The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

THE FAIR RESOLUTION OF INVESTMENT DISPUTE (STUDY IN MANDALIKA SPECIAL ECONOMIC AREA)

SAHARJO

A Student at Program Studi Doktor Ilmu Hukum Universitas Mataram, Mataram, Nusa Tenggara Barat, Indonesia.

Dr. SALIM HS, SH., MS

Professor, Lecturer at Program Studi Doktor Ilmu Hukum Universitas Mataram, Mataram, Nusa Tenggara Barat, Indonesia.

Dr. H. HIRSANUDDIN, SH., M.Hum

Lecturer at Program Studi Doktor Ilmu Hukum Universitas Mataram, Mataram, Nusa Tenggara Barat, Indonesia.

Dr. MUHAMMAD SOOD, SH., M.Hum

Professor, Lecturer at Program Studi Doktor Ilmu Hukum Universitas Mataram, Mataram, Nusa Tenggara Barat, Indonesia.

Abstract

The purpose of this research is to analyze the essential problems that happen because of the investment in the Mandalika Special Economic Zone (SEZ). To analyze the investment dispute resolution mechanism in the Mandalika Special Economic Zone (SEZ) and to analyze the system of equitable investment dispute resolution in the Mandalika Special Economic Zone (SEZ). The recommendations in this dissertation research are: first, it is suggested that there should be goodwill from the Government to implement laws and regulations consistently, fairly and transparently. Coordination among government institutions such as BPN, BUMN and Regional Governments needs to be made synergistically by using the principle of providing public services, the best service to the community. Second, all parties who involved in investment disputes in Indonesia and in Mandalika especially must notice and consequently implement statutory provisions, if there is no agreement among the parties, it is necessary to solve the investment disputes by using the win-win solution. Third, peace mediation through deliberation is an alternative system of equitable investment dispute resolution in the Mandalika Special Economic Zone (SEZ) that is based on local wisdom. In implementing the principles of fair deliberation, there needs to be a balance in the position of the parties in the investment dispute negotiation process, because this is the key word for resolving investment disputes in Indonesia and in Mandalika especially. In the future, the government is expected to really notice to the participation of the community and traditional institutions starting from the participatory planning process to the process of determining public policy to avoid unwanted things in the future.

Keywords: Investment Disputes, Mandalika Special Economic Zone, Justice.

INTRODUCTION

Land problems come up when the authority possessed by the Government, in this case the "right to control the state" is confronted by the basic rights of citizens, especially individual property rights and communal rights, [1] namely joint ownership rights to the land of a customary law community or community property rights in the Mandalika Special Economic Zone (SEZ). Communities around the Mandalika Special Economic Zone consider that investment companies that involve them on behalf of the state take their land rights. In this case, investors

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

and government-owned companies continue to develop the Mandalika Special Economic Zone (SEZ) because they think that they have obtained a business permission from the Government (Ministry or related institution) and the Provincial Government of West Nusa Tenggara (NTB). The conflict came up when the people around the Mandalika Special Economic Zone (SEZ) whose land was being used for the development of the Special Economic Zone by the Government, they did not necessarily want to hand over their land just like that. In this case, for the people around the Mandalika Special Economic Zone (SEZ), land is not only has high economic value, but also contains philosophical, political, social and cultural values. [2]

If we examine from the context of investment disputes in the Mandalika Special Economic Zone, Lidan Chen (1997) in Sinclair-Maragh and Dogan Gursoy[3] said that both parties had different expectations about the investment. The goal of foreign companies is to benefit from the Host State, absorbing the capital and technology needed for economic development. Moreover, Vinci Construction Grand Projects (VCGP) from France had signed a contract for the construction of the Moto GP circuit in the Mandalika Special Economic Zone (SEZ), Central Lombok, West Nusa Tenggara which had been approved by the Indonesian Tourism Development (Persero) or the Indonesia Tourism Development Corporation (ITDC). [4] Then the third problem is the loss of agricultural land. For marginalized communities living in the Special Economic Zone (SEZ) of Mandalika, the impact of the area development project that turned the area into a part of "New Bali", has removed the swamp area that resembles a pond and has become a fishing location for the local community has been stockpiled for asphalt.

Recognizing the weaknesses in facing and responding to investment disputes that occur in the context of infrastructure development for the construction of the Mandalika Special Economic Zone (SEZ) which tends to have an impact on the socio-economic life of local communities who are in and around the construction of the Mandalika Special Economic Zone (SEZ). this is the cause of the importance of making this dissertation research, it is related to fair resolution of investment disputes as a result of infrastructure development for development in the Mandalika Special Economic Zone (SEZ).

The problem in this research is the investment licensing system of equitable investment dispute resolution in the Mandalika Special Economic Zone (SEZ).

RESEARCH METHOD

This research is normative research with research methods including literature study and document study. As the main source of legal material in this research is library material. Library materials consist of primary and secondary legal materials: Primary legal materials are legal materials obtained from the applicable laws and regulations, consisting of:

A. 1945 Constitution of the Republic of Indonesia. No. 1959 of 1945.

B. Law Number 5 of 1960 concerning Basic Agrarian Regulations LN.No. 104 of 1960 TLN. No. 2943.

C. Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Implementation of Development in the Public Interest;

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

D. Law Number 27 of 2007 jo. Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands;

E. Law Number 26 of 2007 concerning Spatial Planning;

F. Law Number 39 of 2009 concerning Special Economic Zones;

G. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest;

H. Government Regulation Number 2 of 2011 juncto Government Regulation Number 100 of 2012 concerning Implementation of Special Economic Zones;

I. Government Regulation Number 52 of 2014 concerning the Mandalika Special Economic Zone;

J. Government Regulation Number 96 of 2015 concerning Facilities and Facilities in Special Economic Zones.

Secondary legal materials, namely materials that have a lot of correlation to primary legal materials and function to assist in analyzing and understanding primary legal materials, which consist of: legal books, legal journals, scientific writings from experts related to the problem or legal issues being studied, or related to primary legal materials, including literature, papers, and research results.

Tertiary legal materials are legal materials that can provide definitions, descriptions or explanations in both foreign and Indonesian languages for foreign words or difficult words contained in this study. Legal materials intended, such as the Indonesian Language Dictionary, English Dictionary, Legal Dictionary, and Encyclopedias: encyclopedias are general practitioners in the world of legal research. [5]

THEORETICAL FRAMEWORK

Dispute Resolution Theory

Dispute resolution theory is a theory that examines and analyzes the categories or classification of disputes or conflicts that come up in society, the factors that cause disputes and the methods or strategies used to end these disputes. The word *dispute* comes from the English translation, namely dispute. Whereas in Dutch it is called geding or process. Meanwhile, the use of the term dispute itself does not yet have a unified view of the experts. There are experts who use the term dispute, and there are also those who use the term conflict.

The two terms that mentioned above are often used by experts. Richard L. Abel uses the term dispute, while Dean G. Pruitt and Jeffrey Z. Rubin, and Nader and Todd use the term conflict. Richard L. Abel defines a dispute as "a public statement regarding an inconsistent claim for something of value". He sees disputes from the aspect of incompatibility or incompatibility of the parties regarding something of value. Something of value is defined as something that has a price or is worth money.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

Dean G. Pruitt and Jeffrey Z. Rubin put forward the notion of conflict. Conflict means: "Perception of differences in interests (perceived divergence of interest), or a belief that the aspirations of the conflicting parties are not achieved simultaneously". [6] Dean G. Pruitt and Jeffrey Z. Rubin, see conflicts from differences in interests or non-agreement of the parties, which is interpreted by differences in interests where the needs of each party differ.

Laura Nader and Harry F. Todd Jr. define conflict as:

"The situation which the conflict is stated in front of people or by the involvement of a third party. Next, he put forward the terms pre-conflict and conflict. Pre-conflict is a state that underlies a person's dissatisfaction. The conflict itself is a situation which the parties are aware of or know about the existence of such dissatisfaction". [7] Disputes or conflicts in society experience a process and go through stages as explained by Laura Nader and Harry F. Todd Jr., they are: First stage, conflict begins by the appearance of complaints (grievance) from one party against another party (individual or group), because the complaining party feels that their rights have been violated, treated unfairly, abused, blamed, their pride stepped on, their reputation damaged, their hearts hurt, and so on. This initial condition is referred to as the pre-conflict stage which tends to lead to monadic confrontation. Monadic means a complaint that the opposing party has not yet responded.

In the second stage, if the other party shows a negative reaction in the kind of a hostile attitude towards the appearance of a complaint from the first party, then this condition escalates into a conflict situation (conflict stage) so that the confrontation takes place diadic. diadic means that the complaint has been responded to by the opposing party.

Third Stage, if the dispute among the parties is shown and brought to the public arena (society) and then processed into a dispute case in a dispute resolution institution, then the situation has escalated into a dispute (dispute stage) and confrontation between disputing parties becomes triadic. Triadic means that individuals or groups have been actively involved in injustice or nonconformity". [8]

The definition of dispute presented by experts contains weaknesses. This weakness includes the unclear subject of the dispute and the object of the dispute. Therefore, the definition of dispute presented above needs to be refined. Disputes are conflicts, disputes that occur between one party and another party and or between one party and various parties related to something of value, whether in the form of money or objects.

Dean G Pruitt and Jeffrey Z. Rubin put forward 5 (five) theories about dispute resolution, they are: "First, contending, it is trying to implement a solution that is preferred by one party over the other party; Second, yielding, it is lowering one's own aspirations and being willing to accept less than what one actually wants; Third, problem solving, it is finding satisfactory alternatives from both parties. Fourth, by drawing (withdrawing), it is choosing to leave the disputed situation, both physically and psychologically. Fifth, in action (silent), it is doing nothing". [9]

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

Legal Anthropologists described their opinions on ways of resolving disputes that occur in society, both in traditional and modern societies, including the opinions of Laura Nader and Harry F. Todd Jr., who explained 7 (seven) ways of resolving disputes in society, they are:

a. *Lumping it*, it is done by a person who feel unfair treatment, who failed to seek their demands. He decides to simply ignore his problems or issues that raise his demands and he continues his relationships with those who feel disadvantaged. This was done due to various possibilities such as a lack of information about the process of filing a complaint to the court, lack of access to the judiciary or deliberately not being processed at the court because it is thought that the losses are greater than the benefits, both predictable from a material and psychological standpoint.;

b. *Avoidance*, it is the party who feels aggrieved, chooses to reduce relations with the party that harms him or to completely terminate the relationship, for example in a business relationship similar things can happen. By evading, the problem that causes the complaint is avoided

c. *Coercion*, one party imposes a solution on the other party, this is unilateral. Coercive actions or threats to use force generally reduce the possibility of a peaceful resolution.

d. *Negotiation*, the two parties facing each other are the decision makers. Solving the problem faced by both of them, they agreed without a third party intervening. Both parties try to convince each other, so they make their own rules and those don't break them by starting from existing rules.

e. *Mediation*, a third party that helps both disputing parties to find an agreement. This third party can be determined by both parties to the dispute, or appointed by the party authorized to do it. Whether the mediator is the result of the choice of both parties, or because it is appointed by someone who has power, both parties to the dispute must agree that the services of a mediator will be used in an effort to find a solution. In a small community it is possible that figures who act as mediators also act as arbitrators and as judges;

f. *Arbitration*, these are two parties that have dispute agree to ask for an intermediary from a third party, the arbitrator and from the outset have agreed that they will accept the decision of the arbitrator;

g. *Adjudication*, it is a third party who has the authority to interfere in problem solving, regardless of the wishes of the disputing parties. The third party also has the right to make decisions and enforce the decision, meaning that the third party seeks that the decision is implemented. [10]

In contrast to the first solution (lumping it), which the relationships continue, only the issues are considered resolved. While in the case of the second kind (avoidance), it is the party who feels aggrieved avoids it. In the first kind of resolution, the relationship between the disputing parties is continued, but in the second kind, the relationship between the two disputing parties can be terminated in part or in whole.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

The seven ways that mentioned above can be divided into 3 (three) ways of dispute resolution, they are traditional, Alternative Dispute Resolution (ADR) and the Court. The traditional way is lumping it, avoidance and coercion. These three ways cannot be found in legislation. Included in dispute resolution using Alternative Dispute Resolution (ADR) are negotiation, mediation and arbitration.

These three ways are contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Options, while dispute resolution in Court is known as Procedural Law. [11]

Authority Theory

To do the functions of government, the government must have "powerful" and "authority". According to a general understanding or language, the word "powerful" comes from the word "power" which means ability or ability (to do something); strength. [12] While authority is (1) the right and power to act or do something; (2) the power to make decisions, govern and delegate responsibility to others. [13]

Soerjono Soekanto describe the meaning of "power" as the ability to influence other parties according to the will of those in power. It is further explained that the existence of power depends on the relationship between the ruler and people who are controlled, or in other words between those who have the ability to exert influence and other parties who accept that influence willingly or compulsorily. [14]

The difference between "power" and "authority" is that any ability to influence other parties can be called power, while "authority" is power that exists in a person or group of people who have support or receive recognition from society. [15]

Furthermore, according to Bagir Manan: [16]

Authority in legal language is not the same as power (macht). Power only describes the right to do or not to do. In law, authority simultaneously means rights and obligations (rechten en plichten). In relation to regional autonomy, rights contain the meaning of the power to self-regulate (zelfregelen) and self-manage (zelfbesturen), while obligations horizontally mean the power to organize government as it should. Vertical means the power to run the government in an orderly bond of state government as a whole.

The powerful is different from authority. Powerful is formal power that comes from legislative power (granted by law) or from executive/administrative power. Within authority there are powers (rehtbevoegheden). Authority is to carry out public legal actions.

Philipus M. Hadjon, argues that government authority can be in the kind of free power or discretionary power, it is the authority to decide independently and the authority to interpret disguised norms but remain subject to the law. [17]

According to Herbert A. Simons, [18] Authority is the power to make decisions and is related to the relationship between superiors and subordinates. Meanwhile, according to SF Marbun, [19] authority is the ability to carry out a public (juridical) legal action, as well as the ability to act

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

given by law to carry out legal relations.

According to Prajudi Atmosudirdjo, authority is the power to carry out a public legal action, while Indroharto, [20] Defining authority is the ability granted by laws and regulations that give rise to legal consequences.

Authority is an important part of Administrative Law because the object of administrative law is the government's authority, so that the scope of government's authority does not only include the authority to make decisions, but also all powers in the context of carrying out tasks, so that the authority to carry out a government affair, is the authority to apply norms -positive legal norms in a field of public life and maintain it. To be able to establish and maintain positive law, authority is needed, without authority, the decisions issued will not be valid.

According to Philipus M. Hadjon, [21] there are 3 (three) sources for State Administrative boards or officials in obtaining authority, they are attribution, delegation and mandate.

Attribution authority in the event that there is recognition of the right to a new authority. In delegation there is a transfer of an existing authority. For attribution and delegation of authority to make decisions must be based on a formal law. Certain things an employee has the authority to make decisions on behalf of the authorities, this is called a mandate, where there is no recognition of authority, only regarding internal work promises between the authorities and employees. Whereas in the case of a delegation the official gets the delegation to be responsible for the decisions he makes, while for the mandate, the decisions made by the recipient of the mandate are on behalf of the responsibility of the giver of the mandate.

From the description above it is clear that attribution authority is an authority attached to the position, in other meanings, the authority is assisted along with the position. Therefore, any authority that arises from attribution even gives birth to authority that is original. The main original source of authority is the making of the Constitution which was first established by the PPKI, the People's Consultative Assembly (MPR) as the executor of people's sovereignty and the resident with the approval of the People's Representative Council (DPR) to make laws. [22] Regarding the authority attribution, Indroharto said that at attribution there was the granting of new government authority by a provision in the statutory regulations. Here is created a new authority. It was further stated that legislators who are competent to provide attribution of governmental authority are differentiated among others: [23]

1. People who are domiciled as original legislators; In our country, at the central level, the MPR forms the constitution and the DPR, together with the government, implements a law, and at the regional level, the DPRD and the regional government produce regional regulations.;
2. people who act as delegated legislators; such as the president who is based on a statutory provision issues a government regulation in which government authorities are created for certain state administrative boards or positions.

In delegation, there is delegation of an authority that already exists by a state administration board or official who has obtained governmental authority in an attributive manner to another

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

state administration board or position. So a delegation is always preceded by an attribution of authority.

Investment Theory

Investment is an cultivation for one or more assets owned and usually for a long time with the hope of getting profits in the future. [24] Investment and cultivation are terms that are well known both in business activities and in the language of legislation. Investment is a popular term in the business world, while the term cultivation is more widely used in statutory language. Basically, the two terms have the same meaning, so they are sometimes used interchangeably. [25]

The two terms above are English translations of the word Invest which means to cultivate or invest money or capital. [26]

To find out the difference in meaning between investment and cultivation, the various meanings of investment include the following:

1. In the dictionary of financial and investment terms, the term investment is used to mean: the use of capital to create money, either through income-generating means or through more risk-oriented ventures designed to obtain capital gains. Investment can refer to a financial investment (where investors put money into a facility) or designate an investment of effort or time someone who wants to reap the benefits of the success of his work;
2. In the trade economics encyclopedia, the term investment is cultivation used for: the use or use of economic resources for the production of producer goods or consumer goods. Solely of a financial nature, investment may mean the placement of capital funds in a company over a relatively long period of time in order to obtain regular returns with maximum security.;
3. In the economic dictionary, investment has two meanings, namely: first, investment means the purchase of stocks, bonds, and immovable objects after analysis will guarantee the invested capital and provide satisfactory results; second, in economic theory investment means the purchase of means of production (including goods for sale) with capital in the form of money;
4. The dictionary of economic law uses the term investment. Investment means cultivation that is usually carried out for the long term, for example in the form of procuring company fixed assets or buying securities with the intention of making a profit;
5. In the Big Indonesian Dictionary, the meaning of investment; first, investing money or capital in a company or project for the purpose of obtaining profit; second, the amount of money or capital invested;
6. In law, investment is all forms of investment activities, both domestic investment and foreign investment to do business in the territory of the Republic of Indonesia

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

According to Muchammad Ardiansyah in his scientific oration "Theories of Investment and cultivation", put forward theories related to the interests of the state in the field of investment, the review is from the point of view of economic development interests. As for development economic theories as the basis for investment law policies, they are:

1. *The Classical and Neo Classical Theory on Foreign Investment.*

The classical economic theory of foreign investment states that foreign investment as a whole benefits the economy of the recipient country.

The factors that support the views of classical and neo-classical theory, they are:

a. it is a fact that foreign capital brought to the capital owner country guarantees that the available national/domestic capital can be used for development interests and the interests of society. The inflow of capital and return of foreign investment by foreign investment originating from profits that are not returned to their country, will increase the savings of the country receiving the capital. Government revenue through taxes increases and other payments will also increase.

b. Foreign investment usually brings with it the technology available in the capital owner's country and disseminates the technology in the capital recipient country.

c. The entry of foreign capital means the creation of new fields. Without foreign investment the opportunity to work will not be obtained

d. Workers employed in foreign investment companies will acquire expertise regarding the technology brought in and introduced by foreign investors. Expertise in management of large projects will be transferred to local experts.

e. Infrastructure facilities will be built by both the government and foreign investment companies and all facilities such as transportation, health, education which are intended for foreign investment will also benefit society as a whole.

The very basic opinion of neo-classical theory according to Chandrawulan is that foreign investment, especially developing countries, plays the role of tutor. Foreign investment replaces lower production functions in the incoming industrialized countries through the transfer of technology, management and marketing expertise, market information, organizational experience, inventions of new products and production techniques, and training of workers, especially multinational corporations which are regarded as a useful agent for the transfer of technology and knowledge.

It can be said that the Neo-Classical Economic Theory argues that Foreign Direct Investment (FDI) has a positive contribution to the economic development of the host country. The fact shows that foreign capital brought to the host country encourages domestic capital to use it for various businesses. Same as Sornarajah's conclusion, foreign investment as a whole is beneficial or profitable for the host country so that it encourages economic growth and national development.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

DISCUSSING

Investment Regulation in Indonesia

The basic law for cultivation in Indonesia was begun by the enactment of Law Number 78 of 1958 concerning Foreign Investment, which in its implementation has stagnated. Then in 1967 Law Number 1 of 1967 concerning Foreign Investment was issued which was later amended by Law Number 11 of 1970 concerning Amendments and Supplements to Law Number 1 of 1967 concerning Foreign Investment and Law Number 6 of 1968 concerning Investment Domestic Affairs as later amended by Law Number 12 of 1970 concerning Amendments and Supplements to Law Number 6 of 1968.

Since the enactment of Law No. 1 of 1967 concerning Foreign Investment and Law No. 6 of 1968 concerning Domestic Investment, the investment climate in Indonesia has developed relatively rapidly. This is due to several incentives contained in the law, which include investment protection and guarantees, employment opportunities for foreign workers, and incentives in the field of taxation. In addition, the political and security situation at that time was relatively more stable which encouraged investment to be more enthusiastic and showed a significant increase.

As implementing regulations the provisions of the Law on Foreign Investment and Domestic Investment are regulated in several regulations which have undergone several changes which include Government Regulations, Presidential Decrees, Presidential instructions, Circular Letters of the State Minister for Investment/Head of BKPM, Decrees of the Minister of State for Investment/ Head of BKPM, Joint Decree of the Minister of State for Investment / Head of BKPM and Minister of Cooperatives, Small and Medium Entrepreneurs, Decree of the Minister of Industry and Trade.

Even though with the basic law of the two laws mentioned above, it can be said that investment in Indonesia is developed quite well. However, in order to support the achievement of national economic development goals, investment must become part of the administration of the economy and be placed as an effort to increase national economic growth, create jobs, encourage people's economic development and realize people's welfare in an economic system that is competitive. [27]

Because of this reason, the existence of Law Number 1 of 1967 in conjunction with Law Number 12 of 1970 and Law Number 6 of 1968 in conjunction with Law Number 12 of 1968 which has been in effect for approximately 40 (forty) years is felt necessary to amend and replacement.

The replacement of the law as referred to above is based on the fact that the two Investment Laws are no longer in accordance to the challenges and needs to accelerate the development of the national economy through the construction of national legal development in the field of Investment that is competitive and in favor of national interests. [28]

Because of this reason, the Government has ratified and promulgated Law Number 25 of 2007 concerning Investment which according to the provisions of Article 40, Investment Law

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

Number 25 of 2007 is effective from the date of promulgation. With the enactment of Law Number 25 of 2007, Law Number 1 of 1967 in conjunction with Law Number 11 of 1970 concerning Foreign Investment and Law Number 6 of 1968 in conjunction with Law Number 12 of 1970 concerning Foreign Investment State, declared revoked and no longer valid.

However, the provisions of the Transition to Law Number 25 of 2007 determine the validity of several provisions of the Law which are the executors of the Law on Foreign Investment and Domestic Investment. Based on these transitional provisions (vide Article 37 paragraph 1 of Law Number 25 of 2007 concerning Investment), prior to the issuance of the implementing regulations of the Investment Law Number 25 of 2007, the old implementing regulations were declared to remain valid.

Investment Dispute Resolution in Indonesia

In general, dispute resolution is carried out through litigation through the courts. The court is not the only way to resolve disputes through litigation, there is arbitration as an option in the litigation route. Dispute resolution with litigation involves a panel or party deciding the case. In court it is called a judge, while in arbitration it is called an arbiter.

According to Komar Kantaatmadja, in general it can be said that dispute resolution can be classified into 3 (three) categories: [29]

1. Dispute resolution using negotiation, either in the form of direct negotiations (simplistic negotiations) or with the participation of third parties (mediation and conciliation);
2. Resolution of disputes by means of litigation, both national and international;
3. Resolution of disputes using arbitration, both ad hoc and institutionalized.

Wiwiek Awiati stated that dispute resolution methods can be divided into 3 (three) types, they are: [30]

1. *Adjudicative*, it is a dispute resolution mechanism by giving decision-making authority to a third party. Generally, dispute resolution in this way results in a win-lose solution.
2. *Consensus, it* is a cooperative consensual dispute resolution mechanism to get a win-win solution.
3. *Quasi adjudicative*, it is a dispute resolution mechanism which is a combination of consensual and adjudicative elements.

At present it can be said that the role and function of the judiciary is considered ineffective and inefficient for business actors. The courts are overloaded, slow and a waste of time, very expensive and unresponsive to the public interest. Or considered too formalistic and too technical. [31] The conditions that mentioned above are also exacerbated by the results of court decisions that are win-lose solutions, where a party is defeated by the court. So that in investment ethics, of course this becomes a burden for investors because the relationship between the two parties can be cut off.

According to the researcher's understanding, litigation is also considered unsuitable for

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

polycentric disputes or disputes involving many parties, many issues and several possible alternative solutions. Litigation processes require delimiting disputes and issues so that judges or other decision makers can more readily make decisions. [32] If the resolution of the dispute through this court is used, considering that this settlement is solely as a last resort (ultimatum remedium) after other alternative dispute resolutions are deemed to be fruitless. [33] Likewise to arbitration, where medium-scale investors, especially in Indonesia, are not very interested in using dispute resolution by arbitration. This is because, investors still do not understand and know well what arbitrage is. Unlike business actors in Europe and America who already know and understand the role and function of arbitration in dispute resolution. [34]

Furthermore, settlement of disputes by arbitration also has weaknesses, it is only for large (bona fide) business actors, dependence on the ability of arbitrators, the absence of precedents for previous decisions and problems implementing foreign arbitral awards. [35]

Apart from resolving disputes by means of court litigation and arbitration, in Article 1 paragraph (10) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is explained that alternative dispute resolution is a dispute resolution institution or dissent through procedures agreed upon by the parties, it is resolution of court by way of consultation, negotiation, mediation, conciliation, or expert judgment.

In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it does not provide a more detailed explanation regarding consultation, negotiation, mediation, conciliation and expert judgment. According to Frans Hendra Winarta, the definition of consultation, negotiation, mediation, conciliation and expert judgment, among others, is:

1. Consultation is an action that is "personal" between a certain party (client) and another party who is a consultant, where the consultant gives his opinion to the client according to the needs and needs of his client;
2. Negotiation is an effort to resolve disputes among parties without going through a court process with the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation;
3. Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator.
4. Conciliation is a mediator who will act as a conciliator with the agreement of the parties by seeking an acceptable solution.
5. Expert judgment is the opinion of experts on a matter that is technical in nature and in accordance with their field of expertise.

Resolution of disputes in the Mandalika Special Economic Zone (SEZ).

Arrangements regarding land acquisition in investment disputes related to the development of infrastructure development in the Mandalika Special Economic Zone (SEZ) begin based on the order of the year the laws and regulations were issued as follows,

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

namely:

1. Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects on it;
2. Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Implementation of Development for Public Interests;
3. Law Number 27 of 2007 jo. Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands;
4. Law Number 26 of 2007 concerning Spatial Planning;
5. Law Number 39 of 2009 concerning Special Economic Zones;
6. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest;
7. Government Regulation Number 2 of 2011 juncto Government Regulation Number 100 of 2012 concerning Implementation of Special Economic Zones;
8. Government Regulation Number 52 of 2014 concerning the Mandalika Special Economic Zone;
9. Government Regulation Number 96 of 2015 concerning Facilities and Facilities in Special Economic Zones;
10. Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects in conjunction with Presidential Regulation Number 58 of 2017 concerning Amendment to Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects in conjunction with Presidential Regulation Number 56 of 2018 concerning the Second Amendment to Presidential Regulation Number: 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects.
11. Regulation of the President of the Republic of Indonesia Number: 66 of 2020 concerning Funding for Land Acquisition for Development in the Public Interest in the Context of Implementing National Strategic Projects.

Furthermore, the development of infrastructure development in the Special Economic Zone (SEZ) of Mandalika which is based on Law Number 39 of 2009 concerning Special Economic Zones, in fact experienced problems in obtaining control over land for the development of infrastructure development as intended. For this reason, Government Regulation Number: 96 of 2015 concerning Facilities and Facilities in the Special Economic Zone was issued which makes it easier for investors or investors from the Mandalika Special Economic Zone (SEZ) in an effort to obtain land to be built into the Mandalika Special Economic Zone (SEZ).

The ease of acquiring land in an effort to develop the physical infrastructure of the Mandalika Special Economic Zone (SEZ) was then followed by the issuance of Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

of 2016 concerning the Acceleration of Implementation of National Strategic Projects jo. Presidential Regulation Number 58 of 2017 jo. Presidential Regulation Number 56 of 2018 concerning the Acceleration of the Implementation of National Strategic Projects which actually normalizes Special Economic Zones to become an object of public interest and obtain guarantees from the Central Government.

Furthermore, earlier in the provisions of Article 21 paragraph (2) of Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects. Presidential Regulation Number 58 of 2017 jo. Presidential Regulation Number 56 of 2018 concerning the Second Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects, states that National Strategic Projects implemented by the Central Government, Regional Government, or State-Owned Enterprises assigned by the Central Government, the provision of land carried out through the provisions of laws and regulations in the field of land acquisition for development in the public interest using a minimum time.

It should also be understood that the provisions of Article 25 paragraph (1) and paragraph (2) of Presidential Regulation Number 3 of 2016 jo. Presidential Regulation Number 58 of 2017 jo. Presidential Regulation Number 56 of 2018 states:

1. The government can provide Central Government Guarantees for National Strategic Projects which are infrastructure projects in the public interest implemented by Business Entities or Regional Governments in cooperation with Business Entities.
2. The National Strategic Project as referred to in paragraph (1) is an infrastructure project for the public interest.

Based on the normative provisions above, that in general there are 2 (two) ways to explain the doctrine of "public interest" which is used as a basic legal/law by the Government in efforts to develop infrastructure development in the Mandalika Special Economic Zone (SEZ) so that a common thread can be found as ideal the investment dispute settlement mechanism in the Mandalika Special Economic Zone (SEZ), including: first, general guidelines which generally state that land acquisition must be based on reasons of public interest. The first method above to explain related to the doctrine of "public interest", then in accordance with its nature as a guideline, this can provide freedom for the Government to declare whether a project meets the requirements for the public interest by interpreting the guideline.

Second, the mention of "public interest" in a list of activities that clearly identifies its purpose, such as schools, roads, government-owned buildings and so on which according to the provisions of laws and regulations are deemed useful for the public interest. Adhering to the above understanding, all activities other than those listed in the list cannot be used as an excuse for land acquisition. However, in reality, often the two methods mentioned above are combined in one provision regarding land acquisition which is immediate or immediate (quick-taking), which gives the possibility to control land before compensation is determined or paid.

The merging of the two doctrines related to "public interest" as stated above can be seen in the

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

process of implementing land acquisition in the context of developing infrastructure development in the Mandalika Special Economic Zone (SEZ).

Patterns of Equitable Investment Dispute Resolution in the Special Economic Zone of Mandalika Based on Local Wisdom

Based on the above understanding, it is also necessary to emphasize that with regard to legal protection for the community, especially landowners who are in the Mandalika Special Economic Zone (SEZ) who are affected by the "land acquisition" process, according to Article 2 of Law Number 2 of 2012, concerning Procurement Land for Development for Public Interest, must be implemented based on several principles, including namely: [36]

1. The humanitarian principle is that land acquisition must provide protection and respect for human rights, dignity and dignity of every citizen and resident of Indonesia in a proportional manner;
2. The principle of justice is to provide a guarantee of proper compensation to the entitled party in the land acquisition process so that they get the opportunity to be able to lead a better life;
3. The principle of benefit is that the result of land acquisition is capable of providing broad benefits for the interests of the community, nation and state;
4. The principle of certainty is to provide legal certainty for the availability of land in the process of land acquisition for development and to provide guarantees to the entitled party to receive proper compensation;
5. The principle of transparency is that land acquisition for development is carried out by giving access to the public to obtain information related to land acquisition;
6. The principle of agreement is that the land acquisition process is carried out by deliberation of the parties without any element of coercion to obtain a mutual agreement;
7. The principle of participation is support in the implementation of land acquisition through community participation, both directly and indirectly, from planning to development activities;
8. The principle of welfare is that land acquisition for development can provide added value for the continuity of the lives of the entitled parties and society in general;
9. The principle of sustainability is that development activities can take place continuously, continuously, to achieve the expected goals;
10. The principle of harmony is that land acquisition for development can be balanced and in line with the interests of the community and the state;

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

CONCLUSION

The essential and crucial problem that comes up by investment in the Mandalika Special Economic Zone (SEZ) is the issue of justice that was begun by the lack of legal certainty in resolving investment disputes in Indonesia. In several cases in Mandalika Lombok, there is still land acquisition and land acquisition leading to on aggressive land grabbing and intimidation by PT. Indonesia Tourism and Development Corporation (ITDC) on land belonging to the Sasak indigenous people in addition to the unclear legality of land ownership;

The procedure for granting investment permits in the Mandalika Special Economic Zone, Central Lombok Regency has referred to the accelerated issuance of permits which was subsequently adopted in granting permits to OSS.

There are various forms of business or investment dispute resolution patterns implemented in various countries which may differ according to the ideology of believed values. The pattern of fair investment dispute resolution in Indonesia in general and in Mandalika in particular, is based on Pancasila values, it is mean that in dispute resolution (investment) it is not solely based on economic interests but also considers aspects of harmony and sustainability both economically and socially. as well as ecology.

RECOMMENDATION

It is suggested that there is a need for goodwill from the Government to implement laws and regulations in a consistent, fair and transparent manner. Coordination between government agencies such as BPN, BUMN and Regional Governments needs to be built synergistically by using the principle of providing public services, the best service to the community; All parties involved in investment disputes in Indonesia and in Mandalika in particular need to pay attention to and implement the provisions of laws and regulations consequently, if there is no agreement between the parties, it is necessary to make efforts to resolve investment disputes in a non-litigation manner, which leads to the win-win principle. win solution and not win-lose solution.

Peace mediation through deliberation is an alternative pattern of equitable investment dispute resolution in the Mandalika Special Economic Zone (SEZ) that is based on local wisdom. In implementing the principle of fair deliberation, there needs to be a balance in the position of the parties in the investment dispute negotiation process, because this is the key word for investment dispute resolution in Indonesia and in Mandalika in particular. In the future, the government is expected to really pay attention to the participation of the community and (customary) institutions starting from the participatory planning process to the process of determining public policy to avoid unwanted things in the future.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

Bibliography

1) Abdurrazak , Sukron Azhari , Putra Wanda , Lalu Suparman Ambakti , and Humamurrizqi, *Religious Tolerance Based On Local Wisdom: Social Perspective Of Lombok Community*, Jurnal Lektur Keagamaan, Vol. 20, No. 1, 2022.

2) Adrian Sutedi, *Implemantasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, (Sinar Grafika:Jakarta, 2007).

3) Aulia Nursyifa, Shifting Causes of Divorce in Indonesia Due to Social Media In Sociological Perspective, Solid State Technology Volume: 63 Issue: 2s (2020).

4) Bambang Eko Turisno Dkk, Negligence in Implementing Child Custody Decisions: A Threat to Child Protection in Indonesia, International Journal of Criminal Justice Science Vol 16 Issue 2 (2021).

5) Bambang Eko Turisno, R Suharto, Ery Agus Priyono, Siti Mahmudah, *Negligence in Implementing Child Custody Decisions: A Threat to Child Protection in Indonesia* International Journal of Criminal Justice Science Vol 16 Issue 2 July – December 2021.

6) ConnieR.Wanberg, Borbala Csillag, MichelleK.Duffy, after the break-up: How divorcing affects individuals at work, Journal Personeell Psychology Vol 1. No. 2 2022.

7) Cynthia Price Cohen, Susan Kilbourne, "Jurisprudence of the Committee on the Rights of the Child: A Guide for Research and Analysis", Michigan Journal Of International Law, Volume 19 Issue 3 1998,

8) Dean G Pruitt & Z. Rubin, Konflik Sosial, Yogyakarta: Pustaka Pelajar, 2004.

9) Elizabeth Donger, Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization, Transnational Environmental Law, Vol.11 No. 2 (2022).

10) Eva F. Nisa, Thebureaucratizationof Muslim marriage in Indonesia, Journal of Law and Religion, 2018.

11) Everson Ndlovu and Richard Tigere, *Life In The Streets, Children Speak Out: A Case Of Harare Metropolitan, Zimbabwe, African Journal of Social Sciences and Humanities Research*, Volume 5, Issue 1, 2022.

12) F.C Susilo Adiyanto, Hukum dan Studi Penelitian Empiris: Penggunaan Metode Survey sebagai Instrumen Penelitian Hukum Empiris, ALGJ Journal, Vol 2. No. 4, 2019.

13) Frangky suleman Pandangan Hakim Terhadap Kelalaian Nafkah Anak Pasca Perceraian di Pengadilan Agama Tondano , Al-mujtahid: journal of islamic family law vol. 1, no. 1 (2021).

14) Isnawati Rais, The impact of COVID-19 pandemic on divorce rates among Indonesian Muslim societies, Indonesian Journal of Islam and Muslim Societies Vol. 11, no. 2 (2021).

15) John Salindeho, *Masalah Tanah dalam Pembangunan*, (Jakarta:Sinar Grafika,1988).

16) Julia Barbara Krakowczyk, COVID-19 Vaccine for Children: Vaccination Willingness of Parents and Its Associated Factors, a Network Analysis, Vol 10 Issu 7 July 2022.

17) Laura Nader & Harry F. Todd Jr, the Disputing Process Law in Ten Societies, New York: Columbia University Press, 1978.

18) Michael D.Murray dan Christy H.DeSanctis, *Legal Research Methods,* Foundation Press, New York, 2006.

19) Muhammad Roy Purwanto, "Divorce and And Its Effects on The Social and Religious Life in Malang Indonesia", Talent Development & Excellence Vol.12, No.2s, 2020.

20) Mursyid Djawas, Ridhwan, Soraya Devy, Asmaul Husna, The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi, AHKAM - Volume 21, Number 1, 2021.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

21) Ricahard C. Reubent *Public Justice: Toward a State ction Theory of Alternative Dispute Resolution*, Journal California Lawa Review Vol 85 No 3 May 1997.

22) Richard P. DeShon dan Jennifer Z. Gillespie, A Motivated Action Theory Account of Goal Orientation, Journal of Applied Psychology Vol. 90, No. 6, 2005

23) Sinclair-Maragh, Gaunette & Gursoy, Dogan, 2015. *"Imperialism and tourism: The Case of Developing Island Countries,"* Annals of Tourism Research, Elsevier, vol. 50 (C).

24) Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat,* Cetakan XI, PT. Raja Grafindo Persada, Jakarta, 2009.

25) Uliviana Restu Handaningtyas, Ika Arinia Indriyany, Lily Ismalia, Fulfillment of the Rights of Children with Disabilities through the Involvement of Civil Society Organizations, Case of Yayasan Sayap Ibu, International Jurnal Of Demos, Volume 3, Issue 2, August 2021.

26) Ummu Salamah1 , Thohir Luth , Rachmi Sulistyarini , Dhiana Puspitawati, Ratio Legis Establishment of Execution and Supervisory Institutions Fulfillment of Child Rights in Family Law Due to Divorce, Jurnal Multidisiplin Madani (Mudima), Volume 3, No 1, January (2023)

27) Valerine J.L. Kriekhoff, Mediasi (Tinjauan Dari Segi Antropologi Hukum), dalam Antropologi Hukum: Sebuah Bunga Rampai oleh T.O. Ihromi, (Jakarta: Yayasan Obor, 2001).

28) Yunitasari Dkk, The effects of health education on increasing knowledge, attitudes, and stunting prevention in pre-marriage couples in bangkalan madura, EurAsian Journal of Biosciences. Jan-Jul2020, Vol. 14 Issue 1.

Notes:

1) Adrian Sutedi, *Implemantasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, (Sinar Grafika:Jakarta, 2007), page.2

2) John Salindeho, *Masalah Tanah dalam Pembangunan*, (Jakarta:Sinar Grafika,1988), page.40

3) Sinclair-Maragh, Gaunette & Gursoy, Dogan, 2015. *"Imperialism and tourism: The Case of Developing Island Countries,"* Annals of Tourism Research, Elsevier, vol. 50 (C), Pages 143-158.

4) Fiki Ariyanti, "RI Punya Sirkuit MotoGP di Lombok". https://www.liputan6.com, tanggal 22 April 2018

5) Michael D.Murray dan Christy H.DeSanctis, *Legal Research Methods,* Foundation Press, New York, 2006, Page: 43.

6) Dean G. Pruitt dan Jeffrey Z. Rubin, *Op.cit*., page. 9-10.

7) Valerine J.L. Kriekhoff, Mediasi (Tinjauan Dari Segi Antropologi Hukum), dalam Antropologi Hukum: Sebuah Bunga Rampai oleh T.O. Ihromi, (Jakarta: Yayasan Obor, 2001), page. 225.

8) Laura Nader dan Harry F. Todd Jr., *Op. cit.*, page. 14-15.

9) Dean G Pruitt & Z. Rubin, Konflik Sosial, Yogyakarta: Pustaka Pelajar, 2004, pages.4-6.

10) Laura Nader & Harry F. Todd Jr, the Disputing Process Law in Ten Societies, New York: Columbia University Press, 1978, Page.9-11

11) *Ibid*, page.11-12

12) Anton M. Moeliono, dkk, *Kamus umum Bahasa* Indonesia, (Jakarta: Balai Pustaka, 1995), hlm. 533.

13) *Ibid*, page. 1128

14) Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta: Rajawali Pers, 1988), page. 79-80

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/FU6TA

15) *Ibid*

16) Bagir Manan, *Wewenang Provinsi, Kabupaten dan Kota dalam Rangka Otonomi Daerah,* Makalah pada Seminar Nasional, Fakultas Hukum Unpad, Bandung, 13 Mei 2000, page. 1-2.

17) Philpus M. Hadjon (1994), *Fungsi Normatif Hukum Administrasi Dalam Mewujudkan Pemerintahan Yang Bersih*, Pidato Peresmian Penerimaan Jabatan Guru Besar Dalam Ilmu Hukum Pada Fakultas Hukum Airlangga., hlm.7 (Philipus M Hadjon III)

18) Herbert H. Simons, *Perilaku Administrasi* (terjemahan), (Jakarta: PT. Bina Aksara, 1984), page.195

19) SF.Marbun, *Perilaku Administrasi Negara dan Upaya Administrasi di Indonesia*, Liberti, Yogyakarta, 1997, page.154

20) Indroharto, *Usaha Memahami Undang-undang tentang Peradilan Tata Usaha* Negara, (Jakarta: Pustaka Sinar Harapan, 2003), page.177

21) Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, (Yogjakarta: Gajah Mada Press, 1993), page. 137

22) Philipus M. Hadjon, *Menuju Kodefikasi Hukum Administrasi*, Bunga Rampai Hukum, (Denpasar: Fakultas Hukum Udayana, 1994), page.4

23) Indroharto, *Usaha Memahami Undang-undang tentang Peradilan Tata* Usaha Negara, Buku I (Jakarta: Sinar Harapan, 1993), page. 65-66.

24) Sunariyah, *Pengantar Pengetahuan Pasar Modal*, (Yogyakarta: UPP STIM YKPN, 2006), page. 32

25) **Lusiana, editor: Yudhi Setiawan, *Usaha Penanaman Modal di*** Indonesia**,** Jakarta: RajaGrafindo Persada, 2012, page. 33

26) John M. Echols dan Hassan Shandily, *Kamus Inggris Indonesia*, (Jakarta: Gramedia, 2000), page. 330

27) Indonesia, *Undang Undang Penanaman Modal,* UU No. 25 Tahun 2007, LN. No. 67 Tahun 2007, T.L.N. No. 4724, General explanation of the second paragraph.

28) *Ibid., General Explanation of the twelfth paragraph*

29) Huala Adolf, 2002; *Arbitrase Komersial Internasional*, Jakarta: PT Raja Grafindo Persada, page.4

30) Bambang Sutiyoso, *Op.Cit*, page.8

31) Werhan Asmin, *Penyelesaian Sengketa Di Luar Pengadilan: Telaah atas Kasus PLN vs Poiton I*, page 1 as quoted by Suyud Margono, 2004, *Alternative Dispute Resolution dan Arbitrase: Proses Pelembagaan dan Aspek Hukum*, Jakarta: Ghalia Indonesia, pages.65-67

32) Suyud Margono, 2004; *Alternative Dispute Resolution dam Arbitrase: Proses Pelembagaan dan Aspek Hukum*, Jakarta: Ghalia Indonesia, page.25.

33) *Ibid.*, page. 25

34) *Ibid.*, Pages. 70-71

35) Gatot Soemartono, Kelemahan Arbitrase, accessed in http://gatotarbitrase. blogspot.com/2008/12/kelemahan-arbitrase.html

36) Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. State Gazette of the Republic of Indonesia Number 22 of 2012, Supplement to the State Gazette of the Republic of Indonesia Number 5280.