



The Legal Analysis Designated of 3 Gilis (Gili Trawangan, Gili Meno, and Gili Air) as a Conservation Area toward Legal Certainty of the Land Rights to the Rights Holder

Tria Septiana ^{1*}, Arba ², Aris Munandar ³

^{1, 2, 3} University of Mataram, Lombok, Indonesia

* Corresponding Author: Tria Septiana

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Abstract

This study aims to examine and analyze the law consequences of designated 3 Gilis (Gili Trawangan, Gili Meno, and Gili Air) as a conservation area and a Forrest Area toward the certainty of Land Rights that already exists to the owner of the right. The type of research used is the Normative-empiric with method are statue approach, conceptual approach, historical approach, and empiric approach. The legal source material used are legal primer material, seconder, tertiary and field data. The analysis used is qualitative analysis. According to result of this research known that legal basis designation of the 3 Gilis as the conservation area recently is the Marine and Fishery Minister's Decision years 2022 about the determining of 3 Gilis as the conservation area, besides that by the Forestry Minister's 3 Gilis also designated as a province forest area. In 3 gilis also published certificate of rights to land since before 1980's and also designated as the national tourism destination with Presidential Regulation Number 84 years 2021. This overlap rules that organize Determination of regional function of 3 Gilis also caused the uncertain legal base for the right to land that already published and questioning of its legitimateness, and also have impact to termination the service of the land matters in 3 Gilis.

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1. Introduction

The state right of mastery on the land throughout Republik Indonesia territory sources from the nation right such as written in the Article 2 paragraph (2), of Agrarian main law. Furthermore in the provisions of article 4 said base on the state basic right determined there's grant about the rights of the land to the individuals or the legal entity. The state even guaranty, admit, and protecting that rights to get utilized for the benefit and fulfilment of the rights holder welfare.

The right of land mastery contain a series of authority, obligation and the prohibition for the rights right holder doing something to the land rights land. The land mastery also can be interpret as the legal institute and certain law subject as the rights holder. However the land mastery is the concrete legal relation (subjectif recht) if its connected with the certain land and certain subject as the rights holder ^[1].

Juridically, the land mastery defined as the mastery that base on the right and acquire the law protection and literally defines as the giving authority to the rights holder and cant be given to other person. There's also jurisdiction where the person who have the right o the land did not utilize the land it self but for rent to the other party to manage it, so the land is owned by the rights holder but physically manage by the other party or the land rented ^[2].

The gifting of the land rights in practice have many obstacles, one of it is the society who inhabit the land that claimed or designated by the government as the conservation area. Such us happen in 3 gili that is Gili Trawangan, Gili Meno, and Gili Air or abbreviated as "Tramena". Along with the tourism growing fast in that area, arising the problems that accompany.

¹ M. Arba, Hukum Agraria Indonesia, Jakarta, Sinar Grafika, 2023, page. 82.

² Asbar F. Konflik agrarian antara Masyarakat dan investor di kabupaten manggarai barat, universitas Muhammadiyah makasar, 2022

The ecosystem state and the amazing biodiversity in the 3 gilis area apparently vulnerable to damage.

As the response on it and as one of the preservation efforts toward the ecosystem that start to scraped by the crowdedness of tourism in 3 gili, so base on Handover Report nature reserve and conservation area from the forest department to the Marine and Fishery Department No. BA.01/Menhut IV/2009-BA.108/MEN.KP/III/2009 date march 4th 2009 of are Gili aye, Gili Meno, and Gili Trawangan. This are designate by the decision or the Marine and Fishery Department No. KEP.67/MEN/2009 about the Designated as the National Water Conservation of Gili Ayer, Gili Meno and Gili Trawangan in province or West Nusa Tenggara.

The conservation area of gili Tramena in managing zoning from years 2014 to the years 2034 managing by the Marine and Fishery Department under the supervision of the work unit conservation centre of Kupang National Waters through the decision of Marine and Fishery Minister No. 57/MEN/2014. The TWP's Gili Tramena extend waters area 12.273,56 ha divided to three conservation area, 340 ha of gili trawangan, 20 ha of gili meno, and 135 ha hili ayer ^[3].

On its development that Decree considered must be review because spacious experiencing change in the 3 Gilis area that will be the conservation area. Afterwards released the Decree of Environment Department No.6598/Menlhk-Pktl/Kuh/Pla.2/10/2021 about Development Map of the Forest affirmation in Province West Nusa Tenggara yeys 2020. With that Decree its set the development the boundaries of the forest area those that have been set until 2018 in West Nusa Tenggara area.

In the Regional Regulation Province of West Nusa Tenggara No. 5 Years 2024 about the Spatial Planning of West Nusa Tenggara Province years 2024 to years 2044 ^[4], the 3 Gilis area including as the hedge forest area in the spatial planning of West Nusa Tenggara Province. It is according to the Article 34 Paragraph (1) letter i.

As the conservation area, the 3 Gilis area also inside the RTRW (spatial planning) of West Nusa Tenggara Province functioning as:

- Fishery area (Article 40 letter j)
- Tourism Area (Article 44 letter j)
- Strategic Province area (SPA) from the corners of the economic growth (Article 53 Paragraph (1) letter a)
- Green Turtle Migration are (Article 30 paragraph (3))
- Marine Ecosystem Protection are (Article 105)

Designation of 3 gili as the forest area also overlap with the determination of 3 gils to be the water conservation area. It is cause by the focus and the purpose of the forest area and the water conservation area is different. The water conservation area focusing on the effort to preservation and protection on the water area, meanwhile the forest area focusing in the production, management and the utilization of forest that related with the woods and non-woods.

Designation of 3 gilis as the water conservation and as the forest area its not in line with the designation of 3 gilis as the National Destination Tourism those that have been set

through the Presidential Decree No. 84 Years 2021 about the National Destination Tourism Lombok-Gili Tramena.

Beside that in 3 gilis also already published the land rights meanwhile in the forest conservation area the land right is not allowed in any form. The existence of the land right that already published and held by the society even before the years 1980's which is mean long before the designation as the conservation area in the years 1993 for the first time.

The problems now is about the rights of the land that held by the society which is located in the coast area that claimed as the conservation area, can it keep being the rights belong. This phenomena where's in the society there is the rights land in the mangrove conservation area, the existence of the mangrove conservation area there's been all along given so many benefit to the society even for settlement and the fish pond, while the conservation area along side the beach must be protect and cant be owned as the right's belong to the society ^[5].

Based on the background that have describe above, the written mean to analyze further about the formulation of the problem as follows below:

How's the basic policy on the designation of 3 gilis as the conservastion area. 2. How's the effect of the designation of 3 gilis as the conservation area toward the rights land and the land service.

As for this research intended to analyze the basic policy of designation of 3 gilis as the conservation area and to knowing the effect of the designation of 3 gilis as the conservation area toward the rights land and the land service.

2. Formulation of The Problem

This research is the normative-empiric law research use the statute approaching method, conceptual approaching, and the historically approach and the empiric approach. The type and law source that used are the library and data that consist of primer law, secondary law, and tertiary, also field data that one of them obtained by interviews. The collection technique of legal ingredients use the library studied and field studied. The analyze of legal ingredients what it used is the Qualitative analyse.

3. Pembahasan

3.1 Determination of 3 Gilis (Trawangan, Meno, Air) as the conservation area

In the Article 2 Law Number 32 Years 2024 about the Change of the Law Number 5 Years 1990 About the Conservation of the Life Nature Resource and its Ecosystem, the understanding of the nature resource is the management of nature resource which is the utilization was done wisely to ensure the sustainability of its supply by keep maintain and enhancement the quality of diversity and the value what is done insed or outside the conservation area, nature preservation area, water conservation area and the coast area, and the small islands, also the area of preservation ^[6].

The islands of gili Tramena is the island is define into categories semi-open inner island. Its because geographically Gili Traeman protected by Lombok island in the south and

³ Azhar Muttaqin, Profil Kawasan Konservasi Perairan Nasional Taman Wisata Perairan Gili Mantra, <http://www.bphn.go.id/data/documents/10pm030.pdf>

⁴ Peraturan Daerah Provinsi Nusa Tenggara Barat Nomor 5 Tahun 2024 Tentang Rencana Tata Ruang Wilayah Provinsi NTB Tahun 2024-2044, Lembaran Daerah Prov. NTB Tahun 2024 No.5, Tambahan Lemabran Daerah Provinsi NTB No. 205

⁵Orias Reizal De Rooy, Hendrik Salmonm Reny Heronia Nendissa, Hak Atas Tanah Pada Kawasan Konservasi, PAMALI Vol 1 No 1 march 2021, page. 44

⁶ Law No. 32 Years 2024 About the Change of the Law no. 5 years 1990 about the conservation of nature resource and the ecosystem, LNRi Years 2024 No.124. TLNRI No. 4437

east side, but in the north side exposed by the Java Sea and in the west side exposed by the Lombok Strait that it's Indonesian traffic flow that influenced by the Hindia Ocean [7]. The designation as conservation area is part of the efforts to prevent and overcome the environment pollution as one of the efforts is to create some regulations of law that become the basic rule to protection and preservation.

Here some short designation status of the 3 gilis area

1. In years 1993 status as the sea tourism park,
2. In years 2001 as the conservation of Aquatic Nature Area'
3. In years 2009 the Forest Department deliver Gili Trawangan, Gili Meno and Gili Air to Department of Marine and Fishery.
4. In years 2009 as the Marine Conservation area'
5. In years 2009 as the conservation area,
6. In years 2018 removed as the forest area of West Nusa Tenggara Province,
7. In years 2019 is reflected as the Other Use Area,
8. In years 2021 reflected as the Forest Area and Determined as the Conservation Area.

Sri Sundari Rangkuti on her book "Environmental Law and the National Environment Policy" explain that The Environmental Laws mainly function to realizing Indonesian human as the environment builder who has awareness about ecology and eco-minded. This is need to be dug as much as possible about the system value that been adopted by our society and deals closely with the environment, especially those adhered by customary law as well as local habits. The development bring a lot of change as the positive and negative impact and also shift of values [8].

The designation of 3 gilis as the conservation area through the Decree those release by the ministry department. Minister decree release based on the ministry authority as the president helper. This realise of the minster decree that arrange the 3 gilis area is one of the form of the delegative authority as one of three's category of authority.

Delegation coming from Latina language *delegare* that meaning bestow. This concept of delegation authority accordingly is power of abundance. Delegative authority come from the abundant of an governments organ to the other organ with the basic of laws and regulations, inside the delegative authority the responsible and liability switch to the one that given and shift to delegataris [9].

Even the determination decree from the environment ministry and marine and fishery ministry arrange the different area, the one ministry arrange the lands area with the conservation forest area, and the other ministry arrange the marine for the conservation area. But this thing can lead the overlap authority because of the things such as:

1. The different policy, because of the management policy of the lands and the marine is different between the two ministry so that it can cause conflict and overlap

management.

2. The usage of the lands and the marine resource can be inappropriate one another so that its need coordination between the institution.
3. The supervision of the management policy in the lands and the marine area can be different and casing overlap of rules and policy so that can consist dualism rule that be in contradiction.

3.2 The effect of designation of 3 gilis as the conservation area and forest area toward the rights to land

According to Boedi Harsono, right of lands mastery contain a series of authority, obligation, and/or the prohibition to the holder of the rights to the land to do something about the entrusted land. "something" that may, obligatory, and prohibition to do. Which is the content of the right of mastery that become the criterion or the standard differentiation, which is the content of the rights of the land that arrange that set in the land law [10].

Regarding the lands located in the 3 Gili area, land rights certificates have been issued for these lands. The issuance of these certificates occurred even before the 1980s. The communities residing in the 3 Gili region have also been living there for generations.

To this day, in practice, the land rights that have been issued within the 3 Gili area remain valid despite its current designation as a conservation area. These pre-existing land rights are still recognized and valid. However, the existence of land ownership certificates within conservation zones often does not serve as a strong legal foundation for guaranteeing the legal certainty that should be afforded to rights holders.

Public opinion regarding the designation of the area as a conservation zone is divided. On one hand, there are residents who oppose certain aspects of the forest area designation but support the marine conservation efforts in order to preserve the ocean and maintain the aesthetic and ecological sustainability of tourism activities. On the other hand, some residents entirely reject the designation and question the inclusion of the Gili islands as forest areas, arguing that it does not reflect the actual environmental and social realities of their daily lives.

Some members of the community believe that the classification as forest area is inappropriate, as it does not align with the factual circumstances on the ground, where land ownership certificates specifically freehold titles have been issued since the 1970s. The current condition of certain parts of the islands, especially those densely populated with concrete buildings, is also far removed from the typical characteristics of forested areas.

Based on data from the North Lombok Regency Land Office, various forms of land tenure exist within the 3 Gili area, including Right of Ownership (Hak Milik/HM), Right to Cultivate (Hak Guna Usaha/HGU), Right to Use (Hak Pakai/HP), and Right to Manage (Hak Pengelolaan/HPL).

⁷ Ferry Kurniawan, Studi Reseliasi Spasial Pulau-Pulau Kecil: Kasus Kawasan Konservasi Perairan Nasional, Taman Wisata Perairan Gili Ayer, Gili Meno, Gili Trawangan, (Gili Matara), Nusa Tenggara Barat. Studi pascasarjana institute pertanian bogor, 2017, IPB, 2017.

⁸Siti Sundari Rangkuti, Hukum Lingkungan dan Kebijakan Lingkungan Nasional, (Airlangga University Press, Jakarta:2005). page. 12

⁹ Philipus M. Hadjon, Kebutuhan akan Hukum Administrasi Umum, dalam Hukum Administrasi dan good Governance, (Jakarta: Universitas Trisakti 2012), page. 20

¹⁰Boedi Harsono, Hukum Agraria Indonesia, Hukum Agraria Indonesia, (Jakarta: 2008, Djambatan) page. 24

The following table presents the distribution of land rights in Gili Indah Village:

Table 1: Distribution of Land Tenure Types in the 3 Gili Area

No	Type of Land Right	Mapped Area	Unmapped Area	Total (Area)
1	Right of Ownership	1299	96	1395
2	Right to Cultivate	289	165	454
3	Right to Use	6	2	8
4	Waqf Land Right	1	0	1
5	Others	410	0	410
Total		2005	263	2268

The range of years in which land certificates were issued in Gili Indah Village is as follows

Table 2: Range of Certificate Issuance Years in Gili Indah Village

No	Year of Issuance Range	Number of Certificates
1	Unidentified Survey Certificate (Undated)	468
2	1981-1993	54
3	1994-2009	177
4	2010-2018	943
5	2019-2023	556
Total		2.198

Based on the data in the table above, there are land certificates in Gili Indah Village that remain unidentified. This is due to unverified the measurement letter, in which the land area have been mapped in the land office database, but the administrative registration has not been completed by the landowners. As a result, accurate data on the land has not been fully recorded.

The issuance of land certificates should, in principle, provide legal assurance to the rights holders, considering that a certificate serves as the strongest and most legitimate proof of ownership. The existence of such certificates is intended to guarantee legal certainty and protection over the land.

According to Philipus M. Hadjon, the issuance of these certificates constitutes a form of preventive legal protection. preventive legal protection is legal protection that aims to prevent the occurrence of disputes ^[11].

The legal uncertainty resulting from overlapping regulations has clearly caused significant harm to various parties. The following are several impacts experienced by various parties:

For the community and investors

1. Land rights holders in the Three Gili Islands are unable to maximize the use of their land due to the inability to apply for necessary permits or extend existing business licenses.
2. The validity of land rights — in this case, certificates issued by the National Land Agency (BPN) since the 1980s — is now being questioned in terms of their legal strength and legitimacy.
3. Local tourism businesses in the Three Gili Islands are disrupted, which threatens the sustainability of tourism activities in the area.

For the government

1. Spatial utilization in Gili Tramen, particularly for non-forest functions, is hindered, especially in regard to tourism development, which has been going on for more than 30 years and serves as a key economic sector.
2. The legitimacy of the issuance of Spatial Utilization Activity Conformity (KKPR) in the Three Gili Islands is now being called into question.
3. The government cant to utilize and manage state-owned

land, which may lead to the land being left idle or abandoned.

One of the efforts to address the issue was the issuance of a policy recommendation by the Coordinating Ministry for Political, Legal, and Security Affairs Number B-287/HN.02/12/2023 dated December 28, 2023 concerning Policy Recommendations on the Supervision, Regulation, and Control of the Utilization of Small Islands. The letter outlines follow-up actions to be taken by the following institutions:

1. Minister of Home Affairs, to encourage the Regional Government of West Nusa Tenggara and the Regional Government of North Lombok Regency to:
2. Urge business actors utilizing Gili Trawangan, Gili Air, and Gili Meno to promptly arrange, complete, and update their business licenses through the Online Single Submission (OSS) system, especially following the revocation of forest area status.
3. Anticipate the emergence of new business actors intending to utilize Gili Trawangan, Gili Meno, and Gili Air before the revocation of the forest area status.
4. The Minister of Agrarian Affairs and Spatial Planning, the Minister of Investment and Downstreaming/Head of the Investment Coordinating Board, and the Minister of Marine Affairs and Fisheries are not to issue any approvals, permits, or recommendations for the utilization of small islands in Gili Trawangan, Gili Meno, and Gili Air—whether for new applications or extensions—until the forest area status has been officially revoked.

Following the issuance of the letter from the Coordinating Ministry for Political, Legal, and Security Affairs, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has temporarily suspended land administration services in the Three Gili area, particularly those involving changes to the "subject" of land rights. However, services related solely to the maintenance of land data or updates to the "object" such as requests for measurement related to land parcel division or boundary verification are still being processed. Applications involving changes to the legal

¹¹ Salim HS, Erlis Septiana Nurbayani, Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi, Hlm. 262

subject of land rights are currently not being processed. In other words, only applications related to the maintenance of existing land data, such as re-measurement or determination of boundary divisions, are accepted, provided they do not alter the legal subject of land ownership.

The only land-related service still provided in the Gili area is Roya certificate processing for banking purposes. Services such as transfer of land rights and renewal of land titles are not being processed until the revocation of the forest area designation in the Three Gili Islands is complete. Similarly, investment activities, licensing, and land administration in the region are currently suspended until the forest designation is officially lifted.

4. Conclusion

4.1 Conclusion

The determination of the Three Gilis as a conservation area was initially made by the Ministry of Forestry in 1993, when the area was categorized as a natural tourism area. Following the handover to the Ministry of Marine Affairs and Fisheries, the area was reclassified as a marine conservation area. This determination was based on the delegated authority held by ministries responsible for assisting the president's duties. In its development, the Ministry of Environment and Forestry later re-determined the Three Gilis as regional forest areas in West Nusa Tenggara through Ministerial Decree Number 6598/MENLHK-PKTL/KUH/PLA.2/10/2021. In the same year, however, the Three Gilis were also designated as a National Tourism Destination Area under Presidential Regulation Number 84 of 2021 concerning the Master Plan for the National Tourism Destination Lombok–Gili Tramenra 2020–2044.

This causes overlapping due to differences in the determination of that regulate the 3 Gili areas into 2 different functions. Moreover, it has resulted in legal uncertainty regarding the status of land rights that had previously been issued in Gili Indah Village. This is particularly problematic because land ownership certificates are prohibited in forest areas.

The local communities in the Three Gilis are well aware of the determination of the 3 Gili as a conservation area and a forest area. They hope that clear boundaries will be established between forest zones from areas where certified land area. Land rights certificates in the Three Gilis have been recorded since the 1980s, as documented by the North Lombok Land Office, based on the results of interviews land ownership certificates have been held by the community since the 1970s, which means before being designated as a Conservation and forest area

However, after the area was designated as a conservation area, the validity of these land rights began to be questioned, because in forest areas, land ownership certificates are not allowed at all. In addition, this has had an impact on land administration services in the 3 Gili area, which have been temporarily suspended due to the status of the forest area. As a result, the community's legal protection has been neglected, even though the land rights they hold are still recognized, they are unable to carry out various activities related to the legal status of land ownership.

4.2 Recommendations

Protecting biodiversity and ecosystems in the Gili Islands is an important effort amidst the growing development of tourism in the Three Gilis. However, if the ministerial decrees are not aligned with the actual conditions in the community and instead create overlaps with higher-level regulations, a review of these regulations is necessary to ensure legal

certainty and protection for the community, local government, and other stakeholders in the Three Gilis. The rights of the community that have existed long before the designation of the conservation area must be prioritized.

In addition, considering that most land administration services in the Three Gilis cannot be provided until the forest status is revoked, the local government must intensify coordination among the relevant parties, such as the Ministries, the Provincial Government of West Nusa Tenggara, the Ministry of Agrarian Affairs/National Land Agency, and the Gili community, to promptly find a solution and prevent the issue from persisting. When determining the status of the Three Gilis, the Ministry of Marine Affairs and Fisheries and the Ministry of Environment and Forestry should pay greater attention to field data and real conditions, and coordinate in a joint, synergistic management effort, or reach a consensus to delegate the management to one Ministry.

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