



***THE IMPLEMENTATION OF HUMAN RIGHTS PROTECTION
IN INTERNATIONAL INVESTMENT: A STUDY OF THE
PROTECTION OF LANDOWNERS' HUMAN RIGHTS
IN THE MANDALIKA SPECIAL ECONOMIC ZONE***

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Abstract

The study's purpose is to identify and analyze the problems of Kuta Mandalika residents who are affected by the Mandalika Special Economic Zone development project. The main legal issue is analyzing the implementation of Human Rights protection in International Investment which is based on the case of landowners' rights in the Mandalika Special Economic Zone. This study's type of research is normative-empirical legal research using a Statute Approach, a case approach, or a conceptual approach. The implementation of human rights protection in international investment activities in the Mandalika Special Economic Zone does not apply the ESF standard based on the FPIC principle resulting in problems in (i) the implementation of meaningful consultation in the socialization of the Mandalika Special Economic Zone project development plan with the community; (ii) the implementation of involuntary resettlement that does not comply with the affected community's needs; (iii) the provision of fair compensation to the affected community; (iv) errors in the census people data of recipients who got recovery assistance; and (v) threats and criminalization of residents whose demonstrations demand relocation and fair compensation. These problems arise because PT. ITDC did not implement meaningful consultation thoroughly with the community to ensure the economic, social, and cultural needs of the affected community.

Keywords: *Human Rights; Infringement; Meaningful consultation*

A. INTRODUCTION

The Mandalika Special Economic Zone (Mandalika SEZ) is the Asian Infrastructure and Investment Bank's (AIIB) first standalone project in Indonesia, approved in 2018. The Mandalika infrastructure development is divided into two phases, namely the first phase (2019-2023) and the second phase (2024-2026). In this first phase, AIIB committed to disburse USD 248.4 million of the USD 316.5 million needed¹ to proceed

¹ ITDC, 2018: Mandalika Urban and Tourism Infrastructure Project (MUTIP)/ Mandalika Urban and Infrastructure Project (PIKPPM) resettlement policy framework.

with the project, which has been marred by a history of violence, coercion and evictions using thuggery and police and military forces to evict the people of Mandalika from their land, homes, neighborhoods and livelihoods.

In 2018, after AIBB officially funded the development of Mandalika SEZ, the document “Resettlement Policy Framework of The Urban and Tourism Project” was published by ITDC which further became the basis for the issuance of the “Resettlement Action Plan (RAP)” which regulates at least 3 main things, namely: 1). Resettlement Plan, 2) provision of compensation, and 3). Life Recovery for the head of Mandalika Project Affected Family (KKTP).

In its development, the accelerated development of Mandalika SEZ actually gave birth to a counter-implementation of the UNGPs. This is evidenced by several political, economic, and cultural issues of landowners that intersect with human rights in the Mandalika SEZ, especially in the area around the Mandalika area which includes Kuta Village, Mertak Village, Sukadana Village, and Sengkol Village.

On March 31, 2021, the UN Special Rapporteur of Human Rights and Extreme Poverty, Olivier de Schutter, sent a press release warning that there was a threat of human rights violations in the tourism project in Mandalika SEZ.

Domestically, there is an issue that has surfaced about the cost of land compensation to affected communities only worth Rp3,000,000 that was offered by PT ITDC. The community believes that this nominal value is an unfair compensation value. So that the nominal compensation given must of course be adjusted to the cost of building a new house, not counting compensation for the loss of land, crops and jobs. In addition to compensation, the community also demands that the government and PT ITDC are also obliged to fulfill the right of residence / relocation for people who lose their homes. The housing provided must also meet the feasibility so that it not only becomes a shelter but also does not cut off people’s access to their sources of livelihood. However, the relocation area built by PT ITDC is located in an area that is far from the daily livelihood activities of local communities and is considered not to guarantee decent sources of livelihood such as unclean water, soil that is not loose for farming, to the far access to fishing and education jobs from the relocation area.

From the background that has been described as above, several key issues can be formulated that will be discussed, namely What are the forms of legal arrangements regarding the protection of Human Rights against landowners and international investment? How is the implementation of human rights protection, especially political and economic rights to landowners in international investment activities in the Mandalika Special Economic Zone?

B. METHODS

This type of research is normative-empirical legal research. The approach to be used in solving the problem formulation above is to use a statutory approach to review and analyze all laws and regulations that have a relationship with the legal issues being addressed. and a case approach to study how legal rules or principles are applied in legal practice, especially regarding cases that have been decided in jurisprudence related to cases that are the subject of research. Practically, it is hoped that this research can be

used as one of the studies that can help the community in dealing with human rights issues related to international business activities. Likewise, it will contribute to the development of legal science related to the protection of human rights in international business activities.

C. ANALYSIS AND DISCUSSION

1. Regulation of Human Rights Protection for Landowners Affected by Investment Activities in the Mandalika Special Economic Zone

Article 2 of the International Covenant on Civil and Political Rights (ICCPR) expressly mandates that each state party to this covenant undertakes to respect and to ensure the rights recognized in this covenant to all persons within its territory and subject to its jurisdiction, without distinction or discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. To the extent that even if this covenant has not been provided for in the existing legislative or other policy provisions of a state, a state party to this covenant shall take the necessary steps in accordance with its constitutional processes and with the provisions of this covenant, to enact such legislative or other policy provisions as are necessary to give effect to the rights recognized in this covenant. Likewise, the International Covenant on Economic, Social and Cultural Rights provides tolerance for states to exploit national economic resources and needs in article 2 of the International Covenant on Economic, Social and Cultural Rights.

Such tolerance is reaffirmed in article 2 paragraph (2) which requires that state parties to this covenant shall ensure that the rights set forth in this Covenant shall be implemented without discrimination of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In general and normatively, Indonesia adheres to the doctrine of dualism in the theory of the applicability of international law to national law² and then proves its alignment with the mission of protecting international human rights by ratifying Law No. 12 of 2005 concerning the Ratification of the ICCPR. More than that, holistically, Indonesia uses the Monism theory in ratifying the ICCPR³ and states that the ICCPR is not contrary to Pancasila and the 1945 Constitution of the Republic of Indonesia, in accordance with the nature of the Republic of Indonesia as a state of law that upholds human dignity and guarantees the equal status of all citizens in law, and the desire of the Indonesian people to continuously promote and protect human rights in the life of the nation and state.⁴

In line with this mandate, the UN also issued guidelines on international business activities that must ensure law enforcement and protection of human rights for communities affected by related business activities. Indonesia is bound by the UNGPs

² Hasanudin Hasim, "Hubungan Hukum Internasional dan Hukum Nasional Perspektif Teori Monisme dan Teori Dualisme". Vol. I, No. 2, Desember 2019. Jurnal Perbandingan Mazhab. E ISSN 2685-7812.

³ INDONESIA: Ratification of key human rights instruments must be followed by legal reforms - Asian Human Rights Commission. Accessed on December 2, 2024.

⁴ Ratification sheet point (d), Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. LNRI Year 2005 Number 119.

to ensure human rights enforcement. UNGPs itself is a soft law that serves as a guide to countries bound by UDHR, ICCPR, and ICESCR to implement 3 (three) pillars of human rights enforcement for communities affected by investment, including: (i) the state's obligation to protect human rights, (ii) the company's responsibility to respect human rights, and (iii) access to remedy for victims. These three pillars then directly include the targets or actors of investment and business to take part in upholding human rights, namely the state and companies in any form such as development companies, manufacturing industries, or financial corporations such as investment banks.

To ensure legal protection in the business sector, Indonesia established Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights (Stranas BHAM) regulating several efforts to protect and restore human rights. Stranas BHAM mandates that Ministries/Institutions and Local Governments as well as business actors such as development companies, manufacturing industries, or investment banks are required to protect human rights in accordance with Law No. 12 of 2005 concerning the Ratification of the ICCPR by providing access and guarantees for remedies for victims or communities affected by business activities. To organize the implementation of Stranas BHAM, a National Task Force on Business and Human Rights (GTN BHAM) was established. Interestingly, business and investment activities in Mandalika SEZ do not deploy the GTN BHAM to ensure the protection and restoration of human rights directly. This is also not mentioned at all in various documents related to this issue, such as (i) Resettlement Action Plan Document: Mandalika Urban and Tourism Infrastructure Project; (ii) Law No. 52 Year 2014 on Mandalika Special Economic Zone; and (iii) Law No. 39 Year 2009 on Special Economic Zone.

In the development of the National Strategic Project (PSN) at Kuta Mandalika, Indonesia stipulated Government Regulation No. 52 Year 2014 on Mandalika Special Economic Zone. To develop the project, AIIB itself has a safe guard in line with the UNGPs to carry out investments that also guarantee the protection of human rights of communities affected by investment, especially the development of areas that intersect with the status of community land ownership, namely Environmental Social Standards (ESS). The main ESS implemented in Mandalika SEZ applies 3 (three) frameworks, namely: (i) Environmental and Social Assessment and Management; (ii) Resettlement upon request; and (iii) Indigenous Peoples. Of course, the three ESSs must also be based on the principle of Free, Prior, and Informed Consent (FPIC).

In Mandalika SEZ, the ESF and FPIC are used as the basis of guidelines for organizing business activities that are related to the protection of human rights of affected communities. The two regulations in the theory of Monism of International Law Primates are in line and exist under the mandate of the ICCPR, ICESCR, UNGPs. For this reason, the touchstone for analyzing the implementation of direct legal protection in Mandalika SEZ is the FPIC-principled ESF which is specifically contained in the Resettlement Action Plan (RAP) document issued by AIIB and PT ITDC.

2. Implementation of Human Rights Protection for Communities Affected by the Mandalika Special Economic Zone

According to the AIIB's own safeguard requirements, all potential projects will be assessed and put into one of four categories, depending on the "highest environmental

risk or social risk, including direct, indirect, cumulative, and induced impacts” in the project’s Affected area.⁵ From the outset, Mandalika was classified as a “Category A” project due to the high risk of “irreversible, cumulative, diverse, or unprecedented” environmental and social impacts.⁶ Although the AIIB-approved Environmental and Social Impact Assessment for the Mandalika project identified the negative impacts of involuntary resettlement,⁷ the project went ahead without further comprehensive social and environmental assessments.⁸

According to the Indonesian Infrastructure Development Monitoring Coalition (KPPH) in its 2023 research, which surveyed 105 affected community members in December 2022 and January 2023, 98 % of respondents were not consulted about the Mandalika project. Only 6 % had attended consultation meetings organized by ITDC or by AIIB. These figures are a clear and manifest violation of the AIIB’s Environmental and Social Framework (ESF), which requires its clients to conduct meaningful consultations with Affected communities and provide “evidence of broad community support” from Indigenous Peoples.⁹

In this case, the claim of community concerns should be normatively substantiated by juxtaposing all laws and regulations governing the relationship between business and human rights (both imperative and soft-law) with empirical legal reality.

a. Issues Regarding the Main Objective of Meaningful Consultation

In July 2019, precisely on July 7, 2019 as photo documentation attached to the RAP document, AIIB and ITDC have organized a forum with the Ebunut and Ujung communities which is claimed to be a meaningful consultation forum.¹⁰

Almost all residents of Ebunut Hamlet and some from Ujung Hamlet attended a forum attended by representatives of ITDC together with the Housing and Settlement Area Office (PERKIM / Ministry of Public Works and Housing - PUPR) of Central Lombok Regency, Central Lombok Regency Government represented by the Regional Secretary of Central Lombok, Pujut Sub-District Head and Ebunut Hamlet Head which was understood by affected residents as a socialization forum for the Mandalika SEZ Victim Resettlement plan without a fair Q&A process provided to residents to express their respective opinions, ideas and proposals.

Based on further information provided by the Chairperson of the Aliansi Gerakan Reforma Agraria Nusa Tenggara Barat (AGRA NTB), Khaerudin, the forum was held in the Ebunut Hamlet Posyandu building with an area of approximately 4x6 meters² so that most of the participants could not enter the room provided and could not hear clearly every delivery explained because the forum also did not use

⁵ Asian Infrastructure Investment Bank, “Environmental and Social Framework (Amendment)”, November 2022. Page 11.

⁶ UN Special Procedures, “Communication concerning human rights violations and abuses committed in the implementation of the Mandalika urban development and tourism project”, March 2021.

⁷ Asian Infrastructure Investment Bank, “*Environmental and Social Impact Assessment of the Mandalika Urban Development and Tourism Project*”, October 2018.

⁸ Korinna Horta and Wawa Wang, “*The Beijing-led Asian Infrastructure Investment Bank (AIIB): Global leader in infrastructure finance, at what cost?*”, December 2020.

⁹ Koalisi Pemantau Pembangunan Infrastruktur Indonesia, “*Kalau Merugikan Masyarakat Lokal, Buat Apa Pembangunan?: Dampak-Dampak Hak Asasi Manusia dan Sosio-Ekonomi dari Proyek Pembangunan Infrastruktur Urban dan Pariwisata Mandalika*”, April, 2023. Page 9.

¹⁰ Interview with Amaq Nasarudin, September 29, 2024.

loudspeakers. In addition, the forum also took place with escorts from the Police, TNI Personnel and PT ITDC Security who were on guard around the meeting location as well as several unknown civilians who were allegedly intelligence agents who freely swarmed in the midst of residents.

From this fact, it is known that the Forum claimed as a consultation Forum by ITDC and AIIB is completely contrary to the principle of Meaningful Consultation which is based on the implementation of Free, Prior and Informed Consent (FPIC) which is a special right of indigenous peoples¹¹ based on the UN declaration on the Rights of Indigenous Peoples and also contradicts the Resettlement Policy Framework Document where consultations must involve all affected residents without exception including vulnerable groups (elderly, women and children), where consultations must explain the rights of affected people including the resettlement process, assistance rations and options related to resettlement and all residents must be involved in every process carried out from planning, implementation, monitoring to evaluation of these plans.

b. Issues Regarding the Involuntary Resettlement Requirement

Linked to the forum that has been held, the RAP as a document prepared jointly by AIIB and PT ITDC states that each Head of Family (KK) affected by the Mandalika Project with a total of 150 families from Ebunut and Ujung hamlets is entitled to a permanent residential house built in Silaq Hamlet, Ngolang Hamlet, and Kuta Village, the house is described as a two-story tourist house built on 100 m² of land and equipped with various facilities for providing utility needs such as clean water, electricity, sanitation, sewerage, and street lighting.¹²

Based on the information provided by respondents, the Chairperson of AGRA NTB, Khaerudin, said that the number of houses available is only 120 units of houses which are one-story buildings and each building consists of two houses. The only facilities available are roads that were only completed after the process of relocating some residents was carried out, electricity with an installed capacity in each house of 900 MW which has consequences for the high cost of electricity dependents that must be paid by each Head of Family and Water that can only be accessed in the morning and evening with a cost burden that must be paid of IDR 10,000 / month as well as the assumption of electricity payment fees for water pumping machines.¹³

On September 24, 2024, it was confirmed that the number of houses that had been occupied was only 61 housing units out of a total of 120 housing units consisting of 27 housing units occupied by 27 families from Ebunut and 34 housing units occupied by 37 families from Ujung, so that there were still 59 empty housing units with an explanation that they would be filled in the next period by heads of families who had been included in the waiting list according to PUPR verification data. Referring to the PUPR Verification data from a total of 120 lists of family heads, there are 12 families who have been removed from the list of relocation recipients, which means that the total recipients and prospective recipients of

11 Interview with Chairperson AGRA NTB, Khaerudin, September 29, 2024.

12 *International Tourism Development Corporate*, "Resettlement Action Plan", page 14.

13 Interview with Chairperson AGRA NTB, Khaerudin, September 29, 2024.

relocation houses are actually 118 families consisting of 61 families who have lived in relocation houses, and the rest are a list of names that will be verified again, which means that they also still have the possibility to be removed from the list of relocation recipients like the 12 previous families.¹⁴

For example, in Ebunut, there were 4 families who had lived in relocation houses, but returned to Ebunut on the grounds that the relocation houses in Silaq did not match the RAP with the following reasons:¹⁵

- a. Far from the sea as the main source of livelihood for the Mandalika community;
- b. No cages and grass fields are provided for livestock; and
- c. Difficult access to clean water because they only wait in the morning and evening to get clean water. Clean water provided by PT ITDC must be paid monthly in the amount of Rp100,000.

In addition, there are also around 20 recipients of relocation houses from Ebunut who continue to carry out daily activities in Ebunut as fish and shellfish seekers in the sea and farmers even though they return to the relocation house every night, which has a consequence on the increasing costs that must be incurred on a daily basis for transportation. Those who do not return to Ebunut are only the elderly and those suffering from severe illnesses.

The unclear resettlement process from the start resulted in most of the residents who had been evicted and had not yet occupied the relocation houses provided becoming scattered. AGRA NTB data reveals that there are 33 families who are still living in Ebunut by building simple bedeng houses including 3 people who have actually received housing in silaq and several people who still occupy their old houses because they have never been evicted; 77 families went outside the Mandalika area and built houses by hitchhiking on land owned by their families including those whose current moving address was not detected; and 7 families who were given a unilateral moving letter by PT ITDC to Batu Pedang Hamlet, Mertak Village who are currently forced to build houses by hitchhiking on other people's land. Furthermore, there are 4 heads of families who are rumored to have migrated outside the area with the aim of Sumbawa 3 families and one family to Kalimantan, and 1 family from ebunut from a total of 15 families who are still stuck in temporary relocation (hijrah village) with unclear status because it is not registered in PUPR verification data.

The absence of the community's right to determine their own resettlement in accordance with what the affected residents want is part of the violation of Economic, Social and Cultural rights in the ICESCR, as regulated in the RAP which relies on the ESF with the principle of FPIC, namely preventing forced resettlement, protecting the rights of landowners, ensuring fair compensation, providing resettlement assistance, and reducing negative impacts. This requires companies and banks to provide options for the choice of relocation sites desired by affected people so that resettlement/relocation can be a sustainable development program, providing and resources to enable people displaced by the project to

¹⁴ *Ibid.*

¹⁵ Interview with Amaq Sibawaih, October 2-3, 2024.

mutually benefit. The settlements prepared by ITDC are forced settlements and very far from being livable and improving living standards.

In addition to violating FPIC, there is a clear violation of the right to freedom of movement and movement under article 12 of the ICCPR. ITDC has set the relocation location of the project-affected community in an area that is completely incompatible with the community's request; moreover, the location is very far from the source and target of the community's livelihood as fishermen.

c. Issues Regarding Inadequate Compensation

During the 'Meaningful Consultation' forum held by PT. ITDC in July 2019, PT. ITDC, in collaboration with the Public Works and Spatial Planning Office of Central Lombok Regency, the Regional Secretary of Central Lombok Regency, the Head of Pujut Subdistrict, and the Head of Ebunut Hamlet, participated. According to a statement from a local resident,¹⁶ three days after the meeting, 79 households from Ebunut were listed as recipients of compensation in the RAP and reported having received IDR 3,000,000 from PT. ITDC without any proof of receipt. Of these households, only 8 claimed to have received the IDR 3,000,000, although their names were not included in the RAP documentation. Furthermore, 6 households listed in the RAP have asserted that they did not receive the aforementioned IDR 3,000,000.

Furthermore, during the period from 2020 to 2022, 11 households from Ebunut Hamlet claimed to have received a sum of IDR 10,000,000 from ITDC, consisting of 9 individuals who received the amount in cash and 2 individuals who claimed to have received it through bank transfers. After receiving a summons from ITDC, 3 individuals stated that they had received IDR 8,000,000 in cash from ITDC. Additionally, 13 households claimed to have been shown NTB Bank account books with an unknown balance, which were later reclaimed with the explanation that the money was an advance payment for land for housing, after signing 3 documents that were unknown to them at the time of attending a forum that was also attended by representatives of NTB Syariah Bank at the Temporary Shelter Hijrah site.

There were 10 residents not included in the PUPR verification data who received invitations in January 2022 to attend the ITDC office. Of the 10 individuals, 4 were successfully met, and only one claimed to have received IDR 10,000,000 in their bank account after being asked to sign a land sale and purchase agreement. The other 3 individuals did not receive the money, with one stating that it could not be represented on their behalf, while the other 2 claimed that they never had their cases followed up. Furthermore, two heads of households also claimed to have received invitations and already received IDR 10,000,000 in their bank accounts. All recipients of the invitation letters stated that ITDC representatives explained that they had only one option: to accept the IDR 10,000,000, and they would not receive permanent relocation housing in Silaq Hamlet.

In the RAP document, each head of a household affected by the Mandalika project is entitled to a relocation fee of IDR 10,000,000.¹⁷ This amount was intended to be

16 Interview with Amaq Nasarudin, October 1. 2024.

17 *International Tourism Development Corporate*, "Resettlement Action Plan", page 27.

used as a down payment for land for resettlement. However, in reality, in 2019, the amount received was only IDR 3,000,000. The residents were subsequently asked to construct their own temporary houses at the Hijrah site. The residents contend that the IDR 3,000,000 compensation is insufficient to meet their living needs, as the costs to build exceed IDR 10,000,000, including the expense of transporting building materials from Ebunut.¹⁸ One of the affected residents, Amaq Sibawaih, revealed:

“If it is true that the amount provided was IDR 10,000,000 and was intended as a down payment for land for resettlement, and thus was not provided directly but rather through a bank account to be collected later, then how will the affected residents finance the relocation of their belongings and the construction of temporary housing at the Hijrah site?”

This reality demonstrates that the compensation amount was not intended to compensate for the losses suffered by the affected residents due to the evictions, but rather was simply a means to force residents to vacate the area in order to avoid delaying the ongoing development.¹⁹

This can be evidenced by the timing of the evictions, which coincided with the disbursement of the compensation funds. In 2019, during the first eviction, each resident was forced to accept IDR 3,000,000. Subsequently, in the second eviction period from 2020 to 2022, residents who remained on the land designated for infrastructure development were again given compensation, ranging from IDR 8,000,000 to IDR 10,000,000. Five households also claimed to have received IDR 3,000,000 from the project subcontractor, with the intention of encouraging them to move voluntarily without coercion, to ensure the smooth progress of the development.²⁰

In addition to breaching the RAP commitments and violating Pillar 3 of the UNGPs, this act clearly violates the right to social security as stipulated in Article 9 of the ICESCR and the right to an adequate standard of living under Article 11 of the ICESCR. The reality faced by the affected communities is the provision of IDR 10,000,000 as compensation, which was not preceded by a survey of the residents' Basic Needs (KHL). The community views this IDR 10,000,000 payment as an involuntary relocation fee, which does not reflect an adequate compensation value in relation to the assets of land and property.

d. Issues Regarding the Census Data of Recovery Assistance Recipients

Related to the previous issues (Meaningful Consultation, Relocation, and Compensation), all recovery efforts must, of course, be verified through a quantitative survey of the affected population in a consistent manner, so that AIIB and PT. ITDC can provide appropriate remedial rights. However, there is an issue of relevance between the census data surveyed by PT. ITDC and the census data surveyed by the Housing and Settlement Office/Public Works and Spatial Planning (Dinas Perkim/PUPR) in 2019.

18 Interview with Amaq Sibawaih, October 2-3, 2024.

19 Interview with Chairperson AGRA NTB, Khaerudin, September 29, 2024.

20 Interview with General Secretary AGRA NTB, Lalu Tirta Bayu Nusantara, October 1, 2024.

ITDC claims that the population of Eburnut Hamlet and Ujung Hamlet, based on a census conducted in collaboration with Greencorp, consisted of 137 households, with an additional 13 households that were not located during the census, bringing the total to 150 households. In the list of names compiled by ITDC in the RAP document, there are 137 households, consisting of 84 households from Eburnut Hamlet and 53 households from Ujung Hamlet.²¹

Meanwhile, the survey conducted by the Housing and Settlement Office/Public Works and Spatial Planning (Dinas Perkim/PUPR) of Central Lombok stated that there were 120 households verified as recipients of relocation (households affected by the Mandalika Project), consisting of 67 households from Eburnut Hamlet and 53 households from Ujung Hamlet.²²

The comparison between these survey results shows a significant discrepancy from the total number of registered residents. The Head of Eburnut Hamlet, Rahmat Panye, also conducted a population census in 2019, focusing on the affected residents. His survey revealed a list of 129 households in Eburnut Hamlet. In 2023, AGRA NTB conducted a survey and found a census result of 155 households.²³

The survey results conducted by local actors and the directly affected community members (the Head of Eburnut Hamlet and AGRA NTB) indicate a higher number of households. In line with the information obtained, this deviates significantly from the principle of Free, Prior, and Informed Consent (FPIC) under the Environmental and Social Framework (ESF).

With four different sources producing significantly different household counts, the disparity in survey and census results for the affected community results in a situation where registered residents are unable to access their rights to resettlement, compensation, or the restoration of their livelihoods.

Survey Implementer	Survey Results		
	Eburnut Hamlet	Ujung Hamlet	Total Result
PT. ITDC/ <i>Green-corp</i>	84	53	150
PUPR/PERKIM	67	53	120
Rahmat Panye	129	-	129 (hanya Eburnut)
AGRA NTB	150	-	155 (hanya eburnut)

Table 1. Comparison of Survey Results for Compensation Assistance Recipients in the Mandalika KEK Project

The discrepancies in the surveys and verifications conducted by PT. ITDC (when compared to the surveys and verifications conducted by the directly affected community) serve as evidence of the weakness in efforts to ensure the protection and enforcement of human rights in the Mandalika Special Economic Zone (KEK) project.

21 *International Tourism Development Corporate*, “Resettlement Action Plan”, page 10.

22 Department of Housing and Settlement Areas, Central Lombok Regency Government, ‘Minutes of the Public Test Results for Special Relocation Housing Assistance Recipients for Ngolang Phase 3’, July 22, 2024.

23 Interview with General Secretary AGRA NTB, Lalu Tirta Bayu Nusantara, October 1, 2024.

e. Issues Regarding Threats and Criminalization of Residents

The various issues ultimately led to actions by the affected community to demonstrate and voice their grievances. Many residents refused to sell their land. According to the accounts of several residents who resisted, they faced various forms of intimidation. The physical intimidation included arson, house demolitions, and theft.²⁴ Several farmers, such as Amaq Sukril, Amaq Semin, Inak Sita, and Amaq Jati, were accused of land encroachment and destroying company signs. Amaq Sukril destroyed a company sign that was placed in front of his house. He was then arrested and charged with property damage.²⁵

Interestingly, according to several residents, whenever someone protested or demonstrated against the land expropriation, the following day, the residents would claim to have lost motorcycles, cattle, and work tools all at the same time. For instance, Amaq Sibawai, who worked as a carpenter, lost all of his furniture-making tools. Amaq Bengkok, Sibawai's neighbor, lost six cattle. Meanwhile, Amaq Ladi lost his motorcycle.²⁶

The phenomenon of threats and criminalization of residents who reject the entire compensation effort constitutes a violation of the right to personal liberty and security under Article 9 of the ICCPR, and the right to freedom of opinion and expression under Article 18 of the ICCPR. The project organizers should have provided proper advocacy services and a meaningful consultation forum that is democratic, in accordance with the FPIC principle. However, in reality, the actions taken by the residents were to directly conduct demonstrations against inadequate compensation, meaning that, to date, there has been no forum organized by PT. ITDC to absorb the democratic aspirations of the residents. Ultimately, the BRIMOBDA forces became involved in handling the demonstrations, which is a sign of the absence of proactive efforts from the project organizers to engage with the input and aspirations of the residents, particularly the communities affected by the Mandalika KEK project.

D. CONCLUSION

After the enactment of Law No. 39 of 1999 on Human Rights, Indonesia consequently ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) as interrelated and binding human rights instruments under Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights. In the context of business and efforts to fulfill the nation's economic needs related to human rights impacts, Indonesia adheres to the United Nations Guiding Principles (UNGPs) and enacts the National Action Plan for Human Rights (Stranas BHAM) in Indonesia, subsequently establishing the National Task Force on Business and Human Rights (GTN BHAM) to ensure the accommodation of human rights guarantees and protection in business activities. Specifically, in the scope of business and investment activities

²⁴ Interviews with several farmers from Bunut – Kuta and Gerupuk Sengkol, October 3-9, 2024.

²⁵ Interviews with Amaq Sukril's family, October 1, 2024. several farmers from Bunut – Kuta and Gerupuk Sengkol, October 3-9, 2024.

²⁶ Interviews with Amaq Sibawai and Amaq Bengkok, October 2-3, 2024.

in Kuta Mandalika, Indonesia, together with AIIB as the financing bank, implements Environmental and Social Standards (ESF) in its Resettlement Action Plan (RAP). These ESF guidelines are based on the principle of Free, Prior, Informed, and Consent (FPIC), which, in a holistic sense, serves as the guiding framework under the mandate of the UNGPs, ICCPR, and ICESCR. In the Mandalika Special Economic Zone (KEK), the ESF and FPIC are used as the foundation for business activity guidelines related to the protection of human rights for the affected communities. These two regulations, in the context of the Monism Theory of International Law, align with the mandate of the ICCPR, ICESCR, and UNGPs. If these soft laws are violated, such violations automatically extend to the ICCPR and ICESCR – in line with their ratification, such violations also apply to Law No. 12 of 2005 on the Ratification of the ICCPR and Law No. 39 of 1999 on Human Rights.

Based on the research findings, several human rights violations have emerged because PT. ITDC, together with AIIB, is considered to have failed to meet the FPIC principle. First, regarding the issue of involuntary resettlement, aside from violating FPIC, there is a clear violation of the right to freedom of movement and relocation under Article 12 of the ICCPR. PT. ITDC has determined the relocation site for the communities affected by the project in an area that is completely inconsistent with the community's requests. Moreover, the location is far from the residents' livelihoods, particularly for those who are fishermen. Second, on the issue of inadequate compensation, besides breaching the RAP commitment, this clearly violates the right to social security under Article 9 of the ICESCR and the right to an adequate standard of living under Article 11 of the ICESCR. The reality faced by the affected communities is the provision of IDR 10,000,000 in compensation, which was not preceded by a survey of the residents' Basic Needs (KHL). The community considers this IDR 10,000,000 as an involuntary relocation fee, which does not reflect compensation proportional to the value of their land and property assets. Third, in line with this issue, the inadequate compensation is caused by the failure to properly verify the census data of the recipients. PT. ITDC, together with Greencorp, claims that there are 150 affected households that should receive compensation, consisting of 84 households from Ebunut Hamlet and 53 households from Ujung Hamlet. This differs from the results of the census conducted by PUPR, which states there are 120 households, consisting of 67 households from Ebunut Hamlet and 53 households from Ujung Hamlet.

Meanwhile, the Head of Ebunut Hamlet, Rahmat Panye, found that there are 129 households in Ebunut Hamlet that should receive compensation. Additionally, AGRA NTB assessed that there are 150 households in Ebunut Hamlet that should be compensated. The discrepancies in the surveys and verifications conducted by PT. ITDC (compared to the surveys and verifications conducted by the directly affected community) serve as evidence of the weakness in efforts to ensure the protection of human rights in the Mandalika KEK project. Fourth, the phenomenon of threats and criminalization of residents who reject these compensation efforts is part of a violation of the right to personal freedom and security under Article 9 of the ICCPR, and the right to freedom of opinion and expression under Article 18 of the ICCPR. The project organizers should have provided proper advocacy services and a meaningful, democratic consultation forum in accordance with the FPIC principle. However, in reality, the actions

taken by the residents were to directly conduct demonstrations against inadequate compensation, meaning that, to date, there has been no forum organized by PT. ITDC to absorb the democratic aspirations of the residents. Ultimately, the BRIMOBDA apparatus became involved in handling the demonstrations, which highlights the absence of proactive efforts from the project organizers to engage with the input and aspirations of the residents, especially the communities affected by the Mandalika KEK project development.

BIBLIOGRAPHY

Books

Hasanudin Hasim, *“Hubungan Hukum Internasional dan Hukum Nasional Perspektif Teori Monisme dan Teori Dualisme”*. Vol. I, No. 2, Desember 2019. Jurnal Perbandingan Mazhab. E ISSN 2685-7812.

Journal

Korinna Horta and Wawa Wang, *“The Beijing-led Asian Infrastructure Investment Bank (AIIB): Global leader in infrastructure finance, at what cost?”*, diterbitkan oleh Heinrich Boll Stiftung, Desember 2020.

Koalisi Pemantau Pembangunan Infrastruktur Indonesia, *“Kalau Merugikan Masyarakat Lokal, Buat Apa Pembangunan?: Dampak-Dampak Hak Asasi Manusia dan Sosio-Ekonomi dari Proyek Pembangunan Infrastruktur Urban dan Pariwisata Mandalika”*, April, 2023.

United Nations Human Rights Special Procedures, *“Indonesia: UN expert warns of human rights threat to tourism projects worth USD 3 billion”*, Jenewa, Maret 2021.

Laws

Indonesia, Peraturan Presiden tentang Percepatan Pelaksanaan Proyek Strategis Nasional, PP No. 3 Tahun 2016, LN No. 4 Tahun 2016, Pasal 1 ayat (7).

Lembar pengesahan poin (d), Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan *International Covenant on Civil and Political Rights*. LNRI Tahun 2005 Nomor 119.

Dinas Perumahan dan Kawasan Permukiman, Pemerintah Kabupaten Lombok Tengah, *“Berita Acara Hasil Uji Publik Penerima Bantuan Rumah Khusus Relokasi Ngolang Tahap 3”*, 22 Juli 2024.

Manuals

Asian infrastructure Investment Bank, *“Environmental and Social Framework (Amandemen)”*, November 2022.

Prosedur Khusus PBB, *“Communication concerning human rights violations and abuses committed in the implementation of the Mandalika urban development and tourism project”*, Maret 2021.

Asian infrastructure Investment Bank, *“Environmental and Social Impact Assessment of*

the Mandalika Urban Development and Tourism Project”, Oktober 2018.

Asian infrastructure Investment Bank, “*Environmental and Social Framework (Amandemen)*”, November 2022.

International Tourism Development Corporate, “*Resettlement Action Plan*”.

ITDC, 2018: Kerangka kebijakan pemukiman kembali Mandalika Urban and Tourism Infrastructure Project (MUTIP)/ Proyek Infrastruktur dan Perkotaan Mandalika (PIKPPM).

Website

[INDONESIA: Ratification of key human rights instruments must be followed by legal reform - Asian Human Rights Commission](#). Accessed at 2nd December 2024.