

IMPLICATIONS OF CONTROL OF COASTAL LANDS BY FOREIGNERS IN THE TOURISM BUSINESS

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Abstract:

This article analyzes the Implications of coastal land tenure by foreigners in the tourism business. This paper examines the legal aspects of foreigners controlling Bali's coastal land for tourism. The author uses statutory, conceptual, sociological, and case approaches to analyze these legal issues. The tourism business in Bali cannot be separated from foreigners based on authority, expediency, and legal protection theories. Similarly, controlling coastal land in Bali-pun does not escape the control of foreigners, both through legal investment and some illegal, by utilizing mutually beneficial cooperation between residents and with prajuru Indigenous Villages based on sharing profits. Balinese people who have a unique culture with nuances of Hinduism in daily life and in running a business in the field of tourism are always based on the "Tri Hita Karana Philosophy," which is manifested in behavior that significantly maintains a harmonious relationship between "Man with God" Man with Nature, and "Humans with other Humans." This philosophy reflects the principle of good faith in investing, so foreigners who own coastal land for tourism must respect this principle. This philosophy reflects the principle of good faith in investing, so foreigners who own coastal land for tourism must respect this principle. The control of Bali's coastal lands by foreigners under the guise of mutually beneficial cooperation is likely to harm the use of indigenous villages for religious purposes. In this case, the concept of mutually beneficial cooperation is contained in foreigners bad faith to control Bali for personal gain at the expense of Balinese nature.

Keywords: Coastal Lands, Foreigner, Mastery, Tourism Business.

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INTRODUCTION

The basic concept of land control rights in Indonesia contained in the provisions of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, from now on abbreviated as the 1945 UUD-NRI, specifies that: "The earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people." Before the amendment of the 1945 Constitution-NRI, Article 33 Paragraph (3) was explained in the explanation of Article 33 paragraph 4, which specifies: The earth and water and the natural wealth contained therein are the main points of the prosperity of the people. Therefore, they must be controlled by the State and used for the greatest prosperity of the people. From the provisions of

article 33 Paragraph (3) and its explanation, it can be seen that according to the concept of the 1945 Constitution Republic of Indonesia, the relationship between the State and the earth, water, and natural wealth is a relationship of control. This means that the earth, water, and natural wealth contained therein are controlled by the State and used for the greatest prosperity of the people.

An authentic explanation of the meaning of the earth, water, and natural wealth contained therein, or in other words, natural resources controlled by the State, is contained in Law Number 5 of 1960 concerning introductory provisions of Agrarian Principles, which is from now on referred to as Basic Agrarian Law which has been in effect since September 24, 1960. Article 2 of the Basic Agrarian Law, which is the implementing rule of Article 33 Paragraph (3) of the 1945 Constitution-NRI, explains the meaning of the right to control Natural Resources by the State as follows:

1. Based on the provisions of Article 33 Paragraph (3) of the Constitution and matters as referred to in Article 1, the water and space earth, including the natural wealth contained therein is at the highest level controlled by the State, as the organization of the power of the whole people.
2. The right of control of the State in paragraph (1) of this article gives the authority to;
 - a. Regulate and organize the appropriation, use, supply and maintenance of the earth, water and space.
 - b. Determining and regulating the legal relations between people and the earth, water and space.
 - c. Determining and regulating the legal relations between people and legal acts concerning the earth, water, and space.
3. The authority derived from the right to control of the State in paragraph 2) of this article is used to achieve the greatest prosperity of the people in the sense of nationality, welfare, and independence in the society and the legal State of Indonesia, which is independent, sovereign, and prosperous.
4. The right of control of the State above its implementation can be authorized to independent areas and indigenous peoples, only necessary and not contrary to the national interest, according to the provisions of government regulations.

Related to the meaning of being controlled by this State to achieve what is specified in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, according to Harsono (1989), it is not necessary. Neither is it in place for the Indonesian nation or the State to act as a landowner. It is more appropriate if the State, as the organization of power of the whole people, acts as the Ruling Body. The word "controlled" does not mean "possessed" but rather the sense that authorizes the State as the organization of power of the nation to the highest degree:

1. Organize and organize its designation, use, supply, and maintenance.
2. Determining and regulating the rights that can be possessed over (part of) the earth, water, and space.
3. We are determining and regulating the legal relations between people and legal acts concerning the earth, water, and space.

The authority of the State to regulate the legal relationship between individuals and land will give birth to individual rights to land, namely, among others; (a) Land rights (Article 4) Basic Agrarian Law, Primary: Property Rights; Business Use Rights; Building Use Rights granted by the state; (art. 16), Secondary: Building Use Rights and use rights granted by landowners, lien rights, profit-sharing business rights, hitchhiking rights, and lease rights (Article 37, Article 41 and article 53); (b) Waqf (article 49); (c) Collateral Rights to land.

The control of Bali land, in this era of globalization, has tended to be controlled by foreign investors in the field of tourism, which is because Bali is known for various charming designations,

such as the name of the island of the Gods, Paradise Island. Also, the Island of a Thousand Temples relies on tourism as the primary income, so the enchanting land of Bali has invited many foreigners to want to acquire land in Bali, both as a place to live, a place of business or to speculate. The people of Bali Island refer to the land as Mother Earth. Religious values in the land for the Balinese people with Hindu nuances are reflected in the philosophy of "*Tri Hita Karana*". *Tri Hita Karana* is derived from the words *Tri*, *Hita*, and *Karana*. "*Tri*" means three, "*Hita*" means prosperous, good, happy, joyful, and sustainable, and "*Karana*" means cause. So *Tri Hita Karana* means three elements that cause the growth of goodness and well-being. This *Tri Hita Karana* is a concept about welfare in the life of the people of the Island of the Gods consisting of Parahyangan, Palemahan, and Pawongan. This conception is not unique but has universal values for life for the Balinese people and those in front of this earth. Balinese people, who are primarily involved in the world of tourism, have placed land (weakening) as something that has religious values in addition to economic value.

The existence of such a fascinating land of Bali, supported by the hospitality of its inhabitants, has invited the entry of foreigners not only to enjoy the natural beauty of Bali but also to intend to invest. One entry of foreigners as investors to invest in controlling land in Bali is through mixed marriages. Article 57 of Law Number 1 of 1974 and its Amendments to Law Number 16 of 2019 concerning marriage states that a mixed marriage is a marriage between two people who in Indonesia are subject to different laws due to differences in nationality, and one of the parties has Indonesian citizenship. Foreigners who want to control the land in Bali do hidden tricks or carry out legal smuggling through marriage with local Balinese residents (women and men) to control the land of Bali by taking refuge behind the guise of being a husband and wife. In principle, based on the Government Regulation of the Republic of Indonesia Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights and Government Regulation of the Republic of Indonesia Number 41 of 1996 concerning Ownership of Residential Houses or Dwellings by foreigners domiciled in Indonesia; foreigners domiciled in Indonesia are allowed to own one house for a residential house either in the form of a stand-alone house or a unit of flats as long as the house is built on the right of use.

However, many foreigners want to do business and speculate about taking advantage of the beauty of the Natural Land of Bali through mixed marriages. The institution of marriage has very sacred values. It has been used only as a cover for business, such as building Villas for resale with lease rights to foreigners so that without feeling, it turns out that foreigners have controlled the land of Bali, and what is more heart-wrenching is that it turns out that many Balinese people are drifting away without realizing it they have taken advantage of the naivety of Balinese women or Balinese men whose education is lacking, the important thing is to get income and enough money to change the fate. They proudly want to lend their name to their spouse (wife or husband) foreigners (Balinese call *Bule*). The institution of marriage is only used as a cover when they are juridically unregistered marriages. The marriage he performed was only limited to religious Law, as referred to in the provisions of article 2 paragraph (1) of Law No.1 of 1974. Suppose the foreigner no longer meets the requirements to be the holder of certain land rights. In that case, it turns out that the land is still controlled by taking refuge behind the husband and wife bond, allowing foreigners to have controlled the land prohibited by the Basic Agrarian Law.

METHODS

This research belongs to the Empire's legal research (Banakar & Traves, 2005). This is based on examining the Law as a passive norm and as laws and regulations in its implementation, commonly called non-doctrinal or socio-legal research (Soekanto, 2008). This is based on the idea that this research makes a concept regarding the legal aspects of land tenure by foreigners in Bali



for the benefit of the tourism business under the guise of mixed marriage diladation by the philosophical *Tri Hita Karana*, critically analytical and philosophical with conclusions that aim to produce new findings as answers to the main problems that have been determined. It will also be analyzed using a descriptive-analytical method by describing applicable laws and regulations related to legal theory and positive law enforcement practices related to these problems.

RESULT AND DISCUSSION

Law of the Republic of Indonesia Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia in Article 4 states that Indonesian Citizens are:

- a. Any person who is based on laws and regulations and based on agreements between the Government of the Republic of Indonesia and other countries before this Law came into force has become an Indonesian citizen;
- b. Children born from the legal marriage of an Indonesian citizen father and mother;
- c. A child born from the legal marriage of a foreign citizen father and mother;
- d. Children born from the legal marriage of a foreign citizen father and an Indonesian citizen mother;
- e. A child born from a legal marriage to an Indonesian citizen mother, but the father has no citizenship or the Law of the father's home country does not grant citizenship to the child;
- f. A child born within a grace period of 300 (three hundred) days after the death of his father from a legal marriage and his father is an Indonesian citizen;
- g. Children born outside the legal marriage of an Indonesian citizen mother;
- h. A child born outside the legal marriage of a foreign citizen mother recognized by a father of Indonesian citizenship as his child, and the recognition is made before the child is 18 (eighteen) years old or unmarried;
- i. Children born in the territory of the Republic of Indonesia who, at the time of birth, need clarification about the citizenship status of their father and mother.

If these criteria are not met, the person is categorized as a foreigner, which results in a firm difference in rights and obligations with Indonesian citizens in terms of obtaining land rights. In addition to these criteria, foreigners who intend to own a house must be foreigners who are domiciled/residing in Indonesia, and their presence in Indonesia provides benefits for national development (article 1 Paragraph (2) of the Government Regulation of the Republic of Indonesia Number 41 of 1996). The explanation of the provision states that foreigners whose presence in Indonesia provides benefits for national development are intended and that the ownership of residential houses or dwellings for foreigners should not be seen solely from the interests of the foreigners concerned. However, moreover, their presence in Indonesia must provide benefits or contribute to national development. In other words, the meaning of foreigners whose presence in Indonesia is more indicative of an economic understanding (Lubis & Rahiu, 2013; p.80).

The rapid flow of technology and information has improved human relations with one another. A human being is no longer limited to the territory of a country. However, it has also penetrated the international area, including in terms of marital relations, including interaction relations to invest. The opportunity to invest in Indonesia, especially in Bali, which relies on international tourist destinations, has a positive impact in various aspects. However, about issues related to the granting of land rights to foreigners, as stated by Sumardjono, an accommodating attitude is needed but based on the consistency of the concepts that apply in our national land law. If the existing concept can juridically account for the solution, then its operationalization requires supporting legal tools so that legal certainty is guaranteed for all interested parties (Sumardjono,



2005; p.163.). Although foreigners are allowed to buy and own a house with a specific land rights status as stipulated in the Government Regulation of the Republic of Indonesia Number 41 of 1996 concerning The Ownership of a Residential or Residential House by a Foreigner domiciled in Indonesia, in the Government Regulation of the Republic of Indonesia there is still confusion of understanding and inconsistency. Article 2 number 1 letter b states that: Foreigners can have a house that stands alone on a plot of land of the right of use over state land or on a plot of land controlled under an agreement with the holder of land rights. The agreement must be in written form with the deed of the Land Deed Making Officer and must be registered (Article 3 and article 4).

Government Regulation of the Republic of Indonesia Number 41 of 1996 talks about the ownership of residential houses / dwellings (buildings) by foreigners using ownership (rights to) their land either over state land or through agreements with land rights holders, and if through agreements it must be in the form of a deed of the Land Deed Making Officer (because the object of the agreement is the granting of new rights to land) and must be registered. So important is the land for humans has caused the land to have a high economic value even more for the benefit of investment in the field of tourism so that by Ter Haar it is called that land is a place to live, provide life and livelihood, the land where humans are buried, and the relationship is magical-religious (Ter Haar, 1991; 49). Along with this view of Ter Haar, Land by Patrick Mc Auslan, in his opinion, mentions that land can mean investment, a source of economic profit that can be translated in an abstract sense, namely as sweat that pours out of the human body and all the consequences of the view of life that grows from it (Patrick Mc. Auslan, 1986; 22).

Regarding the control of the land to invest by foreigners in Bali, many use the guise of mixed marriages. In connection with the issue of mixed marriages involving persons of different nationalities, based on Article 58 of the Marriage Law Number 1 of 1974, people who perform mixed marriages can obtain their citizenship from their husband or wife and may also lose their citizenship according to the methods specified in Law Number 12 of 2006 concerning citizenship of the Republic of Indonesia. Regarding the citizenship status of mixed marriages, Indonesia adheres to the principle of equality of position that women and men can lose citizenship due to mixed marriages. This can be seen in the provisions of Article 26, Paragraphs (1) and (2), which determine:

- (1) Female Indonesian citizen who is married to a man. A foreign national loses the citizenship of the Republic of Indonesia if, according to the Law of her husband's home country, the wife's citizenship follows the husband's citizenship as a result of a mixed marriage;
- (2) A male Indonesian citizen who marries a woman who is a Foreign Citizen loses the citizenship of the Republic of Indonesia if, according to the Law of his wife's country, the husband's citizenship follows the wife's citizenship as a result of the marriage.

In Law Number 1 of 1974 concerning marriage and its Amendments to Law Number 16 of 2019, it is stated that the citizenship status of the wife is not in itself subject to the citizenship status of the husband and is not by itself subject to the Law applicable to the husband. Considering these provisions, it can be understood that the position of husband and wife can both lose citizenship. That is, men and women who perform mixed marriages will follow the status of husband or wife if the state wishes. However, if not, each wife or husband can retain their citizenship.

The citizenship law allows Indonesian citizens who perform mixed marriages to choose their citizenship, which means the husband can obtain the wife's citizenship and vice versa. The wife can obtain the husband's citizenship if her own will determines to follow the husband's citizenship. A male or female Indonesian citizen who is married to a foreigner loses his Indonesian citizenship



if and when he, within one year after the marriage takes place, declares a statement to renounce his Indonesian citizenship.

Related to the legal issue that is the focus of the study in this article is regarding the control of land as an object of investment by foreigners as a result of a mixed marriage, it has the potential to give rise to the existence of the marital property unless they make a marriage agreement. Analyzing marital property in the Marriage Law is regulated in Article 35 to.d. Article 37, while in the Criminal Code. Civil can be seen in detail from Article 119 to Article 198. In the provisions of Article 35 of the Marriage Law, it is stated that:

- (1) Property acquired during the marriage becomes joint property;
- (2) The estate of each husband and wife and the property acquired by each as a gift or inheritance shall be under the control of each to the extent that the parties do not specify otherwise.

Regulation of marital property in the Criminal Code. Civil with the Marriage Law is very different because it is in the Criminal Code. Civil only recognizes one group or class of property in marriage, namely the property of the husband and wife union. In contrast, the Marriage Law recognizes the separation of inherited and joint property between husband and wife.

Mixed marriage, as specified in Article 57 of the Marriage Law, is "Marriage between a man and a woman, which in Indonesia is subject to different laws due to differences in nationality and one of the parties has Indonesian nationality." The legal consequences of this mixed marriage are mainly on the property, including, "ownership of immovable objects in the form of land and everything attached to the land," Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles, which is from now on abbreviated as Basic Agrarian Law in Article 21 Paragraph (3) states that Foreign Nationals are not allowed to own land even though the acquisition is an acquisition from the result of the existence of the common property, namely the mixing of property in Article 21 Paragraph (3) it is stated that Foreign Nationals are not allowed to own land even though the acquisition is an acquisition from the result of the existence of the common property, namely the mixing of property in marriage. Upon his acquisition, foreigners must release their land within one year. If the land passes, the land will fall to the State.

Empirically, this mixed marriage in tourist areas such as Bali is widely used by those who carry out mixed marriages to control land for residential houses or dwellings that are used as objects of continuous investment, such as property rights, without any agency conducting supervision. Based on the results of empirical observations in several Bali areas, such as the Seminyak area, Canggu in Badung Regency, Ubud in Gianyar Regency, and Lembongan in Klungkung Regency, many couples under the guise of mixed marriages factually do Villa business by controlling land for investment. The provisions governing the possibility of foreigners to own a Residential house or dwelling are regulated in Article 2 of Government Regulation Number 41 of 1996, namely:

1. A stand-alone house built on a plot of land :
 - a. Right of use over state land;
 - b. Which is controlled under an agreement with the holder of land rights.
2. Units of flats built on plots of land Right of use over state land.

The classification of residential or residential houses for foreigners needs to be explained in the Government Regulation of the Republic of Indonesia Number 41 of 1996. However, it is in the provisions of article 2 Paragraph (2) of the Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 7 of 1996 concerning the requirements for ownership of residential houses or dwellings for foreigners. Article 2 Paragraph (2) of the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 7 of 1996 concerning the

requirements for the ownership of residential houses or dwellings for foreigners states that the classification of residential houses or dwellings for foreigners is houses built or purchased and the units of flats that foreigners can purchase are flats that do not include the classification of simple houses or elementary houses.

Arrangements regarding the ownership of residential houses by foreigners with concepts until now have yet to exist. Often this is compared to overseas circumstances that allow granted homeownership rights for foreigners for 90 years, as in Malaysia, while in Indonesia, it is only 20 years with the right to use state land (Helen Budiono, 2015; p.266). The right to use state land based on the provisions of article 42 letter b of the Basic Agrarian Law Jo. Article 49 Paragraph (2) letter e of the Government Regulation of the Republic of Indonesia Number 18 of 2021 can be given to foreigners within a certain period. Ownership of houses built on land controlled based on a written agreement with the holder of land rights is also possible under Article 52 of Law No.1 of 2011 concerning Housing and Settlement Areas. Foreigners often use land tenure based on "Written Agreements" with land rights holders to control land continuously to invest like a property rights holder. The basis used is to make a "marriage agreement." Married couples who carry out mixed marriages, which agree to the separation of property, obviously can still control land with property rights even though the control is for business and not for residence, as referred to in Article 52 of Law No. 1 of 2011. However, they control land to invest in housing or as villas for foreigners.

Responding to such legal facts, the author agrees with his opinion Moh. Israeli (Moh. Isnaeni, 2016) said that mixed marriage is international because of a foreign element. Namely, one party is subject to a different legal system. Moreover, there is a strong impetus from this current globalization. This international marriage should be addressed wisely and wisely so that the Indonesian nation is part of a dignified world society. Related to legal issues that are the focus of the study, it is better for agencies that have the authority to carry out control to be clarified so that in the event of violations of land tenure by foreigners to invest can be detected by the authorized agency to take steps to determine the rights and obligations as parties who control land for investment. Violations of the Law, such as legal smuggling of residence permits in Indonesia, avoidance of business taxes, and also the handing over of cash from unclear sources to their spouses who are Indonesian citizens to buy land to be controlled continuously without any authority to carry out supervision /controlling) and enforcement. So that the legal consequence that occurs is the emergence of losses in the form of loss of State or local government income in terms of the imposition of tax obligations, so it is necessary to affirm which agencies are authorized to control/supervise the legal acts of land tenure for investment for foreigners who take advantage of the loopholes in the written agreement as referred to in the decision of the Constitutional Court Number 29 / PUU-XIII/2015.

CONCLUSION

The control of land by foreigners to invest in Bali is very difficult to supervise by the government because those who perform this mixed marriage, on the one hand, have made a marriage agreement for the separation of property, so there is a separation of the husband's property. The property of a wife of different nationalities, and one is an Indonesian citizen. Under the laws and regulations, Foreigners can only control land with the right of use for a certain period. However, by taking advantage of the loopholes in the written agreement given by the provisions of Article 52 of Law No.1 of 2011 concerning Residential areas and Settlements, it has been used by those who carry out this mixed marriage to make marriage agreements to be able to control the land in various places with Property Rights for doing business, so that juridically it does not violate the Law. However, empirically/factually, there has been legal smuggling that harms the State

because they no longer meet the requirements to be the holders of rights, both as holders of the right of use and property rights.

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