welfare of the population and the utilization of the resource potential of outermost small islands have not been managed optimally. This causes the outermost small islands to remain in the following three conditions: outermost, poorest, and disadvantaged. Coastal and small islands development is still neglected compared with large islands, given the infrastructure constraints and poor accessibility [2].

The existence of the outermost small islands geographically has three important functions among others, namely: the function of defense and security, the economic function, and the function of ecology [3]. Those functions should be used to improve the condition of the population living there. Therefore, the population-welfare approach should be considered in the development of coastal and outermost small islands [4]. According to Agung Kuswandono, Deputy of Natural Resources and Services of the Coordinating Ministry for Maritime Affairs, Indonesia has maritime potential, especially in coastal and



small islands, which can be utilized in terms of promising economic values, both in the field of production and in the tourism sector [5].

The aspect of tourism carried out in the coastal waters of the outermost small islands in general is marine tourism. In Indonesia, several outermost small islands utilized for marine tourism business are owned by foreigners, both individually and in the form of limited liability companies (*Perseroan Terbatas/PT*). According to Augustine, some marine tourism business owned by foreigners, for example, Angel Island is managed by Ernest Lewandoski from England, Kanawa Island by Stefano Plaza and Sebayur Island by Mr. Ed. The use of coastal waters and small islands by foreigners is also permitted after obtaining business license, location permit and management permit, as stipulated in Indonesian law [6].

In this context, the Indonesian law approaches can be seen from two aspects, namely the aspects of land and water regimes. The land regime is related to spatial aspects and land use, in the form of structuring the ownership and use of land in outermost small islands. In addition, the water regime is linked to the arrangement of coastal space and small islands waters in each province. Therefore, for the sake of utilizing island land, marine tourism businesses require location permits and management permits in line with the regulations governing the use of land space on the island, including the right to build (*Hak Guna Bangunan/HGB*) as stipulated in the Law Number 5 Year 1960 concerning Basic Agrarian Principles (*Undang-Undang Pokok Agraria/UUPA*), the Government Regulation Number 40 of 1996 concerning Business Use Rights (*Hak Guna Usaha/HGU*), Right to Build, and Right to Use [7, 8]. The objectives of this research were to emphasize the status of the land rights of the Kepa Island community, the legality of the control and usage of land and coastal waters for water tourism business by foreigners, and the role of the local government in granting permission and supervision to the foreigners.

2. Materials and Method

2.1. Field work

The research was conducted on Alor Island in East Nusa Tenggara Province (NTT). It is one of the outermost small islands bordering with Timor Leste. Alor Regency has a number of inhabited and uninhabited small islands. There are several small islands that have not been officially named and several islands are marine/water tourism destinations managed by foreigners individually and in the form of legal entities.

The research is descriptive using survey techniques. Primary data collection was carried out as follows: (1) direct observation or direct identification in the field to find out and understand firsthand the existing conditions of small islands in Alor district, including physical conditions (such as water tourism objects) as well as economic, social, and cultural conditions of the community; (2) conducting interviews with traditional leaders; (3) conducting interviews with Alor Regency government and relevant heads of office (Department of Marine and Fisheries, One-Stop Licensing Service, Tourism Office, and Regency Land Agency). Secondary data were obtained from the government agencies mentioned above, books from the Ministry of Maritime Affairs and Fisheries Center, library books, journals and other sources.

2.2. Data analysis

The data analysis method used in this study is the qualitative method, that is, the analysis of data in the form of words and not a series of numbers. Data was collected in the form of observations and interviews. Policy analysis was carried out qualitatively, starting from the consequences of policies that have not been implemented to the evaluation of policies that have been implemented.

3. Result and Discussion

3.1. Land rights status of the people/residents of Alor Island

The island of Alor, historically, is known for collective land ownership and communal use. These land rights are associated with the designation of tribal land, that is, land controlled by indigenous peoples'

associations formed based on territorial similarity or genealogy. A research on the land of indigenous peoples in East Nusa Tenggara Province stated in East Nusa Tenggara, the term ulayat rights (tribal land) is unknown, but terms such as *Kabisu* land in Sumba, *Wungu* land in East Flores, *Lingko* land in Manggarai, *Leo* land in Rote, *Kanaf* land in parts of East Timor, *Fukun* land in Timor part *Tetun*, *Udu* in *Sabu*, *Bapang* in Alor, and *Ngeng Ngerang* in Sikka contain meanings and contents that are identical to a land of communal rights. However, the popular term is tribal land (ulayat rights) [9].

The indigenous peoples in Alor Island perceive tribal land similar to ulayat rights and communal rights, as contained in Article 3 of the UUPA. It states that “Keeping in mind the provisions in Articles 1 and 2, the implementation of customary rights and communal rights by indigenous and tribal peoples must be such that they are in accordance with national and state interests, which are based on national unity and may not conflict with laws and other higher rules”.

Customary rights are recognized by the State based on several conditions according to the provisions of Article 2 paragraph (2) of the Regulation of the Minister of Agrarian Affairs of the National Land Agency No. 5 Year 1999 concerning Guidelines for Resolving Customary Rights Issues of Customary Law Communities [10], which states that the customary rights of indigenous peoples are still considered to exist if:

- a. There is a group of people who still feel bound by their customary law as citizens together in a particular legal community which recognizes and applies the provisions of the fellowship in their daily lives.
- b. There is certain ulayat land which is the living environment of the community members and the place to obtain their daily needs.
- c. There is an order of customary law concerning the management, control and use of communal land that is valid and complied with by the citizens of the legal entity.

Regarding the existence of indigenous peoples and tribal land (ulayat rights) in Alor district, the current situation is that “the existence of tribes no longer fulfills only the requirement of a genealogical group” [6]. This was determined based on the results of The Limited Symposium carried out in the NTT Province held on May 1972, which asserts that indigenous peoples as a genealogical tribal alliance must fulfill several requirements, namely:

- a. there must be an area of fellowship with clear boundaries;
- b. there must be membership of a genealogical community;
- c. there must be a tribal government structure or tribal management;
- d. there must be binding tribal rules.

The results of this symposium were followed up by the Level I Regional Regulation of NTT Province No. 8 Year 1974 concerning the Implementation of the Affirmation of Land Rights [11]. Article 2 paragraph (1) of this regulation states that “former land ownership of customary law communities is declared as lands under the control of the Regional Government through the Regional Head Governor”. Also, paragraph (2) determined that “every person or legal entity that controls land as referred to in paragraph (1) of this article needs to have proof of affirmation of rights”. The NTT Province Regulation No. 8 Year 1974 was strengthened by the Instruction of the Governor of the Regional Office of NTT No. 3/Pem-um/1984 which contains the following conditions [12]:

1. Prohibiting every person, legal entity, government agency and social institution from dividing state land and former tribal lands, as long as the authority is not regulated by applicable laws and regulations.
2. Inventory of vacant land that is abandoned and regulated by the government in accordance with the regional development master plan.

The existence of the regional regulation and the governor’s instruction above expressly states that if indigenous peoples no longer fulfill the requirements as a tribal alliance and do not have proof of affirmation of rights, then tribal land is declared as State land. This arrangement gave rise to the assertion that tribal land which was collectively owned has shifted gradually and has become land of individual ownership since it is registered individually. But Luter stated that “the control of lands on the island is registered individually by the population and a certificate of land rights is obtained as proof of individual

ownership rights over land, although in its utilization it is communal [13]. The ownership of land on small islands in Alor district is certified in the name of individuals.

Table 1. Present data on certified land rights with respect to occupied islands in Alor Regency.

Island	District	Village/ Sub-district	Large (ha)	Information
Big Island				
Alor	17	120	193.232	certified
Pantar	5	43	85.880	certified
Pura	1	7	2.816	certified
Small Island				
Ternate		2	416	certified
Buaya		1	224	certified
NuhaKepa		1	32	certified
Tareweng		1	384	certified
Kura/PiringSina		1	24	certified
Kangge		2	1,584	certified

The regulation of individual ownership of collectively owned land, that is tribal/communal rights land in the outermost small islands in Alor Regency, is the reason for the disappearance or removal of tribal/customary rights land. This is in line with the statement of the NTT Limited Symposium, which concluded that there was no tribal land (ulayat land) in East Nusa Tenggara because there had been a process of tribal individualization and disintegration, so the tribe's existence no longer met the requirement of a genealogical alliance.

This situation may be recorded in future in Alor Regency; if there are no clear arrangements regarding legal certainty and protection of the tribes of indigenous peoples in the Alor archipelago, then in future, tribal land/customary rights will be increasingly depleted and lost. According to UUPA, if ulayat rights are lost, there is no possibility of new customary rights being generated. Likewise, the survival of tribes that still exist will be increasingly threatened with extinction. Clearly, this concerns the basic rights of humans as stipulated in Law No. 39 Year 1999 concerning Human Rights [14], specifically in Article 6 paragraph (1), which states that in order to ensure human rights enforcement, "the differences and needs of the Customary Law Society must be considered and protected by law, society and the government".

3.2. Status of marine tourism business/tirta tourism in Alor Regency

The existence of foreign investment in outermost small islands that have been certified as individual land indicates that there is already individual ownership of land in these islands. How can investment be conducted if the ownership of the island is not associated with the State. This question requires answers from the management of these outermost small islands. To provide answers, business licenses, location permits, management permits, and the provision of right to build on the inhabited islands are indicators of the validity of businesses carried out by foreigners/foreign companies. The table below shows a number of foreign businesses in the field of tourism that have obtained tourism business permits in Alor Regency

Table 2. Business Particulars of Foreign Investors in Tourism in Alor Regency.

Company Name	Name of Entrepreneur	Address	Information
PT. Wisata Tanjung Wol Wal	Max Thomas Hopwood	RT.02.RW.01 Wol Wal Village, Alor Barat Daya District	Tirta Tourism
PT. Jawa Toda Pantai Pantar	Giles Pascal Brignardelo	RT.09.RW.04 Batu Village, Pantar Timur District	Tirta Tourism
PT. Nuha Kepa Kai	Cedric C. Lechat	RT.05. RW.03 Dusun II Alor Kecil Village, Alor Barat District	Tirta Tourism

Based on the data above, there are three locations of water tourism business, consisting of diving and cottage businesses, and they have tourism business licenses (*Surat Izin Usaha Kepariwisata*/SIUK). Tourism businesses in the form of water tourism are regulated by the Minister of Tourism Regulation No. 18 Year 2016 concerning Tourism Business Registration [15]. Article 17 explains that Tirta sports tourism business is an effort to provide water sports facilities for recreational purpose. Furthermore, according to Article 13, water tourism business includes the following types:

- a. rafting tours;
- b. paddle tours;
- c. diving tours;
- d. fishing tours;
- e. surfing tours;
- f. water sports tourism; and
- g. tourist dock

Based on the Tourism Law Number 10 Year 2009 and the Tourism Minister Regulation No. 18 Year 2016 concerning Tourism Business Registration [16], Tirta tourism business is a type of tourism business that must be registered. Furthermore, in granting water tourism business licenses, reference must be made to location permits relating to the Regional Spatial Plan accompanied by the granting of land rights in the form of building use rights, which are the authority of the Regency/City Land Office.

Data on water tourism businesses in Alor Island that already have tourism business licenses accompanied by location permits and subsequent HGB are given in the table below:

Table 3. PMA businesses that already have Location Rights/Permits in Alor Regency.

Company Name	Land Location	Large (ha)	Type of Rights/Rights Number	Business Permit
PT. Jawa Toda Pantai Pantar	a. Batu b. Pantar	10.480	Building rights No. 1	Accommodation services and Tirta Tourism Pearl Company
PT. Cendana Indiopearts	a. Monu b. Alor Barat Daya	2.080	Building rights No. 3	Pearl Company
PT. Cendana Indiopearts	a. Monu b. Alor Barat Daya	2.665	Building rights No. 2	Pearl Company
PT. Wisata Tanjung Wol Wal	a. Wol Wal b. Alor Barat Daya	2.910	Location permit	Lodging/cottage

Provision of location permits and right to build in relation to small islands whose territorial waters are owned/controlled/cultivated by indigenous legal communities requires several conditions with respect to issues that need to be considered in the use of land rights:

1. For small islands whose territorial waters are controlled/owned/cultivated by customary law communities, the management activities are carried out by considering the existence of local customary law.
2. The management of small islands by investors using customary law areas must be preceded by agreements between investors and indigenous peoples that are mutually beneficial by considering the carrying capacity of the environment and the sustainability of resources.
3. The procedure for obtaining rights to land and or waters is carried out in accordance with the applicable laws and regulations.

3.3 Authority of the Regional Government in the management of outermost coastal and small islands

The waters of Kepa Island are included in the Mutiara Bay Marine Park, which is one of the most beautiful marine parks in the world, with the richest biodiversity of the world's best marine biota [17]. Being one of the assets of the local government of Alor Regency, it is very important for it to be managed well. Describing some of the problems that exist in the management of outermost coastal and small inhabited islands in Alor Regency can illustrate their conditions, which among others are as follows:

- 1) The history of customary law society with respect to its customary territory/tribal land and the history of the control and ownership of tribal land in Alor Island need to be explored further after the NTT Province Symposium, held in May 1972 to formulate the concept of indigenous peoples in the Alor islands.
- 2) Several outermost small islands are still not recorded and have no official name.
- 3) There is lack of data and information about the use of small islands by the community/local residents and foreigners without permission from the local government.
- 4) There is lack of attention and equity by the government towards the management of the outermost small islands.
- 5) Coordination between agencies has not been well developed, so the control and utilization of small islands are not in accordance with the regional regulation.
- 6) Use conflict and authority. The return of the authority of the district to the province makes spatial planning for the first aid area unclear, causing differences in objectives, targets and plans to exploit coastal resources between agencies.
- 7) There is lack of infrastructural and facility support (marine and fisheries) and non-existence of activity centers as drivers of coastal economic growth as well as insufficient knowledge of traditional fisherman.
- 8) There is lack of supervision related to tourism activities involving community participation, especially the occurrence of damage due to over exploitation of some types of coastal resources.

The various problems mentioned above are related to law, politics, defense, security, environment, economy, social aspect, and culture, so they require integrated handling in the form of synergy between the central and regional governments as well as coordination between agencies; this synergy is important especially if the issue is associated with the implementation of the ASEAN free market and the Asia Pacific policies as well as increased economic cooperation, which would spur the development of small islands and coastal areas, especially in investment activities. For this reason, in order to achieve sustainable development of the outermost small islands, regional governments should pay greater attention to small islands, especially the outermost small islands and border islands with neighboring countries.

Various regulations relating to the management of outermost small islands have been enacted by the government, but there is lack of coordination in their implementation. This makes outermost small islands objects of businesses that are owned by foreigners, individually or in the form of corporate bodies. The most important issue is the participation of the community in planning and implementation,

in accordance with their needs and aspirations, which relies on local wisdom values and natural resource governance that the local community is expected to comply with.

The regional government in the perspective of regional autonomy, based on the principle of de-concentration, has the authority and obligation to regulate and manage the affairs of government and the interests of the local community in accordance with the prevailing laws and regulations. As contained in Article 1 Number 13 of Law No. 23 Year 2014 concerning Regional Government [18], the administrative region is the working area of the central government, and the governor as the representative of the central government administers government affairs under the authority of the central government in the region, which is the working area of the governor and regent/mayor.

4. Conclusion

It can be concluded that the land rights status of the people/residents of Alor Island is for the uninhabited outermost small islands are designated as government assets whose authority is at the center, while for the inhabited outermost small islands, land rights certificates are issued as proof of individual ownership. However, there are still situations where collective ownership applies in the form of communal rights, called ulayat rights/tribal land. In addition to status of marine tourism business/tirta tourism in Alor Regency, an adequate arrangement has not been made for the issuance of business licenses, location permits, and management permits as well as the provision of building use rights for investment activities in the outermost small islands, especially those inhabited by traditional customary communities and local communities. There is lack of synergy between various ministries and non-departmental institutions in addition to lack of coordination of several sustainable development programs launched on the outermost small islands as strategic areas.

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