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THE PROBLEMATIC LAND ACQUISITION FOR THE SPECIAL ECONOMIC ZONE DEVELOPMENT OF *TANJUNG KELAYANG* IN BELITUNG REGENCY

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Abstract

As a developing country, Indonesia is incessant in doing development in all sectors both industry and tourism, which can support the economy of the community. Infrastructure development requires land, but not all land parcels can be used as construction sites. The limited use of land for development can be caused by the factors of the land itself, the human factor as the owner of the land, and the regulatory factors. On progress, the laws and regulations for the land acquisition for development have been improved by making a division between development for the public interest and development for the private interest. In connection with the great social and economic inequality between regions, it is necessary to accelerate development specifically in certain regions. This is taken into consideration for the establishment of the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP) based on Presidential Regulation No. 75 of 2014 concerning the Acceleration of Provision of Priority Infrastructure. In addition, several regulations were issued to support the efforts to accelerate development, including Law No. 39 of 2009 concerning Special Economic Zone, Presidential Regulation No. 3 of 2016 concerning the Acceleration of National Strategic Project Implementation as amended by Presidential Regulation No. 58 of 2017 concerning Amendment to Presidential Regulation No. 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects; and Presidential Instruction No. 1 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects. One of the National Strategic Projects being implemented is the development of the *Tanjung Kelayang* Special Economic Zone (SEZ) which is one of the 10 (ten) Priority Tourism Areas located in Belitung Regency, Bangka Belitung Province. Many problems related to land acquisition for the *Tanjung Kelayang* Special Economic Zone Development including land acquisition process issues and the location permit.

Keywords: Land Acquisition; Special Economic Zone; Process Issues; The Location Permit

A. Introduction

As a developing country, Indonesia is incessant in doing development in all sectors both industry and tourism that can support the economy of the community. Infrastructure development requires land, but not all land parcels can be used as construction sites. The limited use of land for development can be caused by 3 (three) factors, namely: (1) the land factor itself, for example the location and conditions that are not possible; (2) human factors as land owners, for example the owner's willingness; and (3) factors of laws and regulations, for example spatial planning. The government realizes that the issue of land availability for development is an issue that needs serious attention. On Progress, the laws and regulations for the land acquisition for development have grown, namely by making a division between development for the public interest and development for the private interest.

In the last decade, due to the still sharp social and economic inequality between regions, it is necessary to accelerate development specifically in certain regions. This

consideration is the basis for the establishment of the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP) based on Presidential Regulation No. 75 of 2014 concerning the Acceleration of Provision of Priority Infrastructure. In addition, several regulations were issued to support the efforts to accelerate development, including Law No. 39 of 2009 concerning Special Economic Zones, Presidential Regulation No. 3 of 2016 concerning the Acceleration of National Strategic Project Implementation as amended by Presidential Regulation Number 58 of 2017 concerning Amendment to Presidential Regulation No. 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects; and Presidential Instruction No. 1 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects.

There are 16 (sixteen) National Strategic Projects whose construction requires acceleration, namely: (1) the road sector; (2) the railroad sector; (3) airport sector; (4) port sector; (5) housing sector; (6) energy sector; (7) water and sanitation sector; (8) sea dike sector; (9) Post-State Border Sector (PLBN) sector; (10) the dam sector; (11) irrigation sector; (12) the technology sector; (13) the regional sector; (14) the smelter sector; (15) electricity program; (16) the aircraft industry program.

One of the National Strategic Projects being implemented is the development of the *Tanjung Kelayang* Special Economic Zone (SEZ) which is one of the 10 (ten) Priority Tourism Areas located in Belitung Regency, Bangka Belitung Province. The determination of *Tanjung Kelayang* as a SEZ was carried out with Government Regulation No. 6 of 2016 concerning the *Tanjung Kelayang* Special Economic Zone. *Tanjung Kelayang* SEZ is designated as a Tourism SEZ that has geostrategic advantages, close to ASEAN countries such as: Singapore and Malaysia. In accordance with the meaning that the Special Economic Zone is an area with certain restrictions that has regional geoeconomic and geostrategic advantages and is given special facilities and incentives as an investment attraction (http://kek.go.id), the *Tanjung Kelayang* SEZ is worthy of being targeted by the government in increase economic growth and become one of the National Strategic Projects.

It cannot be denied that the development of SEZ and all other National Strategic Projects requires land as the area of infrastructure development. So far, land acquisition regulations only recognize 2 (two) procurement procedures, namely land acquisition for public use and land acquisition for private interests. Since the laws and regulations governing the National Strategic Project are 'special', of course the process of land acquisition should also be given special treatment, namely by holding certain facilities for the land acquisition.

Thus, judging from its purpose, land acquisition for the benefit of the National Strategic Project can be classified into specific land acquisition - because it is strategic - which distinguishes it from land acquisition for public use and land acquisition for private

interests. This research is intended to find out the facilities provided through laws and regulations and Government policies (both Central and Regional) in the acquisition of land for the intended strategic interests, specifically the development of SEZs in *Tanjung Kelayang* , Belitung Regency.

Land acquisition for the development of tourism areas is not development in the public interest as stipulated in Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest, but is subject to the land acquisition regime for private interests. Nevertheless, since the development of the tourist area in *Tanjung Kelayang* is a National Strategic Project, the land acquisition process is carried out by obtaining certain facilities.

Traced from the history of land acquisition, the construction of the *Tanjung Kelayang* SEZ with an area of 324.4 ha located in the District of Sijuk is unique because the land in the coastal area was originally owned by local residents who were then 'compensated' by private companies. Then the land that has been compensated is issued a certificate of Right to Manage (HPL) on behalf of the Government of Belitung Regency. In connection with the issuance of Right to Manage (HPL), a private company that had 'freed' the land from the local population was brought a civil suit to the Tanjung Pandan District Court. In the trial, peace was reached between the Belitung Regency Government and the Plaintiff, where one of the contents of the agreement was that the Belitung Regency Government released its HPL into State land. The former State Land of the HPL then became the *Tanjung Kelayang* SEZ development area and has been issued a certificate of Right to Build (HGB) in 3 (three) development companies which are a consortium for the development of the *Tanjung Kelayang* SEZ.

Based on the description, it turns out that the land acquisition of *Tanjung Kelayang* SEZ still causes various problems. As quoted from radarbangka.co.id that after the *Tanjung Kelayang* Coastal Area which officially became a Special Economic Zone (SEZ) after it was signed by President Joko Widodo still leaves problems. The land used for SEZ is suspected to be still in dispute, because in the management of land submitted to the Stakeholders there is a dispute with community land. The issue of land acquisition until the land dispute has been protracted and impressed by the omission by related parties, mutual claims between the Regional Government issuing the location permit and the BPN issuing the certificate (Radarbangka, 2016).

B. Literature Review

1. Land Acquisition Conception

In Law No. 2 of 2012 limitative classification of the public interest has been determined, namely :

a. efense and security;
b. public roads, toll roads, tunnels, railway lines, railway stations, and railroad operations facilities;
c. reservoirs, dams, weirs, irrigation, drinking water channels, water drains and sanitation, and other irrigation structures;
d. ports, airports and terminals;
e. oil, gas and geothermal infrastructure;
f. power plants, transmissions, substations, networks and distribution of electricity;
g. government telecommunications and informatics networks;
h. waste disposal and treatment sites;
i. government / Regional Government hospital;
j. public safety facilities;
k. public cemeteries of the Government / Regional Government;
l. social facilities, public facilities, and public green open spaces;
m. nature reserves and cultural reserves;
n. government / Regional / village Government offices;
o. structuring urban slums and / or land consolidation, sera housing for low-income people with rental status;
p. government / Regional Government education or school infrastructure;
q. government / Regional Government sports infrastructure; and
r. public markets and public parking lots.

That is, outside of the 18 (eighteen) (public) interests, the development is classified as private interests.

The study of the differences between public land acquisition and private interests is a difference in the 'objectives' of development itself. Meanwhile, the study of land acquisition can also be seen from the 'method' of land acquisition. There are 3 (three) types of land acquisition methods, namely: (1) the normal way, namely through buying and selling, exchanging or in other ways agreed by both parties (privatsrecht); (2) by means of land acquisition (gemeenschapelijkrecht); and (3) by extraordinary means or by force, namely by using institutions to revoke land rights (*publieksrecht*) (Gunanegara 2006, 1-2).

In practice, the distribution of the three methods is implemented as follows: first, the acquisition of land in the usual way for the development of private interests. Second, land acquisition (*gemeenschapelijkrecht*) and extraordinary or forced methods (*publieksrecht*) are carried out for the development of public interests. Although Law No. 2 of 2012 regulates 'land acquisition', but in its implementation regulations (Perpres No. 71 of 2012) it is possible to obtain land rights through privatsrecht as stipulated in Article 121, namely the procurement of small-scale land that is no more than 1 ha; which was later changed to 5 ha based on Perpres No. 40 of 2014). In other literatures, ways of taking land can be done in 2

(two) ways, namely: (1) with the agreement of the land owner; and (2) without the consent of the land owner. In the latter case, land grabbing is also called "compulsory acquisition, resumption, compulsary purchase, expropriation, eminent domain or condemnation" (Douglas Brown 1996, 1-2).

Land acquisition in the 'normal' way (privaatsrecht) is subject to the Civil Law regime because the procurement process is left to the agreement of both parties. Thus, the provisions of Article 1338 of the Civil Code apply to the agreement. The article reads: "All treaties made legally apply as a law for those who make them". For the validity of the agreement, it must be carried out in good faith and meet the subjective and objective conditions as stipulated in Article 1320 of the Civil Code, namely: "For an agreement to be valid, four conditions are required: (1) an agreement of those who bind themselves; (2) the ability to make an engagement; (3) a certain thing; and (4) a lawful cause.

Agreements between landowners to transfer or relinquish their rights to land to those who need land can be done through buying and selling, exchanging, leasing, or through an agency releasing land rights. Related to the National Land Law system, the agreement must pay attention to the provisions on the subject that is allowed as the holder of land rights.

2. Land Acquisition for Private Purposes

For private interests, land acquisition or land acquisition can be achieved in 2 (two) ways, namely: (1) by buying and selling; and (2) by releasing land rights by the owner. The first method is done through a deed of sale and purchase in front of the PPAT, and is only possible if the party who needs the land meets the material requirements as the subject of the rights to the land to be sold.

As determined in the National Land Law that legal entities (private) are only possible to be subject to the Right to Cultivate (HGU), Right to Build (HGB), and Right to Use (HP). In the event that the party who needs the land does not meet the requirements as the subject of the rights to be obtained, or if the land to be acquired has not yet been registered, then the mechanism of 'release of land rights' is adopted.

According to Law No. 2 of 2012 concerning Land Acquisiton for Development in the Public Interest, the relinquishment of rights is the termination of legal relations from parties entitled to the state through the Land Agency. Meanwhile, in the Decree of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 21 of 1994 concerning Procedures for Land Acquisition for Companies in the context of Investment; relinquishment or surrender of land rights is the activity of releasing the legal relationship between the holder of land rights and the land under his control by providing compensation on the basis of deliberation. Therefore, if the relinquishment of land rights is intended not in the public interest, then the intended release does not have to be done through the Land Agency or the land authority.

According to Article 131 Verse (3) Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration, the release of land rights can be done through:

a. notarial deed, which states that the holder concerned waived the right, or
b. statement from the right holder, that the relevant right holder relinquishes the rights made in front and witnessed by the Camat of the relevant land, or
c. statement from the right holder, that the relevant right holder relinquishes the right made in front of and witnessed by the Head of the Land Office.

Through the release mechanism, the rights to the released land are to become State land and then an application for land rights is submitted by the party who needs the land. The release is generally by giving compensation to the holders of land rights. Overall, the procedure for acquiring land for private interests is as follows:

a. Confirmation of agreement with Regency / City Regional Spatial Planning (RTRW) at the Regency Development Planning Agency (BAPPEKAB) or City Development Planning Agency (BAPPEKOT).
b. Location Permit from the Regent / Mayor for an area of more than 1 (one) ha.
c. For those with an area of less than 1 (one) ha, submitting a Change in Space Use (P2R).
d. Acquisition of land through the process of 'transfer of rights' or the transfer or relinquishment of HAT.
e. Granting of Land Rights.
f. A drying permit is not required if: (a) land for an industrial business is in an industrial area; (b) the land to be obtained is from the authority or the organizer of the development of an area with the spatial plan of the development area; (3) the land to be obtained has obtained a Location Permit.

3. Special Economic Zone (SEZ)

To accelerate economic growth and equity between regions and between regions, primarily maintaining the balance of the progress of a region in the unity of the national economy, the Government established a Special Economic Zone (SEZ). In Law No. 39 of 2009 concerning Special Economic Zones it is said that Special Economic Zones are areas with certain limits within the territory of the Republic of Indonesia which are determined to carry out economic functions and obtain certain facilities. SEZs consist of one or more zones, namely: export processing, logistics, industry, technology development, tourism, energy, and / or other economies.

Law No.23 of 2014 concerning Regional Government in Article 360 also affirms that "to carry out certain governmental functions that are strategic in the national interest, the

Central Government may stipulate special areas within provincial and / or district / city areas". One such special area is a special economic zone (Article 360 Verse (2) Letter f). The SEZ institutions at the Central and regional government levels are as follows:

a. National Council at the Central level formed by Presidential Decree.
b. Zone Councils established in each province which are partly designated as SEZ and SEZ Administrator in each SEZ.
c. Managing Business Entity which is conducting business activities in SEZ, which can be in the form of State Owned Enterprises (BUMN) / D, Cooperative Business Entity, Private Business Entity and joint venture between private and / or cooperatives with the Government, and / or provincial government, and / or district / city government.

Locations that can be proposed to become a SEZ must meet the following criteria: (a) in accordance with the Regional Spatial Plan and not potentially disturb the protected area; (b) the relevant provincial / district / city government supports SEZ; (c) located in a position that is close to an international trade route or close to an international shipping lane in Indonesia or is located in an area of potential superior resources; and (d) have clear boundaries. Throughout Indonesia, there are eleven SEZs: (1) *Arun Lhokseumawe*; (2) *Sei Mangkai* in Simalungun Regency; (3) *Tanjung Api-Api* in Palembang, (4) *Tanjung Lesung*; (5) *Tanjung Kelayang* in Belitung Regency; (6) *Maloy Batuta Trans Kalimantan*; (7) Mandalika Island; (8) Bitung; (9) Palu; (10) *Morotai* in Maluku; and (11) *Sorong* in West Papua.

In the Special Economic Zone Law, the provisions regarding land are regulated in 2 (two) articles, namely:

a. Article 36: In the SEZ it is easy to obtain land rights in accordance with statutory provisions, and
b. Article 37: Business entities that have acquired land in locations that have been designated as SEZs based on Government Regulations are granted land rights.

As an implementing regulation of the SEZ Law issued Government Regulation No. 2 of 2011 concerning Implementation of Special Economic Zones which was later amended by Government Regulation No. 100 of 2012 concerning Amendment to Government Regulation No. 2 of 2011 concerning the Implementation of Special Economic Zones. Then PP No. 96 of 2015 concerning Facilities and Convenience was issued in Special Economic Zones.

4. Land Rights in Special Economic Zone

In Government Regulation No. 96 of 2015 concerning Facilities and Facilities in Special Economic Zones, it is stated that the facilities and facilities provided to Business Entities and Business Actors in KEK include: 1) taxation, customs, and excise; 2) goods traffic; 3) employment; 4) immigration; 5) land; and 6) licensing and non-licensing.

Facilities and facilities regarding land are regulated in Articles 73 to 78, which in general are as follows:

a. Land acquisition in SEZ locations refers to the location permit or location determination that has been determined in the context of establishing SEZ.
b. If the land acquisition in the SEZ location is based on the proposal of the ministry / agency, provincial government, district / city government, or State Owned Enterprises / D and the source of funds comes from the State Budget / D, the implementation refers to the determination of location / location permit and is carried out based on the provisions of the legislation in the field of land acquisition for development in the public interest,
c. If the land acquisition in the SEZ location proposed by a Private Business Entity, the implementation refers to the location permit and is carried out directly through the sale and purchase, exchange or other means agreed by the parties and in accordance with the existing location permit.
d. For SEZ locations where land acquisition is referred to in 'letter b', then the right granted is a Right to Manage (HPL). In this HPL, land rights can be given to Business Actors as follows:
    1) Right to Build (HGB) with a period of 30 (thirty) years and can be extended for a period of 20 (twenty) years and renewed for a period of 30 (thirty) years.
    2) Right to Use (HP) with a period of 25 (twenty five) years and can be extended for a period of 20 (twenty) years and renewed for a period of 25 (twenty-five) years.
    3) The extension and renewal of the aforementioned Right to Build (HGB) or Right to Use (HP) is provided when the Business Actor has commercially operated.
    4) If the cellphone is intended for residential / property ownership in the tourism SEZ, the extension and renewal of the cellphone is given when the occupancy / property has been legally owned in accordance with statutory provisions.
e. For agrarian, spatial and land services, Ministry of Agrarian Affairs and Spatial Planning / National Land Agency delegates authority in the land sector to the SEZ Administrator and / or places officers in the One Stop Integrated Service located in the SEZ Administrator's office.
f. The SEZ administrator and / or officers at the One Door Service provide services which include:
    1) serve requests in the context of service in the field of agrarian, spatial planning and land affairs;
    2) provide information, facilities, recommendations in the field of agrarian, spatial planning and land affairs;
    3) carry out coordination with relevant agencies, both at central and regional levels;
    4) helping to solve problems in the fields of agrarian, spatial planning and land affairs;

5) Monitor and supervise the implementation of the timeliness of completion of services in the fields of agrarian, spatial planning and land affairs; and
6) Coordinating and consulting to the land office, Regional Office of the National Land Agency and the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency to accelerate the service process in the field of agrarian, spatial planning and land affairs.

g. Based on the agreement with the holders of land rights, foreigners / foreign business entities can own residential / property that stands alone with the Right to Use for 25 (twenty five) years and is renewed on the basis of the agreement set forth in the agreement; or Ownership Rights of the Flats on the Right to Use.

5. *The Right to Manage*

The Right to Manage is defined as the controlling right of the State whose authority to exercise is partially delegated to the holder (Article 1 number 4 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Right to Manage).

The regulation of Right to Manage is not found in the Agrarian Law, but it is implied in General Explanation II (2) Agrarian Law that states: "By referring to the objectives stated above, the State can provide such land to a person or legal entity with a certain right according to its designation and needs, for example ownership rights, usufructuary rights, usufructuary rights or usufructuary rights or give it in management to a ruling body (department, department or autonomous region) to be used for the implementation of their respective duties".

Related to that Boedi Harsono said that Right to Manage in the systematics of land tenure rights were not included in the land rights group. The Right to Manage holder does have the authority to use the land that is claimed for his business needs. But that is not the purpose of granting such rights to him. The main objective is that the land in question is provided for use by other parties that need it (Boedi Harsono 1997, 247). In the provision and granting of land, the right holder is given the authority to carry out activities which are part of the State's authority, which is regulated in Article 2. In connection with this, Right to Manage is not in fact a right to land, but is an "shake-up" from The Right to Control from State".

Initially, the land authority granted the Right to Manage only to Departments, Departments and Self-Administered Areas. In subsequent developments, subjects from the Right to Manage are: (Arie Sukanti Hutagalung and Oloan Sitorus 2011, 40):

a. Rulers (Departments, Departments or Autonomous Regions, and customary law communities (General Explanation of the Agrarian Law and Article 2 Verse (4) of the Agrarian Law).

b. Government-owned Legal Entities whose entire capital is owned by the Government / Regional Government in the context of regional development, industry, tourism, ports, housing / settlements (PMDN No. 5 of 1974).
c. Public companies, Persero or other forms engaged in the supply, procurement, and maturation of land for business activities (Minister of Internal Affairs Regulations No. 5 of 1974).
d. Authority (Presidential Decrees No. 41 of 1973 jo No. 94 of 1998).

In Article 67 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 concerning Procedures for the Granting and Cancellation of State Land Rights and Management Rights, it is stated that those who can be subject from Right to Manage (HPL) are: (a) Government Agencies including Regional Governments; (b) State-Owned Enterprises; (c) Regionally Owned Enterprises; (d) P.T. Persero; (e) Authority Bodies; (f) Other Government legal entities appointed by the Government.

Judging from the various formulations of HPL's authority in various laws and regulations, the contents of the HPL's authority include (1) Planning the designation and use of the land concerned; (2) Using the land for the purpose of carrying out its duties; (3) Submit the parts of the land to the other party according to the conditions determined by the company that holds the rights.

The three authorities show that the Right to Manage (HPL) contains 2 (two) nature of authority, namely public (numbers 1 and 3) and civil authority (number 2). Although it contains civil authority, HPL is not a right to land as ownership rights, business use rights, building rights or use rights as stipulated in the Agrarian Law. Therefore, "HPL cannot be traded, but can be released (returned to the State) and then given to another party with a right according to the applicable laws and regulations" (Maria SW. Sumardjono 2008,213-214). Boedi Harsono also states that HPL is not a right to land because: 1) it is not included as a right to land in a system of tenure rights; 2) the granting of the HPL is not intended to be used by the HPL holder, but its main purpose is that the relevant land is provided for use by other parties who need it. In providing and granting land, the right holder is given the authority to carry out activities which are part of the State's authority (Boedi Harsono 1997, 247).

As the delegation of the State's Right to Control, which is regulated in Article 2 paragraph (2) of the Agrarian Law, shows that the Agrarian Law is an authority in the field of public law. The Constitutional Court, in the decision of the Right to Judge Material several laws related to Resources such as the Oil and Gas Law, Electricity, Water Resources, Management of Coastal Areas and Small Islands; also argues that the control of the State includes five functions that constitute public authority, namely: formulating policies

(beleid), making arrangements (regelendaad), administering (bestuursdaad), carrying out management (beheersdaad), and conducting supervision (toezichthoudendaad).

In several laws and regulations relating to and related to HPL it is stated that HPL gives the authority to "hand over portions of the land to third parties". Initially the land rights that can be granted over the HPL are usage rights for a period of 6 (six) years and then can be granted with ownership rights, or building rights for a period as referred to in Agrarian Law jo Government Regulation No. 40 of 1996 concerning Right to Cultivation (HGU), Right to Build (HGB) and Right to Use (HP).

C. History of Land Tenure in Belitung Regency

From interviews with officials of the Agrarian and Spatial Planning / National Land Agency Office in Belitung Regency, information was obtained that all land in Belitung Regency was State land or land that was directly controlled by the State. Thus the process for applying for land rights is carried out through 'granting of rights'. In some cases there were found Zegel Letters issued by the Village authorities before 1960. In such a case the process of requesting rights based on 'zegel' rights was processed through conversion (adjustment of old rights to new rights under the Agrarian Law), because it is considered as customary land. The land with the Zegel Letter was converted to ownership rights. However, if the zegel is issued after 1960, then the application for the rights submitted by the zegel holders is done through the 'granting of rights' over State land. In Belitung Regency there are no customary lands and swapraja/royal lands (interview, 3 May 2018).

Considering that on the island of Belitung there are many Indonesian citizens of Chinese descent, the information obtained states that there is no policy from the Provincial Government of the Bangka Belitung Islands and also from the local District Government and which prohibits the granting of Proprietary Rights to such Descendants.

D. The Problematic Land Acquisition For The Special Economic Zone Development Of *Tanjung Kelayang* In Belitung Regency

Tanjung Kelayang Special Economic Zone is stipulated by Government Regulation No. 6 of 2016 concerning *Tanjung Kelayang* Special Economic Zone, which is the Tourism Zone with the main activities of tourism. The Government Regulation stipulates that the area of the *Tanjung Kelayang* SEZ is 324.4 Ha (three hundred twenty four point four hectares) which is located in the Sijuk Subdistrict of Belitung Regency with the following boundaries: North is bordered by the South China Sea, the east is bordered by Keciput Village, Sijuk District, Belitung Regency; the south bordering Tanjung Binga Village, Sijuk District, Belitung Regency; and in the west bordering the South China Sea and Tanjung Binga Village Beach, Binga District, Belitung Regency.

According to information from the results of an interview with Mr. Imam Fadli who served as Head of the Legal Section of the Belitung Regency Government, the idea for the Special Economic Zone was the beginning of a letter to the Regent regarding land reserve data. Because of the back up, the funds that capitalize are Business Entities. Since the issuance of Law No.2 of 1999 concerning location permit for the backup scheme, there has been no more. For investors, HGB above HPL is considered economically less compared to pure HGB. There are two opinions about HPL: HPL as an asset and HPL not an asset, if HPL is an asset there is capital issued. SEZ is a proposal from PT. BELPI. There are location permit requirements for SEZ while this Business Entity already holds the right to be let alone a location permit. HGB above HPL outside SEZ is still available. Because their big companies have a lot of capital so they are strong enough to apply for HGB over HPL in many regions. Around the 1990s there were investors coming in and the Regional Government agreed to establish a joint venture of PT. PLTDC, the HPL is around 92 hectares, even though the area is 200 hectares, outside it has become private property. This also causes problems. All those who depart from the reserve land are considered HPL on behalf of the Regional Government (interview, 3 May 2018).

Problems began to arise when the promulgation of Government Regulation No. 6 of 2016 concerning the *Tanjung Kelayang* Special Economic Zone, while the location designated as SEZ already had HGB status on behalf of the company, above the HPL of Belitung Regency Government. As explained earlier, traced from the history of land acquisition, the development of the *Tanjung Kelayang* SEZ with an area of 324.4 ha located in the Sijuk District area is unique because the land in the coastal area was originally owned by local residents who were then 'compensated' by the company private. Then the land that has been compensated is issued a certificate of Management Rights (HPL) on behalf of the Government of Belitung Regency. In connection with the issuance of the HPL, a private company that had 'freed' the land from the local population was brought a civil suit to the Tanjung Pandan District Court.

When viewed from the Belitung Regency Regional Spatial Planning Map Year 2005-2015, information is obtained that the area used as the *Tanjung Kelayang* Special Economic Zone is indeed dominated as a tourism area and production forest, for tourism areas symbolized by a horizontal red line of shading while production forests are symbolized by color light green as shown in Figure 1.

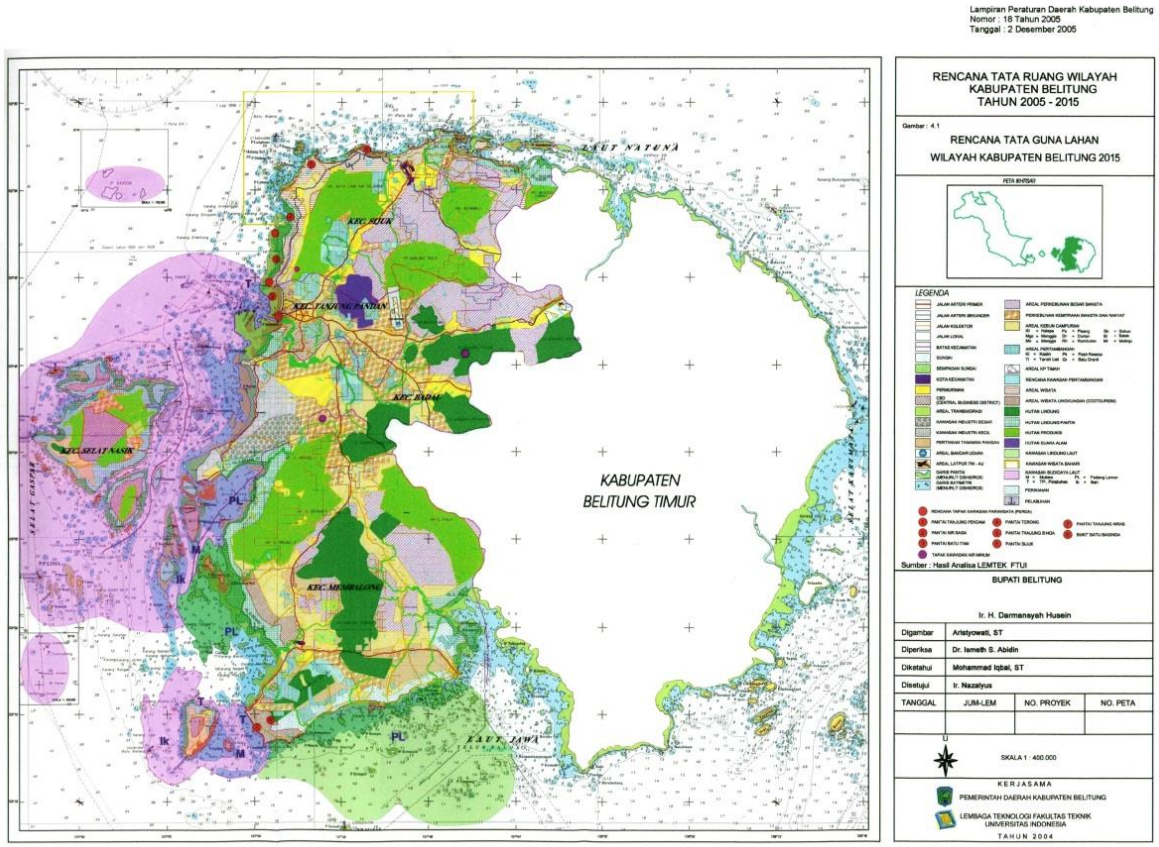

Figure 1. Map of Spatial Planning for Belitung Regency in 2005-2015

Map of Regional Spatial Planning that is used as a reference for *Tanjung Kelayang* land acquisition is a map of the old Regional Spatial Planning or which was made before Government Regulation No. 6 of 2016 concerning the *Tanjung Kelayang* Special Economic Zone. Of the Regional Spatial Plan, the *Tanjung Kelayang* Region is intended for tourist areas, so that it does not violate its Regional Spatial Plan.

Tanjung Kelayang Special Economic Zone Proposing Business Entity is a P.T. Belitung Pantai Intan, domiciled in South Jakarta, is headquartered at Sultan Hasanudin Street No.69, Kebayoran Baru, South Jakarta 12160. As for the Business Entity, the consortium SEZ builders and managers consist of :

1. P.T. Belitung Pantai Intan, domiciled in South Jakarta, headquartered at Sultan Hasanudin Street No.69, Kebayoran Baru, South Jakarta 12160.
2. P.T. Tanjung Kasuarina, domiciled in South Jakarta, headquartered at Dharmawangsa VII / 9 Street Kebayoran Baru South Jakarta 12160.
3. P.T. Nusa Kulila, domiciled in South Jakarta, is headquartered on Dharmawangsa VII / 9 Street, Kebayoran Baru, South Jakarta 12160.

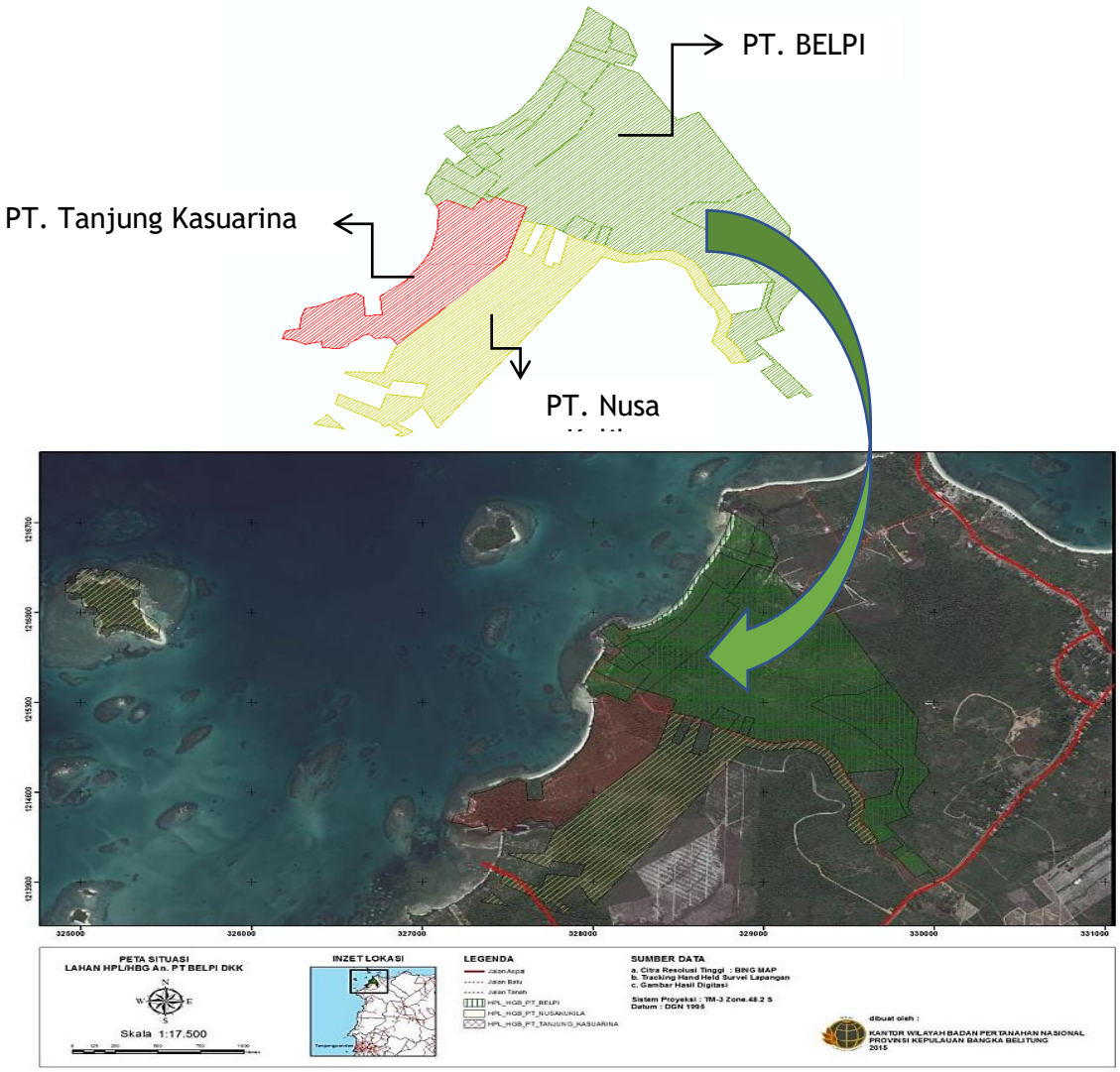

Figure 2. Situation Map

From the Situation Map that is overlaid with the image as shown in Figure 2, that for the color of green shading the most extensive area is the HGB area above the HPL requested by PT. BELPI, while the yellow shading is the HGB area above the HPL requested by PT. Nusa Kukila and the red shading are HGB areas above the HPL requested by PT. Tanjung Kasuarina.

In Government Regulation No. 6 of 2016 it is emphasized that the Business Entity carrying out the construction of the *Tanjung Kelayang* SEZ is ready to operate within a maximum period of 3 years from the enactment of the Government Regulation (March 15, 2016). If within 3 (three) years the *Tanjung Kelayang* SEZ is not yet ready to operate, the National Council for Special Economic Zones:

1. make changes in the area or zone;
2. provide an extension of time of no more than 2 (two) years;
3. do business entity replacement; and / or
4. Proposal of cancellation and revocation of *Tanjung Kelayang* SEZ.

If an extension of the time period has been granted and the *Tanjung Kelayang* SEZ is not yet ready to operate because it is not a negligence or force majeure of the business entity, the Special Ecomonic Zone National Council may provide an extension of the development time. The history of land tenure from the *Tanjung Kelayang* SEZ is as follows:

1. November 19, 1992 between Belitung Regency Government and P.T. Belitung Permai Intan (P.T. BELPI) was held an MOU on Development Cooperation and Management of Tanjung Binga Tourism Objects.
2. After that the 'land acquisition' was carried out by the community in Tanjung Binga Village and Keciput Village, Tanjung Pandan District, where the acquisition fee was prepared by PT. BELPI.
3. In 1992 a Location Permit was issued (document not found) in the context of the issuance of HPL Belitung Regency Government.
4. In 1993 issued the 'Extension of Location Permits' in 1992 for 1 (one) year.

In the period 1994, 1996 and 1997 19 (nineteen) certificates of Management Rights (HPL) were issued a.n. The Belitung Regency Government, which is entirely located in Tanjung Binga Village, Sijuk District. Then, above 19 (nineteen) Management Rights (HPL) were issued 19 (nineteen) Building Rights (HGB).

In further developments in 2012 the three Private Legal Entities holding the HGB filed a civil suit with the Belitung Regency Government (Defendant I) and the Government of the Republic of Indonesia Cq. National Land Agency Cq. Regional Office of the National Land Agency of Bangka Belitung Province Cq. Belitung Regency Land Office (Defendant II) to the Tanjung Pandan District Court registered in case No.18 / Pdt.G / 2012 / PN Tdn. November 14, 2012. Because based on the Republic of Indonesia Supreme Court Regulation No. 1 of 2008 concerning the Implementation of Mediation in the Courts, the Panel of Judges provided an opportunity for both parties to make a settlement with mediator Eka Yektiningsih, SH, one of the Judges at the Tanjung Pandan District Court based on Letter of Determination Number: 18 / Pdt.G / 2012 / PN.TDN dated December 12, 2012.

The Tanjung Pandan District Court in its decision dated February 27, 2013 contained a Peace Agreement between the two parties whose contents outline were as follows:

1. Defendant I with the assistance and support of Defendant II agreed and agreed to process the change of HGB land status on behalf of the Plaintiffs over HPL to HGB status on behalf of the Plaintiffs; where Defendant I ensures revoking, releasing and canceling HPL on behalf of Defendant I. The process of changing the certificate of HGB over HPL to HGB on behalf of the Plaintiff will be carried out by Defendant II (Belitung Regency Land Office) in accordance with the applicable laws and regulations.
2. The Plaintiff is willing to pay compensation to Defendant I in the amount of Rp. 80,000,000 (eighty million) per year for the duration of the HGB above the validity of

HPL until 2027 or for 14 (fourteen) years, which is charged to the Plaintiff. I (PT Belitung Pantai Intan) by 50% (fifty percent); Plaintiff II (P.T. Tanjung Kasuarina) of 30% (thirty percent); and Plaintiff III (P.T. Nusa Kulila) by 20% (twenty percent); which was paid in full at once to Defendant I.

3. The Plaintiff is willing to provide compensation to Defendant I of 2.5% (two point five percent) which is agreed based on the total area of land to be built by the Plaintiff which is 30% (thirty percent) of the total area of land owned by the Plaintiff, with the following formula:

   2.5% (30% of the total Land Area x NJOP applicable at the time of payment)

   with each breakdown:

   a. Plaintiff I: 2.5% (30% x 1,946,633 M2 x NJOP applicable at the time of payment);
   b. Plaintiff II; 2.5% (30% x 503,049 M2 x NJOP applicable at the time of payment);
   c. Plaintiff III: 2.5% (30% x 937,145 M2 x NJOP applicable at the time of payment).

If the Plaintiff in implementing Tanjung Binga tourism development exceeds 30% (thirty percent) of the total land area, the Plaintiff is required to provide compensation to Defendant I of 2.5% (two point five percent) for the excess (additional) land area used.

Before the HPL was released by the Belitung Regency Government, Head of the Revenue Service, Financial Management and Regional Assets of the Belitung Regency Government on the date. 9 April 2013 No. 900/663 / DPPKAD Belitung Regency issued a letter stating: that during the 1990-2002 fiscal year the Belitung Regency Government did not allocate / budget funds in the Regional Development Budget for land acquisition activities in relation to land management in Tanjung Tinggi Beach Tourism Area, Keciput P.T. Nusa Kukila, P.T Tanjung Kasuarina, P.T. Belitung Pantai Intan and P.T. Putra Ciptawahana Sejati.

In addition, the Chairperson of Regional Assembly in Belitung Regency on April 10, 2013 No.170 / 095 / DPRD / IV / 2013 concerning recommendations submitted to the Belitung Regent, among others, provided recommendations for the release of certificates of Management Rights on behalf of the Government of Belitung Regency for the process of completing the Building Use Certificate Certificate. on behalf of PT Nusa Kukila, P.T Tanjung Kasuarina, P.T. Belitung Pantai Intan and P.T. Putra Ciptawahana Sejati by the Belitung Regency Land Office.

Following up on the Court's decision, the letter of the Head of the Regional Financial and Asset Management Revenue Service, as well as the Recommendation of the Belitung Regency DPRD Head, the Belitung Regent submitted a request for Cancellation of 19 (nineteen) Certificates of Management Rights (HPL) on behalf of the Belitung Regency Government to the Head of the Belitung Regency Land Office dated May 24, 2013 Number 180/985 / DPPKAD / 2013.

Upon the request for cancellation, the land authority (BPN RI) gave instructions regarding the process of releasing the Right of Management (HPL) by issuing Letter Number 726 / 27.1-600 / II / 2014 dated February 26, 2014 concerning "Guidelines for the Abolition of Management Rights on behalf of the Regional Government of the Belitung Level Level II. requested by PT Nusa Kukila, P.T Tanjung Kasuarina, P.T. Belitung Pantai Intan and P.T. Putra Ciptawahana Sejati, located in Belitung Regency, Bangka Belitung Islands Province; which was signed by the Deputy for Land Assessment and Handling of Land Disputes and Conflicts, provided the following explanation: "Based on the Internal Case Title at the BPN RI on January 13, 2014, it was agreed that the removal of the HPL of the Belitung Regency Government would be guided by the Decision of the Tanjung Pandan District Court dated. January 23, 2013 No.15 / Pdt.G / 2012 / PN.Tdn and date. 27 February 2013 No.18 / Pdt.G / 2012 / PN.Tdn pursued through the release of rights in accordance with the conclusion of the Case Title, namely:

1. Decision of the Tanjung Pandan District Court dated. 27 February 2013 No.18 / Pdt.G / 2012 / PN.Tdn. used as a basis for follow-up administration of the land in question.
2. In accordance with the aforementioned decision there is no need for cancellation, but it is done through the relinquishment of rights by the Belitung Regent before a Notary Public and for the application file for the cancellation of the Right of Management (HPL) to be returned to the Regional Office of National Land Agency in the Province of Bangka Belitung Islands.
3. With the release of the Right of Management (HPL) by the Regent of Belitung, the Right of Building (HGB) above it was erased and the former HGB holder could then submit an application for land rights through the Belitung Regency Land Office in accordance with statutory provisions.

The release of Management Right by the Belitung Regent was the basis for the Head of the Belitung Regency Land Office to cross off the land book and other general registers of land registrations. On August 15, 2014, the Regent of Belitung Regency released the 19 (nineteen) HPLs by making a Legalized Release Statement before the Notary Mrs. Linawati Hasan, S.H. in Belitung

Theoretically HPL can be released so that the lands released become land that is directly controlled by the State (state land). In the case of HPL being released, what is the legal status of the land rights that are on it? Some argue that even though the HPL was released, the rights to the land on it remained 'alive'. This opinion is based on the argument for the abolition of land rights as regulated in Agrarian Law and Government Regulation No.40 of 1996, namely:

1. The expiration of the period as specified in the decision to grant or renew or in the agreement of the award;

2. canceled by the competent official, management right holder or right owner before the time period expires, because:
   a. non-fulfillment of rights holder obligations and / or violations of the provisions referred to in Article 30, Article 31 and Article 32 (for Right of Building /HGB) or Articles 50, 51 and 52 (for Right of Use/ HP); or;
   b. non-fulfillment of conditions or obligations contained in the agreement to grant HGB / HP between the holder of the HGB / HP and the holder of the Right to Ownership or the agreement to use the land for Management Rights; or
   c. court decisions that have permanent legal force;
3. is voluntarily released by the rights holder before the period ends;
4. revoked based on Law No. 20 of 1961;
5. abandoned;
6. the land is destroyed;
7. Rights holders no longer qualify as subjects of rights.

On the other hand there is an opinion that when the HPL is released, the rights to the land that is on it (HGB / HP) is also erased. This opinion refers to the Letter of the Head of BPN RI Number 726 / 27.1-600 / II / 2014 dated February 26, 2014 concerning "Guidelines for the Abolition of Management Rights on behalf of the Regional Government of the Level II Regency of Belitung requested by P.T. Nusa Kukila, P.T Tanjung Kasuarina, P.T. Belitung Pantai Intan and P.T. Putra Ciptawahana Sejati, located in Belitung Regency, Bangka Belitung Islands Province, which in one of its conclusions stated: "With the release of HPL by the Belitung Regent, the HGB that was on it was erased and subsequently the former HGB holder can submit land rights applications through the Land Office Belitung Regency in accordance with statutory provisions.

E. Closeure

As explained in the previous section that there are 19 (nineteen) HGB of P.T. Belitung Pantai Indah, P.T. Tanjung Kasuarina, and P.T. Nusa Kukila with a total area of 2,693,695 m2, which is located above 19 (nineteen) HPL of Belitung Regency Government with a total area of 3,393,695 M2.

The HGB certificates of the three companies issued in 1994 are listed in column 'i) Designator' written: "Right to Build this is above Management Right No." ... Tanjung Binga Village.

In 2015 there was a change of the 1994 HGB Certificate form with the reason for the existence of a new certificate form. It's just that on the blank certificate of the old HGB it is written that the HGB is mentioned above. (so) Tanjung Binga Village, then in the new HGB blank, the editorial 'Above Management Rights' is gone. On the 'Registration for Transfer of Rights, Assignment of Rights and Other Registration' page of the HGB Certificate (new

blank after the change) records the event of the release of the HPL and the basis for the release of the said HPL.

Regarding the status of the HGB above the HPL after the release of the HPL, it can be stated that actually with the release of the HPL, the HGB also becomes 'delete'. The basis of this opinion is that theoretically, land rights are born due to 3 (three) things, namely: (1) statutory provisions; (2) stipulation of the Government; and (3) agreements with holders of land rights. The explanation in point (1) is a conversion condition; point (2) is the granting of rights to land (state); while point (3) is the existence of land rights on land rights such as HGB or HP on HM; or HM, HGB and HP above HPL.

The HGB above HPL was born because previously there had been an agreement between the prospective HGB holder and the HPL holder that the HPL holder agreed to give part of the land from HPL to the prospective HGB holder. Based on the agreement as outlined in the agreement, the HPL holder submits the HGB application to the land authority so that the HGB is then issued to the third party. Therefore, if the HPL is deleted, the HGB should also be deleted because the HGB is based on, or because of the existence of the HPL.

References

'KEK Tanjung Kelayang, Lahan KEK Masih Sengketa' 2016, *Radarbangka.co.id*, posted on April 21, 2016, viewed on March 21, 2018, https://www.radarbangka.co.id/

Brown, D 1996, *Land Acquisition: an examination of the principles of law governing the compulsory acquisition or resumption of land in Australia and New Zealand*, Butterworths.

Harsono, B 1997, *Hukum Agraria Nasional. Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya Jilid I Hukum Tanah Nasional*, Djambatan, Jakarta.

Hutagalung, AS & Sitorus, O 2011, *Seputar Hak Pengelolaan*, STPN Press, Yogyakarta.

Sumardjono, MSW 2008, *Tanah Dalam Perspektif Hak Ekonomi, Sosial dan Budaya*, KOMPAS publishing, Jakarta.

Gunanegara 2006, 'Pengadaan Tanah Oleh Negara Untuk Kepentingan Umum', dissertation at Postgraduate Program, Airlangga University.

Secretariat of the National Council for Special Economic Zone 2018, *Indonesia's Special Economic Zone*, viewed on March 21, 2018, http://kek.go.id

Legislation

Law No.2 of 1999 concerning the Location Permit

Law No. 39 of 2009 concerning Special Economic Zone

Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest

Law No.23 of 2014 concerning Regional Government

Government Regulation No.40 of 1996 concerning Right to Cultivate, Right to Build and Land Use Rights

Government Regulation No. 2 of 2011 concerning the Implementation of Special Economic Zone

Government Regulation No. 100 of 2012 concerning Amendment to Government Regulation No. 2 of 2011 concerning the Implementation of Special Economic Zone.

Government Regulation No. 96 of 2015 concerning Facilities and Conveniences in Special Economic Zone.

Government Regulation No. 6 of 2016 concerning Tanjung Kelayang Special Economic Zone

Presidential Regulation No. 71 of 2012 concerning Implementation of Land Acquisition for Development in the Public Interest.

Presidential Regulation No. 40 of 2014 concerning Amendment to Presidential Regulation No. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest.

Presidential Regulation No. 75 of 2014 concerning the Acceleration of Priority Infrastructure Provision

Presidential Regulation No. 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects

Presidential Regulation No. 58 of 2017 concerning Amendment to Presidential Regulation No. 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects

Presidential Instruction No. 1 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects

Regulation of the Minister of Agrarian Affairs / Head of National Land Agency No.3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration

Regulation of the Minister of Agrarian Affairs / Head of National Land Agency No. 9 of 1999 concerning Procedures for the Granting and Cancellation of Rights to State Land and Management Rights

Decree of the Minister of Agrarian Affairs / Head of the National Land Agency No. 21 of 1994 concerning Procedures for Land Acquisition for Companies in the Framework of Investment