

URGENCY PROVISION OF SEA WATER TREATMENT INVESTMENT LEVY WITH SWRO TECHNOLOGY

Ratih Wulandari¹, Hirsanuddin², Zainal Asikin³

¹Faculty of Law, Mataram University
Jl. Majapahit No. 62, Mataram, West Nusa Tenggara, 83115, Indonesia
Telp./Fax: +62-81-808990009 Email: ratih.wulandari1501@gmail.com

²Faculty of Law, Mataram University
Jl. Majapahit No. 62, Mataram, West Nusa Tenggara, 83115, Indonesia
Telp./Fax: +62-370-633035 Email: magisterhukum_unram@yahoo.co.id

³Faculty of Law, Mataram University
Jl. Majapahit No. 62, Mataram, West Nusa Tenggara, 83115, Indonesia
Telp./Fax: +62-370-633035 Email: magisterhukum_unram@yahoo.co.id

Submitted: Mei 17, 2019; Reviewed: Jun 15, 2019; Accepted: Jun 29, 2019

Abstract

Indonesia is a country with a million potential of profitable natural resources. This archipelago country is also a country with abundant water richness but still often occurs scarcity of clean water one of which happened in Gili Trawangan, North Lombok reGENCY of West Nusa Tenggara province. To overcome the lack of access to clean water, PT. Berkas Air Laut conducting investment activities of seawater into freshwater/clean water with desalination technique through the technology of Sea Water Reverse Osmosis (SWRO). Unfortunately, the investment process is always experiencing obstacles in the licensing process due to the absence of provisions regarding the redistribution of such activities. The purpose of this research is to analyse sea water treatment investments with SWRO technology related to the legal void of regional retribution. The methods used are approach to statutory regulations, approach to concepts and approach of the case. These approaches are used to analysts form legal certainty regarding the imposition of seawater retribution.

The results of the research obtained is that the Law No. 7 of 2004 on water resources has been cancelled by the Constitutional Court of Indonesia as well as stating the re-enactment of Law No. 11 year 1974 of Irrigation but these laws are not comprehensive to accommodate any water resources related activities. Then, other related rules such as Law No. 28 of 2009 on Regional Taxes and Retribution, Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. 47/PERMEN-KP/2016 on the Utilization of Water Conservation Area, West Nusa Tenggara Provincial Regulation No. 12 year 2017 about the Plan Zoning of Coastal Regions and Small Islands of West Nusa Tenggara in 2007-2037 and other special rules do not explain the provisions regarding the levy on sea water treatment so that the void of law needs to be new legislation related to water resources.

Keywords: *Regional Retribution; Sea Water Treatment*

INTRODUCTION

One of the objectives of Indonesian Government is to advance the general welfare. The mandate was described in article 33 of the Constitution of the Republic of Indonesia year 1945 and is the mandate of the constitutions underlying the establishment of all legislation in the field of economy. The Constitution mandated that the national economic development must be based on the democratic principle that is able to create the economic sovereignty of Indonesia through the implementation of national economy.

In regard to this, investing should be part of the national economy and placed as an effort to increase national economic growth, create jobs, improve economic development capacity and capability of national technology, encouraging people's economies, and realizing the welfare of the community in a competitive economic system. The objective of the capital investment can only be achieved when the supporting factors that impede the investment climate can be overcome, among others through the improvement of coordination between central and local government agencies, the creation of efficient bureaucracy, legal certainty in the field of capital investment, high competitive economic costs, as well as a conducive busi-

ness climate in the field of employment and security strive. By the improvement of various supporting factors, expected the realization of capital investment will improve significantly.¹

Currently the central government through the Presidential Instruction of the Republic of Indonesia number 1 year 2016 about the Acceleration of the Implementation of National Strategic Project is promoting the investment and accelerating development Program of the national strategic area and in in appendix of Presidential Regulation of the Republic of Indonesia No. 3 of 2016 on Accelerating the Implementation of National Strategic Project, West Nusa Tenggara Province is one of the provinces selected in the implementation of the program with entry point Tourism development, especially the provision of clean water for coastal areas and small islands, especially the areas of clean water crisis that can not or not reached by the service of the Regional Drinking Water company hereinafter referred to as PDAM. The election of West Nusa Tenggara Province in tourism development should certainly have the strengthening of policymakers in the area because proper and equitable policy can open up space for investors to be more controlled

¹ Explanation in the Appendix of law number 25 year 2007 on Investing

in the their investing efforts. One example is in the form of government cooperation with a business entity hereinafter referred to as KPBU. Related to KPBU, this has been described in the rules relating to regional cooperation with third parties as intended in article 363 paragraph (2) letter b of Law No. 23 of 2014 on Local Government which includes cooperation in providing services, cooperation in asset management to increase added value that provides revenue for the region, cooperation of investments and other cooperation that does not contradict the provisions of the legislation. In this case, the provisions related to government cooperation with third parties especially in the field of investment can be done in accordance with the provisions of legislation and not contrary to prevailing laws and regulations.

On the other hand related to the realization of KPBU, water management in West Nusa Tenggara province, especially three Gili, brought together a new company as a manager who collaborated in the form of KPBU with the local government of North Lombok regency. The local government of North Lombok Regency cooperates with PT. Tiara Cipta Nirwana which has officially signed a Memorandum of Understanding hereinafter abbrevi-

ated as MoU on 16 January 2018.² The existence of KPBU is based on the need to urge the people of North Lombok to the availability of clean water for their daily life after a reduced full involvement of PT. Berkas Air Laut for the provision of clean water in Gili Trawangan and Gili Meno.

Before the operation of PT. Tiara Cipta Nirwana, PT. Berkas Air Laut has invested as a pioneer company for the technology of Sea Water Reverse Osmosis which hereinafter referred to as sea water treatment SWRO³ into freshwater through desalination process⁴ in Gili Trawangan and Gili Meno since 2012 years ago. This means that the company has proved as a professional capable company by promoting quality and good quantity sustainably for the fulfillment of the needs of clean water and tourism people who it can not

² PT. Tiara Cipta Nirwana Resmi Kelola Air di Tiga Gili. Accessed on the page : <https://kicknews.today/2018/01/16/pt-tiara-cipta-nirwana-resmi-kelola-air-di-tiga-gili/> on Januari 15th 2019

³ Sea Water Reverse Osmosis (SWRO) is a unit of desalination system to convert seawater into fresh water. In developed and developed countries, this unit has a lot of use because by processing sea water into fresh water, there are many benefits for life cycle and environmentally friendly

⁴ Desalination is a process of water treatment to separate salt from saline solution to produce drinking water or low water of its TDS. Seawater desalination and brackish water can be used to increase the availability of clean water sources. Nevertheless, desalination technology requires high energy in the process, so far the energy is provided from fossil based energy sources, which is very volatile, it is difficult to be transmitted to remote areas, and not Renewable. (Abdulloh, SH. Water treatment using renewable energy, 2015,1-8)

be done by North Lombok Regency Government. It was a waste of water treatment business to be done by PT. Berkat Air Laut due to the unresolved license management, there are still differences in views on the legal norm of water management and the imposition of retribution until the director of PT. Berkat Air Laut should be determined as a suspect related to the in maximum management of such permits.

Related to this, raises a variety of questions that is why the PT. Berkat Air Laut has an obstacle in the management of permits in the absence of a legal norm of the charging of retribution while PT. Tiara Cipta Nirwana can do water management with the same technology in the same location? In addition, when the cooperation conducted by the party of PT. Tiara Cipta Nirwana through the concept of KPBU can be realized in the form of MoU, then why the application of KPBU party of PT. Berkat Air Laut with the same concept of KPBU not received?

In the absence of a clear legal norm related to the imposition of retribution in the field of water harvesting with this latest technology, raises problems in the field of licensing that is to be given so as to slow the access of this investment to be better developed.

In relation to law number 25 of 2007 on Capital Investment, it is also explained about the aspects of legal certainty in article 14 with the explanation, "every investor is entitled to certainty of rights, law, and protection, information that is open regarding the field of business, the right of service and various forms of facility facilities in accordance with the provisions of legislation "so that in this case can be said that the aspect of legal certainty is the right to investors in order to carry out its capital activities in Indonesia, especially in West Nusa Tenggara. In other words, the problem that arises regarding legal certainty is not manifested as a mandate from the rules that set it. This is what will hamper the investment movement in the future. Although KPBU itself is done one of them with the aim to create an investment climate that encourages the participation of business entities in the provision of infrastructure based on the principle of healthy business as contained in article 3 regulations President of the Republic of Indonesia number 38 year 2015 on government cooperation with business entity in the provision of infrastructure.

Based on such exposure, the problem formulation is related to the form of legal certainty of the imposition of sea water retribution with research objectives

to analyse the legal certainty of the imposition of retribution so that it will not the investment activities of sea water treatment in various areas in the future.

RESEARCH METHOD

Type of Research

The type of research used in this writing is normative juridical, which is research conducted by reviewing the legislation and legal theory and the opinion of the legal experts to be able to answer issues related to certainty regarding the imposition of the sea water retrieval levy.

Research Approach

The method used are (1) The Statute approach where this approach is conducted by studying and researching a juridical norm, principles, and legal norms that live in society, particularly relating to the preparation of regional legal products pursuant to Law No. 25 of 2007 concerning Capital Investment. (2) The Conceptual approach is a process to find the rule of law, principles of law, and legal doctrines to address legal issues faced mainly relating to legal issues in this writing⁵ such as theory on legal certainty, authority theory and legal protection theory. This approach went from the views and doctrines that developed in the law. This approach is

important because understanding of the views/doctrines that develop in the science of law can be a foothold to build legal arguments when resolving the legal issues encountered. The view/doctrine will clarify ideas by providing the legal, legal concepts, and legal principles relevant to the problem and (3) Case approach is the approach by reviewing the cases relating to legal issues that have become problematic in the area in the preparation of various regional legal products. In this case related to the investment permit acquisition of SWRO technology PT. Berkas Air Laut in North Lombok regency.

Collection of Legal Materials

Consisting of 2 (two) sources i.e. (1) The primary legal material is a basic legal material that can not be replaced by other legal material that is derived from the legislation. The legal material sourced from the legislation in the writing of this thesis is the Constitution of the Republic of Indonesia year 1945, Act No. 11 of 1974 on Irrigation, Law No. 12 year 2011 on Establishment Legislation, law number 23 of 2014 as amended several times last by Law No. 9 of 2015 on the Second amendment to Law No. 23 of 2014 on Local Government, and Law number 25 of 2007 on Capital Investment. Furthermore (2) The secondary legal material, which is

⁵ Peter Mahmud Marzuki, (2011), *Penelitian Hukum*, Jakarta : Kencana Prenada Media Group p. 35

a legal material that provides explanations about the primary legal materials, such as books and journals related to the preparation of local law products. Lastly (3) The tertiary legal materials, which are legal materials that provide explanations of primary and secondary legal materials such as the legal dictionary, and the Black Law Dictionary. To acquire legal material in this writing, the authors use a document study, which is a technique of collecting legal materials by collecting literature materials in the form of literary, paper, journal, magazines and regulations legislation relating to the substance of problems related to retribution and treatment of seawater into freshwater/clean water.

Data Analysis

The legal material obtained in the study is analyzed in a qualitative descriptive, which describes systematically as a whole and draws conclusions with the deductive technique, which is to draw conclusions from common things to Things that are specific. Furthermore Soerjono Soekanto explained that:⁶ "Legal research is a scientific activity, based on certain methods, systematic and thoughts, aimed at studying one or more of the specific legal symptoms, with the way to analyse them".

⁶ Soerjono Soekanto, (2012). *Pengantar Penelitian Hukum*, Jakarta: Cetakan Ketiga, UI Press, p.42.

ANALYSIS and DISCUSSION

Regulatory Urgency of the Sea Water Field

John H. Garvey and T. Alexander Aleinikooff argue that there are two forms of power-sharing: The former is sometimes said to address The "vertical" division of authority between national and state governments, The latter a "horizontal" division among The executive, legislature, and Judiciary.⁷ Then Arthur Maarab also argued that the division of power is horizontally referred to as the capital division of power, while the division of power is vertically referred to as division of power. In the framework of capital division of power, legislative, executive, and judicial functions are each given to a body. In the framework of the area of division of power, certain functions such as monetary and foreign relations are given to the central government, while other functions are given to state or local governments.⁸

Article 1 paragraph (3) of law No. 23 of 2014 on the Local Government states that the local government as an element of regional governance governs and manages itself the affairs of Government

⁷ Edie Toet Hendratno, (2009). *Negara Kesatuan, Desentralisasi, dan Federalisme*, Yogyakarta: Graha Ilmu. p.120.

⁸ Ibid. p. 121

according to the principle of autonomy and co-administration. Syarif Saleh said the autonomy was the right to govern and govern his own area. On its own initiative and willingness, the rights are obtained from the central government.⁹ Wayong suggests that regional autonomy is the freedom to nurture and advance the special interests of the region, with its own finances, determining its own laws and self-governance.¹⁰ Sugeng Istanto states that autonomy is interpreted as the right or authority to regulate and manage the local household.¹¹

Departing from this then the core implementation of regional autonomy is a discretionary power to conduct its own government on the basis of initiatives, creativity and active participation of the community in to develop and advance its territory.¹² Here the community can not only determine its own fate through community empowerment, but the main thing is to try to improve its own fate.¹³ In an effort to implement the principle of regional autonomy, North Lombok District government needs to improve the welfare

of its people, one way by increasing the source of regional indigenous revenue.

Mahmudi argued that one source of local income can be obtained from the current source of income and already stipulated by legislation.¹⁴ In accordance with the provisions of article 285 of Law No. 23 of 2014 on Local Government, it is said that the regional revenue source consists of the original revenue of the area which includes local tax, regional levy, results of regional wealth management Segregated, and other genuine local revenue. So related to the condition that occurs, the potential to maximize the original revenue of the area can be done one of them through the levy of sea water management conducted by PT. BAL.

In the provisions of the provincial regulation of West Nusa Tenggara number 12 year 2017 on the Zoning Plan of Coastal Territories and Small Islands West Nusa Tenggara Province year 2017-2037, article 3 stated that the Coastal zone zoning plan and Small islands of West Nusa Tenggara Province hereinafter referred to as RZWP-3-K NTB province aims to:

- a. To create harmonization and synergy of the planning and utilization of marine space between the government,

⁹ Syarif Saleh, (1953) *Otonomi dan Daerah Otonom*, Jakarta: Endang, 1953, p. 31.

¹⁰ J. Wayong, (1975) *Asas dan Tujuan Pemerintahan Daerah*, Jakarta: Jambatan, p. 5

¹¹ F. Sugeng Istanto, (1971) *Beberapa Segi Hubungan Pemerintah Pusat dan Daerah dalam Negara Kesatuan Indonesia*, Yogyakarta: Karyaputera, p. 24

¹² H.A.W. Widjaja, (1998). *Percontohan Otonomi Daerah di Indonesia*, Jakarta: Rineka Cipta, p.36

¹³ Edie Toet H. Op.Cit., p. 64

¹⁴ Mahmudi, (2010). *Manajemen Keuangan Daerah*, Jakarta: Erlangga. p. 16.

and the provincial government in realizing the management of resource and small islands safe, comfortable, productive and sustainable;

- b. To create harmonization and synergy of planning and utilization of marine and land space in order to prevent space function and the prevention of negative impact on the environment due to space utilization;
- c. To realize the sustainability of coastal resources and small islands in an integrated and sustainable manner;
- d. To realize the utilization of coastal resources and small islands for the improvement of Community welfare;
- e. Strengthening the participation of communities and government institutions and encouraging Community initiatives in the management of coastal resources and small islands to achieve justice, balance and sustainability; and
- f. Ensure the legal and fairness assurance in the management of coastal resources and small islands.

Furthermore, the scope of planning RZWP-3-K province includes:

- a. Inland includes the district administrative area, and

- b. Towards the sea as far as 12 (twelve) nautical miles are measured from the coastline at the highest tide towards the high seas and/or towards the island waters

In this case, the authors observe that the activities of seawater treatment into freshwater is done by PT. BAL in the area of Gili Trawangan and Gili Meno based on the decree of the Minister of Maritime and Fisheries Republic of Indonesia number KEP. 67/MEN/2009 on the Determination of the National Water Conservation Area of Gili Ayer Island, Gili Meno and Gili Trawangan in West Nusa Tenggara Province has been determined that the sea water of Gili Air, Gili Meno and Gili Trawangan as the National Conservation Area in NTB province, so as to the activities of utilization of water resources potential in the national Conservation Area, it must be guided by the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia number 47/PERMEN-KP/2016 on Water Conservation Area utilization. Sea water utilization as a raw material of freshwater/clean and simple construction development activities as supporting infrastructure in national water conservation areas of water Tourism Park Gili Mantra should be ex-

amined in by the Director general of Marine Space Management of the Ministry of Marine Affairs and Fisheries because it is categorized as national Conservation Area so as to obtain permission from the Minister of Maritime and Fisheries. In particular, this has been affirmed in article 14 of the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia number 47/PERMEN-KP/2016 on the Utilization of Water Conservation Areas stating that the permit to use conservation Area Waters published by Minister for the National Water Conservation Area.

However, if it is associated with NTB Provincial regulation number 12 year 2017 about RZWP-3-K, in article 67 mention:

- (1) The licensing conditions as intended in article 52 paragraph (2) b, are the controlling equipment of space in accordance with the provisions of legislation;
- (2) The licensing conditions as intended in paragraph (1), consist of:
 - a. Location permits;
 - b. Management permissions.
- (3) Any person and/or legal entity that utilizes the space of a partially settled coastal waters is obliged to have location permits and management permits;

- (4) Location permits as referred to in paragraph (3) shall be provided based on the RZWP-3-K and the basis of granting management permission;
- (5) Location permits and management permits as referred to in paragraph (2) shall be given by the Governor pursuant to its authority.

Then in article 69 mentions:

- 1) Location permit as referred to in article 67 paragraph (2) letter a is given on the use of space in some coastal waters that includes the surface, the water column until the surface of the sea floor at certain extent of area and certain time that is settled;
- 2) Location permit as intended in paragraph (1) can not be given in the core zone of conservation area, sea flow, port area and public beach;
- 3) In case the holder of the location permit as referred to in paragraph (1) does not realize its activity in a period of maximum 2 (two) years from the receipt of acceptance of administrative sanctions in the form of revocation of site permit;
- 4) Any issuance of permits shall be subject to retribution fee in accordance with the provisions of statutory regulations.

In article 70 mentions:

- (1) Management license as intended in article 67 paragraph (2) letter b shall be given after obtaining location permit;
- (2) The management license as intended in paragraph (1) shall be given to the activities:
 - a. Nautical tourism;
 - b. Salt Enterprises;
 - c. bio pharmacology;
 - d. Biotechnology;
 - e. Sea water Utilization in addition to energy;
 - f. Installation of undersea pipes and cables; and
 - g. Removal of sinking vessel.
- (3) Management permit for activities other than as intended in paragraph (2) shall be given in accordance with the provisions of legislation.

In this case, associated with PT. BAL as a foreign investor, a foreign citizen who utilizes coastal resources and small islands must obtain permission from the Minister of Marine Affairs and Fisheries after obtaining a recommendation from the Governor in accordance with Provisions of article 72 of the Regional regulations of NTB Province about RZWP-3-K.

Interesting to discuss, about the guidelines of the determination of the area levy related to sea water management.

Retribution is one of the beneficial things for the implementation of good governance. Similarly, about investments because investment is also part of the state's financial income. So, the retribution that will be discussed is the levies that arise because of the activities of investment in the specialty of sea water treatment activities into fresh water.

The term investment comes from the English language, "investment" which translates into Indonesian language which means "investing". In Indonesia, the investment policy has been set forth in the law number 25 of 2007 about Investing. In article 1 paragraph (1) states that investing is all forms of investing, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia.¹⁵

Today, foreign capital recipient countries no longer consider the inclusion of foreign capital as a threat, nor are it considered to be suspected, because the developing world now considers that foreign capital can provide working capital, bring managerial, science, capital and market connection skills.¹⁶

¹⁵ Law No. 25 of 2007 on Investing. Tim Redaksi Fokus Media, 2007. p. 2

¹⁶ Huala Adolf, (2004). *Perjanjian Penanaman Modal dalam Hukum Perdagangan Internasional (WTO)*, Depok: PT. Raja Grafindo Persada., p. 6

In the theory of Harrod-Domar outlines that investment (and the public's savings to finance investments) is a determination of economic growth. If the savings and investments are low, the economic growth of the community or country will also be low.¹⁷

Raemond Vernon and Charles P. Kindlebergen see the role of foreign investment in the traditional economy and in terms of reality, where foreign investment can bring influence to the development and modernization of the economic foreign capital recipient countries. The process can be seen in the symptoms of the development and growth of the world economy and the market mechanisms that can take place either with or without the arrangement and facilities of foreign capital recipient countries.¹⁸

The Indonesian Government is aware that economic development means processing potential economic forces into a real economic power, it has also been described in article 33 the Constitution of the Unitary Republic of Indonesia 1945

namely " The national economy is held based on economic democracy with the principle of togetherness, fairness, sustainability, environmental insight, independence and by maintaining a balance of progress and national economic unity ".¹⁹

In line with this, investments are part of the national economy and the objectives of investment management can only be achieved when the supporting factors that impede the investment climate can be overcome.²⁰

The strategy of pushing forward investment activities in the area is essentially not only the responsibility of the local government, but it is also the responsibility of the central government. This conception arises based on an understanding of our State concept based on the concept of unitary state. Therefore, the existence of a synchronous vision and mission between the central and local governments while promoting the welfare of the community as a whole should be the basis of a fundamental step in realizing the policy in the field of investment.²¹

Investment inhibiting factor can be de-

¹⁷ Indra Ismawan. (2002). *Otonomi Ranjau-Ranjau*, Solo : Pondok Edukasi, p. 122

¹⁸ Karl Max dalam Budi Sutrisno, (2006) *Penanaman Modal Asing Dalam Perspektif Pengutamaan Kepentingan Nasional dan Konsekuensi Hukumnya Pasca Persetujuan Trims*, Program Studi Ilmu Hukum Fakultas Hukum Universitas Mataram, p. 19

¹⁹ Constitution of the Republic of Indonesia year 1945, Sekretarit Jenderal MPR RI, 2006, p.125

²⁰ Law No. 25 of 2007.Op.Cit p 37

²¹ Ulya Sofiana, (2014) *Iklim Investasi di Daerah Perspektif Undang-Undang Nomor 25 tahun 2007*. Jurnal IUS Kajian Hukum dan Keadilan. Vol.II, Nomor 4, Apri. p. 71

scribed a number of weaknesses including:²²

- a. The existence of inconsistencies in policy, arrangement and implementation of investment

One example of such inconsistencies is about the task and the main function of investment Coordinating Board, whether one stop service center in licensing services and investment facilities or only as investment promotion body. From time to time it is always changing. This situation not only reflects inconsistencies, but also uncertainty that confuses investors and prospective investors.

- b. Uncertainty in interpretation and implementation of regional autonomy

Erroneous understanding of regional autonomy and the obscurity of the Division of authority between the center and the region leads to high cost economy. On the one party many emerging local regulations in the areas of taxation and levies that are driven by the local desire to increase the indigenous revenue of the region, but in other parts of the central government does not manage to

provide guidelines for areas to prevent the rise of problematic local regulations. Many problematic local regulations will potentially undo investment intentions.

- c. Weak institutional coordination

The weak institutional coordination is caused due to the obscurity of the fundamental functions of each institution, can also be inflicted by the coordination mechanism that does not go well often the failure in coordination caused by the subjective consideration of political and economic interests.

Based on the explanation above, the authors concluded that the coordination related to the harmonization of rules between institutions in North Lombok and the provincial government has not run to the fullest. They have not understood related to the authority of each of the agencies in providing product licensing services. The activities undertaken by PT. BAL is a pioneer activity that occurs in the area of national strategic area where the form of licensing issued is through the central government instead of the district government. Provincial government in this case the Governor is actually involved in assisting the course of a good public

²² Ida Bagus Rahmadi Supanca, (2006). *Kerangka Hukum dan Kebijakan Investasi Langsung di Indonesia*, Bogor: G hlmia Indonesia, 2006, p.17-22

service in the field of licensing so as not to cause an impression, qualify in the one institution but hindered by other agencies that are not in his authority. The governor in position as head of government in the area of local government plays a role in providing recommendations related to the activities undertaken by PT. BAL which can be facilitated by the capital investment and integrated service of one door of Nusa Southeast of West.

In addition, in the provisions of Law No. 28 of 2009 about Local Tax and Regional Retribution, it is explained that groundwater is water contained in soil or rocks below ground level. The location of the Beach Well PT. BAL which in this case is called Beach well has been built with a distance of ± 100 m from the beach, towards the land with a diameter of a well 25 cm and a depth of well ± 50 m with water contained therein classified as sea water level Salt $\pm 33,000$ ppm TDS so in this beach water is processed by PT. BAL there is no clarity whether including groundwater or not. So, is PT. BAL charged with groundwater tax or retribution?

Groundwater tax is the tax on the uptake and/or utilization of groundwater where groundwater tax falls into the category of county/city tax. Provisions regard-

ing groundwater tax in accordance with Law No. 28 of 2009 concerning Regional Tax and Levy, entered into the category of county/city tax type. However, since the Law No. 23 of 2014 on Local Government, the provincial provinces are empowered to manage natural resources in the Marine region including:

- a) exploration, exploitation, conservation, and management of marine wealth outside of oil and gas;
- b) Administrative arrangements;
- c) Spatial settings;
- d) Participate in maintaining security at sea; and
- e) Participating in maintaining the sovereignty of the State²³

Authority in the sea exists in the provincial area to manage the natural resources in the sea most distant 12 (twelve) nautical miles are measured from the coastline towards the offshore sea and/or towards the archipelago waters.²⁴ From the explanation of the law, the administrative arrangements in this provision include the licensing, worthiness and safety of the voyage. **However, it is not explained about the management of seawater and water treatment to fresh water.**

²³ Article 27 paragraph (2) of Law No. 23 of 2014 on Local Government

²⁴ Article 27 paragraph (3) of Law No. 23 of 2014 on Local Government

Further related to the retribution, Rohmat Sumitro defines the regional retribution as payment to the country that is done to those who use the state services, meaning the regional levy as payment for services or because business or regional work for the interested, or services provided by the area either directly or indirectly. So the retribution is closely related to the services provided by the local government to the needy.²⁵ According to Davey, payment of retribution must meet two conditions, namely: 1) The basis for the levy should usually be based on the total cost of the services provided; and 2) in some respects, the retribution should usually be based on the continuity of service price of a service, that is on the basis of seeking profit. According to Josep Riwu Kaho, there are several features of retribution, namely: 1) retribution imposed by the State; 2) in the levy of economic compulsion; 3) The existence of cons of achievements that can directly be appointed; 4) Retribution is imposed on any person/entity using/tasting the services provided by the State.²⁶

Then, judging by the legislation that is in the regional regulation of West Nusa Tenggara Number 5 year 2018 about the

Regional Retribution explained that the object of retribution is divided into public services, business services and certain licensing. General services include health service retribution and reimbursement of map replacement fee. Types of business services levies include a levy on regional property use, the retribution of recreational and sporting places, the levy of regional business production sales, the levy of lodging/Pesanggarahan/villa and terminal retribution. Lastly, certain licensing levies include the route permit retribution, fisheries business license retribution and IM-TA renewal levy. **In this case, there is no explanation regarding sea water treatment levy.** Similarly, in the Regional Regulation of North Lombok Regency No. 9 of 2011 on the plan for Regional Spatial Planning of North Lombok year 2011-2031, it is not explained about the arrangement of processing or utilization of seawater.

In this case, it can be said that there is a legal void in the arrangement of sea water tax and the levy of sea water treatment into fresh water. The phenomenon of legal vacancies is often heard in the implementation of policy in Indonesia.

"State of Indonesia is the state of law", as described in article 1 paragraph (3) of the Constitution of the Unitary State

²⁵ Adrian Sutedi, (2008). *Hukum Pajak dan Retribusi Daerah*, Bogor: Ghalia Indonesia, p. 74.

²⁶ Ibid p. 75

of Republic of Indonesia year 1945. Therefore, in the life of society, a system/regulation/law is required to create a harmonious and orderly life of society. In accordance with the ideals of the nation's founders and based on the mandate of the law is established by Pancasila as the source of all legal resources in Indonesia as contained in article 2 of Law No. 12 of 2011 on the Establishment of Laws and Regulations. But in reality the laws or regulations that are made do not cover all the things that arise in the dynamics of the people of the country so that sometimes complicate the law enforcement to resolve the matter.²⁷ This happens from new investments through water treatment SWRO technology to fresh water. The law is not able to accommodate the development of renewable technology to meet the needs of the Society of Clean water. Insurance Law No. 7 of 2004 on Water Resources and revive Law No. 11 of 1974 about Irrigation in the hopes of preventing the law vacancy is not able to accommodate the sea water investment with SWRO's renewable technology will impede the licensing process.

The enforcement and application of the law, especially in Indonesia, often faced with obstacles related to the devel-

²⁷ Hario Mahar Mitendra, (2018) *Fenomena Dalam Kekosongan Hukum*. Jurnal Rechtsvinding Online. April

opment of society and is a logical consequence of the development of civilization of World society. In this case the development of society that is faster than the development of legislation becomes a problem related to things that are not yet or not regulated in the legislation, because based on the statement can be taken a conclusion that there could be no legislation can govern all human life completely so as to allow the circumstances where the rules that exist in a country is deemed incomplete and do not guarantee The legal certainty of its citizens that resulted in the void of Law (*rechtsvacuum*) in the community.²⁸

It has been explained earlier that the purpose of the RZWWP-3-K NTB province is to create harmonization and synergy of the planning and utilization of marine spaces between the government, and the provincial government in realizing the coastal resource management and Small islands that are safe, comfortable, productive and sustainable. But the author concluded if there is still a problem in implementing rules related to the licensing of sea water treatment means the harmonization has not been achieved.

Therefore, in overcoming the efforts that can be done that is necessary policies

²⁸ Ibid

and initiatives from the Board of the forming laws and regulations based on article 20 paragraph (1) and paragraph (2) of the Constitution of the unitary State of the Republic Indonesia in 1945 stating that "the House of Representatives holds the power to form legislation" and "any draft law is discussed by the House of Representatives and the President for mutual approval". Then in article 5 of the Constitution of the Republic of Indonesia year 1945 asserted also that "the president has the right to submit a draft law to the House of Representatives" and "the President set the government Regulation for Act as it should ". So it can be concluded that this initiative is a must in order to accommodate and regulate the investment phenomenon that occurs.

Fairness is not only an equitable distribution but also must balance and align the rights and obligations in fulfilling the needs of each person according to their respective rights and the legal authority to ensure that the implementation of the rules can run properly.

CONCLUSION

There is a legal void in the arrangement of sea water exploration especially the lack of proper definitions associated with seawater. The vacancy of the law

leads to the contribution that is to be given by PT. BAL in the investment activities of sea water treatment into fresh water through SWRO technology. In this regard to the retribution of seawater treatment through renewable technology that converts seawater into fresh water/clean water is worth the consumption is not explained by the Act, Ministerial regulation, provincial regulation of the province up to regency regulation in West Nusa Tenggara province. So the government needs to immediately establish regulations on new water resources that are more comprehensive according to the circumstances in the community so that the investing will not be hindered in developing the economic progress of the community. Regulations can be through laws and government regulations to address the void of norms.

BIBLIOGRAPHY

Books

- Adolf, Huala. (2004). *Perjanjian Penanaman Modal dalam Hukum Perdagangan Internasional (WTO)*. Depok: PT. Raja Grafindo Persada.
- Hendratno, Edie Toet. (2009). *Negara Kesatuan, Desentralisasi, dan Federalisme*. Yogyakarta: Graha Ilmu.
- Ismawan, Indra.(2002). *Otonomi Ranjau-Ranjau*. Solo : Pondok Edukasi.

- Istanto, F. Sugeng. (1971). *Beberapa Segi Hubungan Pemerintah Pusat dan Daerah dalam Negara Kesatuan Indonesia*. Yogyakarta: Karyaputera.
- Mahmudi. (2010). *Manajemen Keuangan Daerah*, Jakarta: Erlangga.
- Marzuki, Peter Mahmud. (2011). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Mitendra, Hario Mahar. (2018) *Fenomena Dalam Kekosongan Hukum*. Jurnal Rechtsvinding Online.
- Saleh, Syarif. (1953). *Otonomi dan Daerah Otonom*. Jakarta: Endang.
- Soekanto, Soerjono. (2012). *Pengantar Penelitian Hukum*. Jakarta: Cetakan Ketiga, UI Press.
- Sofiana, Ulya. (2014). *Iklm Investasi di Daerah Perspektif Undang-Undang Nomor 25 tahun 2007*. Mataram: Jurnal IUS Kajian Hukum dan Keadilan.
- Supanca, Ida Bagus Rahmadi. (2006). *Kerangka Hukum dan Kebijakan Investasi Langsung di Indonesia*, Bogor: G hlmia Indonesia.
- Sutedi, Adrian. (2008). *Hukum Pajak dan Retribusi Daerah*, Bogor: Ghalia Indonesia
- Sutrisno, Budi.(2006). *Penanaman Modal Asing Dalam Perspektif Pengutamaan Kepentingan Nasional dan Konsekuensi Hukumnya Pasca Persetujuan Trims*, Mataram : Program Studi Ilmu Hukum Fakultas Hukum Universitas Mataram.
- Wayong, J. (1975). *Asas dan Tujuan Pemerintahan Daerah*, Jakarta: Jambatan.
- Widjaja, H.A.W. (1998). *Percontohan Otonomi Daerah di Indonesia*, Jakarta: Rineka Cipta.

Regulations

- Undang-Undang Dasar Negara Kesatuan Republik Indonesia tahun 1945 (Constitution of the Republic of Indonesia year 1945)
- Undang-Undang Nomor 11 tahun 1974 tentang Pengairan (Law No. 11 year 1974 of Irrigation)
- Undang-Undang Republik Indonesia Nomor 25 tahun 2007 tentang Penanaman Modal (Law No. 25 of 2007 on Investing)
- Undang-Undang Nomor 28 tahun 2009 tentang Pajak dan Retribusi Daerah (Law No. 28 of 2009 about Local Tax and Regional Retribution)
- Undang-undang Nomor 23 tahun 2014 tentang Pemerintahan Daerah (Law No. 23 of 2014 on Local Government)

Peraturan Menteri Kelautan dan Perikanan Republik Indonesia Nomor 47/PERMEN-KP/2016 tentang Pemanfaatan Kawasan Konservasi Perairan (Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. 47/PERMEN-KP/2016 on the Utilization of Water Conservation Area)

Peraturan Daerah Provinsi Nusa Tenggara Barat Nomor 12 tahun 2017 tentang Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil Provinsi Nusa Tenggara Barat tahun 2007-2037 (West Nusa Tenggara Provincial

Regulation No. 12 year 2017 about the Plan Zoning of Coastal Regions and Small Islands of West Nusa Tenggara in 2007-2037)

Peraturan Daerah Kabupaten Lombok Utara Nomor 9 tahun 2011 tentang Rencana Tata Ruang Wilayah Kabupaten Lombok Utara Tahun 2011-2031 (Regional Regulation of North Lombok Regency No. 9 of 2011 on the Plan for Regional Spatial Planning of North Lombok year 2011-2031)
