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Implementation of the Right to Manage (HPL) Post-Job Creation law: A case study of NTB Provincial Government's Land Utilization Agreement in Gili Trawangan

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Abstract
This research analyzes the juridical validity of the Right to Manage (HPL) Utilization Agreement between the Provincial Government of West Nusa Tenggara (NTB) and a third party in Gili Trawangan, based on the Job Creation Law and the Indonesian Civil Code. Utilizing a normative-empirical research method, this study finds that although the agreement is grounded in the principle of freedom of contract, it substantially violates the objective requirements of Article 1320 of the Civil Code. The primary obstacle lies in the legal status of the agreement's object, which is designated as a Forest Conservation Area under the Minister of Environment and Forestry Decree No. 6598/2021, supported by the Coordinating Minister for Political, Legal, and Security Affairs Recommendation No. B-287/2023, which prohibits permit issuance prior to the formal release of the forest area. The impossibility of performance (issuance of the HGB) by the NTB Provincial Government results in a lack of "lawful cause." Based on the termination clause within the agreement and the principle of legal certainty, the agreement is declared null and void. The NTB Provincial Government, as the HPL holder, is obligated to account for the retribution fees paid by the third party.

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1. Introduction

Indonesia is a nation-state endowed with abundant Natural Resources (SDA), encompassing land, marine, and atmospheric wealth. This abundance is a divine gift that provides Indonesia with a strategic position in global affairs. Ideally, these resources should serve as a source of value utilized to the greatest extent possible for the prosperity of the people, in accordance with the mandate of Article 33, Paragraph (3) of the 1945 Constitution. However, the management system of Indonesia's natural resources has historically remained far from achieving social justice. For instance, a small minority of citizens monopolize the control over land and other natural resources, while a significant portion of the population continues to live in deprivation, with some even falling into the category of extreme poverty. This phenomenon is what Prabowo Subianto refers to as an "economic anomaly" in his book, *The Paradox of Indonesia*. [1]

Long before this, the government regulated the utilization of state-controlled land through the enactment of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA). This law, promulgated on September 24, 1960, is regarded as a progressive product of the Indonesian land system because, in addition to its social justice orientation, it aims to provide legal certainty regarding land issues. Prior to the UUPA, Indonesia operated under a dualistic land law system: land law based on customary law (*hukum adat*) and land law based on Western law as found in the Indonesian Civil Code (*KUHPerdata*) [2].

[1] Subianto, Prabowo. *The Paradox of Indonesia and Its Solutions*. 1st Digital Edition. Media Pandu Bangsa, Jakarta, 2023. p. 27.
[2] *Elucidation of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles*. Djembatan, Jakarta, 2002. p. 27

The utilization of state-controlled land is governed through an instrument known as the Right to Manage (*Hak* based on subordinate legislation, specifically Minister of Agrarian Affairs Regulation Number 9 of 1965 concerning the Implementation of the Conversion of the State's Right to Control and Provisions on Subsequent Policies. This ministerial regulation introduced the term "Right to Manage" for the first time.

The regulation of state land management has undergone significant development, particularly regarding the authority held by HPL holders. Law Number 11 of 2020 concerning Job Creation subsequently adopted the Right to Manage in a manner conceptually aligned with the legal policy of the "state's right to control" as regulated in both the 1960 UUPA and Article 33 of the 1945 Constitution. Article 136 of the Job Creation Law defines HPL as the state's right to control, where part of the executive authority is delegated to the holder of the right.

According to Article 137, Paragraph (1) of the Job Creation Law, the subjects eligible for HPL include central government agencies, local governments, the Land Bank Authority, State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), or specific legal entities appointed by the central government. Meanwhile, Article 137, Paragraph (2) specifies that these legal subjects are authorized to use or utilize the land, either independently or through cooperation with a third party. Third parties are granted access via a "land utilization agreement," enabling them to process HGU (Right to Cultivate), HGB (Right to Build), or *Hak Pakai* (Right to Use) for the utilization of the land (Article 138) [3]. Juridically, the Right to Manage possesses two aspects:

1. Public Aspect: HPL serves as the state's right to control, where authority is partially delegated to the holder to ensure the land is available for use by parties in need.
2. Private (Civil) Aspect: This is evident in the shift of "management" from a mere function into a "right" that can be used for the holder's own business purposes or to grant land rights over HPL land to third parties through a land utilization agreement [4].

Article 1233 of the Indonesian Civil Code states that obligations (*perikatan*) arise either from an agreement or from the law. In this regard, Subekti, in his book *Law of Agreements*, distinguishes between an "obligation" and an "agreement." The relationship between the two is that an agreement gives rise to an obligation; the agreement is the source of the obligation, among other sources [5]. Furthermore, as a legal act that carries legal consequences, an agreement can create rights and obligations. However, these rights and obligations can only be enforced if the agreement or consent is legally valid.

Based on Article 1320 of the Civil Code, the validity of an agreement must satisfy subjective and objective requirements. The subjective requirements include the consent of the parties and the capacity to enter into a contract. The objective requirements consist of a specific subject matter and a lawful cause.

Pengelolaan or HPL). In a juridical sense, HPL is not a land right directly established by the UUPA; rather, it is a right

Book III of the Civil Code concerning agreements adheres to an "open system," which provides the public with the broadest freedom to enter into agreements, provided they comply with applicable regulations. The HPL utilization agreement is a consequence of this open system, particularly Article 1338 regarding the principle of freedom of contract.

As an implementation of Law Number 11 of 2020, Government Regulation (PP) Number 18 of 2021 concerning land management rights was issued, followed by technical procedures in Minister of ATR/Head of BPN Regulation Number 18 of 2021. However, this Ministerial Regulation does not specify the form of the agreement—whether it must be a notarial deed or if a private deed (*akta di bawah tangan*) is permitted. Furthermore, the mandatory contents of such agreements are not detailed, except for requirements regarding recommendations from the HPL holder if the HPL is used as debt collateral or is transferred.

In reference to PP No. 18 of 2021 and Minister of ATR/BPN Regulation No. 18 of 2021 as efforts to implement Articles 136–138 of the Job Creation Law, the Provincial Government of West Nusa Tenggara (NTB), as the HPL holder, entered into a Land Utilization Agreement for part of the HPL land in Gili Trawangan, North Lombok, with a third party (an individual). This was based on the Handover Minutes (*Berita Acara Serah Terima*) No. 900/57/TRAMENA/XII/2024, dated December 27, 2024, following the Approval Letter from the Regional Secretary of NTB No. 000.2.5/893/TRAMENA/XI/2024, dated November 25, 2024. The HPL in question was issued under Number 1 on December 22, 1993.

Based on the study of this cooperation between the NTB Provincial Government and the third party, the following questions arise:

1. What is the legal validity of the HPL utilization agreement between the NTB Provincial Government and the third party in Gili Trawangan, North Lombok, when reviewed under current laws and regulations?
2. What are the legal consequences of the HPL utilization agreement if the terms of the agreement cannot be fulfilled?0

2. Research Method

The author employs a normative legal research method supported by empirical data. Normative-empirical research integrates library-based research with field data obtained through observations, interviews, and discussions with relevant stakeholders. This type of legal research utilizes normative case studies in the form of legal behavioral products in this instance, the implementation of the Right to Manage (HPL) utilization agreement between the Provincial Government of West Nusa Tenggara (NTB) and third parties (individuals) in Gili Trawangan, North Lombok, evaluated against prevailing laws and regulations. The core objective is to determine the legal validity of said agreement and to analyze the factual implementation of positive law and contractual provisions within specific legal events in society

[3] *Elucidation of Articles 136-138 of Law No. 11 of 2020 concerning Job Creation*.
[4] Rahmi, Elita. "The Existence of Right to Manage (HPL) and the Reality of Indonesian Development." *Journal of Legal Dynamics* Vol. 10, 2012. p. 338.
[5] Subekti, R. *Law of Agreements*. Intermasa, Jakarta, 2008. p. 1.

to achieve predetermined goals [6]. This study utilizes a conceptual approach and a statute approach, supported by a sociological approach, as the analytical framework for the research conducted in Gili Trawangan, North Lombok, NTB. The data collection techniques used in this research combine Normative Juridical and Empirical Juridical methods. The Normative Juridical approach focuses on examining the application of rules or norms within positive law. This approach adopts a legal-positivist conception, which views the law as being identical to written norms enacted and promulgated by authorized institutions or officials [7]. Conversely, the Empirical Juridical approach is a legal research method conducted based on field observations and experiments to analyze how law functions in reality.

The study employs Library Research and Field Research methods. This involves synthesizing existing legal theories with current legal practices where the author preliminarily suspects issues regarding the validity of the agreements, which have hindered the comprehensive fulfillment of the contractual terms. These materials are sourced from primary legal authorities, academic references, and contemporary expert opinions. These findings are then elaborated with field data to verify their consistency with established benchmarks. Furthermore, to ensure research accuracy, the author collects valid data published by both governmental and non-governmental research institutions. Such published data is typically processed by Environmental Law experts as an embodiment of their professional expertise.

The data collection techniques are conducted in two stages:

1. Literature Study: Collecting data to answer the formulated research problems by analyzing primary, secondary, and tertiary legal materials.
2. Field Research: Conducting on-site investigations at the research location and engaging with government agencies and environmental NGOs. This technique allows the author to analyze the normative legal position in relation to actual implementation practices.

The data analysis model employed is qualitative analysis within a normative-empirical framework. According to Denzin and Lincoln [8]. qualitative research utilizes natural settings to interpret phenomena through various methods, including interviews, observations, and document utilization. The collected data is then collaborated with universally recognized legal principles to draw conclusions that address the author's initial hypotheses. Finally, the author will translate these conclusions into proposed solutions or legal actions that policymakers and the relevant third parties should take.

3. Discussion

3.1. The Validity of the Agreement on the Utilization of Land Management Rights (HPL) over Land Owned by the Provincial Government of West Nusa Tenggara in Gili Trawangan – North Lombok with Third Parties (Individuals), Viewed from the Perspective of Statutory Regulations.

Article 138, Paragraph (1) of the Job Creation Law stipulates that the transfer of utilization rights for portions of Right to Manage (HPL) land to third parties is conducted through a "Land Utilization Agreement for the Right to Manage (HPL)." This provision clearly positions the HPL holder as a private legal entity capable of entering into agreements, rather than a public legal entity authorized to issue administrative decrees (*beschikking*) for the transfer of HPL land. Furthermore, this provision affirms that the obligations arising between the HPL holder and the third party are derived from a contract.

An agreement or consent is a source of an obligation (*perikatan*), alongside other sources such as the law. According to Article 1233 of the Indonesian Civil Code (*KUHPerdata*), obligations arise either from an agreement or by operation of law. In this regard, Subekti distinguishes between "obligation" and "agreement," stating that an agreement gives rise to an obligation; thus, the agreement serves as a source of the obligation [9]. As a legal act with legal consequences, an agreement creates rights and obligations. However, these can only be enforced if the agreement is legally valid [10].

The management of state-controlled land is regulated under the Right to Manage (HPL). In this context, HPL is not a land right established directly by statute (specifically the UUPA), but rather a right based on subordinate regulations, namely Minister of Agrarian Affairs Regulation No. 9 of 1965. This regulation introduced the term "Right to Manage" for the first time.

The regulation of state land management has evolved significantly, particularly regarding the authority of HPL holders. Law No. 11 of 2020 concerning Job Creation adopted HPL in a manner conceptually consistent with the "state's right to control" (*hak menguasai negara*) as stipulated in the 1960 UUPA and Article 33 of the 1945 Constitution. Article 136 of the Job Creation Law defines HPL as the state's right to control, where part of the executive authority is delegated to the holder. Under Article 137, Paragraph (1), subjects eligible for HPL include central and local government agencies, the Land Bank Authority, State-Owned/Regional-Owned Enterprises (BUMN/BUMD), or designated legal entities. Article 137, Paragraph (2) grants these subjects the authority to utilize the land independently or through cooperation with third parties via a "land utilization agreement," allowing the third party to process HGU, HGB, or *Hak Pakai* (Right to Use) [11].

Juridically, HPL encompasses two aspects:

1. Public Aspect: HPL functions as the state's right to control, delegated to the holder to ensure land availability for those in need.
2. Private Aspect: This involves the transformation of "management" into a "right" used for the holder's business purposes or to grant rights to third parties through utilization agreements [12].

Article 1320 of the Civil Code stipulates that for an agreement to be valid, it must meet subjective requirements (consent and capacity) and objective requirements (a specific

[6] Ramadani, Granita. *Analysis of Research Methodology Aspects*. Faculty of Law, University of Indonesia, Depok, 2009. p. 58.
[7] Ibrahim, Johnny. *Theory and Methodology of Normative Legal Research*. Bayumedia Publishing, Malang, 2008. p. 295.
[8] Moleong, Lexy J. *Qualitative Research Methods*. Remaja Rosdakarya, Bandung, 2010. p. 5.
[9] Subekti, *Law of Agreements*, Intermasa, Jakarta, 2001, p. 1.
[10] *Loc. Cit.*, p. 70
[11] *Elucidation of Articles 136-138 of Law No. 11 of 2020 concerning Job Creation*.
[12] Rahmi, Elita, "The Existence of Right to Manage (HPL) and the Reality of Indonesian Development," *Journal of Legal Dynamics* Vol. 10, 2012, p. 338.

subject matter and a lawful cause). Book III of the Civil Code adheres to an "open system," providing the public with the broadest freedom of contract, as further emphasized by the principle of *pacta sunt servanda* in Article 1338.

As an implementation of the Job Creation Law, Government Regulation (PP) No. 18 of 2021 was issued, followed by Minister of ATR/BPN Regulation No. 18 of 2021. However, these regulations do not specify the required form of the agreement—whether notarial or under private hand (*onderhands*) nor do they detail the mandatory clauses, except for recommendations regarding collateral or transfers.

Based on the aforementioned framework, the Provincial Government of West Nusa Tenggara (NTB), as the HPL holder, entered into an HPL Utilization Agreement with a third party (individual) for land in Gili Trawangan, North Lombok. This was based on the Handover Minutes No. 900/57/TRAMENA/XII/2024, dated December 27, 2024, regarding HPL No. 1 issued on December 22, 1993.

Based on the analysis above, the HPL utilization agreement in Gili Trawangan is legally invalid as it violates the requirement of a lawful cause (*causa yang halal*) under Article 1320 of the Civil Code. The unlawful cause stems from the fact that the object of the agreement, based on research findings, cannot be utilized because its current status is a Forest Conservation Area. This is based on the Minister of Environment and Forestry Decree No. SK.6598/MENLHK-PKTL/KUH/PLA.2/10/2021, and the Letter from the Coordinating Minister for Political, Legal, and Security Affairs No. B-287/HN.02.12.2023, dated December 28, 2023. The latter recommends that the Minister of ATR refrain from granting any utilization permits/recommendations for Gili Trawangan, Gili Meno, and Gili Air until the forest area is formally released [13]. Consequently, the failure to meet the objective requirements due to these empirical findings renders the agreement null and void (*batal demi hukum*), meaning it has no legal force from the outset and does not bind the parties.

3.2. The Legal Consequences of the Agreement on the Utilization of Land Management Rights (HPL) over Land Owned by the Provincial Government of West Nusa Tenggara in Gili Trawangan – North Lombok with Third Parties (Individuals)

3.2.1. Scope of the Land Utilization Agreement for the Right to Manage (HPL)

One of the authorities of the Right to Manage (HPL) holder, as stipulated in Article 137, Paragraph (2), Point b of the Job Creation Law, is to grant the utilization of portions of HPL land to third parties. This provision is further elaborated in Article 8, Paragraph (2) of Government Regulation (PP) No. 18 of 2021, which essentially governs the scope of the HPL utilization agreement with third parties, including:

1. Clarity regarding the legal subjects (the parties involved);
2. Clarity regarding the object of the agreement, including the location, boundaries, and area of the land being transferred;
3. Clarity regarding the type of land use and utilization;
4. Clarity regarding the type of rights granted, the agreed duration, extensions, renewals, transfers, encumbrances, amendments, and/or the expiration or cancellation of rights granted over the HPL land;
5. Clarity regarding the rates and/or annual mandatory fees (*uang wajib tahunan*) and the payment procedures;
6. Clarity regarding the terms and conditions binding the parties, construction implementation, penalties for breach of contract (*wanprestasi*) including sanction clauses, and the cancellation or termination of the agreement.

3.2.2. Legal Principles in the Land Utilization Agreement for the Right to Manage (HPL)

An agreement can be manifested in two forms: written or oral. Both forms carry equal legal weight, meaning they have the same standing to be enforced by the parties. However, a written agreement serves as a more reliable instrument of evidence should a dispute arise.

Fundamentally, an HPL utilization agreement contains the commitment of the HPL holder to provide the agreed object along with its requirements, while the third party declares their commitment to utilize the HPL land in accordance with the agreement and fulfill the required conditions. According to Subekti, an agreement is a series of statements containing promises or commitments made either verbally or in writing [14]. In constructing an obligation based on such promises, certain legal principles are required to serve as guidance and direction under the law.

The legal principles that serve as a guide in drafting an HPL utilization agreement include the principles of consensualism, freedom of contract, *pacta sunt servanda*, and good faith, as detailed below:

1. Principle of Consensualism According to Mariam Darus Badrul Zaman, Article 1320 of the Civil Code contains an essential principle of contract law, namely "Consensualism," which determines the existence of an agreement (*raison d'être*). This principle embodies the intention of the parties to bind themselves to one another, fostering mutual trust regarding the fulfillment of the agreement [15].
2. Principle of Freedom of Contract Book III of the Civil Code adheres to an "open system," meaning it grants the parties the latitude to regulate their own legal relationships. This openness is reflected in Article 1338, Paragraph (1), which stipulates: "All agreements made legally shall apply as law for those who conclude them." According to Subekti, the principle of freedom of contract is inferred by emphasizing the word "all" before "agreements." Article 1338, Paragraph (1) acts as a proclamation that individuals are permitted to enter into any agreement, and such an agreement will bind them just as strictly as the law [16].
3. Principle of Pacta Sunt Servanda From the perspective of the Civil Code, the binding force of a contract is found in Article 1338, Paragraph (1). The phrase "apply as law for those who conclude them" indicates that the law itself recognizes and places the parties in a position equivalent to that of a legislator. According to L.J. van Apeldoorn, there is a certain analogy between a contract and a

[13] Letter of the Coordinating Minister for Political, Legal, and Security Affairs of RI, No. B-287/HN.02.12.2023.
[14] Subekti, R. *Law of Agreements*. Intermasa, Jakarta, 2008.
[15] Zaman, Mariam Darus Badrul, *et al*. *Compilation of the Law of Obligations*. Citra Aditya Bakti, Bandung, 2001, p. 82.
[16] *Ibid.*, p. 80.

statute. To a certain extent, the contracting parties act as "private legislators." However, there is a difference regarding their applicability: statutes apply to everyone and are abstract in nature, whereas a contract's applicability is limited to the contracting parties as a concrete legal act [17].

4. Principle of Good Faith While Article 1338, Paragraph (1) implies the freedom of contract and its binding force, these principles do not stand alone. They exist within an integrated and integrative system with other provisions. Regarding the binding force of an agreement (*pacta sunt servanda*), its applicability is limited in certain situations by the principle of good faith.
5. Based on the explanation above, it is evident that the transfer of HPL land utilization to a third party is based on mutual consent and is not a unilateral administrative decree (*beschikking*) by the HPL holder. In this transaction, the HPL holder acts as a private legal entity, enabling them to perform legal acts with third parties through a land utilization agreement. Thus, the HPL holder does not act in their capacity as a public legal entity whose primary authority is to regulate.

The Form of Agreement on the Utilization of Land Management Rights (HPL) Owned by the Provincial Government of West Nusa Tenggara with Third Parties (Individuals) in Gili Trawangan, North Lombok.

There is a terminological distinction between Job Creation Law No. 11 of 2020 and Government Regulation (PP) No. 18 of 2021; the former utilizes the term "Third Party," whereas the latter uses "Other Party." Despite this difference, both terms carry the same legal meaning: that the utilization of Right to Manage (HPL) land may be transferred to a third or other party. Hereinafter, the author shall employ the term "Third Party" (Individual).

The existence of the Right to Manage (HPL) is currently strengthened by the Job Creation Law. One of the primary authorities of an HPL holder is to transfer the utilization of HPL land, either in part or in its entirety, to a third party. Article 142 of the Job Creation Law mandates that further provisions regarding HPL be regulated by Government Regulation, which led to the enactment of PP No. 18 of 2021. Article 137, Paragraph (2), Point b of the Job Creation Law states that the authority of an HPL holder includes personal use and utilization of the HPL land or entering into "cooperation" with a third party. However, neither the Job Creation Law nor PP No. 18 of 2021 provides a further definition of "cooperation." Referring to Article 27, Paragraph (1) of PP No. 28 of 2020, the forms of utilization for State/Regional-Owned Assets consist of:

1. Lease (*Sewa*);
2. Loan for Use (*Pinjam Pakai*);
3. Utilization Cooperation (*Kerjasama Pemanfaatan*);
4. Build-Operate-Transfer (BOT) or Build-Transfer-Operate (BTO); or
5. Infrastructure Provision Cooperation.

Based on the aforementioned provisions, the transfer of HPL land utilization to a third party cannot be executed through a lease or loan-for-use mechanism; it is strictly limited to utilization cooperation, BOT/BTO, or infrastructure provision cooperation.

The transfer of HPL land utilization through cooperation must adhere to Article 33 of PP No. 28 of 2020. Based on these provisions, an HPL holder is only authorized to transfer utilization through various forms of cooperation, while the authority to lease or grant a loan-for-use is not possessed by the HPL holder. Consequently, the Provincial Government of West Nusa Tenggara (NTB), as the HPL holder, entered into a Right to Manage (HPL) Utilization Agreement with a third party (individual) in Gili Trawangan, North Lombok. This was formalized via the Handover Minutes for Land Utilization No. 900/57/TRAMENA/XII/2024, dated December 27, 2024, following the Approval Letter from the Regional Secretary of NTB No. 000.2.5/893/TRAMENA/XI/2024, dated November 25, 2024. The HPL in question was issued under Number 1 on December 22, 1993.

In the minutes of the cooperation signing between the NTB Provincial Government (represented by the Regional Secretary) and the third party, dated December 27, 2024, it is stipulated that:

1. H. Lalu Gita Ariadi (Regional Secretary of NTB), acting for and on behalf of the Provincial Government of NTB, serves as the "First Party," and Abdilun, as the land user, acts as the "Second Party." The First Party transfers, and the Second Party receives, the object of the agreement: a plot of land measuring 2,300 m², which is part of HPL No. 1 of 1993, located in Gili Trawangan, to be utilized strictly for residential purposes.
2. The First Party represents the NTB Government as the holder of HPL Certificate No. 1 dated December 22, 1993, covering a total area of 750,000 m². This utilization was approved via letter No. 000.2.5/893/TRAMENA/XI/2024 and is based on the Governor of NTB Decree No. 900-827 dated December 24, 2024, regarding the Determination of Names for Land Utilization [18].
3. Regarding the type of utilization, Articles 2 and 3 specify that the HPL land is to be used by the Second Party solely for a Villa. The First Party agrees to grant a Right to Build (HGB) with a duration *mutatis mutandis* to the term of the agreement, which may be extended pursuant to Article 4, Paragraph (3).
4. Article 5 (Transfer of HGB): The Second Party may transfer the HGB to another party subject to a written application and the written consent of the First Party.
5. Article 6 (Encumbrance of HGB): The Second Party may use the HGB as collateral/security by encumbering it with a Mortgage (*Hak Tanggungan*), subject to prior written approval from the First Party.
6. Article 7 (Change of Right Category): The Second Party may request a change in the type of land right through a written application to the First Party.
7. Article 9 (Retribution Amount and Payment Procedure):

➢ The annual retribution fee is IDR 57,500,000. The first-year payment must be made no later than two business days before the signing of the agreement.

[17] Van Apeldoorn, *Introduction to Legal Science*. 24th Ed. Pradnya Paramita, Jakarta, p. 111.
[18] Governor of NTB Decree regarding the Determination of Names for Land Utilization on Portions of the NTB Provincial Government's HPL Land, Number 900-827, December 24, 2024.

- Subsequent payments must be made annually in cash by November 24 of the current year.
- From the fourth year onwards, payments are to be deposited into the Regional General Treasury (*Kas Umum Daerah*).
- The retribution amount is subject to review/evaluation by the First Party every two years or upon changes in legislation.

8. Article 11 (Rights and Obligations): This article details 29 points regarding the parties' respective rights and obligations, including the First Party's right to monitor/evaluate the object and the Second Party's right to construct buildings for personal use or business support.
9. Article 16 (Default/Wanprestasi): The Second Party is declared in default if they fail to fulfill obligations or violate terms of the agreement.
10. Article 18 (Duration): The agreement is valid for 30 (thirty) years and is extendable.
11. Article 19 (Termination): Paragraph (1), Point D states that the agreement shall terminate if prevailing laws and regulations render its implementation impossible.

The Implementation of the Agreement on the Utilization of Land Management Rights (HPL) between the Provincial Government of West Nusa Tenggara and Third Parties (Individuals)

As stipulated in Article 138, Paragraph (1) of the Job Creation Law, the transfer of utilization rights for portions of Right to Manage (HPL) land to third parties shall be executed through a land utilization agreement. This provision clearly positions the HPL holder as a legal subject engaged in a contractual relationship with a third party.

Based on observations, interviews, and discussions with relevant and competent parties regarding the Land Utilization Agreement for the Right to Manage (HPL) No. 900/57/TRAMENA/XII/2024, dated December 27, 2024 concluded between the Provincial Government of NTB (represented by Regional Secretary H. Lalu Gita Ariadi) and a third party (individual) in Gili Trawangan, Gili Indah Village several conclusions can be drawn regarding the implementation of the agreement's substance:

Regarding the type of utilization, Articles 2 and 3 specify that the HPL land is to be used by the Second Party exclusively for a Villa. The First Party agrees to grant a Right to Build (HGB) for a duration *mutatis mutandis* to the term of the agreement, which may be extended pursuant to Article 4, Paragraph (3). However, the execution of this provision specifically the promised performance (*prestasi*) of issuing the HGB certificate by the HPL holder (NTB Provincial Government)—has not been realized. This is because the object of the agreement is currently classified as a Forest Conservation Area under the Minister of Environment and Forestry Decree No. SK.6598/MENLHK-PKTL/KUH/PLA.2/10/2021 [19]. This designation contradicts the factual conditions on the ground, which show massive island utilization as a tourism zone. This discrepancy has drawn the attention of the Coordinating Minister for Political, Legal, and Security Affairs, leading to the issuance of Letter No. B-287/HN.02.12.2023, dated December 28, 2023. This letter recommends that the Minister of Agrarian Affairs and Spatial Planning withhold any approvals, permits, or recommendations for the utilization of small islands in Gili Trawangan, Gili Meno, and Gili Air—whether for new applications or extensions—until the formal release of the forest area occurs [20].

Furthermore, the author visited the National Land Agency (BPN) Office of North Lombok Regency on September 15, 2025, and consulted with officials from Section 3 (Land Arrangement), namely Mrs. Rifka and Mr. Nara. Upon verifying the Spatial Information at the BPN Office, it was confirmed that the land subject to the utilization agreement (under HPL No. 1 of 1993 in Gili Trawangan) is not located within a Protected Rice Field Area (*Lahan Sawah Dilindungi* or LSD). However, Mrs. Rifka and Mr. Nara further explained that the BPN Office of North Lombok Regency is unable to issue any land certificates due to the restrictive recommendations contained in the Coordinating Minister's Letter No. B-287/HN.02.12.2023 [21]

Legal Consequences of the Land Utilization Agreement for the Right to Manage (HPL)

The Land Utilization Agreement for portions of the Right to Manage (HPL) land belonging to the Provincial Government of West Nusa Tenggara (NTB), Number 900/57/TRAMENA/XII/2024, dated December 27, 2024, was concluded between the Provincial Government of NTB (represented by the Regional Secretary) and a third party (individual) in Gili Trawangan, Gili Indah Village, North Lombok. This agreement pertains to HPL Certificate No. 1, issued on December 22, 1993. Based on the author's observations, review, and analysis, the following legal facts have been identified:

The provisions of Articles 2, 3, and 4 of the Land Utilization Agreement No. 900/57/TRAMENA/XII/2024 have not been realized as of the completion of this research, due to the reasons detailed in the preceding sub-chapter on agreement implementation. Under Article 1320 of the Civil Code (*KUHPerdata*) regarding the legal requirements for a valid agreement, this HPL utilization agreement fails to meet the subjective requirement concerning the genuine consent of the parties.

The subjective requirement in question relates to Article 4, Paragraph (1) of the agreement, which states: *"The First Party agrees to grant a Right to Build (HGB) over the object of the agreement to the Second Party"* as a consequence of Article 138, Paragraph (2) of the Job Creation Law. However, the performance promised in this provision has not been obtained or secured by the Second Party. Consequently, the failure to meet this subjective requirement under Article 1320 of the Civil Code renders the agreement "Voidable" (*Dapat Dibatalkan*).

The designation of the agreement's object as a Forest Conservation Area—pursuant to the Minister of Environment and Forestry Decree No. SK.6598/MENLHK-PKTL/KUH/PLA.2/10/2021—and the issuance of the Letter

[19] Minister of Environment and Forestry Decree No. SK.6598/MENLHK-PKTL/KUH/PLA.2/10/2021 regarding the Progress Map of Forest Area Inauguration in West Nusa Tenggara Province.
[20] Interview with Officials of Section 3 (Land Arrangement), BPN North Lombok, September 15, 2025.
[21] Ibid,

from the Coordinating Minister for Political, Legal, and Security Affairs No. B-287/HN.02.12.2023, dated December 28, 2023, present a significant legal barrier. This letter recommends that the Minister of Agrarian Affairs and Spatial Planning withhold any approvals or recommendations for land utilization in Gili Trawangan, Gili Meno, and Gili Air until the forest area is formally released.

As a result, the Land Utilization Agreement No. 900/57/TRAMENA/XII/2024 fails to satisfy the objective requirement of Article 1320 of the Civil Code regarding a lawful cause (*causa yang halal*). Furthermore, according to the termination clause in Article 19, Paragraph (1), Point D of the agreement itself, *"This agreement shall terminate if prevailing laws and regulations render its implementation impossible."* Therefore, the agreement is "Null and Void" (*Batal Demi Hukum*).

Regarding the implementation of Article 9 of the agreement concerning the Retribution Amount and Payment Procedures, the Second Party has fulfilled its obligations, as evidenced by bank transfer receipts. While Article 138, Paragraph (2) of the Job Creation Law stipulates that HPL land may be granted an HGB—which, under the 1960 UUPA, constitutes a real right (*hak kebendaan*)—and considering the provisions of Article 1333 of the Civil Code, the current legal impasse is evident. By applying legal principles, particularly the principle of priority, the First Party is unable to fulfill its obligations and may be required to refund the retribution fees already paid by the Second Party.

4. Conclusion

Based on the research findings and discussion regarding the juridical analysis of the Right to Manage (HPL) Utilization Agreement between the Provincial Government of West Nusa Tenggara (NTB) and third parties in Gili Trawangan, the following conclusions are drawn:

1. Validity of the Agreement: The HPL Utilization Agreement Number 900/57/TRAMENA/XII/2024 does not meet the objective legal requirements stipulated in Article 1320 of the Indonesian Civil Code. This is due to the fact that the object of the agreement (land in Gili Trawangan) is currently classified as a Forest Conservation Area under the Minister of Environment and Forestry Decree No. 6598/2021. The legal impediment, specifically the recommendation from the Coordinating Minister for Political, Legal, and Security Affairs prohibiting the issuance of permits before the formal release of the forest area, results in an "unlawful cause" (*causa yang tidak halal*). Consequently, the agreement is Null and Void from its inception.
2. Legal Consequences: The inability of the NTB Provincial Government, as the HPL holder, to issue the Right to Build (HGB) to the third party, as promised in Article 4 of the agreement, constitutes a failure of performance. Juridically, pursuant to Article 19, Paragraph (1), Point D of the agreement's own terms, this legal relationship must terminate as prevailing laws and regulations have rendered its implementation impossible. As a consequence, the First Party is obligated to account for or refund the retribution fees paid by the Second Party to ensure legal certainty and justice.

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