



## Analysis Study of Acquisition of Rights to Land Resulting from Beach Reclamation in Bima City

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### **Abstract**

This research aims to analyze the process of implementing the acquisition of rights to land resulting from coastal reclamation in the city of Bima and to examine the legal implications of the reclamation activities along the Bima coastline. The study adopts an empirical legal research approach, incorporating statutory, conceptual, and socio-legal perspectives. Both library and field data are utilized in the research process. The findings of the study reveal the procedural intricacies involved in obtaining rights to land resulting from coastal reclamation in Bima City. The acquisition of these rights necessitates alignment with the regional spatial plan (RTRW) and relevant laws and regulations. The implementation unfolds in two stages: initial unauthorized landfilling and subsequent issuance of certificates for reclaimed beaches, constituting an illegal act. The legal implications of such unlawful beach reclamation in Bima City manifest in several ways. Firstly, the Ownership Rights and HGB (building use rights) certificates authorized by the National Land Agency (BPN) may be considered illegitimate. Secondly, the Bima City government faces restrictions in collecting Property Tax (PBB) and Land and Building Acquisition Duty (BPHTB) taxes on land resulting from the illegal reclamation.

**Keywords:** *Acquisition; Land Rights; Reclamation*

### **Introduction**

Indonesia, a country blessed with abundant natural resources, both on land and in the sea, has seen a continuous increase in the demand for land over time. This rise in demand is in line with development, population growth, and economic progress. People recognize the importance of land for their livelihoods and with the constant increase in land prices, they strive to acquire and control land to meet their living needs and improve the welfare of the Indonesian people. Land is an integral part of human activities, providing a space for individuals to live and thrive. As a result, land plays a crucial role in society, often leading to disputes among individuals or with the government.

According to the 1945 Constitution, the State has the power to control and utilize land, water, and natural resources for the benefit of the Indonesian people. This authority granted to the State does not mean ownership, but rather the ability to regulate as the highest authority in the state hierarchy (Ruslina, 2012). The Basic Agrarian Law or also known as UUPA (*Undang-Undang Pokok Agraria*) further emphasizes the State's control over natural resources. Boedi Harsono defines the right to land as a specific, limited part of the earth's surface with length and width dimensions (Harsono, 1997).

Islands play a crucial role in a nation's governance structure, serving as valuable assets. They offer a unique blend of political, geographic, and spatial elements, making them a treasure for Indonesia (Patittingi, 2012). The land on these islands, especially small ones, is essential for national cohesion and must be carefully managed and regulated.

Coastal reclamation goes beyond just acquiring land at a lower cost; it also aims to improve public amenities. This process involves transitioning coastal areas into terrestrial spaces, unlocking economic potential. Reclaimed areas are repurposed for various uses like agriculture, residential areas, industries, commerce, and tourism, bringing economic benefits to previously overlooked regions (Hasni, 2008).

The coastal areas are subject to strict regulations outlined in Law Number 27 of 2007 jo Law Number 1 of 2014. These laws emphasize the importance of managing and utilizing the resources in coastal areas and small islands. The process involves careful planning, supervision, and control to ensure the well-being of both the community and the environment. It also encourages collaboration between the Government and Regional Government, as well as between different sectors and ecosystems. By integrating science and management, these regulations aim to enhance the welfare of the coastal communities.

As per the regulations outlined in Law Number 1 of 2014 regarding Coastal Areas and Small Islands Management, reclamation involves enhancing land resources through activities like filling, draining, or land drainage for environmental and socio-economic benefits. Additionally, Government Regulation Number 16 of 2004 on Land Use Planning governs reclamation based on land rights status, stating that land created from reclamation in coastal waters, tidal areas, swamps, lakes, and former rivers is under state control.

The Bima City government has taken significant steps towards the development of coastal areas by issuing Regional Regulation Number 4 of 2012. This regulation, which consists of 11 chapters and 109 articles, focuses on the spatial planning plan for Bima City from 2011 to 2031. It covers various aspects such as principles, objectives, and spatial planning plans for the city. When it comes to the management of spatial planning for the coastal areas of Bima City, Article 9 Paragraph 4 Point (a) of the regulation plays a crucial role. It outlines the strategy for the development of these areas, which includes supporting coastal mitigation programs and utilizing reclamation activities to rearrange the coastal areas of Teluk Bima, transforming them into a vibrant Waterfront City.

According to the Circular Letter issued by the Minister of Agrarian/Head of the National Land Agency (BPN) of the Republic of Indonesia, dated May 9, 1996, there are specific guidelines for the management of emerged and reclaimed lands. These guidelines state that naturally emerged lands, including coastal edges, lake edges, riverbank deposits, emerged islands, and other similar areas, are considered as lands under the direct control of the state. The possession and utilization of these lands are then regulated by the Minister of Agrarian/Head of the National Land Agency, in accordance with the relevant laws and regulations.

In accordance with the Regional Regulation of West Nusa Tenggara Province Number 12 of 2017, also known as the Draft Zoning of Coastal and Small Islands (RZWP3K), reclamation activities in

maritime areas aim to convert aquatic areas into terrestrial areas based on the relevant regulations. To carry out such activities, both local governments and individuals must obtain location permits and implementation permits.

Meanwhile, according to Presidential Regulation Number 10 of 2006 on the National Land Agency, the National Land Agency (BPN) is a Non-Departmental Government Institution that operates under the direct responsibility of the President and is led by the Head of the National Land Agency. The primary role of the BPN is to fulfill government duties related to land at the national, regional, and sectoral levels.

The National Land Agency plays a crucial role in assisting the President in managing and developing land administration in accordance with the Basic Agrarian Law Number 5 of 1960 and other relevant legislation. This includes land regulation, use, control, ownership, determination of land rights, land measurement, land registration, and other matters pertaining to land issues. All of these activities are carried out in alignment with the policies set by the President (Ali, 2002). Since 2016, the city of Bima has been actively reclaiming its coastal areas, particularly Amahami Beach. The main reason behind this initiative is the scarcity of urban land, which prompted the local government to take action and develop essential public facilities like roads, markets, and places of worship.

In line with Presidential Regulation Number 51 of 2016 on Coastal Zoning, the boundaries of the coastal areas are defined as the land adjacent to the shoreline. The width of these boundaries depends on the shape and conditions of the coastline, but it must be at least 100 meters from the highest tide point towards the inland. However, the implementation of coastal reclamation has sparked objections from the community, particularly regarding the issuance of land ownership certificates (SHM) by the government. According to Law Number 1 of 2014, the state has control over coastal areas and small islands, with the aim of ensuring the utmost benefit for the people. However, a heated discussion has emerged within the local community due to the fact that the land certificates resulting from reclamation are owned by newcomers rather than the original residents of Dara Village. This has ignited social conflicts and tensions among the residents.

From the explanation provided earlier, it is clear that the reclamation process in Bima City leads to a discrepancy between "what should be (*das sollen*)" and "what is (*das sein*)". There is a clear misalignment between the legal requirements and the actual outcomes. The reclamation activities in Bima City have given rise to various challenges, including issues with licensing, particularly concerning individual ownership certificates after reclamation. It is evident that the main focus of reclamation is to secure individual land certificates. The acquisition of land rights is governed by four methods as per the law: government allocation, legal provisions (conversion affirmation), inheritance, and transactions like buying, selling, exchanging, gifting, incorporating into company capital (*imbren*), and auctions.

Therefore, the researcher aims to investigate and analyze these issues. Building on the aforementioned background, the goal of this study is to evaluate the process of obtaining land rights following coastal reclamation in Bima City and to evaluate the legal consequences of coastal border reclamation in the city.

## **Method**

The type of research employed in this study is empirical legal research. The approach methods utilized in this research include the conceptual approach, statutory approach, and socio-legal approach. The legal materials involved in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials.

Primary legal materials used in this research include:

- 1) 1945 Constitution.
- 2) Law Number 5 of 1960 concerning Basic Agrarian Principles.
- 3) Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands.
- 4) Presidential Regulation of the Republic of Indonesia Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands.
- 5) Regional Regulation of West Nusa Tenggara Province Number 12 of 2017 concerning the Plan for Coastal and Small Islands Zoning.
- 6) Regional Regulation of Bima City Number 4 of 2012 concerning the Spatial Planning Plan of Bima City.

Secondary legal materials are derived from relevant scholarly books, research findings, papers, and articles. Tertiary legal materials refer to online sources on the internet. The field data for this study consists of:

- 1) Primary Data, which is obtained directly from the main source through informants, namely from the National Land Agency of Bima City and three respondents, namely the residents of Bima City. Respondents are selected through purposive sampling. This data will be collected through field observations and interviews.
- 2) Secondary Data, which is obtained from literature related to the research object.

To acquire legal materials and data needed for this study, data collection techniques involve both literature review and field data. The data and information gathered from the research, including interviews with the National Land Agency, are analyzed qualitatively and descriptively. This involves grouping and selecting data based on their quality and accuracy. Subsequently, the findings are presented in descriptive form to draw conclusions regarding the researched issues.

## ***Results and Discussion***

### **The Process of Land Acquisition Resulting from Coastal Reclamation in Bima City**

#### **a. The Process of Land Acquisition Resulting from Coastal Reclamation in Bima City**

From a legal and constitutional standpoint, Article 33 Paragraph (3) of the 1945 Constitution dictates that land, water, and natural resources fall under the jurisdiction of the State and are to be utilized for the utmost benefit of the people. In Indonesia, land is governed by the State, which holds administrative authority. This authority serves as a means for distributing land to the public in the form of land rights, ownership, and similar arrangements. The acquisition of land rights in Indonesia is subject to specific procedures and regulations outlined in the law. Land management is governed by Government Regulation Number 16 of 2004 on Land Management, which defines land control as a legal relationship between individuals, groups, or legal entities and land as outlined in Law Number 5 of 1960 on Basic Agrarian Principles.

Land control can be understood in different ways, both in terms of physical and legal aspects, as well as in terms of private and public ownership. Legal control is based on rights protected by the law, which typically grants the rights holder the authority to physically control the land. This means that landowners have the right to use and benefit from their land without transferring ownership to others. However, there are cases where legal control is delegated to another party. For example, a landowner may choose to lease their land to someone else. In this situation, the land is still legally owned by the landowner, but the tenant has the physical control over it. This arrangement allows for different perspectives on land ownership and control (Urip, 2012).

Boedi Harsono explains that state land, also known as land directly controlled by the state, refers to land that does not have any specific land rights attached to it (Harsono, 1997). On the other hand, Arie S. Hutagalung defines state land as land that is still under the direct control of the State and has not been granted individual rights or rights given to legal entities, individuals, including government institutions (Hutagalung, 2002). In simpler terms, state land is land that has not been burdened with specific land rights or lacks individual rights owned or controlled by individuals or legal entities. The official definition of state land, as stated in Government Regulation No. 24 of 1997 concerning land registration, is land that is not owned by any specific land rights (Article I, number 3). Similarly, according to the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 9 of 1999, state land is land controlled by the State as stated in Law Number 5 of 1960 concerning Basic Agrarian Principles (Article I, paragraph 2).

To acquire land rights for coastal reclamation, the party involved must follow a specific process. They need to submit a request for state land rights to the Head of the National Land Agency of the Republic of Indonesia through the Land Office in the relevant regency/city. If the request is approved, the government will issue a Decree on Land Grant (SKPH) through the delegated authority of the Head of the National Land Agency. This ensures that the necessary permissions and rights are obtained for the reclamation project.

Muhammad Mukhsin, the former head of the RT and RW of Paruga Village in 2002, shed some light on the geographical details. He mentioned that the western side of the Amahami market is connected to the open sea, with one pond owned by Husen Ayub acting as a border. On the other hand, the Amahami market itself is situated within a mangrove forest, and behind PO. Rasa Sayang on the eastern side, there is another pond.

A resident named Lutfi H. Ibrahim, who hails from the Dara sub-district, shared his experience as a lime burner using coral stones, a business passed down from his father. In 1979, the government banned the extraction of coral stones in the Amahami area to protect the marine ecosystem. Lutfi also noticed boundary markers in the sea in 2007, which he promptly reported to the village head. Despite this, the current head of Dara sub-district clarified that he never recommended the issuance of Land Tax (SPPT) or new certificates, emphasizing that the area south of the Amahami market is indeed part of the sea.

Mr. Ismail, the former head of Dara sub-district, was appointed by the Bima regent on December 27, 2001. Serving as the head of Paruga, he highlighted the presence of both sea and ponds in the Amahami area. Initially, the area had a one-way street with ponds to the east and both the sea and ponds to the west. Subsequently, a two-way road was constructed, and land was allocated for the development of the Amahami market. Mr. Ismail worked closely with the National Land Agency (BPN) to identify the landowners, which included H. Arifin and associates. The land was subject to Land Tax (SPPT) and DHKP for tax purposes. He clarified that he was not involved in any land acquisition by the Bima City government during his tenure. Additionally, he pointed out that beyond the market, extending to the floating mosque, lies the sea, along with ponds in the vicinity.

According to Bahrudin, the former head of Paruga sub-district who served from November 17, 2007, until 2014, he testified that he was not aware of any land issues for the Amahami market location. He further stated that to the north of the Amahami bridge, there are unproductive ponds, and on the west side of the Amahami market, there is a portion of unproductive ponds. During high tide, the pond embankments are not visible, and the same goes for behind the Amahami market.

According to Ibrahim Samiun/Mulyadin, a collector, he testified that to the north of the Amahami bridge, there are one or two individuals who own ponds. To the west of the Amahami market, there is a pond owned by Guru Mahmud, while to the west and south of the Amahami market is the sea.

According to M. Nor Amajid, former sub-district head of West Rasanae and head of community empowerment: he served as the head of West Rasanae sub-district since August 2005. During his tenure, the city government of Bima planned to build an inter-city and inter-province terminal (AKAP). From this plan, the land clearance for approximately 5 hectares around the Amahami area was signed. Later, he stated that Mr. Slamet and his friends had requested a recommendation for the completeness of documents for the making of certificates for pond land located between the Amahami bridge and the ditch, but he rejected it. In 2014, bamboo markers appeared in the middle of the sea around the Amahami area. Mayor H. M. Nor A Latif instructed him to remove these markers as they were feared to become individual ownership. Behind the market and to the west of the Amahami market is the sea, and the same goes for the north and south of the new road.

According to Bukhari, the current head of Dara sub-district, during his tenure as the head, some parties requested the splitting of Land Tax (SPPT) to pay for Amahami taxes. However, he did not approve it. He further stated that there are no ponds to the south of the Amahami market; it is the sea.

According to Mahmud Makarudin, he has been cultivating a pond since 1994 located to the west of the ditch, precisely next to the pond owned by Mr. Slamet. Since 1999, when he was appointed as a civil servant (CPNS), the land became neglected. He had previously applied for the land certificate, and it was only issued in 2006. While working on the mentioned pond, he witnessed that to the east of the ditch, there were several other ponds. To the north of his pond, there were ponds owned by Mr. Kamaludin and Umi Ida, purchased from H. Husen Ali. To the west of his pond, there was a small ditch separating his pond from Mr. Haris's (Hairil) pond, and to the south, it faced the sea. This condition was before the existence of a two-way road.

Muhamad Mukhsin, a community figure in the Dara sub-district, testified that to the west of the Dara terminal, there is a pond. To the south of the Amahami market is the sea and mangrove forest. To the west of the Amahami bridge is a river; there are no ponds or mangrove forests. Behind the Amahami market is the sea.

According to H. M. Sidik Ridwan SPD, a figure in the Dara community, based on his testimony, there are no ponds to the south of the Amahami market, only the sea. He further stated that the land for the inter-city and inter-province terminal (AKAP) is located in the area of H. Jakariah's shop houses, not in the current market location. This is evidenced by a signboard stating that the land belongs to the Bima City Government for the construction of the AKAP terminal, located right in front of H. Jakariah's shop houses. The testimony of Ismail SH, the former head of Paruga, and the representatives and all the residents of Dara and Paruga present during the field visit to the Amahami coastal embankment on August 28, 2019, confirms H. M. Sidik Ridwan SPD's statement that the land in the area of H. Jakaria's shop houses is currently owned by the Bima City Government.

Based on the statements of various parties, the utilization of space in each area must be based on the provisions of the legislation according to the intended development of the area. Analyzing land policy and regulations related to the acquisition of reclaimed coastal land, two crucial aspects must be

prioritized: urban planning and development policies, including Regional Spatial Planning (RTRW), and the legal framework of existing laws and regulations. These reference sources will guide the implementation of land acquisition processes in society. Often, discrepancies between spatial planning and applicable laws and regulations in land acquisition led to disputes and conflicts.

Land rights are one of the ownership rights over land regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles. Land rights are the authority granted to an individual who has the right to use or benefit from the land. Article 4 paragraph (1) of the Agrarian Law asserts that, "based on the State Control Right, as referred to in Article 2, various rights over the earth's surface, called land, can be determined to be given and owned by individuals or jointly by others and legal entities."

State land cannot be bought or sold. The method to obtain rights from State Land is through a request for land rights. Other methods include buying and selling, gifting, inheritance, and exchanging. Meanwhile, land derived from ownership rights (land rights) is obtained based on mutual agreement and consensus on the transfer of land between the land rights holder and the party in need of land. The next step taken by both parties is to transfer the rights and release the land rights. Former head of the National Land Agency (BPN) of Bima City, Mr. Karim Aziz, was also asked for information by the special committee. Regarding his testimony on the coastal area of Amahami during his tenure as the head of BPN of Bima City, he mentioned that State land is divided into two categories:

- a) Free land
- b) Controlled land

Regarding state land under control, some receive certificates, while others do not receive certificates because certain conditions must be met for a certificate to be issued. In the case of those applying for ownership certificates for ponds in the Amahami area, some are approved, and some are not approved. Those not approved are usually unable to provide clear boundaries for the requested pond land, including the embankments as evidence of a legitimate pond. Therefore, during his leadership at the National Land Agency (BPN) of Bima City, only 2 (two) certificates were issued in the Amahami area, one of which was in the name of Muhmud Makaruddin, located to the west of Amahami Market or south of the road.

Mr. Karim Azis also stated that to the south of the Amahami market area, there is the sea and no ponds, and at that time, there was no Spatial Planning Draft Regulation for the Bima City region. The Public Works and Spatial Planning Agency (Dinas PUPR), represented by the head of the spatial planning division, Ririn Kurniati, explained that building permits (IMB) are issued by the City Planning Agency based on regional regulations (*Perda*) RT/RW of Bima City. The area is designated for industrial, commercial, and warehousing activities.

According to Drs. Zainudin, the head of BPKAD, he clarified that the SPPT (Land and Building Tax Notification) is not a proof of ownership but a tax notification document. BPKAD is not the issuer of SPPT for landowners but only issues tax billing SPPT. BPKAD is also not the issuer of the original SPPT, only issuing split SPPT. In the surrounding area of Amahami, there have been no new SPPT issued.

According to the Regional Development Planning Agency (Bapeda) of Bima City, represented by Ir. Tafsir as the secretary, in 2012, Regional Regulation (*Perda*) No. 4 on Spatial Planning and Area (RT/RW) of Bima City for the period 2011-2029 was enacted. Before being ratified, this regulation underwent a series of public consultation processes involving all stakeholders. Subsequently, the City Council (DPRD) of Bima City approved the content of the regulation. The RT/RW regulation was then synchronized with the Regional Spatial Planning Regulation (RTRW) at the provincial and national

levels. This regulation designates the Amahami area for green open spaces (RTH) and recognizes the evolving dynamics of community life. After 5 years, adjustments to the regulation may be necessary.

Drawing on Gustav Radbruch's perspective on legal certainty, the law is a positive factor capable of regulating the interests of every individual within society and must always be obeyed, even if the positive law is deemed unjust (Hutabarat et al., 2022; Radbruch, 2006). Furthermore, legal certainty is a state of certainty. In the development of reclamation undertaken by the government or individuals, Gustav Radbruch's concept of legal certainty suggests that in acquiring ownership rights to reclaimed land, individuals must adhere to all applicable legal regulations governing their property rights. The acquisition of ownership rights from reclaimed land requires compliance with certain conditions, one of which is related to permits. Permits are a crucial instrument in registering land resulting from reclamation. Permits are acts based on laws and regulations, following procedural mechanisms. A permit represents a government act based on legal regulations to be applied in every event. Therefore, the explanation above emphasizes that every legal regulation must be applied in all situations to ensure legal certainty.

According to Lawrence M. Friedman, the effectiveness and success of law enforcement depend on three elements. First is the legal structure, which refers to the institutions created by the legal system, serving various functions to support the system's operation. This component allows an examination of how the legal system provides services for the development of legal materials systematically. The next element is that every applicable legislation cannot be solely assessed based on its wording, which explicitly explains the law. In practice, it might be challenging to implement due to the different legal cultures in each region.

In the development of island reclamation, the application of the principle of free and prior informed consent is essential. This principle emphasizes obtaining the consent of the local community before implementing the construction project (Muazzin, 2014). Reclamation permits should prioritize participatory principles to achieve consensus among all stakeholders. Regarding permits, Prins states that they should include a restrictive description of the reasons for refusal. However, the difference between conditions and dispensations is not always clear. Ateng Syarifuddin mentions that a permit aims to eliminate obstacles, transforming what is prohibited into permissible or as *opheffing van een algemene verbodsregel in het concrete geval* (the abolition of a general prohibition rule in a specific case).

## Legal Implications of Coastal Reclamation in Bima City

### a. Implementation of Coastal Reclamation According to Indonesian Positive Law

Linguistically, reclamation originates from the English word "to reclaim," meaning to restore something damaged. Specifically, according to the English-Indonesian dictionary published by PT. Gramedia, "reclaim" is translated as making land above sea level. In the same dictionary, the term "reclamation" is translated as the effort to obtain land. Reclamation is an effort to utilize an area or land that is unproductive and watery, transforming it into useful land by draining it. Areas suitable for reclamation include coastal regions, lakes, swamps, or expanses of rivers (Hasni, 2010).

Coastal reclamation, according to Save M. Dagon, is the utilization of economically unproductive land for various purposes such as settlements, agriculture, industry, recreation, and others. This includes soil conservation, water resource preservation, clearing barren land, drainage in swampy or valley areas, and tidal project installations. According to Wisnu Suharto, reclamation is an effort to utilize relatively unproductive or vacant and watery areas, transforming them into useful land by draining. Essentially, reclamation is an activity that transforms coastal water areas into higher lands (Soemarwoto, 1991).

Based on Article 2 Paragraph (1) of the Basic Agrarian Law Number 5 of 1960, it states that, in accordance with the provisions of Article 33 Paragraph (3) of the Constitution and matters referred to in

Article 1, the Earth, water, and airspace, including the natural resources contained therein, are at the highest level controlled by the State as the organization of power for the entire people. This statement contradicts what happens in society, where the sea should not be controlled by individuals other than the State.

According to Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands, reclamation is defined as activities carried out by people to increase the benefits of land resources from an environmental and socio-economic perspective through dredging, land drying, or drainage. Therefore, parties involved in reclamation, including those granting reclamation permits, reclamation implementers, workers, and developers, must always adhere to the provisions of these regulations. This ensures that the implementation minimizes undesired consequences and environmental impacts in the post-reclamation area.

As supporting regulations, there is also Presidential Regulation No. 122 of 2012 concerning Coastal and Small Islands Reclamation. This regulation essentially follows the aforementioned laws. Hence, both the law, the RZWP3K, and the Presidential Regulation are fundamental legal bases for reclamation implementation in Indonesia. The Presidential Regulation covers four main aspects of reclamation, namely: a) Reclamation planning; b) Reclamation licensing; c) Reclamation implementation; and d) Monitoring and evaluation.

In obtaining reclamation permits, as explained in Article 16 of Presidential Regulation Number 112 of 2012, to obtain location and implementation permits for reclamation, the Government, local government, and individuals must first submit an application to the Minister, governor, or regent/mayor.

In the implementation of reclamation, it is also important to consider land utilization, including changes in land and ownership of reclaimed land. This is elaborated in Government Regulation of the Republic of Indonesia No. 16 of 2004 concerning Land Use Planning. Article 12 explains the ownership rights of reclaimed land carried out by the government, private companies, or those in collaboration. It is stated that land originating from emerged land or reclaimed coastal areas, lakes, and swamps is directly under the control of the State. This regulation provides legal certainty regarding the validity of land resulting from coastal reclamation, even though in other provisions, this land is under the authority of the State.

In Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration, land from coastal reclamation can be granted Management Rights and/or Land Rights, provided that reclamation permits have been obtained. If the reclamation permit is granted to Central Government agencies, State-owned enterprises, Regional Government-owned enterprises, State-owned legal entities, Regional Government-owned legal entities, the Land Bank Agency, or legal entities appointed by the Central Government.

The implementation of reclamation is regulated by Presidential Regulation of the Republic of Indonesia Number 122 of 2012 concerning Reclamation in Coastal and Small Island Areas. Reclamation activities can be carried out upon obtaining implementation permits. To obtain location and implementation permits for reclamation, the Government, local government, and individuals must first submit an application to the Minister, governor, or regent/mayor. The term "Minister" refers to the minister responsible for maritime and fisheries affairs.

Lately, reclamation activities are no longer aimed at productive development such as repairing coastal damage and restoring the original functions of the coast, expanding docks or ports, or for industrial expansion. Instead, reclamation is directed more towards development to meet consumptive needs, such as residential development and recreational facilities, including sports facilities. Economically, developing residential areas in coastal areas is more profitable for investors compared to

developing coastal areas for industrial purposes.

Coastal and Small Island Reclamation is conducted to enhance the benefits and/or added value of Coastal and Small Island Areas, considering technical, environmental, and socio-economic aspects:

- 1) The sustainability of the life and livelihood of the community;
- 2) The balance between the interests of utilization and the preservation of the functions of the coastal and small island environments; and
- 3) Technical requirements for material extraction, dredging, and filling.

The determination of the location is based on the Coastal and Small Island Zoning Plan (RZWP-3-K) of the Province, District/City, and/or the National Spatial Plan (RTRW) of the Nation, Province, District/City. The location determination includes the designation of reclamation and material source locations. The selection of reclamation and material source locations must consider technical, environmental, and socio-economic aspects.

The development of a master reclamation plan should take into account strategic environmental assessments, alignment with the Coastal and Small Island Zoning Plan (RZWP-3-K) of the Province, District/City, and/or the National Spatial Plan (RTRW) of the Nation, Province, District/City, physical infrastructure on reclaimed land and its surroundings, public access, public facilities, coastal ecosystem conditions, land ownership and/or control, social structures, economic activities, population, local wisdom, and areas of cultural heritage and historical sites.

Those conducting reclamation must obtain location permits and reclamation implementation permits. Location permits and reclamation implementation permits are exempted for reclamation carried out in:

- 1) Working Areas (DLKr) and Interest Areas (DLKp) of main and collecting ports, as well as in the special terminal waters;
- 2) Mining, oil, natural gas, and geothermal locations; and
- 3) Forest areas for the purpose of forest recovery and/or improvement.

In Minister of Marine Affairs and Fisheries Regulation Number 17 of 2013, it is further clarified that governors have the authority to issue location permits and reclamation implementation permits in sea waters beyond the jurisdiction of districts/cities, up to a maximum of 12 (twelve) nautical miles measured from the coastline towards the open sea and/or towards island waters, as well as in fisheries ports managed by the provincial government. Regents/mayors have the authority to issue location permits and reclamation implementation permits in one-third (1/3) of the province's jurisdiction and in fisheries ports managed by the district/city government.

Applications for location permits must include the applicant's identity, reclamation proposal, location map with geographical coordinates, and evidence of the conformity of the reclamation location with the Coastal and Small Island Zoning Plan (RZWP-3-K) and/or the Spatial Plan (RTRW) from the relevant authority. The Minister, governor, and regent/mayor, according to their authority, shall approve or reject location permit applications within a maximum of 20 (twenty) working days from the complete receipt of the application. If there is no decision within the 20 (twenty) working days, the application is considered approved, and the permit must be issued. After obtaining the location permit, the applicant must, within a maximum of 2 (two) years, develop a master plan, feasibility study, and detailed reclamation design.

Therefore, in the implementation of the illegal reclamation along the Amahami Beach in the City of Bima, it did not follow the processes outlined in the legislation. The construction of the Amahami market and the filling in its vicinity is considered illegal and a misappropriation of coastal resources that should be controlled by the State for organized management to achieve community welfare, but it has negative impacts on the community.

## **b. Legal Implications of Coastal Reclamation in the City of Bima**

### **1) Unlawful Land Rights Acquisition**

Based on a letter from the Department of Marine Affairs and Fisheries of West Nusa Tenggara Province and in response to the clarification request from the City of Bima Regional People's Representative Council (DPRD), several points are hereby presented:

- a) According to Regional Regulation Number 3 of 2010 on the Spatial Plan (RTRW) of West Nusa Tenggara Province for the years 2009-2029, the coastal area of Bima Bay is a strategic provincial area that, in terms of economic growth interests, functions as: Fisheries zone, Agricultural zone, and Tourism zone.
- b) The City of Bima should align the utilization direction within the Spatial Plan (RTRW) of Bima City with the Provincial Spatial Plan of West Nusa Tenggara.
- c) Law Number 23 of 2014 concerning Regional Governments, particularly Article 27, stipulates that the management of the 0-12 nautical mile sea area measured from the highest tide is the authority of the provincial regional government.
- d) Presidential Regulation Number 51 of 2016 regarding coastal boundary limits and Minister of Marine Affairs and Fisheries Regulation Number 21 of 2018 on procedures for calculating coastal boundary limits mandate provincial and district/city governments with coastal areas to establish coastal boundaries as outlined in their respective Spatial Plans (RTRW).
- e) West Nusa Tenggara Provincial Regulation Number 12 of 2017 on the Coastal and Small Islands Spatial Plan (RZWP3K) for the years 2017-2037 has allocated the sea area of Bima Bay and Amahami Beach as a Tourism Zone Sub-Zone for natural beach tourism/Fishery and Marine Resources (P3K).
- f) Law Number 1 of 2014 amending Law Number 27 of 2007 on the Management of Coastal Areas and Small Islands states that:
  - Article 16 paragraph (1) declares that anyone utilizing a portion of coastal waters and utilizing them as small islands on a permanent basis must have a location permit
  - Article 17 paragraph (1) states that the location permit as mentioned in Article 16 paragraph (1) is granted based on the Coastal and Small Islands Spatial Plan (RZWP3K)
- g) The construction activities of the floating mosque and the reclamation for road development along the coastal area of Bima Bay (Amahami Beach) have been accommodated in the regulations, particularly in Regional Regulation Number 12 of 2017 concerning the Spatial Plan for Small Islands in West Nusa Tenggara Province for the years 2017-2037. However, for the legality of spatial utilization, permits must be sought for the construction of the floating mosque and the location of the reclamation for road development.

- h) Reclamation activities along the coast of Amahami Beach in Bima Bay, including the construction of the floating mosque and road development as mentioned in point (7) above, are illegal and must be issued in accordance with applicable mechanisms and regulations. Observing maps from Google Earth from 2003 to 2017, the location mentioned in point (8) is still within the marine territory.

According to the former chairman of the National Land Agency, Mr. Karim Azis, state land cannot be bought or sold. The way to obtain rights to state land is through a request for land rights. Other methods to acquire land include buying and selling, gifting, inheritance, and exchanging. Meanwhile, land that originates from private ownership (land rights) is obtained based on mutual agreement and consent regarding the transfer of land between the land rights holder and the party in need of the land. The next steps taken by both parties involve the transfer and release of the land rights. Mr. Karim Aziz, the former head of the National Land Agency (BPN) in the city of Bima, was also asked for testimony by the special committee (pansus). Regarding his testimony on the coastal area of Amahami during his tenure as the head of BPN in the city of Bima, he stated that state land falls into two categories: a. Free land; and b. Controlled land.

Regarding state-controlled land, some are granted certificates, while others are not because certain conditions must be met to issue a certificate. In the case of obtaining ownership certificates for shrimp ponds in the Amahami area, some applications are approved, while others are not. The disapproval is often due to the inability to provide clear boundaries for the applied shrimp pond land and embankments as clear indicators of a legitimate pond. During his leadership at the National Land Agency (BPN) in the City of Bima, only two certificates were issued in the Amahami area. One of them was issued in the name of Muhmud Makaruddin, located west of the Amahami market or south of the road. Mr. Karim Aziz also stated that to the south of the Amahami market area, there is the sea, and there were no shrimp ponds at that time. Additionally, there was no Spatial Planning Regional Regulation in the City of Bima during that period.

Land certificates, as the strongest evidence of land ownership, are issued when the landowner completes the land registration process following the stages stipulated in the applicable regulations. Issued certificates provide legal certainty for the ownership of a land right (Julyano & Sulistyawan, 2019)

Unlawful acts under Article 1365 of the Indonesian Civil Code (KUHPdata) refer to any action that violates the law and causes harm to others. The party causing such harm is obliged to compensate for the losses incurred. Wrongful acts can be described as actions or negligence that contradict the rights of others, violate the legal obligations of the perpetrator, or conflict with ethical standards and societal norms that should be respected in interactions with others or property. Actions not only contrary to the law but also infringing on the rights of others, violating legal obligations, conflicting with ethical standards, or disrupting societal order can be considered wrongful acts. If such actions violate the rights of others, breach legal obligations, conflict with ethical standards, or disrupt societal order, they are deemed wrongful acts (Agustina, 2003).

Another element concerns the presence of fault on the part of the perpetrator, meaning that the fault must be proven in establishing a wrongful act. This is because if there is no fault, accountability cannot be established. Additionally, the element of experienced harm must also be satisfied. Harm in wrongful acts differs from harm caused by breach of contract, as it involves both material and immaterial losses. The last element that must be considered is the presence of a causal relationship or cause-and-effect between the action and the resulting harm (Agustina, 2003).

In this discussion, the author will focus more on the legal implications of issuing certificates for reclaimed land without obtaining permission. A defective legal certificate is evidence of land rights (land ownership certificate) that has been issued but contains elements that render it null and void. This could

be due to elements such as coercion, errors, fraud, and other factors. Alternatively, if the formal procedures are not followed or violated, the legal consequence is that the certificate is invalidated (Murad, 1991).

Ownership rights, as stated in Article 20 paragraph (1) of the Agrarian Law (UUPA), are hereditary, the strongest, and the most complete rights that individuals can have over land, considering the provisions in Article 6. The characteristics of ownership rights are as follows:(Chomzah, 2002)

- a) Hereditary: Ownership rights over the land can be transferred by law from a deceased landowner to heirs.
- b) Strongest: This implies that ownership rights over the land are the most powerful among other land rights.
- c) Most complete: This means that ownership rights over the land can be used for agricultural purposes and for constructing buildings.
- d) Transferable: Can be transferred from one person to another.
- e) Can be encumbered with credit by imposing a Mortgage.
- f) Unlimited duration.

Ownership rights to land come in two forms: individual (personal) and legal entities:

- a) Individuals: Only Indonesian citizens are eligible to have ownership rights. This is regulated by Article 21 paragraph (1) of the Agrarian Law (UUPA), which stipulates that only individuals who are Indonesian citizens can have ownership rights to land.
- b) Certain Legal Entities: The government designates specific legal entities that can have ownership rights, as stated in Article 21 paragraph (2) of the Agrarian Law (UUPA). Legal entities eligible for ownership rights, as outlined in Article 1 of Government Regulation No. 38 of 1963 concerning the Designation of Legal Entities Eligible for Ownership Rights to Land, include state-established banks (Bank Negara), agricultural cooperatives, religious organizations, and social organizations.

The Occurrence of Land Ownership Rights to land can occur through three methods as specified in Article 22 of the Agrarian Law (UUPA):

a) Land Ownership through Customary Law

Land ownership under customary law arises through land clearing (forest clearing) or the emergence of new land (*Aanslibing*). Land clearing involves the joint efforts of the Customary Law community led by a customary leader through three cultivation systems: *matok sirah matok galeng*, *matok sirah gilir galeng*, and the *bluburan* system.

b) Ownership through Government Determination

Land ownership here initially originates from state land. This form of land ownership occurs through a request for granting land ownership submitted by the applicant, complying with the procedures and requirements set by the National Land Agency of the Republic of Indonesia (BPNRI). If all the specified requirements are met by the applicant, the Head of the National Land Agency of the Republic of Indonesia or an authorized official issues a Decree of Land Grant (SKPH). The SKPH must be registered

by the applicant with the Head of the Land Office of the respective District/City to be recorded in the Land Book and to issue a Certificate of Land Ownership as proof of ownership. The registration of SKPH marks the birth of land ownership rights.

#### c) Land Ownership through Legal Provisions

This type of land ownership occurs as a result of legal provisions, as regulated in Article I, Article II, and Article IV paragraph (1) of the UUPA Conversion Provisions. The occurrence of land ownership is based on the provisions of conversion (change) according to UUPA. Since the enactment of UUPA on September 24, 1960, all land rights must be converted into one of the land rights specified in UUPA. Conversion refers to the change in land rights status due to the enactment of UUPA. Land rights existing before the enactment of UUPA are transformed into land rights specified in UUPA (Article 16 UUPA). Conversion is the change in the status of land rights from the old legal system before the enactment of UUPA to land rights according to UUPA.

Ownership of the land certificate with the number 975/1992 covering an area of 2170 square meters, as stipulated in Article 22 of Agrarian Law (UUPA) Number 5 of 1960, explaining the conditions for acquiring land ownership, and regulated in detail through Government Regulation Number 18 of 2021 concerning Management Rights, Land Ownership Rights, Apartment Units, and Land Registration.

UUPA specifies that the annulment of land rights is one of the reasons for the removal of related land rights. The issuance of a decision to annul land rights is due to legal administrative defects or for the enforcement of legally binding court decisions. Consequently, the annulment results in the forfeiture of rights and the land ownership becomes state-owned (Lubis & Lubis, 2008).

As per Article 17, paragraph (1), reclaimed land may be granted Management Rights and/or Land Ownership Rights provided that reclamation permits have been obtained. Furthermore, paragraph (3) states that if the reclamation permit is granted to a legal entity or individual, the reclaimed land mentioned in paragraph (1) is granted Land Ownership Rights and/or Management Rights with the following provisions:

- a) For reclamation permit holders, Land Ownership Rights and/or Land Ownership Rights over Management Rights are granted; and
- b) For the Central Government or Regional Governments issuing reclamation permits, Management Rights are granted.

The consequence of land disputes is the annulment of the Land Certificate, a legal action taken by the government, namely the National Land Agency, in the field of land. Because the Land Certificate is not a permanent proof of ownership but is strong in nature, it is interpreted as a proof of ownership based on physical and juridical data contained in the Certificate, similar to the information in the land book and survey letter. Therefore, if there are objections to the issuance of the Land Certificate, individuals can file objections with the National Land Agency for annulment or file a lawsuit in court. Thus, from the explanation of the above article, the author can analyze that the ownership certificate in the name of Purna Wijaya with certificate number 975/1992 covering an area of 2170 square meters can be annulled, along with all certificates issued on reclaimed land without a permit. The ownership certificate evidence located on the previous page, as stated in Article 107 of the Regulation on Agrarian Affairs (Permen/agraria/BPN9/1999).

The coastal resource wealth that should be controlled by the State for well-managed utilization to achieve the welfare of the community, providing benefits for the current generation without sacrificing the needs of future generations. Generally, many communities have settled in coastal areas, and some

even have land rights in coastal areas. This has led to changes in the coastal ecosystem as the settled communities exploit coastal resources. However, besides the negative impacts, there are also positive ones, such as the better preservation of the coastal ecosystem because those residing in the area view it as their life potential. This results in actions that lead to the desired consequences for the doer, regulated by the law, known as the legal consequences. These actions are referred to as legal acts. In other words, legal consequences are the implications of a legal act (Soeroso, 2016).

## 2) Implications of Building Construction Approval (PBG) Resulting from Coastal Reclamation/Filling

Regulations regarding Building Construction Permits (PBG) are generally governed by Law Number 28 of 2002 concerning Buildings. The implementation details are further outlined in Government Regulation Number 16 of 2021 concerning the Implementation of Law Number 28 of 2002 concerning Buildings. Article 14 of Government Regulation Number 36 of 2005 contains provisions related to Building Construction Permits, and the stipulations within it are as follows:

- a) Every individual intending to own a building must obtain a building construction permit.
- b) Building construction permits are granted by the local government, except for buildings with special functions determined by the central government, through the process of applying for a building construction permit.
- c) The local government is obliged to provide a district/city certificate for the relevant location to anyone applying for a building construction permit.
- d) The district/city plan certificate is a stipulation applicable to the respective location.
- e) The district/city may also include specific provisions applicable to the respective location.
- f) The district/city plan certificate is used as the basis for the preparation of the technical plan for building construction.
- g) Based on the official letter from the Department of Marine Affairs and Fisheries of West Nusa Tenggara Province stating that reclamation activities along the coastal area of Amahami in Teluk Bima, apart from the construction of a floating mosque and roads as mentioned above, are illegal and must be issued in accordance with the applicable mechanisms and regulations. Observing the Google Earth maps from 2003 to 2017, the location at number (8) is still considered a maritime area.

In the implementation of the Amahami Beach reclamation development carried out in 2015-2016, it obtained a Building Rights (*Hak Guna Bangunan* - HGB) from the reclamation result without a permit for reclamation with the number HBG:56/2015, covering an area of 781 square meters under the name of Adi Wahyudi with a history of new land application. Therefore, the HGB obtained from this reclamation must meet the licensing requirements issued by the Department of Marine Affairs and Fisheries of West Nusa Tenggara Province. Based on the information explained above, the acquired HGB can be revoked.

The philosophical basis of granting permits is the concept that serves as a surveillance instrument for community behavior. Granting permits can also be interpreted as a limitation on limited potentialities. In general, permits are assumed to be beneficial decisions, so they cannot be easily withdrawn or modified due to the interests involved (Hadjon, 1993). Permits do not emerge spontaneously but should be supported by the "authority" given to public officials (government as the executor of the law). Ultimately, the government's granting of permits to individuals and legal entities is implemented through decisions or determinations that subsequently fall within the realm of state administrative law.

In practice, the Building Permit (*Persetujuan Bangunan Gedung* - PBG) will go through several processes, including the planning process and the permit issuance process itself. It is hoped that in this regard, the implementation of licensing can be done maximally so that permit holders feel that their position and implementation within the scope of the permit are protected by law based on applicable regulations. Similar to the concept of the previous Building Construction Permit (*Izin Mendirikan Bangunan* - IMB), permits are established with the aim that in the future, when conducting activities in the building, there will be no problems hindering specific activities (Dwi, 2008). By having an official permit, users are entitled to legal protection.

The enforcement of the law in Indonesia aims to assist in regulating human life in society. For example, law enforcement can help someone get out of a difficult situation by providing legal certainty that ensures the enforcement and protection of the law (Rahardjo, 2010). The community or relevant users will feel assisted with the enforcement of the law. Furthermore, as a rule of law state, Indonesia certainly does not want to overlook anything that has the potential to complicate the conditions of its society. With the establishment of laws and structured regulations, the community can reap the results in the form of law enforcement and protection.

Regarding the scope of permits in a building, it is also an important aspect in the feasibility of the intended construction. With the establishment and implementation of permits, certain aspects such as feasibility, one of which is its accuracy, can be ensured. The formation of permits is not only limited to reporting but also includes several aspects that can be used as benchmarks for the implementation of activities, law enforcement, and legal protection. The aspects of feasibility include administrative and technical aspects related to the establishment of a permit that will be implemented. With order in administration and technical matters, it is expected that the structured form of permits can be established and implemented as intended.

Moreover, permits are also related to the authenticity or proof that can be accounted for in the future. Authenticity is usually associated with specific data that can be accounted for and serves as evidence of ownership or even a guarantee when facing certain situations. By optimizing spatial planning in building construction, the establishment of permits can also serve as proof that the building is officially and properly used, following procedures and complying with the applicable laws and regulations in Indonesia.

The Building Permit (*Persetujuan Bangunan Gedung* - PBG) is one form of innovation in building permits implemented by the Indonesian Government. The regulation governing PBG is Government Regulation Number 16 of 2021, which is also a consequence of Law Number 11 of 2020 on Job Creation, especially in Article 24 and Article 185. This innovation can be considered as a legal manifestation that follows the development of the times, especially when considering the existing permit form (*Izin Mendirikan Bangunan* (IMB)), which still requires optimization.

The implementation or application of policies is an integral part of the organizational process of public organizations that never ceases socially. Its existence is heavily influenced by the conditions in its social environment, making both internal and external aspects of the organization crucial in determining the implementation process of the Building Permit (*Persetujuan Bangunan Gedung* - PBG) policy. Moreover, it must also comply with the standards and requirements set by the authorities, such as the necessary documents and completeness. This applies to the construction of houses, offices, schools, and so on. Construction activities cannot commence abruptly, even if one already owns the land on which the construction will take place (Fea & Radhite, 2016).

The Utilitarianism theory, in general, is quite straightforward — it aims to maximize the utility of an action, ensuring that we enjoy benefits, profits, happiness, and pleasure from the process. In government reclamation policies, authorities may sometimes disregard the rights of fishermen, a group

that consistently needs to have their economic rights, the right to life, and the right to a comfortable environment fulfilled. The core issue in fulfilling the economic, social, and cultural rights of marginalized communities is that these groups lack access to the centers of power that formulate and decide on policies. Access to justice does not stop at decision-making or the approval of regulations but also extends to evaluating the development of cases up to the implementation level.

The building permit granted to Adi Mahyudi with Ownership Rights Number HGB: 56/2015, as indicated by data from the National Land Agency and letters from the Department of Marine Affairs and Fisheries of West Nusa Tenggara Province, reveals that the construction permit in Amahami is considered illegal.

### 3) Tax Collection

There are two types of taxes related to reclamation activities: Land and Building Tax (*Pajak Bumi Bangunan* - PBB) and Acquisition of Rights over Land and Building Tax (*Bea Perolehan Hak Atas Tanah dan Bangunan* - BPHTB). Due to the illegal nature of the reclamation, the government does not consider land resulting from reclamation as a taxable object for both PBB and BPHTB.

According to Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, the Acquisition of Rights over Land and Building Tax (BPHTB) is a tax on the acquisition of rights over land and/or buildings. The acquisition of rights over land and/or buildings is an act or legal event resulting in the acquisition of rights over land and/or buildings by individuals or legal entities. Rights over land and/or buildings include rights to land, including management rights, along with buildings on it, as defined in land and building laws. With the unauthorized reclamation activities along the Amahami coast, the tax collection carried out by the city government is also considered illegal.

### **Conclusion**

Based on the findings, the process of acquiring land rights from coastal reclamation in Kota Bima raises significant concerns that need attention. The implementation occurs in two phases: the unauthorized land filling and the subsequent issuance of certificates on reclaimed land, both of which are deemed illegal. This poses a challenge to the legality of Hak Milik and HGB certificates certified by the National Land Agency (BPN). Moreover, the local government faces limitations in levying property tax (PBB) and acquisition duty (BPHTB) on such illegally reclaimed land.

To address these issues, it is crucial to formulate policies for the utilization of coasts and small islands for reclamation that align with Coastal Zoning Plans and Regional Spatial Plans, adhering strictly to applicable regulations. Any entity intending to utilize space along coastal areas must obtain location permits and engage in thorough planning, taking into consideration the sustainability of coastal ecosystems and small islands. Additionally, in the process of acquiring land ownership certificates from reclaimed coastal areas in Amahami City, Kota Bima, careful attention should be given to reclamation permits. The local government is urged to implement policies facilitating the cancellation of ownership certificates that do not adhere to the conditions specified in the relevant regulations regarding coastal boundary reclamations.

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