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PROCEEDING

1st INTERNATIONAL CONFERENCE ON LAW, BUSINESS,
AND GOOD GOVERNANCE 2024,
Opportunities and Challenges toward Sustainable Development
(1st ICLBGG-2024)



UNIVERSITAS ATMA JAYA YOGYAKARTA

Organized by:

Faculty of Law & Faculty of Economics
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Co-Organized:

1. Universitas Katholik Parahyangan
2. Universitas Widya Karya Malang
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Economics; Business & Accounting; Business law ; Constitutional & administrative law;
Environment law; Good governance; Human rights; International law; Law enforcement
& dispute resolution

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=====EXECUTIVE SUMMARY

Sustainable Development Goals (SDGs) are a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. However, opportunities and challenges remain in achieving the SDGs, also known as the Global Goals, which were adopted by the United Nations in 2015. Several global issues, such as good governance, including human rights issues, and its connection with legal and business policy issues at the country level and relations between countries are becoming increasingly relevant to discuss, especially to mitigate the uncertainty and disruptive trend of the globalization era.

This conference aims to invite enthusiasts of law, business, and good governance issues, and human rights issues, to present ideas, thoughts, and research results. These contributions, both monodisciplinary and interdisciplinary, are expected to support the creation of an effective legal policy at the country level and improved relationship between countries, all aimed at building a prosperous, peaceful, and just society. Concerning the dynamic nature of these issues, the conference will be held every two years.

The objectives and expected results from the 1st ICLBGG-2024 are:

- 1) Express ideas and thoughts as alternative solutions to global problems in law and business relating to good governance and human rights, both at the country level or at the global level, towards sustainable development.
- 2) Sharing the results of research on various topics related to law and business policy issues towards sustainable development.

The organizing committee in reaching the objectives and expected results of the 1st ICLBGG-2024, called Academics, researchers, government agencies, industry, professional organizations, NGOs, students, and the public, as prospective authors are kindly encouraged to contribute research papers describing original and unpublished results of conceptual, constructive, empirical, experimental, or theoretical work that address theme and topics of the conference, and are cordially invited for presentation at the conference. Topics of the conference includes:

1. Economics
2. Business & Accounting
3. Business law
4. Constitutional & administrative law
5. Environment law
6. Good governance
7. Human rights
8. International law

9. Law enforcement & dispute resolution

In the date of 1st ICLBGG 2024 on 26-27 2024 at the campus of Faculty of Business and Economics of Universitas Atma Jaya Yogyakarta, there are 122 academics, researchers, practitioners, as well as students, joining the 1st ICLBGG 2024. It includes three non-presenter participants, and 119 presenters. Five of them are from International, such as Elise Nicoleta VĂLCU from The National University of Science and Technology POLITEHNICA Bucharest, Manchanayaka Jayawardana Mudalige Udara Priyanjana Jayawardana from Legal Draftsman's Department of Sri Lanka, Muhammad Amrullah from International Islamic University Malaysia (IIUM), Zoană Maria Gabriela from The National University of Science and Technology POLITEHNICA Bucharest, and Jose Gama Santos from ⁴Law Faculty of Da Paz University, Timor Leste. While the rest are from Indonesia. They presented their ideas in the field of

The committee also invited keynote and expert speakers to share and contribute their thoughts as alternative solutions to global problems in law and business relating to good governance and human rights, both at the country level or at the global level, towards sustainable development. They are:

- 1) Drs. Sumedi Andono Mulyo, M.A., Ph.D, Direktur Perencanaan & Pengembangan Proyek Infrastruktur Prioritas Nasional BAPPENAS, Who delivered his thought on "Indonesia's SDGs: Achievements and Challenges"
- 2) Prof. Dr. Jürgen Bröhmer, Professor of Law, School of Law, Murdoch University, Australia, with sharing about "Legal and Policy Challenges of the Green Energy Transition"
- 3) Bencharat Sae Chua, Ph.D., Institute of Human Rights and Peace Studies, Mahidol University, Thailand. Explored her idea on "Business Policies that support the Achievement of Human Rights"
- 4) F.X. Endro Susilo, S.H., LL.M., Faculty of Law Universitas Atma Jaya Yogyakarta, focus on the issue of "International Environmental Issue Regarding Sustainable Development"
- 5) Dr. Irene Hadiprayitno, from Leiden Institute for Area Studies, Leiden University, contributed her idea about "Food Justice in global trade towards sustainable development"
- 6) Prof. Niaz Asadullah, from Global Labor Organization (GLO) Southeast Asia Lead, delivered his thought concerning with "Global Labor Market and Sustainable Development"
- 7) Prof. Aloysius Gunadi B.Ph.D., a professor of Faculty of Business and Economics Universitas Atma Jaya Yogyakarta, who contributed his expert on the issue of "Governance Challenges in Sustainable Development at the Local Level"

Sumedi Andono Mulyo, justified that Indonesia's SDGs had an advance Progress, for instance, (i) Shifting from Middle-Income into High-Income Country; (ii) 62% of the 224 indicators of Action Plan for SDGs have been achieved. In the other hand, he mentioned Global Challenges in Achieving Indonesia's SDGs. Furthermore Sumedi put forward six acceleration strategies that Indonesia will address to cope with global challenges. One of them is Strengthening regulations and policies commitment.

Strategy to strengthening regulations and policies met with Bröhmer concerned: legal and Policy Challenges. He, particularly focus on the legal and policies challenges of the Green Energy Transition in the sectoral areas of action, i.e, energy, industry/business, buildings, waste, agriculture/forestry/land use, and transport/mobility. Bröhmer provides a comparison of solutions by climate protection policies carried out by the German government.

Relating to climate change issue, Endro Susilo highlighted the Legal Challenges to reduce emission as a part of Fighting against Climate Change. He concluded that the implementation of NDCs in cutting down green-house gas emission as part of fighting against global warming & climate change has been dependent much upon how individual member state keeps its national commitment. Bencharat Sae followed up with another SDG issue, related to human rights. She questioned Business obligations to Human Rights. Of that question, Bencharat referred to The ECtHR that recognized State members to take measures to enable the full enjoyment of ECHR rights in private relations. While from the economic standpoint, Irene tries to combine economic and legal aspects by echoing the emergencing concept of Food justice in global trade towards sustainable development. She argued that the starting point of this conception is that the mainstream economic understanding of international trade as a moral-free zone is mistaken, and found that recently, an increasing number of political philosophers have been focusing on international trade as a matter of justice. Niaz addressed the issue of global labor market in relation to the SDGs. In his opinion, there are 5 Challenges in the Second Half of the SDG Campaign (2022-2030), namely (i) increasing Labor Share (and Ensuring Fair Wages) to Reduce Inequality; (ii) Rising Youth Unemployment and Underemployment; (iii) Promoting Gender Equality in the Workforce; (iv) Adapting to Technological Changes; (v) Migrant labor market. Similar to Irene, Niaz also revealed the relevance of economics to legal principles, namely in Increasing Labor Share (and Ensuring Fair Wages) to Reduce Inequality. Aloy further elaborated on one of the national challenges presented by Sumedi, particularly on Addressing Regional Disparities, by bringing up Governance Challenges in Sustainable Development at the Local Level. He concluded, if local actions are the foundation for achieving the SDGs, then governance issues at the local level should be addressed. 119 presenters tidak kalah serunya juga menyumbangkan berbagai ide atau hasil penelitian mulai dari eksplorasi isu hatau problem hingga memberikan solusinya untuk tema SDG di bidang hukum dan ekonomi.

The more people join the seminar, the greater the hope for providing variety and innovation for SDG problem solutions in a multidisciplinary way. ICLBGG is planned to be held every two years. Hopefully, better promotion will attract more participants, especially those from outside Indonesia. It is also hoped that the proceedings to be published will provide benefits for both the advancement of knowledge and better policy changes."

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INVITED SEPAKERS

Prof.Dr. Jürgen Bröhmer, Professor of Law, School of Law, Murdoch University, Australia “Legal and Policy Challenges of the Green Energy Transtition”

Bencharat Sae Chua, Ph.D., Institute of Human Rights and Peace Studies, Mahidol University, Thailand. “Business Policies that support the Achievement of Human Rights”

F.X. Endro Susilo, S.H.,LL.M., Faculty of Law Universitas Atma Jaya Yogyakarta “International Environmental Issue Regarding Sustainable Development”

Dr. Irene Hadiprayitno, from Leiden Institute for Area Studies, Leiden University, “Food Justice in global trade towards sustainable development”

Prof. Niaz Asadullah, from Global Labor Organization (GLO) Southeast Asia Lead, “Global Labor Market and Sustainable Development”

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REMPANG ECO CITY DEVELOPMENT PROJECT: BETWEEN INVESTMENT AND AUTHORITARIAN CAPITALISM

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ABSTRACT

Investment plays an important role to improve the economy and development of a country. Therefore, in formulating investment policies, the state should not violate the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, or the main functions of the state. However, in practice, investment policies often only benefit certain parties, as seen in the development of the Rempang Eco City area in Batam, as one of the National Strategic Projects (PSN). In this project, maladministration and human rights violations against the indigenous people of Rempang Island have been found according to the investigation done by the ombudsman, WALHI, and National Human Rights Commission. Highlighting this investment policy, the theory of Authoritarian Capitalism is known, which describes the state's actions in supporting capitalism and ignoring the principles of the rule of law, as is the case in this project. This study is formulated as normative legal research, using a statutory approach and a conceptual approach. The results of this study indicate that the Rempang Eco City Development Investment Project can be concluded as a form of Authoritarian Capitalism, this is due to the many human rights violations and maladministration carried out by the government. Hence, legal protection is needed for affected communities by considering aspects of customs and the welfare of the surrounding community, not just based on providing compensation and relocation.

Keywords: *Investment Policy; Authoritarian Capitalism; National Strategic Projects; Legal Protection.*

I. Introduction

Investment according to Black's Law Dictionary is defined as "an expenditure to acquire property or assets to produce revenue: a capital outlay".⁶⁵¹ In simple term, Investment can be defined as the allocation of capital expenditures to acquire assets that generate profits for the investor. Investment is categorized into two types: indirect investment and direct investment. In direct investment, the investor is directly involved in managing the company's operations, meaning the investor must oversee the operational system of the company and directly bear any associated risks. According to Article 1, number 4 of the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment (hereinafter referred to as the Investment Law), direct investment is further classified into Foreign Investment (hereinafter referred to as PMA) and Domestic Investment (hereinafter referred to as PMDN).⁶⁵²

Countries compete with each other in attracting both domestic and foreign investors to invest in their respective countries. The presence of foreign direct investment in an appropriate policy environment can be an important tool in the development of local businesses to improve the economy of the host

state.⁶⁵³ According to Rahmi Jened, the motivation of the host state in attracting foreign investors to finance development is because it can provide income from the tax sector (tax), public savings, balance of payments (balance of payments) and no less important is the foreign direct investment. According to Rahmi Jened, the motivation of the host state in attracting foreign investors to finance development is because it can provide income from the tax sector (tax), public savings, balance of payments (balance of payments) and accelerating the industrialization process through transfer of technology.⁶⁵⁴ In other words, it is simple to say that investment plays a very important role not only for the development of a country, but also for the country's economic conditions to improve. In this regard, legal certainty then becomes one of the pillars that can attract interest from investors.⁶⁵⁵

Furthermore, although stated in the previous paragraph that investment has such important benefits, the formulation of investment policy should not be done arbitrarily. This is because theoretically, according to Friedmann, in a modern economy there are four main functions of the state, namely the first is to provide social services to ensure the minimum standard of living of its

⁶⁵¹ Bryan A. Garner, *Black's Law Dictionary: Standart ninth edition*, West, Minnesota, 2009, h. 902.

⁶⁵² Lihat Pasal 1 angka 4 UU Penanaman Modal "Penanam modal adalah perseorangan atau badan usaha yang melakukan penanaman modal yang dapat berupa penanaman modal dalam negeri (PMDN) dan penanaman modal asing (PMA)".

⁶⁵³ OECD, *OECD Benchmark Definition of Foreign Direct Investment*, OECD, 2008, 14.

⁶⁵⁴ Rahmi Jened, *Teori dan Kebijakan Hukum Investasi Langsung (Direct Investment)*, Kencana, Jakarta, 2016, h. 117.

⁶⁵⁵ Omar E. Garcia-Boliviar, *Business Climate: When Weakness Means Foreign Direct Divestment*, Intech Open, United Kingdom, 2021, h. 3.

people. Second, it operates as an entrepreneur or self-employed person. Third, it acts as a regulator to protect the interests of the public at large and certain individuals in society. Fourth, it is responsible for the judicial process in the sense that the state is a neutral party that mediates problems that occur between its people.⁶⁵⁶ According to Friedman's theory, in the context of Investment, the state not only has an important task to carry out development and advance the economy, but, in doing so, the state must also always act as a neutral party and care about and protect the interests of its own society.

Unfortunately, Friedmann's function of the state has not been seen when it comes to investment and development policies carried out by the state in the context of the development of the Rempang Eco City area in Batam. The development plan of Rempang island itself basically started in mid-2004. At that time, a recommendation letter from the Regional People's Representative Council (DPRD) of Batam City was the beginning of investment into the Rempang Island area. Almost 20 years later, through the Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia Number 7 of 2021,

which was later amended in 2023, the Rempang Eco City development project was included in the National Strategic Project - the development of this project also attracted investors from China Xinyi and other investors with a total investment value of 381 trillion rupiah (approximately 23.443.556.745,00 USD).⁶⁵⁷ The development of the project was carried out by the central government through the Batam Concession Agency (BP Batam) in collaboration with PT Makmur Elok Graha (MEG)⁶⁵⁸ In detail, the development of Rempang island will also be divided into 7 different zones, namely: Rempang Integrated Industrial Zone, Rempang Integrated Agro-Tourism Zone, Rempang Integrated Commercial and Residential, Rempang Integrated Tourism Zone, Rempang Forest and Solar Farm Zone, Wildlife and Nature Zone, dan Galang Heritage Zone.⁶⁵⁹ The development of the Rempang Eco City project, however, has complicated problems both in terms of administration, as well as, its relationship with the indigenous people who occupy the island of Rempang. The Ombudsman of the Republic of Indonesia even found that there was a maladministration in the development of Rempang Eco City, namely:⁶⁶⁰ First, there is no legal recognition of the existence of the Old

⁶⁵⁶ Nigel Savage, Robert Bradgate, *Business Law*, Butterworth, London, 1993, h. 8.

⁶⁵⁷ Badan Pengusahaan Batam, "Pengembangan Rempang Eco City dan Berbagai Keuntungannya", Diakses: https://bpbatam-go-id.translate.google.com/pengembangan-rem-pang-eco-city-dan-berbagai-keuntungannya/?_x_tr_sl=id&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc pada 15 Mei 2024.

⁶⁵⁸ Nur Fitri Ayuningmas, dkk, "Resistensi Berbasis Adat: Perlawanan Masyarakat Pulau

Rempang, Kota Batam, Kepulauan Riau, Terhadap Rencana Pembangunan Rempang *Eco City*", *Jurnal Inovasi Penelitian*, Vol. 4 Nomor 6, (2023): h.1035.

⁶⁵⁹ Badan Pengusahaan Batam, *Loc.cit*.

⁶⁶⁰ Ombudsman Republik Indonesia, "Ombudsman RI Temukan 4 Pelanggaran Proyek Rempang *Eco-City*", 2024. Diakses di: <https://ombudsman.go.id/artikel/r/pwkmedia--ombudsman-ri-temukan-4-pelanggaran-proyek-rem-pang-eco-city> pada 16 Mei 2024.

Village on Rempang Island, and the boundary demarcation and issuance of land certificates for the local community are not optimized. Secondly, regarding the status of the area, land and land management, a management right certificate has not been issued on behalf of Batam Concession Agency, while the Granting Management Rights (HPL) decree is still in the process of being extended. Third, the establishment of Rempang Eco-City as PSN occurred in a relatively short period of time, spanning May-July 2023, which shows that the accelerated development of the area was not supported by careful preparation. Starting in terms of regulations, policies, availability of clear and clean land and community readiness so that rejection and conflict arise. Fourth, the handling of the impact of national strategic projects carried out by law enforcement officials has caused fear, insecurity and reduced the level of public trust in the Police or the government as a whole.

Not only the Ombudsman, the Indonesian Forum for the Environment (WALHI)⁶⁶¹, and even the National Commission on Human Rights (Komnas HAM) found a number of violations of the Law and Human Rights of the indigenous people of Rempang island and the utilization of the state

⁶⁶¹ Wahana Lingkungan Hidup Indonesia, “Hentikan Program Strategis Nasional Kawasan Rempang Eco-City, Copot Kapolresta Bareleng, Kapolda Kepulauan Riau, dan Komandan Pangkalan TNI AL Batam”. 2023. Diakses di: <https://www.walhi.or.id/hentikan-program-strategis-nasional-kawasan-rempang-eco-city-copot-kapolresta-bareleng-kapolda-kepulauan-riau->

apparatus to help the successful implementation of the Rempang Eco-City project which is considered to attract investors to invest in Rempang island. Komnas HAM further stated that the establishment of the Rempang eco-city as a national strategic project was not carried out with a human rights approach and took into account the indigenous people who have inhabited Rempang island for two centuries.⁶⁶² The National Strategic Project itself, based on Government Regulation of the Republic of Indonesia Number 42 of 2021 concerning the Ease of National Strategic Projects (hereinafter referred to as PP PSN) is defined as a project and/or program implemented by the central government, regional governments, and/or business entities that have a strategic nature for growth and equitable development in the context of efforts to create jobs and improve people's welfare. Through this definition, national strategic projects (PSN) are expected not only to provide economic benefits to the state, but also to pay attention to the welfare of the community, without exception. The problem is that the findings presented by the Ombudsman, WALHI, and Komnas HAM show that the development of the Rempang Eco-City project pays little attention to the welfare of the Rempang indigenous people who

[dan-komandan-pangkalan-tni-al-batam](#) pada 16 Mei 2024.

⁶⁶² Komisi Nasional Hak Asasi Manusia, “Belajar dari Kasus Rempang, Komnas HAM: PSN Harus Bermanfaat Bagi Masyarakat”, 2023. Diakses di: <https://www.komnasham.go.id/index.php/news/2023/10/9/2425/belajar-dari-kasus-rempang-komnas-ham-psn-harus-bermanfaat-bagi-masyarakat.html> pada 16 Mei 2024.

work as fishermen, and only pays attention to investors - even though indigenous people are also part of the Indonesian nation who need protection of their traditional rights.⁶⁶³ In addition, the findings from WALHI and Komnas HAM presented earlier, indicate that there are human rights violations committed by the government in the development of the Rempang Eco City project. This is theoretically contradictory to Friedmann's state purpose, and dogmatically, contradicts the PP PSN itself. For this reason, through this research, the author highlights the investment policy for the development of the Rempang Eco City project which is attractive to investors, but on the other hand, based on the findings presented previously, it is detrimental to the community from a legal perspective. The development of theory even recognizes a concept called authoritarian capitalism, which is simply described as state actions that support capitalism by ignoring the principles of the rule of law.⁶⁶⁴ In authoritarian capitalism, the authoritarian pattern is not emphasized on the political power of the state (for example in terms of electoral politics), but rather, on the actions of the state in supporting capitalism and excluding the community by using legal instruments and mobilizing authorities to limit freedom of expression (this is like WALHI's

report on the findings of human rights violations in the development of Rempang Eco City).

II. Method

This study is structured as a doctrinal legal study. Terry Hutchinson stated that doctrinal legal study analyze legal concepts, legal principles, legal cases, and every related statute.⁶⁶⁵ Terry Hutchinson further explain that a doctrinal legal study consist of two steps: first, identifying the law, including the statuted, principles, cases, and concepts, and the second, analyzing the legal problems in this study—connect them with the statuted, principles, cases, concepts, and then structured the answer for the problems in a systematic analysis.⁶⁶⁶

III. Discussion Determining the Existance of Authoritarian Capitalism

Authoritarian capitalism can be define as a combination of an authoritarian political regime and a capitalist economic structure. This system demonstrates significant government control and intervention in the capitalist economy.⁶⁶⁷ In other words, countries that contribute significantly to the economy yet do so in autocratic or non-democratic

⁶⁶³ Made Oka Cahyadi Wiguna, “Pemikiran Hukum Progresif untuk Perlindungan Hukum dan Kesejahteraan Masyarakat Hukum Adat” *Jurnal Konstitusi*, Volume 18 Nomor 1 (2021): 113.

⁶⁶⁴ Dorottya Sallai, “What is ‘Authoritarian’ about Authoritarian Capitalism? The Dual Erosion of the Private-Public Divide in State-Dominated Business System”, *Business and Society*, (2019): h. 37,

⁶⁶⁵ Terry Hutchinson and Nigel Duncan, “Defining and Describing What We Do: Doctrinal Legal Research”, *Deakin Law Review*, Volume 17, (2012): 84.

⁶⁶⁶ *Ibid*, h.116.

⁶⁶⁷ Michael A. Witt and Gordon Redding, “China: Authoritarian Capitalism,” *SSRN Electronic Journal*, 2012, <https://doi.org/10.2139/ssrn.2171651>.

environments are considered as an authoritarian capitalist.

Authoritarian capitalism is differ from state capitalism. In state capitalism, the government is viewed as the primary player in the economy, but all actions are conducted without disregarding the human rights or democratic principles. Authoritarian capitalism, on the other hand, employs strategies that restrict civil freedoms and disregard democratic values. Sallay and Schnyder further explain the main characteristics of authoritarian capitalism, which are:

1. Significant State Intervention. The state plays a central role and carries great influence in the economic sector, especially in supporting certain economic actors who are aligned with the government. Later the state will support it through regulations, subsidies or special protection.
2. Restrictions on Civil Liberties. Civil liberties will often be sacrificed or ignored in order to maintain government stability and power. The manifestation of this restriction can be by limiting freedom of speech, assembly, and expression of opinion.
3. Policy Making without a Democratic System. The government's policy-making process often does not involve public participation or does

not go through transparent democratic mechanisms. Important economic decisions will be made by political elites in the government along with business people who have the same interests as the government.

4. Use of Law as a Tool. The law will often be used as a tool to suppress opposition and maintain government power. Laws in the form of regulations are applied unfairly, especially against parties who are considered to threaten the economic or political stability desired by the government. Meanwhile, individual rights and the principle of checks and balances are weakened and ignored.⁶⁶⁸
5. Reduction of Economic Pluralism. That economic activities and opportunities are aligned with the interests of economic sector elites, thereby reducing diversity in the economic sector.
6. Dependence of Economic Actors on the State. The state will create high dependence on economic actors, on state policies and support. This support can take the form of providing incentives, strict regulations, to ensure compliance with state policies.⁶⁶⁹

⁶⁶⁸ Dorottya Sallai and Gerhard Schnyder, "What Is 'Authoritarian' About Authoritarian Capitalism? The Dual Erosion of the Private–Public Divide in State-Dominated Business Systems,"

Business and Society 60, no. 6 (2021), <https://doi.org/10.1177/0007650319898475>.

⁶⁶⁹ Daniel Kinderman Associate Professor and Muqtedar Khan, "Authoritarian Capitalism and Its Impact on Business Symposium on

Based on these characteristics, it can be concluded that authoritarian capitalism is a form of capitalism, characterized by state control. The state in the economic sector, including investment, tends to ignore the rights of individuals or communities. Causing people's voices or opinions to not be heard, or the absence of democracy.

This action is actually a form of violation of the principles of the rule of law and tends to use the state as a tool to maintain its power and the interests of certain parties, not for the public interest. The state here will not directly be an actor in the economic sector. However, in accordance with the characteristics of authoritarian capitalism, the state will use its authority as if it were using the law. This law, which is supposed to provide justice, certainty and benefit, is actually used as a tool to force civilians to submit to state power or the wishes of the economic elites.

Authoritarian capitalism is a quite controversial system, because the assessment will depend on the perspective and goals to be achieved. This authoritarian pattern can indeed grow the country's economy, or further help a country's development. However, it should be noted that this model can lead to an erosion of the rule of law or, if we are talking in the investment sector, allow for state colonization from the ruling elite. Therefore, to avoid authoritarian capitalism, an investment policy requires a mechanism to maintain the integrity

of the bureaucracy and the supremacy of the law, so that civil society is not oppressed.⁶⁷⁰

Another theoretical basis to determine the existence of authoritarian capitalism regime can be analyze from the perspective of the self-determination theory. In a broad sense, this theory implied that the rights of the State over its natural resources and self-determination are connected—one of the arguments to support this notion is that having the rights to govern natural resources located within the territory of the State is needed in order to enjoy meaningful self-determination.⁶⁷¹ In line with that, another argument that can support such notion could be based on the article 1 of the UN General Assembly Resolution on Permanent Sovereignty over Natural Resources (hereinafter referred as RPSNR) which stated that, the rights over natural resources should be exercised in the interest of their national development without jeopardizing the well-being of the people live within it. Thus, it seems fairly plausible to assume that the rights to govern such resources should be owned only by the State, because to exercise such rights, national development and the well-being of the people should be concerned. Moreover, it can said that, such provision could help the state duty to fulfil demands implied in social, economic, and human rights.⁶⁷²

Undeniably, even though self-determination theory already has a such plausible explanation, there are still critiques

Authoritarianism and Good Governance,” 2021, <https://doi.org/10.47816/02.001.23>.

⁶⁷⁰ *Ibid.*, h.4.

⁶⁷¹ Ioannis Kouris, “Sovereignty over Natural Resources,” *Critical Review of International Social*

and Political Philosophy, 2020, 3, doi:10.1080/13698230.2020.1737474.

⁶⁷² Markku Oksanen, Ashley Dodsworth, and Selina O’Doherty, *Environmental Human Rights: A Political Theory Perspective* (Routledge, 2018).

left that try to negate the connection between self-determination and resources rights—one of which is why the people (represented by the State or not) should have the right to govern natural resources within their territory? To answer such critique, Moore argues that the right to govern natural resources (or in her term ‘right to control’) is indeed needed because it bears the capacity of the right bearer to make decision related to the resources and such decision is important to what she calls as collective self-determination.⁶⁷³ Moore further explained that without such right, people who lived within the territory where the resources located can not exercise their right to know and determine what happened to the land they live in.⁶⁷⁴ With regard to Moore’s thesis, we can assume that without such right, colonization would happen again. Thus, while self-determination theory fails to explain where the connection between self-determination and resource right comes from, it succeeded to explain why the connection should happen. In line with that, Cara Nine stated that, resources rights should be understood as rights that own by a collective within a territory which involves right to make rules (or it can be implied as making natural resources-related decision through rules) and the right to own.⁶⁷⁵

Based on the explanations above, the self-determination theory, in a broad sense, implied the state rights to regulate policies regarding the exploitation of natural resources.

However, in a more specific sense, the self-determination theory does not only applied for the state, but, with regard to Moore thesis, it is also applied to people who lived within the territory where the resources located. Thus, by jeopardizing the well-being of these people, the state, despite the rights it possess, can be considered arbitrary for economical purposes, ergo, it is in line with the very own conception of authoritarian capitalism itself.

Rempang Eco-City: A Case of Authoritarian Capitalism in Indonesia

Previous section of this study has explained the characteristics of authoritarian capitalism. In this section, these characteristics used to determine the existence of authoritarian capitalism in Rempang eco-city project.

Significant state intervention

Project development was carried out by the central government through the Batam Business Agency (BP Batam) in collaboration with PT Makmur Elok Graha (MEG). This shows the significant role of the government in managing and directing this large investment project. Based on the findings of the Ombudsman of the Republic of Indonesia regarding maladministration in the development of the Rempang Eco City project, several articles that were violated can be linked to what is mandated in Laws and Government Regulations related to investment and land

⁶⁷³ Margaret Moore, “Natural Resources, Territorial Right, and Global Distributive Justice,” *Political Theory* 40, no. 1 (February 2012): 88, doi:10.1177/0090591711426999.

⁶⁷⁴ Ibid.

⁶⁷⁵ Carla Nine, *Global Justice and Territory* (New York: Oxford University Press, 2012), doi:<https://doi.org/10.1093/acprof:oso/9780199580217.001.0001>.

management. Law of the Republic of Indonesia Number 25 of 2007 concerning Capital Investment: which states that investment must be carried out with the principles of sustainability, environmental awareness, independence, and maintaining a balance of national and regional interests. Based on the findings reported by the Ombudsman, WALHI, and Komnas HAM, there are indications that the government in developing the Rempang Eco City project violated Article 3 paragraph (2) of Law of the Republic of Indonesia Number 25 of 2007 concerning Capital Investment. The following are the reasons why this violation may occur: The development of the Rempang Eco City project is not optimal in determining boundaries and issuing land certificates for local communities and ignores the rights of indigenous communities who have inhabited the area. There is also maladministration related to territorial status and land management. This activity does not pay attention to the principles of sustainability and is environmentally sound, because it damages the social structure and environment of the indigenous people who have lived there for centuries.

This is seen as a form of authoritarian capitalism in terms of significant decision making by the central government without adequate consultation with local communities or adequate transparency in decision making. The central government took a dominant role in managing and directing this project, including in collaboration with private parties such as PT Makmur Elok Graha, without considering the overall impact on local communities and the

environment. The development of this project also appears to violate the sustainable and environmentally sound principles mandated in the Investment Law, because it is not optimal in determining boundaries and issuing land certificates for local communities, and ignores the rights of indigenous communities who have long inhabited the area. This reflects the use of policy and law as tools to facilitate certain economic interests without paying attention to environmental and social sustainability, which is a characteristic of authoritarian capitalism.

Restrictions on Civil Liberties

The handling of the impact of national strategic projects by law enforcement officials has created a sense of fear and insecurity among the community. The use of state power to control indigenous protests represents a restriction of civil liberties in voicing opposition to the project. In this case, the handling of the impact of a national strategic project by law enforcement officials has created fear, a sense of insecurity, and reduced the level of public trust in the police or government as a whole, thereby violating the provisions of Article 28 of Law Number 39 of 1999 concerning Human Rights which regulate the right to live, maintain life, and improve their standard of living. This is seen as a form of authoritarian capitalism in terms of the use of state power, including law enforcement officials, to control protests and resistance by indigenous peoples to the project. These actions cause people to feel afraid, unsafe, and lose trust in the police and government as a whole. In the context of authoritarian capitalism, the government uses its power and control to

protect and advance certain economic interests, in this case the development of the Rempang Eco City project. The use of law enforcement officials to crack down on or intimidate people who voice opposition is one example of how civil liberties can be limited or ignored in the interests of large economic projects. This is contrary to the principles of democracy and human rights which recognize the right to express opinions, assemble peacefully and express opinions without fear of repression or violence.

Thus, this action reflects the authoritarian use of state power to secure certain economic interests without considering the civil and political rights of society in a fair and transparent manner, which is a characteristic of authoritarian capitalism.

Policy Making without a Democratic System

Policy making without a democratic system refers to a decision-making process that does not involve an adequate consultation process with affected communities and lacks transparency and public participation in the process. In the context of Rempang Eco City, there are several aspects that indicate violations in decision making without a democratic system: Rempang Eco City was quickly designated as a PSN in a relatively short time span, namely between May and July 2023. This decision was not supported by extensive public consultation. adequate or transparent participatory processes; The community, including the indigenous people who live in Rempang, were not adequately involved in this determination process. Their opinions and interests in the development of the island are not

taken into account significantly. This is contrary to Article 12 of Law Number 25 of 2007 concerning Investment: States that the determination of business fields that are open and closed to foreign investment must take into account the criteria of health, morals, culture, environment, national defense and security, as well as other national interests. This is seen as a form of authoritarian capitalism in terms of the decision to designate Rempang Eco City as a National Strategic Project (PSN) which was carried out quickly and without an adequate public consultation process as well as a lack of transparency and transparent public participation. Democracy mandates that decisions that affect society must go through a participatory, transparent and accountable process. In this case, the absence of an adequate consultation process shows a disregard for these democratic principles.

Thus, policy making without a democratic system in this context reflects the authoritarian use of state power to legislate policies that support certain economic interests without adequately considering the opinions and interests of society in general, which is a characteristic of authoritarian capitalism.

On the other hand, According to Suparto Wijoyo, the most important role of the public participation is through state administration decision-making procedures, aka

administrative decisions.⁶⁷⁶ The rationale for the need for community participation in every decision making according to Lothar Gundling, is: informing the administration, increasing the readiness of the public to accept decisions, supplementing judicial protection, and democratizing decision making.⁶⁷⁷ Through community participation in the decision-making process, this is means:⁶⁷⁸

- a. In every decision making, including the issuance of permits, there is room for community participation to participate by putting forward ideas and suggestions.
- b. Government organs receive information input from citizens or experts so that all interests can be accommodated ("informing the administration")
- c. Increasing the willingness of the public to accept and adapt to the implementation of decisions taken and reducing the possibility of conflicts of interest ("increasing the readiness of the public to accept decisions").
- d. Helping to increase legal protection in a preventive manner, so that the need or encouragement to file a lawsuit in court can be avoided ("supplementing judicial protection").
- e. Democratizing the decision-making process can help government agencies to carry out their authority in a way that is acceptable and effective for the public ("democratizing decision making").

In this regard, Adam Tomkins firmly considers "transparency" and "public participation" as "*the buzzwords of the moment*" alongside "accountability" and "responsibility". The government's openness in the integrated environmental licensing mechanism means that there is opportunity for broad access to information for the people in the integrated environmental licensing administrative procedures. Based on the principle of transparency, the public has "access to documents", "knowledge about who makes decisions", "comprehensibility and accessibility", to the framework, structure and procedures of "decision making" as well as consultation facilities in "policy making processes". Administrative transparency places an obligation on the government to provide an argumentative basis for consideration of every integrated environmental licensing decision ("duty to give reason").⁶⁷⁹ With that being said, the government choice not to include the indigenous people who live in Rempang adequately in the decision-making process can be considered as authoritarian capitalism due to the fact that it does not involves democratic process.

Use of Law as a Tool

The theory of social change related to the field of law is one of the most important theories in legal science. The relationship between social change and the legal field is an interactive relationship in the sense that social

⁶⁷⁶ Suparto Wijoyo, *Hukum Perlindungan Lingkungan Hidup*, Airlangga University Press, Surabaya, 2017, h.46.

⁶⁷⁷ Lothar Gundling dalam *ibid*.

⁶⁷⁸ *Ibid*,

⁶⁷⁹ Adam Tomkins, *transparency and the emergence of a European administrative law*, dalam Suparto Wijoyo, *Ibid*.

change influences changes in the legal field, but conversely, legal changes also influence social change. Legal changes that can influence social change are in accordance with one of the functions of law: as an instrument of social change or a tool for forming society (social engineering). Therefore, the law is a tool of social engineering, a term first coined by the famous American jurist Roskow Pound.⁶⁸⁰ Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia Number 7 of 2021, and amendments in 2023, do support the development of the Rempang Eco City project as a National Strategic Project (PSN). This shows the existence of authoritarian capitalism on the grounds that the decision to authorize PSN status for this project was based on legal regulations established by the government, without adequately considering the aspirations or extensive public consultation.

Reduction of Economic Pluralism

Economic pluralism refers to diversity and inclusiveness in economic structures, involving the participation of various economic actors, including small and medium enterprises, local communities, and indigenous peoples. In the context of the development of Rempang Eco City, several government actions and policies lead to a reduction in economic pluralism by prioritizing large investments from foreign and domestic investors, while ignoring the interests and role of local communities. Factors

⁶⁸⁰ Munir Fuadi, *Teori-Teori Besar (Grand Theory) Dalam Hukum*, (Jakarta: Kencana Prennamdeia Group, 2013), hal 248.

⁶⁸¹ Badan Pengusahaan Batam, “Pengembangan Rempang Eco City dan Berbagai

Reducing Economic Pluralism in the Case of Rempang Eco City: The designation of Rempang Eco City as a PSN attracted large investments, especially from foreign investors such as Xinyi Group from China. This directs the economic focus towards large companies and reduces the scope for participation of local small and medium enterprises (SMEs).⁶⁸¹ Bearing in mind that the Rempang indigenous community, most of whom are fishermen, were not included in the planning and implementation of the project. The presence of large projects that do not consider traditional livelihoods can threaten the sustainability of the local economy. The dominance of large investments from foreign investors, lack of inclusiveness towards local communities, and concentration of economic policies reflect the characteristics of authoritarian capitalism. Economic decisions that are mostly determined by big interests without integrating and taking extensive account of local economic interests indicate the dominance of authoritarian power in the economic realm.

Dependence of Economic Actors on the State

Dependence of economic actors on the state refers to the condition where major economic actors, such as large investors and companies, are highly dependent on support, incentives, or policies made by the government. In the context of the development of Rempang Eco City, there are several indications and policies that show the dependence of economic

Keuntungannya”, Diakses:https://bpbatam-go-id.translate.google/pengembangan-rempang-eco-city-dan-berbagai-keuntungannya/?_x_tr_sl=id&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc pada 15 Mei 2024.

actors on the state. In the context of Rempang Eco City, there are several indications of violations related to the dependence of economic actors on the state: The large involvement of foreign investors such as the Xinyi Group shows the dominance of investment from outside which is highly dependent on government support and policies; The involvement of local communities, including indigenous communities, the majority of whom are fishermen, is not properly accommodated in government policies and support, resulting in minimal local economic empowerment; Large developers and investors rely heavily on incentives and conveniences provided by the government, such as tax exemptions or permit extensions, which can create economic dependence on government policies. Thus, the dependence of economic actors on the state in the context of Rempang Eco City reflects the characteristics of authoritarian capitalism, where dominant economic decisions are determined by the government by offering incentives and support to large investors, while paying less attention to the empowerment and participation of smaller local economies.

Ending Authoritarian Capitalism

Ending the practice of authoritarian capitalism in the case of Rempang Eco-City requires a holistic and integrated approach. The government must use methods that focus more on restoring public trust. The first step that can be taken could be in a way that is more focused on slowly restoring the Rempang indigenous people's trust in society, such as opening up

public participation as widely as possible, holding more inclusive public consultations, in order to listen to the aspirations and concerns of the Rempang indigenous community.

The decision-making process in formulating policies is expected to include local communities, so that what is achieved is also in accordance with the needs and desires of the Rempang indigenous community. This involvement can be realized by slowly holding public participation in a transparent and accountable manner, such as public hearings, open discussion forums and opinion polls.

Ensuring cooperation and participation in decision making is the key to achieving inclusive and sustainable development. In line with one of the functions of the state according to Friedmann, namely the state as a provider of social services and a regulator that protects the interests of the public and individuals. Therefore, this negotiation and dialogue step will provide a much better understanding of the position and desires of the Rempang indigenous people.

The second step, regarding the ongoing practice of authoritarian capitalism, is that if the government subsequently requires land acquisition for public purposes, it would be best not to do so by consignment. This is because there is some land in Indonesia that originates from customary law and is still recognized in the 1945 Constitution of the Republic of Indonesia and national land law (Law No. 5 of 1960). Consignment proves that the compensation given is not in accordance with

the wishes of the community, or that the community refuses to let the land be released. This could later be blamed for human rights violations.⁶⁸² Thus, In land acquisition, the government can offer fairer and more proportional compensation to the people whose land was taken, in accordance with market value and potential loss of (immaterial) income.

The next step requires a comprehensive approach regarding compensation and relocation. In this regard, the state must pay attention to the economic, social and cultural aspects of the Rempang indigenous community itself. Considering that the profession of the Rempang indigenous people is dominated by fishermen, the government must avoid isomorphism or attempts to impose culture or practices that are not in accordance with the original lives and livelihoods of the Rempang indigenous people.

The government's relocation must respect local culture and provide adequate financial facilities in the new place. The government should not move the Rempang indigenous people to areas that do not have easy access to the sea, which would inadvertently force them to drastically change their way of life and livelihood. This will not only be detrimental economically, but also socially and culturally. And still be able to guarantee a

minimum standard of living for the Rempang indigenous people.

Apart from that, the state must also ensure that the administrative process of investment in Indonesia runs fairly, transparently and participatively, while still respecting individual rights, including protection of subjects with rights to land, residence, as well as livelihoods and access. justice for customary law communities affected by this investment policy. This administrative law approach requires the state to comply with statutory regulations (legality) and the General Principles of Good Governance (AUPB) in every action it takes, so that it does not violate human rights⁶⁸³ of Rempang indigenous people.

The middle path theory in investment will also be relevant to ending authoritarian capitalism.⁶⁸⁴ That in this investment, Indonesia must remain careful in making investment decisions, there must be clear boundaries. This also related with the self-determination theory which stipulate that despite it rights, the state also has the duties to consider the well-being of the people living in the investment project areas. Thus, Investment requirements policies must be given much more attention, environmental regulations tightened, as well as protection of the rights of local workers and communities who will be affected by

⁶⁸² Iwan Erar Joesoef, "Rekonstruksi Pencabutan Hak Atas Tanah Dan Konsinyasi Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Masalah-Masalah Hukum* 50, no. 3 (2021), <https://doi.org/10.14710/mmh.50.3.2021.318-330>.

⁶⁸³ Azmiati Zuliah and Mhd. Asri Pulungan, "Pelayanan Publik Dalam Kajian Hukum

Administrasi Negara Dan Hak Asasi Manusia," *Law Jurnal* 1, no. 1 (2020), <https://doi.org/10.46576/lj.v1i1.786>.

⁶⁸⁴ M. Sornarajah, "The International Law On Foreign Investment", *The International Law on Foreign Investment*, 2017, <https://doi.org/10.1017/9781316459959>.

investment. In this way, the country can reduce the negative impacts that will arise from these investments, such as excessive exploitation of natural resources and violations of human rights, but still get economic and development benefits from these investments.

Appropriate Compensation as a Legal Protection

For many years, Indonesian government has implemented the same policies in handling the social impact resulted from both national strategic project and investment project. Based on article 6 of Presidential Regulation of the Republic of Indonesia Number 63 of 2018 Concerning Treatment for Social Community Impact In The Framework Of Land Provision For National Development (Hereinafter referred as Perpres 63/2018) the compensation give by the government are limited in a form of money and relocation. However, in the previous section of this study, such compensation can be considered as one-sided, and more importantly reeks of isomorphism. Thus, it is plausible to assume that change for the compensation concept as regulated in Prepress 63/2018 is obligatory.

Unlike Indonesia, Russia has more sophisticated approach in regulating compensation for indigenous people affected by national or investment projects in form of benefit sharing, which are: paternalism, social responsibility of the company, partnership,

contract system for distribution of benefits and traditional crafts support, and the shareholder model.⁶⁸⁵ Of all these types of benefit sharing compensation model done by Russian government, those that can be considered as a breakthrough for benefit sharing compensation are the partnership contract system for distribution of benefits and traditional crafts support and the shareholder model, but the latter is not developed much and used less likely than the former.

For the contract system for distribution model, the basis of negotiations on measures to support the local population should be clearly described as well as potential losses, damage and risks to local communities.⁶⁸⁶ This means, in formulating the most appropriate compensation for indigenous people affected by both national strategic and investment project, the government should not only calculated it based on the price of the land and rely it on relocation, but through holistic approach which involves consideration regarding the loss of indigenous people livelihood as well as its potential losses.

In calculating this, Violetta and Ivan (2019) use concept of calculating losses to indigenous peoples based on the methodical approach of the resource assessment of the territory. This considers the potential income of the local population using available natural goods (reindeer pastures, water, rivers for fishing, areas for hunting, sites of vegetation for

⁶⁸⁵ Violetta Gassiy and Ivan Potravny, “the Compensation for Losses to Indigenous Peoples Due to the Arctic Industrial Development in Benefit

Sharing Paradigm”, *Resources Journal*, Vol 71, Issue 8, (2019): 1-19. DOI: 10.3390/resources8020071
⁶⁸⁶ *Ibid.*

gathering berries, mushrooms, medicinal plants, etc.). In essence, it is proposed to determine potential incomes and losses, if this territory would be involved by the indigenous population in economic circulation.⁶⁸⁷In this way, compensation given to the indigenous people is not only based on the price of their land, but also through the calculation for their potential incomes and losses.

IV. Conclusion

Based on the discussion above, it can be concluded that Rempang Eco City development project can be considered as a form of authoritarian capitalism, due to the fact that it matches the characteristics of the said concept. However, despite of that, there are few ways to stop this regime, these include opening up public participation as widely as possible, holding more inclusive public consultations, avoid consignment, avoid isomorphism, and the lastly by regulating compensation for indigenous people affected by national or investment projects in form of benefit sharing. In this benefit sharing model, the compensation given to the indigenous people is not only based on the price of their land, but also through the calculation for their potential incomes and losses.

⁶⁸⁷ *Ibid.*

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