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Bali, Indonesia
28–29 July 2021

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PREFACE

The 2nd International Conference on Business Law and Local Wisdom in Tourism (ICBLT) will be an annual event hosted by Universitas Warmadewa, Denpasar, Bali. This event held on 15-16 November 2021 at zoom conference.

"Business Law and Local Wisdom in Tourism" has been chosen at the main theme for the conference, with a focus on the latest research and trends, as well as future outlook of the field of Call for paper fields to be included in ICBLT 2021 are Local Wisdom (Customary Law); Law on Business, Business Competition, and Prohibition of Monopoly; Law on Land and Environment; Law on Investment; Law on Criminal Act of Corruption and Asset Recovery Law on Licenses and Labor; Law on Tourism; Law on Transportation; Law on Immigration Intellectual Property Rights; and Law on Resolution of Tourism Investment and Business Disputes.

This international seminar aims to facilitate scholars, researchers, practitioners, and students to share their thoughts on the latest trends on Business Law and Local Wisdom in Tourism whilst building network in an engaging environment. The participants of this conference will have a chance to enrich knowledge and discuss common challenges and offer creative solutions. By this, we hope to enhance and contribute knowledge for a better civilized community.

Committee

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"Sunflower Garden" Eco-Tourism Area Development Strategy in Batannyuh Belayu Village, Marga District, Tabanan Regency

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ABSTRACT
Tourism today has become a necessity for all levels of society. Therefore, tourism management must be carried out seriously by involving related parties. The Central Government also has exceptional attention to Bali as an area with enormous tourism potential and much foreign exchange. The central government and local governments issued several policies to support tourism development in Bali and make Bali an international tourism area. The Bali Provincial Government, through the direction of policies and programs implemented, is the Vision of "*Nangun Sat Kerthi Loka Bali*." Which contains meaning of maintaining the holiness and conformity of Bali's nature and the contents to embody prosperous and happy life of Balinese attitude, from time to time towards the life of Balinese manners. One of the villages in Tabanan Regency, Batannyuh Belayu Village, has an innovative breakthrough, namely the "Sunflower Garden" Ecotourism Area with the main focus on sunflower gardens and equipped with several Balinese ornaments. This time, the formulation of the research problem is how is the Strategy for developing the "Sunflower Garden" ecotourism area in Batannyuh Belayu village, Marga District, Tabanan Regency. The method used in this research is qualitative method through literature study by adding the results of interviews. Moreover, this research brief concludes that the Sunflower garden ecotourism area is still promoting the cultivation of ecotourism areas according to the community itself also the absence of cooperation with various parties to advance the area, suggestions from researchers so that in the future this ecotourism area will be intensified in terms of promotion. so that this eco-tourism area continues to attract tourists.

Keywords: *Ecotourism, Sunflower Garden, Tourism.*

1. INTRODUCTION

Nowadays, tourism has become a necessity for all levels of society. Therefore, the management of tourism must be carried out seriously by involving related parties. In recent years, Ecotourism has proliferated. So those promotions are carried out on a large scale to gain profits and opportunities in the ecotourism market by Realizing the massive potential of the tourism sector for the economy of a country, especially Indonesia, which has extraordinary natural and cultural potential. The Central Government also has exceptional attention to Bali as an area that has enormous tourism potential. The Central Government and Regional Governments issued several policies to support tourism development in Bali and make Bali a tourism area on an international scale.

The tourism sector is the sector that has an essential role in supporting the economic development. The tourism sector is in direct contact with the peripheral community. With tourism, it will have positive implications in increasing income and welfare for the surrounding community. In addition, the tourism sector also contributes significantly to the country's foreign exchange. This can be seen from the number of foreign tourists to Bali from 2015 to 2019; namely, in 2015, the number of foreign tourists to Bali was 4,001,835 people. In 2016 there were 4,927,937 people, the number of foreign tourists to Bali, in 2017, number of foreign tourists. 5,697,739 people to Bali, 6,070,473 people in 2018, number of foreign tourists to Bali, and in 2019, number of foreign tourists to Bali was 6,275,210 people (https://bali.bps.go.id/, accessed 13 November 2020).

The data above shows that every year the number of tourists visiting Bali has increased so that it directly adds a significant contribution to the country's foreign exchange.

The above proves that travel development has led to the development of a Tourist Destination Area (DTW). The tour that is carried out is inseparable from the movement of tourists. In line with the population dynamics, the movement of tourism development penetrates various fields of terminology. The potential development of the tourism sector is often associated with its role as one of the strengths of the source of contribution to regional income, especially with the existence of regional autonomy at this time, where the existence of regional autonomy makes each region compete to explore its potential and develop potentials that are expected to provide added value for regional revenues or usually the tourism sector is more developed to increase its contribution to Regional Original Income (PAD). Regional Original Revenue (PAD) is a significant source of revenue for routine and development financing in an autonomous region. Tourism destinations in Indonesia is mostly located in some islands, one of which is in Bali island.

Bali offers many tourism destinations, such as marine tourism, traditional and cultural tourism, nature reserve tourism, and agricultural tourism. Agricultural tourism which currently become the focus of Bali Provincial Government is *subak*. It can be seen from the issuance of Bali Provincial Regulation Number 9 in 2012 with regard to Subak. The Central Statistics Agency in Bali recorded 77,986 *subak*, spread over eight regencies and one city (https://bali.bps.go.id/, accessed 13 November 2020).

Ecotourism refers to the tourism activity which concerns on preserving tourism resources (Giri and Adikampana, 2018). The development of subak as Ecotourism can create the welfare and economy of the community. It can also function to build the awareness of environment and culture in the local communities and tourists. According to the Bali Provincial Regulation Number 9 in 2012, *subak* is as traditional organization in water use and or plant management at the farming level in Balinese indigenous peoples that is socio-agrarian, religious, and economical, which historically continues to grow and develop.

Bali Provincial Government, through the direction of policies and programs implemented, is the Vision of *Nangun Sat Kerthi Loka Bali*, contains meaning of maintaining the holiness and harmony of Bali's nature and contents to create prosperous and happy life of Balinese attitude, time to time towards the life of Balinese manners. Tabanan is located about 35 km west of Denpasar City. In addition, Tabanan is one of the areas that received the idea for some of its villages to be used as Tourism Villages, where Tabanan itself gets a share of dozens of villages that must be developed into Tourism Villages. One of them is Batannyuh Belayu Village, Marga District. Batannyuh Belayu Village has various potentials that can be developed into an ecotourism area. To better understand these progressive efforts, an ecotourism program was launched in Batannyuh Village, an innovative breakthrough, namely "Sunflower Garden," which is a beautiful sunflower and Celosia flower plantation by utilizing rice fields that have been transformed into beautiful flower gardens. In the Ecotourism area, Sunflower Garden is also equipped with selfie spots, with several architectures such as a miniature Eiffel tower and some traditional Balinese ornaments. In the management of this ecotourism area, problems were found related to the lack of awareness of the peripheral community in terms of promotion for Sunflower Garden ecotourism area.

2. METHOD

The method used is qualitative research method emphasizing literature study through adding interview data. Main types of the references used in the study of literature are journals and scientific articles. The data obtained from the literature and the results of these interviews will be used to analyze and explain the problems in a discussion. The number of informants interviewed amounted to 7 people, namely from the Tabanan Regency Tourism Office, Batannyuh Belayu Village Perbekel, Batannyuh Blayu Village Customs Village Head, Sunflower Garden Ecotourism Manager, and the Batannyuh Belayu Village community.

3. RESULT AND DISCUSSION

The state-of-the-art research is taken from several examples of previous research as a guide or example for current research. Examples are taken in the form of journals about the Strategy of developing ecotourism areas. This is based on problems that occur because there is no maximum support from the government in providing supporting facilities and the low quality of human resources related to knowledge about cultural packaging techniques into creative products; besides that, the problem in tourism management in ecotourism areas is the absence of creative SMEs, which can package the existing tourism potential as well as market and promote tourism using information technology while maintaining the sustainability of natural resources (Ecotourism). Based on this analysis, the researchers used several theoretical reviews from related research, namely:

a. Strategy

In the book Strategic-Knowledge Management quoted by Kusumadmo (2013), the word strategy etymologically comes from the Greek word Strategos which is formed from the word stratos or soldiers, and the word ego or leader. In Oxford Learner's Pocket Dictionaries (2010), Strategy (noun): scheme of action designed to reach overall aims. According to the book Big Indonesian Language Dictionary (KBBI) in 2007, Strategies: (1) the knowledge and art of utilizing all the resources of nations to carry out specific policies in war

and peace; (2) the knowledge and art of leading armies to pass the enemy in war, to obtain favorable conditions; (3) careful planning of activities to achieve specific goals; (4) a good place based on war tactics.

Jauch and Glueck (2000) state that strategy as a cohesive, comprehensive, and integrated plan that match the company's advantages with the environmental challenges and designed to assure that the company's main goals can be reached through the proper implementation. According to Hamel and Prahalad quoted by Rangkuti (2002), "strategy means a tool to achieve company goals regarding long-term goals, follow-up programs, also the resource allocation priorities."

Strategy is the fundamental design of present and planned goals, source mobilization, interactions with markets, competitors, and other environmental factors. According to Marrus (2002:31), strategy is as a process of establishing the plan of top leaders that focuses on the organization's long-term goals, accompanied by the preparation of method or effort on how to reach these goals. Quinn (1999:10) defines strategy as the form or plan that integrates the main goals, policies, and series of actions within organization into unified whole. According to Umar (2011: 31), strategy refers to an incremental action (constantly increasing) and continuous and carried out based on what customers expect in the future.

Thus, it can be concluded that strategy is the way to reach the goals that have been planned by explaining what must be achieved, where to focus, and how which sources and activities will be allocated to each product market in meeting environmental opportunities and challenges and to achieve competitive advantage.

b. Development Strategy

According to Iskandar Wiryokusumo, development is an educational effort, both formal and non-formal, that is carried out, planned, directed, regularly, and responsibly to identify, grow, guide, and evolve personality basis that is balanced, intact, and harmony, knowledge, and skills by his talents, desires, and skills, as the provision for further on his initiative to add, improve, and develop himself, as well as his environment towards the accomplishment of optimal human dignity, quality and ability, and independent personality. Strategy development refers to comprehensive effort, which needs support from the top management designed to improve the effectiveness and health of the organization through the use of some intervention techniques by applying knowledge derived from behavioral sciences. Strategy development is also as process that intensify organizational effectiveness by integrating individual desires for the growth and development of organizational goals. Strategy formulation is essential after knowing the threats facing the company, the opportunities or opportunities it has, and the strengths and weaknesses that exist in the company. Strategy formulation includes determining the company's mission, achieving the objectives, developing strategies, and also establishing policy guidelines.

c. Ecotourism Concept

Area is based on a functional grouping of certain activities, like industrial areas, trade areas, and recreation areas. Ecotourism refers to the tourism concept that reflects environmental perception and follows the guidelines between balance and environmental sustainability (Ihsan et al., 2015). It is an alternative concept of tourism that prioritizes natural, community, and social values that allow for positive relationship between the actors (Lappo et al., 2010). It is a tourism activity directed to integrate economic development while generating funding for efforts to conserve natural resources as an attraction (Nadiasa et al., 2010). Ecotourism is a journey of a person or group to nature-based places and aims to conserve the environment and provide a livelihood for the surrounding community (Hayat, 2018).

The impact of Ecotourism can impact the environment, social economy, and impact on the economy. According to Ayuningtyas and Dharmawan (2011), Ecotourism has both positive and negative impacts on the environment, social, economic, and economic impacts, namely:

a. Positive Impact of Ecotourism
   The positive impact that occurs is the addition of income obtained from work in the ecotourism sector. Another positive impact is that residents are aware of protecting the surrounding environment by throwing garbage in its place, not doodling on trees, and not cutting down trees carelessly. Locals are more open to tourists or outsiders
b. Negative Impact of Ecotourism
   The existence of Ecotourism causes conflicts due to the non-participation of the population in cooperation activities. Another negative impact is on the status of the settlement. There is noise due to tourists coming. Increased waste due to food and beverage waste brought by tourists. The level of communication between residents and their families, neighbors, and village officials has decreased relatively in intensity due to the busyness of each resident.

According to The International Ecotourism Society (2015), ecotourism is responsible for travel to natural areas that conserve the environment, support the prosperity of local communities, involves interpretation and environmental education. The concept of ecotourism tries to merge three essential components, namely nature conservation, empowering local communities, and intensifying environmental consciousness. The principles of ecotourism include: minimizing physical, social, behavioral, psychological impacts, building environmental consciousness, culture and respect. Provide positive experience for the visitors and hosts. Give direct financial benefits for the environmental

conservation and generate financial benefits for local communities and private industry. Give memorable interpretive experiences for the visitors to intensify sensitivity to the political, environmental, and social climate of tourist destinations, build, operate facilities or infrastructure by minimizing environmental impacts, and recognize indigenous communities' rights and spiritual beliefs and empower them.

According to Gumelar S. Sastrayudha (2010), in the process of developing and fostering integrative ecotourism, the implementation indicators used include:

a. Environmental approach.

The definition and principles of Ecotourism have direct implications for tourists and travel service providers. Tourists are required to have environmental awareness and high socio-cultural sensitivity. However, they must be able to do so in tourism activities through the empathetic characteristics of tourists, being encouraged to spend extra for nature conservation. An in-depth analysis of the parties interested in environmental conservation and conservation needs to be carried out to identify those interested and take advantage of the environment as part of their lives.

b. Participation and empowerment approach.

The approach to participation and empowerment of local communities in the development of ecotourism must result a model of community participation. The participation of the local community is involved in the preparation of planning from the beginning, where the community can express ideas that can provide the feel of participatory planning and encourage them to evolve pure ideas without control from interested parties. Some elements that can increase ideas are economic, conservation, social, political, environmental regulation, empowerment and reclamation of damaged environment, empowerment of local arts and culture, and many more.

c. Infrastructure approach.

Provision of basic infrastructure is important activity to strengthen the ecotourism development. Roads, bridges, clean water, telecommunications networks, electricity, and environmental control and maintenance systems, are physical elements built by avoiding environmental destruction or eliminating the realm of beauty in the ecotourism locations. High technology must avoid environmental damage and damage to the landscape that is inverse to the configuration of the natural surroundings.

d. Ecotourism area zoning approach.

The placement of facilities are divided into three zones: the core zone, buffer zone, service zone, and also development zone.

3.1 Sunflower Garden Ecotourism Area Concept

Belayu Village, Marga District, Tabanan Regency, has inaugurated an Ecotourism Area called Sunflower Garden in December 2018. The Sunflower Garden Ecotourism Area is the flagship destination of Belayu Village. Sunflower Garden presents the charm of a beautiful view with an expansive flower garden plus a unique selfie spot, making this place one of the must-visit places. This place is very suitable as the leading destination for sightseeing on the weekends. Sunflowers garden at Marga Tabanan has only been open since the beginning of January 2019.

Hence, it is still relatively new, so not many people know about the existence of this tourist attraction. However, those who use social media such as Instagram and Facebook can find information more quickly and easily. This place is specially designed for those who like to take selfies, because indeed several rides for selfie photo spots are provided here with a background of beautiful flower gardens, especially sunflower gardens which can rarely find, unlike the gemitir flower garden (marigold), which has long been popular and exists in several places in Bali.

The sunflower garden or garden at the Sunflowers garden in Marga Tabanan provides an alternative to a unique vacation destination. The sunflower garden looks beautiful, especially when the flowers bloom yellow amid green nature, making the scenery excellent. Not only sunflowers but there are also marigold flowers (gemitir) that are beautifully arranged and shaped. Besides that, several spots and platforms are provided for those who like selfie photos; what is found here will present a new pleasant natural atmosphere, which must be enjoyed and can make happiness. Fresh mind again. This sunflower garden in Tabanan Marga is relatively easy to reach; according to the marker on google maps above, the distance from Denpasar city is about 24 km, while from Tabanan city it is about 32 km. The Sunflowers garden attraction is in the same direction and adjacent to several other attractions, such as the Taman Ayun attraction, only a 15-minute drive or about 6 km. From the monkey forest, Alas Kedaton is 5 km away. Besides being easily accessible, its existence can complete the list of the latest tourist attractions in Bali.

Visitors from Sunflowers garden are still dominated by residents, especially young people, flowers that are synonymous with the beauty of a woman, will blend harmoniously with your young women, including lovers, can capture the memories of their trip to this place, Moreover, being one of the new tourist destinations in Bali, will provide valuable memories for you, especially when you can be here when the flowers begin to bloom, will display a romantic and dramatic natural feel. This or sunflower garden, known as the Sunflowers garden, utilizes rice fields that have begun to become unproductive by skilled hands, creating a potential new natural beauty, and is now a recreational or tourist destination. In this place, there are not only selfie spots or flower gardens, among the flower gardens, there are several gazebos that can be used as a place to rest while enjoying the beauty of the garden, the breeze touching the body feels so fresh, the natural atmosphere here is

peaceful and calm in its beauty, so it is also ideal as a place to relax, with family.

To find out and get to know more about the existence of these sunflowers, please note, these flowers also do not live long because there are times when the flowers are old and no longer blooming; however, in this garden, the planting of flowers with certain ages has been arranged, so that visitors who come here can find flowers in bloom. The contours of the soil here are flat, but when the paddy fields are wet, when it rains, the soil will be a little sticky on the footwear, so use appropriate footwear. The Sunflowers garden at Marga Tabanan, as a new tourist spot, continues to receive arrangements from the manager so that it will continue to be better, including perhaps other more complete facilities and rides in the future.

Currently, this place is also equipped with food and drink stalls, many places to relax, and a playground for children. However, at this time, the vehicle parking for cars is still on the side of the road. Currently, Sunflowers garden can be used as a new tourist destination in Tabanan Bali. Visits will be more crowded on weekends or holidays. The price of admission is Rp. 10,000 per adult and Rp. 5,000 per child. However, it is essential to note that this Sunflower garden does not always present sunflower plants because, at certain times, the sunflowers die, so visitors cannot find sunflowers at all, and visitors can see other planets flowers that are also growing. Well, in this area. Instead, visitors can enjoy the beauty of Celosia flowers suitable in the lowlands and imported from Gunung Kidul, and the flowers are colored yellow, blue, green, and red.

3.2 Batannyuh Belayu Village Overview

Batannyuh Village is a village located in Marga District, Tabanan Regency, Bali Province. Based on its geographical condition, Batannyuh Village has an area of approximately 200 hectares/m2. Of the area, most of which are rice fields and residential areas. The village, located offline more than 7 km from Tabanan City, is the center of the timber industry, and 75% of the population is involved in this field. The population of Batannyuh Village is predominantly Hindu, with a population of 2,593 people. In Batannyuh Village, many of the residents have residences with traditional Balinese designs, especially many use carvings, primarily because most of the residents work as carvers.

3.3 Approach to the Environment

The people of Batannyuh Belayu Village have implemented a picket system in this ecotourism area. This is done in order to increase awareness of the environment addressed to the community. This picket system is carried out in rotation every day by residents.

3.4 Participation Approach in Community Empowerment

A participatory approach has been taken by the village government of Batannyuh, Belayu, towards community participation in the management and development of the "Sunflower Garden" ecotourism area. The following approaches are taken, including: (1) Public Education on Ecotourism Areas, (2) Development of Ecotourism Areas, (3) Management of Ecotourism Areas. This has been done to attract the people's interest of Batannyuh Belayu Village towards Ecotourism Areas and the critical role of ecotourism areas at this time.

3.5 Sunflower Garden Ecotourism Area Development Strategy

The development strategy that can be carried out is the Ecotourism-based Creative House Concept. This concept offers education to the public in terms of knowledge, interest, and concern for the natural environment. The Creative House concept is implemented with a scheduled system by the village government towards the surrounding community. The development strategy with this concept will maximize the management of this ecotourism area.

4. CONCLUSION

Ecotourism area is tourism by utilizing the surrounding nature to introduce the natural potential in the local village. This is intended to develop the natural potential of the village, and the community is sensitive to the potential of their respective regions. Therefore, a development strategy was implemented to become the principle of ongoing ecotourism development, one of which is the "Sunflower Garden" ecotourism area in Batannyuh Belayu Village. This ecotourism area raises the attraction of sunflowers as a focus to attract tourists. Meanwhile, the land used is community rice fields which have been transformed into flower gardens. This is done to support the village economy, which is in a slump due to the COVID-19 pandemic.

It is hoped that this development will also occur throughout the island of Bali in order to develop the potential of each village. In order for the continuity of the relationship between humans and the natural environment. The government is expected to support the community in developing Ecotourism in terms of policies, material assistance, and others and assist the private sector in conducting promotions related to ecotourism areas to create good stakeholders between the government, the private sector, and the community.

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The Effectiveness of Licensing on Tourism Business Activity in the Area of the Toba Lake

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ABSTRACT
Establishment of Ministry of Tourism and Creative Economy at national level and the Department of Tourism in each region, the Indonesian government has focused on tourism. Through Government Regulation on Spatial Planning of the National Park, the Indonesian government announced ten tourism sites in Indonesia at Lake Toba (Rencana Tata Ruang Wilayah Nasional). It follows the outcomes of the United Nations Educational, Scientific, and Cultural Organization's (UNESCO) International Conference Global Geopark, held in Lombok from August 31 to September 2, 2019, which designated the Toba Caldera as a UNESCO Global Geopark. Under the objectives identified, the Government of Indonesia may easily promote Lake Toba as an international tourism market, attracting tourism businesses interested in diving, snorkeling, hotels, cafes, golf courses, and tourist schools. The government of Indonesia has some rules of tourism, particularly in Lake Toba, in the form of a Tourism Law, a Regulation of the President of the governing body, the manager of tourism in Lake Toba, local Regulations about the Arrangement of the Area of Lake Toba, and local Regulations about the Team Coordination of integrated tourism evolvement program. As stated in Regulation of Fundamental Agrarian Law, the entire earth, water, and air space, as a gift from God Almighty, plays a crucial role in constructing a fair and prosperous society in Indonesia. Then there is the Law on Environmental Protection and Management states that proper and healthy environment as one of every Indonesian citizen's rights, as specified by Article 28H of Indonesian Constitution in 1945. As a result, the fair and equal application of several laws revealed itself in the shape of tourism business licensing.

Keywords: *Licensing, Tourism.*

1. INTRODUCTION

Toba lake is the largest volcanic lake in the world, located in North Sumatra. The depth of Lake Toba is about 450 meters, with a length of 87 kilometers and a width of 27 kilometers. Toba lake is located in 7 districts within the Government Area of North Sumatra Province, namely: Simalungun Regency, Toba Samosir Regency, North Tapanuli Regency, Humbang Hasundutan Regency, Dairi Regency, Karo Regency, and Samosir Regency. Toba lake is one of the tourism places that are in great demand by local and foreign tourists. It is necessary to do maximum development and preservation by the central government, provinces, and district/city governments. In carrying out Lake Toba's development, development, and preservation, a well-coordinated strategy, measures are needed between the central government, provinces, and districts/cities. In supporting the development and preservation of Lake Toba as an international tourism site, comprehensive special regulations are required so that coordination of implementation and division of licensing authority between the center, province, and district/city does not overlap. Tourist Attraction is everything that can be seen or felt (tangible) or that cannot be seen (intangible), which is a driving factor for tourists to visit. In the past, cultural tourism tended to concentrate only on something static such as museums and monuments. Both are the most visible cultural expressions and are easily accessible to tourists.

Article 1 number (3) Law Number 10 in 2009 on Tourism provides an understanding of the tourism, namely: "Tourism is a variety of tourist activities and supported by various facilities and services provided by the community, businessmen, government, and local government." Tourism in Indonesia received special attention from the government to establish the Ministry of Tourism and Creative Economy at the Central level and the Tourism Office in each region. The term tourism

was introduced to replace the foreign term tourism or local tourism. In government regulation Number 26 in 2008 regarding The National Spatial Plan, the government has declared ten tourist destinations in Indonesia, Tourism in Lake Toba through the Government Regulation on National Spatial Plan (RTRWN). This is in line with the International Conference on Global Geoparks by the United Nations of Educational, Scientific, and Cultural Organization (UNESCO) in Lombok from August 31, 2019, to September 2, 2019. Toba caldera as a UNESCO Global Geopark. For these conditions, the Government of Indonesia can easily promote Lake Toba in the middle of the International tourism market. Tourism entrepreneurs want to invest in tourism such as diving, snorkeling, hotels, cafes, golf zones, tourism schools, etcetera.

The Government of Indonesia has several rules governing tourism. Especially in Lake Toba in the form of Law such as Law Number 10 in 2009 on Tourism, and Presidential Regulation Number 49 in 2016 with regard to the governing body of Lake Toba tourism area, and Regional Regulations such as Regional Regulation of North Sumatra Province number 1 of 1990 concerning The Arrangement of Toba lake area, and the Regional Regulation of Toba Samosir Regency number 671 of 2019 concerning the Coordination Team of integrated and integrated tourism development programs of Toba Samosir Regency, which contains rules governing tourism business activities to run well and harmoniously with the surrounding community. As in Law Number 5 in 1960 on basic rules of agrarian staples, in part weighing the letter, a is stipulated that in Indonesia all the earth, water, and space as a gift of God Almighty has a significant role to build a just and prosperous society. Then in Law Number 32 in 2009 on environmental protection and management, in the section weighing letter A, it is stipulated that a good and healthy living environment is the human right of every Indonesian citizen as mandated in Article 28H of the Constitution of the Republic of Indonesia year 1945.

The state of the Republic of Indonesia divides the authority of the government into several parts consisting of central and regional powers or called the system of centralization and decentralization. In conducting tourism business for private parties, one must first obtain a permit before operating the tourist area. The private sector must obtain a government or local government permit in tourism licensing to legalize its tourism business premises. Modern tourism today is also accelerated by the globalization process of the world, causing interconnections between fields, nations, and individuals living in this world. This is intended so that private parties get legal protection for the ownership or implementation of tourism business activities. In addition to these special rules, special agencies/institutions carry out Lake Toba's development, development, and preservation at the central, provincial, and district/city levels. The Central Government, through the President, has established a particular institution that handles the development, development, and preservation of Lake Toba, namely the Lake Toba Tourism Area Management Authority. The establishment of this body/institution was formed based on Presidential Regulation No. 49 of 2016 concerning the Lake Toba Tourism Area Management Authority (hereinafter referred to as PP BOPKPDT).

Based on Article 21, PP BOPKPDT explained that in the preparation of the plan of development, development, and maintenance of Lake Toba, the implementer must involve the relevant ministries, the Provincial Government of North Sumatra, and the Regency/City Government whose territory is related to Lake Toba by referring to the provisions of the Master Plan as stipulated in this BOPKPDT PP. In general, licensing has a coaching function in the sense that with the granting of a business license by the government, businesses can practice or operate doing business. It hints that a business license is an instrument of government policy or local government given to businesses to control economic activities carried out by businesses. The domain of tourism development between the Provincial Government and the Regency Government creates contradiction of authority, namely the occurrence of overlapping authorities.

From the description above, then the formulations of the problem that become the subject of the study/discussion in this research are 1) What is the licensing authority of Provincial Government and Regency Government in North Sumatra in the development of Lake Toba tourism? 2) How Legal Arrangements and Requirements to Obtain a Business License Tourism in Lake Toba Area?

2. METHOD

Normative law research uses normative case studies in legal, behavioral products, like reviewing the Law. The point of the study is Law's conceptual as a norm that acts in society and becomes reference to everyone's action. Thus, normative legal research focuses on the inventory of positive laws, legal principles, and doctrines, the discovery of Law in cases in concreto, systematic Law, synchronization standards, comparative laws, and legal history.

Method used in this research is the approach of the invitation regulation (statue approach). Normative research must undoubtedly use the invitation-invite approach because what will be researched is the various rule of Law that becomes the focus and the central theme of a study.

The data source used to be processed in normative legal research is secondary data, i.e., the study of documents or literature by collecting and examining that can give information needed by the researchers.

3. RESULT AND DISCUSSION

Government organs refer to organs that carry out government affairs both of central and regional levels. From the search for various government provisions, administration can be known, ranging from the highest state administration (President) to the lowest state administration (lurah) authorized to provide permission. This means that various state administrations (including its agencies) grant permits based on their positions at both the central and regional levels. Permits are juridical instruments in the form of judgment, which the government uses in the face of concrete and individual events. Concrete events refer to events that occur at particular time, specific person, certain place, and certain legal facts. Concrete events requested permits and may be issued or required several permits, based on the process and procedure depending on the authorization of the permit, the type of permit, and the organizational structure, the organ of the government authorized to issue the permit.

Authority means the right to use the authority owned by official following the provisions of regulations and usable law. The provision is as barrier to the scope that can or should not be done by government officials or institutions. In the article 18 of Indonesian Constitution in 1945, it is stated that "the Unitary State of Indonesia is divided into provinces and provinces divided into districts and cities, each of which has local government, which is governed by law." The legal structure here is in state institutions, both in legislative, executive, and judiciary. In the institution worked the state apparatus and government that became the backbone of the work of the legal system in Indonesia. While in the provisions of Article 2 of Law No. 23 of 2014 on Local government, it is explained that "The Unitary State of the Republic of Indonesia is classified into provincial and provincial regions divided into districts and cities." Three government structures above synergize with each other to carry out the functions of government well. Law No. 23 of 2014 on Local Government divides the authority into three types as stipulated in Article 9: (1) Government affairs consist of whole government affairs, concurrent government affairs, and general government affairs. (2) The absolute governmental affairs as referred to in paragraph (1) 33 shall be governmental affairs fully authorized by the Central Government. (3) Concurrent government affairs as referred to in paragraph (1) shall be government affairs divided between the Central and Regional Governments of the Province and Regency/City Region and handed over to the regions as the basis to conduct regional autonomy. (4) The general government affairs shall be government affairs that become authority of the President as the head of government.

Reviewing the territorial boundaries of the authority of the Provincial Government with the District/City can be known from the provisions of Article 13 paragraph (3) and (4) Law Number 23 in 2014 on Local Government. The authority of the Provincial Government consists of government affairs located across districts/cities, the users cross the district/city, the benefit or negatively impact across districts/cities, and the use of resources more efficiently if done by the province. The authority of the district/city consists of government affairs located in the district/city, government affairs whose users are in the district/city, government affairs whose benefits or negative impacts are only in the district/city, and government affairs that use resources more efficiently when done by the district/city. Through the Department of Culture and Tourism of North Sumatra, the government of North Sumatra plays a important role in Toba lake Tourism's development. This can be seen from the 12 development authorities listed in the North Sumatra Regulation Number 5 in 2018 regarding the Master Plan of Tourism Development of North Sumatra Province in 2017-2025. Carrying out significant role as above, indeed not separated from the constraints in carrying out the authority of lake Toba tourism development. These constraints can occur in the internal factors of the Department of Culture and Tourism of North Sumatra Province and constraints from externals stemming from the role of the Regency or City Government in the development of Toba lake.

Utrecht provides the understanding of permission as follows: Where the rule maker does not forbid an act, but still allows it as long as it is held in prescribed manner for each factual matter, then act of the state administration that allows the act is a permit. In the modern state of Law, the task of government authority is not only to defend order and security, but also to seek the general welfare. To carry out this task to the government, it is given authority in the field of regulation, which from the function of this arrangement appears several juridical instruments to pass individual and concrete events in the form of decisions. One state of law principles is wetmatigheid van bestur or based on the laws and regulations. In other words, any government legal action, whether in carrying out the regulatory functions service functions, must be based on the authority given by the applicable laws and regulations. Performing and enforcing the Law's approving authority **need** authority because authority can give birth to juridical instruments. Nevertheless, the government needs to pay attention to the issue based on the authority obtained from the applicable laws and regulations. In general, permission applications must follow specific procedures are determined by the government as an approver. In addition to having to travel through specific procedures, the permit applicant must also meet the requirements determined unilaterally by the government or its licensors. Permission as one type of beschikking has the form and properties: (1) Constitutive, specific actions or behaviors (concrete acts) must be met, which may be penalized if not met. 2) Conditionally, the assessment of

an event to be issued permission may be seen and assessed after the required acts or behaviors happen.

Supervision in the Implementation of Licensing and Tourism Business is carried out by personnel of the Office of Tourism and Culture of each district around Lake Toba. Currently, the Government Republic of Indonesia wants to make the Lake Toba area a Monaco of Asia. The government is working to improve the region of Lake Toba. Any community efforts that, in this case, it falls into the type of Tourism Business, employers are obliged to registering their business premises through the Office of the Investment Agency and Integrated Licensing Samosir Regency, and later must get a letter of recommendations in advance from the Tourism Office in each district where the business is active.

The permit is a document issued by the Local Government based on Local Regulations or other regulations that are evidence of legality, declaring the shah or allowed a person or entity to conduct certain businesses or activities. Permission is not the same as justification. Suppose the prevailing laws and regulations prohibit the activity of a public member, but the authorized apparatus carries out no enforcement. In that case, the justification does not mean permitted, so it can be said that permission must be a constitutive decision of the Authorized Apparatus to issue a permit. Law No. 10 of 2009 concerning Tourism article 15 paragraphs (1) and (2) stated that "To be able to conduct tourism business as referred to in article 14, tourism entrepreneurs must first register their business to the government or local government" then in paragraph (2) it says "Further provisions on registration procedures as referred to in paragraph (1) shall be stipulated by the Ministerial Regulation." According to the Regulation of the Minister of Tourism and Culture, procedures of obtaining a tourism business license are outlined in the Regulation of Minister of Tourism of Indonesia Number 18 in 2016 concerning Registration of Tourism Business article 15-31. The first step that the entrepreneur must do to obtain a Business License is applying for a principle permit first. Before a Head of Office issues a Business License, the first step that tourism entrepreneurs must undertake is. First, they must apply for a principle permit, which is meant by a Permit Principle is a building preparation permit for entrepreneurs to prepare everything needed in their business activities later. The process of managing permits is also inseparable from the recommendations for establishing tourism businesses provided by the local Tourism, Arts and Culture Office. Requirements to obtain a tourism business license around the district in the Lake Toba region, in general, include: (1) Make a letter of application stamped 6000 addressed to the Regent of Officer. (2) Color Photo Fitting Size 4x6 (2 sheets). (3) Copy of Applicant's ID Card (valid). (4) Copy of Permit Disruption (HO) legalized. (5) Copy of IMB (legalized). (6) Copy of Company Deed (If Incorporated) and its subsidiaries (If Legal Entity). (7) Copy of SIUP/TDP (legalized). (8) Amdal/UKL-UPL documents (for those affected). (9) Copy of NPWP. (10) Photo Location Picture. (11) Certificate of Land Status or Business Location from the Village / Village Head.

Obstacles are inevitable from every activity. There are many obstacles faced in implementing the Law Enforcement of Tourism Business License, such as the lack of public understanding of the Law and the issue of land ownership or business premises that are not owned by the government but managed under community and the Marga Foundation. According to the Head of Tourism Office so far, that has become an obstacle in carrying out the implementation of the task: internal obstacles stemming from the citizens' lack of awareness. Themselves to want to be licensed because there are no local regulations that specifically regulate tourism in Samosir and external barriers that come from entrepreneurs who do not get approval from the surrounding environment to operate their business.

Several obstacles are faced in implementing supervisory and Law enforcement duties in the tourism business: 1. Lack of personnel in the environment of Department of Culture and Tourism in Samosir 2 Regency. Lack of human resource in tourism 3. Supporting facilities of law enforcement 4. The number of tourism businesses that do not have a permit 5. The owner did not register his business because it is a family inheritance of 6. Lack of coordination between government apparatus 7. Far away from tourism business so unreachable officer 8. The lack of available budgets is mainly in the supervision of 9. Lack of public awareness in advancing tourism in the Lake Toba 10 area. Legal settlements that are still community-based or still use customary Law.

Efforts made in overcoming obstacles in the implementation of supervisory duties in the tourism business include 1. Adding personnel 2. Conducting training in the field of tourism 3. Adding inadequate facilities and infrastructure are natural resources and manufactured resources needed in their travels in tourism destinations, like roads, electricity, water, telecommunications, terminals, bridges, and so on 4. Increase budget in surveillance 5. Conducting socialization to tourism business holders. 6. In overcoming government sanctions, each district emphasizes advising tourism businesses, whether it is an appeal given directly by the respective Regents or the tourism office of each district. Every tourism business that does not meet the obligations imposed by administrative sanctions gradually, Form:

a. Temporary closure of efforts made for time to take care of permits business following applicable regulations.

b. Business closures are carried out to give a deterrent effect to businesses tourism in violation of applicable regulations.

c. Revocation of business licenses is done because tourism businesses do not heed the warnings that have been given.

Any tourism business that violates the ban imposed the previous administrative sanction in revocation of business license. Imposition of sanctions administration is preceded by coaching, then written warning, where each Regent sets the sanctions.

4. CONCLUSION

The government's authority in issuing permits is free, meaning that it is given the authority to consider based on its initiative. Such considerations are based on: (1) The applicant's conditions that it is possible to issue a permit. (2) How to consider the conditions. (3) Juridical consequences that may arise from the consequences of refusal or permitting are associated with statutory restrictions. (4) Procedures must be performed during and after the decision is accepted and rejected, granting permission. The principle is that regarding the implementation and licensing process. Generally, it is expected to gain clarity with the appearance of the structure of the licensing process in any field about the actual flow, but in the flow chart is not given information about the time it takes to complete each process or part of the licensing process. This is one of the fundamental weaknesses in the bureaucracy in this country, namely the lack of certainty of time and clarity in granting or issuing permits.

Tourism businesses, either individuals or non-individuals, must have a TDUP or Tourism Business Registration Certificate. TDUP is a permit issued by the Online Single Submission Institute (Integrated Online Licensing) on behalf of ministers, agency leaders, governors, or regents/mayors after Business Actors register and to run businesses or activities and operational implementation through meeting the requirements or commitments. The purpose of establishing TDUP as a commitment after the issuance of NIB for tourism businesses in the implementation of business licensing is to ensure legal certainty for businesses, in the sense of legality that protects the legal umbrella, valid and binding under the Law. It is valid evidence following the provisions of the legislation. The obstacles in law enforcement in the field of tourism business around Lake Toba can be divided into two factors, namely: A. Internal factors, among others (1) Lack of awareness and knowledge of the public about the Law, so tourism is challenging to develop following the laws and regulations. (2) The land or land that will be used as a location/object of tourism is hereditary following the Batak Toba customary family tribe, so it is challenging to take care of the licensing because the land letter has not been broken up. (3) The location of the tourism place is too far from the center of each district's government so that not only law enforcement officers are difficult to reach the location but also challenging to complete all materials or equipment for the implementation of tourism objects so that the service to consumers of tourism objects is not maximum, so it is challenging to develop. B. External factors, among others (1) Lack of supporting facilities including equipment and personnel supervisors and law enforcement. (2) The absence of coordination between government officials, especially in supervision and law enforcement. (3) Budget costs are minimal in socialization and counseling to the local community and entrepreneurs, especially tourism business actors.

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The Effectiveness of the Presence of *Investment Management Agency* in Indonesia

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ABSTRACT
The Indonesian government's strategy to deal with the drastic decline in the Indonesian economy is to increase investment and domestic consumption. One of government's modes to increase investment is that the government and Indonesian House of Representatives approve establishment of omnibus law, namely Law Number 11 in 2020 with regard to the creation of job. Foreign investors may not own more than 50% of shares because domestic or domestic investors have the authority and right to own more than 50% of capital. In running business activities, foreign also domestic investors must do their business with fair competition and healthy competition among fellow business actors. Healthy business competition is a very commendable thing. Business Competition in Indonesia is expected during the Pandemic Period to be carried out and run in a Competitive and Innovative manner. The role of Law and Business Competition Policy in encouraging the national economy is very much needed. Fostering great business climate with the role KPPU to supervise the implementation of Law Number 5 in 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition (UULPM) is expected well.

Keywords: *Domestic, Economy, Investment, Investment Management Institution.*

1. INTRODUCTION

Investment is one of the fundamental indicators that determine the economic growth and development of a country. Harrod-Domar's theory explains that investment holds 2 (two) essential factors for the economy. First, investment has a positive correlation with state income. Increased investment activity increases a country's revenue. Second, investment can intensify the production capacity of the economy through increasing the capital stock. These two things show that investment activities affect demand, supply, and production capacity.4 increased investment is considered an essential factor in economic development. In addition, investment is one of the essential instruments of national income, gross domestic product (gdp), or pdb. investment increases, then gdp also increases, as well as if investment obeys, then gdp will also decrease.

Indonesia's economic growth year-on-year decreased to 5.02% from economic growth in 2018, which reached 5.17%.6 one of the reasons is the declining investment performance. this is caused by several things such as too many regulatory problems in Indonesia, overlapping regulations, disharmony of laws between one sector and another, bureaucratic ambiguity, lengthy business licensing processes, and the tendency to deviate from the contents of the legislation. this causes investors from abroad and domestic to be reluctant to invest in Indonesia. Regulatory ambiguity shows the absence of legal guarantees and certainty in Indonesia. As a result, investors decide to invest in other countries with clear regulations and legal certainty.

To deal with regulatory problems in Indonesia, president of Indonesia, Joko Widodo, from his state address on October 20th, 2019, conveyed establishment an omnibus law as the way to solve the problems of overlapping regulations and bureaucracy in Indonesia.7 omnibus law is a concept that functions as a legal umbrella (umbrella act) to fix the problem of overregulated and overlapping regulations. the covid-19 virus, which is a pandemic by who, hit the world, and had big impact on the development of economic field of all countries in the world in early 2020. The government issued regulations on large-scale social restrictions (psbb) and social distancing arrangements enforced in early april 2020 and an interstate flight ban imposed in mid-february 2020 to deal with the covid-19 pandemic in Indonesia. The implementation of the psbb caused economic growth in Indonesia in the second quarter of 2020 to decline and contract by 5.32%, especially in terms of tourism where the number of tourists who came fell drastically, the number of air and rail passengers also grew negatively, and in terms of public consumption.

2. RESULT AND DISCUSSION

Indonesia's economic growth finally experienced retreat in the third quarter of 2020 due to COVID-19 pandemic, with economic growth recorded minus compared to quarter-on-quarter where the GDP figure in the third quarter of 2020 shrank by 3.49%. This situation is reflected in the weakening level of household consumption, declining manufacturing industry, declining trade sector, and declining tourism sector. Furthermore, the income of corporations and business actors also fell due to the decline in people's purchasing power. Several corporations and entrepreneurs ended up terminating their employees.

The Indonesian government's strategy to deal with the drastically declining Indonesian economy is to increase investment and domestic consumption. One of government's modes to increase the investment is that the government and Indonesian House of Representatives ratify the establishment of an omnibus law, that is Law Number 11 in 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law), on October 5th, 2020, and then announced on November 2nd, 2020. The Copyright Law Work has revised 79 old laws. The Job Creation Law regulates employment affairs, taxation, investment and government projects, simplification of licensing, land acquisition, ease of doing business, research and innovation support, economic zones, imposition of proportional sanctions, as well as facilitating the empowerment and protection of MSMEs and establishing a Lembaga Pengelola Investasi (LPI).

The Job Creation Law was established to attract foreign and also domestic investors to infuse in Indonesia by providing clarity and certainty of regulations, ease of business licensing, and land acquisition that the effectiveness and benefits of the presence of the Lembaga Pengelola Investasi (LPI) in economic development during the Covid 19 period in Indonesia is very supportive and valuable to support the improvement of the Indonesian economy.

The Job Creation Law regulates central government investment, specifically in Chapter X of Job Creation Law on Central Government Investment and Ease of National Strategic Projects by establishing a particular institution, namely the Investment Management Agency (hereinafter referred to as LPI). LPI aims to invite investment from other countries and the economy to support job creation in Indonesia. Each additional 1% of the investment will increase the economic growth by 0.3%, with average job creation of 0.16% and the absorption of 33 thousand workers in Indonesia.

LPI is an agency that has particular authority to carry out investment of central government. LPI is formed and managed by the central government and reports directly to the President. LPI was officially formed at the time of the creation of the Job Creation Law and was officially regulated in Government Regulation Number 73 of 2020 concerning Initial Capital for Lembaga Pengelola Investasi (hereinafter referred to as PP 73/2020), Government Regulation Number 74 of 2020 concerning Lembaga Pengelola Investasi (hereinafter referred to as PP 74/2020). Government Regulation Number 49 of 2021 concerning Tax Treatment of Transactions Involving Lembaga Pengelola Investasi and/or Entities It Owns (hereinafter PP 49/2021). These three government regulations are derivative rules of the Job Creation Act. LPI as Indonesian Sovereign Wealth Fund regulates the investment and is tasked with planning, organizing, supervising, controlling, and evaluating all investment activities carried out by the central government.

Ida Bagus Wyasa Putra stated, "Investment law is legal norms regarding the possibilities for investment, investment conditions, protection and most importantly directs so that investment can create prosperity for the people." 16 He added that "investment or investment is an investment given by individuals or companies or organizations both domestically and abroad. Investment, in general, can be defined as an activity carried out either by an individual (natural person) or a legal entity (juridical person) to increase and/or maintain the value of its capital, whether in the form of cash, equipment, immovable assets, rights to intellectual property, as well as expertise."

Law Number 25 in 2007 concerning investment (hereinafter referred to law investment) states that "Investment is all forms of investment activity, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia."

Foreign investors may not own more than 50% of shares because domestic or domestic investors have the authority and right to own more than 50% of capital. In running business activities, foreign also domestic investors must do their business with fair competition and healthy competition among fellow business actors. Healthy business competition is a very commendable thing. Business Competition in Indonesia is expected during the Pandemic Period to be carried out and run in a Competitive and Innovative manner.

The role of Law and Business Competition Policy in encouraging the national economy is very much needed. Fostering great business climate by the role of KPPU in supervising the implementation of Law Number 5 the Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (UULPM) is expected to run well.

Investment Purposes

The Investment Law contains the objectives of implementing capital investment, there are:20

a. Increasing national economic growth;
b. Creating the opportunities of employment;
c. Encouraging the development of sustainable economic;
d. Encouraging the capacity of national business for racing globally;

e. Increasing the capacity of national technology;
f. Increasing the economic development;
g. Turning the economic potential into real economy strength by using domestic and foreign funds;
h. Increasing the people prosperity.

Investment to improve the Indonesian economy by carrying out competitive business activities. The purpose of establishing Monopolistic Practices and Unfair Business Competition Law is used to shield the public interest, as we protect consumers; foster a healthy business climate; assure the certainty of equal business chances for everyone; prevent monopolistic practices and or unfair business competition caused by business actors; as well as creating effectiveness and efficiency in business activities in order to develop the usefulness of the national economy as one of the ways to increase the welfare of people.21

2.1 Rights, Obligations, and Responsibilities of Investors

The Investor Rights.

Every investor got certainty of rights, law, and protection;

Right certainty is a government guarantee that investors obtain rights since investors have conducted the specified obligations.

Legal certainty is government's guarantee to put the law and provisions of the legislation as primary basis in every action and policy to do investment.

Certainty of protection refers to government guarantee for the investors to get protection in conducting investment activities.

Transparent information of the business sectors being operated.

Rights to service; and facilities under prevailing the laws and regulations."

2.2 The Obligation of Investors

"Every investor has an obligation to apply the principles of great mutual governance; meet mutual social obligations; inform on the activities of capital investment also convey that to the Capital Investment Coordination Board; respect the traditions and culture of the society around where the capital investment activities are conducted; abide by all laws and regulations.

Investor has the responsibilities to:

a. Ensure the availability of the capital provided from sources that fulfill with laws also regulations;
b. Manage and settle the obligations and losses if the investor ends or abandons the business activities unilaterally, by-laws and also regulations;
c. Build a healthy business competition climate, keep against monopolistic practices and the other activities that cause loss to the state.
d. Defend the living environment;
e. Build safety, health, comfort, and prosperity for workers; and
f. Obey the laws and regulations.

2.3 Investment Business Field

Business activities are used for investment activities, except for business fields or the types of business that are declared closed and opened with certain conditions. Open business fields refer to business fields that are allowed to be invested, both of foreign investors and domestic investors. Closed business fields refer to the specific business fields that are prohibited from being conducted as investment activities. Types of businesses that are closed to foreign investors consist of:

a. weapons, ammunition, explosives, and war device; and

b. business sectors that are explicitly determined closed.

Opened business fields are as certain types of businesses that can be used for the investment activities with conditions, such as reserved for micro, small and medium enterprises as well as cooperatives, partnerships, capital ownership, specific locations, special permits, and investors from the Association of Southeast Asian Nations (ASEAN). It can be stated that the effectiveness and benefits of the Investment Management Institute (LPI) in the development of during the Covid-19 in Indonesia are very supportive and helpful to bolster the improvement of the Indonesian economic.

Presidential Decree Number 29 in 2004 with regard to the Implementation of Investment in the Context of Foreign Investment and Domestic Investment with the One-Stop Service System establishes that the implementation of investment in Indonesia is coordinated by the authorized official, namely the Investment Coordinating Board (BKPM). BKPM refers to the government agency that manages the activities of foreign and domestic investments.

2.4 Domestic Investment

The Investment Law states that "domestic investment (Penanaman Modal Asing/ PMDN is investment activity to run business in the territory of Indonesia carried out by the domestic investors using domestic capital." Domestic investors are individuals who come from Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or even the regions that create the investments in the territory of the Republic of Indonesia.

Parties that can apply for new investment for PMDN are:

a. Limited Liability Company (PT);
b. Commanditaire Vennootschap (CV);

c. Firm (Fa);
d. Cooperative business entity;
e. State-owned enterprises;
f. Regional owned enterprises;
g. Individual.

The application for new investment for PMDN is submitted to the head of BKPM in duplicate using the Model I/PMDN form. BKPM has standardized the Model I/PMDN form. This is intended to make it easier for potential domestic investors to submit applications to BKPM. The things that potential investors must fill in the application include:

The applicant's information includes the applicant's name, Taxpayer Identification Number, deed of establishment and amendments (notary name, number, and date), endorsement by the Minister of Justice, and complete address.

The project plan includes the line of business, project location, production per year, marketing per year, required land area, human resources, investment plan, source of financing, company capital, project completion schedule, and statement.

2.5 Investment Management Agency

The Investment Management Agency (LPI) was formed to improve the investment climate and ease of doing business to increase foreign direct investment (FDI) entering Indonesia. LPI is the institution that owns particular authority (sui generis) to regulate the central government investment. LPI is as the Indonesia Investment Authority (NIA) or the Indonesian Sovereign Wealth Fund (SWF). The presence of LPI is expected to function as a partner who can provide comfort to investors to invest in Indonesia.

There are 3 (three) legal products related to LPI that the government formed on December 15th, 2020, as a government effort to accelerate LPI operations, namely:

1. Government Regulation Number 73 in 2020 with regard to Initial Capital for LPI;
2. Government Regulation Number 74 in 2020 regarding LPI;
3. Presidential Decree Number 128/P in 2020 with regard to the Establishment of the Selection Committee for the Selection of Candidates for the LPI Supervisory Board from the Professional Element.

2.6 Objectives, Functions, Benefits, and Authority of Investment Management Agency

LPI aims to improve and maximize the long-term investment value management to bolster sustainable development. LPI regulates the investment and tasked with planning, organizing, supervising, controlling, and evaluating investments.

Benefits of LPI:

a. Providing economic benefits, social benefits, and/or other benefits
b. Contribute to the development of the national economy in terms of general and state revenue. LPI can also encourage the economic growth to promote the general prosperity.
c. Receiving benefits LPI in conducting the activities of asset management can be benefit from the investment returns.
d. Organizing legal benefits and also creating the jobs the existence of LPI in Indonesia can encourage the foreign investment and open many new job opportunities since the sectors that are being developed will absorb many workers.

2.7 Implementation of Authority of Investment Management Agency

LPI's authority is to put the funds in the instruments of financial and do the activities of asset management activities. Asset management can be in the form of acquisition, management, company restructuring (shares) or even fixed assets, divestment, which is conducted either alone or mutual with the cooperation through the third parties or the establishment of particular bodies both Indonesian and foreign legal entities.

Cooperating with the other parties, including trust fund entities.

Fund provider (the settlor) must authorize the trust fund entity to manage investment with LPI.

Determining potential investment partners

Determination of potential investment partners is carried out by appointing investment partners directly by considering internationally accepted business practices while maintaining good governance.

The criteria for prospective investment partners who can be appointed directly include having a good reputation, having the financial capacity to support their investment commitments, and/or having expertise in the investment field to collaborate.

Giving and receiving loans

LPI can give and receive loans by the provisions of the legislation. d. Managing assets" In doing its obligations, LPI can cooperate with investment partners, investment managers, BUMN, government agencies or institutions, and even the other entities.

Status, Capital, and Position of Investment Management Institutions LPI is an Indonesian legal entity wholly owned by the Indonesian government. LPI is liable to the President. LPI is domiciled and headquartered in Jakarta. LPI may have offices outside Jakarta and the territory of the Republic of Indonesia.

LPI's sources of capital are:

"State capital participation that can come from: cash fund; state property; state receivables from BUMN or limited liability companies; and/or state-owned shares in BUMN or limited liability companies. Other sources, including reserve capitalization, accumulated retained earnings, and asset revaluation gains."

LPI's capital is set at IDR75,000,000,000,000.00 (seventy-five trillion rupiah) with the following details:48

"LPI's initial capital deposit is in the form of cash funds of at least IDR 15,000,000,000,000.00 (fifteen trillion rupiahs); and

The fulfillment of LPI's capital after the initial capital deposit is carried out in stages until 2021."

3. CONCLUSION

Indonesia's economic growth year-on-year decreased to 5.02% from economic growth in 2018, which reached 5.17%. One of the reasons is the declining investment performance. This is caused by several things such as too many regulatory problems in Indonesia,overlapping regulations, disharmony of laws between one sector and another, bureaucratic ambiguity, lengthy business licensing processes, and the tendency to deviate from the contents of the legislation. This causes investors from abroad and domestic to be reluctant to invest in Indonesia. Regulatory ambiguity shows the absence of legal guarantees and certainty in Indonesia. As a result, investors decide to invest in other countries with clear regulations and legal certainty. The Indonesian government's strategy to deal with the drastic decline in the Indonesian economy is to increase investment and domestic consumption. One of the government's modes to increase investment is that the government and Indonesian House of Representatives validate the formation of an omnibus law, namely Law Number 11 of 2020 concerning Job Creation.

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The Function of Law in the Protection of Culture in Bali: A Study on Tourism Business Based on Omnibus Law

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ABSTRACT
The current legal issue is that the government's expectation of Indonesia is that tourism will be boosted with IDR budget. 14.4 trillion in 2021. The target for the development includes five areas, and Bali will be the primary target. The development of Cultural Tourism in Bali is inseparable from the customary community's culture in the area. Unfortunately, there has been a shift in civilization and local cultural development in the area. Ironically, the development of the tourism business in Indonesia, particularly in Bali, is no longer considering the concept of sustainable tourism. The concept of sustainable tourism has been made possible to be manipulated unfairly by the capital owner (capitalism). What is even worse is that countries in the world do not realize that deviations occur in the pattern of sustainable tourism development in political practice. The impact of tourism development putting aside the concept of sustainable tourism is that society becomes victims. As in Bali, traditional villages are experiencing cultural degradation. Investors earn the profits. As a result, the law only serves as a social engineer. Therefore, the workings and functions of the law shall protect the local culture from the onslaught of the tourism business. The method used is normative legal research. Concept of responsive law is utilized only as the reference and controller, in establishment of the omnibus law.

Keywords: *Culture, Omnibus Law, Tourism Business Law.*

1. INTRODUCTION

This paper is motivated by the great ancient Greek philosopher Aristotle's thought that episteme refers to an ordered collection of rational knowledge with its specific object [1]. In terms of its nature, episteme knowledge or rational knowledge can be divided into three parts, namely practical, productive and theoretical.

Legal science has a systematic method of analyzing, namely grammatical, systematic, historical, and theological. From the perspective of knowledge of philosophy of science, jurisprudence is a written and descriptive, and prescriptive norm. Descriptively, the reasons why the rules were set in the science of law can be explored. Prescriptively, the science of law can be explored philosophically so that the study is more in-depth [2]. The primary purpose of law lies in utility known through the adage, that is to say, justice is the form of the greatest happiness for as many individuals as possible. Jeremi Bentham (19th century) stated that this objective of law could only be achieved if it is based on statutory regulations because the law is deemed capable of guaranteeing the balance of various individual interests [3].

The second proportion behind this study is the legal issue regarding the expectation of the Indonesian government to boost tourism with a budget IDR of 14.4 trillion in 2021, which is focused on five tourist destinations, and Bali is the main target [4]. The development of cultural tourism in Bali is inseparable from the culture of indigenous peoples in the area. There is a shift in behavior in managing civilization and local culture. In this context, changes in all activities and creative works of Balinese people come from intelligence and sense that can be used to improve the quality of life [5]. Hence, the development of tourism in the area is feared to trigger a shift in local culture. From this description, there are two important questions to

raise: (1) how does the legal function work in protecting local culture in Bali with the presence of an omnibus law that facilitates the management of tourism business permits? (2) How can Indonesia absorb the international legal norms in the tourism trade service

business sector as there are differences in the ideology of each country? By having discovered the answers to these questions and solutions to them, it is expected that Indonesia and especially the province of Bali are not victims of cultural degradation.

2. METHOD

This study uses normative legal research methods. The analytical approach used is a qualitative approach to primary and secondary data. The data were classified then analyzed.

3. RESULT AND DISCUSSION

3.1 Process of Legal Function in Protecting Local Culture in Bali

Bali is part of the archipelago that lies in Indonesia, and tourism appears as a mainstay in improving the community's economy. Tourism in Bali presents various forms of tourist attractions related to culture. Balinese culture is thicker with traditional sacred events embraced by Hinduism. The legislators and enforcement of the legislation to realize their roles through several powers and competencies possessed must consider empirical realities and appropriate norms. The realities and norms in question include the world of the mind (the values of Pancasila and religious teachings).

What is more important is that they must understand that legal certainty is not sufficient to regulate the flow of interests of community members. Therefore, the factors of expediency, justice, and compassion for fellow human beings should be used as the basis for applying legal certainty. This is important in order to make the function of the law look more human.

The substance of the law should be oriented towards morality, as well as its enforcement. Legal morality can be adopted from the values that live in society. Disputes or conflicts between values that live in society can occur because of political interference.

From another perspective, Lawrence Friedman mentions that the law has several functions. Law as a control system, which means the law is related to controlling behavior. The law instructs people on what to and what not to do. The law also upholds orders by force.

Law as a dispute resolution medium, which means that law serves as a resolution medium for conflicts and disputes.

Law as a medium of redistribution (redistributive function) or social engineering. This function directs the use of law to planned social change, which the government determines.

Law as social maintenance

The law functions to oversee the ruler himself [7].

In Indonesia, the law can also function:

a. Directive, in that law serves as a guide in development to form a society to be achieved by the goals of state life.
b. Integrative, which means that law maybe becomes a builder of national unity.
c. Stability, which means the law is the keeper and guardian of harmony, harmony, and balance in the life of the state and society.
d. Perspective, which means the law is present as a complement to the administrative actions of the state and the attitudes of citizens in the life of having a state and living in society.
e. Corrective means the law becomes a correction agent for both citizens and state administration in obtaining justice [8].

The morality of law enforcement becomes important when protecting society and culture; what is the meaning of law if it is living without morals (Quid Leges Sine Moribus).

3.2 Simplification of Licensing for Tourism Business Activities According to Omnibus Law

Omnibus law refers to the concept that unites several laws and regulations into one form of law. It represents the legal tradition used in the Common Law of the Anglo-Saxon legal system. Several countries are using the system, such as America, Canada, Ireland, and Suriname. For example, in 2008, Ireland passed a law and repealed approximately 3225 laws. Omnibus Law changes the licensing paradigm from a licensing approach to a risk-based approach. Business activity licenses are only applied to businesses with a high risk of health, safety, environmental, and natural resource management activities. There are three categories of business permits, including tourism trade services business. 1) Business activities with high risk apply a licensing system. 2) Medium risk business activities apply a standardization system. 3) low-risk business activities apply a registration system. Meanwhile, small and medium-scale business activities are only required to carry out registration, including tourism business activities. In Article 67 of Omnibus Law Number 11 in 2020, the public, especially business actors, can obtain business permits in the tourism sector. Some provisions of law Number 10 in 2009 about tourism were amended. Article 15 reads, "… in order to be able to run a tourism business as referred to in Article 14; tourism entrepreneurs are required to get business permits from the central or even regional governments, based on the norms, standards, procedures, and also the criteria set by the central government. Further provisions are then regulated in the government regulations.

Article 16 has been abolished, and Article 26 Paragraph (1) stipulates that every entrepreneur in the tourism field is obliged to:

a. keep the religious norms, customs, culture, and also values that exist in the local community;
b. give accurate and liable information;

c. give non-discriminatory services;
d. give the insurance protection for tourism businesses with high-risk activities;
e. evolve the partnerships with local micro, small enterprises, and cooperatives that need to be profitable and reinforcing;
f. designate the use of local community products, domestic products, and give opportunities for the local workers;
g. encourage the competence of the workforce through training and education;
h. join an active role in the development of the infrastructure efforts and programs of community empowerment;
i. participate in preventing all forms of actions that violate decency and activities;

Paragraph (2) states that provisions concerning on the business licensing as referred to in the paragraph (1) letter are regulated in a Government Regulation.

Omnibus law in America, for example, is implemented to evolve the trade balance deficit through drafting the Omnibus Trade and Competitiveness Act of 1988 (OCTA). The law has aims to negotiate the reciprocal trade agreement (Uruguay Round) by conducting comprehensive revision of the trade law, which includes aid adjustment, export incentives, tariff harmonization, international trade policy, international technology trade, competitiveness policy, corrupt foreign practice, government procurement, patent policy, Sematech, and budget deficits. With this OCTA, all these regulations are under one umbrella [9].

Social change and social justice require a responsive legal order. Responsiveness can be interpreted as a service to social needs and interests experienced and found not by officials but by society. The concept of responsive law contains selective adaptation to new demands and pressures. It is characterized by the shift in pressure and rules to goals; and second, the importance of popular character (populist) both as the legal goal and the way to achieve it. Law quickly turns into a self-serving institution, no longer serving humans [10]. In the formation of omnibus law, the concept reagrding responsive law with such characteristics can be used as a reference.

3.3 Indonesia in Absorbing International Legal Norms In The Tourism Trade Service Business

Indonesia follows the policy regulated by the WTO, which takes over the function of the General Agreement of Tariffs and Trade (GATT), considering that all WTO agreements are considered as an undertaking, which means that all WTO member countries sign WTO agreements as a unified package, not separately. Since Indonesia is a member, it does not choose which agreement it will follow. This provides both advantages and disadvantages for developing countries. The disadvantage is that developing countries become bound by agreements that they feel will burden them more from the start, as was the case with GATS. The free-market economic system results from the Bretton Woods conference, which in principle is based on a capitalist economic system controlled through state intervention. Next, namely, since 1980, the country's economy developed. It began to shift to a neoliberal system.

The motor of economic globalization is the application of the principles of free trade between countries, which are characterized by: the abolition, or at a minimum, the reduction of tariffs on imports of goods, the elimination of various types of non-tariff barriers for the smooth operation of international trade and the free flow of capital and human resources between countries. The target to be achieved is the creation of internationalization of trade between countries and no longer recognizes the territorial boundaries of countries, which implies that the world is made as a single market unit free from state control or interference.

Liberalization of trade in services as regulated in Gatts and the WTO is a form of ideological transformation of Indonesia's full access to the WTO Agreement, which is the official door for the instruction of liberal ideology into the Indonesian legal system. Eventually, it caused an ideological conflict because Indonesia adhered to the ideology of Pancasila

Bali is part of the archipelago that lies in Indonesia, and tourism appears as a mainstay in improving the community's economy. Tourism in Bali presents various forms of tourist attractions related to culture. Balinese culture is thicker with traditional sacred events embraced by Hinduism. The legislators and enforcement of the legislation to realize their roles through several powers and competencies possessed must consider empirical realities and appropriate norms. The realities and norms in question include the world of the mind (the values of Pancasila and religious teachings).

4. CONCLUSION

The presence of the Omnibus Law, which facilitates the management of tourism business permits and which outlines that the function of law is only as a social engineer, the way the legal function works in protecting local culture in Bali from the onslaught of the tourism business rests on the wishes of the people designed by the government. The morality of law enforcement becomes important when protecting society and culture. Law is meaningless if it has no morality (Quid Leges Sine Moribus).

In absorbing international legal norms in the tourism trade service business sector, Indonesia faces obstacles from dissimilarity in ideology. This ideological hegemony theory is used as a basis to justify the reality of the existence of Pancasila as an Indonesian economic and legal ideology. The existence of Pancasila cannot be isolated by the arrival of other ideologies, alternative ideologies that exist and enter the social life of the Indonesian people. This is because Pancasila is naturally the embryo of the birth of the Indonesian nation. This

cultural shift is inseparable from the birth of the hegemonic theory, which can also divide the nation and state because of ideological differences with new needs. However, the author rejects the ideological view of hegemony in Indonesia as a breaker, considering that the central ideology is Pancasila as the controller.

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Management Model of Traditional Village-based Tourism Objects in the Perspective of Tourism Law

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ABSTRACT
This study examines and analyzes existing regulatory instruments regarding the management model for traditional village-based tourism objects from the perspective of tourism law. The method used in this research is normative legal. This conceptualizes law as the thing in which t is written and contained in the applicable laws and regulations, thus existing regulations with regard to the model of managing traditional village-based tourism objects can be known. The legal basis for regulating tourism in Indonesia is regulated in Law Number 10 of 2009 concerning Tourism. In article 2, things regarding the implementation of tourism are set forth, like principles of benefit, balance, independence, participation, preservation, and sustainability. Bali, with its Traditional Villages, has the value of local wisdom in developing tourism. Hinduism, cultural customs, nature, and local law traditions (*awig-awig*) provide added value to the development of Cultural Tourism.

Keywords: *Management Model, Tourism Object, Traditional Village, Tourism.*

1. INTRODUCTION

Tourism provides chances and challenges for the countries that depend on the tourism industry. for indonesia, the tourism industry is as prospective commodity that believed to take essential role in encouraging national development. Thus, it is not surprising that indonesia pays special attention to the tourism industry. this is further strengthened by the fact that indonesia has considerable natural and cultural potential, which can be used as capital to evolve tourism industry.

In the country like, Indonesia, the ways for increasing foreign exchange income includes state income in particular and people's income in general - expanding working opportunities and employment opportunities and encouraging the activities of supporting industries and other side industries are goals of tourism development. Indonesian tourism has a basic legal arrangement in law number 10 in 2009 regarding tourism [1]. As stipulated in the article 2 of the law, the principle of benefit, the principle of balance, the principle of independence, the principle of participation, the principle of preservability, and the principle of sustainability are the principles that underlie the development of tourism in the country.

Furthermore, for other aspects of the nation's life, the development of indonesian tourism also has objectives, that is, as determined through article 4 of the tourism law. The article states that the aims of Indonesia's tourism development such as increasing economic growth, improving people's prosperity, eradicating poorness, passing unemployment, maintaining the environment and natural resources, and also promoting culture. These goals should be realized on the absolute principle. Religious norms and values shall not be set aside but become the manifestation of the concept of living. Relationship of human and God, relationship of human and fellow humans, and relationship of human with the environment are as the principles that must be upheld and maintain nature and the environment.

In addition to the principles described above, indonesian tourism development- contained in the provisions of article 5 of tourism law - also has other principles, like cultural diversity, upholding human rights, local wisdom, and also communities empowerment. This indicates that culture and also local wisdom-based tourism is such an aspect that concerning on the development of tourism in indonesia. Bali, as one of the provinces in Indonesia, the development of the aspect is realized through the development and management of traditional village-based tourism objects. The development of this type of tourism is because bali has become an island that is the most visited tourist destination. To realize the goals and principles of national tourism development, a more efficient and effective legal

arrangement, which controls the management of the development of these tourism objects, has an important role, so it urgently needs to be established. Thus, tourism management will become more structured and invite more visitors, and thus, it will ultimately improve the community's economy.

Aspects of industry, destinations, marketing, and tourism agencies are the coverage aspects of indonesia's tourism development. The tourism development is conducted based on the development of national tourism, provincial tourism development master plan, and regency/city tourism development master plan. As the form of follow-up to the provisions mentioned above, government regulation number 50 in 2011 regarding the national tourism development master plan (*ripparnas*) for 2010-2025 was stipulated by the government for the national interest. Bali is as one of 50 national tourism destinations [2], which to own the potential to encourage and strengthen the sustainable tourism development that focuses on the preservation of environment and culture. As the follow-up to law number 10 in 2009 and *ripparnas* number 50 in 2011, the provincial government of Bali issued Bali provincial regulation number 2 in 2012 with regard to Balinese cultural tourism and regional regulation number 10 of 2015 [3], with regard to the master plan for regional tourism development (*ripparda*) of bali province of 2015 – 2029 [4]. In the article 2, number 2 of regional regulation 2012, implementation of Balinese cultural tourism should be conducted based on the principles of benefit, kinship, independence, balance, sustainability, participatory, sustainable, fair and equitable, democratic, equality and unity which is imbued with hindu religious values by applying the philosophy of *tri hita karana*. furthermore, in article 3 paragraph 1 of Bali province *ripparda*, it is observed that the implementation of *ripparda* shall be carried out in an integrated manner by the provincial government, regency/city governments, the business world, and the community.

These things were formed in order to create a tourism industry that is competitive, credible, open vast public participation space, is environmentally and socio-culturally responsible and encourages the realization of sustainable tourism. observing the above laws and regulations, it can be claimed that tourism development in bali is not only an effort to increase the economy, income distribution, and employment opportunities but also emphasizes the involvement of the government, the community, and the private sector in the tourism sustainability and preservation of Bali's natural and cultural resources, that is based on the values of hinduism and the *tri hita karana* philosophy. Currently, there are 116 villages that have been designated as tourism villages by the regent or mayor in Bali. From the eight regencies and one city in bali, some of them already have regulations regarding the tourism villages but are not entirely by the objectives or principles of tourism implementation; therefore, there is a void of norms at the level of the bali provincial regulations in the establishment of tourism villages.

2. METHOD

The type of research used is normative legal. This research is carried out by reviewing library. Normative research is also known as doctrinal research or library research [5]. This research includes legal principles and legal systematics, legal synchronization, legal history, and comparative law [6]. In this research, the law is often conceptualized as the written in the legislation (law in the book), or the law is conceptualized as a norm, that is a benchmark for people's attitude towards what is considered appropriately [7]. This type of normative legal research is because of the absence of norms in the regulations related to the traditional village-based tourism management model in the perspective of tourism law.

3. RESULT AND DISCUSSION

3.1 Regulations regarding the Management of Traditional Village-based Tourism Objects

Indonesia is a country with potential natural wealth, flora and fauna, ancient relics, historical relics, arts and culture as resources and capital for development of tourism to encourage the standard of living, prosperity, and welfare as contained in Pancasila and the Preamble to the State Constitution of Indonesia in 1945. Tourism activities in Indonesia is known as one of the most significant contributors to the increase in the state's foreign exchange as the tourism destination.

The development of the tourism industry in Indonesia is included in the priority scale, especially for the poor areas in the natural resources. To the statement of the International Union of Official Travel Organization (IUOTO) at a conference in Rome in 1963, tourism is essential not only as the source of foreign exchange but also as the determining factor of the location of industry and in the development of areas that are poor in natural resources. This shows that tourism as a service industry has a significant role in distributing development to underdeveloped areas [8].

Tourism has become one of the industries that can increase economic growth through providing employment and stimulating other tourism supporting productivity sectors. For the Province of Bali, the development of the tourism industry is a top priority, and agriculture and small industries. Tourism is the largest industry and will continue to grow as stated by The World Tourism Organization (hereinafter referred to as UNWTO), that "Tourism has become a major sector of economic activity since the latter part of twentieth-century and all indications are that it will continue growing in the years to come [9]."

The legal basis for regulating tourism in Indonesia is contained in Law Number 10 in 2009 with regard to the Tourism. In article 2, the implementation of tourism

should be based on balance, independence, participation, preservability, benefits, and also sustainability. The development of tourism potential is guided by the tourism law. In the article 8 of the tourism law, "tourism development shall be carried out based on the master plan of tourism development which consists of the master plan of national tourism development, the master plan of provincial tourism development, and the master plan of regency/city tourism development." In the provisions of Article 9 paragraph (1) of the Tourism Law, "the master plan for the development of national tourism shall be regulated in a Government Regulation."

The government enacted the Government Regulation Number 50 of 2011 concerning the National Tourism Development Master Plan of 2010-2025 (referred to as PP 50 Tahun 2011) as the way of conducting regulation of the Tourism Law as the guideline for the preparation of the Provincial Tourism Development Master Plan as stated in the article 4 of the Government Regulation Number 50 in 2011. In the provisions of Article 28 letter c of the Government Regulation No. 50 of 2011, the policy direction for the community empowerment in the tourism sector includes the way to increasing the potential and capacity of local resources, through the development of productive businesses in the tourism sector, and one of the strategies that can be taken to increase this potential is to evolve the potential of local resources through tourism village as stated in the Article 29 paragraph (3) letter b, Number 50 in 2011 of the Government Regulation. The stipulation of the Government Regulation Number 50 in 2011 is the basis for developing the potential of local resources using the tourism villages, which increasing community participation in the tourism through the development of tourist villages that used to develop the potential of local resources.

By the formulation in Article 1 point 3 of Law Number 10 in 2009 regarding tourism, tourism is various activities supported by various facilities and services provided by the community, businessmen, government, and local governments. Article 1, number 5 of Law Number 10 in 2009 concerning Tourism explains that tourist attraction refers to everything with uniqueness, beauty, and also value in the form of the diversity of natural, cultural, and man-made wealth which is the target of tourist visits. Tourism destination area are geographical area in one or even more administrative areas. There are tourist attractions, public facilities, tourism facilities, accessibility, and even communities that complement the realization of tourism.

With regard to the Bali Provincial Regulation Number 3 in 2001 [10], juncto Number 3 in 2003 concerning Pakraman Village, Article 6 paragraph (b), Pakraman village has the right to take part in determining every decision in the implementation of development in its territory, especially those relating to *Tri Hita Karana* [11]. Grounded with the article's description above, Pakraman village has the right to organize the management of tourism potentials in its territory.

3.2 Management Model for Traditional Village-based Tourism Objects

Tourism village appears as the development of village area that does not shift, but tends to develop the potential of the existing village by empowering the capabilities of the elements in the village, that serves as an attribute and makes the tourism products on the small scale into a series of tourism activities and can give also fulfill a series of travel needs, both in terms of attractiveness and as supporting facilities [12]. The development of a tourist village make the best use of natural resources to attract tourists to visit the area concerned to bring the benefits and prosper the surrounding community.

Culture exists due to the agreement on norms that have been made by a community, which is rooted in the noble values of character possessed by the community group. Local wisdom includes traditional views and knowledge that become reference in behaving and has been practiced from generation to generation to meet the needs and challenges in the society life. Local wisdom functions and is meaningful in society, both in preserving natural and human resources, keeping customs and culture, and being useful for life. Local wisdom includes the activities, knowledge, and also beliefs in the way of managing nature that is oriented towards environmental sustainability. Each region has different local wisdom, based on the level of understanding and intelligence and the adaptability of local humans to their environment [13].

Guidelines for the scope of sustainable tourism development can be seen in the Regulation of the Minister of Tourism of the Republic of Indonesia Number 14 in 2016 concerning Sustainable Tourism Destinations [14]. The sustainable emphasis is not only on sustainable environmental preservation and economic development, but also on the cultural sustainability. Bali has the value of local wisdom in developing tourism. Hinduism, culture, nature, and local legal traditions (awig-awig) give additional value in the way of developing cultural tourism.

Related to tourism development in Bali Province, some regulations affect cultural tourism which serves as the basis for its management, such as the Bali Provincial Regulation Number 2 in 2012 concerning on Balinese Cultural Tourism which regulates spiritual tourism {Article 8 paragraph (m)} and in fact, it has not involved ecotourism in the text (article) of Cultural Tourism. In the view of cultural tourism in Bali, local wisdom should be considered, like the beliefs of the Balinese people, which are based on *Tri Hita Karana* and inspired by Hinduism (Article 11 paragraph (a) of Regional Regulation, Number 2 of 2012).

Traditional village-based tourism is very influential on the development of economic in the traditional village or even pakraman village. The management of potentials, which exist in the traditional villages of each region on the island of Bali, has its charm and characteristics. The

government has provided narration to improve tourism potential. Regulations related to the management of custom-based tourism villages have not yet been regulated explicitly in the legislation with regard to the tourism in the legal tourism order in Indonesia.

In managing tourism villages, every traditional village has the right to manage its villages and cooperate with local governments, the private sector, and others. The region-scale joint venture made with a memorandum of understanding model between the local government and pakraman village is followed up with the Regent's decision to implement the Management of Tourist Attractions and Objects. Implementing Public Policy Law in the sustainable management of traditional village or pakraman village-based tourism villages, whether managed by traditional villages or even managed by the Regional Government, needs regulations governing investors as the form of embodiment of tourism activities in Bali, which is contained in Regional Regulations. This aims to synchronize local government and traditional villages with regard to the management of traditional village-based tourist destinations in the Province of Bali. Thus, the regional regulation, later, can become strong legal umbrella for the traditional villages in managing the tourism potentials in their area. However, this is done while still upholding the values of Hindu religious teachings, namely *Tri Hita Karana* in every management. The goal is about to create the sustainability of the tourism and preserve the natural environment, social culture, and also religious systems of the pakraman village community. Thus, traditional village-based village tourism can be realized, provide welfare for the surrounding community, and maintain Taksu on Bali's island.

4. CONCLUSION

Of course, the development of tourism potential is guided by Law Number 10 in 2009 concerning Tourism. Article 8 of the Tourism Law stipulates that "tourism development shall be carried out based on the tourism development master plan consisting of the national tourism development master plan, a provincial tourism development master plan, and a regency/municipal tourism development master plan." In the provisions of Article 9 Paragraph (1) of the Tourism Law, "the master plan for the development of national tourism shall be regulated in a Government Regulation." The government also states in the Government Regulation Number 50 in 2011 concerning National Tourism Development Master Plan 2010-2025 as the implementing regulation of the Tourism Law. In the provisions of Article 28 letter c of PP Number 50 in 2011, the policy direction for the community empowerment with the tourism includes increasing the potential and capacity of the local resources through the development of productive businesses in the tourism sector. One of the strategies that can be taken to increase the potential in question is to develop the potential of local resources through tourism villages, as stated in Article 29 paragraph (3) letter b of Government Regulation Number 50 in 2011. Stipulation of the Government Regulation is undoubtedly the basis for evolving the potential of local resources through tourism villages that includes encouraging community participation in the tourism through the development of tourist villages, which used to develop the potential of local resources.

Traditional villages have the authority to manage their villages and collaborate with local governments, the private sector, and also others regarding the management of tourist villages. The regional cooperation agreement made with the model of the memorandum of understanding between the local government and Pakraman village is then followed up with the Regent's decision on the Appointment of Implementing the Management of Tourism Objects and Attractions. Implementing Public Policy Law in the sustainable management of traditional village or pakraman village-based tourism, whether managed by traditional villages or jointly managed by local governments, needs regulations governing investors as the form of embodiment of tourism activities in Bali, which is contained in the regional regulations. Thus, traditional village-based village tourism can be realized, provide welfare for the surrounding community, and maintain Taksu on Bali's island

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The Role of Mediator in the Settlement of Industrial Relations Disputes Amid Covid-19 Pandemic

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ABSTRACT
The COVID-19 pandemic has disrupted the economic and health sectors and many obstacles in resolving industrial relations conflicts. One of the ways to resolve the conflict between employers and employees are through the action of mediation. This research aimed to know the role of mediators in resolving industrial relations disputes amid the COVID-19 pandemic and the obstacles faced by the mediators in resolving the industrial relations conflicts between the employees and employers. This research was conducted using normative law method applied through examining library materials as the secondary data. The results of this research assert the role of mediators in resolving industrial relations conflicts and the diversity in the settlements during the pandemic. Obstacles faced by mediators are uncovered as well.

Keywords: *Arbitration Disputes, Mandatory Clause.*

1. INTRODUCTION

A company cannot run alone; therefore, it takes support from workers to assist an entrepreneur in running a company. The statement supports this that an entrepreneur cannot run a company alone in a company. [1]. Employees and employers should work together to achieve the company's goals, that is, to create or produce goods or services to make a profit. The creation of the relationship between employees and employers is an employment relationship. [2]. The employment relationship gives the evidence that person is working for another person or a company with an employment agreement made orally or in writingcontains the authority of each between employer and the employee. [3]

Law Number 13 in 2003 regarding Manpower and the State Gazette of Indonesia in 2003 Number 39 of the Supplement to the State Gazette of Indonesia Number 4279 (known in Indonesia by the abbreviation *UUK*) strengthens the position between employees and employers is no longer unequal. This happens because, in the law, the rights and obligations that shall be given to employees by employers and vice versa are prescribed. In the work relation or industrial relation, the employee is obliged to conduct their obligations as an employee by doing the work and obeying company regulations or even work laws, namely a series of regulation that manage all events related to the work of person for another person by receiving wages. [4]

In practice, conflicts between employers and employees are unavoidable. Differences in desires often lead to disputes between them. Employees, are considered contrary to the wishes of entrepreneurs who want to reduce production the costs to get large profits. [5]. These things have given rise to conflicts or disputes. The entrepreneur always wins like the one who has the right to make decisions. There are several sources of conflict; among them are inhumane treatment, limited resources, different goals, poor communication, task interdependence, inappropriate reward systems, and diversity of social systems, personal persons, jurisdictional ambiguity, and organizational differentiation. [6]

Disputes occurring are as Industrial Relations Disputes, which must be resolved to build dynamic and great industrial relations. These things need to be realized optimally between employers and employees and a combination of employers or even employees by the values of *Pancasila*. In the settlement of industrial relations disputes, several ways can be taken as follows:

1. A bipartite negotiation by deliberation and consensus to reach an agreement must be carried out first. Suppose different bipartite dispute resolution cannot be carried out. In that case, the parties may undertake other non-litigation settlements such as mediation, conciliation, or arbitration. [7]. Industrial Relations Mediation, hereinafter referred to as mediation, refers to the settlement of a dispute

over right, a dispute over interest, a dispute over termination of employment, and a dispute among trade union or labor union within one company and the deliberation mediated by one or more neutral conciliators

2. Industrial Relations Conciliation refers to the settlement of the dispute over interest, a dispute over termination of employment, or disputes among trade union or labor union in only one company through deliberation mediated by one or more neutral conciliators.
3. Industrial Relations Arbitration, hereinafter referred to as arbitration, refers to the settlement of a dispute of interest, and a dispute among trade union/labor union in only one company outside the Industrial Relations Court, through a written agreement from the disputing parties to put their dispute resolution to the arbitrator, whose decision is binding on the parties and is final.

At the Manpower Office, the settlement of industrial relations disputes is conducted through the mediation mediated by a mediator.

COVID-19 pandemic having hit the world has also impacted various aspects of individual life in the society, especially in the field of employment. The emergence of the COVID-19 pandemic has affected the performance of employees, company productivity finances also the obligation of employers to put all aspects of the operational cost needs, like the normative rights of employees, including wages. This makes the company to make policies to minimize operational costs incurred through various policies. For instance, conduct production reduction, delay payment of wages to reduce wages, working hour reduction, and layoffs to perform unpaid leave and unilateral termination of employment.

During the pandemic, 1,792,108 million employees in Indonesia were laid off. The figure of 1.79 million employees is based on the data from the Ministry of Manpower of Indonesia, which was updated until May 27th, 2020. [8] Terminating employees, the Indonesian Minister of Manpower, Ida Fauziyah, appealed to companies to do several alternatives and make the termination of employment the last step in dealing with the COVID-19 pandemic.

To prevent more job terminations by employers, the Indonesian Minister of Manpower, Ida Fauziyah, has held dialogue with Apindo and the Trade Unions or Labor Unions regarding the impact of COVID-19 on the working continuity and also anticipating and handling it. To overcome the industrial relations problems between employees and employers because of the COVID-19 pandemic, the Minister of Manpower has also strengthened the role of Industrial Relations Mediator as the third party if the employees and employers do not find an agreement during negotiations.

The role of the Industrial Relations Mediator is significant, considering that harmonious industrial relations are indispensable for the continuity of business. Harmonious industrial relations is used to improve the productivity and prosperity of the employees and employers. This article will discuss the role of mediators in resolving industrial relations disputes during the COVID-19 and the obstacles faced by mediators in resolving industrial relations disputes between employees and employers.

2. METHOD

The preparation of this article was carried out using normative legal conducted by examining library materials as the secondary data. [9]. The statute approach is applied, namely by searching for the laws and regulations related to the issues to be discussed.

3. RESULT AND DISCUSSION

3.1 The Role of Mediators in Resolving Industrial Relations Disputes during the COVID-19 Pandemic

A mediator appointed by the Office of the Manpower and Energy and Mineral Resources Office of the Republic of Indonesia (*ESDM*) of Bali province must fulfill the requirements specified in Decree of the Ministry of Manpower and Transmigration of Indonesia, especially concerning on the points of authority, honesty, fairness, and impeccable behavior, because mediator is in charge of providing options when there is no agreement at the mediation session can be reached.

Before an industrial relations dispute is registered with the Manpower and Energy and Mineral Resources Office of the Province of Bali, the parties must firstly do bipartite negotiation between employees or trade unions and employers to find the solution. The bipartite negotiation can be held for 30 days. However, if one of the parties refuses to negotiate during that period or has conducted negotiations, but cannot reach some agreements, then the negotiations are considered as failure.

Bipartite negotiations that fail may be registered by one or even both parties to the agency that own the authority in the local human resources sector. Bali Province Manpower and *ESDM* Office by attaching evidence to resolve through the bipartite negotiations that have been made. Parties who have been invited to hold the bipartite negotiations, but the second parties are unwilling can give the evidence explaining that they have invited the second party to negotiate. The evidence referred to is in the form of an application for bipartite negotiations. If the evidence is incomplete, the party concerned should be asked to complete the dispute reporting file and give them the time to complete it by the provisions, namely no later than 7 working days from the date of receipt of the return of the file.

The regulation stipulates that the agency in charge of resolving disputes between the company of employee and an entrepreneur, the Manpower and *ESDM* Office of the

Province of Bali - shall offer the parties to resolve their dispute with conciliation and arbitration. Settlement through conciliation is done to settle a dispute of interest, a dispute over termination of employment, or a dispute between trade unions or labor unions. Meanwhile, settlement through arbitration is done to settle disputes of interest and disputes between trade unions or labor unions. However, at the Bali Provincial Manpower and ESDM Office, no settlement model with the conciliation or arbitration has been found despite having previously been offered in the form of choosing to resolve the disputes through mediation conciliation or arbitration. After the parties choose dispute resolution model, the next step is about to mediate.

Before conducting the mediation, the Technical Administration officer records the case in the Mediation Agenda Book, which includes the Complaint Date, Identity of the Complaining Parties, Type of Dispute, and also Dispute Registration Number. This is done after the complaint for recording the dispute.

After receiving the delegation, the Mediator will conduct mediation after having previously researched the problem and the parties concerned. The parties concerned must attend based on the specified schedule by bringing the necessary evidence during the mediation. During the COVID-19 pandemic, the mediation process was halted for a month before it finally reopened but by implementing health protocols, such as wearing masks, washing hands before entering the mediation room, and maintaining a physical distance. There are also restrictions on the number of representatives from the employees, employers, and indorsee who attend the mediation.

The mediator leading the mediation shall be neutral. The mediator will give chance for the parties involved in the dispute to intricate the chronology of the problems that occurred. It then proceeds with conveying the points of the lawsuit filed by the disputing parties. The mediator will also inform the options that can be taken from the statements of both parties to be then handed back to the parties to establish whether or not to agree with the options or choices given. This is usually done when both parties find it difficult to reach an agreement during the mediation session.

If the mediation goes well and an agreed solution is found, thenCollective Agreement signed by both parties and witnessed by the Mediator will be drawn up. The signed Collective Agreement will be registered with the Industrial Relations Court at the District Court in the jurisdiction where the parties made the Collective Agreement to obtain a registration certificate. The goal is to order that the agreement is binding, has legal force, and must be implemented by both parties. Suppose the Collective Agreement is not implemented by one of the parties. The party who feels aggrieved shall be able to apply for execution to the Industrial Relations Court at the District Court to obtain an execution determination.

If the mediation session between the two parties does not agree, the Mediator will issue the written recommendation. This written recommendation should be submitted to both parties within no later than 10 working days from the first mediation. This written recommendation will be Collective Agreement when both parties agree to the written recommendation from the Mediator. If one or both parties refuse the written recommendation from the Mediator, the parties shall be permitted to take the matter to the Industrial Relations Court (IRC).

The parties who have received the written recommendation from the Mediator shall have given a written answer to the Mediator no later than 10 (ten) days from the receipt of the written recommendation. The answer consists of the approval or even rejection of the recommendations. Suppose both parties have agreed to written recommendation from the Mediator within a period of no later than 3 working days based on the written recommendation being approved. In this case, the Mediator shall assist the parties in making Collective Agreement which is registered at the Industrial Relations Court at the District Court to obtain the certificate of registration.

On the other hand, if one or both parties give a refusal answer, it shall be deemed to have rejected the suggestion from the Mediator. In this case, one or both parties may file an appeal to the Industrial Relations Court (IRC). Although the Mediator is not aware with the decision of the parties to appeal or not to be carried out at the Industrial Relations Court, the problem will be considered resolved at the Bali Province Manpower and *ESDM* Office until a Written Recommendation.

Mediation is practically carried out following the pre-pandemic mediation procedure, which refers to Law Number 2 in 2004 regarding the Industrial Relations Dispute Settlement. What distinguishes, it is that in addition to referring to Law Number 13 of 2003 concerning Manpower, the Mediator in dealing with employment issues also pays attention to the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers/Labourers and Business Continuity in COVID-19 Prevention and Control Framework.

In overcoming problems related to Termination of Employment, if based on the circular letter, employers are allowed to change the amount and method of payment of wages for the employee who are temporarily laid off due to the COVID-19 pandemic with the permanent record based on the agreement of both parties.

3.2 Obstacles Faced by Mediators in Resolving Industrial Relations Disputes between Workers and Employers

The factors that hinder the settlement of industrial relations disputes at the Department of Manpower and Energy and Mineral Resources of Indonesia of the Province of Bali are related to the Concept of

Effectiveness based on Soerjono Soekanto, which includes:[10] the first is to look at the legal factor. This is related to the Mediator's obligation to issue recommendations if an agreement is not reached in the settlement process. In practice, sometimes recommendations are given at times that are not by the provisions of the Industrial Relations Dispute Settlement Law Article 13 paragraph (2) letter b, which determines that the appointed Mediator shall have issued a recommendation no later than ten working days from the first mediation session. This is due to requests from the disputing parties. One of the disputing parties asks for time to consider giving an agreement that can be exceed the time limit determined by the law and result in delays in the dispute resolution process.

The second factor is to look at the perspective of law enforcement. The facts obtained from the Department of Manpower and Energy and Mineral Resources of the Republic of Indonesia of Bali Province show very few available mediators. This affects the effectiveness and efficiency of the mediation efforts. The Mediator's workload is quite heavy since each Mediator is tasked with serving mediation requests and serving consultation requests from many parties who need it.

Facilities become the third inhibiting factor. The condition of the COVID-19 pandemic causes the mediation process to be rather difficult to carry out because when it is done face to face, the involved parties are obliged to implement health protocols, such as avoiding crowds involving more than five people in one room as ordered by the government to break the chain of the spread of the COVID-19. Therefore, the performance of the mediation process was shifted to online implementation. Unfortunately, not all parties can use online meeting applications well, such as WebEx, Zoom, WhatsApp, and even email. In addition, the online meeting process is also very dependent on the stability of the internet network at the place of the respective parties involved.

The fourth obstacle lies in the community factor. It can be seen that in the implementation of mediation, it is tough for the entrepreneurs involved in industrial relations disputes to appear at the time of mediation. This hinders the mediation session because those who represent the entrepreneur or a power of attorney in practice cannot make direct decisions in the Mediation of Industrial Relations Disputes to speed up the mediation in order that an agreement or win-win solution is reached between the employees and employers. Coercion of opinion between employers who deny committing violations of workers' rights and workers whose demands burden the entrepreneur also becomes an obstacle to mediation. Sometimes the parties are not open but cover up the truth of what happened, which makes it difficult for the Mediator to figure out the facts that happened. In addition, no data or letters are required as a source of information to continue the mediation process. With no working contracts being made, the mediators found it challenging to do negotiation process and find solutions to resolve disputes.

The fifth obstacle lies in the cultural factor. The disputing parties do not comply with the rules that the Mediator has explained. For instance, ethical violations are committed by the parties; each party seems to want to bring down the other by expressing the weaknesses and disreputes of the other party. In addition, many of the parties were not present on time and did not even want to be present when called by the Mediator.

4. CONCLUSION

The role of the Mediator in resolving industrial relations disputes can be said to have been realized by the provisions of Law Number 2 in 2004 concerning Settlement of Industrial Relations Disputes. The difference in the implementation of mediation before and after the pandemic apart from referring to Law Number 13 in 2003 regarding Manpower, mediators in dealing with labor issues also pay attention to Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers/ Labor and Business Continuity in the Context of Prevention and Control of COVID-19. There are also several obstacles faced by mediators in resolving industrial relations disputes. These obstacles include the Law on Industrial Relations Dispute Settlement, which stipulates limited time for mediators in giving advice, the number of mediators which is considered very lacking, the limitations of the parties in using teleconference technology as a support for the industrial relations dispute settlement process and the difficulty of making the disputing parties attend the dispute resolution process. In addition, the lack of discipline of the parties in carrying out the applicable rules in settling the industrial relations disputes also hinders the efforts of the Mediator to resolve.

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Wages Problems of Local Wisdom-based Tourism Development During Covid-19 Pandemic

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ABSTRACT
This paper aims at obtaining legal solutions to build the concept of wage policies during the COVID-19 pandemic to maintain the continuity and development of local wisdom-based tourism businesses. The covid-19 pandemic has a significant impact on local wisdom-based tourism industries' development. Decreased income caused the disability to pay workers' standard wages. Numbers of companies were forced to close and stop operating, which affected tourism development as a source of income and a component to communicate Indonesian wealth. The Law on Manpower has regulated the minimum wages, stating that it must comply with the Minimum Wage Provisions. The denial of this provision leads to criminal sanctions for entrepreneurs. Wages are paid based on the agreement of entrepreneurs and workers. However, this agreement should not regulate the nominal value under the minimum wage provisions because it makes the agreement null and void. Laws and regulations normatively hinder the company's efforts to develop tourism based on local wisdom. Through the normative juridical method, this research found a legal solution concept to answer the problem. The wage system must be based on individual workers' statements to obtain the nominal amount of wages based on the tourism company's ability. This concept should be an accommodation for legislators to carry out legal making or legal repairing of laws and regulations in the field of labor relations to save the sustainability of local wisdom-based tourism business development.

Keywords: *Local wisdom, Pandemic, Solutions, Wages.*

1. INTRODUCTION

The tourism sector is not limited only to the tourist destination context. However, it is also synergycally correlated with other cases, namely traveling from one place to another, taking accommodation concerning socio-cultural conditions, and providing souvenirs at the tourism spot [1]. The systematical correlation of these components is known as the tourism industry. The tourism industry is a collection of interrelated tourism businesses to produce goods and/or services for the needs of tourists [2]. In this business, a business actor is well-known as a tourism entrepreneur.

The Covid-19 pandemic has brought a severe effect on almost all industries sectors in Indonesia, such as transportation, travel, warehouses, the accommodation and food provision sector, and the tourism sector. There are about 11.83% of Indonesian workers in the sector of tourism industry [3]. In Indonesia, based on *Badan Pusat Statistik* (Central Statistics Agency) data, or is referred to as BPS, the number of foreign tourist arrivals in 2020 was only 4.022 million visits, or it decreases 75.03 percent compared to 2019, which could reach the target of 16.1 million visits. The impact of the Covid-19 pandemic on the tourism industry sector is the absence of hotel rooms and inns booking. The number of passengers on planes and other transportation has drastically reduced, especially for foreign tourists. The absence of tourists also causes food and beverage providers, especially in tourist destinations, to lack the income to go out of business. Many arts, entertainment, and recreational services that rely on tourism activities are stopped operating too. The interest of domestic tourists is also reduced. People are reluctant to travel because they are worried about being infected by Covid-19 [4]. This condition is indeed worrying both for tourism development, especially those based on local wisdom, and the world of work to build the welfare of workers and their families through the tourism companies.

The Covid-19 pandemic does not change the rights and obligations of the parties in the working relationship, i.e., workers and employers. The new regulation on human resources, namely Act No. 11 of 2020 *Undang-Undang Cipta Kerja* (Laws on Job Creations), hereinafter referred to as UUCK, does not make significant changes to Act No.13 of 2003 *Undang-Undang Ketenagakerjaan* (Law on Manpower), hereinafter referred to as UUK, regarding workers' wages. The two-wage system regulated in the regulation is the nominal amount of wages known as the Minimum

Wage. The minimum wage consists of the Provincial Minimum Wage as the nominal standard of each district or city. The district minimum wage cannot be lower than the provincial minimum wage. However, the problem occurs since the minimum wage in 2021 does not necessarily accommodate the actual conditions of companies affected by Covid-19, including tourism companies.

Although tourist visits are reduced during the Covid-19 pandemic, as long as the tourism company operates, the nominal wage for workers must be paid according to the Regency Minimum Wage standard. This fact may lead to termination of employment, and the tourism companies go out of business. The number of tourism companies no longer operating due to potential income has undoubtedly resulted in the dismal development of tourism businesses, especially those based on local wisdom. Local wisdom-based tourism destinations are located outside the city area, in which the availability of facilities to reach the place involves various tourism companies.

On the other hand, the labor regulations do not provide a solution to deal with the impasse on workers' wages. Therefore the tourism development efforts are dilemmatic. The development of tourism businesses is significant as a vehicle for building and communicating cultural diversity, while the welfare of workers through tourism companies is also the main thing. A legal breakthrough is needed as a policy basis to get the solutions when dealing with the wages problem. The decision of tourism entrepreneurs to take alternative policies by making wage agreements below the minimum wage standard is undoubtedly reasonable. However, such a policy deviates from the rules.

Based on the above description, the strategic issues of this study are as follows:

- Does the arrangement of wages in an employment relationship hinder the development of local wisdom–based tourism businesses?
- What is the legal solution for local wisdom-based tourism entrepreneurs who cannot pay workers' wages based on the provisions of the Minimum Wage can carry on their business?

2. METHODS

The normative juridical research is applied to deal with the above legal problems [5]. It is applied by examining the existing laws and regulations. The objects of this study are the laws and regulations concerning human resources, including Act No.13 of 2003 on Manpower, Act No.11 of 2020 on Job Creation, Act no.10 of 2009 on Tourism, Act No.12 of 2011 on the Establishment of Legislation and Government Regulation no.36 of 2021 concerning Wages. This type of normative juridical research is supported by a statutory approach and a conceptual approach. The statutory approach is carried out by reviewing various laws and regulations, especially various matters concerning wages in employment relationships. The conceptual approach is carried out by reading, understanding, and accommodating various concepts about wages in employment relationships and strategies to maintain tourism companies. The comparative approach is carried out by comparing the regulation of wages in terms of working relationships in tourism companies, especially those based on local wisdom.

3. RESULT AND DISCUSSION

3.1 The Wages Regulation of an Employment Relationship in the Development of Local Wisdom-Based Tourism Business

There are two laws and regulations governing employment relations, i.e., the Act No.13 of 2003 on Manpower (UUK) and Act No.11 of 2020 on Job Creation (UUCK) as a refinement of the UUK. Both regulations are still valid by considering the principle of *Lex Posteriori Derogad Lex Priori* [6]. The principle of *Lex Posteriori Derogad Lex Priori*means that the new regulation in a law overrides the old regulation. Thus the wages arrangement in UUCK as a new law overrides the old regulation in the UUK. However, the existence of the UUCK does not revoke the UUCK because not all provisions in the UUCK are regulated in the UUCK.

According to Article 1 number 5 of the UUK, Entrepreneurs are:

- an individual, partnership, or legal entity that operates a self-owned company;
- an individual, partnership, or legal entity that independently operates a company that is not his own;
- an individual, partnership, or legal entity was residing in Indonesia representing the company as referred to in letters a and b domiciled outside the territory of Indonesia.

An employment relationship is an engagement between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages, and order [7]. As long as the relationship between the tourism entrepreneur and the workers is based on an agreement that regulates job descriptions, wages payment, and orders from the entrepreneur, the employment relationship exists, and the parties are subject to labor law.

Based on these provisions, the matter of remuneration for workers at tourism companies submitted to the laws and regulations in the field of labor law, namely UUCK and Government Regulation No. 36 of 2021 on Wages. Article 88E (2) of Article 88E (2) states that: Employers are prohibited from paying wages lower than the minimum wage. Such provisions are emphasized in Government Regulation No. 36 of 2021 Article 23 paragraph (3). By this regulation, the tourism company workers are entitled to receive wages according to the minimum wage provisions. Although the UUCK stipulates that workers' wages can be paid through an

agreement, the nominal wages should not be lower than the minimum wage. Minimum wage is a policy of the central government to realize the rights of workers to a decent living for humanity.

Furthermore, there are two legal aspects regarding the agreement between employers and workers on the payment of the minimum wage, namely:

- The aspect of criminal law. An agreement (between workers and employers) to pay wages below the minimum wage is a criminal offense punishable by imprisonment between 1 year to 4 years and/or a fine of Rp. 100 million to Rp. Four hundred million[8].
- The aspect of civil law. A deal in an agreement, including a work agreement, must not conflict with the laws and regulations. Thus, agreement on wages below the minimum wage is null and void[9].

Based on the above legal provisions, the decrease of tourist visits and the reduction of working hours, which causes a decrease in income of tourism companies, basically cannot be used as an excuse to deviate from paying the minimum wage. This material on wage arrangements is burdensome for tourism companies because they do not accommodate developments and business situations due to the COVID-19 pandemic, which the end cannot be predicted. The government, in principle, is responsive to this issue, but they seem to be half-hearted in taking legal policies in the field of employment relations.

The government's response is proven by issuing a Circular Letter of the Republic of Indonesia Number M/3/HK.04/III/2020 concerning Protection of Workers/Laborers and Business Continuity in the Context of Prevention and Control Covid-19, which is addressed to the Governors (hereinafter referred to as SE). In the Circular Letter, in number II point 5, it is stated that for companies that limit their business activities due to government policies in their respective regions for the prevention and control of COVID-19, causing some or all of their workers/laborers to be absent from work, considering the continuity of the work, the change in the amount and method of payment of workers' wages is carried out by the agreement between the entrepreneur and the worker.

Reviewing the theoretical concept of enactment of laws and regulations, the SE material deviates from the UUCK because the amount of worker's wage is regulated under an agreement. Meanwhile, the status of norms containing deviant rules is found in SE. Based on Act No. 12 of 2011 on the Establishment of Legislations, the existence of SE is not included in the category of statutory regulations, for the existence of SE is meaningless. Thus, the wage arrangements, especially for tourism company workers during the COVID-19 pandemic, cannot answer the problems that arise to maintain the business continuity of tourism companies. In other words, the laws and regulations governing the employment relationship, in this case, the UUK and UUCK and the regulations below are an obstacle to the continuity of tourism companies in developing tourism potential, including local wisdom-tourism. Legislation is functionally expected to be a solution in national disaster situations and conditions. However, it has become counterproductive, which creates new problems in tourism development based on local wisdom.

3.2 Legal Solutions for Remuneration of Local Wisdom-Based Tourism Workers

The function of law is to protect human rights, including workers' rights. In addition, the law is also an element and aims to achieve justice oriented towards usability and benefits. The functions and objectives of the law are closely related to the constitutional commitment of the 1945 Constitution of the Republic of Indonesia, which stipulates that Indonesia is a welfare state. The concept of a welfare state, according to Bagir Manan, is:

"The state or government is not merely a guardian of security or public order, but the main bearer of the responsibility to realize social justice, general welfare, and the greatest prosperity of the people [10]."

Bagir Manan further states that the conception of modern legal state or welfare state law contains three political, legal, and socioeconomic aspects. The political aspect requires the limitation of state power in political life. The legal aspect requires the state to prioritize the rule of law in the law enforcement process, the principle of legality, and the rule of law. In contrast, the social aspect requires the creation of social justice and general welfare. In this case, it is also the welfare of workers.

According to Muchsan, a welfare state aims to promote the welfare of its citizens equally, and four, the state is required to provide the best and most comprehensive possible service to the community. Without these qualified services, it is impossible to realize prosperity in people's lives. In connection with these characteristics, a definite symptom that appears in the welfare state is government intervention in aspects of the life of the wider community. Government intervention in this aspect of community life is required to create equitable social welfare [11].

By the above concept, morally and functionally, the government should be proactive in taking concrete steps as a form of service to deal with the problem of developing local wisdom-based tourism during the COVID- 19 pandemic. In the legal field, government organs must issue authoritative public decisions based on Act No. 12 of 2011 concerning Legislation.

The impasse of solutions in the field of wage regulation that threatens the survival of tourism companies has made entrepreneurs take unconstitutional policies in the form of violating the rules by using the principle of agreement. With the consideration that they are not entangled in the crime of wages, the entrepreneur carries out a tactic of providing wages for tourism company workers through the basis of an agreement. The content of the agreement is the willingness of workers to receive wages below the nominal minimum wage

provisions. The legal concept of this condition is that an agreement is a law for the parties who make it. The parties, the entrepreneur and the workers, may not recognize that the agreement shall not contradict the laws and regulations, morality, and public order.

Meanwhile, the agreement on wages is contrary to the UUCK and Government Regulation No. 36 of 2021 concerning Wages. Thus it is normatively null and void. Therefore, the solution of the wage problems shall be regulated in the form of legislation.

A short-term legal solution that can be done as a loophole to overcome the problem of wages for tourism company workers is a statement of commitment from the workers. The statement of capability, in this case, is the willingness of workers to receive wages at a rate according to the ability of the tourism company. The legislation does not regulate this kind of worker statement. However, it does not mean that the statement of the worker has no legal consequences. At least it provides security for the employer because of the nature of the worker's statement as the will of the individual worker. As long as it does not conflict with laws and regulations, decency, and public order, the concept of workers' statements regarding wages can be categorized as the legal solution. Legislation indeed prohibits employers from providing wages below the minimum wage, including making a deal in the form of an agreement. However, if the workers are willing to accept the decision, no single regulation prohibits it.

In the rule of law, the written will of the worker is a form of the statement. Legally, a statement letter, also known as an acknowledgment letter, contains a written explanation and bind responsibility. A statement letter is made to provide information about an important matter. It is a form of the document made to be used as evidence to specific actions, facts, or circumstances of a civil matter. This letter is a private deed.

The statement letter is also intended for the Maker Party, the Receiving Party, and the Party stated in the Statement Letter. Thus, it means that the main difference between a letter of agreement and a statement letter lies in the function of the letter. There must be two or more parties who make it in the agreement letter, while the statement letter is unilateral.

To be legal, the letter must be signed on sufficient stamp duty so that the statements made are considered accountable. This statement can apply to individuals or groups, or organizations. A statement is used to bind someone to a specific capability, to explain or to admit something. This written statement can be signed and has more legal force than an oral statement. The affixing of stamp duty as a part of the statement will further strengthen the contents and information contained in the letter. For the recipient, the statement letter is evidence to hold the Party responsible for the material stated. For the maker, it is also a means of evidence that the maker has to carry out the facts of the will that has been stated.

The statement letter will have a legally binding force and the strength of evidence equal to an authentic deed if the truth is recognized by the person who signed it as regulated in article 1875 of the Civil Code.

"In the event that a party denies his writing or signature or even if the heirs or the rightful parties do notrecognizeit, the judge order that the authenticity thereof shall be legally investigated."

By the provisions of the Civil Code, formally, the author acknowledges that he is the person who wrote and signed the letter. Materially, the author must also admit that the letter's contents are valid based on the facts. It means that the letter's contents are made according to the maker's will or are not under threats, coercion, or pressure in any form from other parties [12]. Based on the idea of preventing a vacuum of rules, agreement principles, and legal rules regarding the enforceability of statements, the legal solution to answer the problem of wages for tourism company workers is the concept of workers' statements to accept any counter achievement from the company in the form of wages according to the company's ability.

4. CONCLUSION

Laws and regulations in the field of human resources, in this case, the UUK and UUCK, and the regulations under them, in principle, hinder the efforts to create tourism business continuity, especially local wisdom-based tourism. This obstacle is reflected in the wage arrangement that does not accommodate the actual conditions of the COVID-19 pandemic, which causes a decrease in income due to decreased number of tourist visits. The legislation does not provide a solution to create an alternative wage system by the capabilities of tourism entrepreneurs.

The legal solution recommended in dealing with the issue of wages for tourism company workers, especially for local wisdom-based tourism, is to provide space for individual workers' statements as evidence of their willingness to receive wages below the minimum wage. This solution is carried out to fill the legal vacuum to support local wisdom-based tourism business continuity.

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Humanitarian Law Aspects Concerning Cultural Heritage Protection in Tourism Business: Special Reference to Jakarta Old City Area

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ABSTRACT
Indonesia has enacted Law No. 11 of 2010 on cultural heritage and other national laws and regulations to protect cultural heritage, among others, by implementing cultural heritage ratings. Indonesia has also ratified the 1954 Den Haag Convention and its First Protocol which also regulates the protection of cultural property during armed conflict. The problem arises whether any legal correlation between the two instruments in relation to the implementation of the tourism business. This research is a secondary data-based normative research with a content analysis approach. Based on the discussion, the two instruments are related to each other and are complementary. The scope of application of Cultural Heritage Law can be expanded to protect cultural heritage, and the zoning of cultural heritage can be strengthened by using internationally recognized zones based on humanitarian law, including the international symbol for cultural property. The primary duty of the Government and business stakeholders in the tourism business is to ensure no military character in their business and keep the status of their personnel and business staff as civilian persons.

Keywords: *Cultural heritage, Hague convention 1954, Humanitarian law, Law No. 11 of 2010 on cultural heritage.*

1. INTRODUCTION

The tourism sector in Indonesia is one of state income that is very beneficial for economic growth. Opportunities generated from the tourism sector can generate job opportunities, reduce unemployment, provide a positive image for the region concerned, and increase prosperity for the surrounding area. In addition to the various advantages and positive factors resulting from business in the tourism sector, there are also risk factors in its implementation. One of these risks is when the tourism sector business must continue to be carried out in situations of armed conflict. When a conflict occurs for a long time and is protracted in nature, the tourism sector business will face a somewhat complicated situation. On the one hand, the business must continue to run because it generates income. However, on the other hand, there is a risk for the unsuccessful implementation of the business in question.

Concerning the tourism business related to cultural heritage objects, such as Jakarta's old city area, several legal obligations must be carried out by business people, both government-owned and private companies. In a peaceful situation, Law no. 11 of 2010 on Cultural Heritage has formulated what obligations must be carried out in the context of preserving cultural heritage. On the other hand, Indonesia has also ratified The Hague Convention 1954 and its Protocol I, which regulates the protection of cultural objects during armed conflict. Indonesia has also ratified Presidential Decree No. 234/1966. The ratification was carried out without reservation. All the clauses in the agreement bind Indonesia as a party to the agreement and create an obligation on Indonesia to make implementing rules. The problem that arises, in this case, is whether there is a positive correlation between the two instruments related to the implementation of the cultural heritage tourism business.

2. RESULT AND DISCUSSION

2.1 The Meaning of Cultural Heritage/Cultural Property

According to Law no. 11 of 2010 (hereinafter referred to as the Cultural Heritage Law), cultural heritage is a material heritage in nature located on land and/or in water that needs to be preserved because of its essential value for history, science, education, religion and/or culture through determination process. The cultural heritage can be in the form of cultural heritage objects, both natural

and manufactured; movable or immovable, in the form of a unit or group or part thereof, or the remnants of which are closely related to culture and the history of human development. In addition, what is included in the cultural heritage are cultural heritage buildings, cultural heritage structures, cultural heritage sites, and cultural heritage areas, namely geographical units that have two or more cultural heritage sites located close together and/or show distinctive spatial characteristics.

While The Hague Convention of 1954 uses the term cultural property, which includes movable and immovable objects that have essential values as cultural heritage for every human being. Such as architectural, artistic, or historical monuments, archaeological sites, groups of buildings which as a whole have historical or artistic value; works of art; manuscripts, books, and other objects of artistic, historical, or archaeological value, as well as knowledge collections and collections of important books or archives or reproductions thereof. In addition, what is included in cultural property is a building intended to preserve or exhibit movable cultural objects, including a location consisting of many cultural properties called centers containing monuments.

By looking at the definitions contained in the two legal documents, it can be concluded that both provide similar meanings. The different terminology used reflects the abstract and ideal concepts for the word "heritage," while the word "property" is more concrete, but the said terms would be strictly complementary (Frigo, 2004). However, the approach taken by each is different. The Cultural Heritage Law provides more definitive boundaries, while The Hague Convention prefers to provide an example. For example, The Hague Convention expressly stipulates that a collection of essential books or manuscripts is a cultural property. At the same time, the Cultural Conservation Law covers this matter with the meaning of cultural heritage objects. This is confirmed in the explanation of Article 18 paragraph (2), which explains that the collection referred to in the article is material evidence of cultural results, including ancient manuscripts.

The Cultural Conservation Law makes cultural heritage sites a separate classification of the five existing classifications, while The Hague Convention classifies it as the first of the three existing classifications.

2.2 Scope of Application

Although the two instruments provide a similar understanding of cultural heritage, what slightly distinguishes the two is the scope of application. The Cultural Heritage Law is a provision that regulates the preservation of cultural heritage so that the benefits can be felt for future generations. According to the Cultural Heritage Law, conservation actions are carried out in three aspects: protection, development, and utilization of cultural heritage both on land and in water. The protection aspect consists of steps to carry out safeguard, security, zoning, maintenance, and restoration. Aspects of development are applied in the form of research, revitalization, and adaptation. Optimal utilization is intended to achieve optimal results in religion, society, education, science, culture, and tourism.

Meanwhile, The Hague Convention was formulated by recognizing that cultural heritage is often a silent victim in situations of armed conflict. The Preamble of The Hague Convention also considers the need to preserve cultural heritage, which is very important for the world community so that such heritage must receive international protection. The Hague Convention stipulates that the protection of cultural property in times of armed conflict consists of safeguarding and respecting cultural property aspects. The security aspect requires participating countries to take preparatory actions to protect cultural property located in their national territory against the consequences of armed conflict that may occur by taking actions that are deemed necessary and must be prepared in times of peace. In comparison, the respect of cultural property obliges the state party to refrain from taking actions that are expected to cause damage to cultural property during armed conflict or avoid acts of violence aimed at the cultural property directly. In addition, states parties must also prohibit, prevent, and if necessary, stop all forms of theft, looting or illegal appropriation, and acts of vandalism against cultural property. Although the provisions on the aspect of security and respect are intended to protect cultural property, there is a clause in the aspect of respect in which it is stated that the obligation of the state party to protect these cultural properties can be waived only in cases where military necessity imperatively requires the discharge of obligations.

In general, it can be concluded that the two legal instruments have a different scope of application. The Cultural Heritage Law is intended to preserve cultural heritage oriented to be enjoyed by future generations. In contrast, The Hague Convention is intended to protect cultural heritage during the armed conflict from being damaged or destroyed.

However, some provisions show the same actions in both instruments. This can be seen from: first, the classification of action. It is necessary to observe whether protective measures consisting of safeguarding and respecting cultural property in The Hague Convention are the same as protective measures consisting of safeguard, security, zoning, maintenance, and restoration measures in Cultural Heritage Law. Based on the contents of the articles in the two instruments, there are specific actions with the same intention and purpose. For example, actions that need to be taken related to theft, looting, transfer, or illegal appropriation and acts of vandalism on cultural heritage. This is included in The Hague Convention and the aspect of safeguard and security in the Cultural Heritage Law. The security aspect, for example, is aimed at safeguarding and preventing cultural heritage from being lost, damaged, or destroyed (Article 61 paragraph 1). This is further strengthened by the prohibition against partially destroying cultural heritage, stealing, transferring, separating, or moving cultural heritage abroad (Articles 66-69). The Cultural

Heritage Law even stipulates that the security measures can be carried out by the caretaker and/or special police in charge of patrolling the cultural heritage area or making reports on criminal acts related to cultural heritage and arresting suspects, and submitting them to the police. This last provision is similar to the provisions in Article 8 paragraph (4) of The Hague Convention, which stipulates that the protection of cultural objects can be carried out by armed guards or police officers who are authorized to guard or be present in the vicinity of these cultural objects, and not to be used for military purposes.

Second, the scope of application. The aspect of safeguard as regulated in Article 57 of the Cultural Heritage Law provides the right for everyone to safeguard cultural heritage in an emergency or coercive situation. According to the elucidation of Article 57, the state of emergency is a condition that threatens the preservation of cultural heritage, including war. This shows that the actual war situation has also been considered by the drafting committee of the Cultural Heritage Law as a possibility that could happen. On the other hand, concerning protecting cultural heritage, The Hague Convention has emphasized that the parties must prepare the necessary measures to protect cultural property in peacetime.

2.3 Cultural Heritage Ranking

Based on the Cultural Heritage Law, the Government and Local Governments can rank cultural heritage based on its importance into national ranking, provincial ranking, and district/city ranking based on the recommendation of the Cultural Conservation Expert Team. The highest ranking as a national cultural heritage must be determined by a Ministerial Decree and proposed by the government as a world cultural heritage. To determine the highest rank as a national cultural heritage, the requirements that must be met are: if the relevant cultural heritage is a form of national unity and integrity; contains the highest cultural values; rare in kind, unique in design, and few in number; as an evidence of the evolution of the nation's civilization and/or as an actual example of traditional residential areas, cultural landscapes and/or distinctive spatial uses that are threatened with extinction.

The Hague Convention has provided for the granting of special protection to cultural objects, a place of protection for movable cultural objects, or a center containing monuments if the cultural objects are located at a considerable distance from major industrial centers or important military purposes such as airports, broadcasting stations, ports, and so on. In addition, The Hague Convention also stipulates that cultural property is not used for military purposes. Special protection is given to the cultural property by registering it on the International Register of Cultural Property. The International Committee of the Red Cross (ICRC) stated that the particular protection system for cultural property under The Hague Convention was not worked. According to Rashid, Omer, and Khairy Ali, the cases in Syria and Iraq are examples of the failure of the Convention due to the destruction of cultural objects and a large number of cases of theft (Emma Cunliffe & Lostal, 2016; Sulaf Abdullah Hama Rashid, Alaa Bahaa Omer, 2020). To deal with this, a special regulation was formed regarding cultural objects stolen or illegally exported in the Unidroit Convention (Giardini, 2018). In addition, the protection of cultural objects in times of conflict remains a concern with the formulation of the second Protocol of 1999, which formulated a new system with three conditions: the cultural objects concerned must have fundamental values for humanity that have been adequately regulated in national law and actions taken as an administrative act that recognizes the extraordinary historical and cultural value that must be granted the highest level of protection, as well as a declaration that the cultural property is not used for military purposes. Enhanced protection is given when the relevant cultural property is included in the List of Cultural Property under Enhanced Protection. The protection provided in this 1999 Protocol has been enhanced by other humanitarian law instruments such as Additional Protocol I, the Rome Statute, by accepting increasing non-international armed conflicts (Hladik, 2018).

Based on the provisions above, even though the two instruments regulate the same thing, namely a ranking of cultural heritage, they are based on different goals and interests. The Cultural Heritage Law determines the national ranking of cultural heritage, partly because the spatial use is unique and endangered. In contrast, the provincial ranking looks at the association of cultural heritage with ongoing traditions and the district/city ranking if the threat level is high and the type and amount limited. Meanwhile, The Hague Convention and its protocols focus more on ensuring that the status of the cultural object concerned remains as a civilian object. The higher the value of a cultural object, the higher guarantee, and confirmation was given that the cultural object is not used for military purposes.

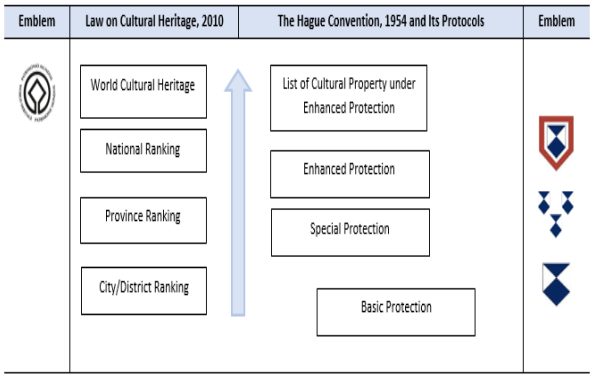

Figure 1 Rating on cultural property

2.4 Zoning of Cultural Heritage

The Cultural Conservation Law also stipulates provisions regarding zoning in Articles 72-74, namely the determination of the boundaries of the extent and use of space both horizontally and vertically. This zoning is intended for national cultural heritage or national cultural

heritage, including two or more provinces. The zoning system consists of the core, buffer, development, and/or support zones. Based on the explanation of Article 73 of the Cultural Heritage Law, the core zone is the main protection area to maintain an essential part of the cultural heritage. A buffer zone is an area that protects the core zone; a development zone is an area for the development of potential cultural conservation for recreational purposes, natural environment conservation area, cultural landscape, traditional cultural life, religion, and tourism. A *supporting zone* is an area designated for supporting facilities and infrastructure and general commercial and recreational activities.

The Hague Convention does not recognize a zoning system for the protected cultural property during the armed conflict but uses a distinguishing symbol to indicate protected cultural properties. This symbol is regulated in Article 6 jo. 16 paragraph (1) concerning essential protection which is manifested in the form of a shield, pointed below, per satire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle); while the distinguishing symbol for special protection is regulated in Article 16 paragraph (2) jo. Article 17 paragraph (1) is repeated three times in a triangular formation (one shield below). The provisions regarding this distinguishing symbol were later supplemented in the 1999 Protocol, which regulates enhanced protection.

Based on the comparison of the provisions in the two instruments above, it can be seen that both have different aims and objectives. The zoning system mentioned in the Cultural Heritage Law is intended for recreational, educational, appreciative, and/or religious purposes. Meanwhile, to protect cultural objects in armed conflict, The Hague Convention and its protocol apply distinctive marking with certain international symbols. The use of this symbol will result in binding consequences for the parties to the conflict not to carry out direct attacks on cultural property as long as they are not used for military purposes.

2.5 Jakarta Old City Area

With regard to tourism destinations, the Local Government of Jakarta has issued Governor Regulation No. 36 of 2014 concerning the Master Plan for the Jakarta Old City area. This area covers a relatively large area, about 334 ha, which is part of the administrative areas of the Tambora, Glodok, Jembatan Lima, Pekojan, Roa Malaka, Pinangsia and Penjaringan sub-districts as part of the North Jakarta and West Jakarta administrative cities.

Based on Article 7 of the Governor's Regulation, there are two control areas, as shown in Figure 1, inside and outside the city walls, to facilitate the development and control of the old city cultural heritage area. The area inside the wall is an area with tight control. It implements a zoning system consisting of a core zone and a supporting zone, which has the primary function as an educational function, cultural and social activities, international tourism icons, replication of the old city of Batavia, a limited business and trade center. The area inside the wall includes the Fatahillah Park area and its surroundings, the Beos Station area and its surroundings, the Kali Besar corridor and its surroundings, and the Sunda Kelapa area.

Jakarta Old City Area	Notes
	

Figure 2. Map of Cultural Heritage Buildings in Jakarta Old City Area.
Issued by DKI Jakarta Government with Governor Regulation No. 475 of 1993

Based on the Governor's Regulation, the cultural heritage area of Jakarta's old city will be built based on several development plans. One of the regional development plans related to the topic of this paper is a commercial area development plan for offices, trade, and services (Article 17). This development is carried out without changing the essential morphological characters of the area or building. The commercial function is directed to strengthen the character of the area as a tourism and historical area. For example, in the core zone of Fatahillah Park, the development of commercial functions must support historical tourism in the old city within the city wall area, mixed functions that support tourism of historic buildings and cultural art centers, commercial functions that support marine historical tourism, and other activities that do not threaten environmental sustainability. Thus, the development of the old city area is directed at realizing the old city area as a cultural heritage area of high economic value as a tourist, business, service, and trade area while maintaining the character and historical values of the

region. To realize the development of the old city as a cultural heritage area, Jakarta Governor Decree No. 1729 of 2019 concerning the Team for the Acceleration of the Arrangement and Development of the Old Town Area was issued.

2.6 Government Duties

The cultural heritage law has explicitly stated the duty for the government to protect cultural heritage by organizing disaster management in an emergency, including taking rescue actions in times of war, especially in preventing criminal acts aimed at cultural heritage, as described in the previous section. The authorities possessed by the government include the authority to determine site and area boundaries.

Obligations based on humanitarian law are not only binding on the state, organized armed groups, and soldiers, but international agreements in the field of humanitarian law that Indonesia has ratified, are also binding on every stakeholder actor, including business enterprises who carry out activities that intersect with armed conflict (ICRC, 1996). It is not easy to interpret what is meant by "carrying out activities related to armed conflict." Kolieb and Kurnadi stated that business activities could be considered related to armed conflict either directly or indirectly. Businesses that assist any kind to a party to a conflict may be considered as an activity closely related to armed conflict, even when carried out indirectly (Fauve Kurnadi, 2020). Hugo Slim explores six prominent roles of business in war: perpetrator, victim, supplier, humanitarian actor, peacebuilder, and business and conflict prevention (Slim, 2012).

Therefore, the government and tourism businesses must pay attention to several essential things in the event of an armed conflict (ICRC, 1996):

1. Ensure that there is no military character in all elements of the business being managed.
2. Take necessary protective measures: for example, placing cultural objects in a safe zone.
3. Determining the boundaries of the area of cultural objects, including the use of a distinguishing international symbol.
4. Cooperating with the Police or the Armed Forces to protect cultural property assets, including conducting internal training in the capacity to guard cultural sites/objects.
5. Make preparations if the occupying power uses assets; with a receipt, it can be asked for compensation or actions supported by modern technology, CCTV, live recording, etcetera.

Based on this, the government of DKI Jakarta and the business actors of cultural heritage in the old city of Jakarta must ensure that there is no military character in every element of their business. This guarantee covers a variety of actions, such as not using the cultural heritage area as an ammunition depot, a gathering place for soldiers, not allowing part of the area to be passed through/armed convoys, not allowing the cultural heritage area to be used as a reconnaissance pot or not allowing business people selling goods that are indispensable in a military operation. There must also be a guarantee that the employees and staff working in the business can still maintain their status as civilians and that they do not engage in direct participation in hostilities.

Concerning the necessary efforts to protect cultural heritage, the DKI Jakarta government can expand the implementation of the Cultural Heritage Law and the 2014 Governor's Regulation; for example, by stating that the core zone and buffer zone of Jakarta old city and even the area outside the city walls, if necessary, can be declared as a demilitarized zone or non-defended locality. In this case, it is also necessary to consider using a distinction symbol, both special protection and essential protection, as a sign that the cultural heritage of the old city area is protected during armed conflict. The use of an internationally recognized symbol of cultural objects is much better. It can complement the function of demilitarized zones or non-defended localities in the old city cultural heritage area. However, the provisions regarding demilitarized zones or non-defended localities will be challenged because the location of Jakarta's old city area with Sunda Kelapa Harbor is only about 4 km. In such a situation, it was impossible to ignore the old city area as a target destination for those who would attack from the north. The Hague Convention cannot even provide special protection when the location of a cultural object is not too far from an object or location that can be a target for military attacks, including ports. In addition, the status of the old Jakarta area as a cultural icon of Jakarta can make the area a target for attack, or an area that needs to be controlled or destroyed to show a monumental victory for the opposing party because it succeeded in destroying traditions and erasing memories in the past and forming a new historical narrative. Practices like this occur in Syria, Iraq, and Mali and are referred to as “cultural engineering" or “cultural cleansing.” (Mahnad, 2017).

As a preventive measure that must be prepared in times of peace, the cooperation between the DKI Jakarta government and the Police or the Indonesian National Armed Forces can also be formulated in the context of preserving cultural heritage during the conflict. The government can also expand the functions of the police stipulated in the Cultural Heritage n Law not only to record criminal acts and report them but also to carry out internal training for guard duties carrying light individual weapons. It should also be emphasized that such personnel are not combatants. These weapons are not used to carry out military actions but are only used to guard cultural heritage.

In this regard, the United Nations Guiding Principles on Business and Human Rights determines guidance on preventing and addressing business-related human rights harms, including in conflict-affected areas. According to this document, companies must respect human rights in all human rights legal instruments, including the ILO Declaration on Fundamental Principles and Rights at

Work. In particular situations, they must respect other rules, including humanitarian law (Davis, 2012).

3. CONCLUSION

The tourism business in the cultural heritage area of Jakarta's old city during armed conflict needs to be followed up and expanded with the implementation of the Cultural Conservation Law and The Hague Convention because the two instruments are related to each other and are complementary. The scope of application of Cultural Heritage Law relating to the occurrence of armed conflict in terms of efforts to save cultural heritage can also be expanded to protect cultural heritage. Internationally recognized zones in humanitarian law can strengthen the zoning of cultural heritage under the Cultural Heritage Law, and if necessary, by applying a rating of the protection of cultural objects, including international symbols.

The actions taken by the government in the tourism business of the Jakarta Old City cultural heritage area are to ensure that there is no military character in every business element contained in the area, determining a safe zone for cultural heritage, and the boundaries of the area by The Hague Convention regulations. It also binds the government and business actors and seeks institutional cooperation in the context of safeguarding cultural heritage in situations of armed conflict.

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The Impact of Customary Wedding Culture Rampanan Kapa' in Strengthening the Customary Law and Improving Cultural Tourism in Tana Toraja-South Sulawesi

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ABSTRACT
Tana Toraja is one area in South Sulawesi-Indonesia that still maintains the cultural customs, which are the heritage of their ancestors since thousands of years ago. This is marked by the validity of customary law, for example, implementing a death ceremony called Rambu Solo' and a traditional wedding ceremony called Rampanan Kapa.' The traditional wedding ceremony of Rampanan Kapa' is one of the attractions for tourists to visit Tana Toraja. This study aims to determine the process of implementing the Rampanan Kapa' traditional wedding ceremony in Tana Toraja related to customary law and its impact on tourism activities in Tana Toraja. This research was conducted in Tana Toraja Regency, with a social-legal approach. The data obtained in the form of primary data and secondary data were analyzed qualitatively. Qualitative analysis is used to analyze the descriptive data. The study results indicated that each process or ritual in the traditional wedding ceremony of Rampanan Kapa' had its meaning, which was closely related to customary law and sanctions for one party if it is proven to be the cause of divorce in marriage. The sanctions that would be given were determined based on the social class or Tana" in Toraja indigenous community. The results of this study also showed that all processes of traditional wedding ceremonies full of various meanings were proven to attract foreign tourists to learn, know, and be involved directly in the Rampanan Kapa' traditional wedding ceremony.

Keywords: *Rampanan Kapa', Tana Toraja custom, Traditional wedding.*

1. INTRODUCTION

Indonesia is a unitary country that has a variety of diversity. Indonesia consists of various cultures, local languages, races, ethnicities, religions, and beliefs. However, Indonesia can unite the diversity by the Indonesian motto "Bhinneka Tunggal Ika", which means a different but still one. *Cultural diversity* is a necessity that exists in Indonesia. The diversity that Indonesia has causes Indonesia to have a variety of cultures and customary laws in each region.1 Different region have different cultures and legal norms. One of the customary environments that still uphold the law of the indigenous community in weddings is Tana Toraja.

Tana Toraja is one area that has very famous customs and culture. Tana Toraja is one of the most reliable tourism destinations in South Sulawesi. Tanah Toraja offers cultural customs as an attraction for tourists. Many tourists from within the country and abroad visit Tana Toraja to witness the traditional rituals held in Tana Toraja. One of these traditional rituals is the customary wedding ritual. Traditional wedding in Tana Toraja is called Rampanan Kapa'. Although not all regions still adhere to customary law due to the influence of religion and current developments, some areas still adhere to their traditional culture. This proves that customary law still applies in Tana Toraja. Although almost all residents in Tana Toraja district have their religion, it is still very often to found various things in the community related to the belief system of the ancestors Aluk To Dolo for example in carrying out funeral ceremonies Rambu Solo' and wedding that is still carried out in a traditional manner called Rampanan Kapa'. 2

The indigenous community of Tana Toraja still practices the wedding system in Tana Toraja called Rampanan Kapa'. In contrast to the wedding procedures carried out in general, the wedding of Rampanan Kapa' is not ratified by the penghulu or religious leaders but by

traditional leaders who are called tao ada'. All rules regarding marital life are regulated through the rules originating from the beliefs and teachings of the ancestors of Aluk To Dolo (animist beliefs) called Aluk Rampanan Kapa' or Ada' Rampanan Kapa'. In the Rampanan Kapa' traditional wedding, divorce is very rare. If a divorce occurs, both parties will be subject to customary sanctions that are very large and determined based on social status in society. As a result, if there is a case where the marriage cannot be reunited, then the married couple will not divorce, but they only separate or remarry without first getting divorced.

2. METHOD

2.1 Research Location and Time

In order to obtain complete, accurate, and adequate data, the authors conducted the objective research, which was related to the impact of traditional wedding culture "Rampanan Kapa'" in strengthening the customary and improving cultural tourism in Tana Toraja-South Sulawesi. This research was conducted for approximately six months.

2.2 Research Approach

This study used a qualitative approach emphasizing efforts to utilize and collect information about the traditional wedding culture Rampanan Kapa' in Tana Toraja-South Sulawesi.

2.3 Type of Research.

This research was descriptive analysis research, which tried to 1) describe the process of implementing the Rampanan Kapa' traditional wedding ceremony in Tana Toraja related to customary law and 2) describe its impact on tourism activities in Tana Toraja.

2.4 Population and Sample

The samples in this research were two resource people who had followed the traditional wedding ritual of Rampanan Kapa' and had also experienced divorce through a process of sanctions and fines based on the Rampanan Kapa' custom. This research also involved two customary leaders, two village government officials or lembang, two civil registration officers, and each Christian and Islamic religious leader in Madandan village, Tana Toraja district.

2.5 Types and Sources of Data

2.5.1 Type of Data

The data obtained was qualitative data from observations and interviews, a description of the literature, and other library materials.

2.5.2 Source of Data.

The source of data used is divided into 2 (two): data obtained directly from the samples or primary data and data obtained from library materials or secondary data. In this research, primary data from direct observations and interviews and secondary data from various library sources will be used.

2.6 Data Collection Technique

In this study, the data collection techniques used are 1. Library Research by reading and studying all materials such as scientific writings, books, archives, magazines, literature, and written sources. 2. Field research uses observation and interview techniques by conducting direct questions and answers to the samples.

2.7 Data Analysis Technique

A descriptive analysis method was used to obtain an accurate explanation regarding the impact of traditional wedding culture Rampanan Kapa' in strengthening the customary law and improving cultural tourism in Tana Toraja-South to analyze the research data Sulawesi.

3. RESULT AND DISCUSSION

The Toraja tribe is a tribe that lives in the mountains of the northern part of South Sulawesi, Indonesia. The population is estimated at around 1 million people, with around 500,000 still living in Tana Toraja Regency, North Toraja Regency, and Mamasa Regency. The majority of the Toraja are Christian, while some adhere to Islam and animistic beliefs known as Aluk To Dolo. The Indonesian government has recognized this belief as part of the Hindu Dharma Religion.3

"Toraja" comes from the Bugis language to riaja, which means "people who live in the land above." The Dutch colonial government named this tribe Toraja in 1909. The Toraja tribe is famous for its funeral rituals, traditional Tongkonan houses, and wood carvings. Toraja funeral rituals are important social events, usually attended by hundreds of people and lasting for several days.4 Each process in traditional rituals and religious rituals in Tana Toraja has its laws classified into customary law.

Customary law is a verbal form of law. The form is not written because it is in line with the culture of the customary law community in Indonesia, which is based on oral culture.5 The emergence of customary law begins with individuals who get thoughts and behavior from God. Behavior that individuals continuously carry out will become a personal habit. If other people imitate the personal habit, then sooner or later, one person and another in the community will also carry out the habit. Then, if all community members carry out these habitual behaviors, these habits will become the community's customs to create that customary law.6

3.1 The Influence of Rampanan Kapa' Traditional Wedding as A Tourist Attraction

Tana Toraja is one of the mainstay tourist destinations in South Sulawesi. This area offers its unique Indigenous culture as an attractive offer for tourists. The Toraja indigenous community lives in mountain areas and maintains a distinctive lifestyle. All wedding, divorce,

and death processes are carried out in a unique and inherited from generation to generation, which is different from the wedding, divorce, and death of other tribes in Indonesia in general. Not only offering an enchanting natural atmosphere, but traditional rituals are also one that attracts tourists. One such ritual is a wedding ritual performed by local people. Based on the Central Bureau of Statistics of Tana Toraja Regency, data obtained that more than two hundred thousand visitors come to Tana Toraja for local tourists and more than five thousand foreign tourists per year7. Judging from the data above, it shows that there is so much interest from tourists in visiting Tana Toraja.

3.2 Rampanan Kapa' Rules According to The Beliefs of Aluk To Dolo

3.2.1 Traditional Wedding

Before the entry of Christian and Islam, the Toraja indigenous community had a belief called parandangan or aluk to dolo. Rampanan kapa' means dipasibali or an agreement between a man and a woman in the traditional wedding vows. Rampanan kapa' or commonly called rambu tuka,' is a Toraja traditional wedding with various rules and traditional ritual processes. This rule according to the belief aluk to dolo comes directly from the sky to humans. According to the myths and beliefs of aluk to dolo, this rule came down directly from the sky by to manurung puang tamboro langi or God Almighty. This rule is marked by pieces of betel. The traditional aluk to dolo wedding process is still followed today based on Tana' or caste rules. Kapa' must go through the applicable rules based on the caste system as follows:

a. Tana' bulaan
   Tana bualaan is an aristocratic caste which is the highest caste in the Tana Toraja society. In the process of customary aluk to dolo wedding or in the modern society of Tana Toraja, there is a process of agreement or kapa 'Tana' bulaan, or the highest caste pledged in front of customary officials to both sides of the bride to bind this traditional wedding through Tana' which 12 to 24 buffaloes mark. Tana' marked with 12 to 24 buffaloes as proof of loyalty between the two parties.
b. Tana' bassi
   Tana' bassi or middle noble caste tied in Tana' which is marked by 6 to 12 buffaloes as a pledge of allegiance in the traditional wedding of the Tana' bassi caste.
c. Tana' karurung
   Tana' karurung, or ordinary people's caste which is marked by 2 to 6 buffaloes as a pledge of allegiance in the traditional wedding of the Tana' karurung caste.
d. Tana kua-kua
   Tana kua-kua or Kaunan or servant caste with a maximum number of 2 buffalo. However, the actual customary rules of aluk to dolo are only trusted by three rules and caste in the traditional wedding agreement process: Tana'bulaan, Tana'bassi, and Tana'Karurung. The tana kua-kua caste is made by the Tana Toraja community today, which is adapted to the modern era.8

The wedding party or Rampanan Kapa' of the Toraja indigenous community is divided into three according to their respective caste levels, namely:

a. Bo'bo' Bannang
   Bo'bo' Bannang is a party in the lowest caste in a simple traditional celebration attended by only a few invitees and held at night. The menu offered to guests is fish and one or two chickens.
b. Rampo Karoen
   Rampo Karoen is a middle caste party. The party is held in the afternoon at the bride's house. Wedding poems will be read during the event. At night, the bride and groom listen to all the wedding rules in front of customary witnesses. After that, the event continued with having dinner together.
c. Rampo Allo
   Rampo Allo is a top caste party. The cost used to organize this party is very large. Many stages started from the proposed event to the wedding party that requires a very long time and preparation.9
d. The Traditional Wedding Process of The Toraja People (From The Aluk To Dolo Period To The Religious Society Period).

The traditional wedding of the Toraja people in the Aluk to Dolo era was very strict because the Aluk To Dolo people firmly adhered to pemali or rules/prohibitions. The traditional Aluk To Dolo wedding must be carried out by the caste or Tana' that applies in society. For example: if a Tana' bulaan (noble caste) enters into a customary wedding agreement with another Tana' of a different caste, it will be given customary sanctions by lowering its status in the community. However, by the times, there has been a cultural shift. Inter-caste weddings have occurred in Toraja indigenous community, but sanctions or punishments are still given and must be carried out. Since people still have the belief in Aluk To Dolo to people who already have a religion, the traditional wedding process still has to go through the same rituals, as follows:

a. Umbawa kada (Family visitation through envoys or family representative)
   In this process, the family representatives are sent to visit the prospective bride. The aim is to find out the caste that the woman belongs to and give the news that the groom will marry the bride. If it is known that there are similarities in caste, then all preparations for marriage begin to be prepared. Unfortunately, as time goes by, there is a shift in cultural values so that the rituals in this traditional marriage only become a habit as a form of

appreciation and respect for the big family of women.

b. Ma'parampo (Proposing)
After the family representatives are sent to the prospective bride's family house returned with news or called umbawa kada, the groom will do ma'parampo or a proposing according to the caste. In the ma' parampo process, if the groom is from a noble caste, the groom must be accompanied by 24 men according to the tana' or 24 caste marks. They must bring 24 areca nuts and betel nuts tied in a single bond and wrapped by Ma'a cloth and gayang (Toraja kris). All of this must be brought by the groom's entourage. In the ma' parampo process, the kapa' agreement is agreed in front of the customary holders of both parties according to Tana' or caste. In Aluk To Dolo era, a man must stay at the bride's house. In the traditional wedding rituals and beliefs of the Aluk To Dolo, men and women have been declared legally as husband and wife if the customary process has been carried out. However, along with the entry of other religions, such as Christian and Islam, marriage has not been declared valid if it has not followed the marriage blessing or contract according to religion and is carried out based on formal law and recorded by the state.

c. Marriage Blessing based on religion

d. Civil registration by the state10

3.2.2 Toraja Customary Divorce Process

Ma'kapa is a kapa' obligation or agreement and sanctions that must be carried out in the typical divorce process of the Toraja indigenous community. Kapa' is a sanction for violations of customs committed by one of the Toraja traditional wedding agreement parties. This sanction must be by the level of Tana' or the caste between the two parties. Divorce in the traditional wedding of the Toraja indigenous people can occur because various things and conditions trigger it, therefore as a consequence of customary sanctions is the obligation to pay kapa'. If there is one party who wants to divorce or to leave the partner in the course of the household, then the customary sanction that must be carried out is to pay kapa' according to caste. If the one who wants a divorce is in the top caste of Tana' bulaan, it is the obligation of a man or woman who leaves her partner to pay 24 buffalo according to the customary agreement. The process of paying kapa' must be carried out in the presence of traditional leaders. If the obligation to pay sanctions has been carried out in the presence of traditional leaders, one of the parties is allowed to leave the partner. In the understanding of aluk to dolo, if one party does not pay its obligations or carry out sanctions, it will receive customary sanctions, namely dosa, or, in other words, become servants of the local village. This custom of Toraja indigenous peoples is very binding and must be carried out because, in the belief of the Toraja indigenous people, pemali is highly respected.11

As time goes by, and the development of increasingly modern society after the aluk to dolo era, to strengthen the position of the engagement or agreement in the traditional wedding of the Toraja indigenous people, the term "surat kongsi" or written agreement has been agreed since the colonial period. Since then, the agreement has been agreed in the customary court and then legally strengthened in written form, which is carried out by the lembang or village government with the stamp.

Based on the experience of Mrs. Themi Fitrini Rante Tonglo, who came from Lembang (village) Madandan when in the ma'parampo pore tananan dapo' (traditional bond) process, the Kapa' was agreed. There was evidence and a juridical/legal basis in the agreement by making an official agreement at the Madandan Lembang (village) government office. This agreement was signed on the stamp to strengthen the customary agreement that has been Ra'tai (agreed on) by both parties and attended by each of the customary stakeholders or other witnesses.

4. CONCLUSION AND SUGGESTION

Rampanan kapa' (traditional wedding) in the Toraja indigenous people must go through a long process based on applicable customary rules. In this process, each individual is obliged to involve traditional leaders from both sides. In the process of this traditional wedding, the agreement must be carried out, and those who violate the agreement must carry out the applicable customary sanctions. This is related to the high self-esteem of the Toraja indigenous people. In order to strengthen the position of the agreement in traditional weddings and the decisions of traditional institutions towards positive law and formal justice, there must be evidence of a written agreement as a formal legal so that the agreement is legally valid and binding.

In the wedding engagement process, the Toraja indigenous people must go through several stages, such as Ubawa kada involving family representatives, Ma'parampo or proposing by involving religious and traditional leaders, Blessing of marriage/marriage contract, and civil registration by the government. In addition, in the divorce process or Ma'Kapa, a customary sanction that must be carried out for individuals who have violated the agreement is to pay a fine in the form of a pig or buffalo according to their Tana' or caste. This acceptable obligation is given to those who have broken the agreement by leaving or divorce the spouse.

Because the Rampanan Kapa' traditional wedding process has many stages, this marriage process becomes an attraction for both local and foreign tourists. The familiar environment that has been formed in Tana Toraja should be preserved so that the community is genuinely obedient in carrying out the process of community life and strengthens the position of customary rules in a juridical manner so as not to cause polemics in the future.

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Customary Law in Constitutional Review in Korea

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ABSTRACT
Customary law is defined as a law formed in social life, not by legislators. Customary laws, based on rituals and customs, have occupied an essential part of legal life. However, in the 19th century, through the codification era, customary law was replaced by written law, not only in written law countries but also in unwritten law countries. The French Civil Code in 1804 (called Code Napoleon in 1087) has played an essential role in codification in Europe. Customary law being considered supplementary; the effect of customary law is inferior to that of written laws. However, the effect of customary law differs according to its nature and form of existence. According to the Introduction, this paper consisted of 1 question: Could a Customary Law object to Constitutional Law? This paper concludes that customary laws in the constitutional review have been a new field of constitutional discussion in Korea; customary laws as an object of adjudication on the constitutionality and formation of customary constitutional law by the Constitutional Court. However, it faced a new and continuous political challenge by the political powers, actually in the majority, which tried but failed to relocate the Capital of Seoul according to the KCC's decision. It could result in other constitutional cases in the future.

Keywords: *Customary Law, Constitutional Review.*

1. INTRODUCTION

In general, *customary law* is defined as a law formed in social life, not by legislators. Customary laws, based on rituals and customs, have occupied an essential part of legal life. However, in the 19th century, through the codification era, customary law was replaced by written law, not only in written law countries but also in unwritten law countries. The French Civil Code in 1804 (called Code Napoleon in 1087) has played an essential role in codification in Europe.

In Korea, customary law is recently being re-evaluated along with the diversification and/or decentralization of socio-economic structure, which has changed the reality of legal life. [1]. Besides, it is reinterpreted not only in general judicial but also in constitutional review.

Traditionally, the ordinary courts have recognized customary law and normative control over it, especially the Supreme Court. However, the establishment of KCC brought out new changes in normative control over customary laws.

As the control of constitutionality of laws has been activated since the constitutional revision in 1987, a new question was raised if a customary law could be an object of control of constitutionality of laws. In other words, it was a question of customary law could have a normative effect like a law stipulated by the legislator.

A normative effect of customary law, like a law, is sometimes recognized by the legislator itself. According to the Commercial Act, the customary commercial law shall apply in priority to the Civil Act for a particular commercial matter: "Where this Act does not provide for a particular commercial matter, the customary commercial law shall apply; and if no such law exists, the Civil Act shall apply." (Art.1)

However, the effect of customary law differs according to its nature and form of existence. As the status of customary law is not stated explicitly in Korean Constitution, it is stipulated in the Civil Act: "If no provisions applicable to certain civil affairs exist in Acts, customary law shall apply, and if no applicable customary law exists, sound reasoning shall apply." (Art.1) And, it is also stipulated in the Commercial Act: "Where this Act does not provide for a particular commercial matter, the customary commercial law shall apply; and if no such law exists, the Civil Act shall apply." (Art.1)

Besides, even if a statutory stipulation does not notify it, customary laws have been recognized in Korea in diverse fields, such as customary constitutional law,

customary laws as a law, customary administrative law, etcetera.

As the constitutional review on the customary administrative law is limited in competence dispute, especially between local governments, it is appropriate to focus on the customary constitutional law and customary laws as a law.

2. RESULT AND DISCUSSION

According to the Civil Act and the Commercial Act, civil and commercial customary laws would have a legal effect, like a law made by the legislator, people's representatives. In this case, it is expected that, even if a customary law could be recognized by ordinary courts, especially by the Supreme Court, they should also be controlled their constitutionality of laws by the Constitutional Court.\

Primarily, customary laws which have based on Japanese research of customs during the Japanese occupation period should be controlled their constitutionality of laws. [2]

However, there is also opinion that inappropriate to make the customary law the object of adjudication. [3]. The ordinary courts confirmed several times that a customer on the right to claim for division of property has been formed and existed as customary law in Korean society, and applied it to the cases on the inheritance (for examples, SC November 25, 1969, 67Me25; SC June 12, 1973, 70Da2575, etcetera.).

Korean Supreme Court itself decided a customary law by which the right to claim for restoration of inheritance would be extinguished after 20 years since the beginning date of inheritance was against the overall legal order with the constitution as the peak norm. So, eventually nonvalid as customary law.

“In order to say that a social life norm created through repeated practices of society has come to be recognized as a legal norm, the social life norm must be recognized as having legitimacy and reasonableness as it does not go against the overall legal order with the constitution as the supreme norm. Otherwise, social life norms cannot be recognized as effective as customary law by using them as legal norms, even if they are created through repeated practices of society."

(SC July 24, 2003, 2001Da48781)

The Court also decided a customary law denying to female as member qualification of a family conflicted with the constitutional order on which the customary law in question was based and lost its normative certitude and validity.

(SC July 21, 2005, 2002Da1178)

A motion made by a party to request a review on the constitutionality of a customary law that denied the right of succession and right to claim for division of property to females if the head of the family was dead was denied by the Supreme Court.

The Court rejected that customary law is not an object of adjudication of constitutionality by the Constitutional Court because it is under the jurisdiction of the Court itself.

(SC May 28, 2009, 2007KaGi134)

After that, based on the article 68 ph.2 of the Constitutional Court Act, the party asking the customary law in question is constitutional or even not filed a constitutional complaint with the Constitutional Court. The Constitutional Court has to decide if the customary law can object to adjudication on the constitutionality by itself. The KCC applied the same reasoning to the case, on which it allowed an adjudication on the constitutionality of treaties that have the same legal effects as laws in the formal sense.

According to the KCC, as treaties that have the same typical effects are considered as the object of adjudication on the constitutionality of statutes, it contributes not only to the unity of legal order and legal stability but also to the protection of people's fundamental rights by allowing adjudication based on the laws consistent with the constitution.

“In this case, even if the customary law at issue is not a law in the formal sense, it has a normative effect substantially as a law in the absence of laws regulating inheritance before the enforcement of Civil Act. Therefore, it could be an object of adjudication of the constitutionality of laws.”

(25-1 KCCR 18, 2009Hun-Ba129, February 28, 2013) The existence of customary constitutional law.

The concept of customary constitutional law is discussed theoretically by law scholars. Some constitutional norms which are not included in a written constitution could exist in the form of customary constitutional law and law-like parliamentary law, election law, etcetera. [4]

However, customary of constitutional law is considered as the part of constitutional law (constitutional sources) by Korean Constitutional Court. It was in Relocation of the Capital City Case (16-2(B) KCCR 1, 2004Hun-Ma554, October 21, 2004) in which KCC considered the Special Act on the Formation of the New Administrative Capital was unconstitutional since it was inconsistent with the constitutional custom of which Seoul has been the capital of the nation.

The program to resettle the administrative function of the capital was the election pledges of candidate Roh Moo-Hyun at the presidential election in 2002. It was for the reason of curbing the concentration and overpopulation at the capital Seoul and balancing local development. After he was elected as President, the Act at issue was enacted for implementing the pledge in 2004.

The constitutional complaint was filed since the Act was unconstitutional. It was an attempt to resettle the nation's capital without the act of revising the constitution and violating the right to vote on the referendum of constitutional revision. (Art. 130, Ph. 2 of Korean Constitution)

1. Reasoning of Korean Constitutional Court

'Seoul is the capital of the Republic of Korea', some questions could be raised in this case.

1) The matter of capital is truly constitutional matter?
2) Constitutional customs exist?
3) If it exists, it owns the same effect as the written constitution?
4) The Constitutional Court can confirm or even form the customs of constitutional?

1) About the first question;

"The establishment or relocation of the capital is the geographical placement of the basis of the nation's organization and structure through the determination of the location of the highest constitutional institutions such as the National Assembly and the President, and is thus a fundamental decision by the citizens concerning the nation, and, at the same time, a core constitutional matter that forms the basis for the establishment of a nation."

2) About the second question;

"That Seoul is the capital of our nation is a continuing practice concerning the life in the national realm of our nation for over six-hundred years since the Chosun Dynasty period. Such practice should be deemed a fundamental matter in the nation that has achieved national consensus from its uninterrupted continuance over a long period. Therefore, Seoul is the capital, is a constitutional custom that has traditionally existed since even before establishing our written constitution. It is a clear norm in itself and a premise upon which the constitution is based, although not stated in an express provision in our constitution. As such, it is part of the unwritten constitution established in the form of a constitutional custom."

However, based on thr opinion of one justice, "in a legal system under a written constitution, customary constitutional law may not be established or maintained apart from the written constitution, and, instead, is always given no more than supplementary effect as it may be established and maintained only when harmonized with various principles of the written constitution.

Also, constitutional revision is a concept that pertains to the constitution in the formal sense, i.e., the written constitution. Therefore, the change of the customary constitutional law does not belong to constitutional revision and may occur through the enactment of the revision of the statute that is the procedure for representative democracy established by the constitution. In the case of a change in constitutional custom such as the transfer of the capital, as there is no particular constitutional provision that prohibits this, it may be done by enacting the statute by the National Assembly. Therefore, there is no possibility that the Act at issue, in this case, violates the right to vote on a referendum under Article 130, Section 2, of the Constitution."

3) About third question;

"Constitutional custom is also part of the constitution and is endowed with the same effect as the written constitution. Thus, such legal norms may be revised only through constitutional revision according to Article 130 of the Constitution. That Seoul is our nation's capital is an unwritten constitutional custom and, therefore, retains its effect as constitutional law unless invalidated by the establishment of a new constitutional provision ordaining a new capital through the constitutional revision procedure. On the other hand, other than through formal constitutional revision, a constitutional custom may lose its legal effect by losing the national consensus that supports it. However, in this case, such circumstance is not found."

"According to Article 130 of the Constitution, a national referendum is mandatory for the constitutional revision. Therefore, the citizenry has the right to express its opinion concerning the constitutional revision through a binary pro-and-con vote. Here, in this case, the Act at issue realizes the transfer of the capital, which is a matter to be undertaken by the constitutional revision, merely in the form of a simple statute without following the constitutional revision procedure. Thus, the Act violates the constitution as it excludes the exercise of the right to vote on the referendum, thereby violating such right, which is a fundamental right to participate in politics retained by the people at the constitutional revision according to Article 130 of the Constitution."

As the Act at issue was declared unconstitutional, it changed, 'Act on the construction of an Administrative-Function Hub City' in 2005, which relocated administrative institutions of the central government with certain exceptions. It was not including the highest constitutional institutions like the National Assembly and the President.

4) About the last question;

KCC implemented the general requirements of customary law traditionally adopted by the ordinary courts, especially the Supreme Court;

- Constitutional custom is as part of the constitution and given with the same effect as the written constitution. Thus, legal norms may be revised through constitutional revision according to Article 130 of the Constitution.
- Seoul is the capital as unwritten constitutional custom and, therefore, retains its effect as the constitutional law unless invalidated by determining new constitutional provision

ordaining new capital through the constitutional revision procedure.

- Other than through formal constitutional revision, a constitutional custom may lose its legal effect by losing the national consensus that supports it.

2. New challenges against the KCC's decision at issue

However, there have been some continuous attempts to relocate the capital. At first, as the KCC required that at least "the highest constitutional institutions such as the National Assembly and the President" have to be in the actual Capital, Seoul, President Roh and the political party in the majority, which tried to relocate the capital by a particular law carried forward it indirectly. They replaced the law declared unconstitutional with a new law moving the Executive (except the President) to the Sejong City, newly being constructed. Of course, the new law being by the constitutional requirements was declared constitutional. In this case, it could be supposed that the KCC understood the concept of the President as the highest constitutional institution in a narrow sense. In Korean Constitution, the President is the Executive itself, including the ministers who assist only the President. (Art.87 Ph.2) Therefore, it is not easy to imagine the ministers separated from the President. It could be an unconstitutional phenomenon.

Recently, President Moon and the political party in the majority, which succeeded the former government, have tried again to avoid the standard constitutional requirements recognized by Constitutional Court. Instead of moving the National Assembly to the City concerned, they are trying to establish a second parliamentary building for the permanent Commissions in Sejong City. It would also raise now and in the future some political and constitutional questions, which could be concluded as unconstitutional**.**

3. CONCLUSION

Questions on customary laws in the constitutional review have been a new field of constitutional discussion in Korea; customary laws as an object of adjudication on the constitutionality and formation of customary constitutional law by the Constitutional Court.

At first, the KCC respected the ordinary courts' judgment on the customary law, conditions of establishment of customary laws, its extinction, etcetera. However, the KCC itself confirmed its jurisdiction on the control of the constitutionality of customary laws.

The KCC's competence in constitutional interpretation, especially on customary constitutional laws, confirmed its power to allow the constitutional effect to a custom. It was through the Relocation of the Capital City Case.

However, it faced a new and continuous political challenge by the political powers, actually in the majority, which tried but failed to relocate the Capital of Seoul according to the KCC's decision. It could result in other constitutional cases in the future.

In this case, it is essential to confirm the People's will to maintain a customary constitutional law, especially by a referendum.

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Overcome Tourism Threat Through Balinese Local Wisdom

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ABSTRACT
Tourism in Bali is the key to economic life for most Balinese people. The economic cycle in Bali is exceptionally dependent on tourism that takes place in various regions in Bali. Bali's status as 'Pulau Dewata' or 'Island of the gods' has a significant impact as one of the tourisms appeals in Bali. Every tourist that has ever set foot in Bali always wanted to come back. Tourism as the most significant intake contributor makes Balinese have a deep dependency on it. Almost all citizens of Bali depend on this sector. In the end, it will have both positive and negative impacts on community life in Bali. In the beginning, Balinese could be said as a traditional community that keeps a conventional living style parallel with the local culture concept that already exists. The local culture applies the Balinese central concept of life, Tri Hita Karana concept, and Sad Kerthi concept. These concepts bring out life harmonization between The Creator, humans, all creatures, and the nature that sustains life on this planet. Nevertheless, this is one of the biggest tourism appeals. The purity of the tradition and authenticity that Balinese hold on to bring out interest for foreigners, whether local tourists from outside Bali or even overseas tourists. As time went by, deviations that used tourism on their behalf and ended on commercialism started to emerge. The desire to lift tourism turns out to be a two-headed knife. That, in the end, will possibly be a considerable risk for authenticity and traditionalism that has been kept nicely in Bali all this time. These are also being the main reason for tourism appeals in Bali. Therefore, these local cultures in Bali should always be upheld and protected by every authority in Bali to defend it for the sake of Balinese economic life enhancement without leaving their life root. In order to ensure the continuity of protection based on local wisdom, the participation of several parties related to it is required. First, the role of the local government to establish rules about tourism is the first and foremost step. Followed by the second step, which is the role of other regional governments to control the implementation and application of the rules that are already made. The most tangible thing is making rules and strict control toward tourism permission and ensuring there are no deviate things there. Third, the awareness of investors that wanted to develop their tourism businesses in Bali to maintain the Sad Kerthi concept as the fundamental principle of their business. On one side, fulfilling their economic needs could go well with full support to Balinese local wisdom. If every party could take care and participate in this thing, then it can be preconcerted that the economic growth in Bali will grow parallel with the environmental preservation, along with sanctity and sustainability of Balinese that stickle to their local wisdom.

Keywords: *Authenticity, Local Culture, Tourism, Tri Hita Karana, Sad Kerthi.*

1. INTRODUCTION

Tourism is an important economic sector in Indonesia. In 2009, tourism ranked third in foreign exchange earnings after oil and gas commodities and palm oil. Based on 2014 data, the number of foreign tourists who came to Indonesia was 9.4 million more or grew by 7.05% compared to the previous year. The natural and cultural wealth is a crucial component of tourism in Indonesia. Nature Indonesia has a combination of tropical climate, 17,508 islands, 6,000 are uninhabited, and the third-longest coastline in the world after Canada and the European Union. Indonesia is also the largest and most populous archipelagic country in the world. The beaches in Bali, dive sites in Bunaken, Mount Rinjani in Lombok, and various national parks in Sumatra are natural tourist destinations in Indonesia. The main attraction in Indonesia that attracts foreign tourists is mainly the culture.

According to in section considering a to d in 10th statute of 2009 about tourism, concerning about:

a. That the state of nature, flora, and fauna as a gift from God Almighty, as well as ancient relics, historical relics, arts, and culture owned by the Indonesian citizen, are the resources and capital for tourism development to increase the prosperity and welfare of the people as contained in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia;
b. That the freedom to travel and to take advantage of free time in the form of traveling is part of human rights;
c. That tourism is an integral part of national development, which is carried out in a systematic, planned and integrated, sustainable and responsible manner while still protecting religious values, cultures that live in society, environmental sustainability and quality, as well as national interests;
d. That tourism development is needed to encourage the equal distribution of business opportunities and gain benefits and be able to face the challenges of changing local, national, and global life.

Considering the provisions of section and implementing the provisions of article 55 of the tourism law in Chapter XII and concerning Human Resource training, standardization, certification, and human resources. Article 53, it is regulated that workers in the tourism sector must have competency standards carried out through competency certification carried out by a certification agency that has received a license under the provisions of the legislation. 52nd Government Regulation of 2012 was established regarding Competency and Certification and business certification in the tourism sector. Because of the provisions regulated by the tourism competency regulations, workers who work in the tourism sector must have competency standards by the tourism competence government regulations. The 11th Ministry of Tourism Regulation of 2015 concerning the enforcement of Indonesian National Work Competency Standards is aimed to be a reference in implementing competency-based education and training, competency testing, and professional certification in the tourism sector.

Government divided the authority of managing tourism to some degree, provincial and district or city degree. As the executor of national tourism programs, the Ministry of Tourism is expected to be more creative and innovative in making breakthroughs in efforts to manage and develop tourism in Indonesia.

According to article 4 10th Statute of 2009 about tourism, tourism is held in order to:

a. intensify the economic growth;
b. intensify the citizen's wealth;
c. abolishing poverty;
d. abolishing unemployment;
e. conserving nature, environment, and resources;
f. intensifying culture;
g. intensifying order of the nation;
h. cultivating the love for the nation;
i. strengthen the identity and unity of the nation; and
j. strengthen the unity between nations.

According to article 28 10th statute of 2009 about tourism, the government is authorized to:

a. Formulate and stipulate a master plan for national tourism development;
b. Coordinating cross-sectoral and gross-provincial tourism development;
c. Organize International cooperation in the field of tourism by the provisions of the legislation;
d. Determining national tourist attraction;
e. Determining national tourism destinations;
f. Establishing norms, standards, guidelines, procedures, criteria, and control systems in the administration of tourism;
g. Developing policies on human resource development in the tourism sector;
h. Maintaining, developing, and preserving national assets that are tourist attractions and potential assets that have not been explored;
i. Conduct and facilitate the promotion of national tourism;
j. Providing facilities that support tourist visits;
k. Providing information and/or early warning related to the security and safety of tourists;
l. Improving community empowerment and tourism potential owned by the community;
m. Supervise, monitor, and evaluate the implementation of tourism; and
n. Allocate tourism budget.

According to article 29 10th statute of 2009 about tourism, the provincial government is authorized to:

a. Formulating and Stipulating a provincial tourism development master plan;
b. Coordinating the implementation of tourism in its territory;
c. Carry out the registration, recording, and data collection of tourism business and registrations;
d. Determining provincial tourism and destinations;
e. Determining provincial tourist attractions;
f. Facilitate the promotion of tourism destinations and tourism products in its territory;
g. Maintain provincial assets that become local tourist attractions; and
h. Allocating tourism budget.

According to article 30 10th statute of 2009 about tourism, the district/city government are authorized to:

a. Formulating and Stipulating a district/city tourism development master plan;

b. Coordinating the implementation of tourism in its territory;
c. Carry out the registration, recording, and data collection of tourism business and registrations;
d. Determining district/city tourism and destinations;
e. Determining district/city tourist attractions;
f. Facilitate the promotion of tourism destinations and tourism products in its territory;
g. Maintain provincial assets that become local tourist attractions; and
h. Allocating tourism budget.

Before mentioning various points of this subject, one question should be posed: What is local wisdom? Local wisdom was known by our community in Indonesia a long time ago. Local wisdom can be viewed as a social and communicative system that produces self-organization (autopoiesis) within a culture [1]. Local wisdom takes many parts in Indonesian communities. Sometimes, it is a bit confusing to explain the phrase "local wisdom" in our minds. Local wisdom is a combination of tradition and knowledge of a specific location that passed from one generation to the other and preserved it or even developed to become dynamically acceptable without changing the whole context. The thing that they know about local wisdom is the things that they do every day without even knowing the word itself. In the middle of the chaotic society that comes from radicalism, local wisdom will be an oasis that could help solve the ongoing problem and remind Indonesians about their origin. The subject of local wisdom is related to the local culture. Even though, for Indonesian, the culture that will be seen is Indonesian culture universally. Culture is one of the basic human instincts in order to save and develop themselves. Why is so? Because through culture, a citizen could defend their existence, and culture could make a person be a better person (in a sense, culture could humanize humans). A journal once said that local wisdom is the ability to adapt to, organize, and cultivate the influences of the natural world as well as other cultures, that is the driving force behind the transformation and creation of the remarkable cultural diversity of Indonesia. [2] The local culture come into sight in the application of Balinese central concept of life, Tri Hita Karana concept, and Sad Kerthi concept. [3] These concepts bring out life harmonization between The Creator, human, all creature, and the nature that sustain life in this planet. However, this is one of the biggest tourism appeals. Balinese hold on to traditional purity and authenticity to attract foreigners, whether local tourists from outside Bali or even overseas tourists.

2. RESEARCH METHOD

There are 2 (two) kinds of research methods, the Normative method, and the empirical method. Normative methods are used in research that using 1 (one) of 3 (three) problems as follows:

1) Problem caused by no statutes regulating;
2) Problem caused by statutes that are blurry, causing mass confusion to the citizens; and
3) Problem caused by 2 (two) or more statutes that contradictive each other.

The empirical method is used in research that the problem is caused by the connection between statutes that apply and the applications differ and cause problems in society. The empirical method uses field research, meaning that the authors must dive in into the problem themselves by interviewing 1 (one) of 2 (two) parties or could be both classified by their experiences and capabilities; those parties are:

1) Informants: this party are not usually or not directly involved in the problems, but classified by their knowledge and capabilities of the cause; usually informants are a person who has powers in certain offices as a person of power or college professors; and
2) Respondents: this party does not always have knowledge and capabilities of the cause of the research, but they are the ones who have direct involvement in the research problems.

This research uses normative method because the author is using some primary sources such as the 10th statute of 2009 about Tourism which seeking what the role of the government in every degree, role by the citizen how they preserve the local wisdom left by their ancestors, secondary sources such as published books and published scientific researches that been written by credible experts in the subject matters such as tourism law and customs law, especially Balinese custom. This research uses the tertiary source that includes English-Indonesia dictionaries, Indonesia-English dictionaries, and Law dictionaries.

3. RESULT AND DISCUSSION

Tourism in Bali is the key to Balinese economic life, frequently confusing and omission in defending the culture's authenticity and cosmic balance in Balinese life. In the middle of passionate tourism development in Bali, this cosmic balance factor is often forgotten and considered not essential to be fought for.

Bali's condition now is very different compared to before, although the difference is not visible from the side of religious life. However, if seeing it from the tourism side that impacts nature, it cannot be ignored. Balinese life concept is mainly based on their religious concept. Tri Hita Karana's concept seeps into the life of Balinese. This concept itself gives certain rules about Uttama Mandala or Wilayah Parhyangan (managing the relation of human and Sang Hyang Widhiwasa), Madhya Mandala or Wilayah Pawongan (managing about human relation with other human being), and Nishtha Mandala

or Wilayah Palemahan (managing the relation between human and the universe).

This article will be giving most of the attention to the last concept of Tri Hita Karana, even though people need to be aware that these three concepts cannot be separated. The third concept is very likely to be unbalanced or even damaged when the tourism regulation in Bali does not recognize the needed factors. The last concept of Tri Hita Karana is primarily shown on Sad Kerthi concept, namely the six efforts from Balinese to maintain their life harmonizes with the universe.

The six things that are done to harmonize with the universe are:[4]

1. Atma Kerthi is done to purify all the spirits or souls from those who already passed away.
2. Danu Kerthi, this is done to purify and preserve the sustainability of all water resources that exist and become the mainstay for everyone.
3. Samudera Kerthi is the attempt done to purify and preserve the sustainability of beach and sea.
4. Wana Kerthi, in this part, the objects to be purified and preserved are forest and mountain areas.
5. Jagad Kerthi is done to purify and perfect the relationship between humans and other creatures.
6. Jana Kerthi, the last effort is made to purify and perfect themselves.

This life concept is the one that keeps chastity and sustainability of human life, other creatures, and every life facility in Bali. This is also the thing that got affected the most when tourism development was done more intensively. Sometimes, because of the desire to invite investors, the government often forgot to control things that they should control to preserve the region itself. Other than that, the consideration of commercialism also defeats the compulsion of preserving the nature that already exists.

Nowadays, the Bali government already contributes to preserving local wisdom by making some rules and regulations for Balinese tourism based on the Sad Kerthi concept. Nevertheless, the thing that should be emphasized, other than rules and regulations, is that the government should pay more attention to the control of permission given to business owners in Bali.

4. CONCLUSION

In the environmental conservation frame in Bali, Balinese has declared that local wisdom-based efforts have been applied in their life since a long time ago. Sad Kerthi concept is a complete concept that could be relied on to purify and preserve the environment in Bali, community life, and all living things in Bali.

In order to ensure the continuity of protection based on local wisdom, the participation of several parties related to it is required. First, the role of the local government to establish rules about tourism is the first and primary step. Followed by the second step, which is the role of other regional governments to control the implementation and application of the rules that are already made. The most tangible thing is making rules and strict control toward tourism permission and ensuring there are no deviate things there. Third, the awareness of investors that wanted to develop their tourism businesses in Bali to maintain the Sad Kerthi concept as the fundamental principle of their business. On one side, fulfilling their economic needs could go well with full support to Balinese local wisdom. Suppose every party could take care and participate in this thing. In that case, it can be preconcerted that the economic growth in Bali will grow parallel with the environmental preservation, along with sanctity and sustainability of Balinese that stickle to their local wisdom.

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Misuse of Visitation Visas by Foreigners

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ABSTRACT
The Arrival of foreigners in Indonesia is a tourist visit and comes with the purpose of state or business visit, in tourism science known as "Business Tourism." For example, the Arrival of foreigners in Indonesia is the leading destination for business. However, the rest of the time is used to make tourist visits; nowadays, the event is increasing. Based on this, the problem is formulated: what form of abuse of visiting visas by foreigners? Moreover, how are the legal sanctions of the misuse of visit visas by foreigners? The research method uses normative legal research with the general legal approach in Indonesia, a conceptual approach supported by literature material. The results of the study, a form of abuse of foreign visit visa identified that conduct activity not following the purpose of issuance of visas such as foreign visitor visas used to work in the Bali area, elderly visas used to work living in Indonesia exceeded the validity period of Visa so that it is categorized as an overstay. Legal sanctions for misusing foreign visitor visas imposed administrative sanctions (forced expulsion from Indonesian territory) or criminal sanctions (punishment of confinement).

Keywords: *Abuse of Visit Visas, Foreigners.*

1. INTRODUCTION

The application of foreign visa obligations to visit Indonesia sometimes still finds many problems. The Visa granted is often misused, so the use deviates from the expected purpose, namely the Visa granted is for a visit or a socio-cultural visa. However, foreigners work in Indonesia, ranging from practicing as a Legal Consultant to English Teachers or other jobs that are unquestionably very detrimental to the state in terms of the job taking and foreign exchange should be accepted by the state.

Seeing the reality above, it is now signaled that many foreigners come to Indonesia abusing their visas, thus impacting the field of economy and national stability. Then the author is interested in discussing this in a scientific paper entitled "Misuse of Visit Visas by Foreigners."

From the background as described above, there can be some problems, namely:

1. What are the forms of abuse of visitation visas by foreigners?
2. How are legal sanctions for the misuse of Visit Visas by foreigners?

2. METHOD

2.1 Types of Research and Problem Approaches

Legal research uses normative legal research type by using the prevailing legal approach in Indonesia and supported by literature materials in the form of literature, articles, and journals.

2.2 Source of Legal Materials

The legal materials used in this study are sourced from primary legal materials, which are legal materials of binding content, because it is issued by the government, in this case, namely: Law No. 6 of 2011 on Immigration, Government Regulation No. 32 of 1994 on Visas, Entry Permits, Immigration Permits. Moreover, secondary legal materials were used, obtained through literature research in literature, articles, and journals.

2.3 Legal Material Collection Techniques

The Collection of legal materials with the study of documents and recording techniques, namely by studying the existing primary legal materials, both in the form of legislation and secondary legal materials through works of literature, journals, articles related to research issues. First of all, an inventory of primary and secondary legal materials is carried out, then classified and subsequently selected legal materials that suit the needs of the research.

2.4 Legal Materials Analysis

Against existing legal materials, systematically arranged from things of a general nature to things of an exceptional nature-based on existing problems. Then the source of legal materials is chosen based on their respective proportions so that the technique of processing legal material sources carried out is qualitative. Descriptive analysis techniques analyze primary and secondary legal materials by answering problems based on the field.

3. RESULT AND DISCUSSION

3.1 Forms of Abuse of Visiting Visas By Foreigners

In Chapter I of the General Provisions, Article 1 part 7 is determined, referred to as Visa for the Republic of Indonesia, hereinafter referred to as Visa is written permission given by an authorized official to the Representative of the Republic of Indonesia or elsewhere determined by the Government of the Republic of Indonesia which contains the approval of foreigners to enter and travel to the territory of Indonesia. Unlike passports, in Law No. 6 of 2011 on Immigration, visas are not further elaborated. At the same time, the provisions on the type of passport are stipulated in article 29 to article 35 of Law No. 6 of 2011 on Immigration. In article 29, it is determined that the Travel Letter of the Republic of Indonesia consists of :

a. Ordinary Passport.
b. Diplomatic Passport.
c. Service Passport.
d. Hajj passport.
e. Passports for foreigners.
f. Passport-Like Travel Letter for Indonesian Citizens.
g. Travel Letter Like Passport for Foreigners.
h. Travel letter like a Service Passport.

The type of Visa seen in Government Regulation No. 32 of 1994 concerning Visas, Entry Permits, and Immigration Permits in Chapter I of Section I of The First Section on the type and form of Visa in article 1 paragraph (1) is determined that the visa type consists of:

a. Diplomatic Visa. b. Official Visa
b. Layover Visa
c. Visit Visa
d. Limited Stay Visa.

The occurrence of visa abuse if a foreigner entering the territory of Indonesia conducts activities/activities that are not following the intention of granting visa/permit to him or doing things outside the permission of the foreigner.

For example, a Visit Visa should be used for non-working purposes whose activities include all aspects related to government, tourism, socio-cultural, and business activities, given a maximum of 60 days, such as:

a. Cooperation visit between the governments of other countries and the state of Indonesia,
b. Family or social.
c. Take short training and so on.

After foreigners arrive in Indonesia (Bali Island), then the permit is not used as stated in the Visa, but instead used for other purposes, for example, for work or business, so that foreigners have manifestly violated some legal provisions, for example in the field of labor, taxes, Immigration and so on.

The misuse of foreign visitor visas that can be identified immigration class I Special Ngurah Rai is conducting activities that do not follow the visa/permit granted. Such visa violations violate the provisions of Law No. 6 of 2011 and can be subject to a maximum prison sentence of 5 years or a maximum fine of Rp.25,000,000 (twenty-five million rupiahs), this is following the provisions of Article 50 of Law No. 6 of 2011 and in reality, accompanied by deportation from Indonesia.

Then secondly, the form of visa abuse is staying beyond the given time limit (overstay), which is approximately 75% of the total cases as described above, while the rest in other forms of violations, such as mental illness and so on. Visa holders are granted a residence permit in the Territory of Indonesia according to the type of Visa held. For tourist visas, residence permits in Indonesia for 30 days, then business visas residence permits in Indonesia for 60 days, and for Social and Cultural visas, the residence permit is 60 days. If a foreigner lives on the island of Bali beyond the time limit set in the Visa, then the person is categorized as overstaying or past the specified time limit. This person may be subject to criminal provisions following Law No. 6 of 2011 on Immigration, namely article 52, where the threat of punishment is a maximum imprisonment of 5 years or a maximum fine of Rp.25,000,000 (twenty-five million rupiahs).

Other violations that can be identified as misuse of visit visas are foreigners entering Indonesian territory without having a visa (illegal immigrants) and obtaining an illegal entry/departing stamp and/or forged. Then when foreign tourists enter the territory of Indonesia or the island of Bali through the specified entrances, immigration officers will put an entry permit in the form of a box-shaped stamp/stamp. The stamp stated the date of Arrival, the purpose of Arrival (visit), and the validity period/residence permit of tourists for 60 days. Before or when the validity period of the visit permit expires, tourists must immediately leave the territory of Indonesia through the designated exit. At the exit, the immigration officer will put a stamp in the shape of a triangle. On the stamp is listed the date of departure and the immigration office that affixed the stamp.

Foreigners who do not meet the requirements mentioned above means that the person forgery visa so that it is classified as an illegal immigrant, the provisions

of the penalty is 6 (six) years, this is stipulated in article 49 of Law Number 6 of 2011, which fully specifies that:

Sentenced to a maximum imprisonment of 6 (six) years and a maximum fine of Rp.30.000.000,-(thirty million rupiah) :

1. Foreigners who intentionally falsely create or falsify Visas or immigration permits; or
2. Foreigners who knowingly use visas or fake or forged immigration permits to enter or are on Indonesian territory.

3.2 Legal Sanctions for Misuse of Visiting Visas By Foreigners

The Immigration Office Class takes preventive measures I Special Ngurah Rai Denpasar in tackling the influx of foreigners who abuse Visa are:

1. Open complete access to the public about the prevailing immigration laws so that the public understands the content of the law and is ready to assist the authorities in the implementation of their duties.
2. Tightening supervision on the entry of Foreign Nationals (Foreigners) when foreigners are at immigration checkpoints (TPI) entering the territory of Indonesia (Bali Island).
3. Conduct intensive surveillance activities, both administrative supervision, and field supervision of foreign nationals (Foreigners) who enter and are in Indonesia (Bali).

In addition to preventive measures taken by Immigration in tackling visa abuse, repressive measures or legal handling measures are processed legally after a criminal offense. The first step of countermeasures began with information that the foreigner had misused the Visa given to him.

Visa abuse can be known usually from reports of public members that there has been an abuse of immigration permits by the visa holder, or the person is caught in the hands during an examination, search, or other action under the law. The actions taken in the repressive step are:

a. Coordinate with other parties/agencies to supervise foreign nationals (Foreigners) who enter and are in Indonesia (Polri, Depnaker, Local Government).
b. Conducting immigration action is by applying strict sanctions against foreigners who violate following the applicable Immigration Law. This crackdown can be done in two ways, namely Immigration and projustisia (submitted to the court).

Article 1 paragraph 14 of Law No. 6 of 2011 on Immigration determines that what is meant by immigration action is an administrative action outside the court process. The decision on immigration action is made in writing and aims to ensure the existence of legal certainty. In Law No. 6 of 2011, the issue of immigration action is stipulated in articles 42 to 45. In addition, immigration measures are regulated in Government Regulation No. 31 of 1994, challenging Foreign Surveillance and Immigration Measures, stipulated in articles 24 to 30.

Immigration measures can be imposed on foreigners who misuse immigration permits; especially Visa can be:

1. Restrictions, changes, or revocation of existing permits.
2. Prohibition of being in a particular place or place in the territory of Indonesia.
3. The necessity to live in a particular place in the territory of Indonesia.
4. Expulsion or deportation from the territory of Indonesia or refusal to enter the territory of Indonesia (Article 42 paragraph 2 of Law No. 6 of 2011)

For foreigners who violate immigration measures are also charged a burden, following the provisions of article 45 of Law Number 6 of 2011.

The Constitution of the Republic of Indonesia year 1945 confirms that Indonesia is a country of law. In line with this provision, one of the essential principles of the state of the law is the guarantee of the implementation of independent judicial power, free from the influence of other powers to conduct the judiciary to enforce the law and justice. So in the event of violations of immigration actions committed by foreigners residing in Indonesia, then against this person will be subject to the provisions of the law applicable in Indonesia, whose system is the same as that applied to Indonesians.

Article 47 of Law No. 6 of 2011 on Immigration specifies that in addition to investigators of the State Police Officers of the Republic of Indonesia, as well as certain Civil Servant Officials in the Department environment whose scope of duties and responsibilities include the construction of Immigration, given special authority as investigators as referred to in Law No. 8 of 1981 on Criminal Procedure Law, to investigate immigration crimes.

The Investigator of the Civil Servant Office, as referred to above, has the authority:

a. Receive reports of immigration crimes.
b. Calling, checking, searching, arresting, detaining a person suspected of immigration crimes.
c. Checking and/or confiscating letters, documents, Travel Letters, or objects related to immigration crimes.
d. Calling people to be heard as witnesses.
e. Conduct checks in certain places where there are suspected immigration papers, documents, travel letters, or other items related to immigration crimes
f. Take fingerprints and photograph suspects.

The authority of the Investigator, as mentioned above, is carried out according to Law No. 8 of 1981 on Criminal Procedural Law.

The occurrence of immigration crimes, the legal provisions are the same as other crimes, namely starting from the investigation conducted by the Investigator, then if it is considered sufficient evidence continued to the Prosecutor's Office and then is the judicial process, which is the principle, principle, and others following the provisions applicable in Law No. 4 of 2004 on the Basic Law of Judicial Power.

4. CONCLUSION

Based on the above descriptions, it can be concluded as follows:

1. The forms of visa abuse by foreigners can be identified are:
   a. Conducting activities or activities that are not following the purpose of issuance of the Visa, for example:
      a) Visit Visa owned by foreigners is used to work in the Bali area.
      b) Senior visas are also used for work.
   b. Staying in Indonesia exceeds the validity period of the Visa given so that it is categorized as overstay, for example:
      - Travel Visa period for 30 days, then Visa Busines period of 60 days, Social and cultural Visa permit for stay 60 days, but they are in Bali exceeds the time of stay
   c. Entry into The Territory of Indonesia does not use Visa (Illegal Immigrants).
2. Legal sanctions for the misuse of visas for foreigners are that foreigners are subject to sanctions either in administrative sanctions or in the form of criminal sanctions, namely the punishment of confinement or expulsion from Indonesian territory by forcibly.

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Multimodal Transport: Liability of Third Party Under International Carriage of Goods

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ABSTRACT
The increase in international trade is followed by the increase in the carriage of goods services. There are various transportation modes for international carriage of goods, namely: land, sea, air, and multimodal. The problems often arise when goods are lost, damaged, or delay. Especially when using cross-border multimodal transportation, which causes difficulty determining who is the responsible party; It becomes more complicated when a third party performs the carriage of goods, but he is not the party of a contract between the consignor and the Multimodal Transport Operator (MTO). This research uses the normative legal method to determine the third party's liability in the international multimodal transport carriage of goods. This paper suggested that the third party rely on the Himalaya clause to extend limitation liability to the MTO. Several conditions are to be fulfilled when the party would like to use the Himalaya clause, such as acceptance from the third party, explicit determination of who are the third party, kind of acts or omissions, and separate contract between the MTO and the third party.

Keywords: *Himalaya clause*, *International Carriage of Goods*, *Liability*, *Multimodal Transport*, *Third Party*.

1. INTRODUCTION

The development of international trade is followed by the development of the international carriage of goods. There are some modes of transportation according to the international carriage of goods: by road, rail, sea, air, and multimodal transport. Multimodal transport is a combination of two, three, or all modes of transportation and put the goods into a container to keep them safe [1].

Multimodal transport is one kind of transport that is used in contracts for the carriage of goods. The methods of multimodal transport are giving advantages and disadvantages. The carriage of goods in multimodal transport begins at taking over the goods and continues until the designated delivery of the goods. It systems usually called "door-to-door" transport. One person is responsible for performing a contract carriage of goods, which is called Multimodal Transport Operator (MTO).

MTO is the only person who makes a multimodal contract carriage of goods with the consignor or seller. The performance of multimodal contract carriage of goods involves other parties such as carriers, sub-contracted carriers, stevedores, terminal operators, warehouse workers, or crew members. All of those parties are called third parties. How if the delivered goods are lost, damaged, or delay. Who will be liable for it? The MTO or the third parties? Can the third parties be held liable because they are not in the multimodal contract carriage of goods? For instance, Kirby Case 2004; Kirby, a cargo owner, hires International Cargo Control (ICC) to deliver goods (machines) from Australia to Huntsville, which involves a third party. When goods are delivered by train, the goods are damaged, and the third parties do not want to take any liability [2].

Those complicated conditions are compounded by the absence of international legal instruments of multimodal transportation. Each unimodal transport (by road, rail, sea, and air) is regulated by each unimodal convention. For example, road transport by the convention on the Contract for the International Carriage of Goods by Road (CMR 1956). There are two legal instruments which are regulating multimodal transportation: first, the United Nations Convention on International Multimodal Transport 1980 (MT Convention), and second, the Convention on the Carriage of Goods [wholly or partly] [by sea] 2001(Rotterdam Rules). Nevertheless, both of them are never come into force until now.

Based on the description abovementioned, there are two legal problems which need to be discussed a) How does the third parties' liability under multimodal transport

contract carriage of goods when lost, damaged, or delayed goods occur? b) How should the third parties' liability under multimodal transport contract carriage of goods when lost, damaged, or delayed to the goods occur?

2. METHOD

This research uses the normative research method. The normative research method is the study about norm; whether the norm is vague, empty, or conflict. Secondary data is used in this research: primary (legal instruments related) and secondary legal materials (books, journal articles, Internet). Those data were collected by conducting library research. The legal problems and collected data are analyzed by statute, conceptual, and case approach.

3. RESULT AND DISCUSSION

3.1 Definition of Multimodal Transport

According to Article 1.1 MT Convention: "International Multimodal Transport means the carriage of goods by at least two different modes of transport on the base of multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country…..".

As one of the drafters of the MT Convention, the United Nations Conference on Trade and Development (UNCTAD) stated three elements of multimodal transport. First, the MTO is a single operator in multimodal transport responsible for the carriage of goods in "door-to-door" movement with one document of transport. Second, multimodal transport involves integrated factors. It consists of different stages (sea, air, rail, or road), different modes of transport, the base of liability, and levels of liability. The third, multimodal transport, is a non-static system. It is adjusted to the development of trade and carriage of goods, follows the development of communications and technologies, such as ordering goods through the Internet and paperless document of transport [5].

3.2 Multimodal Transport Contract Carriage of Goods

The international carriage of goods by multimodal transport needs to be transformed into a contract. According to Article 1.3 MT Convention: "Multimodal transport contract means a contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport".

A multimodal transport contract has a different character than other contracts for the carriage of goods. A multimodal transport contract is not the sum of unimodal transportation contracts. It is a *sui generis* contract "which has nothing in common with unimodal conventions but is one of a kind, related with the liability of carriers" [6]. The consignor only concludes one contract with the MTO for the entire transportation. There are no separated contracts between the consignor and the individual carrier who perform the various transport legs.

Another characteristic of multimodal transport contracts is the MTO. MTO is the person or entity who takes responsibility for the whole process of the carriage of goods. He acts as a principal, not as an agent. As a principal, the MTO could hire a third party to perform its obligations.

However, in reality, the liability of loss, damaged, or delay to the goods is not that easy. There is a distinction between the party which concluded the international multimodal transport contract carriage of goods with the party who performs it (persons who really carrier the goods). The sub-contracted carrier performs parties such as stevedores, terminal operator, warehouseman, or a crew member as the third party who performs the contract. How is the liability of the third party? They were not concluded multimodal contract carriage of goods with the consignor.

3.3 Liability of the Third Party under Multimodal Transport Contract Carriage of Goods

1) *Third parties rights under a contract:* Contract binds the parties who concluded it. Those parties are mandatory to do their obligation under the contract, but there is a possibility to involve third parties to perform the contract. Even though the third parties did not conclude the contract, they could benefit from the promisor because they perform promisor obligations. Two elements cause third parties to get protection and benefit under a contract: assignment and relationship. The assignment transfers contractual rights to a third party, and relationship means whether the promisor acts as an agent or principal [7]. According to Article 6:110 Principles of European Contract Law, the third party has the right to extend the limited liability of the promisor unless the third party renounces the rights or by notice from the promisor or promise that they deprive the right of the third party.

2) *Himalaya Clause:* Third-party under international multimodal or by sea transport which uses Bill of Lading could use Himalaya clause to extend their liability to the MTO even though they are not an original party to the contract [8]. Here is an example

> of Himalaya Clause in Whitesea Shipping v. El Paso 2009: "It is hereby agreed that no servant or agent of the carrier (including any person who performs work on behalf of the vessel on which the goods are carried or any of the other vessels of the carrier, their cargo, their passengers or their baggage, including towage of and assistance and repairs to the vessels and including every independent contractor from time to time employed by the carrier) shall in any circumstances whatsoever be under any liability whatsoever to the shipper, for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act neglect or default on his part while acting in the course of or in connection with his employment".

According to Defendants in Whitesea Shipping v. El Paso, there is a contrary between the Himalaya clause and Article III Rule 8 The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules): "Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this chapter, shall be null and void and of no effect….." Nevertheless, in the end, the Judge concluded that the Himalaya clause in the Bill of Lading does not have a characteristic as a contract of carriage under the Hague Rules. The clause is recognized as a contract of exemption which was ancillary to other contractual arrangements. Furthermore, its goals are to protect the third party from a claim against the consignor, consignee, or MTO.

The Himalaya clause also protects Norfolk Southern Railway as a servant or independent contractor from Hamburg Sud under Kirby Case 2004. Kirby and his insurance company held Norfolk liable. However, Norfolk defends that he can rely on both of the bills of ladings. Even though he is not an original party to the contract between Kirby and the ICC, he is entitled to obtain protection. The US Supreme Court holds that Norfolk, as a railroad carrier, is entitled to protect the liability limitations in the International Cargo Control (ICC) and Hamburg Sud Bill of Lading.

The judgment in Scruttons Ltd. v. Midland Silicones Ltd. 1962 was different. Scrutton as a stevedore, can not rely on extending the limited liability of carrier even though there is a Himalaya clause in the Bill of Lading. It caused no clear considerations, which is stated that Scrutton is involved in the original contract. Based on the cases above, the Himalayas Clause cannot always give protection to the third party. It is casuistic, depends on the Judge's interpretation, the system of law, choice of law, contract, and consensus between the parties involved under multimodal transport contract carriage of goods.

3) *International Legal Instruments According to the Existence of Third Party under Multimodal Transport Contract Carriage of Goods:* Some international legal instruments regulate multimodal transport: MT Convention, FIATA Multimodal Transport Bill of Lading, Unimodal Convention, and Rotterdam Rules.

First, Article 15 MT Convention states the MTO has liability for acts or omissions of the third party he hired to perform the multimodal transport contract carriage of goods. The acts or omissions of the third party are recognized as MTO acts or omissions. However, unfortunately, the MT Convention is never come into force until now.

Second, according to Clause 2, paragraph 2.2, FIATA Multimodal Transport Bill of Lading recognizes the right of the third party to extend limitation liability to the MTO as same as in the MT Convention. The lack of FIATA is not a complicated law. It is only soft law. Thus, the FIATA is not mandatory. The merchant is free to use or not to use the FIATA as a legal basis for their multimodal transport contract carriage of goods.

Third, The Hague-Visby Rules (HVR) is a unimodal convention for carriage goods by the sea. According to Article IV bis paragraph 2, the third party could rely on limitation liability to the carrier as long as they are sub-contracted.

Fourth, unimodal transport by road is regulated in the CMR. This convention also recognized the right of the third party to extend limitation liability to the carrier under Article 3 of the CMR.

Fifth, Article 18 of the Rotterdam Rules recognized limitation liability of any other persons who perform the contract carriage of goods by sea or multimodal to the carrier or MTO. Nevertheless, it is not applied to the maritime performing party. According to Article 19 paragraph 3, when the maritime performing party breaches its obligations under the Rotterdam Rules by acts or omissions, he shall be liable. The Rotterdam Rules have the same status as the MT Convention, which never enters into force as a legal basis for international multimodal or sea transport carriage of goods.

4) *Contract as the Model for the Third Party Liability under International Multimodal Transport Carriage of Goods:* Sales and Carriage of Goods are the private matter that is important to transform into a contract, especially if there are foreign elements. The difference in the merchant's country of origin would be associated with the system of law, tradition in the contract drafting, and choice of law.

In order to draft a good contract, a consensus is an important thing. According to the freedom of contract principle, the party of the contract is free to determine the form and substance of the contract as long as it is based on consensus, it does not violate the law, morality, and public order [9].

When the consignor drafts a contract with the MTO, they are free to stipulate the limited liability of the third party because it is allowed by the international legal instruments, based on the Himalaya clause and best practices. The limited liability of the third party is to give protection to them. Thus, first, the third party shall know a Himalaya clause in the international multimodal transport contract carriage of goods between the consignor and the MTO. It means the MTO shall inform the third party and accept the third party [10]. Since the Himalaya clause exists in the contract and the contract is valid, the third party has accepted the contract indirectly even though the third party would never become the contracting party between the consignor and the MTO.

Second, the third party under the Himalaya clause shall be defined clearly in the contract between the consignor and the MTO. Third, what type of acts or omissions of the third party could rely on the MTO liability. When the third party did a tort in the carriage of goods, could it still extend their limited liability to the MTO? For example, the goods are delivered damaged or lost. The clarity of the third party and kinds of limited liability of the third party are essential to avoid ambiguousness.

Fourth, there is a contract between the MTO and the third party. This contract would regulate the third party's obligation to the MTO in performing the carriage of goods. What are the technical matters that the third party shall do to the carriage of goods?, what kinds of acts or omissions by the third party could be held liable by the MTO? what about the amount of compensation?. It is related to "stipulation for another." This legal device is recognized by civil law countries [11].

Once the party stipulates specific conditions in a contract (between the consignor and the MTO), for example, limitation liability of the third party; technical matters in order to the carriage of goods by the third party are going to regulate in another contract between the MTO and the third party then the consignor could ask liability to the third party when the goods delivered are lost, damaged or delay. In other words, even though the third party was not signed the contract between the consignor and the MTO, he could still be liable when the goods delivered are lost, damaged, or delay because his existence is stated in the contract. The third party's liability is limited to the content of the Himalaya Clause and the contract between the third party and the MTO. Thus, it is imperative to make an explicit Himalaya clause under an international multimodal transport contract carriage of goods to give legal certainty to all parties involved in the contract and its performance.

4. CONCLUSION

The third party under international multimodal transport carriage of goods could extend limitation liability to the MTO as long as there is a Himalaya clause in the Bill of Lading. The clause is not always used successfully to limit the third party liability when the goods delivered are lost, damaged, or delay. It was caused by the absence of international legal instruments of multimodal transport and the various court decisions (casuistic).

In order to make the liability of the third party under international multimodal transport carriage of goods more precise and give legal certainty to all parties involved, several conditions must be fulfilled. First, there is acceptance from the third party that the contract between the consignor and the MTO uses the Himalaya clause. Second, it shall be clearly defined according to who is the third party would perform the contract. Third, kind of acts or omissions by the third party could rely on the MTO liability when the goods delivered are lost, damaged, or delay. It shall be determined under the Himalaya clause.

Furthermore, fourth, there is a separate contract between the MTO and the third party. This contract is essential to regulate the relationship between the MTO and the third party. It could be used as a legal basis by the consignor or the MTO to ask liability of the third party according to “stipulation for another”.

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Legal Standing of Foreign Workers in Tourism Sector in Indonesia and Carrying out Mixed Marriage with Indonesian People

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ABSTRACT
Foreign workers working in the tourism sector in Indonesia and carrying out mixed marriages with Indonesians, then the spouses of the foreign workers may become an individual sponsors. With this sponsor, the foreign workers may also work to help his family in the informal sector. This is regulated in Article 61 of Law Number 6 of 2011 concerning Immigration. The status and legal standing of the foreign workers are contrary to Article 42 and Article 43 of Law Number 13 of 2003, supplemented in Article 42 of Law Number 11 of 2020 concerning Job Creation. The disharmonious existence between these laws raises conflict of norms and significantly impacts the implementation of regulations for foreign workers working in the tourism sector in Indonesia.

Keywords: *Foreign Workers, Mixed Marriage.*

1. INTRODUCTION

Foreign workers living and working in Indonesia may carry out mixed marriages. this mixed marriage is carried out with an awareness considering its effect on foreign workers, namely the ease in carrying out activities, work, and/or administrative processes in Indonesia. The acculturation creating the legal relationship has legal implications to the standing of foreigners. The legislation has regulated the legal standing, namely article 61 of law no. 6 of 2011 concerning immigration. This basis has a deep understanding contextually and philosophically in its application due to the dynamics of government's participation as good governance (good government). Mixed marriages with Indonesians complement the different concepts of marriage under law no.1 of 1974 concerning marriage, where the notion of mixed marriage is governed in article 57.

The marriage of foreign workers and Indonesians binds them through law no. 6 of 2011 concerning immigration and law no. 1 of 1974 concerning marriage and law number 13 of 2003, which has been issued law number 11 of 2020 concerning job creation. The regulation in article 42 paragraph (1) is due to the legal standing of the foreign workers having employment status, so there is a conflict of the norm in its implementation *das sein and das sollen*. so that foreign worker who should also get wages, which are a crucial problem in employment. even if they are not professional in handling wages, they often become potential disputes and encourage strikes and/or demonstrations. With his wife's sponsorship to be able to help his family not getting a salary.[[1]] in this case, there is nothing that the immigration law should dispute because it is the duty of foreign workers as family members who are entitled to help the family economy.

2. METHOD

The type of writing applied here is normative legal writing, which is done by conducting library research or secondary data. The normative legal writing examines law as a norm or rule existing and developing in society.[[2]] The approach applied to the problem is a statute approach, a conceptual approach, its application through practice and legal decisions.

3. RESULT AND DISCUSSION

Marriage acculturation creating legal relationships has legal implications for foreign workers. This is regulated in the legislation, namely Article 61 of Law No. 6 of 2011 concerning Immigration. Therefore, the foreign workers with a work-limited stay permit may replace it with a family-limited stay permit, and their spouses may directly become sponsors for the foreign workers. The holder of a Limited Stay Permit as referred to in Article 52 letter e and letter f and the holder of a Permanent Stay

Permit as referred to in Article 54 paragraph (1) letter b and letter d may carry out the work or business to meet the necessities of life and/or family.

The provisions govern how foreigners may stay and have their status regarding their legal standing in Indonesia. The legal standing of foreigners obtained through acculturation, namely by carrying out mixed marriages with Indonesians, further completes the concept of Marriage according to Law No. 1 of 1974 concerning Marriage. Where the notion of Mixed Marriage is governed in article 57. The Marriage of foreign workers and Indonesians binds them through Law No. 6 of 2011 concerning Immigration and Law No. 1 of 1974 concerning Marriage and Law Number 13 of 2003, which has been issued Law Number 11 of 2020 concerning Job Creation. The regulation of Article 42 paragraph (1) reads: "Every employer using foreign workers is required to have written permission from the Minister or designated official." Paragraph (2) reads: "Individual employers are not allowed to employ foreign workers." The provisions of Article 61 of Law Number 6 of 2011 concerning Immigration and Article 42 of Law Number 13 of 2003 create a conflict of norms in its implementation *Das Sein and Das Sollen*. The use of foreign workers under Law Number 13 of 2003 concerning Manpower is regulated in article 42 and the Copyright Law early. An Employer must submit a Plan for Foreign Worker Employment (RPTKA), a plan for using foreign workers for certain positions made by an employer for a certain period approved by the Minister or designated official.[[3]] And an individual is not allowed to be a sponsor for a worker. Meanwhile, in Immigration Law, Article 61 states that foreigners married to Indonesians may work with Family Limited Stay Permit so that their spouses may become sponsors for the foreign workers. There is a conflict of norms in this regard, in which The Company should sponsor foreign Workers according to the provisions of the Manpower Law and Law of Copyright. Implementing the two laws has created legal uncertainty, but it provides each other's legal protection when viewed from the legal point of view. So, if any legal problems exist due to the legal standing of foreign workers in Indonesia, each law has different roles and legal protection.

This legal action is the beginning of the birth of a legal relationship, namely, the interaction between legal subjects with legal relevance or having legal consequences which run harmoniously, in balance circumstances and relatively where each legal subject gets what his/her right is and carries out the obligations imposed on him. The law appears as a rule in governing the relationship. [[4]] In the provisions of Article 61 of the Immigration Law, what is undertaken by foreign nationals is legal under the rules of the article, and also by the direct explanation by the Director of Transmigration explaining that foreign citizens marrying Indonesian citizens may work in the informal sector providing that they get paid immediately.

Moreover, of course, the work carried out by the foreigners does not require formal requirements in obtaining a work permit as regulated in the Law of Manpower, where law constitutes the basic norm as described by Hans Kelsen as the concept of law and justice. So that the justice obtained by the foreign worker returns to Plato's theory. One of the theories of justice in question is the theory of justice from Plato, which emphasizes harmony or harmony. Plato defines *justice* as "the supreme virtue of the good state," while a just person is "the self-disciplined man whose passions are controlled by reason." For Plato, justice is not directly related to law. For him, justice and the rule of law are the general substance of a society that creates and maintains its unity.[5] The government formulated a vision for Indonesia to progress in 2045 as a strategic step to make Indonesia one of the top 5 (five) world economic powers in 2045.[[5]]

4. CONCLUSION

Due to mixed marriages, foreign workers' legal standing in Indonesia provides legal uncertainty when the two laws are enacted together since each law has its legal protection. This is where the conflict of norm lies between the Immigration Law and Copyright Law.

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Juridical Review of Extradition Treaty Between Indonesia and the Republic of South Korea in Narcotics and Psychotropic Crimes

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ABSTRACT
Extradition is a form of international cooperation to arrest and hand over a suspect, defendant, or convict who is under the jurisdiction of another State to a State entitled to try them. As one of the countries that are often the target of criminal acts of narcotics among countries, Indonesia must make the rule of law a preventive measure to prevent narcotic crime from increasing. One of these preventive efforts is establishing rules regarding the criminalization of narcotics crimes between countries and an extradition treaty. The problems raised to be analyzed and answered in this study are: 1) what are the regulations for extradition treaties in Indonesia? 2) What is the juridical review of the extradition treaty between Indonesia and South Korea in settlement of narcotics and psychotropics cases? In order to achieve the research objectives, scientific research is conducted using a normative legal research method. This research model was chosen because what is being studied reveals the systematic regulation for criminal acts of narcotics between two countries, especially those committed in Indonesia and South Korea. This study hopes that the arrangements regarding extradition treaties in Indonesia can be understood and provide solutions to narcotics cases occurring in Indonesia and South Korea.

Keywords: *Extradition Treaty, South Korea, Narcotics.*

1. INTRODUCTION

An extradition treaty is a form of overcoming criminal crimes between countries that emphasizes the issue of the human rights of the perpetrators of the crimes. When it comes to the protection of human rights, extradition institutions provide enormous protection. For example, suppose a suspect or defendant of a criminal crime is sentenced to death in the requesting country, while in the requested country, the law on the death penalty is not provided for in its national law. In that case, the requested country has the right not to hand over the suspect or defendant for the crime. Likewise, the suspect or defendant can only be tried by the requesting country based on the type of crime requested; they may not be tried for crimes other than those specified in the extradition request.

Extradition is a formal surrender, either based on a pre-existing extradition agreement or based on a reciprocal relationship of a person suspected of having committed a crime (suspect, accused, or defendant) or on a person who has been sentenced who has had definite binding force for the crime they have committed (convicted, convicted) by the country where he is located to the country that has jurisdiction to try or punish him, at the request of the country that has jurisdiction over the country where the person concerned is located, with the intent and purpose of prosecuting them or carrying out their sentence or the remainder of their the sentence [1].

In 2007, the Indonesian government ratified the extradition treaty between the Republic of Indonesia and South Korea through Law No. 42 of 2007. It was conducted based on the desire of both parties to establish collaboration for the possibility that both countries need assistance in arresting fugitives of criminal cases, perpetrators of crimes related to banking, finance, and/or other types of crime.

One of the transnational crimes that often occur throughout the world is the criminal acts of Narcotics and Psychotropics. In Indonesia itself, regarding these crimes, it has been regulated in Law Number 35 of 2009 concerning Narcotics which includes criminal sanctions, imprisonment, fines, and death sentences.

Internationally, narcotics and psychotropic substances have been defined in Article 3 (1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 ("UN Convention") (p. 127). Indonesia has ratified the UN Convention through Law Number 7 of 1997 concerning Ratification of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Law 7/1997").

It is undeniable that in addition to banking crimes and corruption, the crimes that most often have fugitives are criminal acts of narcotics. The perpetrators of these narcotics crimes often flee abroad and sometimes even commit their crimes again in the country they fled. This makes the extradition treaty very important to eradicate narcotics cases between countries, including between Indonesia and the Republic of South Korea.

2. METHOD

This study uses normative legal research to reveal legal arrangements regarding extradition provisions between Indonesia and South Korea related to criminal acts of embezzlement of Narcotics and Psychotropics. The approach used is statutory, a conceptual approach, and an analytical approach. The data used are in the form of primary data and secondary data collected by documentation and recording techniques and then analyzed by hermeneutic and qualitative techniques.

This study uses normative legal research. With this method, the study was conducted on legal norms through the principles of legislation. The problem approach used is the statutory approach, conceptual approach, and analytical approach. Secondary data or legal materials were collected through documentation and recording techniques using a file system.

3. RESULT AND DISCUSSION

3.1 Extradition Treaty Arrangement in Indonesia On December 14, 1990, the United Nations

General Assembly passed Resolution No. 45/117 on the Model Treaty on Extradition. Although only in the form of a legal model and is not yet a positive international law, the agreement can be used as a model by countries in making extradition treaties. Now almost all countries in this hemisphere are familiar with a legal institution called extradition [2].

In general, extradition results from the right to asylum, which is a political goal and a means to achieve power. Extradition is practiced to penetrate national borders in the sense that national criminal law can be applied to war criminals who fled to other countries or in order that court decisions against criminals who fled abroad can be executed.

The word *extradition* is derived from the Latin *extradere* consisting of *ex*, which means *to go out*, and *tradere*, which means *to surrender* [3]. The term *extradition* is usually used in the handover of criminals from a country to a requesting country, which can be executed formally either based on a pre-existing extradition treaty or based on the principle of reciprocity or good relations, against someone who is accused of committing a crime (suspect, defendant, accused) or someone having been sentenced to a criminal sentence that has binding legal force (convict), by the country where they have been living (the requested country) to the country that has jurisdiction to try or conduct punishment (the requesting country), at the request of the requesting country, to try and or execute the sentence.

Indonesia has a national regulation regarding extradition, namely Law Number 1 of 1979 concerning Extradition. In addition to Law Number 1 of 1979, Indonesia has laws that transform the ratification of extradition treaties that Indonesia has entered into with other countries. They are Law Number 9 of 1974 concerning Ratification of Treaty between the Government of the Republic of Indonesia and the State of Malaysia concerning Extradition, Law Number 10 of 1976 concerning Ratification of Extradition Treaty between the Government of the Republic of Indonesia and the Government of the Philippines, Law Number 2 of 1978 concerning Ratification of Treaty between the Government of the Republic of Indonesia Indonesia and the Government of the Kingdom of Thailand concerning Extradition, Law Number 8 of 1994 concerning Ratification of the Extradition Treaty of the Government of the Republic of Indonesia and the Government of Australia, Law Number 1 of 2001 concerning Ratification of the Treaty between the Government of the Republic of Indonesia and the Government of Hong Kong for the Handover of Runaway Lawbreakers and Law Number 42 of 2007 concerning Ratification of the Extradition Treaty between the Republic of Indonesia and the Republic of Korea.

By having made these agreements concerning extradition, the state of Indonesia has carried out its role as a state of law. By the concept of the rule of law, according to Julius Stahl, there are four essential elements, namely the protection of human rights, the division of power, government based on laws, and the State Administrative Court; hence, Indonesia as a state of the law has performed its role well by making extradition treaties as an effort to eradicate international crimes.

3.2 Juridical Review of the Extradition Treaty between Indonesia and South Korea in settlement of Narcotics and Psychotropic Cases

The development of the use of narcotics today is increasing and not for the benefit of scientific treatment but turning its function to obtain huge profits [4]. The statutory provisions governing narcotics issues have been drawn up and enforced through the Narcotics Law; however, crimes related to narcotics have not been appeased. In recent cases, many drug dealers and

traffickers have been caught and received severe sanctions. However, it does not seem to have a deterrent effect for other perpetrators, and there is even a tendency to expand their area of operation [5]. Therefore, cooperation between countries needs to be built to eradicate the illicit trafficking of narcotics that has spread throughout the world.

In this era of free trade, criminals no longer recognize territorial boundaries or jurisdictional boundaries for them to operate to commit crimes. They have long used the concept of free trade without being faced with legal signs; even what is happening in various countries around the world today is the law with all its limitations becomes a protector for the perpetrators of these crimes [6].

Narcotics and psychotropic crimes internationally have been defined in Article 3 (1) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 ("UN Convention") (p. 127). Indonesia has ratified the UN Convention through Law Number 7 of 1997 concerning the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("Law 7/1997"). This shows the seriousness of the Indonesian state to eradicate international narcotics crimes.

The Indonesian government's further efforts in eradicating transnational narcotics crime are realized by making an extradition treaty. With the existence of an extradition treaty, if its citizens are threatened with punishment in another country for narcotics and psychotropic cases, extradition will be executed. Elucidation of number 5 of Law 7/1997 states: "The crimes referred to in Article 3 paragraph (1) of this Convention include crimes that can be extradited in an extradition treaty made between the Parties."

If the parties do not have an extradition treaty, this convention may be used as the legal basis for extradition for crimes that fall within the scope of the application of this article. Furthermore, other efforts that can be made are listed in the Elucidation of number 7 of Law 7/1997, namely: "It opens up the possibility for States parties to transfer the proceedings from one country to another if the transfer of the proceedings is deemed necessary in the interest of a better implementation of justice."

Then, regarding extradition in Indonesia, it is further regulated in Law Number 1 of 1979 concerning extradition ("Law 1/1979"), which explains that extradition is: [1] Submission by a country to a country requesting the surrender of a person suspected or convicted for committing a crime outside the territory of the country that will hand over and within the jurisdiction of the territory of the country requesting the surrender because it is authorized to try and convicted them.

Furthermore, the Elucidation of Article 7 of Law 1/1979 states: "In the interest of protecting the citizens themselves, it is considered better if the person concerned is tried in their own country. However, it is possible that the person would be better tried in another country (in the requesting country) considering the considerations in the interests of the country, law, and justice."

In one instance, in 2019, two foreigners were extradited by the Bali High Court to the South Korean Government. They are Alex Go, a citizen of the Philippines, and Lim Thow Khai, a citizen of Malaysia. The Indonesian police arrested the two foreigners at Ngurah Rai airport on July 11, 2017. After that, Interpol issued a red notice because they were smuggling class I narcotics of methamphetamine weighing 2,050 grams. The South Korean government was hunting for these two people for committing narcotics crimes in South Korea with a minimum prison sentence of 7 years and a maximum of 30 years. This shows tangible evidence of the function of the extradition treaty between Indonesia and South Korea in eradicating international narcotics crimes. This action is also in line with the theory of punishment, which stipulates that punishment must be applied as a form of defense of public order and as revenge for the crimes committed.

4. CONCLUSION

Indonesia has already had a national regulation regarding extradition, namely Law Number 1 of 1979 concerning Extradition. Meanwhile, an extradition agreement between Indonesia and South Korea is contained in Law Number 42 of 2007 concerning the Ratification of the Extradition Treaty between the Republic of Indonesia and Korea.

Regarding the settlement of narcotics cases, Indonesia has ratified the UN Convention through Law Number 7 of 1997 and established Law Number 35 of 2009 concerning Narcotics. Indonesia and South Korea have realized the regulation by eradicating international narcotics crimes through the narcotics eradication law and implementing the extradition treaty.

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Legal Smuggling of Share Ownership Using Nominee Arrangements Associated with a Violation of the Negative Investment Lists

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ABSTRACT
This paper analyzes whether or not there is legal smuggling in the nominee arrangement when it is associated with the negative investment list that applies in Indonesia. The normative law is used in this paper. The result is that the nominee arrangement is part of smuggling law against investment law. Moreover, if the nominee arrangement is carried out, it can potentially violate the negative investment list. The principle used in the nominee arrangement depends on the freedom principle of contract as stipulated in the Civil Code. An agreement on the freedom principle of contract must comply the requirements contained in the Civil Code, thus the agreement becomes valid. The practice of nominee arrangements must be managed through giving the strict sanctions, like administrative sanctions.

Keywords: *Investment, Legal smuggling, Negative list of investments, Nominee arrangement*.

1. INTRODUCTION

Indonesia, as a developing country to do a development sometimes requires foreign investors [1]. Thus, foreign investors are used to supplementing domestic capital. Since Indonesia is the law country, the state of law means a power and it is as subject to the law, and everyone is equal before the law. In the field of investment, the rules with regard to the investment in Indonesia apply the same rules.

Investment is often made to improve the capital of company. Investment is all the forms of investment activities, to conduct the business in the territory of Indonesia. This investment is made in two ways, that is domestic and foreign investments.

Those who can create investments are domestic investors as well as the foreign investors. Article 1 of Law Number 25 in 2007 regarding the investment explains domestic investment, which has the meaning of investing activities to conduct the business in the territory of Indonesia conducted by domestic investment by using domestic capital. The parties that can be Domestic Investment are:

1. Indonesian citizens, and or;
2. Indonesian business entities, and or;
3. Indonesian legal entities.

Foreign investment is in Article 1 of Law Number 1 in 1967 with regard to foreign investment. Foreign investment is only foreign direct investment conducted based on the law provisions and used to conduct business in Indonesia. Article 1 point 3 of Law Number 25 in 2007 concerning investment states that foreign investment is an activity to invest capital in conducting business in the territory of Indonesia which carried out by foreign investors, both those who use foreign capital with the investment in the country.

Judging from the preceding, the elements of Foreign Investment can include, as follows: 1. Conducted directly, meaning that the investor directly bears all the risks experienced from the investment. 2. According to the law, foreign investors' foreign capital invested in Indonesia must be based on the substance, procedures, and conditions determined in the prevailing laws and regulations and are stipulated by the Indonesian government. 3. Used to run a company in Indonesia, meaning that the capital invested by foreign investors used to run a company in Indonesia must have the status of a legal entity.

Assume that the foreign investor wishes to invest in Indonesia. They must follow several rules with regard to investment in Indonesia, like Law Number 25 in 2007 on the Investment, Presidential Regulation Number 49 in

2021 with regard to alteration to Presidential Regulation Number 10 in 2021 concerning The Field of Investment, etcetera. The Presidential Regulation Number 49 in 2021 with regard to alteration to Presidential Regulation Number 10 in 2021 concerning The Field of Investment or as the Negative Investment List. In this regulation, all business fields are opened for the activities of investment, except for the business fields that are declared closed. The opened business field is a priority business field. The allocated business field or partnership with cooperatives and MSMEs is as the business field with specific requirements. The entire business sector is described in detail in the attachment of the Negative Investment List.

In the practice of investing in Indonesia often arises some agreements based on the principle of freedom of contract. For instance, arises nominee arrangement in the share ownership. Even, this is strictly prohibited in practice, it is still often done.

From the description above, it can be determined that the problems discussed in this research are as follows:

- How are the shareholders using the nominee arrangements when related with the violations of negative investment list?
- Is it valid to own shares if done with nominee arrangement in Indonesia?

2. METHOD

The term "legal research" consists of two words, namely: "research" and "law." The origin of the word "research" is "research," which means an action full of prudence and accuracy. Meanwhile, "law" is interpreted very diversely according to the point of view of each school of legal philosophy. Neutrally and straightforwardly, the law can be interpreted as norms formed, enforced, and recognized by public authorities to regulate the state and society, enforced by sanctions.

The object of the study of legal science is the norm and not the attitude or behavior of humans, as the object of study is, for example, sociology, anthropology, psychology, economics, and politics. This study belongs to normative law. Soerjono Soekanto's benchmark in his discussion of normative legal research from the nature and scope of the legal discipline, in this respect, discipline means teaching system about reality, which usually includes the analytical discipline and prescriptive discipline. Legal discipline covers the normative aspect. However, in the same writing, Soerjono Soekanto wants to emphasize that legal discipline can be interpreted as the system of teaching about law as the norm and reality or even as something aspired to as reality or law life. [2] Normative legal research whose research objects are legal norms, legal concepts, legal principles, and also legal doctrines. Legal research is in a narrow sense. The choice of this method is because legal research as the process to discover the rule of law, legal principles, and legal doctrines to answer the legal issues. [3] The research specification used in this research is descriptive-analytical; that is, the descriptive-analytical method is as the development of the descriptive method.

The analytical descriptive research explains the laws and regulations associated with the legal theories and the implementation of the favorable laws with regard to the problems faced. The data collection method used in writing this law uses library research, namely studying and gathering written data to encourage the research.

3. RESULT AND DISCUSSION

Investments are those people who have income, that is used not for the need of consumption, but as an investment. Investment is also can be said as investing money now to get more benefits in the future. In other words, investment is the beginning of business activity. In this matter, investments can include both direct and indirect investments. What is meant by direct investment as an investment in the assets or factors of production to conduct business. For instance, the investment in plantations, fisheries, factories, shops, and other types of businesses. In everyday conversation, this type of investment is intangible investment assets. This direct investment produces significant multiplier effect for the wider community. This direct investment will produce backward effect in the form of business input and forward, in the form of business output, which is an input for the other businesses.

In comparison, indirect investment refers to an investment in the financial assets, not in the assets of the production. Examples of indirect investments are deposits, investments in securities, such as stocks and bonds, CP (Commercial Paper), mutual funds. Investments in the financial assets also aim at obtaining future benefits. The future benefits of this investment are the investment fees.

Based on the discussion above, the term investment has connotations as the direct investment [3]. Investment in Indonesia has various rules related to investing in Indonesia, especially for the foreign investors. Some regulations on this could trigger a nominee arrangement for a shareholding in a company. A nominee has two different meanings. First, nominee refers to a proposal or nomination of a candidate or candidate to occupy a particular position, obtain a specific award, or other types of candidacy. Second, the nominee provides an understanding as someone who represents the interests of other parties. [4] The definition of a nominee agreement, also known as a name-borrowing agreement, is one type of innominate agreement or an anonymous agreement that is not known in the Civil Code but appears and develops in the community.

Nominee arrangements include several agreements. First, an unnamed agreement, and in the nominee arrangement itself. There are two parties: nominees and beneficiaries. The nominee is the owner who borrowed his name to represent the actual owner. The beneficiary is the actual owner. In th term of share, ownership is a nominee officially listed as the shareholder and beneficiary their name is not recorded. Thus, the beneficiary has desire to acquire shares beyond the restrictions on the share ownership in Indonesia. The beneficiary also covers foreign investors where the regulation on the limitation of share ownership also regulates the restrictions on the ownership of shares that foreign investors may own. This restrictive regulation is known as the Negative Investment List, regulated in Presidential Regulation number 44 in 2016 with regard to the list of closed business fields and business fields that are opened with the conditions in the investment sector.[5] The Negative Investment List (DNI) is a regulation that forbid the investors from investing in the specific sectors in Indonesia. This list serves as the information base for the investors, especially foreign direct investors, before investing in Indonesia. The DNI policy is the government step to save the business and investment interests of Indonesian people and provide business opportunities for the foreign investors. The DNI policy is not rigid since the list can be changed at the discretion of the President of Indonesia through Presidential Regulation.

The legal basis for DNI is contained in Article 12 of Law Number 25 in 2007 with regard to the investment, which has now been changed to the Law Number 11 in 2020 regarding Job Creation. The article states that the real sector investment in Indonesia is divided into three groups. These can be seen as follows:

1. Opened business fields;
2. Opened business fields with conditions;
3. Closed business fields, which then recorded in the list of negative investment.

In the law, the government has also prohibited foreign investors from investing in sectors that could threaten national defense and security, such as weapons, munitions, explosive devices, and war equipment. All of these business fields are automatically included in the investment blacklist under the Act. However, the same rule states that the government can give other business sectors to the list of negative investment, which is 100% closed to the foreigners, through Presidential Regulation. The government can consider some aspects, such as health, morals, culture, environment, national defense and security, and the other national interests.

The main characteristic contained in the use of the nominee concept is the existence of nominee agreement between the beneficiary and the nominee. The nominee agreement is about the trust born from an agreement and the form of an anonymous agreement born based on the principle of freedom of contract, the principle of binding force, and good faith contained in book ii of the Criminal Code. Based on this nominee agreement, the elements in the use of nominees show that there are two parties, namely the legally recognized party and the party behind the legally recognized party, where these two parties are in ownership. Shares or land ownership gives birth to the separation of ownership of an object, namely the legally recognized owner (the nominee) and the actual owner of the object (the beneficiary).

The covenant itself is an agreement between the two parties to do something, thus, the agreement and the agreement have the same meaning [6]. In the agreement, it is known by the principle of freedom of contract. However, this principle must also fulfill applicable requirement that is the validity of the agreement. Contained in Article 1320 of the Civil Code. Article 1320 of the Civil Code reads:

1. There is a consensus for those who bind themselves;
2. The ability of the parties totally;
3. Particular thing; and
4. Legal cause.

The first and second conditions are subjective, while the third and fourth conditions are objective conditions. For the first and second terms, if not fulfilled, then the agreement may be requested in cancellation. However, if the third and fourth conditions are not met, it will be null and void. Null and void are as the absence of such agreement, or the agreement is deemed to have never existed. About the fourth condition, which is a lawful reason contained in Article 1337 of the Civil Code, an agreement is essentially prohibited if it is contrary to the laws, decency, and also public order. [7]

Ownership of shares in the company can lead to legal smuggling through agreements made. This smuggling law occurs since parties attempt to avoid enacting a statutory regulation that has been in force for a particular purpose and a nominee arrangement in the ownership of shares. The existence of a nominee arrangement has violated the fourth condition of an agreement as stipulated in Article 1320 of the Civil Code, which is a legal cause because it violates the prevailing laws and regulations.

The nominee arrangement in this share ownership has been prohibited quite firmly in Law No. 25 in 2007 on Investment (Investment Law). Namely, in Article 33 paragraph (1), which states, in essence, the investors, both domestic and foreign in limited liability companies, are prohibited from making an agreement or statement related to the ownership of the company's shares for and on behalf of others. If it continues to be done, it will be null and void, as mentioned in Article 33 paragraph (2) of the Investment Law.

Article 52, paragraph (4) also states that, in essence, the shareholders are a right that cannot be shared. Thus, in the nominee arrangement of share ownership, who can enjoy the benefit rather than the share ownership itself is the nominee and not the beneficiary.

The legal smuggling of this also often causes variety of problems, both for nominees and beneficiaries. For instance, in the verdict number: 375/PDT/2018/PT. DKI, in essence in this ruling, explains that there is a nominee arrangement between the nominee and the beneficiary. In the end, the nominee must bear personal income tax, which is quite burdensome for the nominee because of the stock trading transaction that occurred between the beneficiary and a third party. However, the shareholding is still on behalf of the nominee.

In addition, the examples that have been given, smuggling laws on this subject also violate the provisions of the Negative Investment List. Furthermore, there are rules regarding the amount of capital invested by domestic investors or foreign investors in the Negative Investment List. For example, in appendix III Negative Investment List is related to the field of business with specific requirements, namely the Navy For Tourism. In the field of business, the top foreign capital is 49% (forty-nine percent). It means foreign investors can only invest 100% (one hundred percent). However, precisely, this restriction can also cause violations of the Negative Investment List by using nominee arrangements against share ownership because there can be a tendency to control the whole.

4. CONCLUSION

The conclusion is shareholding based on a nominee arrangement as legal smuggling. The smuggling laws relating to this matter can be null and void and result in the agreement being deemed never to exist because it does not meet the fourth requirement of the terms of the validity of the agreement, namely lawful reason in terms of violating the prevailing laws and regulations, both violations of Law Number 25 in 2007 on Investment and Presidential Regulation Number 49 in 2021 with regard to the amendments to Presidential Regulation Number 10 in 2021 concerning to the Field of Investment in particular. According to the author, the regulation on nominee arrangements has not prevented the practice from occurring because of the lack of strict sanctions of the actors of nominee arrangement practices, especially in the regulation in investment. However, the nature of the nominee arrangement is in the realm of civility. Of course, this is very detrimental if the legislation has been violated. The consequences of the practice of nominee arrangements should be not just declared null and void, for example, and imposed administrative sanctions such as fines. The government needs to pay more attention and adjust regulations to prevent the practice of nominee arrangements.

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[11] Peraturan Presiden No. 44 Tahun 2016 Tentang Daftar bidang usaha yang tertutup dan bidang usaha yang terbuka dengan persyaratan di bidang penanaman modal

The Manak Salah Tradition in the Songan Traditional Village, Bangli Regency, Human Rights Perspective

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ABSTRACT
Manak Salah is as a tradition carried out by the indigenous people in Songan Village, Bangli. They think that the birth of tapered twins (male and female) is such a mistake that obliges parents and their tapered twins to isolate for three months temporarily. This was considered as inverse to humanity, thus the government issued Regional Regulation Number 10 in 1951 regarding the Elimination of *Manak Salah*. The problem under this study is the wrong tradition in Songan Village and the factors that make the implementation of the wrong tradition in Songan Village. The method used was empirical legal with sociology of law approach and case approach through looking at the actual legal events that happened in Songan Village, and the sources of legal materials used are primary and secondary legal materials with the techniques of collecting legal materials through interviews and recording which were then analyzed qualitatively. The result of this study was *Manak Salah* carried out by the beliefs of Songan people with the palm-leaf manuscript, *Dewa Tatwa* and *Brahma Sapa*, which were used as the basis for the implementation of this tradition since time immemorial. Even it has been abolished, *Manak Salah* tradition is still carried out due to the belief of the Songan indigenous people about the disasters will happen if this tradition is not held.

Keywords: *Manak salah Tradition, Buncing twins.*

1. INTRODUCTION

Tradition, also called a habit, is carried out for time to time and continues to be part of the life of community group, often carried out by the same country, culture, time, or even religion.

Tradition is usually defined as a provision that applies to a particular society and describes a whole way of life. In the Big Indonesian Dictionary, tradition has two meanings. First, hereditary customs are still carried out by the community. Second, the assessment or assumption that the existing methods are the best and proper way. Thus, tradition is a generic term to designate everything that comes with the present.

Traditions in society have a goal so that human life is rich in culture and historical values. In addition, tradition will also make life more harmonious. However, this will be realized when humans can respect each other, respect, and carry out a tradition correctly and adequately according to the rules.

The cause of the change in tradition is that many traditions clash with government regulations and are no longer by the current state of society. However, the people still want to carry out the traditions inherited by their ancestors. Hence, there is a shift to a tradition, such as changes in the levels of traditions, ideas, symbols, and values. Some are added, and others are removed.

In this modern era, there are still many traditions that are still maintained from generation to generation. However, some traditions have shifted but are still carried out without reducing the meaning of implementing their traditions.

The same thing happened in Songan Village, Kintamani District, Bangli Regency, Bali Province. The tradition in question is the wrong Manak tradition. This tradition has shifted three times due to regulations from the government and the agreement of residents to change the traditions inherited from their ancestors because they are considered not by the current situation in the village. As we all know that tradition will still be carried out in its entirety if it is still accepted by the community and does not give the slightest pressure.

From this background, several problems will be discussed, namely:

1. How did the manak wrong tradition appear in the Songan community?

2. What are the kinds of procedures to implement *Manak Salah* tradition in the Songan community?

2. METHOD

The research method used is the empirical method. Conducting direct observation and interviews with community leaders in Songan Village related to the manak Salah tradition in Songan Village.

3. RESULT AND DISCUSSION

3.1. The Background of the Emergence of the Wrong Manak Tradition in Songan Village

Humans are born as social beings who cannot live alone, which causes humans not to live normally without the presence of other humans.[1] Early relationships in human life as social beings start from the family by carrying out marriage. Marriage can be carried out if there is relationship between a man and a woman with full of love and it has been legalized in the terms of religion and law.

Marriage is one of the main ways to maintain the continuity of the kinship system. In principle, humans cannot develop without marriage because marriage causes offspring. Therefore, marriage is a rope that continues human life and society.[2] According to Subekti, marriage has been legal relationship between the man and the woman for long time.[3] Article 1 of Law Number 16 in 2019 concerning Amendments to Law Number 1 in 1974 concerning Marriage states:

"Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on God Almighty."

The purpose of forming household is to create a cooperative relationship between husband and wife and children in the container which is known as a joint family residence (father, mother, and children).[4]

From the view of customary law in general in Indonesia, marriage does mean not only a civil engagement but also the agreement of customary and the engagement of kinship and neighborhood from both parties, wife and husband. So, the occurrence of marriage bond does not result in civil relations, like the rights and obligations of husband and wife, joint property, children's position, rights and obligations of parents, but also focuses on the relations of inheritance customs, kinship, inheritance, and neighborhood, and also regarding the traditional and religious ceremonies[5]

According to Balinese customary law, marriage aims to reach prosperity and happiness forever and produce offspring to preserve, manage, and pass on the inheritance of parents and ancestors, both in the form of obligations and rights to family and society.[6]

The purpose of marriage in Law Number 16 in 2019 concerning Amendments to Law Number 1 in 1974 concerning marriage and Balinese customary law has the same goal: to produce offspring as the successor of family life with regard to the rights and obligations.

To have offspring, the possibility of getting pregnant twins or twins for a boy and a girl is also substantial. According to the view of the general public, this is a natural thing to happen. However, with one of the traditional villages in Bali who still considers that twins are a mistake, they are required to carry out a tradition called the Manak Salah tradition.

The Manak Salah tradition is a culture long ago believed and implemented by the people of Songan Village, Kintamani District, Bangli Regency. This tradition blames the birth of twins with twins, namely the birth of twins of different sexes. The traditional culture of twin buncing or Manak Salah that applies in Songan village is one of the local pearls of wisdom for the village. Apart from Songan Traditional Village, there are no other villages that apply this tradition, or in other words, it is forbidden to maintain this tradition.

The Manak Salah tradition is considered to be very contrary to Human Rights. Therefore, On July 12th, 1951, the Bali DPRD stipulated Regional Regulation Number 10 in 1951 with regard to the Elimination of *Manak Salah*. From some considerations, finally, the following decisions were made as follows:

(1) If there are people who give birth to a son and a girl who, according to Balinese Hindu custom, used to be called "Manak Salah" or "buncing," then after the enactment of this regulation, the people concerned are not deemed guilty, and no punishment may be imposed.

(2) With the enactment of this regulation, the custom called "manak salah" or "buncing" was abolished

(3) This regulation may be called the regulation on the abolition of "manak salah" or "buncing" adat and shall come into force on the day it is announced.

After a long time, the regulations regarding the abolition of the wrong manak custom were enacted. The false manak tradition is still believed and implemented in the Songan traditional village.

The Manak Salah tradition in the Songan community is conducted for a long time, and there is no record of the number since what year this tradition began. It is known that this wrong manak tradition is based on the belief of the local village community that the twins are melik or born as incarnations of gods.

According to local stories and beliefs, twins in Songan are believed to be the incarnations of King Masula Masuli. In the past, people believed that King Masula Masuli, who was born with twins, was the gods' incarnation. In historical records, King Sri Masula Masuli was a child with twins or twins born and women.

The Songan Village community's belief in twins is the oldest, and it has existed since ancient times until now. At first, what has considered the incarnation of the god was that pointy twins, which was male twins, were born earlier than the female, but over time all types of twins were believed to be incarnations of gods, such as salit twins, which are female twins who were born first. Boys, same-sex twins are boys, and same-sex twins are girls. This happens based on the belief of the traditional village community in general, that all twins in Songan Village are melik and must be treated specially by making a pelinggih called the Twin Gods Stana, and worshiped by their relatives, because if a pelinggih is not made they believe that the circle the family of the twins will often get misfortune, and vice versa if they often worship at the Twin Gods Stana then the family circle will be blessed. When one community gives birth to twins, all religious ceremonial activities, such as Dewa Yadnya, Yadnya Man, Rsi Yadnya, and Pitra Yadnya, are not carried out because they are considered cuntaka. Cuntaka or dirty means that the universe is considered dirty because the twins born are considered to rival and equal the king of Masula-Masuli "if society can match the birth of a king, then the people who gave birth to twins are exiled in a place called coral exile and their home. Burned, after the expiration of the time of exile then a cleansing ceremony was made. Pelinggih or holy place in the yard. However, over time the Manak Tradition was wrong. There was a process of exile, and the burning of the house was stopped because it was not by the values of Pancasila and violated human rights.

3.2 The procedure for implementing the Manak tradition is wrong in Songan Village

Continuing something that is an ancestral heritage from generation to generation is not easy. Not a few outsiders think that this tradition cannot be continued for various reasons, including humanitarian reasons. However, the people of Songan Village are not fooled by this because they still believe what their ancestors have believed since time immemorial.

Based on Dewa Tatwa's ejection, the people of Songan Village believe that carrying out the manak salah tradition can create Niskala peace. However, if this tradition is not carried out, it is believed that undesirable things will happen, as stated in the Dewa Tatwa Lontar.

Lontar Dewa Tatwa explained that if twins were born and the manak tradition was not implemented, things would happen that were not desirable. This means that the dangers that will occur include: aridity in nature, many diseases, many people die, damage to the universe occurs, leaders and people often fight, stricken with dangerous diseases that can cause death, enemies become violent and create trouble, rice fields and the plantations were infertile, and the universe became barren.

Until now, no one has ever been able to prove the truth of the contents of the lontar. Even though this tradition has been abolished, the Songan people do not dare to violate it, so they still believe and carry out everything written in the lontar.

Although it was abolished through a Regional Regulation in 1951, this tradition is still carried out because what is stated in the regulation is considered not by the reality that occurred. Regulation of Regional Number 10 in 1951 regarding the Elimination of *Manak Salah* which states:

Noting that having sex (male and female) has been commonly referred to in Balinese Hindu custom as "Breaking Wrong," which usually applies only to the sudrawangsa group, because according to ancient understanding, "Amanda - manda the queen" and governs the country.

Considering that the language of a newborn baby and his parents must be moved from his home to the graveyard or the graveyard for 42 days, this is against the feelings of humanity and health. Also, considering the language after the time arrived, the baby's parents had to make a prayascita ceremony for the village, which cost money.

Considering, the traditional language as mentioned above is no longer appropriate to the current situation.

Decided to stipulate that the Peswara for the abolition of the customary so-called "manak salah" or "buncing" was abolished.

(1) If there are people who give birth to a boy-girl who, according to Balinese Hindu custom, used to be called "manak Salah" or "buncing," then after the enactment of this regulation, the people concerned are not considered guilty. They may not be subject to any punishment.

(2) With the enactment of this regulation, the so-called "manac false" or "bancing" custom is abolished.

(3) This regulation can be called the "manak salah" or "buncing" customary abolition regulation and comes into force on the day it is announced.

Implementing the Manak Salah tradition in Songan Village, Kintamani Bangli is divided into three (3) phases: the initial, middle, and final, which are still being carried out today. This happens because the changing times also indirectly change the social order in Songan Village. Moreover, there is a governor's regulation that prohibits the existence of this tradition. Therefore, there have been several shifts, but it does not reduce the meaning of implementing the wrong Manak tradition in Songan Village, which is inherited by the ancestors and does not violate the values of Pancasila and humanity.

In the initial phase of the Manak Salah tradition in Songan Village, the implementation procedure is that if a husband and wife who have twins with twins, namely male twins, are born first, the parents and twins will be exiled to coral exile, which is in the west of the village which is far from village community settlements, where

the village community built two makeshift houses with thatched roofs and woven bamboo walls (gedek). The first house is in the westernmost part of the village, and the second house is a little closer to the village area but is still outside the scope of the village residents' settlements. The difference in the location of this emergency house means that the longer a family is in exile, the closer their residence will be to the village. Until the exile process is complete, they return to the village and carry out their usual activities in the exile process, accompanied by a cleaning ceremony carried out step by step.

The initial stage, if someone gives birth to twins, three days after the baby is born, a nyebrahma ceremony is made which is a form of a cleansing ceremony for the baby, on the same day the house where the baby was born will be burned and they will carry out seclusion for forty two) days in exile, which will start from the baby being three (3) days old to twelve (12) days old, they will live in the first emergency house, after the baby is twelve (12) days old the village prajuru will make a mesakaran ceremony has the aim of cleaning the village area and the baby's family is moved to the second emergency house, the first emergency house will be burned again, they live in that house until the baby is forty- two (42) days old, when the baby is forty-two (42) the day the mesadi ceremony will be held, but before the mesadi ceremony, the Ida Batara Setiman ceremony will be held by h the Songan people will Tedun Kabeh (removed from their place), the next day there will be a mesadi ceremony, namely the cleansing ceremony of Ida Batara symbols, a release service ceremony which aims that the village is considered clean again and that religious processes such as Dewa Yadnya can no longer be carried out . After all the formal processes are over, the baby and his parents can return to the village area. The parents of the buncing twins bear all the costs of the ceremony at that time. Moreover, when the baby is three months old, a pelinggih will be made by the baby's relatives, from the baby's uncle, cousin, etcetera., the pelinggih is called the Pelinggih Stana Dewa Twins.

The second phase in implementing the false Manak tradition in Songan Village has a slightly different implementation procedure from the initial phase of the False Manak tradition in Songan Village. The difference lies in the burning of the house, which was initially the house of the parents of the buncing twins was burned, then they were exiled, slightly shifted into a symbolic one in the sense that their house was not burned and after they finished the exile they would get their house back in good condition. . The shift in the implementation of the burning of the house occurred because in 1979, there was a village (community) karma having cubs and they came from a poor family, when the traditional village soldiers came to his house, the father of the bunny twins cried and begged that his house not burned, with a conversation in Songan that reads "diolas jero, sampunang is burned by umah polee, pole early prostitutes men sing ngelah what men umah polee jani burns is sanga anggen pole ngae bin, kenggake nasi sing has baan pole" meaning, he doesn't allow krama Banjar burned his house because he was a very poor family, they couldn't even afford food, let alone build another house because his house was burned. Since that incident, the care of the traditional village and village manners held a deliberation. They agreed to a shift in implementing the burning of the twins' houses to be symbolic only with the roof being taken and then burned. The other process, which is still the same, is carried out according to the implementation phase of the Manak Salah tradition in the initial phase.

The final phase in the implementation of *Manak Salah* in Songan Village, which is still valid today, underwent a significant shift, namely a change in the belief that every twin is melik or is called an incarnation of the god, not only twins, this is based on the relatives of twins who often get misfortune. Because it does not make a pelinggih for the twins. Therefore, each type of twin must be made a pelinggih and worshiped. Changes also occur, such as the absence of house burning and exile. This can happen because of the socialization of the PHDI around 1985 regarding the DPR/GR/TH.1951 regulation regarding the abolition of the tradition because no human being is born wrong. If the tradition is still carried out not by the values of Pancasila and violations of Human rights, therefore the community can accept it. However, the village area becomes cuntaka, and the twins are believed to be melik and are incarnations of the gods, so the implementation of making pelinggih called Stana Dewa Twins for twins in Songan Village is still valid today. . The village cleaning ceremony is still being implemented but is funded by the traditional village.

Moreover, people still believe that twins should be made pelinggih called Stana Dewa Kembar, a place of worship for the twins, making this pelinggih not required by the traditional village. However, the relatives of these twins still make pelinggih because they believe that worship of twin gods is the priority. If they do not make a shrine, the family who is still close to the twins will often get misfortune. Vice versa, if they often worship at the Stana Dewa Dalem, they will always be blessed. The twins will be treated specially as if they cannot be given harsh words, called Jero Kembar and diodali every day they are born in Bali (otonan), all people will worship at the Twin Gods Stana to ask for safety. This is a public trust that must be respected.

4. CONCLUSION

Manak Salah tradition is still being applied in Songan Village, but experiencing a shift in the implementation procedure, namely the absence of house burning and the exile of families who gave birth to twins because they are contradictory. With the values of Pancasila and not inhumane. However, the community's belief about the village area will become cuntaka when a family gives birth to twins. It must be ensured that the cleaning ceremony is still valid and paid for by the local traditional village. Moreover, the making of pelinggih called Stana Dewa Twins is still implemented, but there

is no element of coercion from the traditional village. It purely happens because the community believes in twins that they must be made pelinggih and worshiped. The twins are melik means extraordinary if not made pelinggih then the closest family will often be in trouble.

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Dynamics of BMKT Investment Policy: Challenges in Application

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ABSTRACT
Changes in investment policy choices for Valuable Objects from Sinking Ships (BMKT) in Indonesia are quite dynamic. Starting with foreign freedom in the ownership of BMKT based on Law 5 of 1992 concerning Cultural Conservation, the inclusion of BMKT in the Negative Investment List (DNI) based on Perpresulation 44 of 2016, lastly BMKT investment was opened through Law 11 of 2020 concerning Job Creation and its derivative Perpresulation 10 of 2021 with remove BMKT from DNI. The policy dynamics were born because of the obstacles to exploration costs, risks, and high lifting costs, juxtaposed with the wealth of BMKT, which are cultural heritage objects with high cultural values in them. The policy of removing BMKT from DNI may attract investors' enthusiasm, but there is no legal regulation regarding management in the form of cooperation between the state and investors. It is feared that BMKT will only become objects with high economic value and ignore the dignity of BMKT as cultural heritage objects. The research is legal research that uses a statutory approach, a concept approach, and a comparative approach. This research shows that BMKT, a cultural heritage object, must be protected by the state in the public interest while still paying attention to investors. Strict legal policies in regulating the form of cooperation to the distribution of BMKT gains between the state and investors are a solution to balance the public interest and the interests of investors.

Keywords: *BMKT, Cultural heritage, DNI, Investment.*

1. INTRODUCTION

Investment is one of the activities that can increase the level of the economy of a country. Countries with high levels of investment will often be directly proportional to the ability of a country's economy. A country will try to increase the attractiveness of investment in its country to be interested.

The investment itself is divided into two categories, namely direct investment, and indirect investment. In direct investment activities, the owner of capital will play a direct role in managing a business activity or company. Meanwhile, in indirect investment, the owners of capital do not participate directly in managing business activities. Furthermore, indirect investment based on the source of capital, Law Number 25 of 2007 concerning Investment (Investment Law) divides direct investment into Domestic Investment (PMDN) and Foreign Investment (FDI).

Regarding FDI, there are several advantages of direct investment compared to indirect investment for a country, including [1]:

1. Provide income in the tax sector (tax)
2. Public saving
3. Balance of payments
4. Transfer of technology

These reasons then affect the host state to compete in attracting investors to invest in their respective countries.

The progress of the investment sector is now increasingly becoming the focus of the Indonesian government, through Law Number 11 of 2020 concerning Job Creation (Job Creation Act) which was promulgated on November 2, 2020. The investment sector has received much attention with the changes in legal regulations in Indonesia, which are considered to hinder the pace of investment and require attention for development. One area of concern for the government is the Negative Investment List.

DNI was previously regulated in Perpresulation Number 44 of 2016 concerning the List of Closed Business Fields and Business Fields Open with Conditions in the Investment Sector (Perpres 44/2016). The Perpresulation 44/2016 was revoked through

Perpresulation Number 10 of 2021 concerning Business Fields Investment (Perpres 10/2021) which was promulgated on February 2, 2021, and effective since March 4, 2021. Then the Perpresulation 10/2021 was amended again through Perpresulation Number 49 of 2021 concerning Amendments to Perprescree 10/2021, which was promulgated on May 25, 2021.

The change in business fields due to the amendment of Perpresulation 44/2016 can be seen from the DNI, which previously had 20 closed business fields. Now there are six closed business fields. According to Perpresulation 44/2016, one of the closed business fields is Valuable Objects on the Load of Sinking Ships (BMKT), which is now an open business sector through Perprescree 10/2021.

As an archipelagic country, Indonesia is supported by its geographical position, which is located between the continents of Asia and the continent of Australia, and flanked by the ocean, making Indonesia an international trade route. Archaeological discoveries of BMKT in Indonesian marine areas show that the waters in Indonesia are among the areas with the most extensive distribution of sunken ancient ships. The sunken ships sank according to the shipping lanes in the past known as spice and silk routes, and these ships were merchant ships and freighters. [2] At that time, the crowds of water traffic lanes were greatly influenced by the most sought-after needs, namely spices and forest products in the Southeast Asian region, which were classified as rare. In this case, Indonesia is very popular with forest products and spices (camphor, frankincense, nutmeg, coffee, and cloves). Where these needs are rare for people in Europe and the Middle East. [3]

Based on the geographical location and the explanation above, Indonesia has great potential for BMKT that still exists in Indonesian waters. However, the appointment of BMKT is not an easy and high-risk thing. This then opens up opportunities for cooperation with investors. However, the problem that then arises is the meaning of the BMKT value itself. In some statutory provisions, BMKT is a cultural heritage object with historical and cultural values . So that its utilization is aimed as much as possible for the benefit of the people, this is reflected in the meaning of cultural heritage objects according to Article 1 number 1 of Law Number 11 of 2010 concerning Cultural Conservation which confirms that:

Cultural Conservation is material cultural heritage in the form of Cultural Conservation Objects, Cultural Conservation Buildings, Cultural Conservation Structures, Cultural Conservation Sites, and Cultural Conservation Areas on land and/or in water that needs to be preserved because they have essential values for history, science, education, religion, and/or culture through the determination process.

The emphasis on objects in the water shows that BMKT is one of the concrete manifestations of cultural heritage objects themselves.

BMKT is not only related to cultural heritage but also related to tourism and marine affairs. From the tourism aspect, looking at the legislative ratio in the basis for considering Law 10 of 2009 concerning Tourism, it is briefly stated that ancient relics, historical relics, arts, and culture are resources to develop tourism whose ultimate goal is to increase the prosperity and welfare of the people. Meanwhile, concerning marine affairs, based on Article 27 paragraph (4) of Law 32 of 2014 concerning Marine Affairs directs the appointment of BMKT as one of the marine industries which are specifically activated in the field of maritime services and changes to the policy on BMKT come from Perpres 10/2021 which removes BMKT from the negative list, thus enabling investment in the BMKT business sector.

These different orientations on BMKT place inconsistencies in the value of BMKT and void the scheme for the form of cooperation in the management of BMKT. The interests of commercial use and the maximum benefit for the benefit of the people are objects of discussion that continue to be a concern for legal practitioners. So that in this study, the author is interested in compiling a study with two main focuses, namely the characteristics of BMKT and the form of investment cooperation on BMKT.

2. METHOD

This research is normative legal research. Peter Mahmud Marzuki argues that legal research is a process in finding the rule of law, legal principles, and legal doctrines to resolve legal issues at hand". [4]

In this study, there are two sources of legal materials, namely primary legal materials in the form of legislation relevant to the research discussion. The primary legal materials in this study consist of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Job Creation Law, the Cultural Conservation Law, the Tourism Law, the Maritime Law, Perpresulation 44/2016, Perprescree 10/2021, and Perpresulation 49 /20211. Then secondary legal materials consist of publications on the law in the form of journals, legal dictionaries. The collection of legal materials uses library research, namely the activities of collecting legal materials both primary and secondary, then making an inventory and connecting them with legal issues in this research.

3. RESULT AND DISCUSSION

3.1 Characteristics of BMKT

Indonesia is an archipelagic country, “Nusantara” (Archipelago) stated in the Juanda Declaration on

December 13, 1957. [5] More firmly, Article 25 Chapter IXA of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) affirmed that Indonesia is a state archipelago with archipelagic characteristics. As an archipelagic country at that time, Indonesia became one of the centers of foreign ship routes. Archives reinforce this in Europe and China, where the archives state that there is a trading process in Indonesia that has lasted for hundreds of years. Later, during the trade process, many merchant ships sank in Indonesian territory due to storms, wars, or crew mistakes. [6] This shows that the potential for BMKT to be found in Indonesian marine waters is very high.

BMKT as a cultural heritage object, as described previously, has a relationship with the tourism sector, as stated in the legislative ratio in the basis for considering the Tourism Law, which emphasizes that ancient heritage, historical heritage, art, and culture are resources to develop tourism that is oriented towards increasing prosperity. And the welfare of the people. Then in relation to marine affairs, Article 27 paragraph (4) of the Maritime Law provides business opportunities in the appointment of BMKT, where BMKT is included as one of the marine industries, namely maritime services.

The difference in orientation on the value of BMKT from the Cultural Conservation Law, Tourism Law, Marine Law with the abolition of BMKT from the DNI has led to an antinomy and avoid in norms related to the scheme for the form of cooperation in the management of BMKT due to an inaccurate formulation of the legislation. In this case, Mathias Klatt argues that the juridical implications of not being formulated in a proper legal manner (legal indeterminacy) are caused by several things, namely [7]:

1. Vaqueness of meaning (vaqueness) / vaqueness norm
2. The ambiguity of meaning (ambiguity), namely the confusion of meaning in language. The equation is ambivalence, i.e., the floating state between two actions.
3. Inconsistency (inconsistency), which is not aligned / not appropriate
4. Fundamental concepts contradict each other / there are still concepts that are open to evaluation (evaluative openness).

Furthermore, Koch and Rusmann argue that regulations containing vagueness, inconsistency, ambiguity cause the meaning to be unclear. [8] The existence of legal problems over the BMKT investment policy in Indonesia brings the author to a critical idea discussed in this study: legal certainty. The problem of legal certainty can be achieved in one way: trying first to restore the value of the BMKT. The international convention that covers the protection of BMKT is UNESCO's Convention On The Protection of Underwater Cultural Heritage 2001 (UNESCO 2001), UNESCO 2001 it adheres to the following basic principles [9]:

1. Obligation to preserve underwater cultural heritage
2. In-situ preservation as a preferred option
3. No commercial exploitation
4. Training and information sharing

The principle of no commercial exploitation adopted by UNESCO is a sign that BMKT is not exploited commercially for trade. M. Satria Wibowo said that there were three reasons why Indonesia had not ratified UNESCO 2001[10]:

1. Consideration of the impact of applying the principles adopted by UNESCO 2001
2. Differences in the provisions of the authority in the use of BMKT
3. Indonesia does not need to rely on conventions for cooperation

Regardless of whether or not UNESCO 2001 was ratified by Indonesia, the main focus drawn from UNESCO 2001 and the Cultural Conservation Law related to BMKT is the value contained in BMKT. Where both UNESCO and the Cultural Conservation Law have the same view of the values contained in BMKT, namely cultural, historical, or archaeological character (Article 1 Paragraph 1 UNESCO 2001) and history, science, education, religion, and/or culture (Article 1 number 1 of the Cultural Conservation Law), it is on this basis that provides the basis that BMKT should be prioritized for the benefits of culture, history, education, science.

On the other hand, in the area of BMKT investment policy, the laws and regulations in Indonesia change dynamically over the BMKT line of business itself. It is also feared that these increasingly dynamic changes could decrease investor interest in investing in the BMKT sector. This is in line with Aminuddin Ilmar's opinion, which states that a series of laws and regulations that support stability and domestic politics with a significant market share is one of the main things that increase the interest of investors, especially foreign investors. [11] This can be seen from the changes in the BMKT rules, which were previously included in the DNI, which are now turned into open business fields based on Perprescree 10/2021 while revoking Perpresulation 44/2016.

The consequences that the Government of Indonesia must accept if it intends to direct the value of BMKT not only for the sake of culture, history, education but also for taking advantage of the economic value should be formulated an integrated policy BMKT. The policy starts from the central values taken from the BMKT, the direction to the economic value by taking into account the cooperation scheme that will be carried out. With a firm policy, the public interest in the use of BMKT can remain the main focus, followed by economic value.

3.2 Form of Investment Cooperation for BMKT

Discussion on BMKT at the international level is often a vital discussion, and this is because BMKT does contain not only economic value but also historical and archaeological value. [12] This issue is a debate over which one will take precedence. In this case, the Government of Indonesia's attention to BMKT investment should focus on increasing investment enthusiasm and how to provide guidelines so that the maximum use of BMKT is for the benefit of the people. As explained in the previous sub-chapter that the existence of BMKT is very closely related to the interests of the people related to culture and tourism. The community is the main target that must be prioritized in terms of management and utilization of BMKT. This is in line with Indonesia's economic, democratic system, as confirmed in Article 33 of UUD NRI 1945.

In an economic democracy system, the main foundation used to run the system is mutualism, brotherhood, and cooperative. So that in an economic, democratic system, the government is formulating a policy that will side with the protection of national interests, especially regarding foreign investment. This is in contrast to the liberalist economic system, which opens the way for investment because the liberal economic system operates based on individualism and competition. [13] The principle of economic democracy itself is enshrined in Article 33 of UUD NRI 1945.

Furthermore, the presence of the public interest (the people), which is faced with the interest of increasing investment attractiveness, is one of the main problems a country often faces. In such a case, M. Zaidun conveyed the Principles of Protection of the Balance of Interests (PPKK). The PPKK principle expects equality for the parties involved, namely the host country, the interests of foreign investors, and at the same time embracing international interests. Equality is intended to balance rights and obligations proportionally. [14]

The public interest, as the national interest as the orientation of the management and utilization of BMKT, policies related to BMKT must be prepared based on that foundation. The opening of the BMKT business field, but not yet accompanied by in-depth arrangements regarding the appointment, management, and appointment of BMKT, causes BMKT to lose protection for the values contained in it.

From the side of commercial salvors (investors), they assume that time is money. Artifacts are valuable objects that must be found and sold immediately to return their investment immediately. [15]

The vacancy in the BMKT arrangement can be resolved by taking into account economic democracy and PPKK. So that in this case, the government can formulate a policy of cooperation with foreign investors but still pay attention to national interests, for example, conducting exploration cooperation with foreign investors. However, in terms of the distribution of BMKT, the state has priority in selecting BMKT objects. This aims to restore the value of BMKT both in terms of cultural heritage and revive tourism in the BMKT field.

The absolute control of the state over BMKT here is a form of application of the law of salvage. The law of salvage has two aspects contained in it, namely private and public. The private aspect is related to the proportional reward given for the rescue, while the public aspect is related to the rescue mechanism. [16] So, when referring to these provisions, the concept of cooperation that is most likely to be carried out is to carry out public-private partnerships (public-private partnerships) by paying attention to aspects of saving BMKT and providing proportional benefits to private organs that assist in saving BMKT. The form of cooperation between the public and the private sector regarding the management of BMKT is often not explicitly explained and only in the form of an arrangement that such actions can be taken. As in America, for example, in Section 4 a, number 2 point c Abandoned Shipwreck Act, which stipulates that "allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites. In other words, when referring to these provisions, the United States of America also provides an opportunity for cooperation between the public and private sectors in the management of BMKT. However, even though it is not explicitly regulated, standards such as maintaining historical values still exist.

Furthermore, related to the form of cooperation, the Indonesian government has launched a cooperation model for the use of BMKT through concessions. In the draft Perpresulation on the Management of Submerged Vessels, [17] the BMKT utilization model is divided into several types:

1. First in situ, namely the utilization model by accommodating BMKT as part of a tourism object—through marine tourism.
2. The second model of BMKT utilization is carried out by declaring BMKT as part of the state collection that cannot be commercialized. However, with the condition that the BMKT is only one of one type. If there is more than one number for one type, then only one is the country collection.
3. Third, through an auction, the auction can be requested by a private company that assists in the appointment of the BMKT and the implementation of the auction so that the profit from the sale is divided by 50% for the state and 50% for the company.
4. Lastly, through concessions. Concessions must be made if the auction does not produce results. The form of concession can be rental,

exhibition, or borrow-to-use, which can be done overseas or domestically, with certain conditions. From these concessions, the government gets 2% per year of the concessions per year and will increase by 3% per year.

The problem in the form of BMKT collaboration launched by the government lies in the standards that will be used to distinguish whether a BMKT is a state collection or not. When referring to the draft Perpresulation, the only standard used is the number per type of BMKT that can be commercialized. As a reference, the American shipwreck explorer organization (proSEA) provides three essential standards for distinguishing cultural artifacts and trade goods, namely [18]:

1. Number of BMKT of the same kind. Indonesia uses this requirement to distinguish BMKT, which is a collection of the state and which can be commercialized. However, the conditions determined by proSEA are at least 5% of the total amount (if there are more than one.
2. It is easy or not to document or duplicate the BMKT. In this standard, when the BMKT is easy to document and publish, it is allowed to be commercialized as long as it meets the quantity requirements.
3. Consideration between archaeological value and commercialization value. In this standard, the number does not always determine whether the BMKT can be commercialized or not. For example, there is a BMKT in the form of a thousand gold coins. Just because of this amount, it does not mean that leaving just one coin can get the maximum archaeological value. This is because the number of artifacts must be investigated in total to be useful for archeology. Therefore, if we refer to numbers only, the possibility of not finding the archaeological value of the BMKT will be unknown.

Although some of these points are not official rules but are in the form of ethics and knowledge of BMKT, at least provide a new perspective on the characteristics of BMKT as objects with archaeological value.

The form of cooperation launched by the Indonesian government through the draft Perpresulation has met the investment requirements described previously. For example, regarding the distribution of results that can accommodate the interests of the parties proportionally. It is just that, what needs to be considered from the form of cooperation, must also pay attention to the object of the cooperation.

Indeed, commercial exploitation, including the sale of artifacts, which combines archaeological and economic values, has been used—at least in America. However, the division between a collection of the state (cultural artifacts) and BMKT that can be commercialized (trade goods) must be done correctly before commercialization occurs.

Thus, according to the author, the most appropriate model of cooperation in utilizing BMKT can be done by auction or concession as stated in the draft regulation. However, in addition, the process must be preceded by identifying a BMKT that meets the three standards described previously. Thus, economic or commercial use of BMKT will not affect the archaeological value of BMKT itself.

4. CONCLUSION

Based on the discussion, it can be concluded that the policy on the orientation of the BMKT is still in conflict, but this can be resolved by establishing an integrated legal rule. In addition, clear rules regarding the form of cooperation and grouping of BMKT are essential for the government to pay attention to.

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The Role of *Bale Mediasi* in Settlement of Tourism Disputes in West Nusa Tenggara (NTB)

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ABSTRACT
Tourism development, which is a way for the Government to accelerate economic growth to realize the community's welfare, will lead to disputes in the process. West Nusa Tenggara (NTB), which is made one of the areas in the priority of national and international tourism development, must look at sustainable tourism development so that the values that exist in the community are maintained and can respond to disputes that will arise. Bale Mediasi, an out-of-court dispute resolution institution based on local wisdom, can play a role in this. This research was conducted through legal research method juridical-normative using literature study. The results showed that Bale Mediasi is an out-of-court dispute resolution institution based on legally valid local wisdom. So, Bale Mediasi can be used as a dispute resolution mechanism in tourism to provide basic needs for people's lives with a sense of security, order, and peace.

Keywords: *Bale Mediasi, Dispute Resolution, Local Wisdom, Tourism.*

1. INTRODUCTION

National economic development based on the 1945 Constitution of Indonesia Article 33 must be conducted on the economic democracy with togetherness, efficiency, justice, sustainability, environmental insight, independence, keeping the balance of progress, and also national economic unity. This is also inseparable from national agenda related to the acceleration of economic growth to realize people's prosperity.

Development of tourism business sector is one way for the Government to accelerate the country's economy, which is part of a plan that has been studied together. Tourism refers to various tourism activities encouraged by many facilities and services given by the community, businessmen, government, and local governments. While, tourism is about all activities related to the tourism and multidimensional also multidisciplinary that arise as the manifestation of the needs of each person and country and interactions between the tourists and local communities, fellow tourists, government, regional governments, and also entrepreneurs.

In achieving the target of 16-17 million foreign tourists by spending US$ 1345 and the target of local tourist movement of 330-355 million in 2024, the mutual synergy between parties like community, businessmen, and the government are needed. The Government, both represented by the regions and the center in terms of governing, actually has an obligation in tourism development. Article 23 paragraph 1 regulates the Government's obligations in:

a) Giving tourism information, legal protection, as well as security and safety to tourists;
b) Making a conducive climate for the development of tourism businesses which consists of the opening of the equal opportunities in running business, facilitating, and giving legal certainty;
c) Maintaining, developing, also preserving national assets that are tourist attractions and potential assets that have not been explored; and
d) Supervising and controlling tourism activities in preventing and overcoming various negative effects in the community.

The authority that has been given is a mandate that must be implemented. The province of West Nusa Tenggara (NTB) is no exception, which is currently one of the priority areas in national and international tourism development (development of the Mandalika Special Economic Zone, halal tourism destinations, Tambora national geopark destination, and UNESCO global geopark Rinjani). However, it should be remembered that the tourism development process, oriented towards economic and business benefits, must be accompanied by the concept of sustainable and responsible development

to keep environmental sustainability, religious values, culture in society, and also the quality as the national interests.

West Nusa Tenggara administratively consists of 8 regencies, two cities, 117 sub-districts, and 1143 villages/kelurahan. There are three main tribes, namely Sasak, Samawa, and Mbojo tribes with local values, customs, and also culture who has long been present in managing all aspects of people's live. These values of NTB culture are as "local wisdom," that is, the noble values that occur in the community's life to, among other things, save and manage the environment sustainably. The subsequent understanding, local wisdom, in the foreign language, is as the local policy or local knowledge refers to a view of life and knowledge as well as many life strategies in the form of activities carried out by local communities.

As for tourism development, legal protection is undoubtedly needed in preventing or dealing with matters that give rise to legal disputes and social conflicts that exist in the people of West Nusa Tenggara based on local wisdom that has been respected and recognized by the state. For example, there is a growing national issue regarding the development of the Mandalika Special Economic Zone (SEZ) regarding allegations of the violations of the human rights by the United Nations, also the dispute over the conflict, tanak pecatu Jerowaru sub-district, East Lombok, both of which are tourism destinations.

The West Nusa Tenggara regional government has enacted the West Nusa Tenggara Provincial Regulation Number 9 of 2018 concerning Bale Mediasi in responding to development relations to business activities in the tourism sector in its region which is prone to conflicts and interests which can hinder the ongoing activities by forming alternative institutions for resolving disputes based on local wisdom outside the Court.

For this reason, this study will analyze the role, authority, and legal consequences that Bale Mediasi can do in resolving tourism disputes in West Nusa Tenggara. The problem in this study is as follows:

1. What is the Role of Bale Mediasi in the settlement of Tourism Disputes in West Nusa Tenggara (NTB)?

2. METHOD

The research method used in this research is legal research juridical-normative, with library materials that include primary legal materials, namely the 1945 Constitution, the Republic of Indonesia Law Number 8 of 1999 concerning Consumer Protection, Law Number 30 of the Year 1999. 1999 concerning Arbitration and Alternative Dispute Resolution, Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, Law Number 48 in 2009 concerning Judicial Power, Regional Regulation of West Nusa Tenggara Province Number 9 in 2018 concerning Bale Mediasi, Regional Regulation of Nusa Tenggara Province West Number 7 in 2013 concerning the Master Plan for Regional Tourism Development in 2013-2028. The secondary legal materials, like previous legal studies, legal books, scientific journals, and the other legal materials, then tertiary legal materials, including Indonesian dictionary and also encyclopedia.

3. RESEARCH AND DISCUSSION

3.1 The Role of Bale Mediasi in Settlement of Tourism Disputes in West Nusa Tenggara (NTB)

3.1.1 Bale Mediasi institutional, juridical analysis

Bale Mediasi itself was born from an understanding of the importance of recognizing, respecting, and protecting cultural and customary values into an institutional law whose formation is based on national philosophical, sociological, and juridical foundations and specifically the people of West Nusa Tenggara. Constitutionally, the recognition of state of "cultural and customary values" has been promulgated in the Article 18B paragraph (2) of 1945 Constitution:

> "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society. Moreover, the principles of the Unitary State of the Republic of Indonesia as regulated by law".

Article 28 paragraph (3) NRI Constitution in 1945 "cultural identity and traditional rights be respected in line with the times and civilization". Article 32 paragraph (1) also explains, "The State shall promote Indonesian national culture amid world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values".

Then, the establishment of the Bale Mediasi institution itself cannot be separated from regional authority based on statutory regulations that have been weighed to become the legal basis. Bale Mediasi is an institution that carries out the function of mediation, guidance, and coordination in implementation of the mediation in community following the local wisdom and it is not part of the judiciary state, but the institution that resolves disputes outside the Court. While, mediation refers to the settlement of disputes through deliberation and consensus negotiation to get the agreement between the parties with the help of mediator. Mediation is the dispute resolution process between two or even more parties through negotiation or consensus with the help of neutral party who does not have the authority to determine.

The development of the judiciary's policy in Indonesia, which has unified all forms of Court under the

Supreme Court based on Law Number 48 in 2009 regarding Judicial Power. Customary courts in this era have not yet been included "structurally" or "nomenclature" into the national judicial power institutions that base the entire series of legal dispute resolutions from the initial trial to the sentencing (decision). However, the Bale Mediasi institutional "gaps" that were formed can still be traced by:

1. Looking at the meaning of the court process, it is not always resolved by litigation (inside the Court) but can be carried out non-litigation (outside the Court). CHAPTER XII Settlement of Disputes Outside the Court Article 58 of Law Number 48 the Year 2009 with regard to Judicial Power stipulates, "Efforts to settle civil disputes can be carried out outside the state court through arbitration or even alternative dispute resolution." Then, Article 60, paragraph 1 states that alternative dispute resolution is the institution for resolving disputes or the differences of opinion through procedure agreed upon by the parties, that is, settlement out of Court using consultation, negotiation, mediation, conciliation, or even expert judgment.
2. Using the theory of legal pluralism, namely more than one legal order in social arena. Because the system of formation of Indonesia itself is formed from western law, customary law, and Islamic law, customary law, which is one of the elements forming the customary judiciary in the mediation mechanism, is *Bale Mediasi*. Although the concept develops two forms of legal pluralism, the first is known as the weak legal pluralism, and the second is as strong legal pluralism. "Weak legal pluralism" is the separate regulation created by the state for different groups of people, either based on ethnicity and religion or even district of residence. This is practical technique applied by the government to regulate a pluralistic society. Thus, Indonesian state is still leading to the concept of "weak" legal pluralism. Where the customary laws, religious laws, and the other laws must be subject to explain law. It can be seen from Indonesian judicial system in the form of incorporation to date.
3. Nowadays, there are also many institutions that, although not explicitly referred to as the courts, have the authority and working mechanism adjudicating. Under the provisions of the law, the institutions have the authority to examine and decide something the dispute, and even the matters of ethical violations specified by the final decision and binding (final and binding) and court rulings are "inkracht". Institutions that are 'judicial', but are not as the courts are the form of quasi-court or semi-trial. For instance, some of them can be stated as follows:
    1) Business Competition Supervisory Commission (KPPU);
    2) Indonesian Broadcasting Commission (KPI);
    3) Central Information Commission (KIP) and Regional Information Commission (KID); 4) General Election Supervisory Body (Bawaslu);
    4) Ombudsman of the Republic of Indonesia (ORI);
    5) And the others.
4. In the formation of laws and regulations related to *Bale Mediasi*, one of them is considered legally, one of them is based on Law Number 15 in 2019 concerning Amendments to Law Number 12 in 2011 regarding the Establishment of Laws and Regulations regarding regional authorities, provincial and government. Regencies or cities were informing regional regulations. In the example of the recognition of the customary courts in Papua, which is based on Chapter XIV on Judicial Powers of Law Number 21 in 2001 regarding Special Autonomy for the Papua Province.

The establishment of the *Bale Mediasi* institution is legally valid and can be an extension of the judicial Power in resolving disputes based on the local wisdom because of the continued accumulation of the cases in the district courts. Regarding Article 4 of the Law on Judicial Power that the Court assists justice seekers and attempts to pass the obstacles and to get simple trial, fast, and also low cost.

3.2 Authority of Bale Mediasi in Settlement of Tourism Disputes

The establishment of Bale Mediasi itself aims to:

a. government recognition as the protection, honor, and empowerment of traditional institutions in carrying out the functions of mediation;
b. prevent and reduce conflicts or disputes in the community earlier; and
c. the implementation of dispute resolution in the community through mediation to create a harmonious, orderly and harmonious atmosphere.

As for the task, it can be seen in 11, namely:

a. create a database of certified and uncertified mediators;
b. facilitating socialization, education, research, training, seminars, workshops, workshops on mediation;
c. compiling and establishing Standard Operating Procedures (SOP) for the Mediation Bale;

d. submit reports on the implementation of duties and authorities;
e. assistance of dispute resolution carried out by institutions carrying out mediation functions; and
f. coordinate with institutions and institutions related to the implementation of their duties. And authorized to:
    a) strengthen the capacity of institutions that carry out mediation functions in the community;
    b) to increase the capacity of mediators;
    c) coordinate with institutions that carry out mediation functions; and
    d) resolve disputes through mediation.

Meanwhile, concerning the resolution of tourism disputes, it is to make Bale Mediasi authority based on law into a dispute resolution institution outside the Court or better known as the Alternative Dispute Resolution to resolve legal disputes in NTB tourism. APS is such a tool of legal experience and technique that aims to: (a) resolve legal disputes out of court for the benefit of the parties; (b) Reducing the costs of conventional litigation and the usual time delays; and (c) Preventing legal disputes, which are usually brought to Court. Because nowadays, alternative dispute resolution methods are getting more attention and are used by various groups, especially those in the business world, as a dispute resolution method that needs to be developed to overcome the bottleneck of settlement through the courts.

Suppose you look back at the highest regulations regarding tourism, for example, in Law Number 10 in 2009 regarding Tourism. There is no article written in a separate article or chapter regarding tourism disputes. The regulation only provides provisions for sanctions of a procedural or administrative nature (Articles 62 and 63) by limiting them to tourists and tourism companies. In contrast, tourism itself in planning, development, implementation, management, and evaluation involves many communities, Government, Local Government, academics, local communities, and others. Although there is a criminal provision in the tourism law, it is again limited to Article 27 of the law, which organizes the “prohibition” of damaging tourist attractions. Even because of the tourism development in West Nusa Tenggara, it is not even possible for disputes in all lines of the tourism process to give rise to disputes that are not only civil but criminal. As mentioned in the background of this writing, the NTB community itself has indigenous peoples who maintain traditional and cultural values or better known as indigenous peoples (in a more specific context) in protecting their territory. Moreover, the tourist destinations in West Nusa Tenggara are primarily located in village areas that still maintain their noble values.

Although in terms of dispute resolution out of Court, either referring to Law of Indonesia Number 8 in 1999 with regard to the Consumer Protection, the Law of the Republic of Indonesia Number 30 in 1999 focusing on Arbitration and Alternative Dispute Resolution or Law Number 48 in 2009 with regard to Power In the judiciary, the three of them place “civil disputes” as the objects. Nevertheless, this is not the case with the NTB regional government, which gives Bale Mediasi authority to settle "criminal" disputes. Because in the realm of law based on custom, it does not recognize the division of nature into law (criminal and civil law), but the makers of Bale Mediasi who are in the unification of the judiciary must submit to the Power of the judiciary but do not also "put aside" the values of the local community because they look at history. The NTB area puts forward a cultural approach through the mediation of consensus (mediation) in maintaining the orderliness of the community. This depends on Article 17 of the NTB Regional of Regulation Number 9 in 2018, that includes:

(1) *Bale Mediasi* to resolve disputes in the community using mediation through the principle of deliberation and consensus outside the Court.
(2) Types of disputes that Bale Mediasi can resolve include:
    a. civil disputes; and
    b. criminal act.
(3) Settlement through mediation as in paragraph (2) shall be made at the request of parties.
(4) The dispute, as referred to in paragraph (2), can be resolved through Bale Mediasi without the parties' request but with the participation of the community who reports it.

Furthermore, to get legal certainty to protect the parties to the dispute. The mediation results are made in the form of mutual agreement as the peace deed signed by the parties, the mediator, and known by the Chair of the Mediation Bale, which is final and binding. Then, the peace deed referred to can be registered with the local District Court to get the executory decision.

On occasion, the Governor of NTB, Dr. Zul, said, “Conflict resolution by means of mediation or prioritizing deliberation, will support the development pursued by the Government. The reason is that people who can solve their problems also take care of their order and security without having to use higher legal instruments”. The development in question can be related to the tourism development of the NTB region itself, which includes: a. Tourism destination; b. Tourism marketing; c. Tourism industry; and D. Tourism institutions. So, *Bale Mediasi* can resolve the disputes that are local wisdom for the tourism development in the NTB area, which can prosper live of people with sense of security, order, and also peace.

4. FIGURES AND TABLES

The conclusions of this research are as follows:

(1) *Bale Mediasi*, which was promulgated as an institution through NTB Provincial Regulation Number 9 in 2018 regarding *Bale Mediasi*, became an out-of-court dispute resolution institution based on the local wisdom that is legally valid by referring to the Indonesian national legal system and aims to prevent, reduce, protect, and resolve disputes that exist in the community first without having to go to Court.

(2) The development of tourism in the NTB region, which is the Government's effort to evolve the economy to realize the prosperity of the people, have created conflicts of interest that have harmed the local community whose territory has become a tourist destination. So, *Bale Mediasi* is here to trestle disputes that arise to help accelerate development to give the basic needs for the live of people with sense of security, order, and also peace.

(3) By looking at the absence of regulations or mechanisms for resolving disputes, specifically in regions that still uphold local wisdom in Indonesia at the level of the law. In its regulations, Alternative Dispute Resolution only bases its object on civil disputes must change its approach to criminal things. Seeing the development of the legal study, Bale Mediasi makes criminal cases into the type of dispute that can be resolved.

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Environmental Law in the Tourism Development of Investment in Indonesia

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ABSTRACT
Globally, tourism is seen as one of the sectors increasing its contribution to national income. Tourism encourages economic growth through the investment opportunities, job opportunities, business opportunities and, in the end, can improve welfare of people. Along with continued development of tourism, there has been a change in the environmental component as a buffer. The more developed the tourism sector in Indonesia, the more legal arrangements related to environmental law and environmental law regulations related to tourism not to cause natural damage caused intentionally or unintentionally. This paper has a formulation of How the role of Environmental Law in Tourism Development of Investment in Indonesia.

Keywords: *Environmental Law, Investment, Tourism.*

1. INTRODUCTION

Humans grow and develop with the environment around them. Every human interaction, both among humans and the environment, will impact the environment, both positively and negatively. Therefore, a legal rule is designed to regulate the balance of humans and the environment in which they live. Environmental law regulates the pattern of the environment along with all the devices and conditions with humans that exist and affect the environment.

Environmental conservation in this century is increasingly attracting attention, not only in Indonesia but throughout the world. This is because environmental sustainability has now been seen as an obligation of the entire world community. In addition, environmental sustainability is in the interest of all the people of the world. The environmental damage that occurs around us and harms us also harms the entire community in this world. Government issued the policies to pay attention to environmental sustainability.

Globally, tourism is seen as one of the sectors increasing its contribution to national income. Along with the continued development of tourism, there has been a change in the environmental component as a buffer. Tourism development creates two types of impacts[1]. The impact can be in the form of a positive impact or a negative impact. Positive impacts can be in conservation of natural areas, conservation of historical and archaeological sites and distinctive formations, improvement of environmental quality, improvement of infrastructure, and increased environmental awareness. At the same time, the negative impacts can be in the form of water pollution, air pollution, noise pollution, landscape pollution, waste treatment problems, ecological decline, environmental disasters, damage to historical and archaeological sites, and land-use problems.

Tourism has been proven to encourage economic growth through investment opportunities, job opportunities, business opportunities and, in the end, can increase people's prosperity. The tourism development throughout Indonesia with natural scenery or natural beauty continues to increase. Facilities and infrastructure supporting or supporting tourism are continuously being built. The attraction of tourism objects that are presented in tourist attractions is also equipped with various facilities. In this way, it can increase the attractiveness of tourist objects, increasing the number of visitors to these attractions.

The more tourism development in Indonesia, the more natural damage that exists caused intentionally or unintentionally. The damage arises from the development of tourism supporting infrastructure that does not prioritize environmental sustainability, such as building roads to tourism objects by displacing the environment without paying attention to the long-term effects of these actions.

To reduce the pollution and also damage, it is needed to balance the sustainabilities of development and environment. The act of increasing economic activity through the tourism sector must not damage the other

sectors. For instance, the construction of hotels or restaurants must not cause the damage of agricultural land. The concept of harmony between development and environmental sustainability is called environmentally sound development, and lately, it is known as sustainable development. Sustainable development has the characteristics of not harming the environment inhabited by people [2]

The preservation of the function of the environment, which is the goal of environmental management, is the foundation for the continuation of sustainable development. Therefore, from the beginning of planning a business and/or activity, it is necessary to predict the changes in the environmental setting due to the establishment of a new environmental condition, both favorable and unfavorable, that arise as a result of the implementation of a business or development activity. Article 15 of Law Number 23 in 1997 regarding every business plan or activity that is likely to own significant impact on the environment must analyze the environmental effects.

By incorporating an analysis of environmental impacts into the planning process of a business and/or activity, the decision-maker will gain a broader and in-depth view of various aspects of the business and/or activity. Environmental effect analysis is such a tool for decision-makers to examine the possible consequences of business plan or activity on the environment to prepare the steps to decrease the negative impacts and evolve the positive effects.

Every business plan or activity that is likely to have significant effect on the environment must examine the environmental impacts. As part of the feasibility study to apply the business or activity plan, the analysis of environmental impacts is as the necessity that must be met to get a permit to conduct a business or activity.

Considering the background as described above, the problem formulated is the role of environmental law in the tourism development of investment in Indonesia.

2. RESULT AND DISCUSSION

2.1 Environmental Law Regulations in Tourism

According to Law number 32 in 2009, the environment refers to the unity of space with objects, forces, conditions, and also living things, such as humans and their behavior, which affect the continuity of life and the prosperity of humans and other living creatures. While, the management of environmental is the integrated effort to maintain the functions of environmental, including arrangements, utilization, development, maintenance, restoration, control, and also the environmental control.

By definition, environmental law is the rules or provisions or legal norms that regulate integrated structuring, exertion, expansion, preservation, restitution, surveillance, and the environmental control.

The management of environmental protection regulations are specifically regulated by the law. However, the policies issued by the government are not necessarily by the laws used, including to regulate the development of tourism and the protection of environmental management. Law Number 32 in 2009 regarding the protection and management of the environment.

The law refers to systematic and integrated effort conducted to preserve the environmental functions, including the prohibition of polluting, importing hazardous, and also toxic objects (B3), entering waste into environmental media, clearing land by burning.

Many parties highlight that environmental licensing policies and investment interests are considered to have a significant role in causing the environmental crisis in this country. [3]. Environmental destruction and pollution in the tourism sector by business actors can be traced to various policies for providing environmental businesses, such as hotels, restaurants, cafes and so on.

The law is used to organize the development of tourism. The tourism development with natural environment objects is increasing, and more and more tourists are coming. The development of tourism object facilities must be regulated so that investors do not arbitrarily build tourism supporting places, resulting in damage to the environment around tourism objects.

In addition to the law on environmental protection and management, another law, namely Law Number 10 in 2009, concerning Tourism. This law regulates the state of nature, flora, fauna, ancient relics, historical relics of art, culture, which are used as tourism objects owned by the Indonesian people.

Tourism refers to the integral part of the national development, integrated, systematical, sustainable, and also responsible while still protecting the religious values, the culture in society, environmental sustainability and quality, and the national interests.

Tourism policy is an effort to give certainty for the tourists and community related to the tourism development to optimize the benefits of tourism to the stakeholders and minimize the adverse effects, costs, and the other impacts in the development with the sociocultural and environmental economic dimensions depend on the justice not only for the present generation but also for the future generations. [4]

Seeing the sentence above means that environmental sustainability should be very concerned in building or developing tourism in Indonesia. Because environmental sustainability is essential for all human beings both now and even in the future, regulations must govern tourism so that tourism development does not damage the environment.

In addition to the two laws above, according to the author, one more regulation can regulate environmental protection and management, namely environmental impact analysis. Environmental impact analysis or analysis of environmental impacts in Indonesia. It is the study of the principal and significant impacts of the planned business and/or activity on the required of environment for the process of decision-making with

regard to the business and/or activity operators in Indonesia.

One of tourism development policies in the tourism law is tourism development carried out based on the principles referred to Article 2 of Law number 10 in 2009 with regard to the tourism. In this policy, tourism development must concern on various aspects, like the uniqueness of culture and nature.

In carrying out development in the tourism sector, the law also explains that stakeholders must make a development master plan. According to the author, these stakeholders have representatives from the government who examine the impact or impact of the environment, including sustainable development. With the development plans and regulations regarding tourism development, environmental policies should have considered their impact ahead of time, thus reducing the damage to the natural environment [5] resulting from tourism development.

2.2 Development of Tourism to the Environment

Tourism is as the variety of tourism activities that encouraged by many facilities and services given by the community, entrepreneurs, government, and also local governments. [6]

Tourism refers to the temporary and short-term movement of people to the destinations where they usually live and work. [7]

Prof. Salah Wahab defines that the tourism as the conscious human activity that accepts the services between people within country or even abroad, like the residence of people from the other regions for a while seeking varied and diverse satisfaction. [8]

From the understanding of tourism above, tourism is as one of the activities conducted by every human being when humans need diverse atmosphere due to the fatigue with their daily activities. So, the tourism has become the human need even it is not the basic need, but it is a must. Thus, the level of human interest in the traveling is such quite large.

Various kinds of tourism are provided for tourists both from within and outside the country, such tours as nature tourism, cultural tourism, artificial tourism (town squares, city parks, urban forests), Waterland tours, and special interests in the form of pilgrimage tours, tourism culinary and shopping tours. Of the various kinds of tourism that are more attractive to tourists is nature tourism because Indonesia's nature is wonderful to be enjoyed as a reliever and a place for family recreation.

From there, tourism has been proven to increase the growth of economic through various chances, like the investment opportunities, job opportunities, business opportunities, and can create the community prosperity. Tourism also makes the problems in social life, culture, and the conservation of environment.

Many theories and examples show that tourism activities can play a significant role in financing environmental conservation programs. However, it must be noted that activities also can participate in leading to environmental damage. Development planning to complement tourism facilities often raises the argument that it will damage the environment. Environmental observers see that the development carried out is a real threat to the biodiversity in or around the area to be developed.

According to J. Barros and JM Jonston, environmental damage and pollution are closely related to development activities carried out by humans, among others in the form of waste, hazardous waste substances such as heavy metals, radioactive substances, and others. Second, mining activities, in the form of damage to installations, leaks, pollution of mining disposal, air pollution, and damage to ex-mining land. Third, transportation activities in the form of puffs of smoke, rising city air temperatures, motor vehicle noise, fuel spills in the form of oil from tankers. Fourth, agricultural activities, especially as a result of residues from the use of chemical substances to eradicate pests such as insecticides, pesticides, and also the use of organic fertilizers. [9][10]

In theory, stated above, tourism can provide three causes, namely the first cause, namely industrial activities, for example, with a restaurant or cafe. The third is transportation because more and more tourists want to visit tourist objects, the more transportation or vehicles that enter these attractions.

Talking about environmental pollution will be related to the relationship between human society and the natural environment in a natural way, Humans and their communities. In addition, by having the right to use, it also has a responsibility to save and preserve the environment. [11]. Therefore, it is the people who must be aware that the natural environment around us is essential for our lives together and must take care of it together, not only blame the government.

Some of the impacts that occur due to the development of tourism that result in environmental damage that need to be considered by tourism business investors are:

1) Waste

The impact of tourism on the environment that is the problem of waste. The waste generated by visitors becomes the problem of environment that can affect the quality of tourist destinations. It is easy to happen where the liquid waste disposal is carried out by guesthouses, hotels, restaurants, also villas. It is unavoidable that these places are important part of the tourism. However, without realizing it, the waste generated from these places is not organized, which makes damage to the environment around the place.

Garbage is also the problem in the environment. Waste is unwanted residual material after the end of the process. Humans define waste based on the degree of use. There is no concept of waste in the natural processes, only the products produced during the natural process. Since life human-defined the concept of environment, then trash can be shared depend on the types. [12]

2) Clean Water Source

Often conflicts between the management of the tourism industry, especially the owners of hotels, restaurants, and other tourism developers, against the local population will arise. Conflicts that often occur involve the transfer of use of surface water and groundwater. Usually, this diversion can occur because of the diversion of water flow, namely for the benefit of local communities and local agriculture towards the fulfillment of water resources for hotels, restaurants, and other tourist interests.

Many tourism objects use springs as tourism and are built for tourism purposes to complement the tourist facilities. Indeed, good tourist facilities affect the number of tourists who come. However, investors do not care that their development will have a significant impact in the future when the surrounding nature has begun to be damaged and abandoned by tourists.

3) Air pollution

Air pollution is also one of the environmental problems caused by development of tourism development.

The air in the tourist area is polluted[13]by the fumes of motorized vehicles of tourists heading to tourist attractions. Smoke is the smoke that comes out of the exhaust gas of motorized vehicles, which increases every day due to the increasing number of vehicles coming to the tourist attraction. The impact of this phenomenon is that there is an unpleasant odor from vehicle exhaust gases, and the atmosphere tends to become hotter.

Air pollution causes discomfort for people who are around tourist attractions. The air that was initially cool slowly turned cold again.

4) Wild Life

Wildlife life means great tourist attraction. Tourists are fascinated by the pattern of the life of animal. The tourism activities disrupt the lives of the animals. The composition of the fauna changes because of hunting of animals as the souvenirs, harassment of wildlife for photography, exploitation of animals for show, disturbances in the animal reproduction, changes in the animal instincts (e.x. Komodo dragons, which were vicious animals into the protected tame animals), animal migration. The number of wild animals is reduced, when the tourists visit tourist areas.

5) Natural disasters

Natural disasters are a consequence of natural activities and physical events, such as volcanic eruptions, earthquakes, landslides, and human activities. Human powerlessness due to lack of preparedness and emergency management causes financial and structural losses, even death. [14]

Natural disasters are the most significant impact when the nature around us is damaged, whether damaged by nature itself or by irresponsible human activities. Tourist attractions that often occur in disasters are mountainous areas or highlands and then coastal areas.

Tourists from the summer areas choose to travel to the mountains to shift the atmosphere-meanwhile, the tourist activities in the mountains destroying the mountains and the wilderness areas. The opening of hiking trails, the establishment of hotels at the foot of the hills, and the construction of other facilities are the examples of developments that can harm mountains and wild areas.

As the result, landslides, soil erosion, depletion of mountain vegetation (which can be the lungs of the community), and potential pollution visual and excessive flooding since the mountain cannot absorb the rainwater. In this case, it needs to be done to avoid the damage to mountains and the other wild areas.

2.3 Overview of Environmental Impact Analysis (AMDAL)

a. Definition of AMDAL

Since 1982 at the Earth Conference in Rio de Janeiro, sustainable development has become a common theme of development in all countries worldwide. Sustainable development incorporate the three pillars of development, that is the fields of economic, social, cultural, and environmental. One of the activities related to the environmental pillar is conducting Environmental Impact Assessment (EIA) activity.

Environmental Impact Analysis (AMDAL) activity is an activity to assess an activity to be carried out without having a detrimental impact on the environment (flora, fauna, soil, water, land use, economical, social, cultural, public health, and other environmental components. This AMDAL activity is significant and strategic in managing resources and the environment and integral to environmentally sound development.

In Government Regulation Number 27 of 1999 concerning "Analysis of Environmental Impacts," Environmental Impact Analysis (AMDAL) is the study of the principal and significant impacts of the planned business and/or activity on the environment which is required for the decision-making process regarding business operations. And/or activities. In Indonesia. This AMDAL is made when planning the project is expected to influence the surrounding environment. What is meant by the environment here is the physical-chemical, ecological, social-economic, social-cultural, and public health aspects.

The definition of AMDAL according to the PPLH Law is an analysis of environmental impacts. Therefore, it is the study of the significant impact of the planned business and/or activity on the environment, which is required for the process of decision-making regarding the implementation of the business or activity. [15]. Meanwhile, in the PPLH Law Number 32 in 2009 Article 1 paragraph (11) defines AMDAL as "Analysis of environmental impacts, hereinafter referred to as Amdal, is a study of the significant impact of a planned business and/or activity on the environment which is required for the decision-making process regarding implementation of business and/or activities."

Besides being regulated in PPLH Law Number 23 of 1997 and PPLH Law Number 32 of 2009, it is also regulated in Government Regulation Number 27 of 1999 concerning Environmental Impact Analysis (AMDAL), known as PP AMDAL. In Article 1 paragraph (1), the definition of AMDAL is not much different from UU PLH Number 23 of 1997 and UU PPLH Number 32 of 2009, wherein PP AMDAL is explained that "Analysis of environmental impacts (AMDAL) is a study of major impacts and the importance of a planned business and/or activity in the environment which is necessary for the decision-making process regarding the operation of a business and/or activity." Article 2 of PP AMDAL Number 27 of 1999 also explains: (1) The analysis of environmental impacts is part of the feasibility study of the business and/or activity plan. (2) The results of the analysis of environmental impacts are used as material for regional development planning. (3) Preparation of an analysis of environmental impacts can be carried out through a study approach to a single, integrated business and/or activity or regional activity.

AMDAL is one of several instruments used to achieve and maintain sustainable development. Sustainable development is also known as environmentally sustainable development. The concept of sustainable development can be seen in Article 1 paragraph (3) of the Law on Environmental Protection and Management, namely the PPLH Law Number 32 of 2009, which explains that "Sustainable Development is an effort and planned that combines environmental, social, and environmental aspects. and economy into development strategies to ensure the integrity of the environment as well as the safety, capabilities, welfare, and quality of life of present and future generations. [16]

b. Purpose and Functions of AMDAL

One of the environmental law systems that have the most influence on Indonesia's environmental law system is the United States. United States is the first country to introduce "Environmental Impact Analysis" or AMDAL as an essential instrument in controlling environmental impacts. This is stated in The National Environmental Policy Act 0f 1969" (NEPA 1969)[17] as the first environmental management regulation in the world, and it has an influence on the environmental law system in various parts of the world and, of course, Indonesia. [18]

Since the 1969 NEPA came into effect on January 1, 1970, environmental laws in other countries have evolved. NEPA 1969 regulates Environmental Impact Analysis as contained in Section 102(2)(c), i.e., any planned activity that is estimated to affect the quality of the human environment significantly must be accompanied by an Environmental Impact Analysis (AMDAL). [19]

To understand the meaning and nature of the 1969 United States Environmental Law, especially the implementation of AMDAL in various countries, including Indonesia, the objectives and procedures of AMDAL are described below. Sewell identified six objectives of the AMDAL, namely:[20]

a. As the responsibility for future generations (responsibility to future generations)
b. To ensure a quality living environment for all Americans (provision of a quality environment for all Americans)
c. Efforts to avoid unwanted environmental impacts (prevention of undesirable impacts)
d. Efforts to preserve the national cultural heritage (preservation of national heritage)
e. Efforts to achieve a population-resource balance
f. Increasing extensible resources and recycling of nonrenewable resources.

In this new legal concept, everyone has the right to good and healthy environment and also should maintain it. NEPA 69 states that the

AMDAL process is the responsibility imposed on the government, which is carried out through the following legal procedures:[21]

a. Take a systemic and cross-sectoral approach to plan and policy-making processes that affect the environment.
b. Develop procedures that incorporate unmeasured environmental values.
c. Avoid conflicts that do not find a resolution regarding the use of land, water, or air.
d. Conduct international cooperation to maintain the quality of the environment.
e. Bring all implementing regulations into compliance with the law.

The functions of the AMDAL are:[22]

1. The first function of the AMDAL is to be considered for regional development planning.
2. The second AMDAL function assists in the process of decision-making on the environmental feasibility of the particular business plan or even activity.
3. The third function of the AMDAL is to help provide input to develop a detailed design of a business or activity plan.
4. The fourth function of the AMDAL is to help provide input into preparing environmental management and monitoring plans.
5. The fifth function of the AMDAL is to help give information to the community about possible impacts of the planned business and/or activity.
6. The following function of the AMDAL is as the primary recommendation for a business license
7. The following AMDAL function is Scientific Document and Legal Document.
8. The last function of the AMDAL is the environmental feasibility permit.

While the benefits of AMDAL are as follows:[23]

1. Benefits of AMDAL for the government
   - AMDAL can assist the planning process to prevent pollution and damage to the environment.
   - AMDAL can help prevent conflicts that occur with the community over the impact of environmental damage caused by activities or businesses.
   - AMDAL can keep the development process running by the principles of sustainable development.
   - AMDAL helps realize responsible governance in terms of environmental management.
2. Benefits of AMDAL for the initiator or business implementer
   - AMDAL can help make businesses and activities more secure and safe.
   - The AMDAL can be used as a reference for applying for credit or accounts payable at the bank
   - AMDAL can be used to help interact with the surrounding community as evidence of compliance with the law.
3. Benefits of AMDAL for the community
   - The AMDAL can explain to the community the impacts that will occur in the future after the business or activity is carried out.
   - With AMDAL, the community can participate in the implementation of activity and control the activity.
   - With AMDAL, the community can be involved in the process of decision-making that will influence the environment in which they live.

This AMDAL is a project that expected to impact the surrounding environment. What is meant by the environment here is the abiotic, biotic and cultural aspects. The legal basis for AMDAL in Indonesia government regulations 27 in 2012 regarding "Environmental Permit", a substitute for PP 27 in 1999 with regard to AMDAL. The functions of AMDAL are:

1) Assist in the process of decision-making with regard to the environmental feasibility of the planned business or activity.
2) Give input for the preparation of detailed technical designs of the plans or activities.
3) Give input for the preparation of management plans and the monitoring of environmental.
4) Provide information to the public on the impact of business plan or activity.
5) The beginning of the recommendation on business license.
6) As the Scientific Document and Legal Document.
7) Environmental Feasibility Permit.

According to the author, the AMDAL permit needs to be used in every construction of hotels, villas, restaurants that exist in every the tourist attraction in Indonesia, so that our natural environment can be maintained and not damaged in the present in the future and in the future.

3. CONCLUSION

Tourism is one sector that continues to increase its contribution to state revenue. Tourism policy has been proven to increase the economic growth through the investment opportunities, job opportunities, business opportunities and, in the end, can increase people welfare. Tourism requires constructing facilities to make the tourists comfortable to come to tourism objects. The investors need to focus on the environment, so that there

is no impact of environmental damage. Therefore, it is essential to have regulations regarding tourism policies and environmental management protection.

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Role of Residence Permit Section and Immigration Status in the Management of Extended Visitation Residence Permit

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ABSTRACT
Era of globalization that is increasingly has a significant influence on the mobility of the population. For example, people travel to various places in the world, among others, for travel, work, and school. The mobility of the community certainly cannot happen without the permission of the country to be visited. Everyone has the right to obtain services and must comply with managing residence permits in a country. The role of the Section on Residence Permits and Immigration Status in the management of the extension of The Residence Permit for Foreign Nationals has an essential role in the process and receive the files submitted by the applicant or guarantor. The counter officer accepts the application for renewal after the file submitted by the applicant has been fulfilled by the applicable provisions so that the Foreign National can be granted an extension of the Visit Residence Permit. Foreign nationals (foreigners) who commit violations of the visitors' residence permit get legal sanctions violations in the form of sanctions of administrative actions and pro justicia actions. So, in the Service of Extension of Residence Permit Visit to further improve cooperation between officers in the process of service to the applicant can be completed promptly.

Keywords: *Immigration, Role, Stay Visit Permits.*

1. INTRODUCTION

In the current global development, the high mobility of the population impacts the lives of the nation and the state, where information technology has a significant influence on everyone to travel to various places in the world. Many driving factors motivate a person to travel to various countries around the world. Such a decisive driving factor makes a person pass through various countries, thus creating a tremendous opportunity for developing a country.

Increased traffic and human mobility cause the role and function of immigration to be an essential and strategic part of minimizing negative impacts and encouraging the positive impact that will arise from the arrival of foreigners since entering, while in and conducting activities in Indonesia until he/she leaves the country territory.

Law No. 6 of 2011 on Immigration in Article 48 states that every foreigner in Indonesia's territory must have a residence permit. Foreigners are non-Indonesian citizens, while residence permits are granted to foreigners by immigration officials or foreign service officials to be in Indonesian territory. Residence permits are divided into five types: diplomatic residence permits, official residence permits, visitation permits, limited residence permits, and permanent residence permits.

Immigration law is a set of instructions governing the discipline of people who pass within the area of Indonesia and supervision of the foreigners in the territory of Indonesia. Immigration law is in the public law, which governs the relationship between individuals and the state [2]. Setting the field of immigration of the country, based on the international law is the right and also the authority.

To support stability preservation and also national interests, state sovereignty, security, and public order, and also the vigilance against negative impacts arising from the crossing of people between countries, the presence, and the activities of the foreigners in the territory of Indonesia, it is necessary to conduct the surveillance for the foreigners and immigration actions quickly, thoroughly, and coordinated, without neglecting openness in the way of providing supervision for the foreigners.

The implementation of this supervision aims to realize domestic security marked by the guaranteed security and public order, establishment of the law, and implementation of protection, protection, and also service to the community.

The implementation of foreigners' supervision is the authority and responsibility of the Minister of Law and Human Rights. To carry out the existence and activities in the territory of Indonesia and coordinate the implementation of the duties of relevant government agencies in the supervision of foreigners. For supervising the foreigners, it is necessary to gather the data and information of every person who is entering or outside, located, and conducting activities in the territory of the Republic of Indonesia.

The Directorate General of Immigration as a public service unit is obliged to continue to make efforts and innovations in facilities, infrastructure, and technology to improve the quality of services. Technology that is currently growing to support the improvement of public services is information technology, so that the creation of public services is based on *Information Technology* (IT).

One of the Directorate General of Immigration's efforts to increase the quality of immigration services, especially in the passport of issuance services, by empowering the development of the information technology is the legality in the extension of the residence permits given to foreign nationals.

Surveillance of foreigners is the whole process of controlling the activities of foreigners in Indonesia's territory by the immigration documents owned by the foreigners. Thus, minimizing the occurrence of violations of residence permits by foreigners in the territory of Indonesia.

From the description above, then the formulations of the problems are as follows:

- What is the role of the residence permit section and immigration status in the management of the extension of the visit residence permit?
- Are legal sanctions a violation of a visit's residence permit?

2. RESEARCH METHOD

In order to collect data for this research, the author uses normative-empirical legal research methods that are research methods that, in this case, combine normative elements that are then supported by the addition of facts in the field. By approaching a legal event, there is a process that is still ongoing or not over. In this case, the author uses three kinds of legal materials such as primary legal materials, secondary legal materials, and tertiary legal materials.

3. RESULT AND DISCUSSION

Every foreigner who enters the territory of Indonesia must get the entry sign. The entry mark is given based on the type of visa owned by the foreigner concerned. The granting of this entry certificate is conducted by the Immigration Official in the charge of the Immigration Checkpoint (TPI) by stamping the travel document of the concerned foreigner, both manual and also electronic.

In addition, the Travel Documents such as Visas and Entry Signs must be owned by foreigners living in Indonesia. According to Law No. 6 of 2011 on Immigration, Article 48 paragraphs (1) and (2), "Every foreigner who is in the Territory of Indonesia must have a Residence Permit. Residence Permit is granted to Foreigners by their Visa". According to Law No. 6 of 2011 concerning Immigration Article 48 paragraph (3), Residence Permit as referred to in paragraph (1) consists of:

1. Diplomatic Residence Permit;
2. Office Residence Permit;
3. Visit Residence Permit;
4. Limited Stay Permit;
5. Permanent Residence Permit.

Permission *(Vergunning)* refers to approval of the ruler based on the law or even government regulations to, in certain circumstances, deviate from the provisions of the prohibition of legislation. Permission can also be interpreted as the dispensation or even release from a prohibition. The residence permit is granted to the foreigners by the immigration officials to be on Indonesian territory. Every foreignermust take care of the Residence Permit as long as he or she is in Indonesia.

Visit Residence Permit is granted to Foreigners entering the Territory of Indonesia with a Visit Visa; or a newborn child in the Territory of Indonesia at the time of birth of his father and/or mother who holds a Residence Permit visit [4].

Visitation Residence Permit for Visa Holders Visit 1 trip and several trips are granted for maximum of 60 days from the granting of the entry mark. Visit Residence Permit for Visa Holders Visit 1 trip can be extended at most 4 times, and the period of each extension is no longer than 30 days.

Visitation Residence Permit for on Arrival (VoA) Visa holders is granted for maximum of 30 days from the granting of the entry mark and can be extended 1 time for maximum of 30 days. Visitation Residence Permit for Foreigners from the countries exempted from the obligation to own Visa (BVKS) is granted for a maximum of 30 days from granting an entry mark.

Visitation Residence Permit is granted to:

1. Foreigners entering Indonesia on a Visit Visa;
2. Newborn children in the region of Indonesia and at the time of birth the father and/or mother holder of Residence Permit Visit. The Visit Residence Permit is granted by the Visit Residence Permit of the father and/or mother;
3. Foreigners from the countries exempted from the obligation to own a Visa by the provisions of the laws and regulations;
4. Foreigners who serve as the crew members of Transport Equipment that is in the territory of Indonesia by the provisions of the laws and regulations;
5. Foreigners entering Indonesian region in emergency situation; and,
6. Foreigners entering Indonesia on a Visit Visa upon arrival.[5]

In granting the application for the extension of the Visit Residence Permit, Foreign Nationals must have some requirements for the application to be processed. In the application for the extension of The Residence Permit, two general requirements and special requirements must be fulfilled.

a. General Requirements, applicants are required to attach:
    1. Application form.
    2. Letter of request and guarantee from the guarantor.
    3. Original nationality passport and photocopy containing proof of valid and valid visitation permit.
    4. The application for a second to the fifth extension attaches proof of registration of foreigners from the Head of Immigration Office or designated Immigration Officer.
    5. Not included in the prevent-tang list.
    6. Pay the Immigration Fee by the provisions.

b. Special Requirements, applicants requires to attach:
    Proof of guarantee in the form of *a return ticket* to return home or continue the trip to another country. By fulfilling the conditions that have been set, with the hope of monitoring human traffic is also one part of the function of immigration carried out and become an essential and strategic part in order to minimize the negative impact of the arrival of foreigners since entering, being and conducting activities in Indonesia to exit the territory of Indonesia and at the same time have a positive impact and create a national development continuity.

The Section of Residence Permit and Immigration Status has the task of conducting residence permit and immigration status in accordance with the applicable law. The function of Immigration Status includes determining immigration status for foreigners in Indonesia and conducting research on evidence of a person's citizenship regarding citizenship status.

To carry out the duties as referred to in Article 579 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-05. OT.01 the Year 2010 On Organization and Working Procedure of the Ministry of Law and Human Rights of the Republic of Indonesia, Directorate of Residence Permits and Immigration Status has the following functions:

1. Prepare a draft policy formulation in the field of residence permits, transfer immigration status and review immigration and citizenship status;
2. Implementation of guidance, guidance, and services in the field of residence permits, transfer of immigration status, and review of immigration and citizenship status;
3. Preparing the preparation of norms, standards, procedures, and criteria in the field of residence permits, transferring immigration status, and reviewing immigration and citizenship status;
4. Implementation of technical policies in residence permits, transfer of immigration status, and review of immigration and citizenship status; Dan.
5. Implementation of administrative and household affairs and evaluation and preparation of reports on the Directorate of Residence Permits and Immigration Status.

The Residence Permit and Immigration Status sections perform their functions as follows:

a. Planning, evaluation, and reporting in the field of residence permits and immigration status;
b. Residence permit services;
c. Re-entry service;
d. Immigration status checking, review, and completion;
e. Review of immigration status and citizenship in the framework of issuance of immigration certificate;
f. Immigration certificate service; Dan.
g. Proof of registration of dual nationality [8].

All products of Immigration Permit for Foreign Nationals (WNA), such as Extension of Visit Residence Permit, Extension of Residence Permit on Arrival (VOA), Limited Stay Permit (ITAS), Permanent Residence Permit (ITAP), Water ITAS (Dahsuskim), Immigration Certificate (SKIM) and others, all of which are carried out in the Section of Residence Permit and Immigration Status.

In applying for an extension of the Visit Residence Permit for Foreign Nationals, the Section of Residence Permit and Immigration Status has a role in the process and receive the file.

Submitted by the applicant or guarantor, the counter officer accepts the application for renewal after the file submitted by the applicant has been fulfilled by the applicable provisions so that Foreign Nationals can be granted an extension of the Visit Residence Permit [8].

In applying for an extension of the Visit Residence Permit, the applicant, in this case, a Foreign National (WNA), is obliged to go through a series of application procedures to obtain the issuance of a Visit Residence Permit. The party that has the authority to issue a residence permit for a visit is the Head of the Immigration Office, where the applicant applied.

The procedure for the extension of the residence permit of the visit that has been established must be adhered to by the applicant. In-law country, every state or government activity included in the application for an extension of the residence permit must be subjective to the rules of law that guarantee and protect the rights of its citizens. Both in the civil and political fields and in the social, economic, cultural, and cultural fields. In other words, the law is placed as the rule of play in state and government administration to organize a peaceful, just, prosperous and meaningful society.

Therefore, every state or government activity should be a public *service that* radiates from the rights of everyone who must be served and protected, including Foreign Nationals (FOREIGNERS) who in this case have the right to be served in the application for an extension of the visit residence permit.

Visit Residence Permits that have been processed by the Section of Residence Permits and Immigration Status can be said to expire for several reasons, including:

1. The permit holder returns to his/her home country;
2. Time-out occurs;
3. Switch status to Restricted Stay Permit;
4. Cancelled by the Minister or appointed immigration Officer;
5. Permit holders are subject to deportation; And,
6. The licensee died.

Immigration law is part of the legal system that applies in Indonesia, even a subsystem of state administrative law. For foreigners must be disciplined while in Indonesia, surveillance is carried out by the Government through the Directorate General of Immigration of the Ministry of Justice and Human Rights. Generally, the supervision of foreigners in Indonesia includes two things, namely the entry and exit of foreigners to and from the territory of Indonesia and the presence and activities of foreigners in the territory of Indonesia. Therefore, the directorate general of immigration has determined the framework of its duties reflected in the Tri Function of Immigration, namely:

a. Community Service Functions

   From this aspect, immigration is required to provide excellent services in immigration, both to Indonesians and foreigners. Services for Indonesian citizens consist of Passports, Passport- Like Travel Letters (SPLP), Cross-Border Passes (PLB), and the provision of departing or entering signs. Services for foreigners consist of granting and renewing immigration documents (DOKIM) in the form of a Limited Stay Permit Card (KITAS), Permanent Residence Permit Card (KITAP), Special Ease of Immigration (DAHSUSKIM), the extension of visit visa, granting re-entry permit, departing permit and granting departing and entry sign [9].

b. Security Functions

   Immigration serves as the gatekeeper of the country. It is caused that immigration is the first and last institution that filters the arrival and departure of foreigners to and from the territory of the Republic of Indonesia. The implementation of security functions aimed at Indonesian citizens is described through foreign precautions for Indonesian citizens. The implementation of security functions addressed to foreigners are as follows:

   1. Make a selection of any intention of the arrival of foreigners through the examination of visa applications.
   2. Cooperating with other state security apparatus, especially in providing *supervision* regarding immigration law enforcement.
   3. Conducting immigration intelligence operations for the security interests of the country.
   4. Take precautions and countermeasures [9].

c. Law Enforcement Functions in the implementation of immigration duties, the absolute rule of law must be enforced to everyone in the territory of Indonesia, be it Indonesian citizens directed to the issue of false identity, sponsorship accountability, dual sponsorship ownership, and involvement in the enforcement of immigration rules.

Law enforcement against foreigners is aimed at identity forgery, registration of foreigners, and the provision of foreign surveillance books, misuse of residence permits, illegal entry or illegal entry, monitoring or raiding, and geographical insecurity within the crossing. All operations and law enforcement functions implemented by immigration institutions include refusal of entry permits, permits, immigration permits, and immigration actions. All of these are administrative forms of law enforcement, meanwhile, in

terms of pro-judicial law enforcement, namely the authority of the investigation, covered by the task of investigation (summons, arrest, detention, examination, search and seizure), filing of cases, and filing of case files to the public prosecutor.

The trifunctional of immigration which is the ideology or outlook of life for every policy and ministry of immigration, must be changed because of the demands of the times. The paradigm of security conception is now starting to shift, initially using the regional approach (*territory*), which only includes national security (national security) turned into a comprehensive approach in addition to national security as well as public security (*human security*) by using a legal approach. Supporting the conception so that immigration people change the view on the concept of security that was initially only as a tool of power, to become an apparatus that can provide legal certainty, carry out law enforcement, and provide protection to the community. In order to resist the challenge, it is best opportunity to open the horizon of thinking from inward-looking into the way of outward-looking and began to change the paradigm of immigration trifunctional that was original as a public servant, law enforcement, and security. In order to be transformed into a new immigration trifunctional, namely as a public servant, law enforcement, and facilitator of economic development.

Immigration violations and crimes will arise with the arrival of foreigners in the territory of Indonesia. In response to these violations committed by foreigners will be taken decisive action. Immigration measures imposed can be in the form of deportation as one of the unique and typical actions of the immigration function as mentioned in the Law of the Republic of Indonesia Number 6 of 2011 on Immigration.

If in the supervision found immigration violations such as the misuse of residence permits, the period of a residence permit has expired (*overstay*), and do not have a residence permit (illegal stay), then immigration measures are carried out, including administrative and pro *justiciar* actions.

1. Administrative Actions
   Immigration actions in the administrative form are better known as Immigration Administration actions. This action is non-litigation, an action in the form of imposition of sanctions or outside or not through a court decision [2].
2. *Pro Justicia* Action
   Pro Justicia is an act in the form of imposition of sanctions through the process/decision of the court. In this case, there are several stages, namely:
   1. Investigation
   2. Investigation
   3. Prosecution [11].

Examination in the court of law enforcement, especially criminal law when viewed from a policy process, law enforcement is essentially policy enforcement through several stages, namely:

1. Formulation Stage;
2. Application Stage;
3. Execution Stage [12].

As a follow-up to the supervision of foreigners, action is taken if there is abuse or violation of residence permits committed by foreigners (FOREIGNERS) such as falsification of immigration documents and visas to obtain a residence permit, misuse of visas, residence permits that exceed the time limit*(overstay)*and other immigration permit violations committed by foreigners, both concerning the permit of his existence and his activities while in the territory of Indonesia. Officials authorized to carry out immigration measures are:

1. Immigration Officials at Immigration Checkpoints, as long as it concerns the refusal of entry permits and the suspension of the granting of leave.
2. Head of Immigration Office for foreigners who have a stopover permit and a visitation permit located in his/her work area.
3. Head of the Regional Office of the Ministry of Law and Human Rights to foreigners who hold a stopover permit, a visit permit, and a limited residence permit in his work area.
4. Director-General of Immigration, in this case, the Director of Immigration Supervision and Enforcement of foreigners with immigration permits in the territory of the Republic of Indonesia.

Thus, if the rules in immigration can be adequately enforced without the interference of interested parties, this will also impact economic development in Indonesia, especially from the tourism sector. Foreigners can enjoy Indonesian nature with their Indonesian entry permits and comply with the permits that have been granted.

4. CONCLUSION

The role of the section of residence permit and immigration status in the management of the extension of the visit residence permit is to have a significant role in processing and receiving the file submitted by the applicant or guarantor. The counter officer receives the application for renewal after the file submitted by the applicant has been fulfilled by the applicable provisions so that Foreign Nationals can be granted an extension of the Visit Residence Permit.

Legal sanctions for violations of the residence permit of the visit are to be given immigration measures in Administrative and Pro *Justicia measures.* What is meant by administrative action is a non-litigation action that is an action in the form of imposition of sanctions or outside

or not through a court decision/trial and *pro Justicia* is an action in the form of imposition of sanctions through the process/decision of the court.

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Actions of Tourism Business Actors Against Tourism Workers on Impact of Covid-19 Pandemic

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ABSTRACT
This paper discusses policies to reduce employment termination because of the affect of the Covid-19 pandemic in early 2020, made many tourists cancel their travel plans. Tourism business actors made efficiency efforts by reducing working days, including implementing the Work from Home system to reduce operational costs. The method used in this study is the normative legal. The actions taken by the tourism business actors in this study refer to all actions of tourism business actors related to the fulfillment of workers' rights. The study results show that the action taken by the tourism business actors is to terminate employment, which then requires them to realize the laws and regulations concerning employment, namely paying severance pay to employees who are subject to termination of employment, as workers' rights. If the tourism business actors do not reserve pension funds, they will not implement these laws and regulations. Based on the justice and legal protection theory, tourism business actors need to obtain justice and legal protection from the government as part of person or group of people influenced by the Covid-19 pandemic.

Keywords: *Tourism Business Actors, Legal Protection, Termination of Employment.*

1. INTRODUCTION

Management of tourist destinations in bali involves the community, government, entrepreneurs, and the private sector with various models of partnerships. This has resulted in the applied destination management having an emphasis on different aspects. several destination management models have been implemented, including tanah lot, west bali tourism park, and nusa dua, which tend to have different specifications. Differences in management models are caused by factors of resources, types, and locations of tourist attractions, and the essential factor is funding (government budget). differences in management models for tourist attractions will affect the performance of the related tourist destinations [1].

The worst situation was the spread of the virus outbreak in bali, which overall weakened the destination's image. The disease occurs due to infection with this virus is coronavirus disease 2019, which causes respiratory system disorders, severe lung infections, and death acceleration. transmission of the virus is very fast from human to human by accident through objects that are often touched by human hands, transmitted through coughing/sneezing or interaction with many people. Covid-19 is such a global outbreak that endanger the dimensions of human and social. The pandemic of Covid-19 emerges as big shock to the global economy, like Indonesia [2]. The economy is in decline for at least the first half of the year and perhaps will take longer if the measures to deal with the Covid-19 outbreak are not effective.

Covid-19 has caused disruptions to global, domestic supply chains, financial market volatility, consumer demand shocks, and negative impacts in the critical sectors, like travel and also tourism. The impact of the Covid-19 outbreak will no doubt be felt along the tourism value chain. Small and medium-sized enterprises are expected to be affected. The pressure of tourism industry is most evident in the massive decline in the foreign tourist arrivals with the massive cancellations and drop in bookings. The decline also happened because of slowdown in domestic travel. The decline in the tourism and travel business give the impacts oon micro, small, and medium enterprises and also disrupts employment opportunities.

President of Indonesia, Joko Widodo, has requested employers not to round off the employment of the workers. The members of commission IX of the house of representatives of Indonesia (*dpr-ri*) on march 23rd, 2020, through online media, requested companies whose businesses were impacted by the pandemic not to end their employment, so that, the workers can continue to

get income to fulfill the needs; however, the request of the president and members of the house of representatives could not be fulfilled by the company. Companies still terminated the workers, cut their severance pay, and applied termination of employment to the workers without paying wages and severance pay. The worker's condition is like the one described in the proverb "rub salt into the wound," which means that the workers who are laid off without being paid will suffer more (double suffering). In addition, to their safety being threatened in the face of covid-19, the workers concerned also suffer from hunger that always haunts them and their families.

The preamble to the 1945 constitution (which is also known to the Indonesian people by the abbreviation of *uud nri tahun 1945*), namely article 27 paragraph (2), prescribes that "every citizen has the right to work and a decent living for humanity." This implies that work is a such basic need of every citizen. The goal is to support the stability of the necessities of life by obtaining the decent results to maintain the existence of their lives. Thus, the government's constitutional obligation is to give job opportunities for the citizens because work is a citizen's human right. It is the commitment of Indonesian people to respect, recognize, and also protect and uphold the human rights of every citizen.

The outbreak of this pandemic has impacted various fields, one of which due to various closures for business actors. During the ongoing pandemic, the world is experiencing many losses, and Indonesia is also experiencing the impact. As the result, problems arise in the business sector. In Indonesia, it has been noted that several business sectors have difficulty in maintaining companies, whether they are small, medium, or high-level entrepreneurs. the business sector has been most affected by this pandemic is the tourism sector. The business actors in the tourism sector experienced several problems, both with employees and with the government.

Based on the description of the background of the problem above, the formulation of the problem are: what are the impacts of the covid-19 pandemic on tourism business actors and their legal arrangements in Indonesia? how is legal protection against the inability of tourism business actors to fulfill the rights of tourism workers due to the impact of the covid-19 pandemic?

2. METHOD

This is normative legal research, which puts the law as the building system of norms. The building system of norms is about the principles, norms, rules of laws, and even regulations, court decisions, agreements, and doctrines (teachings) [3]. Law is as the norm that considered appropriate.

This research is devoted to the context of legal science to figure out legal events and legal processes, as well as the provisions of the legal regulations themselves. Thus, the legal procedure itself can be explored [4].

Legal research is used to find the solutions to legal issues that arise. Thus, it can be said that legal research is research within the framework of know-how in the legal science regarding guidance on what should be done on the issues [5].

3. RESULT AND DISCUSSION

3.1 The Impact of Covid-19 on Tourism Business Actors and Its Regulations in Indonesia

With the presence of law in social life, it is helpful to integrate and coordinate interests that usually conflict with one another. The spread of Covid-19 has decreased the number of tourists visiting in Indonesia. Tourism supporting sectors, such as hotels, restaurants, and retail entrepreneurs, also feel the impact of pandemic. The areas whose retail sector is most affected are Manado, Bali, Riau Islands, Bangka Belitung, Medan, and Jakarta. The impact on tourism is foreign tourist arrivals have fallen drastically along with the reducing international flights. Domestic tourists have also dropped since the pandemic and will worsen along with the implementation of social and physical distancing. The pandemic has hit not only Indonesian tourism, but also tourism at the global level. In the various parts of the world, the hotel business, aviation services, land and sea transportation recorded a drastic decline. These are the causing factors of the low number of tourism business actors.

Entrepreneurs feel the impact in the form of decrease in the sales and experience financial difficulties, so they are forced to do action by stopping or reducing their business activities which leads to the termination of employment. Employment termination due to the pandemic has different effect on the government because unemployment will intensify and cause social unrest. For the workers themselves, the pandemic can reduce and eliminate workers' financial resources because they are affected and subject to the termination of the employment. This condition resulted in various companies experiencing the decrease in revenue to the losses that led to the closure of company. The company's reason for their actions was because it was the last resort after they adopted a policy of reducing salaries and working hours and overtime, implementing shift work, and reducing facilities and laying off.

In fulfilling their obligations, employers must continue to fulfill workers' rights and realize the protection for the workers during this pandemic. The protection provided is the total payment of wages to workers in the form of basic wages and fixed allowances along the workers are laid off other than because it has been regulated in the work agreement, company regulations, or even collective work agreement, and the circular letter from the ministry of human resources. For the workers who have been terminated, the form of protection provided is based on the law. In that, employers must provide severance pay, service or even payment of service period, and the retribution for the

worker's rights. Severance pay is the retribution that the employer must pay in the event of termination of employment.

All actions of the tourism business actors must refer to the applicable laws and regulations, like the Constitution, Law Number 2 in 2004 regarding Settlement of Industrial Relations Disputes, Law Number 21 in 2000 concerning Trade Unions/Union Labor, Law Number 13 in 2003 with regard to Manpower, Law Number 11 in 2020 concerning Omnibus Law, Law Number 10 in 2009 concerning Tourism and Government Regulation Number 35 in 2021 with regard to Agreements on Working Time, Rest Time, Outsourcing, Working Time, and Termination of Employment. Until now, there are no regulations governing actions for the business actors in the tourism sector because of the impact of COVID-19.

3.2 Legal Protection for the Inability of Tourism Business Actors to Realize Workers' Rights Due to the Impact of Covid-19 Pandemic

In current pandemic conditions, all businesses experience a decline in performance, and even losses, including businesses in the tourism sector, even though efficiency efforts have been made, such as cutting workers' working days and implementing Work from Home (WFH) to reduce operational costs.

The Indonesian government plays a role as a worker protector, among others, in drafting various laws and regulations and circulars of the ministry of human resources as a complement and accompaniment. The government is a facilitator in resolving disputes between workers and employers in finding solutions to problems between the two parties and the rights as regulated in the law. Another role of the government is to oversee and monitor existing regulations. In supervising, the central government must be ready and be a good pioneer with local governments so that optimal supervision can be achieved because government regulations can protect and understand that workers have no meaning if their implementation is not addressed and supervised by experts.

Actions taken by business actors in the tourism sector are implementing termination of employment, thus requiring them to realize the laws and regulations in the field of employment, namely paying severance pay for terminated employees, as workers' rights. If the company has reserved pension funds for employees, problems will not occur. However, on the other hand, business actors do not reserve pension funds, and the companies experience operational losses, so they cannot implement the labor laws and regulations. As a result, the law is considered to have failed to respond to any problems in society [6].

Related theories used as the tool of analysis to examine the problems of the study are the theory of legal certainty, theory of justice, and theory of legal protection. Based on the theory of justice, law as a social order can be declared fair if it can regulate human actions satisfactorily so that they can find happiness in it [7]. This protection is given to the community to enjoy all the rights granted by law [8]. As entrepreneurs, especially in the tourism sector, they need justice and legal protection because they are part of a group of people affected by the Covid-19 pandemic. In providing protection and justice for entrepreneurs in the tourism sector, the role of the government is required in seeking and providing justice and protection for the entire community, both business actors and workers as victims who feel the impact of the pandemic. Legal certainty refers to a legal umbrella that is consistent, consistent, fixed, and clear, and in its implementation, should not be influenced by a subjective group of people. Justice and certainty are not only moral demands, but factually they characterize the law. A law that will not be specific and fair results in a bad law [9].

Given that the pandemic causes all community activities to run not optimally and the implementation of lockdowns in various places, the company's termination of employment policy towards workers is the last decision that can be taken. This is because if it is forced, it can have a more dangerous impact on the survival of other workers and if the company is open as it usually is. Another impact for workers is that they do not receive wages during the pandemic. It is because workers prefer to resign. The government issued Circular Letter Number M/7/AS.02.02/V/2020 with regard to Business Continuity Plans in Facing the Pandemic. The Circular aims to protect the workers and business continuity from the impact of the pandemic. It also intends to prevent the spread of Covid-19 in the companies that still carry out business activities and producing by the provisions of the applicable laws and regulations, entrepreneurs, workers, and the government as much as possible to prevent layoffs by taking the systematic and practical steps as the act of readiness by preparing business continuity plans in the face of the Covid-19 pandemic.

Some of the policies issued by the government related to legal protection for workers are as follows. The Pre-Employment Card Program is the government's way of assisting communities that have experienced layoffs and micro, small, and medium enterprises affected. Temporary Income Program for those who have lost their income due to various social restrictions. Business Program in the form of Circular Letter of the Ministry of Manpower of Indonesia Number M/8/HK.04/V/2020 with regard to Protection of Workers in the Work Accident Insurance Program to affirm the provision of rights to workers who are at risk and exposed to Covid-19 and in the form of work accident insurance.

The policy, issued by the government amid the pandemic, actually needs to exist to protect every worker's rights and help ease the burden on companies because the rights to guarantee for every worker at work and the right to a decent life are needed. The government is present in enforcing and understanding justice in the impact of the business world during the ongoing pandemic. The normative rights of workers can be

granted if the parties in the employment contract, namely workers and employers, jointly accept and understand the current pandemic situation because both parties suffer losses. The normative fulfillment of workers' rights by the company must be adjusted to the entrepreneur's ability.

4. CONCLUSION

Business actors, especially in the tourism sector, need to obtain and accept a sense of justice and have a legal umbrella in legal protection, as recipients or people who feel the impact of the Covid-19. Government policies during the pandemic have protected every worker's rights and eased the burden on entrepreneurs because the rights to guarantee for every worker at work and the rights to a decent life are necessary. The government is present in enforcing and understanding justice in the impact of the business world during the ongoing pandemic. The normative rights of workers can be granted if the parties to the employment contract, workers and employers, jointly accept and understand the current pandemic situation because both parties suffer losses. The fulfillment of workers' normative rights inevitably needs to be adjusted to the ability of employers. In avoiding the impact of the pandemic, social negotiations must prioritize finding the best solution so that workers can be protected and do not harm the parties. The government needs to be urged to strengthen further supervision for employers who terminate employment and do not fulfill their obligations to workers or take arbitrary actions toward workers amid the Covid-19 pandemic.

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Implementation of Concept 'Halal Tourism' in Nusa Tenggara Barat and Their Effect in Increasing Number of Tourists

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ABSTRACT

Tourism is one sector that can intensify employment and growth of economic in Indonesia. The development of halal tourism can be seen from various countries, both countries with most Muslims and non-Muslims, including Indonesia. Several regions have implemented the concept of halal tourism, one of which is Nusa Tenggara Barat. Nusa Tenggara Barat has issued Governor Regulation Number 51 in 2015 with regard to halal tourism and regional regulation number 2 in 2016 regarding halal tourism. The scope of regulation of halal tourism in this regional regulation includes a. destination; b. marketing and promotion; c. industry; d. institutional; e. guidance and supervision; and f. financing. After 5 years of issuing the regulation, it would be interesting to examine the implementation and impact of the increase in tourists visiting Nusa Tenggara Barat. This research was conducted through empirical legal methods by studying secondary data in the reports from government agencies and Nusa Tenggara Barat of Ulema Council and primary data obtained through the observation and interviews. The results showed that Regulation of Governor Number 51 in 2015 with regard to halal tourism and regional regulation number 2 in 2016 concerning halal tourism have been carried out by the tourism managers in Nusa Tenggara Barat, including hotels, restaurants, and also restaurants as food and beverage product business actors. Regulation of Governor and Nusa Tenggara Barat of Regional Regulation on Halal Tourism have impacted the increase of the number of tourists visiting Nusa Tenggara Barat.

Keywords: *Halal, Tourism, Tourist.*

1. INTRODUCTION

Tourism is one sector that can improve employment and economic growth in Indonesia. [1]. The development of halal tourism is carried out by various countries, including Indonesia. [2] Several regions have implemented the concept of halal tourism, one of them is Nusa Tenggara Barat. [3] Nusa Tenggara Barat began to develop halal tourism in 2015 by issuing Governor Regulation Number 51 in 2015 with regard to Halal Tourism and Regional Regulation Number 2 in 2016 concerning Halal Tourism. Halal tourism is calmer for Muslim and non-Muslim tourists since it is safer and more comfortabl. They are not bothered by other tourists who drink liquor. Four areas have been designated as the facilities of choice for halal tourism, like hotels and travel agency restaurants. For these four fields, halal certification was carried out by the National Sharia Council (DSN) - the Indonesian Ulema Council (MUI), and Institute for the Study of Food, Drugs, and Cosmetics Indonesian Ulema Council (LPPOM). [4]

In Nusa Tenggara Barat, Governor's Regulations and Regional Regulations mentioned above, the scope of the regulation of Halal Tourism includes a. destination; b. marketing and promotion; c. industry; d. institutional; e. guidance and supervision; and f. financing. After 5 years of the issuance of the regulation, it would be interesting to examine how it is implemented and its impact on increasing the number of tourists visiting the West Nusa Tenggara area. The research was conducted through empirical legal research methods by studying secondary data in reports from government agencies and the West Nusa Tenggara Ulema Council (MUI) and primary data obtained through observation and intervi

2. RESULT AND DISCUSSION

2.1 The Conceptualization of halal tourism

Several terms mean the same as the term halal tourism, namely Sharia Tourism, Halal Travel, Moslem Friendly Destinations, Islamic Tourism. or religious

Islamic tourism sharia travel. [5]. The word halal in the comes from the Arabic *Halla, yahillu, Hillan, wahalalan* which means justified or allowed by sharia law. It has meaning as something that is allowed or permitted by God. The word is a significant source and not only related to food, but also enters all aspects of life, such as banking and finance, cosmetics, work, tourism, and more. [6]. While, halal tourism is one of the emerging concepts related to halal and has been defined in many ways by experts including:[7] Battour and Ismail (2016) stated that what is meant by halal tourism is an activity in tourism that is 'permitted or permitted' according to the teachings of Islam. Islam. Meanwhile, according to Mohsin,[8] halal tourism is The provision of tourism products and services that meet the needs of Muslim tourists after the teachings of Islam. Meanwhile, Halbase[9] defines *halal tourism* as tourism that offers tour packages and extraordinary destinations to meet the considerations and needs of Muslims. Meanwhile, according to Amini Amir Abdullah et al., Islamic tourism is not only related to religious values but comprehending every walk of life that is not contradicting Islam. [10]

In Indonesia, the concept of halal tourism is the form of culture-based tourism that puts the values and norms of Islamic law as its foundation. Halal tourism is new concept in tourism studies. The concept of halal tourism puts forward Islamic values. Halal tourism complements existing conventional tourism. The position of halal tourism is alternative for the Islamic tourists who want to get tourist needs and spiritual needs. Halal tourism is not only owned by Islamic tourists. Non-Islamic tourists are also allowed to enjoy halal tourism in the context of tourism development. Halal tourism cannot be separated from religious tourism, sharia tourism and then develops into halal tourism [11]. The diversity between the four types of tourism can be seen in three aspects: objects, goals, and targets. This can be explained through the Table 1 below;[12]

Table 1. The Comparison of the Four Types of Tourism

No	Comparison	Conventional	Religion	Sharia
1	Objects,	Realm, culture, heritage and food	Places of worship and historical relics	all
2	Goals	Amusing	Intensify spirituality	Increase spirituality by entertaining
3	Targets	Touching satisfaction and the fun lust dimension	Spiritual aspects	Fulfill wish and fun as well as Grow awareness religious.

Tourist destination as halal tourism is as the company that focuses on developing halal tourism which has conducted studies in 130 countries, showing six basic needs of Muslim tourists, like:[13] (1) Free of liquor, pork; (2) Availability of worship facilities; (3) Bathroom with water for flushing; (4) Services during the month of Ramadhan, for instance, sahur meals; (5) Inclusion of non-halal label if there is non-halal food; (6) Recreational facilities that keep privacy. While, the Global Muslim Travel Index (GMTI), a standard drawn up by Crescent Rating, has also been good in identifying halal tourism standards in the world as follows: (1) Family Friendly Destinations: (2) Tourist destinations must be family and child friendly; (3) Public security for Muslim tourists; (5) Muslim tourist arrivals is quite crowded (6) Services and Facilities at Muslim-Friendly Destinations: (7) Food choices that are guaranteed to be halal; (8) Easy access to worship and good conditions; (9) Muslim-friendly airport facilities; (10) Adequate accommodation options; (11) Halal Awareness and Destination Marketing: (12) Ease of communication; (13) Outreach and awareness of the needs of Muslim tourists; (15) Air transportation connectivity; (16) Visa requirements.

2.2 The Concept of halal tourism in the West Nusa Tenggara regional regulation

Indonesia is the country with the largest population of Muslim. According to the Central Statistics Agency in 2018, 86.7% of 267,670,543 population are Muslims, 7.6% Protestant, 3.13% Catholic, 1.74 % Hindu, 0.77% Buddhist, 0.03% Confucian, 0.04% other religions. [14]

Indonesia empowers this potential to continue to increase halal tourism. Very strategic geographical conditions support this. Indonesia's tropical climate makes this country rich in flora and fauna. This high biodiversity causes Indonesia has great potential as the tourist destination. The tourism products are grouped into three things, like natural, cultural, and artificial tourisms. [15]

In developing halal tourism, Indonesia attempts to increase the presence of sharia hotels. Through the Regulation of Minister of Tourism and Creative Economy of Indonesia has made guidelines for the implementation of sharia hotels. The Sharia, in this respect, is the principles of Islamic law as regulated by fatwas and also approved by the Indonesian Ulema Council (MUI).

At the end of 2019, there are only five halal-certified hotels in Indonesia, all three-star," The five hotels that have already bagged halal certificates like the Solo Syariah Hotel, Sofyan Betawi Menteng Jakarta, Sofyan Tebet, and two hotels in Aceh. Based on online data from the Central Indonesian Ulema Council (MUI) LPPOM, halal-certified restaurants in Indonesia are only 5,663 outlets. While, the number of halal products in Indonesia, based on the Institute for the Study of Food, Drugs, and Cosmetics, the Indonesian Ulema Council (LPPOM MUI) is 688,615 pieces.

Several regions in Indonesia have developed the concept of halal tourism, that is, Nusa Tenggara Barat. The Government of Nusa Tenggara Barat has developed halal tourism in this area since 2015 through issuing Governor Regulation Number 51 in 2015 with regard to Halal Tourism and strengthened by Regional Regulation Number 2 in 2016 concerning Halal Tourism. The scope of regulation of Halal Tourism in this Regional Regulation includes a. destination; b. marketing and promotion; c. industry; d. institutional; e. guidance and supervision; and f. financing. In Perda II, what is meant by Halal Tourism is tourism visit activities with tourism destinations and the tourism industry that prepares product facilities, services, and also tourism management that fulfills Sharia.

The things that show the halalness of tourism according to the regulation include:

1. Public facilities, that include places of worship and holy places for Muslim tourists;
2. Halal food and drink;
3. SPA, Sauna and Massage Griya Entrepreneurs;
4. There is Qibla direction in the hotel room;
5. There is information on the location of the nearest mosque;
6. Information on halal/non-halal products;
7. Availability of separate ablution places for men and women;
8. Supporting facilities to prayers; and
9. Separate urinals for men and women and make them easier to wash.

The principle of Halal Tourism according to the Governor's Regulation and the Regional Regulation are explained as follows:

1. Managers of halal tourism destinations must build public facilities to encourage the convenience of halal tourism activities. What is meant by public facilities consist of: a. places and equipment for Muslim tourists' worship; and b. purification facilities that meet sharia standards;
2. The conventional[16] tourism industry must provide a. Qibla direction in the hotel room; b. nearest mosque information; c. places of worship for tourists and Muslim employees; d. information on halal/non-halal products; e. separate ablution places for men and women; f. supporting facilities for performing prayers; and g. separate urinal for men and women and make it easier to wash.
3. Accommodation must at least meet the following: a. adequate facilities are available for washing; b. available facilities that make it easier to worship; c. available halal food and drink;
4. Food and beverage providers in Halal Tourism include restaurants, bars (shops), cafes, and catering services. a. must guarantee the halalness of the food/beverage served, starting from providing raw materials to the presentation process as evidenced by a halal certificate; b. If the halal certificate has not been fulfilled, each food and beverage provider must include the words halal/non-halal on each type of food/beverage; and maintaining a healthy and clean environment; c. As referred to in paragraph (2), Halal food and drinks are in accordance with the standards set by the MUI National Certification Board (DSN-MUI).
5. Every halal SPA, Sauna, and Massage (Massage) entrepreneur must provide a. separate treatment rooms for men and women; b. mind therapy and physical exercise therapy do not lead to shari'ah violations; c. male therapists exclusively for men and female therapists exclusively for women; and d, facilities that make it easier to pray.
6. Every halal SPA, Sauna, and Massage Griya entrepreneur must: a. use products with the official halal logo; b. The products with the official halal logo include 1) spice ingredients; 2) scrub; 3) masks; 4) aromatherapy; and 5) facial, hair, hand, and nail care ingredients.

To implement the principle of halal tourism, Government of Nusa Tenggara Barat has collaborated with the MUI and LPPOM as well as the Culture and Tourism Office and Micro, Small, and Medium Enterprises (MSMEs) to carry out halal certification in hotel restaurants, non-hotel restaurants, restaurants (Catering), (MSMEs). Drinking and Bottled Water (AM DK), Slaughterhouse (RPH) and Poultry Slaughterhouse (RPU), and Cosmetics. The number of Restaurants, Catering, Small and Medium Enterprises ((UKM), (AMDK), (RPH/RPU), and Cosmetics that have been certified halal is as in the table below:

Table 2. List of LPPOM MUI Halal Certificates Nusa Tenggara Barat

Year	Restaorant	Catering	UKM	AMDK	RPH/U	Cosmetics	Amount
2012	6	-	239	-	-	-	245
2013	1	-	226	-	-	-	227
2014	2	-	180	-	-	-	182
2015	80	20	75	-	-	-	175
2016	**135**	**262**	**279**	**-**	**-**	**-**	**676**
2017	**57**	**15**	**347**	**9**	**2**	**-**	**432**
2018	15	10	72	3	1	-	101
2019	10	9	71	3	-	-	93
2020	3	4	52	1	3	2	5
2021	5	2	2	3	2	-	14
JLH	**316**	**322**	**1.536**	**19**	**8**	**2**	**2.230**

Source: Report of the Indonesian Ulema Council of Nusa Tenggara Barat, 2021
Note: The restaurant here includes hotel and non-hotel restaurants as well as restaurants.

From the data above, it can be seen that the number of restaurants that have been certified halal in NTB to date is 316, Catering (322), UKM (1,536), bottled water (19), RPH/RPU (8), and Cosmetics (2). SME catering, bottled water, RPH/RPU, and Cosmetics as a whole in NTB, not all have been certified.

Governor's Regulation and the Nusa Tenggara Barat Regional Regulation on Halal Tourism have had significant effec on the number of Halal-certified Restaurants, Catering, SMEs, AMDK, RPH/RPU, and Cosmetics. This can be seen from the increasing number of certifications for the restaurants, SME catering, bottled water, RPH/RPU, and cosmetics, which increased sharply in 2016 and 2017.

With regard to the implementation of Halal Tourism concept as regulated, it can be known that several hotels have accommodated the provisions contained in these regulations. The data from the MUI indicates that the names of hotels reported by the government that has accommodated the provisions of the Governor's Regulation and Nusa Tenggara Barat Regional Regulation are as shown in the table below.

Table 3. List of Hotels in Nusa Tenggara Barat in 2019 that implement Halal principles according to the 2016 Nusa Tenggara Barat Regional Regulation

No	County/City	Star Hotels	Non-Star Hotels	Amount
1.	Mataram City	29	124	153
2.	Lombok Barat	38	163	201
3.	North Lombok	9	583	592
4.	Central Lombok	6	107	113
5.	East Lombok	3	144	147
6.	West Sumbawa	1	35	36
7.	Sumbawa	7	53	60
8.	Dompu	0	36	36
9.	Bima	0	15	15
10.	Bima City	0	18	18
TOTAL		**93**	**1.278**	**1.371**

Source: NTB MUI Report, 2021.

The halal principles that the hotel has applied are

1. Public facilities which include places of worship and places of worship for Muslim tourists;
2. Halal food and drink;
3. SPA, Sauna and Massage Griya Entrepreneurs;
4. There is a Qibla direction in the hotel room;
5. There is information on the location of the nearest mosque;
6. Information on halal/non-halal products;
7. Availability of separate ablution places for men and women;
8. Supporting facilities for performing prayers; and
9. Separate urinals for men and women and make them easier to wash.

According to the MUI, hotels with swimming pools are expected to separate the baths for Muslim tourists and Muslim tourists, which are currently one open space.

It is not difficult for the hotel managers and restaurant managers in Nusa Tenggara Barat to implement sharia principles because the majority of the population of Nusa Tenggara Barat is Muslim, so that, since the concept of halal tourism has not existed, hotel and restaurant managers have served halal food. Likewise, the availability of worship facilities is also straightforward to find in Nusa Tenggara Barat. There are 4,500 mosques spread over 598 villages and sub-districts. So that, Nusa Tenggara Barat is also province which full of thousand mosques.

2.3 The Influence of Halal NTB Regional Regulations

To see the trend and influence of the Regional Regulation, it can be known that the number of tourists who visited NTB before the application of the concept of halal tourism with the Governor's Regulation and the Nusa Tenggara Barat Regional Regulation after the implementation of the halal tourism concept with the Governor's Regulation (2015) and the Governor's Regulation (2016).

Table 4. Number of Tourists visiting Nusa Tenggara Barat (2014-2019).

No	Year	Foreign Tourists		Domestic Tourists		Amount	
		Estimate	Realization	Estimate	Realization	Estimate	Realization
1	2	3	4	5	6	7	8
1	**2014**	637,200	752,306	866,200	876,816	1,503,400	1,629,122
2	**2015**	697,363	1,011,146	1,008,037	1,199,381	1,705,400	2,210,527
3	**2016**	**1,111,292**	**1,404,328**	**1,258,927**	**1,690,109**	**2,370,219**	**3,094,437**
4	**2017**	**1,750,000**	**1,430,249**	**1,750,000**	**2,078,654**	**3,500,000**	**3,508,903**
5	**2018**	**1,500,000**	**1,204,556**	**2,500,000**	**1,607,823**	**4,000,000**	**2,812,379**
6	**2019**	**-**	**1,550,791**	**-**	**2,155,561**	**-**	**3,706,352**

Source: NTB Tourism Office Report, 2021.

Considering the data presented in table 3 above, the number of tourists visiting Nusa Tenggara Barat increased rapidly after 2015. The number of tourists after 2015 averaged above 3000 people, namely 3,094,437 people in 2016, 3,508,903 people in 2017, 2,812,379 in 2018, and 3,706,352 in 2019, While before the Governor's Regulation and Regional Regulation namely in 2014, the number of tourists visiting Nusa Tenggara Barat was only 1,629,122 and in 2015 amounted to 2,210,527. Thus, there is a significant influence on the application of the concept of halal tourism with the Governor's Regulation and the Nusa Tenggara Barat Regional Regulation on the increase in the number of tourists to Nusa Tenggara Barat Province.

3. CONCLUSION

Halal tourism in Indonesia is embraced. Some regions in Indonesia, like Nusa Tenggara Barat, have started implementing the concept of Halal Tourism. Nusa Tenggara Barat has implemented the concept of halal tourism since 2015 with the issuance of Governor Regulation Number 51 in 2015 and Regional Regulation Number 2 in 2016 with regard to Halal Tourism. Since the issuance of the Governor's Regulation and Regional Regulation, several managers of tourist destinations, hotels, and also restaurants have adapted their businesses to the principles of halal tourism as regulated in the two regulations, including halal certification of food and beverage products as well as restaurant management and cosmetics. From the study results, 316 hotels have been certified halal by LPPOM MUI, 322 caterers, 1,536 Small and Medium Enterprises, 19 Mineral and Packaged Water (AMDK), 8 Slaughterhouses/Poultry Slaughterhouses (RPH/ RPU), and 2 Cosmetics. From the results of the study, it appears that the issuance of Governor Regulation Number 51 of 2015 and Regional Regulation Number 2 of 2016 concerning Halal Tourism has a significant effect on increasing the number of tourists, both foreign tourists (Wisman) and Nusantara tourists (Wisnu) to West Nusa Tenggara. If before the issuance of the Governor's Regulation and Regional Regulation the number of tourists only amounted to 1,629,122 (in 2014) and 2,210,527 (in 2015, then after the issuance of the Governor's Regulation, the number of tourists increased by an average of over 3000 people per year namely: 3,094,437 people in 2016, 3,508,903 people in 2017, 2,812,379 in 2018 and 3,706,352 in 2019.

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Implementation of Pancasila Values in Population and Civil Registration Services

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ABSTRACT
It has known that Pancasila is an ideology, the foundation of the nation, and the Indonesian people's philosophy that became guidelines and benchmarks for Indonesian people in their daily life. Especially in social service at the population and civil registry. However, in this era of globalization, almost all the values contained in Pancasila are endangered. Therefore, the work ethic in population services and civil registry office is not by the local wisdom that has been embedded in the nation's life, which is multicultural. So that, it is necessary to actualize Pancasila's values in improving the service in population and civil registry office.

Keywords: *Implementation, Pancasila, Services.*

1. INTRODUCTION

The country is formed by the residents, the territory, and the government include the head of government as a part of the most prominent organization in the country and has a significant role in the country's growth and development on various population problems. The primary needs of the population in the form of clothing, food, and shelter, the need for goods, services, and administration are the country's duty to fulfill it all. The presence of the state in fulfilling the needs of its society can be reflected through the bureaucratic services that run the priority services for society. Like it or not, the service must be carried out to satisfy and give happiness to society.

The diversity of the Indonesian population, which stretches from Sabang to Merauke, which consists of different ethnicities, religions, and customs, must be the same, and there are no differences to be served in administration population documents and civil registry. Pancasila is the unifier and becomes an entire system in all aspects of life, including the service of population administration and civil registration.

Based on the background above, the formulation of the problem are a) How do the values of the Pancasila are implemented in population and civil registration services? b) What are the significant changes in improving the quality of population and civil registration services in implementing the values of the Pancasila philosophy?

Thus, the aim of this research is implementing the values of Pancasila philosophy in population and civil registration services can contribute to the society to improve the quality of services so that it can bring fresh air to all aspects of life towards a just and prosperous society.

2. METHOD

This research was conducted by using the qualitative method with empirical technical analysis to re-actualize the values of Pancasila and its implementation as a reasonable service effort. The basis of the discussion is obtained from the results of a literature study of various sources such as books, articles, journals, and going directly to the field, which is then presented in descriptive form.

3. RESULT AND DISCUSSION

The founding fathers who have fought from the pre-independence era until now have experienced a lot about the existence of the Pancasila philosophy. They must face the upheaval and turmoil to maintain the Pancasila philosophy as the foundation of the state's total view of life. It has been tested and proven that only Pancasila can provide direction in sustainable development. Regeneration of the children and next-generation begins as early as possible must be given the education and teaching at home, school, environment or in the office. This is conducted because of the degradation of the understanding of Pancasila, the more so and the

multicultural customs and culture of religious belief, if they are not united the differences will become sharper.

The personnel or service officers at the forefront guard need to be given a view about the services based on Pancasila values, which is friendly, easy, fast, and complete. Moreover, the exclusivity and egocentricity must be thrown away, especially excessive fanaticism and radicalism in the service. Ideally, the services are for everyone, and the officers must service everyone as well as possible without distinguishing where they are from and not be racist. The empowerment and procurement of human resources in recruiting service officers is the task of the personnel department to be selective in the testing process for the national insight test based on the Pancasila philosophy. Therefore, the service will be looked friendly and harmonious. With the spirit of togetherness between officers or workers from various elements of any background, and no one feels more powerful and self-righteous because the noble values of Pancasila have become part of the life of the nation and state.

The basic philosophy of the Indonesian nation is Pancasila which consists of five precepts. It is described in the values contained in public services in the population service and civil registry, which is based on the basic philosophy of Pancasila that has become relevant by seeing the diversity of ethnic, cultures, and languages in Indonesia.

Expert opinions:

According to Sunoto (1985:14), the ethical values of Pancasila that should be implemented and become the basis for the action of Indonesian people in achieving the goals have not yet been fully realized. However, it does not mean that the ethical aspect of Pancasila is merely theoretical and fantastical. The ethical teaching of Pancasila is still valid and must be applied. In addition, the ethical teaching of Pancasila administrative information systems remains the norm for all activities that occur in Indonesia. However, not all the ideals can be achieved. It does not reduce the value contained in Pancasila ethics. This is a challenge that must be answered as well as possible, and it is realized that the necessity and reality will continue throughout human life and society.

Furthermore, Rahayu (2014:32) determines that as long as the Indonesian people have a common will to build the nation on the philosophical basis of Pancasila values, all policies in the state, especially in carrying out reforms in the country. The current reform process of Pancasila values is the starting point for the derivation of both in the politics, social, economics, law, and international legal policy in this era.

Nowadays, it is termed in scientific discourse that Pancasila is a paradigm in the life of the nation and state. Departs from these problems, this paper becomes interesting to discuss how far the values of Pancasila can be implemented.

The examples of Pancasila's implementation in population service and civil registration are as follows:

1. The services are free of charge. Free of charge and bribery is the value in the first precept of Pancasila, which is belief in the one and only God.
2. Fast and cheap service without being long-winded is the value of the second precept. It is just and civilized humanity.
3. The service that does not discriminate and is treated equally is the value of the third precept, and it is the unity of Indonesia.
4. The services provide a way out of unsolved file requests, and solving the problem is the fourth precept's value. It is a democracy led by wisdom in representative deliberation.
5. The services that provide quality and quantity and provide happiness are the values of the fifth precept, which is social justice for all the people of Indonesia.

The implementation of Pancasila values carried out in services both internal and external to the government bureaucracy. It is essential because multicultural or the diversity of culture must be inherent and unified in providing the same and undifferentiated services between bureaucratic employees in the government so that the service can run smoothly and safely according to what society expects.

The implementation of Pancasila values in improving the population services and civil registration services can be conducted by the following list:

1. The value of tolerance refers to the public service law, which regulates the principles of public service and ethics in providing the service. The less responsive and informative services should not happen if the providers of service realize that they are the servant for society by maintaining good relations, humble, and willing sacrifice. By the existence of a responsive attitude with indicators, responding to the society's desire, providing the services quickly, accurately, and carefully.
2. The value of justice is an impartial attitude and does not classify between groups or give equal treatment to all groups. The value of justice includes a sense of social justice, a sense of political justice, economic equity, openness, balance, equality, non-contradiction, giving rights to those who have the right to be respectful and wise.
3. The value of cooperation. The public services can work well according to the values of Pancasila if public service providers realize that they are part of the nation and state that must have empathy in carrying out public services.

> By doing the public service with an empathetic attitude mean that it does not complicate. It must be friendly, manners, and appropriateness.

Negara Kesatuan Republic Indonesia, based on Pancasila and Undang-Undang Dasar 1945, is obliged to provide the protection and recognition of legal status and for population events and essential events experienced by residents inside and/or outside the territory of Negara Kesatuan Republik Indonesia.

The demographic events include address changes, moving to come, limited stay, and change in the status of foreigners from limited stay to permanent residence. Meanwhile, the actual events include births, deaths, stillbirths, marriages, and divorces, including the adoption of acknowledgment and ratification of children. In addition, it also includes the changes in citizenship and name changes are the events that must be considered and reported because it has implications for changing the identity data or residence certificates.

The population administration or SIAK is information developed based on the procedures for population administration service in Indonesia. The population administration and civil registration are a series of structuring and controlling activities in controlling population documents and data through population registration, civil registration, management of population administration information, and the utilization of the results for public services and development of other sectors. Civil registration is the recording of events experienced by a person in the civil registration register at the implementing agency (Undang-Undang Nomor 24 Tahun 2013 Tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan).

4. CONCLUSION

The population is the primary basis and focus of all development processes. Almost all the sectoral and cross-sectoral development activities must be directed and related to the population. In other words, the population must be the subject and the object of development. Making it easier for residents to obtain access to population services and civil registration is one indicator of the government's success in providing legal protection to the citizens. The philosophy of Pancasila is the foundation and the judicial basis in population service and civil registration services. The services must avoid the sentiment of the SARA in the service, which leads to a decrease in the quality of services, and Pancasila is the only principle in the life of the nation and state.

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Economic Influence Relating to Traditional Village Role in the Welfare of Children According to Local Regulations on Traditional Village in Bali

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ABSTRACT
The change of status of Traditional Village into a subject of law makes Traditional Village possess more comprehensive legal relations, especially economic relations with the private sector. It is in the interest of the welfare of their people, especially children. Along with the change of status of Traditional Village into a subject of law, children's vital role as the nation's next-generation is not explicitly outlined in Local Regulations on Traditional Village. Based on the conducted analysis, it is acknowledged that one of the rights obtained by children in Traditional Village is access to religion-based education such as Pasraman, as stipulated in Article 50 of the aforementioned local regulation, thus in fulfilling such right, Traditional Village must provide religion-based education or Pasraman with commitments and consistency by their apparatus for the interest of the children.

Keywords: *Children Welfare, Pasraman, Traditional Village.*

1. INTRODUCTION

Indonesia's ideals as a nation, as mentioned in the preamble of indonesian 1945 constitution, are to protect all the people of indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people, and to contribute to the establishment of social justice. They are indonesia's ideals in their occurring national development. In order to continuously live their nation's beliefs, development is administered in every aspect. besides the legal aspect, economic aspects are one of the many prioritized aspects.

The issuance of local regulation of bali number 4 the year 2019 concerning traditional village (hereafter mentioned as local regulation on traditional village) is an implementation of the principles of autonomy as imposed on article 1(8) of indonesian act number 23 the year 2014 concerning local government which states that decentralisation means the transfer of government affairs by the central government to autonomous regions based on the principle of autonomy. Moreover, ideals to be conducted by the indonesian government which relates to basic needs such as education, health, public work, and so forth, as mentioned in article 12(1) of the indonesian act concerning local government, are already adopted in local regulation on traditional village in article 1(35), article 3(1)(f), article 3(2)(e), article 22(f), article 25(1)(k) and (l), and article 60.

The phrase traditional village consists of two traditional words and village. in accordance to article 1(1) of indonesian act number 6 the year 2014 on village, "village shall be the village and traditional village or as referred to by other names, hereinafter referred to as village, shall be a unit of community that has boundaries with the authority to regulate and manage the affairs of government, interests of the local communities based on the community's initiatives, right of the origin, and/or traditional rights recognized and respected in the system of government of the republic of indonesia." The term adat (traditional) is adopted from arabic, which translated into indonesian means "tradition" [1]. Balinese tradition acts as life guidance that is sourced from hindu teachings and local customs. Traditions are recognized in not only traditional villages but also cities. in accordance to local regulation on traditional village, traditional village is the unity of communities on customary laws in bali which possess territory, seat, original structure, traditional rights, wealth, tradition, hereditary manners, and social interaction attached to certain sanctum (kahyangan tiga or kahyangan desa), duties, authority and rights to manage and administer their affairs.

Updates on applied regulations are in most cases influenced by the needs of the people, especially relating to the economic aspect. The economy is getting bigger every year. Its development is determined by investment growth. Investment in traditional village can be seen from establishing lpd and bupda as regulated under article 60 of local regulation on traditional village. lpd is a financial institution owned by traditional village, seated in its territory (wewidangan).

In comparison, bupda is their business in the economic sector. The governor created those institutions to conduct training and supervision to the economy of traditional village. This effort is considered successful as many traditional villages in bali, especially in southern parts of bali, own significant assets, thus gaining capital for their village. Generally, traditional villages build business relations with the private sector to cooperate in developing tourist facilities. The village provides location or land, and the private enterprise builds the hotels, restaurants, etcetera. due to the cooperation agreement, both traditional villages and private enterprises will obtain profits by using a profit-sharing method.

The cooperation becomes possible for both parties because traditional village can act as a subject of law, as regulated under article 5 of local regulation on traditional village. This means traditional village is allowed to establish a business and economic relationship with the private sector. One of the aims of traditional village in establishing cooperation with the private sector is to prosper their people, especially in children's education. as proposed, the welfare of the people is conceptualized as providing prosperity and safety (free from any interference) [2]. this matter is aligned to the principles of justice under the human rights principles [3]. in order to guarantee the people's merriment, the creation of law is parallel to the conscience of the people, as it is created to usher justice, prosperity, and joy to humankind [4].

In discussing further children's education in traditional village, article 50(1) of local regulation on traditional village states that pasraman is an educational platform based on hindu teachings which focus on self-development, moral integrity, and quality of traditional village community (krama desa adat). it is regulated under article 30(1), (3) and (4) of indonesian act number 20 the year 2003 concerning the national education system, that religious education is organized by government and/or religious communities, by the law may be held in formal, non-formal and informal, in the form of diniyah, pesantren, pasraman, pabhaja, samanera, and any other similar kinds.

As concluded by a previous study by ni nyoman sudiani [5] titled "character building through gending rare ethnography study to early age children in tenganan traditional village, karangasem regency, bali province (pendidikan karakter melalui gending rare studi etnografi pada anak usia dini di desa adat tenganan pengringsingan, kabupaten karangasem, provinsi bali)," education shall mean every effort conducted as a process in order to assist growth and development in physical, intellectual and character aspects, as of the children will gain awareness as a human being who has obligations in building and maintaining the connection with god, another humankind and beings around them. furthermore, a study by i made siryadana [6] is titled "character building of children through pasraman lascarya parama seva activities in tianyar village kubu district karangasem regency (pembentukan karakter anak melalui kegiatan pasraman lascarya parama seva di desa tianyar kecamatan kubu kabupaten karangasem)," concluded that the existence of pasraman emphasizes spiritual and mental building for children and the importance in implementing character building for children.

Children are the next generation of the nation, and as god's creation has human rights, thus no one may seize their rights. children are an investment that becomes a success indicator for a nation developing their country [7]. Success in children's development will determine the quality of future human resources. this matter is stipulated under the indonesian 1945 constitution in article 28b(2), which states that "children have a strategic role and the government guarantees the rights of every child to live, grow, and develop, and to be protected from violence and discrimination. therefore, the best interest of children must be met and internalized for the sake of humankind."

Local regulation on traditional village does not explicitly mention the term children. however, article 1(10) states that the traditional village community (krama desa adat) is the hindu people of bali mipil and is registered a member of their home-grown traditional village. furthermore, article 1(21) regulates that a traditional village organization (yowana desa adat or daa taruna desa adat or any other aliases) consists of young people in a traditional village. The term young people is not clearly defined as children or not. in a study titled "behind the prevalency of agitating child marriage; national law versus customary law (di balik prevalensi perkawinan usia anak yang menggelisahkan: hukum negara versus hukum adat)" by sudantra and laksana [8], stated that criteria "not yet 18 years of age" as a criteria to define children is aligned to the international law definition of children as determined under convention on the rights of the child. article 1 of the convention states that "for the present convention, a child means every human being below the age of eighteen years unless the majority is attained earlier under the law applicable to the child." based on the description above, there are two problems discussed in this study: how is the position of children in local regulation on traditional village relating to their welfare fulfillment? how is the role of traditional village in prospering the children?

2. METHOD

This article is structured using the juridical normative research method, and this method is used because the focus of this research is based on the void of the

norm. *Juridical normative method* is a method that prioritizes the approach to legal norms. Normative legal research can be functioned in giving legal arguments to void, obscurity, and conflict of norms. The approach method used is the statutory approach and conceptual approach. The legal sources used to consist of acts, books, articles, and online sources. The writing of this study used legal resources or data collection through a literature study. The legal resources analytical method used is a description analysis technique, interpretation technique, and systematization technique.

3. RESULT AND DISCUSSION

Regulation on Traditional Village relating to their welfare fulfillment, Article 1(1) of Indonesian Act Number 4 the Year 1979 concerning the Welfare of Children stipulates that the welfare of children means an order of life and livelihood which guarantees the growth and development of children reasonably, spiritually, physically and socially. The government is making an enormous effort in the welfare of children. This effort is proven by issuing Ministry of Women Empowerment and Child Protection Regulation Number 13 the Year 2011 concerning Guidance on Children.

Friendly District and City Development. In improving and fulfilling the welfare of children through developing children-friendly districts and cities, local governments may involve children representatives, legislative bodies, judicial bodies, enterprises, religious/traditional leaders, and society. Religious leaders in Bali, also called Prajuru Desa as representatives of Traditional Villages, are also asked to be involved in the improvisation and fulfillment of the welfare of children.

The aforementioned local regulation does not explicitly regulate the term children. It can be concluded that children are part of the Traditional Village community (Krama Desa Adat). By the law, the Traditional Village community (Krama Desa Adat) has rights and complete independence in the field of parahyangan, pawongan, and palemahan of the Traditional Village as stipulated under Article 9(2)(a). In the commentary section of the law, "full independence" (swadikara penuh) means the right to obtain service and/or harness entire facility in the field of Parahyangan, Pawongan, and Palemahan, consistent with local customs (Awig-awig and/or Pararem) of the Traditional Village.

More specifically, one of the rights children obtain under Local Regulation on Traditional Village is to gain access to education. As proposed, education is based on Hindu teachings for the self-development, moral integrity, and quality of Traditional Village community (Krama Desa Adat) such as Pasraman, as stated in Article 50(1) of the local regulation. The term pasraman is rooted in "asrama" (primarily written and read as ashram), which means a place to conduct teaching and learning. Pasraman education emphasizes self-discipline, noble morals development and intelligence, hard-working, lust restraining, and the trait to help others.

Moreover, Article 50(3) of Local Regulation on Traditional Village stipulates that Traditional Village in forms of: conducts formal Pasraman

a. Pratama Widya Pasraman A equivalent to early age education;
b. Pratama Widya Pasraman B equivalent to kindergarten;
c. Adi Widya Pasraman equivalent to primary school;
d. Madyama Widya Pasraman equivalent to junior high school;
e. Utama Widya Pasraman equivalent to senior high school; and
f. Maha Widya Utama Pasraman equivalent to higher education.

Meaning, besides gaining education in the formal educational platform such as school, children also gain education facilitated by Traditional Village. To provide special attention to children, it is essential to add the term children to clarify that Pasraman is already given to the right group of age. It is also essential to recall that children are the nation's next generations who need to be given education as early as possible for the sake of their ability to contribute to their nation and country. A study by Ni Nyoman Sudiani as titled "Character Building Through Gending Rare Ethnography Study To Early Age Children in Tenganan Traditional Village, Karangasem Regency, Bali Province (Pendidikan Karakter Melalui Gending Rare Studi Etnografi Pada Anak Usia Dini di Desa Adat Tenganan Pengringsingan, Kabupaten Karangasem, Provinsi Bali)," education shall mean every effort conducted as a process in order to assist growth and development in physical, intellectual and character aspects, as of the children will gain awareness as a human being who has obligations in building and maintaining the connection with God, another humankind and beings around them. If this matter is linked to law protection theory, it could be described that:

As cited from the article by Ahmad Zaini, it is mentioned that law protection theory is "the development of the concept of recognition and protection to human rights which longs for the existence of certain elements in the management of state administration system." By giving limits and responsibilities to the people and the government, is also protecting human rights. Satjipto Rahardjo stated that "law protection is an effort to organize multiple interests in society to prevent conflict of interest and enjoy every right given by law." The way to organize multiple interests is to limit specific interests and give an appropriate authority. By the existence of pasraman, which is consistently done, and inserting term children to Local Regulation on Traditional Village will provide special attention to children and materialize the improvisation of the welfare of children, as well as respecting their rights in education or pasraman in Traditional Village.

As a social being, human needs education. Especially in the societal system of Hindu people in Bali, every person is under one same platform called Traditional Village. Inside this societal system, the people of Bali are taught to develop their social sensitivity. They also learn how to recognize a solid traditional connection. Thus education is needed to build social solidarity among the people of Traditional Village.

In Local Regulation on Traditional Village, several regulations stipulate fulfillment to the welfare of children. Those regulations can be found in Article 1(35), which states that Baga Utsaha Padruwen Desa Adat (BUPDA) is a business unit owned by Traditional Village with a duty to conduct business activities in the field of the real economy, service, and/or public work, except business relating to finance, which is based on customary laws and managed by modern management to improve the prosperity and independence of Traditional Village community (Krama Desa Adat). Furthermore, in Article 3(1)(f), the regulation on Traditional Village is aimed to improve quantity and quality of service for the Traditional Village community (Krama Desa Adat) to embody prosperity. Hereinafter, Article 3(2)(e) is stated that the regulation on Traditional Village is functioned to administer Pasraman as an educational institution based on Hindu teachings for self-development, moral integrity, and quality of the people. Article 22(f) stated that Traditional VIllage's duty in materializing kasukretan sakala and Niskala is to administer Pasraman based on Hindu teachings for self-development, moral integrity, and quality. Lastly, in Article 25(1)(k) and (l), it is stated that it is the Traditional Village's apparatus authority to administer art and culture studio, and pasraman; kapustakaan and reading place.

The role of Traditional Village in guaranteeing the welfare of its people, especially children, can be seen from administering Pasraman in several villages. Such as Pasraman in Guliang Kangin Traditional Village, Bangli District, Bangli Regency, Pasraman is held with Rejang and Pendet dance practice, and uparengga, an activity of weaving, and so forth. Furthermore, Galungan Village in Sawan District, Buleleng Regency, also held Pasraman to preserve the culture of Bali. The pasraman was participated by primary school students in the village with activities such as making klatkat, kwangen, dress etiquette for spiritual activities at Hindu temple, Balinese language materials, and Dharmagita kawitan Wargasari. Besides Pasraman activities which is aimed for children, there are also Pasraman for community of wives (Krama Istri) in Padang Luwih Traditional Village, Dalung Village, Kuta Utara District, Badung Regency, which has successfully held Pasraman Srati Banten with a theme "Malarapan Pasraman nangun jnana sakti krama istri, nincapang kawruhan magama Hindu ring Desa Adat Padang Luwih." In the village, the pasraman was participated by 66 (sixty-six) traditional Banjar and 6 (six) Banjar tempekan.

However, based on research conducted by Ni Komang Sutriyani, with the title "The Perception of Hindu Society to the Existence of Formal Pasraman in Bali (Persepsi Masyarakat Hindu terhadap Keberadaan Pasraman Formal di Bali)," the existence of Pasraman is welcomed by various responses, both positive and negative responses. The positive responses include the people feeling proud because the community owns a formal education. On the other side, the Hindu community is still reluctant to put their kids in formal Pasraman. Furthermore, Sutriyanti also concluded that students' interest to gain education in formal Pasraman is insufficient. The lack of support by the people impacts the effectiveness of Pasraman. This becomes a challenge for Traditional Village to hold Pasraman consistently and continuously and commit further to improving the children and the people of Traditional Village.

Legal certainty theory is meant to give those who are rightful to obtain their rights and the appropriate decisions. In Riduan Syahrani's book, Utrecht stated that "legal certainty consists of two interpretations: Firstly, regulations that are general results in understanding about action which is legal and illegal. Secondly, individual who has legal safety from injustice, government to individuals as a result from such regulations makes them acknowledge all matters that the country may charge to the individual."

Regarding legal utility theory, according to Sudikno Mertokusumo, society expects an advantage from the administration or enforcement of the law. Law is for every human. Thus the administration or enforcement shall give advantages to society lest the law creates insecurity in the society. Moreover, Jeremy Bentham, as an adherent of utility theory, stated that law is not recognized as law until it provides the most significant advantages to the majority of people. Meaning, Local Regulation on Traditional Village is only recognized as law after it can provide advantages to most people, especially children.

4. CONCLUSION

Based on the analysis, it is acknowledged that one of the rights obtained by children in Traditional Village is to gain access to religious-based education such as Pasraman as stated in Article 50 of Local Regulation of Traditional Village, to obtain the right, the critical role of Traditional Village is needed through Traditional Village apparatus in administering Pasraman with commitment and consistency for the sake of children's interest as the nation's next generations.

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Strengthening Regulations to Improve Tourism in the Globalization Era

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ABSTRACT
The tourism business is one form of support for increasing state revenues. Due to the Covid-19 pandemic, countries in the world experienced a significant decline in the tourism sector. Therefore, more concentration is needed as a form of effort to increase the tourism business. The government and tourism business players must make various ways and efforts to develop the potential in the tourism sector, which is hampered by the Covid-19 pandemic. So, the interesting problem in this paper is how to strengthen regulations to increase tourism in the era of globalization. In this paper, the method used to examine the problems that are the focus of the study is the normative method of analysis or doctrinal research, which states that law is identical with written norms made and promulgated by official authorities, institutions, or officials. Through this research study, it is hoped that intensifying the tourism business in globalization era that is experiencing a decline, the government must do various ways, including how to increase the ability and support of the community, including business people. In addition, it is appropriate to strengthen regulations, especially in providing guarantees to business actors, to provide legal certainty and guarantees of justice. In addition, the use of high-tech technology will result in a high-tech strategy in increasing tourism and the role of digital multimedia nets.

Keywords*: Business actors, Globalization, Strengthening regulations, Tourism.*

1. INTRODUCTION

Tourism is as one of the sectors that encourage the economy of the country. An invaluable wealth with a strategic geographical location, diversity of languages and ethnic groups, natural potential, flora, fauna, and ancient relics, historical relics, arts, and culture, which are gifts from God Almighty owned by the Indonesian people and are sources of wealth. The sources and capital for the development of tourism to add on the prosperity of the people as in the Pancasila and Indonesia's Constitution are invaluable state assets. As a source of foreign exchange earnings, the tourism industry[1], both nationally and regionally, continues to make efforts to improve. For this reason, the Indonesian state continues to encourage the development of the tourism sector and tries to create innovations in order to maintain and improve competitiveness in a sustainable manner. [2]. The presence can see the increase in the tourism industry in Indonesia of tourism industries in areas that have the potential for natural beauty. [3]

Tourism is such an integral part of national development, which carried out in the systematic, planned, integrated, sustainable, and also responsible manner while still protecting religious and cultural values in the society, environmental sustainability, and quality, also national interests. Tourism development is necessary to support the equal distribution of business chances, obtain benefits, and pass the challenges of changing local, national, and even global life. During the government's activities in carrying out development in the tourism sector, the global community experienced very unexpected conditions, namely the outbreak of the Coronavirus Disease due to the Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2) virus[4], the type of disease that attacks the respiratory system and lead to infection.

The policy orientation in the tourism sector, which the government is promoting, has been paralyzed due to the outbreak of the pandemic of Covid-19, which has also affected various other sectors. The Covid-19 pandemic has limited individual freedom in all corners of the world in carrying out various activities, including tourism activities to other countries. Therefore, to accommodate the development of tourism businesses and their effectiveness in implementing, fostering, monitoring, and controlling tourism businesses, including in the regions, the government implements improvements in various ways,[5] including by strengthening regulations related to tourism.

The era of globalization has forced all countries to compete to build and strengthen the economic system of their respective countries, including to get investors in building a national economic system to face the same

challenges during competition between countries. [6]. Therefore, the success of the tourism sector has a positive impact in the direction of the agricultural sector, the hotel and restaurant sector, and other sectors. Thus, it is necessary to improve the legislation to ensure and increase tourism in the globalization era.

Amid the pandemic, it has resulted in everyone not daring to travel or visit other countries. Countries have their policies restricting both tourism that will travel abroad and on tourism that will enter the territory of a country. Thus, in the context of increasing tourism in globalization era during the pandemic, the government and the DPR as regulators must prepare various laws and regulations supporting increasing tourism, especially in force majeure conditions.

Thus, the interesting problem in this paper is how to strengthen regulations to increase tourism in the era of globalization. This issue becomes interesting, considering that during non-natural disasters that are hitting almost all over the world, primarily due to the outbreak of the Covid-19 pandemic, how can the tourism industry not die and even continue to run well and get stronger. This simple article does not intend to justify that the existing laws and regulations are not good, but to choose other perspectives. However, it is unavoidable that thoughts intersect with each other. This paper will conduct a study to determine that strengthening regulations are needed to increase tourism in globalization.

2. METHODS

This study used normative method with post-positivism paradigm to add on tourism within the era of globalization, it is necessary to strengthen the rules. The government must take steps to strengthen guidelines through numerous policies, during the Covid-19 pandemic. Indeed, the conditions that should be faced are challenging, and on the only hand, they must enhance and advance the tourism sector. However, the circumstance of nations inside the world which are being hit by an international crisis because of the outbreak of pandemic makes people no longer dare to do and postpone travel to other nations. It takes a look at the usage of a normative juridical approach or, in keeping with Wignjosoebroto, is doctrinal research, namely a study that makes use of positivist legis, which states that regulation is identical to written norms made and promulgated by legal institutions or officials.

Similarly, on this concept, regulation is visible as a normative machine; this is self-sufficient, closed, and detached from humans' lives. Satjipto Rahardjo said that this angle is to peer the law as an abstract regulation. His attention may target a truly autonomous organization which can be mentioned as a separate concern, no matter its relation to subjects outside the law. According to the analytical discussion, the point of interest will lead to a normative approach, so this approach is known as normative analysis

3. RESULT AND DISCUSSION

Natural resources and capital owned by the Indonesian people must be utilized optimally through the implementation of tourism. In addition to being a source of national income, it can also expand and equalize business chances and give the employment of opportunities, encourage regional development, introduce and empower the tourist attractions and destinations in Indonesia, as well as fostering the sense of love for the homeland and strengthening friendships between nations. [7]

The tourism industry, which plays a central role, began to appear during World War II. In that era, a massive surge in tourism emerged as a new force in the economic and social fields. [8]. Along with the progress of civilization and the state administration system, the tourism industry continues to increase and requires improvement. In addition to increasing tourism objects, clear rules are also needed to regulate the tourism sector to provide legal certainty. Therefore, one of the efforts that the government must make to improve the tourism sector, especially in the era of globalization, is through strengthening regulations and government policies to improve the tourism sector. The strengthening of regulations that were initially implemented by the government, among others with the enactment of laws and regulations: Law Number 5 in 1960 with regard to Basic Regulations on Agrarian Principles (Including State Gazette No. 104 in 1960), Law Number 1 in 1967 concerning Foreign Investment (State Gazette of the Republic of Indonesia of 1967 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 2818, from now on referred to as Law 1/1967), which since the enactment of Law 1/1967, foreign investors have competed to invest in Indonesia,[9] including investing in the tourism sector.

3.1 History of Tourism Development

The history of western civilization starts from the 11th era to the 15th era. During this period, pilgrimages to special places for religious reasons became a new model in the expansion of tourism industry. [11]. While, the era of human travel around various countries and continents by moving from place to place started from the 17th century to the 20th century which later gave rise to a culture of migration, where people moved to live in new places as if they were an area. Their origin, while the upper class in that era stopped temporarily just for a vacation. The reason people travel is growing, apart from traveling, they also travel for religion, migration, study purposes, trade, and war. [12]

In 1740, Great Britain and Europe was the forerunner of the western era where young couples from the upper-middle-class went on long journeys with various goals, whether it was fun, education, or other purposes. Thomas Cook, in 1840 initiated a modern, inclusive tour package

for group travel. [13]. According to Adam Smith, the term tourists all have a negative image because they are considered only doing something that is not important; finally, in 1770, tourists gave a new influence with the start of travel using mass transportation modes. [14] The 20th century, especially 1960-1980, was the peak of the development of the world of tourism where the number of tourists increased rapidly from several surveys held in that era. [15]

In Indonesia itself, 1910 was the forerunner of the development of tourism with the establishment of VTV (Vereeneging Toeristen Verkeer) as a tour operator and travel agent formed by the Dutch in Batavia, who at that time was very active in promoting Java and Bali as the tourism destinations in Indonesia. [16] Tourism is not only related to economic issues, but also social, political, cultural, and the other issues. Tourism is such a multi-complex system by linking various aspects that affect other aspects where in recent times, tourism has played an essential role as the driving force for the community dynamics that affect sociocultural changes. [17]

3.2 Tourism Legislation

The development of tourism sector from year to year shows very rapid development. This is caused, among others, by changes in the socioeconomic structure of countries and the increasing number of people who have higher incomes. Tourism is increasingly developing into global phenomenon, becoming a basic need, refreshing, and part of human rights that must be upheld. The government (in this case, the central government and regional governments), the tourism business world, and the community are obliged to assure that the tourism activities as the right of everyone and can be enforced to encourage the achievement of increasing human dignity, increasing welfare, and also friendship between nations in realizing the peace of the world. [18]

In the face of global changes and the strengthening of people's privacy rights to enjoy the leisure time through traveling, is as the reason for the need for the development of tourism based on the diversity, uniqueness,[19] and also distinctiveness of the nation while still placing diversity as the essential thing within the framework of the Unitary State of the Republic of Indonesia. Tourism development must still pay attention to the population, which will be one of the main capitals in the tourism development in the present and the future with dual function [20]

With regard to the law to the tourism (UU 10/2009), problems are encountered in the implementation, including:[21]

1. Facilities and infrastructure in Law 10/2009 relate to the infrastructure development in the tourism. One of the efforts to evolve facilities and infrastructure in the tourism is through cross-sectoral coordination, where there must be synergy in the development of facilities and the infrastructure in the tourism sector as confirmed in the Article 33 of Law 10/2009 regarding coordination. In the implementation, not all regions have experienced the effect of developing infrastructure facilities and infrastructure.
2. Law enforcement.
3. Investment
4. Tourism development.
5. Management and environmental preservation of tourist attractions.
6. Order and safety of tourist attractions.
7. Authority and coordination between tourism-related institutions.
8. Lack of budget for tourism funding.

Law 10/2009 intends to support small and medium enterprises to help creating Sustainable Tourism Industry. Thus, in Law 10/2009, craftsmen, tour guides, and small and medium-sized tourism actors can be fostered and developed by applicable regulations. [22]. Tourism is as the travel activity carried out by a person or even group of people by visiting certain places for the recreational purposes, personal development, or even studying the uniqueness of tourist attractions[23] visited in the temporary period,[24] with the increasingly attractive tourist destination objects to be visited. Tourists both from within the country and from abroad are interested in visiting the prepared tourist objects. Thus, the government is obliged to prepare the kinds of tourism activities and their facilities.

3.3 Tourism Development

According to Article 1 number 3 of Law 10/2009, various kinds of tourism activities and encouraged by various facilities and services given by the community, businessmen, the Government, [25] and Local Governments[26]. According to Karyono, tourism refers to overall activity of the government, the business world, and the community to regulate, manage, and also serve the needs of tourists. [27]. Thus, tourism activities are the series of activities carried out by humans within the territory of their own country and other countries. These activities are done using many kinds of facilities, services, and the other supporting factors to realize the wishes of the tourists. [28]

Thus, according to Isa Wahyudi, five essential things of the tourism activities, as follows:[30]

1. Responsible travel, meaning that all tourism actors must be responsible for the impacts of tourism activities on the natural and cultural environment;
2. Tourism activities are carried out to/in areas that are still natural (nature made) or in/to areas that are managed based on natural principles;
3. The goal is not only to enjoy the charm of nature but also to gain additional knowledge and understanding of various natural and cultural phenomena;
4. Provide support for nature conservation efforts;
5. Improving the welfare of the local community.

Concerning tourism development, it is necessary to arrange regulations, with the reasons: (1) too many regulations (hyper-regulation); (2) *conflicting*; (3) *overlapping*; (4) *multi interpretation*; (5) *inconsistency*; (6) not effective; (7) creating unnecessary burdens; (8) create a high-cost economy. In addition, in order to avoid a legal vacuum, the government carries out regulatory arrangements through:

4. CONCLUSION

Tourism development in the context of strengthening regulations in the era of globalization is needed, providing legal certainty and guarantees of justice for tourism industry players and avoiding overlapping or even contradictions between one regulation and another. Tourism development in the era of globalization, apart from strengthening regulations, can also be carried out through high-tech technology, which will produce high-tech strategies in increasing tourism and the role of digital multimedia nets. With a high-tech strategy, the tourism industry in the era of globalization can be empowered as a promotional event and create creative and innovative ideas in providing tourism services while maintaining local wisdom and positive mentality from each region.

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Transformation of Land Ownership with Reclamation Result Right to Manage (HPL) on Behalf of the Government of DKI Jakarta Through Capital Participation in BUMD PT Pembangunan Jaya Ancol Tbk

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ABSTRACT
This paper will describe the transformation of land ownership resulting from the reclamation activities of the Ancol Project with the status of Right To Manage (HPL) on behalf of the DKI Jakarta Regional Government through the regional capital participation of the DKI Jakarta Regional Government in the Regional Owned Enterprise (BUMD) PT Pembangunan Jaya Ancol Tbk. Legal problems arose when one of the legal bases for PT Pembangunan Jaya Ancol Tbk was revoked to manage the HPL land in 2015. In addition, there are still different interpretations of state/regional assets separated by BUMN/BUMD. The revocation of the legal basis for managing and interpreting the separated state/regional assets creates legal uncertainty for PT Pembangunan Jaya Ancol as a BUMD in managing and recording HPL. It has become the regional capital participation because it is contrary to the provisions on the capital or assets of the Limited Liability Company, which is divided in the form of shares as regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

Keywords: *DKI Jakarta Regional Government, PT Pembangunan Jaya Ancol, Right to Manage (HPL), Regional Owned Enterprises (BUMD), Separated Regional Assets.*

1. INTRODUCTION

PT Pembangunan Jaya Ancol Tbk as one of the Regional Owned Enterprises (BUMD) of the DKI Jakarta Regional Government, which is engaged in the real estate business and management of tourism areas, was formed based on DKI Jakarta Regional Regulation Number 4 of 1991 concerning DKI Jakarta Regional Equity Participation in the Establishment of Limited Liability Companies PT Pembangunan Jaya Ancol. Through the Regional Regulation, it is stipulated that the DKI Jakarta Regional Government shall participate in the regional capital in the establishment of the BUMD PT Pembangunan Jaya Ancol in the form of immovable property in the form of several parcels of land and buildings, one of which is the land parcel resulting from reclamation activities that have been carried out continuously since the early 1960s decade. The status of land with Right To Manage (HPL) covering an area of 4,779,120 m2 by HPL certificate Nomor 1/Ancol of 1987 on behalf of the Regional Government of the "Special Capital Region of Jakarta," 1 which was followed later by the issuance of implementing regulations/derivatives of these Regional Regulations through the Decree of the Governor of DKI Jakarta Number 1107 of 1993 concerning Guidelines for Development in the Ancol Area, which regulates the authority of PT Pembangunan Jaya Ancol in managing the HPL and non-HPL land parcels that are in the Ancol area that has been *inbreng* .2. There are two legal problems. First, the DKI Jakarta Governor Decree Nomor 1107/1993 was revoked in 2015 by the DKI Jakarta Regional Government through the DKI Jakarta Provincial Governor Regulation Nomor 239/2015 concerning Procedures for Providing Recommendations for Applications for Rights on Land with Right to Manage (HPL).

The Ex-Village Land and Ex-City Praja Land are Owned/Controlled by the Provincial Government of the Special Capital Region of Jakarta, 3 which causes the status of the capital participation of the DKI Jakarta Regional Government in PT Pembangunan Jaya Ancol Tbk to be unclear. The Decree of the Governor of DKI Jakarta Number 1107 of 1993 concerning Guidelines for Development in the Ancol area, among others, regulates the following matters:

- The Governor of the Regional Head determines the use of Ancol land after a recommendation from PT Pembangunan Jaya Ancol;4
- Before each development activity in the Ancol area obtains a permit from the relevant agency, and it must obtain written approval/recommendation from PT Pembangunan Jaya Ancol;5
- Applications for and rights to land above HPL and land, not HPL Ancol must obtain written approval/recommendation from PT Pembangunan Jaya Ancol;6
- Administration fee for written approval/recommendation of music application and additional land permit, determined by PT Pembangunan Jaya Ancol and represents revenue from PT Pembangunan Jaya Ancol;7
- Land rights that have expired on HPL land can be extended by applying PT Pembangunan Jaya Ancol;8
- Requirements and procedures for application to participate in building in the Ancol area;9
- Additional area in the Ancol area because reclamation is an integral part of the Ancol area and its development activities follow the provisions stipulated in this decree.10

With the revocation of the Governor's Decree as intended11, PT Pembangunan Jaya Ancol Tbk loses all of its authority in managing HPL, which has become a regional capital investment, so that in the end, the status of regional capital participation in the form of HPL is unclear. Second, there is a difference in interpretation between the laws and regulations governing the interpretation of separated state/regional assets and the 2014 RI Constitutional Court (MK) decision on state/regional assets separated in BUMN/BUMD. Article 1 number 21 Government Regulation Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, stipulates that Central/Regional Government Equity Participation is the transfer of ownership of BMN/BMD, which was originally an unseparated wealth into separated assets to be calculated as state-owned capital/shares/net assets/net assets. Alternatively, regions in BUMN/BUMD,12 however, the Decision of the Constitutional Court (MK) RI Number 62/PUU-XI/2013 dated February 13, 2014, in the Court's consideration interprets that state assets that have been transformed into BUMN/BUMD capital but the separation of state assets does not turn into BUMN/BUMD assets independent of state assets, because from the perspective of transactions that occur it is clear that only separation cannot be constructed as a transfer of ownership. 13 The revocation of the legal basis for managing and interpreting the separated state/regional assets creates legal uncertainty for PT Pembangunan Jaya Ancol as a BUMD in carrying out its authority in managing and recording HPL, which has become a regional capital investment because it is contrary to the provisions on the capital or assets of the Limited Liability Company which is divided in the form of shares as regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

The legal issues proposed in this study are as follows:

1. What is the legal status of ownership/control of the right to manage (HPL) resulting from reclamation on behalf of the DKI Jakarta Regional Government, which has become part of the equity participation in PT Pembangunan Jaya Ancol BUMD in terms of related laws and jurisprudence?
2. What legal solutions can be taken to provide legal certainty and restore full authority to PT Pembangunan Jaya Ancol in managing the HPL?

2. METHODS

To answer this problem, the researcher uses a normative juridical research method

3. RESULT AND DISCUSSION

3.1 The Transformation of Ancol Land HPL as a Limited Liability Company Capital

Ancol land from the beginning was a land that had been designated and used by the President of the Republic of Indonesia at that time, namely Ir. Soekarno, through Government Regulation Number 51 of 1960 as development land covering an area of approximately 552 hectares, stretching from east to west bordering the Fish Market Port, and to the south of the Ancol Canal, 14, therefore, those who have land rights in Tanah Ancol and the people in Tanah Ancol must give full opportunity to the authorities to take the necessary actions. The loss suffered by the person referred to due to the authorities' actions is reimbursed by the State.15 In the implementation of later development, the first phase of construction on the Ancol land began in 1962 and was completed in 1966 through the release, stockpiling, and spraying of swamps and ponds16 or in other terms, it can be said as reclamation activities. More specifically, the designation and use were determined through a Decree The Governor of DKI Jakarta Number DC.7/1/6/1967 concerning the Basic Guidelines for Participation in the Antjol Project Development Activities, which in Article

2 is more specific than the Antjol Project aims to create a modern trading, industrial, housing, social and recreational area. In line with the Governor's Decree, the Governor of DKI Jakarta's application to the Minister of Home Affairs stated that the HPL application for the Ancol Land would be used for the Industrial, Housing, and Recreational Areas.

Land reclamation in DKI Jakarta Province is given the status of Right to Manage (HPL).17 The development of the term and understanding of the right to manage (HPL), starting from the terms "in beheer," "control," "in management" and only after the enactment of the Regulation of the Minister of Agrarian Affairs Number 9 of 1965 known the terms "Treasury Rights" and "right to manage" as a type of right on land, but not sourced or not rooted in the Basic Agrarian Law. The State's right to control land is regulated in Article 2 paragraph (2) of the UUPA, which contains the authority to control the State, namely:18

1. regulate and administer the designation, use, supply, and maintenance of earth, water, and space;
2. determine and regulate legal relations between people and the earth, water, and space;
3. determine and regulate legal relations between people and legal actions regarding the earth, water, and space.

3.2 Provisions for Reclamation in DKI Jakarta Province

1. Presidential Decree Number 52 of 1995 concerning the reclamation of the North Coast of Jakarta:
   a. Article 9 paragraph (1): the reclamation area of the North Coast of Jakarta is granted the status of Right to Manage (HPL) to the Government of the Special Capital Region of Jakarta.
   b. Article 9 paragraph (2): the area resulting from the reclamation of the North Coast is utilized by the plan to divide the zone of the Pantura Area as set out in Attachment II to this Presidential Decree.

2. Article 30 of DKI Jakarta Regional Regulation Number 8 of 1995 concerning the Implementation of Reclamation and Spatial Planning for the North Coast of Jakarta:
   a. The land area resulting from the reclamation of the North Coast of Jakarta is granted the status of Right to Manage (HPL) to the Regional Government.
   b. The exploitation of Right to Manage (HPL), as referred to in paragraph (1) of this article, is delegated by the Governor of the Regional Head to the Implementing Agency with the boundaries of its working area determined by the Governor of the Regional Head.
   c. By delegating the right to manage (HPL) as referred to in paragraph (2) of this article, the Implementing Body is authorized to use the reclamation land for its cultivation and transfer the rights to the reclamation land to other parties by the prevailing laws and regulations.

3.3 Definition of State Asset Land

Asset Land is State/Regional Owned Property and/or State/Regional Owned Enterprise assets by the provisions of laws and regulations. The definition of *State Assets Land* is land that is controlled or not controlled, both registered and unrecorded in the balance sheet books of BMN/BMD and BUMN/BUMD obtained through purchases at the expense of the APBN/APBD, state-owned enterprises budget/BUMD, Nationalization, grants/donations, implementation of agreements/contracts, Inkracht court decisions, and land acquisition by applicable laws and regulations.

3.4 Definition of Central/Regional Equity Participation

Article 1 number 21 of Government Regulation Number 28 of 2020 concerning amendments to Government Regulation Number 2 of 2014 concerning Management of State/Regional Property:19

"Central/Regional Government Equity Participation is the transfer of ownership of State/Regional Owned Goods which were originally assets that were not separated into separate assets to be calculated as capital/shares/net assets/net assets belonging to the State or region to state-owned enterprises, business entities owned by the region, or other legal entities owned by the state."

3.5 Transfer of State/Regional Owned Land

Article 54 of Government Regulation Number 27 of 2014:20

(1) State/regional property that is not required for the implementation of the tasks of the state/regional government can be transferred.

(2) The transfer of State/Regional Property as referred to in paragraph (1) shall be carried out by:
   a. Sales;
   b. Exchange;
   c. Grant; or
   d. Central/Regional Government Equity Participation.

Article 1 number 17 of Government Regulation Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property:

"Transfer is the transfer of ownership of State/Regional Property."

Based on the provisions described above, it can be seen that the Ancol land as a land parcel with Right to

Manage (HPL) Number 1/Ancol situation map Number 12/1987 dated February 2, 1987, covering an area of 4,779,120 m2, located in Ancol Village, North Jakarta, registered under the name of the "Jakarta Special Capital Region Government" when the HPL was given to the DKI Jakarta Regional Government in 1987 in principle it is a state asset area in the form of BMD DKI Jakarta Regional Government. However, its status changed when the HPL was used as regional capital to establish PT Pembangunan Jaya Ancol. Based on the DKI Jakarta Regional Regulation Number 10 of 1988 concerning DKI Jakarta Regional Capital Participation in Third Parties, which is the Applicable law and the basis for regional capital participation by the DKI Jakarta Regional Government in the establishment of a joint venture company PT Pembangunan Jaya Ancol at that time, Article 6 paragraph (4) stipulates that Regional Assets embedded in a Limited Liability Company are separated Regional assets.21.

3.6 The decision of the Constitutional Court of the Republic of Indonesia

Page 231 item [3.23] paragraphs 3 and 4:22
"The question is whether the separated state assets, which later become the business capital of the BUMN and BUMD, are still state finances, and thus, the BPK has the authority to examine it. Another question is whether the system and mechanism of Article 23 of the 1945 Constitution generally apply, even though the BUMN or BUMD are business entities. Thus the separated state assets are transformed into no longer state finances, which constitutionally the BPK is no longer authorized to examine its management, but the authorized examiner (internal audit)."

"That, according to the Court, the separation of state assets, seen from the perspective of the transaction, is not a transaction that transfers a right, so as a legal consequence, there is no transfer of rights from the State to BUMN, BUMD, or other similar names. Thus, the separated state assets will remain state assets. According to the Court, regarding the authority of BPK to examine, because it is still state finance and BUMN or BUMD belongs to the State and, as considered above, is also an extension of the State. There is no reason that BPK is no longer authorized to examine it. However, so that BUMN and BUMD can operate by the principles of good corporate governance, internal supervisors, other than the Board of Commissioners or the Supervisory Board, are still relevant."

Page 233 item [3.25] paragraphs 1 and 2:23
"Considering that apart from the constitutional issues as considered above, it turns out that there are still other issues that must be considered, namely regarding the paradigm of the function of BUMN or BUMD as an extension of the State, which is carried out based on the business judgment rules which are completely different from those of the State. The administration of Government is carried out based on the paradigm of Government (government judgment rules)";

"That is true, the State's wealth has been transformed into BUMN or BUMD capital as business capital whose management is subject to the business paradigm (business judgment rules), but the separation of state assets does not make it turn into BUMD or BUMD wealth which is independent of state wealth, because From the perspective of the transaction that occurs, it is clear that only separation cannot be constructed as a transfer of ownership. Therefore it remains as state property, and thus the State's authority in the field of supervision remains in effect. However, the paradigm of state supervision in question must change, which is no longer based on the management of state assets in the administration of Government (government judgment rules), but based on the business paradigm (business judgment rules)."

The legal problems being faced by PT Pembangunan Jaya Ancol above are in line with the legal opinion presented by Prof. Hikmahanto Juwana, S.H., LLM., Ph.D. to the Court in his opportunity as an expert at the trial of the Constitutional Court as referred to above as follows:

- "*I was asked by the Petitioner, what about doctrinally if state money is used as capital for BUMN? Is it still state money, or has it become BUMN money separate from state money? There are 3 (three) reasons for this question, and that is my opinion. The first is state money that has been deposited with BUMN, so it will no longer be state money because the State has obtained "proof" of the paid-up capital in the form of shares. It has already been mentioned in the description, visualization. If the State does not deposit in the form of money, but in the form of land (in breng), it will be easy to see it in real terms. When the State owns an asset in the form of land and then enters it as capital, the BUMN can reverse the name on the land in the name of the BUMN, and as compensation, the State will get shares. It is strange if the land that has become the property of the BUMN is then claimed as the property of the State. This means that there have been two calculations. The first is the shares owned by the State. The second is the land originally from the State but has been included as capital in BUMN."*

- "*Finally, in my opinion, doctrinally categorizing BUMN finances as state finances are contrary to the concept of public money and private money. It was conveyed by my senior, my colleague, Prof. Erman Rajagukguk, that when he received a pension that originally came from the APBN, the money could not be treated as public money so that when a pickpocket took*

the money, the pickpocket was accused of having harmed the State's finances. Public money has an end, and public money ends when private money begins. In the context of BUMN, when public money is entered into the capital of BUMN, it becomes private money. This concept of public and private money is followed in the procurement of goods and services provisions. Let us look at the Presidential Regulation on the Procurement of Goods and Services.

Based on the description above, it can be clearly understood that the capital participation of HPL on behalf of the DKI Jakarta Regional Government by the DKI Jakarta Government to PT Pembangunan Jaya Ancol is a transfer of ownership from the previous BMD, which is regional wealth which is not separated into regional assets which are then separated into business capital assets. PT Pembangunan Jaya Ancol. Therefore, it is necessary to make adjustments to conflicting laws and regulations, namely revising and/or revoking the Regulation of the Governor of DKI Jakarta Province Number 239 of 2015 concerning Procedures for Providing Recommendations for Applications for Rights over Land Sector with Rights to Manage (HPL) for Ex-Village Land and Ex-Village Land. Kota Praja Belongs to / Controlled by the Provincial Government of the Special Capital Region of Jakarta, and the following amendments.

4. CONCLUSION

The position of the HPL Ancol Land p.p. The Regional Government of the "Jakarta Special Capital Region," which was used as equity participation in the establishment of PT Pembangunan Jaya Ancol Tbk (HPL Number 1/Ancol Year 1987), has transformed into the assets of the BUMD PT Pembangunan Jaya Ancol Tbk. by Article 1 number 21 Government Regulation Number 28 of 2020 concerning Amendments to G. Therefore, regulation Number 27 of 2014 c, concerning Management of State/Regional Property, this is evidenced by the registration of the HPL as the capital or wealth of PT Pembangunan Jaya Ancol in the form of shares of the DKI Jakarta Regional Government by provisions of Law Number 40 of 2007 concerning Limited Liability Companies.

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Authority of Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia

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ABSTRACT
National economic development is jointly by various parties. One of them is SOE which has assets that support the value and productivity of its business. However, most of these assets become idle/unproductive and even add to the financial burden on SOEs. After enacting the Law on Cipta Kerja, the Indonesia Investment Authority (INA) was present, intended to increase and optimize the value of government assets, one of which was SOE assets. This research was conducted using a legal method juridical-normative through literature study. The results showed that the legal status of the Investment Management Institution is legally formal as the public legal entity. The authority of Indonesia Investment Authority in optimizing SOE assets is one of the functions and tasks are given by the process of income for these assets that the institution with capital participation can own. And the transfer of assets. However, the authority to manage SOE assets is owned by INA and is the responsibility of each SOE.

Keywords: *Asset Optimization, Indonesia Investment Authority, SOE.*

1. INTRODUCTION

The state, which in its implementation is represented by the government on the mandate of the people, continues to strive to advance economic development in the context of general welfare based on economic democracy. To realize this, it is the mandate in Article 33 paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia that (1) The economy is structured as the joint effort based on the principle of kinship. (2) Production branches that are very important to the state and affect the people's livelihood are controlled by the state. One of the business actors that organizes the national economy in realizing the community's welfare is a State-Owned Enterprise (SOE).

State Owned Enterprises (SOEs) themselves derive two different goals for the companies they own. For example, a Limited Liability Company (Persero) aims to pursue profit (profit), and a Public Company (Perum) aims for public benefit but still seeks profit. Each SOE has assets (both tangible and intangible) that are owned and used in carrying out the productivity of their respective work achievements. Over time, many SOEs cannot optimize their assets to become "idle assets" and may not even become a financing burden in their operations and worsen the company's management. The total assets of SOEs in December 2020, which amounted to Rp. 8,400 trillion were greater than assets owned by the government, and the total revenues of SOEs were Rp. 2,400 trillion. Thus, the company's burden also increases. *The Asian Development Bank* (ADB) noted that the profitability of SOEs in terms of *return on assets* (ROA) and *return on equity* (ROE) has continued to decline since 2012. To note, ROA refers to the ratio of net income to the total assets, while ROE is about the ratio of income net compared to the equity. Justifying in the attachment to the general explanation of the Regulation of the Minister of State-Owned Enterprises Number: PER-13/MBU/09/2014, some of the fixed assets owned by SOEs are less productive and have not been utilized because of the low ROA of some SOEs.

There are assets of substantial value. However, with bad corporate governance, the company loses money and must be restructured (restored) or utilized assets not to impact state losses. So, in order to be able to manage SOE assets *idle* and to create a good climate in today's business world and to realize people's welfare, the government based on Law Number 11 Year 2O2O concerning Job Creation Article 159 CHAPTER X Central Government Investment and Ease of Strategic Projects Nationally stipulates the presence of a new institution, namely the Indonesia Investment Authority (INA), which in the same rules refers to Article 165

number (2) that the establishment of Indonesia Investment.

Authority appears to optimize the value of assets and to support sustainable development. One of the assets in question can come from SOE assets, if it refers to Government Regulation of Indonesia Number 74 in 2020 with regard to Indonesia Investment Authority.

Based on the regulation known as the *omnibus law*, this study will analyze the legal, institutional, and authority status of the Indonesia Investment Authority (INA) in optimizing SOE assets in Indonesia. The formulation of the problem that can be discussed in this study is What is the Authority of the Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia?

2. METHOD

The research method used in this research is law juridical-normative, with library materials that include primary legal materials, that is, the 1945 Constitution, Law of Republic of Indonesia Number 19 in 2003 with regard to State-Owned Enterprises, Law No. 11 in 2020 concerning Job Creation, Government Regulation of Indonesia Number 74 in 2020 regarding Indonesia Investment Authority, Regulation of the Minister of State-Owned Enterprises of Indonesia Number PER-03/MBU/03/2021 with regard to the Third Amendment to Regulation of the Minister of State-Owned Enterprises Number PER -02/MBU/2010 concerning Procedures for Write-off and Transfer of Fixed Assets of State-Owned Enterprises. Secondary legal materials refers to previous legal studies, legal books, scientific journals, and other legal materials, and finally, tertiary legal materials are Indonesian dictionary and encyclopedia.

3. RESULT AND DISCUSSION

3.1 Authority of Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia

3.1.1 Legal Status of Indonesia Investment Authority (INA)

In terms of terminology, according to *the Big Indonesian Dictionary* (KBBI), the word *status* means a state or position (person, body, etcetera.) in relation to the surrounding community; condition or position of a person or thing in the eyes of the law. So, it can be said that the legal status here is a position where the body or institution is related to the existing law.

Indonesia Investment Authority, hereinafter abbreviated as INA, are institutions that are given special authority *(sui geneis creation*) in organizing Central Government Investments as in Law Number 11 in 2020 concerning Job. Where the legal standing of this institution can be traced in Employment Creation Law *(omnibus law)* Chapter X Central Government Investment and Ease of National Strategic Projects through 1). Article 154 number 1 stipulates that Central Government Investment is carried out in the context of increasing investment and strengthening the economy to support strategic policies for job creation. 2) Article 154 number 3 which stipulates that Central Government Investment is carried out by one of the institutions given special authority *(sui generis)* in the framework of investment management, hereinafter referred to as the institution. 3) Article 156 states that the institution in this respect isIndonesian legal entity owned by the government and has the right to the President. The establishment of the institution and organization is based on Article 165 to Article 169.

Even in establishing the institution, it can be sourced from state assets, assets of state-owned enterprises, and/or other legal sources. Of course, institutional capital is obtained from the state through equity participation and/or other sources. The initial capital of the institution is obtained from:

a. Cash fund;
b. State property;
c. State receivables from state owned company or limited liability companies; and/or
d. State owned shares in state owned company or limited responsibility companies. Back to the search related to the status of Indonesia Investment Authority. It was found that the stipulation given to this institution is a “legal entity” in which the legal entity will give birth to the rights and obligations of the authority it has. The definition of a legal entity itself can be taken from several expert opinions, namely:
    1. In the legal subject itself, it is not only humans themselves who have a relationship with the law. There are also bodies, foundations, associations, and associations of people who do it. The issue of INA's authority will be discussed in the subsequent discussion separately.
    2. Regarding representation in court, INA is given authority to the Board of Directors based on Article 30 number 2 letter (f) PP No. 74 of 2020.
    3. Legal entity is about the rights and obligations of its members jointly and, there are joint assets that cannot be separated.

According to Retnowulan Sutantio, a legal entity itself can be formed by circumstances such as:

1. Based on a concession system or ratification, an institution will obtain a position or status as a legal entity because it is legalized by an agency appointed by specific laws and regulations.
2. Based on the law, according to this system, the law has determined for itself that the institution

mentioned in the law in question is a legal entity.
3. Based on a hybrid system, according to this system, the status of a legal entity is obtained because the law itself determines it and after approval from the authorized agency.
4. Based on jurisprudence (judge's decision), where the legal entity status of an institution is based on jurisprudence.

Even in another view, a legal entity can be based on statutory provisions (which does not only refer to the law but also below or above the law by the hierarchy of laws and regulations), customary law (looking at the elements forming a legal entity such as the separation of wealth, the appointment of a particular goal and a specific organization) and doctrinal views (see the views of experts).

Legal entities themselves are divided into 2 (two) categories, namely:

a. A public legal entity *(Publiek Rechts Person)* whose nature is as an element of public interest handled by the state.
b. Private legal entities *(privaat Rechts persoon)* refers to the elements of individual interests in private legal of entities.

Furthermore, public legal entities themselves are divided into 2 (two) types, namely:

a. The law firm that has territoria**l,** a legal entity, in general, should pay attention to or effectuate the purposes of those who live in the area or region.
b. A legal entity with no territory is formed by the authorities only for specific purposes.

In relation to the statements above, it can be said that the Indonesia Investment Authority (INA) itself is a public legal entity that has no territory, and its formation comes from the Act. *First, it is* said to be a public legal entity by statutory regulations because in Article 156 number (2) Chapter X Central Government Investment and Ease of National Strategic Projects Law Number 11 of 2020 concerning Job Creation and Article 2 number (1) of Government Regulation of the Republic of Indonesia Indonesia Number 74 of 2020 concerning Indonesia Investment Authority clearly states the nomenclature even though it is an Indonesian legal entity in full. This resulted in forming an Investment Management Institution as a legal entity because it was derived from the existing regulations. *Second,* when referring to the definition of a public legal entity that does not have territory, this Indonesia Investment Authority can be related to the purpose and form of the legal entity found. 1) The purpose of establishing INA is motivated by a need by the government in managing investment, namely, central government investment which aims to "public interest" such as creating jobs, obtaining economic benefits, social benefits, contributing to the development of the national economy, obtaining profits for revenue. The state and its administration for the public benefit and 2) the institutional form provided is an institution that uses state assets in its formation and implementation. The basis for this can be found in the Government Regulation of the Republic of Indonesia Number 73 of 2020 concerning Initial Capital for Indonesia Investment Authority which in the preamble said that to support operational activities and investment activities of Indonesia Investment Authority, it is necessary to provide initial capital to Indonesia Investment Authority sourced from the Revenue and Expenditure Budget. State for the Fiscal Year 2020. The arrangement for the presence of this Management Institution is then regulated in the form of Government Regulation of the Republic of Indonesia Number 74 in 2020 concerning Indonesia Investment Authority based on Article 171 point (3) Chapter X Central Government Investment and Ease of National Strategic Projects Law Number 11 the Year 2020 with regard to Job Creation which stipulates "Further provisions about Indonesia Investment Authority are organized in the Government Regulation". The last paragraph has fulfilled one of the principles forming legislation, namely the institutional principle.

3.2 Authority of Indonesia Investment Authority for Optimizing SOE Assets

In the Big Indonesian Dictionary, Authority comes from authority, which means 1) authority and 2) the right and power to do something. Authority is as the power owned by the attachment of rights and obligations.

In carrying out its role, the Investment Management Institution (INA) has its authority, regulated by the government regulations that formed it. The powers granted include:

a. Place funds in financial instruments;
b. Carry out asset management activities;
c. Cooperate with other parties, including fund entities *trust;*
d. Determine potential investment partners;
e. Provide and receive loans; and/or f. administer assets.

Furthermore, Article 7 number (2) states that authority, as paragraph (1), INA may cooperate with Investment partners, Investment Managers, SOE, government agencies or institutions, and/or other entities both domestically and abroad. While in Article 159 Chapter X Central Government Investment and Ease National Strategic Project Law Number 11 in 2020 with regard to Job Creation, INA itself has the authority (1) to increase asset value, the institution can manage assets through cooperation with third parties, and (2) Cooperation with third parties as referred to in paragraph (1) conducted by the Institute through a. the power of governance; b. the establishment of a joint venture; or c. other forms of cooperation.

In exercising authority which is still said to be in the form of rights above the word "assets" as in related rules, one of which is assets belonging to state-owned enterprises (SOE) with the process of earning these assets into institutional assets as the result of the process of capital participation. State-owned enterprises. The assets refers to fixed assets, like tangible assets used in the operation of SOEs that does not intend to be sold in the context of normal company activities and have a useful life of more than one year. First, the transfer of assets does not include assets: a. management of production branches that are important and affect the livelihood of many people; and/or b. management of the earth, water, and natural resources contained therein. This is match with the mandate given by the 1945 Constitution of Indonesia in Article 33. SOE assets can be transferred into INA assets by: a. buy and sell; or b. another legal way where both are done commercially, and INA gets the right of preference while still prioritizing the principle of fairness through a fair price assessment of assets, and the joint venture company has the same transfer process. The transfer is an act of transferring the Fixed Assets of a SOE that transfers ownership rights to the said Fixed Assets to another party. Even in the regulation of the Minister of SOEs Number PER — 02/MBU/2010, the method of transferring assets is not only through buying and selling, but there is also an exchange, compensation, and fixed assets as the capital participation. The explanation of each method is below:

1. Sales refers to any act of transferring by accepting payment in the form of money. Transfer can be done if it meets one of the requirements and carried out as long as it gives better impact for SOE as follows:
    a. Technically and/or economically, it is no longer profitable for SOE if the existence is kept;
    b. Technically and/or economically, some alternatives or substitutes are more profitable for SOEs;
    c. Allotment for the Public Interest by the provisions of laws and regulations and RUTR/RUTRWK that the provisions of laws and regulations have ratified;
    d. Required by the ministry or State/Government Institution in the context of carrying out the duties and functions of the state or government;
    e. Part of the restructuring and restructuring program for SOEs;
    f. Required by Indonesia Investment Authority established under Law Number 11 of 2020 concerning Job Creation, either directly or indirectly to Joint Ventures established by Indonesia Investment Authority as regulated in Government Regulation Number 74 of 2020 concerning Indonesia Investment Authority; or
    g. Alternative source of funding for SOEs of very urgent needs.
2. Exchange is about any act of transferring by accepting the primary/principal replacement of goods, by being carried out in the conditions that become the most profitable alternative for SOE.
3. Indemnity means any act of transferring by receiving a replacement of money and/or goods. Compensation can only be created for the Transfer of Fixed Assets in the Public Interest.
4. Other methods are carried out with conditional provisions, one of which is not to interupt with operational activities/non-productive Fixed Assets of SOEs, and the implementation of other methods as referred to is carried out after obtaining approval from the GMS/Minister and taking into account the interests of the company.

As for the transfer of assets, INA is given the authority to make direct appointments of asset management due to the transfer of rights belonging to and responsibilities of the institution.

With regard to the equity participation, it has been organized in the Government Regulation of of Indonesia Number 73 in 2020 about Initial Capital. In the current situation of the Covid-19 pandemic, the handling of which cannot be controlled and cases that continue to soar impact the economy and people's prosperity. The government quickly issued this regulation, and even the state budget was directly used in the initial capital to form the INA. This is based on the consideration "that in order to encourage the operational activities and investment activities of the Investment Management Institution, it is necessary to provide initial capital to the Investment Management Institution originating from the State Revenue and Expenditure Budget for Fiscal Year 2020 as redefined in the Changes in Posture and Details of the State Revenue and Expenditure Budget. The fiscal Year 2020. The value of the equity participation is not small, namely Rp. 75,000,000,000.00 (seventy-five trillion rupiahs) with an initial capital of Rp. 15,000,000,000.0000.000.00 (fifteen trillion rupiahs) at the beginning, and the fulfillment of INA's capital after the initial capital deposit is carried out in stages until 2021.

Preferably, the two government regulations governing the INA must be seen at the current condition of the content in it, especially considering the existence of Law Number 2 in 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning Policies State Finances and Financial System Stability for Handling the 2019 CoronaVirus Disease Pandemic and/or In Passing Threats That Endanger the National Economy and/or Financial System Stability become law.

4. CONCLUSION

Based on the analysis above, the conclusions of this research are as follows:

1. Authority of Indonesia Investment Authority (INA) in Optimizing SOE Assets in Indonesia has been formal in the status or even its position as the institution in the form of public legal entity that is liable to the President by basing its formation on Law Number 11 of 2020 concerning Job Creation Chapter X Central Government Investment and Ease of National Strategic Projects. The basis for institutional formation is revealed through the implementing regulations of Government Regulation of the Republic of Indonesia Number 73 of 2020 concerning Initial Capital for Indonesia Investment Authority and Government Regulation of the Republic of Indonesia Number 74 of 2020 concerning Indonesia Investment Authority.
2. The purpose of establishing an Investment Management Institution is motivated by a need by the government in managing investment, namely, central government investment, which aims to "public interest" such as creating employment opportunities, obtaining economic benefits, social benefits, contributing to the development of the national economy, obtaining profits for state revenues and administration for the public benefit. Has the authority to carry out its roles and functions, one of which is to carry out asset management activities. One of these assets refers to assets belonging to SOEs, which now have assets that are not productive/idle and add to the burden on the SOEs themselves. Thus, INA is present as the "optimizer" of these assets. Institutions can own the process of income from these assets with equity participation or asset transfers. However, given the current pandemic conditions that have made the country's economic decline, it is wise that the provisions underlying the formation of the INA can be postponed because the initial capital charged to the APBN is too large. Furthermore, the authority to manage SOE assets does not belong to INA alone but the respective SOEs.

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Role of Business Law School in the Development of Indigenous Culinary Tourism

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ABSTRACT
Each indigenous community has local wisdom related to art, food (culinary), specific rituals (ceremonies), cultural products. Regional food culture products have been widely developed as a form of culinary tourism. The role of business law schools in developing culinary tourism in indigenous communities is essential to be involved. Based on this thought, this article would like to describe community service activities for the Master of Law Program, Concentration of Business Law in developing culinary tourism, and its various aspects in Bogor City. Role theory in sociology is used in this article. Field studies are used to answer the question of what role the concentration of business law can play in the development of culinary tourism as part of local wisdom in an area. This research shows that developing aspects of legal culture and mentoring economic and business law schools in culinary business incubators is essential to each region's attention.

Keywords: *Culinary Tourism, Indigenous Peoples, Small and Medium Enterprises (UMKM), School of Economics and Business Law.*

1. INTRODUCTION

Universities and postgraduate schools in Indonesia have a mandate to develop education, research, and community service. Business law education also requires further research to develop legal science and business practice by legal norms. In the end, the results of this education and research can be applied in real life in society. Thus, business law knowledge and research can be realized directly in community service activities.

The Master's Program in Business Law at the University of Pancasila carried out community service activities in the form of "legal counseling on Entrepreneurship and Intellectual Property Rights for Small and Medium Enterprises in Bogor City," in 2018.3 This legal counseling activity is a tangible manifestation of the Postgraduate School's social contribution to empowering indigenous peoples who are socio-economically incorporated in the Small and Medium Enterprises group. Empowerment of knowledge about business law is needed by those who are direct actors of trading activities and business transactions.

The theme of providing knowledge about entrepreneurship and the legal aspects of intellectual property was chosen from the real needs of the local community. The Postgraduate School also held discussions and coordination with the Bogor City Culture and Tourism Office. The legal counseling materials presented in the community service activities are as follows: 1). Knowledge of Entrepreneurship and SMEs 2). Knowledge of simple business contracts and how to avoid legal disputes 3). Knowledge of intellectual property rights: how to obtain and register trademarks, copyrights, patents, industrial designs, and geographical indications4.

According to participants, this material is essential for them to know. The participants seemed enthusiastic in following the simple explanations from the lecturers who were the speakers at this counseling activity. The 35 participants are micro and small business actors who are also partly representatives of indigenous peoples. They are the owners and direct actors of the craft, food (culinary) business, and art performers (artists)5.

People who have grown up in the modern world are still not easy to let go of their customs and attachments to the procession and spiritual life surrounding them. Local customs or customs of indigenous peoples that have strengthened into law in kinship even though they live in

suburban areas still show the existence of local wisdom in their daily lives, and some even make it their livelihood (work). In this context, the role of modern law in the form of national law must accommodate local wisdom in the form of a culinary business developed locally to become productive culinary tourism.

The role of graduate schools with a concentration in business law is essential in empowering indigenous peoples who are members of the micro and small businesses who are still vulnerable in terms of knowledge of contract law in terms of assets and turnover. Empowerment through counseling legal knowledge, entrepreneurial strategies, and intellectual property rights is an important step to protect them from legal disputes that may occur.

The subject that will be discussed in this simple research is how business law schools can provide knowledge in various forms of activities such as counseling, mentoring, social assistance, coordinating institutions, and advisory in culinary business development. This culinary business activity is carried out by members of the orthodox law community who run micro and small businesses and medium-sized businesses that require assistance to empower entrepreneurial abilities.

2. LEGAL PROBLEMS AND METHODS

What forms of legal protection, including avoiding legal disputes, is an important question that must be answered in the development of culinary tourism. Culinary as local wisdom in the environment of indigenous peoples (local customs) needs to pay attention to the legal aspects of business that continue to grow. The answer to this question requires research data from the official website and direct understanding from the community (field study).6. Notes on the meaning of legal counseling participants (respondents) become essential data to be analyzed and produce conclusions that can be recommendations for follow-up.

3. RESULT AND DISCUSSION

Five descriptive data are essential for us to know before finding legal problems in the field—first, data on culinary variety in the Bogor area. Second, data on indigenous peoples in the Bogor area. Third, data on the number of small and medium enterprises, and fourth, data on law schools and economics and business faculties in the Bogor area. Fifth, data on the growing Business Incubator in the City of Bogor. The correlation of these five data needs to be understood. Indigenous peoples are included in the category of vulnerable groups who are entitled to special protection. The experience so far is that indigenous peoples are in a weak position when faced with the power of prominent entrepreneurs, both economically, socially, and politically7.

In the socio-economic context, indigenous peoples often fall into the category of small and medium enterprises. This situation requires assistance from various directions. Mentoring and counseling from universities such as postgraduate schools that concentrate on business law are very suitable to empower indigenous peoples who are often in a marginal position. The role of many business law schools is significant for efforts to empower indigenous peoples who are members of the small and medium business category in developing their culinary tourism business.

The city of Bogor has many unique foods that can be developed into culinary tourism. Souvenirs typical of Bogor in food, pickles, and various fried foods are financial products that can become a business area for the community. Of course, this culinary business area can be the primary source of livelihood and income for the community members involved.

3.1 Data About Culinary Variety in Bogor Region Wilayah

Looking at the Bogor City Profile Digital site, there are 69 (sixty-nine) culinary specialties in Bogor.8The typical food in Bogor, among others, can be mentioned 20 of the most famous types, among others. 1. Fried Toge, 2. Nutmeg Ice. 3. Doclang Typical Bogor. 4. Pinch. 5. Patong. 6. Ngo Hiang. 7. Grilled Pickled Corn. 8. Laksa Bogor. 9. Soto Mie Bogor. 10. Pickled Bogor. 11. Pepes. 12. Sago. 13. Bogor Layer Sponge Cake. 13. Baked Macaroni (MP). 14. Pia Apple-Pie Bogor. 15. Beans Bogor Palace. 16. Bika Bogor Talubi. 17. Unyil Bread. 18. Typical Sundanese Bajigur of West Java. 19. Kotjok Bogor Ice Beer. 20. Encek Martabak. 21. Suryakencana Wet Spring Rolls. 22. Bogor Yellow Soto.9

3.2 Data on Indigenous Peoples in the Bogor Region

a. The Kasepuhan Community of Banten Kidul

Kasepuhan Banten Kidul is a group of Sundanese sub-ethnic indigenous people who live around Mount Halimun, especially in the West Sukabumi Regency to Lebak Regency and the north to Bogor Regency. Kasepuhan (Sd. sepuh, old) refers to old customs that are still maintained in everyday life.10

The Kasepuhan community of Banten Kidul includes several traditional and semi-traditional villages, which still recognize local adat leadership. There are several Kasepuhan including Kasepuhan Ciptagelar, Kasepuhan Cisungsang, Kasepuhan Cisitu, Kasepuhan Cicarucub, Kasepuhan Citorek, and Kasepuhan Cibedug. Kasepuhan Ciptagelar itself includes two other Kasepuhan, namely Kasepuhan Ciptamulya and Kasepuhan Sirnaresmi.11

The traditional leaders in each Kasepuhan are called Abah, who in the daily activities of customary Government are assisted by customary officials called rows kolot (Sd. kolot, parents; kokolot, elders). Kasepuhan Ciptagelar is now led by Abah Ugi, who

inherited it from his father, Abah Anom, who died in 2007. The area of influence of this kasepuhan includes the villages of Sirnaresmi and Sirnarasa in Sukabumi. Meanwhile, Kasepuhan Cisungsang is located in Cisungsang Village, Lebak area, led by Abah Usep.12

In the South Bogor area, they live around the Cigudeg sub-district, precisely in the villages of Urug, Pabuaran and Cipatat Kolot in the Kiara Pandak village area. In the South Sukabumi area they are scattered around the interior of the Cisolok District and along the Cibareno Girang river (Adimihardja, 1992). The rest are areas occupied by native Sundanese people, not Kasepuhan and Baduy (local people).13

b. There are two traditional villages/villages in Bogor City:

   i. Kampung Urug is located in Kiara Pandak Village, Sukajaya District, Bogor Regency14

   ii. Sindang Barang Cultural Village, The location of this Sindang Barang Cultural Village is on Jalan E Sumawijaya, Pasir Eurih Village, Tamansari District, Bogor Regency.15

The village is located in Pasir Eurih Village, Tamansari District, Bogor, West Java. Currently, Sindang Barang has been used as one of the Sundanese cultural tourism destinations, the remnants of the glory of the Sunda Kingdom in the 12th century. As quoted from tourismindonesia. id, currently in Sindang Barang Village, there are 22 traditional houses with their original shapes and different functions, such as for storing rice, residents' residences, halls, and several traditional houses for lodging.16

3.3 Data on Small and Medium Enterprises in the Region Bogor:17

TABEL PELAKU USAHA UMKM DI KOTA BOGOR

NO.	URAIAN	JUMLAH	KETERANGAN
1.	Pelaku Usaha Formal	12,047	Mikro
2.	Pelaku Usaha Formal	2,664	Kecil
3.	Pelaku Usaha Formal	747	Menengah
4.	Pelaku Usaha Informal	4,129	PKL
5.	Pelaku Usaha Dalam Pasar	3,569	PD. PPJ
6	Pelaku Usaha Dalam Pasar	550	PROPINDO
JUMLAH		23,706	

Sumber : Dinas Koperasi dan UMKM Kota Bogor

Adapun Pembagian Jenis Komoditi dari usaha Mikro, Kecil dan Menengah yang ada di Kota Bogor sesuai dengan tabel berikut :

NO	KOMODITI	PERSENTASE	MIKRO	KECIL	MENENGAH
1	Jasa	15 %	7 %	5 %	3 %
2	Perdagangan	35 %	20 %	10 %	5 %
3	Tekstil	12 %	7 %	3 %	2 %
4	Makanan Minuman	28 %	15 %	8 %	5 %
5	Industri	10 %	5 %	3 %	2 %

Sumber : Dinas Koperasi dan UMKM Kota Bogor

3.4 Data on the Law School and the Faculty of Economics-Business in Kota Bogor:18

a. Andhiga. Dharma Law College19

b. Pakuan University Faculty of Law
   Pakuan University (Unpak) is a campus that was established in 1980. The campus is located on Jl. Pakuan, RT.02/RW.06, Tegallega, Central Bogor District, has 3 study programs, namely Vocational School, Undergraduate Program, and Graduate School.20

c. Faculty of Law, Ibn Khaldun University, Bogor
   Ibn Khaldun University, often known as UIKA, is an Islamic campus founded by national leaders and scholars, KH Sholeh Iskandar. Established in 1961 under the auspices of the Ibn Khaldun Bogor Islamic Education Foundation. UIKA has six faculties, 1 Postgraduate School with four levels of education, 22 study programs, and many concentration options, as well as 16 self-development units for students.21

d. Faculty of Law, University of Djuanda
   Djuanda University (Unida), famous for its Bertauhid Campus, was established on March 21, 1987. The Unida campus is located in Ciawi, Bogor Regency, with a relaxed and comfortable atmosphere because it is located in a highland. Unida has a

Bachelor Program (S1) with 7 Faculties and 16 Study Programs as well as a Masters Program (S2) in Law, Public Administration and Food Technology.22

e. Tazkia Institut Institute
The Tazkia campus, which used to be called STIE Tazkian, has now become the Tazkia Institute at 18. Tazkia Institute is famous for its Sharia Economics Campus. Even Tazkia was awarded as Center of Excellent Sharia Economics Campus (Kemenag RI). The Tazkia Institute has three faculties, namely the Faculty of Economics and Islamic Business, the Faculty of Law/Sharia and the Faculty of Education/Tarbiyah, and one Postgraduate school with the study program of Sharia Economics.23

3.5 Data About Business Incubators that are Growing in the Bogor Region

Since its establishment in 1963, Bogor Agricultural University (IPB) has always conducted development programs for various organizations with the Institute for Community Service. The program for community service consists of training, technology transfer, management consulting, and joint services with various government agencies (Depdiknas, Ministry of Agriculture, Depkop and PPK, Ministry of Industry and Trade, BULOG, BKKBN, Ministry of Manpower, Ministry of Health, Distransmigration and PPH), private sector and international institutions .

On August 3rd, 1994, IPB established the Incubator, as the start of new era in the small programs that run for three months of incubation per small and medium enterprise. The IPB incubator is the Center for Agribusiness and Agroindustry Incubator (IAA-IPB Center) and gives special services for small businesses in the sector of agricultural.

In the development, PIAA-IPB developed into a Center for Research and Entrepreneurship Development (P3K) in 2005 and was further expanded into Center for Business Incubator and Entrepreneurship Development (incuBie) in 2011 based on the Rector's Decree no. 211/I3/OT/2011 dated December 6th, 2011.27

INCUBIE IPB is the incubation institution for entrepreneurs who want to develop into a more substantial company (agribusiness and agroindustry) but lack of capital, knowledge, and the other skills. INCUBIE IPB makes the incubation process through daily consultations so that tenants become stronger, independent, and competitive. The consultations refer to technology transfer, business management, business plans, products, and capital. Incubator tenants buy low-rent business space; entrepreneurship consulting; technology and business management; business plan preparation; access to financial institutions (business buyers) and prospective buyers (buyers) and facilitation of business licensing and certification of product.

The existence of indigenous peoples, the number of micros, small, and also medium enterprises, the number of business economics law schools, and the development of business incubators, the co-existence of each entity has meaningfulrelationship for the development of culinary tourism and supporting the institutions. The school of economics and business law refer to the institution that has the potential to encourage the birth of productive and high-profit culinary tourism for the perpetrators, like entrepreneurs from micro and small businesses who are part of the indigenous community groups in the Bogor area.

Knowledge of contract law (written agreements), entrepreneurial strategies, marketing networks, legal protection of intellectual property, geographical indication products, and other legal aspects related to culinary tourism development. This knowledge is impossible for them to get from the formal education they have taken. Practical and economic knowledge that is helpful or empowering will benefit micro, small and medium enterprises. Thus, the culinary business field is no longer a place to maintain life but is a step forward to achieve a prosperous life.

Based on the data and community service activities, the Pancasila University Business Law Masters Program in Bogor City has three essential roles that business law schools can play. These three essential things were carried out based on Friedman's modified approach to the completeness theory of the legal system. The implementation of these three roles will be able to develop healthy culinary tourism and protect the interests of indigenous peoples:

1. The role of introducing and participating in improving the legal and regulatory structure related to micro, small and medium enterprises (MSMEs) involving indigenous groups. Business law schools (in a broad sense) must ensure that laws and regulations related to MSMEs and Indigenous Peoples must be accommodative, fair, and protective (cultural conservation). Legal relations and interactions and business activities must be in a position not to ignore the rights of indigenous peoples.
2. The role of liaison between government institutions (legal apparatus), non-governmental organizations, and traditional institutions. A liaison (mediator) in law and business activities for micro, small and medium enterprises is a sine qua non condition for developing a culinary tourism business that involves indigenous peoples as MSME actors. Business law schools must carry out their role as liaisons to empower and protect the rights of micro, small and medium enterprises, which primarily involve members of indigenous and tribal communities. Turning on the culinary business incubator is part of a collaborative effort

driven by lecturers/experts from the business law school.

3. The role of fostering the legal culture of indigenous peoples in running a culinary business that protects all customary interests. The School of Business Law can carry out the role of fostering legal culture because it has inter-faculty knowledge and can involve experts in anthropological and sociological approaches. The role of business law schools is essential to be involved as supervisors and mediators in legal conflicts in the culinary business involving indigenous peoples.

4. CONCLUSION

The role of business law schools in business development/culinary tourism is something essential (important). Three essential roles that business law schools can play in participating in developing healthy culinary tourism and protecting the interests of indigenous peoples include 1). Improvement of legal and regulatory structures related to micro, small and medium enterprises (MSMEs) involving indigenous groups. 2). Liaison between government institutions (legal apparatus), non-governmental organizations, and traditional institutions to make collaborative efforts to empower the capacity of MSME business actors. 3). Supervision and mediation in the event of a legal conflict in the culinary business involving indigenous peoples.

The involvement of the role of business law schools in the development of culinary tourism can be realized through joint awareness efforts from the Association of Business Law Studies (in various forms) with the Government, in this case, the Ministry of Tourism. Empowerment and protection are critical words for efforts to raise the dignity of indigenous peoples in social life. Thus, the ideals of a united nation's life to strive for justice and prosperity can be realized.

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Legal Protection of Consumers Using E-Commerce Services During the Covid-19 Pandemic

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ABSTRACT
Technology development brings progress in all aspects of human life. In line with developments in this era of globalization, there are also developing economic activities in society. One of the impacts of economic developments is e-commerce activities—the development of e-commerce towards fast, secure, and confidential of payment system. However, in the early 2020, the world was shocked by the spread of coronavirus (SARS-CoV-2), and the disease is called Coronavirus disease 2019 (Covid-19). The author wants to question the matter, namely, How is the Legal Protection of Consumers Using E-Commerce Services During the Covid-19 Pandemic? This study uses normative legal research methods. The analytical approach used is a qualitative approach to primary and secondary data, then analyzed descriptively. The result showed that since President of Indonesia, Joko Widodo, declared Covid-19 to be a national disaster with Presidential Decree No. 12 in 2020 with regard to the Determination of the National Disaster of the Spread of Corona Virus Disease 2019 as the National Disaster, public trust has relied on the e-commerce services to fulfill their daily needs. The days are increasing as the pandemic progresses, even to this moment, where the increase in the use of e-commerce, including the risk of consumers experiencing losses. However, the current law in Indonesia is sufficient to guarantee the legal protection for the consumers who utilize e-commerce, which proves that there is an element of consumer error in the compensation claim is the burden and liability of the business actor. So, the burden of proof does not lie with consumers, but the e-commerce business actors themselves.

Keywords: *Consumer, Covid-19, Legal Protection.*

1. INTRODUCTION

In the current Industry 4.0 era, a sale and purchase transaction no longer requires or requires the seller and the buyer to meet face to face then pay and receive (ijab kabul) using demand deposits in conducting a business transaction, but business transactions can be carried out with facilities virtual world or the internet.2

The rapid development of technology brings progress in almost all aspects of human life. In line with developments in this era of globalization, economic activities in society are also developing. One of the impacts of existing economic developments is e-commerce activities. E-commerce in the world towards a fast, safe, and also secret payment system.

Covid-19 has affected on many sectors of life, including the economy and business. Covid-19 has caused economic shock, impacting individuals, households, small and large companies, and also affecting the economy of country with the scale of coverage from local to global scale. However, not all of them were affected. E-commerce business sector during the Covid-19 pandemic experienced the number of profits since it is online based.

Evidence from this statement is, for example, that the revenue of several world retail websites showed significant growth in the pandemic. In the United States, the highest-ranking was occupied by the website Amazon.com which was able to record sales of US$ 4.059 billion, followed by Ebay.com with sales of US$ 1.227 billion.5

In Indonesia, some e-commerce companies have also benefited from the increased profits during the pandemic of Covid-19. Bukalapak, for instance, as one of unicorn startup companies in Indonesia with appraisal of up to US$1 billion, has developed the choice of essential food products over the past few weeks to fulfill the needs of consumers who stay at their home.

Meanwhile, the changing market dynamics caused by the pandemic are also providing opportunities for online

food delivery services. Market leaders such as Go-Food and Grab Food which can be accessed via Go-Jek and Grab have carried out contactless delivery mechanisms and very tight hygiene procedures to continue doing the serving for the consumers. Industry players explain that the food delivery market in Indonesia has the potential to double in 2020 due to the Covid-19 outbreak.

2. RESULT AND DISCUSSION

2.1 E-Commerce in Indonesia

According to the World Trade Organization (WTO), E-Commerce consists of the process of production, distribution, marketing, sales, and also delivery of goods and even services through electronics. At the same time, the OECD (Organization for Economic Cooperation and Development) states that e-commerce, namely transactions based on electronic data processing and transmission. The Alliance for Global Business, the world's leading trade association, defines *e-commerce* as all transactions of value through the transfer of information, products, services, or payments through electronic networks as a medium.

In 1970, e-commerce applications started in their simplest form. Because computers were expensive at that time, computers could only be bought by multinational companies (MNCs), large organizations, and corporations.

In 1980, the way computers work, and function changed, supermarkets or shops began to use computers as cash payment machines and abandoned traditional payment methods. In 1990, computers began to be used in homes and small businesses. Even big companies like IBM and Hewlett Packard (HP) are starting to serve these new markets. 11

In 1992, the worldwide web (www) revolution emerged. The internet that uses hypertext (superscript) and the standard gateway interface (CGI) or the CGI general gate boundary became known and grew in 1993. Since then, websites have become outlets for advertising or product sales purposes. -products for all kinds of businesses, has developed and become a global phenomenon. 12 The growth of electronic data exchange or Electronic Data Interchange (EDI) has made the business community start using EDI for data exchange. ATM (Asynchronous Transfer Modes) or shared transfer modes and the internet make communicating via computers with remote access more accessible and more economical.

At the beginning of the 21st century, the number of internet users has increased throughout the world. This has paved the way for a new business form, such as buying and selling, marketing, and others. E-Commerce has developed with several considerations and goals to be achieved, including 13 through a competitive process; organizing acquisition processes cost-effectively and efficiently; enable companies to conduct business or transactions with distant counterparts and premises; empowering small businesses and others. Therefore, e-commerce is an alternative transaction that is quite promising because e-commerce is seen as having many conveniences for the parties who use it, both merchants and buyers.

The existence of e-commerce in Indonesia was pioneered by an online bookstore known as Sanur. The first idea for an e-commerce business was an online bookstore, inspired by a similar e-commerce business, namely www.amazon.com. Currently, Sanur has transactions per month, offers 30,000 books, and has 11,000 customers. Now, Indonesia has many e-commerce business actors, including the famous ones, namely Go-Jek, Grab, Shopee, OVO, Kredivo, and others.

2.2 Covid-19 Throughout 2020 In Indonesia

President Joko Widodo declared Covid-19 as the national disaster with Presidential Decree No. 12 in 2020 concerning the Determination of National Disaster for the Spreading of Corona Virus Disease 2019 as National Disaster. Presidential Decree No. 12 in 2020 was stipulated in Jakarta on 13th April 2020, after stipulating Presidential Decree No. 11 in 2020 regarding the Determination of the COVID-19 Public Health Emergency.

According to the Head of the Payment System Policy Department of Bank Indonesia (BI), e-commerce sales up to 26%, with new consumers at 51%. Digital payments also intensify with the use of technology. More than 70% of Kredivo's transaction portion are from e-commerce. Shopee noted that there were 260 million transactions during the second quarter in 2020, with an average of more than 2.8 million transactions per day. This record shows an increase of 130% compared to the previous year.

Legal Protection Of Consumers Using E-Commerce Services During The Covid-19 Pandemic From 2020 until 3 December last, 1,220 consumer complaints went to National Consumer Protection Agency. Several complaints in the field of financial and e-commerce are dominantly from consumers. During the pandemic period, especially from April to December, complaints intersect between the e-commerce sector and fintech companies. According to Rizal, this slice of the complaint is closely related to changes in people's consumption patterns since the Large-Scale Social Restrictions (PSBB) policy was implemented. This data shows that the increasing use of e-commerce services, the risk to consumers experiencing losses is very high. Thus, it is necessary to look at how the laws in Indonesia guarantee legal protection for consumers using e-commerce services.

In general, the principle of legal liability are as follows:

1. The principle of Liability Based on Fault. This explains that a person can be held legally responsible, if it is proven with the existence of an element of error that has been committed;
2. The Presumption of Liability Principle. This principle states that the defendant is responsible (Presumption of Liability Principle) until the defendant can prove his innocence;
3. The Presumption Non-Liability Principle. This principle is such the opposite of the presumption principle always to be responsible. This principle is limited in the scope of consumer transactions;
4. The principle of Absolute Liability (Strict Liability). This principle stipulates that error is not as the determining factor, but some exceptions allow exemption from responsibility in this respect, such as in a Force Majeure situation;
5. The principle of liability with limitations (Limitation of liability), the application of this principle is welcomed by business actors to be used as an "exoneration clause" in the standard or standard agreement they make. This principle is detrimental to the consumers if business actors limit their responsibilities unilaterally in standard agreements.

In the e-commerce transactions, responsibility also applies to the business actors, in this respect, merchants, if the consumers find the goods and/or services purchased are not by the agreement. Aspects of the liability of business actors in the UUPK containes in the Articles 19 to 28. This aspect is used when the business actors commit acts that cause harm to the consumers. This loss can be in the form of damage, pollution of goods and/or services traded by business actors.

The provisions of Article 19 were later developed in the Article 23, which states: "Business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the consumer dispute settlement agency or put to the judiciary at the consumer's domicile".

According to Inosentius, the formulation of Article 23 of the UUPK appears to have emerged based on two frameworks. First, Article 19 in the UUPK refers to the principle of presumption of negligence. This principle is from the assumption that the consumer does not suffer a loss if the producer does not make any mistake. In another formulation, if the consumer experiences a loss, the producer has made a mistake. As the consequence of this principle, the UUPK uses time limit for the payment of compensation 7 days after the date of the transaction. Judging from the context of Article 23, the 7 day time limit is not aimed to undergo the process of verification. However, it only provides the chance for the producers to pay or even find the solutions, including dispute resolution through the courts.

The responsibility of business actors to consumers in the transactions through e-commerce has not been regulated either in the Consumer Protection Act or the Electronic Transaction Law. The Consumer Protection Act only regulates on buying and selling conventionally, while the Electronic Transaction Law regulates electronic transactions in general; there is no particular mention of e-commerce. This weakness is one of the factors that create it difficult for consumers to appeal accountability from business actors in buying and selling via the internet if there is a loss (in a broad sense) for consumers.

3. CONCLUSION

Since President Joko Widodo declared Covid-19 to be a National Disaster with Presidential Decree No. 12 in 2020 concerning the Determination of the National Disaster of the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, public trust in relying on e-commerce services to meet their daily needs has increased. Increasing as the pandemic progresses, even to this moment, the increase in the use of e-commerce, including the risk of consumers experiencing losses.

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Policy License of Law of Natural Resources Especially on Management Coastal and Small Island in Indonesia

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ABSTRACT
As an archipelagic state, Indonesia has potentially with most natural resources on coastal areas, waters, and small islands lend. Research problem (1) why can foreign investors behave utilization management business activity in coastal area waters resource and waters around small islands? (2) How do realization management coastal resource areas and small islands based on local communities with the principle of local wisdom? The type of research method is doctrinal or normative research with a statue approach and concept approach. Result and discussion, the policy license is an essential function because it is an administrative law instrument for guarantee to prevent pollution and environmental damage. On the other hand, the licenser also guarantees to legalize business activity for corporation domestic and foreign investor's investment to manage utilization resource of coastal waters area and islet around waters sea level and sea bed. The problem about permitted of the foreigner is debatable, but from the point of view government policy to open job opportunities only hope that policy really and actually can be realized. The second research problem is local community participation to manage coastal resources and islet no good realization. There is an intern and extern obstacle. Government and local government must be petrified local communities through microcredit to increase welfare and prosperity citizen compatible with our constitutional mandate to the welfare of the people.

Keywords: *Policy license, Coastal area and small islands, Customary law community, Microcredit.*

1. INTRODUCTION

According, article 33, paragraph (3), The 1945 Constitution of The Republic of Indonesia, stated "The land and the waters and the natural riches contained therein shall be controlled by the State and exploited to the most significant benefit for the all of the people. As an archipelago country, Indonesia has a very long coastline, and most have small islands with potential natural resources to manage for utilization. It means the Governance of the function making rules in figure legislation authority of legislator and regulation authority of executive; policy gives a license for persons or corporation to engage in the activity utilization of coastal area and small islands[1]. The function of license as government control for guarantee utilization of resources coastal areas and small island areas to the prosperity of entities local community. Government-regulated utilization of small islands and coastal area not only for persons, corporations, and corporative, foreign investors based on business orientation, but also for customary law communities sustainability environment orientation based on local wisdom right take use management of coastal resources of the area and small island the land area. [2]. It is mean that the legal subject who can take advantage the coastal resources and small island beside domestic investors, cooperative, and customary law community, foreigner invertor too. Based on the background problem, in this research, there are two which can be formulated, that is:

(1) Why could foreign investors use the investment to manage the resource's natural resources on coastal areas and small islands?

(2) How the realization of the utilization of natural resources on the coastal area and small islands based on communities for welfare of the local population

2. METHOD

The type of this research is doctrinal or nominative, which statute approach and the conceptual approach. The statute approach is systematization, interpretation, and evaluation text of the Constitution, Statute, and regulation also court decision related to the natural right, especially about the coastal area and small island land to

economic activities. It is called the primary legal material and is authoritative because the texts could be subject to sanction, criminal, private, and administrative when violated. The concept approach is all information about law from a law expert who has a scientific authority, and it has called secondary legal material. The tertiary law material or resource of law, among others: abstract, index, dictionary, and other reference material[3].

3. RESULT AND DISCUSSION

According to Article 19 Omnibus Law, Act Number 11, the year 2020 about Job Creation, stated that each person who utilization the natural resources around the coastal and small island must behave license for salt production; bio pharmacology; biotechnology of the sea; utilization sea apart energy; marine tourism; bedding of pipe and cable under the sea inadequate; and/or recovering content from sinking ship.

The implementation of Article 19, paragraphs 1 and 2 about other utilization of the natural resources around waters and small islands should be regulated by Government Regulation. Its utilization is for realized conservation, education, and training to the upgrading of knowledge community, how they could sustainability natural resources. The other business utilization is marine culture; tourism; sustainable fishing industry activity; organic farm; and bio farms, like cattle farms, chicken farms, and goat farms.

3.1 Utilization of coastal and small areas for Domestic Investor

Government policy regulate the utilization natural resource on sea level, and seawater pool must be two licenses are for manage, that is:

(1) The location license is to take advantage of the coastal resource, involve utilization for space apart of the coastal area of the sea and the small island area.
(2) According to article 50 paragraph (1) Act Number 1 the year 2014 about Management Coastal Areas and Small Islands, the official authority to issue location license that is Minster of Marine and Fisheries, in coastal water and of small islands on:
    a. Cross-province;
    b. Strategic national area; and
    c. Specific national strategic areas;
    d. National conservation area.
(3) Governor with authority to issue area license on:
    a. Coastal water sea;
    b. Small islands by their authority until 12 miles.
(4) Regent or Mayor with authority to issue area license on:
    a. Coastal water sea; and
    b. Small islands according to their authority.

Three requirements have the right to apply for the area license for the local domestic investor: the business license is a management permit venture to exploit water resources on coastal areas waters and small island waters. According to his authority, the authority can assign a location license by the minister called the field function of marine and fisheries; governor, regent, or mayor. Three legal subjects have asked for location licenses based on Indonesian law: individual, corporation, and cooperative.

The requirement licenses business activities that are consist of the (1) technical, like a business proposal, which contains: type and plans of activity; consideration (environmental technicalities, social) map area; and conformity with the spatial plan. (2) administrative, like identity, profile/company deed, Taxpayer Number, recommendation, like, map; containing and planning of business activity; and (3) operational requirement, like:

The validity of the license period is pending on the type of business:

a. Salt production only five years;
b. Bio pharmacology of the sea, only five years;
c. Biotechnology of the sea, only five years;
d. Marine-tourism, twenty years;
e. Utilization of seawater apart energy, ten years;
f. Bedding of pipe and cable under the seabed, thirty years; and
g. Recovering content sinking the ship, only two years. [4]

The validity location license period is the pending type that is:

a. Coastal waters valid last the most extended two years, and can be extended for two years, totally four years;

b. Small islands valid of two years, and can be extended two years again, totally valid for four years (according to the Article 22B Act Number 1 the year 2014 about Management Coastal Areas and Small Islands).

3.2 Special for Foreign Investor

Utilization of business on the small island and around of seawater by foreign investors has regulated in Article 26A the Act Number: 1 the year 2014, stated

First, the official management utilization assignation business license is a Minister of Marine Affairs and Fisheries, according to Ministerial of Marine and Fisheries Regulation, Number 24/KP/2019 about Procedure of License for Granting Location and Management of Waters Area and Small Islands.

Second, the license is granted after the recommendation of the regent or mayor; and

Third, the requirement of assigning license involve:

a. Has a legal entity in the form of Limited Company, according to Indonesian law;

b. Aces public guarantee; like aces for the community to utility beach border when face danger of the coast; aces for traditional fishing; aces for people's voyages; and aces communities for religious.
c. There is no resident in the land area;
d. There are no utilities by the local community;
e. Corporate with Indonesian people participant;
f. Carry out the transfer of share to Indonesia participant step by step;
g. Undertake technology transfer and
h. Pay attention to aspects ecology, social, economical on land area.

The concept of ecology is the aspect that influences environmental sustainability and the ecosystem on the islet. The social aspect is the aspect that influences community social-cultural. The economic aspect is the aspect that influences business eligibility or investment.

Granting license location and business license for a foreigner has been debatable. Some scholars said it is not compatible with massage utilization on coastal and small island land areas based on the local community, especially the orthodox law community[5]. The utilization rights to manage the Small Islands and around sea waters for local communities' interest. The other one statement that the utilization for the foreign investor to manage the resource of area coastal and islet is limit on water sea level and undersea surface water with strictly requirement and control by government and local government. The Foreigner investor could utilization only on the area of small islands, which not resident in those land areas, and according to the investment ecosystem, can open job opportunities[6].

3.3 Customary law community Right

The customary law community given the right to make use of Small Island and surrounding waters based on local wisdom to manage to involve:

a. Space and waters resources coastal and;
b. Small island waters.

The concept of customary law community is a group of people as communities which is hereditary from generation to generation life on the territory of the Republic Indonesia geography because of the bond of origin has a great relationship with the land, which has the figure of customary government, and customary law order" [7]. According to that concept, it is four elements of the customary law communities that is:

a. There is a group of people;
b. There is a place to live;
c. The existence of a bond origin; and
d. The figure of government and customary law order. As the figure government on Balinese local wisdom where the customary law communities which government based on community, called "DESA ADAT" (Balinese Traditional Village) has autonomic government and has authority making a written customary law, we called "AWIG-AWIG Traditional Village) where" the law material" based on principles of local wisdom, with the philosophy of "***Tri Hite Karana***" (the harmony relation between man and God; harmony man and the other man or individual and community; and harmony mans with his environmental).

According to the decision of the Constitutional Court of the Republic of Indonesia, Number: 3/PUU-VIII/2010 on material judicial review of Act Number 27 the year 2007 about Management Coastal Area and Small Islands as was amended by Law Number 1 the year 2014. The Constitutional Court, under legal consideration, set that the right to manage natural resources have the status, not fundamental rights. However, it is a material right, can be used as a mortgage. That is why also the customary law community, whose have rights to manage the natural resources, must be given according to law. It is legal consideration according to original intent interpretation[8].

3.4 License Revocation and Sanction

Each person or corporation who have the license to utilization resource of the coastal areas and small islands must be implementing the substance requirement of the permit according to law.

When the government regulates those who take advantage of the coastal resources areas and the small island without obtaining the permit, it may issue criminals for their investment. However, when each legal subject is to utilize coastal resources and islet not use the permit substance properly, the licensing could be revocation of the location permit and their management of a business.

The sanction for violation of one of the permits can be administrative and criminal. The administrative sanction in the form: first, warning; second, temporary freeze; and/or third, revocation of location license.

The administration sanction for manage of business activity, when violation material permit, can be in forms: first, written warning; second, temporary suspension of activities; third, closure of the location; fourth, license revocation; five, revocation of license; and/or, sixth administrative fines.

Next to the criminal sanctions, according to article 75 Act Number 1 the year 2014, stated: "*Each person which utilization resources of area waters of coastal and islet which not have the license of location as arranging stated in the article 16 paragraph (1) the imprisonment with criminal the longest three years and a maximum fines five billion rupiahs*".

According to article 75B the Statute Number 1 year 20014, that stated: "*Each person who not have the license of manage to the utilization of resources islet space as arranging stated in the article 19 paragraph (1) the imprisonment with longest four years and maximum fines two billion rupiahs."*

Next, the second problem of this research about the realization of management resources coastal areas and small islands land areas must be based on local communities. the author thinks to the systematic interpretation of the Act Number 1 the year 2014 about Amended on Act Number 27 the year 2007 concerning Management of Resource Coastal Area and Small Island, the central management resource of Coastal waters area and Small Islands involve:

a. Regulation, control, rehabilitation, utilization, enrich natural resources territory of the islet, and sustainability the ecology.
b. Create harmony and synergy between Government, Local Government, and local communities in management resources coastal areas and small islands.
c. Strengthening community participation accelerates the achievement of sustainable development.
d. Increase achievement of local community strengthens in social, cultural, and economical through participation in utilization to manage resources of coastal areas and small islands.

These the ideal main goal to utilization management resource coastal areas and small islands based on local communities, in reality, is not could be realized. This matter is caused influence of intern and extern factors. The intern factors are that the local communities lack knowledge in fields of technology, lack of capital, and another synergy between government, local government, and local communities not maximal yet to accelerate poverty alleviation of rural communities. The extern factor is the domination of domestic and foreign investors because they have high technology for exploration and exploitation to utilization resources coastal areas and islet. Until now, they are master the utilization of business activity on fishing industries, tourism, and bio pharmacology of the sea. In reality, that business utilization manages the resources of coastal water areas, and small island land areas could not be the workforce of local communities. In the description of the influence intern and extern above, the author thinks the main goals to manage utilization of natural resources based on communities cannot be welfare and prosperity for all Indonesian citizens.

4. CONCLUSION

As is described above, it can be concluded:

1. Indonesia is an archipelago country, surrounded by long beaches stacked with resources on coastal areas and small islands for citizen welfare, compatible with the mandate of our Constitution. That is why the Indonesian Government could be making an authority license policy for managing the coastal areas and small islands as is regulated on Act Number 27 the year 2007 as has amended by Act Number 1 the year 2014 about Management Coastal Areas and Small Island.
2. The license, as in administrative law instrument, has these functions:
    a. A guarantee to prevent environmental pollution and destruction which is effective, and;
    b. A guarantee to legalize each person, corporation, cooperative, and foreigner's investor; c. It is the realization of "legal certainty."
3. The role of foreign investors is debatable because it is government policy, according to the investment ecosystem. From a positive point of view, the writer hopes that the policy will open job opportunities moving forward.
4. Problem about the realization management of utilization resources on coastal waters area and small islands based on the local community cannot be realized yet, because two-factor obstacle:
    a. Intern obstacle, which includes local communities lack capital and lack of knowledge toward technology;
    b. Extern obstacles, which include the national capital corporation and foreign investment, have dominated.

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Constitutionality of Norms Used by Judges in Criminal Jurisdictions in Indonesia

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ABSTRACT
Legal norms are not only the basis for judges in examining and adjudicating a case. However, the essence of every court decision, in casu of a criminal judgment, is a matter of legal certainty for defendants to safeguard so that it does not violate the principles of human rights and constitutional rights of the defendant or any citizen who is dealing with a criminal case that is protected based on the Constitution, which is the basis of all legal norms, be they abstract or concrete legal norms. In principle, in any democratic country based on a rule of law system, every court decision is concrete legal norms in casu of criminal case decisions. In a system of legal norms, which is hierarchical, a law has validity or legality as long as it is formed based on norms of a higher degree and does not conflict with higher provisions, which lead to the most basic norms, namely the Constitution as the supreme law of the land and the basis for all lower norms. Thus, every legal norm, including a court decision that is concrete in nature, must be guaranteed to be constitutional. The constitutionality of norms is crucial as they form the basis for the concretization of law by judges in examining, trying, and deciding criminal cases to ensure the constitutionality of verdicts in order to realize justice, and protect the human and constitutional rights and constitutional rights of defendants, avoiding any violation of the defendant's rights in the sentencing decision. This study aims to identify the constitutionality of court decisions in criminal cases in Indonesia and analyze legal considerations by judges (ratio decidendi) and their use of legal norms to decide cases of questionable constitutionality, as well as legal remedies applied when those norms are of questionable constitutionality. This research is normative legal research with the main types of approaches to be statute and case approach. Sources used are primary, secondary, and tertiary sources of legal materials. The legal materials that have been collected are classified to make it easier to identify and analyze them. This research method is combined with the method of examination of court decisions.

Keywords: *Constitutionality, Legal Considerations, Legal Norms*.

1. INTRODUCTION

Legal norms in the theoretical hierarchical system of legal norms elaborated by kelsen are not only legal norms in legislation. However, court decisions are also concrete legal norms. therefore, court decisions must not conflict with higher norms, especially with the basic norms, namely the constitution. In connection with this, the reality shows that cases in indonesia are related to the constitutionality of norms used by judges in criminal case decisions in indonesia, namely in decision no. 1114/pd.b/2006/jkt.pst) and the unconstitutionality that occurred in articles 134 and 136 bis of the criminal code as the basis for judges in deciding the case was stated by the constitutional court, which examined the constitution. Unconstitutional articles occur when the constitutional court declares these articles to be contrary to the 1945 constitution, and no longer has binding legal force, judicial review of the act on the grounds of constitutional losses suffered by the applicant because he has been tried and even punished based on provisions whose constitutionality is doubtful. the author raises two issues as follows: how is the constitutionality of norms used by judges in deciding criminal cases? how is legal consideration by judges (ratio decidendi) in using norms to decide cases of constitutional doubt?

2. RESULT AND DISCUSSION

State law is the law established by the decision of the state power as a result of regulatory, stipulation, or court action. The legal norms set by the court in question are other concrete and individual legal norms, namely those in the form of 'vonnis' or court decisions that can be supervised or controlled by a higher-level court.

The formation of rules (laws) is the duty of legislators. However, according to Franken,[1] the formation of laws by judges is considered a good thing

because judges formulate rules in such a way that through the formulation also establish facts which in this case are facts. the law of the results of the examination which is a particular case becomes relevant. Then the final decision will flow from it as a concrete way of resolving the dispute.

The theory "Reine Rechtslehre" or "The pure theory of law." Law, as a rule, is used as the object of legal science. It is recognized that law is influenced by political, sociological, philosophical factors, and so on, but what he wants is a "pure theory" of law. Every rule of law is an arrangement of rules (stufenbau). At the top of the "stufenbau," there is a "grundnorm" or fundamental rule resulting from juridical thinking. A system of legal rules is a hierarchical system of legal rules, namely: (1) The legal rules of the Constitution; (2) General law rules or abstracts in-laws or customary law; (3) Individual legal rules or court concrete legal rules. [2]

Hans Kelsen further explains: "In resolving a dispute between two parties or when convicting a defendant with a sentence, the court applies a general norm of statutory or customary law.

Nevertheless, at the same time, the courts gave birth to a particular norm that stipulates that certain sanctions must be applied to a particular individual. These specific norms relate to general norms, such as laws relating to the Constitution. So, the court's function, like the legislator, is to make and apply the law. The court's function is usually determined by general norms regarding the procedure and the content of the norms that must be made. In contrast, the legislators are usually determined by the Constitution only regarding procedures. But it is only a degree difference. [3]

Furthermore, Hans Kelsen argues that a court decision is an act of applying general norms, and at the same time, is the formation of special norms. Special norms are binding on some handled instances but can give birth to a general norm in similar cases that may have to be decided by the court in the future. As Hans Kelsen explains: Court decisions can also create a general norm. Court decisions can have binding force not only for some handled instances but also for similar cases that may have to be decided by the court. A court decision can have a jurisprudential character, that is, a decision binding on future decisions of all the same cases. However, a decision can have a jurisprudential character only if it is not an application of a general norm of pre-existing substantive law, only if the court acts as a regulator. [4] Thus, the description above shows that court decisions are concrete legal norms, apart from abstract legal norms that exist in statutory regulations. Therefore, like it or not, the court's decision must be constitutional. That is, it must not conflict with the Constitution.

A constitutional question is meant that a judge who is adjudicating a case asks the Constitutional Court about the constitutionality of a law which is the basis of the case he is examining. If someone is brought to court for violating specific laws whose constitutionality is doubtful, before deciding on the case, the judge must first ask the opinion of the Constitutional Court, whether the law is constitutional or not. Based on the decision or answer of the Constitutional Court to constitutional questions, the judge can then decide on the case he is handling. [5]

3. CONCLUSION

The norms used by judges in deciding criminal cases are based on positive law that applies and remains based on the Constitution. A judge adjudicating a case asks the Constitutional Court about the constitutionality of a law used as the basis for the case he is examining.

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The Meaning of Good Faith Philosophy in Sale and Purchase Agreement of Land Rights Drawn up Before a Notary/Land Deed Conveyancer

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ABSTRACT
This study examined and analyzed the philosophical meaning of the good faith principle in legal provisions in Indonesia, like contract law. The principle regarding good faith is often debated, and this is because the parties to the agreement are often dragged into legal problems. The parties having good faith are no exception. Good faith should exist from the pre-contract phase, where the parties start negotiating until reaching an agreement, and the contract implementation phase. Every person should have good faith. This study raised the following problem: What is the philosophical meaning of the good faith principle in legal provisions in Indonesia, especially in Contract Law in the land sector? This research applied normative legal research, namely by using primary and secondary legal materials. The approaches used are the statutory approach, concepts and philosophy, comparative law approach, and legal history. The findings of this study are that the good faith principle is honesty and propriety, which shows trust, transparency, autonomy, obedience, coercion, and also deceit. The core of the good faith principle is about permanent and unchangeable. While, the meaning of good faith is dynamic and constantly changing according to society's complex and dynamic legal awareness.

Keywords: *Contract Law, Good Faith, Sale and Purchase Agreement of Land Rights.*

1. INTRODUCTION

Nowadays, the business development is essential in our everyday life. Businees is very closely to agreement. Thus, it is necessary to understand the essential points with regard to the agreement, including what is an agreement, the terms of the validity of agreement, the principles of agreement, the object of the agreement, the period of the agreement, the form of agreement, the parties involved, the rights of the parties involved, and obligations of the parties, the structure, and also the anatomy of agreement production, the settlement of disputes and termination of the agreement.[[1]] One of the conditions in an agreement is about the existence of good faith that should be fulfilled.

Good faith has abstract meaning and so difficult to formulate. In the implementation of an agreement, good faith is related to the issue of courtesy and appropriateness. The good faith principle can be divided into subjective and objective of good faith.[[2]] Good faith is very much needed in the implementation of agreements both related to agreements required in legal provisions in the field of civil law and the field of agrarian law in the land sale and purchase agreements. Good faith in an agreement should exist since an agreement will be agreed upon. in other words, good faith exists at the time of pre-agreement negotiations to make and/or draft an agreement. Ridwan khairandy stated that "good faith should exist since pre-contract phase where the parties start negotiating until reaching an agreement and the contract implementation phase" [[3]] In the article 1338 paragraph (3) on civil code, the agreement should be carried out in the good faith. There is no further explanation related to what is meant by good faith. Therefore, more concrete legal certainty relating to good faith is necessary to provide clarity and to avoid hesitation in implementing what is meant as good faith.

In addition, there is no uniformity in the laws and regulations relating to good faith. Therefore, it does not provide any legal certainty and justice. since it is undeniable that no law is perfect or complete, there are bound to be flaws or weaknesses. in general, it can be stated that there are two main potential weaknesses in the legislation. *first*, in terms of formulation, sometimes incomplete, precise, and concrete. *second*, it is sometimes irrelevant (again) with social reality from the aspect of material contents.[[4]] This principle of good

faith should provide or reflect the principle of expediency (*beneficence*) which is translated as the necessity to do good (*bona fidel*), that living together should bring benefits (benefit) and should never harm others. Everyone is obliged to assist others or cooperate in meeting their needs as a legal subject.[[5]] This principle of *justice* requires that everyone is treated equally by fair rules and according to objective criteria and may be accounted for.[[6]] In general, good faith should exist at every stage of agreement so that the other party always considers the interests of one party.

In contrast, in practice, implementing a sale and purchase agreement occurs various shortages due to parties having bad intentions in the agreement only for the benefit of personal interests, thereby causing harm to other parties having good intentions. In practice, various cases are found related to the land sale and purchase agreement or land ownership disputes between one another. For instance, there is often dual ownership in one plot of land, meaning that one party has a deed on behalf of himself. However, the other party also claims that the land is theirs, which is generally shown in inherited land disputes. Namely, one of the heirs committed illegal expropriation of rights over parts of the land inherited to their children by their older brother due to evil intentions. Moreover, this dispute may be detrimental to investors who have purchased the land in good faith. based on the description above, the author intends to examine deeply the principle of good faith contained in the legal provisions in indonesia, including the provisions of civil code and agrarian law, especially in the sale and purchase agreement of land rights.

2. METHOD

This research is normative legal as to find the truth based on the logic of legal science from the normative point of view. In this respect, the law is as the positive norm that applies at particular time and made of specific legitimate of political power. Several approaches used are the statutory, conceptual, legal history, and also philosophical.

3. RESULT AND DISCUSSION

3.1 Philosophical Thoughts on Good Faith

We can find good faith in various legal literature. However, no law or doctrine provides clear boundaries regarding the meaning of good faith as a legal norm/rule. Rule of law has philosophical foundation. Agus Yudha Hernoko [[7]] stated that a rule or norm has a philosophical foundation and a principle as its spirit. The principle, according to *Black's Law Dictionary*, is "fundamental truths or doctrines, as laws; comprehensive doctrinal rules providing a basis or origin for others" [[8]], which essentially means, principles are teachings or truths that are fundamental to the formation of a comprehensive rule of law. Philosophically, good faith is divided into 2, namely subjective good faith and objective good faith.

3.1.1 Subjective Good Faith

Goods holder (*bezitter*) in good faith, buyers having good intentions are as good faith with subjective elements. Buyers of goods refer to good intentions who buy goods completely with confidence that the seller owns the goods they buy. He did not know if he was purchasing from someone reserving no right. That is why he is called an honest buyer.

3.1.2 Objective Good Faith

There is a diversity between good faith in the validity of legal relationship and in the terms of implementing rights and obligations in a legal relationship. The first good faith lies in the state of soul of human being at the time, namely when the legal relationship comes into force. It is different from good faith in the implementation of rights and obligations in the legal relationship. In this respect, good faith can be seen in the actions taken by parties, primarily actions as the implementation of agreement. Good faith should run in one's heart continually remembering that humans as society should be far from harmful to other parties by using words blindly when people agree.

While, the nature of honesty at the time the legal relationship comes into force is more static.[[10]] This comes from Roman law. In Roman law, this principle is known as the principle of *Bonafides*. BW uses the term of good faith in two understandings. The first understanding of good faith is the understanding of good faith in the subjective sense as 'honesty'. The definition of good faith in the subjective/honest sense is contained in Article 530 BW, which governs the position of power (*bezit*). The subjective meaning of good faith is the inner attitude of the soul.[[11]] Then, the good behavior of the debtor and creditor should be tested based on verbal objective norms. Good faith in Article 1338 paragraph (3) BW is good faith in an objective sense.

The aim refers to the fact that the parties' behavior should be the general assumptions of good faith and not solely based on the parties' opinions.[[12]] Honesty in Article 1338 paragraph (3) BW does not lie in the state of the human soul, but in the actions taken by both parties in keeping promises. Thus, honesty here is dynamic; in the sense of dynamics or appropriateness is rooted in the role of law in general, namely an effort to balance various interests existing in a society. In a legal system, the interests of others should not be suppressed or ignored at all. Society should constitute a balance standing upright in a state of balance. Regulations on Land Law in Indonesia are regulated in the UUPA (Principle of Agrarian Law). However, before the enactment of UUPA, the Indonesian Land Law was dualistic, meaning that in addition to recognizing the application of customary land law originating from customary law, regulations concerning land based on western law were also recognized. Then the era of dualism in land law prevailing in Indonesia was terminated, which became the unification of land law.

3.2 Good Faith in the Land Right Transfer

The transfer of land rights through sale and purchase means the legal act of transferring rights from the seller to the buyer and payment of the price, either wholly or partly from the buyer, is carried out on clear and cash terms. In general, the sale and purchase arrangement in Indonesia is still plural as the sale and purchase in the community is still based on 3 (three) different laws according to the agreement of each party. The 3 (three) applicable laws in sale and purchase are: The provisions of Customary Law concerning the sale and purchase of movable and immovable objects including land (Customary Law Provisions). The Provisions of Law Number 5 of 1960 concerning Agrarian Principles (UUPA) concerning immovable objects, especially land (Provisions of the Agrarian Law); The Provisions of BW concerning the sale and purchase of movable and immovable goods as long as they are not on the land (BW Provisions).

Good faith acts as the principle of contract law, consists of three functions in the contract implementation: (1) Good faith serves to add (*aanvullende werking van de goede trouw*) the contents of the agreement; (2) Good faith limits the implementation of the agreement (*derogorende werking van de goede trouw*); and (3) an act of good faith abolishes the implementation of the agreement.[[13]] Good faith as a legal principle is the natural element in the contract, like the contract, so it attaches to the contract implicitly. The function is to complete the contract by filling legal vacancies, completing/adding, and waiving the contents of the contract.

4. CONCLUSION

The realization of the principle of good faith in the binding of sale and purchase agreement of land rights refers to the content of the agreement that is appropriate. Good faith in the context of Article 1338 paragraph (3) BW (Indonesia) is based on the rationality and propriety. The standard used in assessing good faith in the performance of the contract is an objective standard. Under this standard, the behavior of parties in conducting the contract and assessment of the contract's contents are based on the principles of rationality and propriety.

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Principles of General Benefits in Arrangements of Water Resources Enterprises to Realize Welfare and Community Justice

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ABSTRACT
The implementation of water resources management, including its business, is mandated in the 1945 Constitution of the Republic of Indonesia to realize the welfare of the people in general. This mandate is regulated in Article 33 (3) that the Earth, water, and natural resources contained therein shall be controlled as much as possible for the welfare of the people. In the water resources Law Law Number 17 of 2019, the principle of its implementation is based on public benefits. So in providing a comprehensive and philosophical concept and meaning, it is necessary to examine it in depth. The legal issue examined in this research is the concept and meaning of the principle of public benefit in regulating water resources business in realizing people's welfare. This is normative legal research using a statutory approach, philosophical concepts, and approaches by using legal materials, primary and secondary legal materials, and supporting legal materials. From the results of the research, it can be found that the meaning of the Principle of Public Benefit in regulating the exploitation of water resources is interpreted in terms of utilization, including in its exploitation, it is not justified to be oriented only to economic or material benefits, but rather immaterial in the form of social, cultural and emotional interests (the relationship between water and humans.), natural and ecological (relationship between water and nature) and ritual, spiritual (relationship between water and God). This means that water can be used for business or economic purposes when the community has fulfilled its daily needs.

Keywords: *Exploitation, Public Benefit, Water resources.*

1. INTRODUCTION

The legal politics of natural resource management has been constitutionally represented in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. It is stated that the Earth, water, and natural resources contained therein are controlled as much as possible for the prosperity of the people. Article 33 of the 1945 Constitution is the constitutional basis for state control over the Earth, water, and natural resources.

The right of state control based on the constitution is used for the greatest prosperity of the people. The two aspects of the rule cannot be separated, and both are a systematic unity. The right to control the State is an instrument (instrumental), while "used for the greatest prosperity of the people" is an objective (objectives). 1In the level of implementation and the existing reality, there is a diversity of phenomena or facts closely related to the different social arrangements and environments within the Indonesian State.

The State should control the important production branches and control the livelihoods of many people. The value of social justice should maintain the inspiration for the construction of legal politics as part of the development of the Indonesian national legal system in natural resources. Drinking water in several areas has been privatized with a concession model, for example, PAM Jaya, which has been privatized3 to PT Thames and PT. Lyonnaise. The control of water sources by the private sector and even foreigners have occurred in Ponggok village, Polanharjo district, Klaten, namely by PT Tirta Investama, whose shares are controlled by Danone,4 as well as in Bali PT Tirta Dewata Semesta Mambal located in Badung Regency. The preceding is undoubtedly contrary to the position of water as a social object that controls the livelihood of many people, which must be controlled by the State and used for the greatest prosperity of the people. Although the 1945 Constitution of the Republic of Indonesia after the amendment no longer includes an explanation as an integral part of the Body of the 1945 Constitution of the Republic of

Indonesia, the explanation of Article 33 before the amendment is essential to note. It is emphasized in the explanation of Article 33 of the 1945 Constitution that:

"The economy is based on economic democracy, prosperity for everyone. Therefore, the branches of production that are important for the State and affect the livelihood of the people must be controlled by the State. Oppressed a lot. Only companies that do not control the livelihood of many people may be in the hands of one person."

No one denies the statement that water exploitation is a crucial production sector for the State and affects the livelihood of many people. Therefore, the business should be controlled by the State, not by the private sector. However, on the other hand, the flow of globalization has influenced the management of natural resources in Indonesia. The global economy tends to have the characteristics of a capitalist liberal flow that does not take sides with the community and demands privatization in all lines of state economic life.

Seeing such phenomena occurring in the community, it is necessary to pay attention to the concept of public benefits in managing water resources, including in their exploitation.

There is a problem that is the subject of research to be able to find novelty in the clarity of the concept of public benefit in regulating water resource exploitation, namely How is the principle of public benefit as a guide in the implementation of water resource exploitation to realize community welfare and justice?

2. METHOD

This research will be conducted using normative legal research; it will be used because it examines and analyzes laws and regulations relating to water resources. When the researcher examines the legislation being studied, it will emphasize the philosophical foundations in the legislation being studied, namely regulations relating to water resources. Then the emphasis will also be on the aspect of justice and the perspective of human rights. This study will use a statutory approach and a philosophical approach. The reason for using a statutory approach is used so that researchers can analyze and examine the reasons or legis ratios from the formation of legislation which is the study, in this case, is water resources.

3. RESULT AND DISCUSSION

Article 33 paragraph (1) of the 1945 Constitution formulates that: "The economy is structured as a joint effort based on the principle of kinship." The meaning of kinship is the atmosphere of extended family life, including the extended family of the Indonesian people and nation. This is in line with Aristotle's view that the State occurs because of the merging of families into one large group to form a nation or State.5

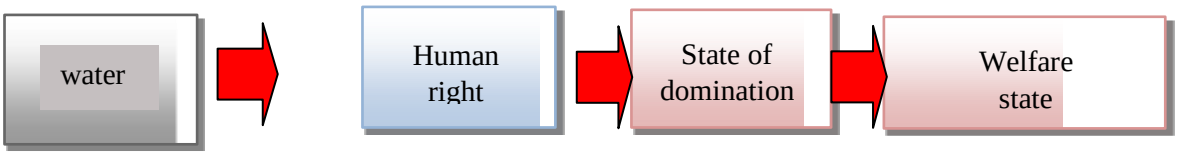
Furthermore, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is formulated "Earth and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people."

Then in the official explanation6 of the 1945 Constitution, it is written, "Earth and water and natural resources contained in the Earth are the main points of people's prosperity. Therefore, it must be controlled by the State and used for the greatest prosperity of the people." This formulation is in line with the view of Jeremy Bentham that nature (water) provides happiness and distress. Humans are always trying to increase happiness and reduce pain.

From several phrases, the social function contained in the regulation of water resources management is essential to realize the welfare of the people in general. Therefore, the State has a responsibility to realize peace, security, comfort in social life. This means that the State is responsible for realizing the welfare Of the people. This goal is the same as the goals in the welfare state. (welfare state).7 This is in line with Roelof Krenenburg's view, stating that the State must actively seek welfare, act pretty, which can be felt by the entire community in an equitable and balanced manner, not for the welfare of certain groups, but for all people.8

Furthermore, it is contained in the Indonesian constitution (UUD NKRI 1945) CHAPTER XIV Article 33 and Article 34 with the title Economy and Social Welfare. In the regulation of water resources management related to its exploitation as contained in Law Number 7 of 2004, the Constitutional Court believes that it is not by the 1945 Constitution of the Republic of Indonesia, so it is canceled. water to its citizens.

Figure 1: Philosophical Framework for Water Resources Management



From this chart, it can be explained that water is a natural resource bestowed by God Almighty given to his people, namely humans and other living creatures, in carrying out their lives and lives. Water in the nation's life is also a means of equitable development and an element of unifying the nation. Therefore, in its development, countries in the world stipulate that water is part of human rights that must be fulfilled by every country to its citizens, meaning that the State is responsible for fulfilling water for every citizen in their minimum daily needs. Therefore the State in its management must be directly involved in the control and exploitation, and the State must not be negligent in the issue of water to every citizen. This is because the purpose of the State is to realize the welfare of the people as a whole.

Thus, it is necessary to formulate how water pays more attention to social and environmental functions than the economy. For this reason, in the future, it is necessary to have the same interpretation of social functions in their arrangements, which will later be able to realize people's welfare and social justice. For this reason, in the future, it will be a challenge for the Indonesian people to formulate policies and regulations regarding water resources that are appropriate and in line with the provisions of Article 33(3) of the 1945 Constitution, namely placing water resources under the control and responsibility of the State to be used as much as possible for the prosperity of the people.9. Thus, the most concrete action to take is to establish a new Water Resources Law and then establish its implementing regulations, which align with the constitutional principles contained in the 1945 Constitution.

Based on the discussion that has been described previously, it can be concluded that the meaning of the General Benefit Principle in regulating the exploitation of water resources is interpreted in terms of utilization, including in its exploitation, it is not justified to be oriented only to economic or material gains, but rather to primarily immaterial in the form of social, cultural and emotional interests. Relationship between water and humans), natural and ecological (relationship between water and nature), and ritual, spiritual (relationship between water and God). For this reason, respect for, protection of water resources, and the fulfillment of community rights to water need to be guaranteed through legal instruments (laws and regulations) based on Pancasila and the 1945 Constitution of the Republic of Indonesia, where the meaning, nature, and philosophy of the principle of benefit the right to water contained in religious norms, customary law, and environmental ethics must be reflected in the laws and regulations relating to water resources.

4. CONCLUSION

From the discussion that has been described previously in this study, it can be concluded as follows: the meaning of the Principle of Public Benefit in regulating the exploitation of water resources is interpreted in terms of utilization, including in its exploitation, it is not justified to be oriented only to economic or material gains, but rather immaterial in the form of social interests, cultural and emotional (water's relationship with humans), natural and ecological (water's relationship with nature) and ritual, spiritual (water's relationship with God). For this reason, respect for, protection of water resources, and the fulfillment of community rights to water need to be guaranteed through legal instruments (laws and regulations) based on Pancasila and the 1945 Constitution of the Republic of Indonesia, where the meaning, nature, and philosophy of the principle of benefit the right to water contained in religious norms, customary law, and environmental ethics must be reflected in the laws and regulations relating to water resources.

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Policy Regarding Employment After the Enactment of Law Number 11 of 2020 Concerning Omnibus Law

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ABSTRACT
Law Number 11 of 2020 concerning Omnibus Law as a law formed to raise one big issue of the worsening Indonesian economy. The changes in the policy related to employment make this research necessary to be conducted as a comparative investigation. This study aims to reveal Indonesia's employment policies after enacting Law Number 11 of 2020 concerning the Omnibus Law. This study uses a normative juridical method. The results of data analysis show that the policy regarding employment after the enactment of Law Number 11 of 2020 concerning the Omnibus Law is a legal product that seeks to provide more relief to employers and is more binding on workers. Moreover, with the many government regulations that must be made in the Omnibus Law on Job Creation, the government is forced to immediately complete the government regulation formation to achieve legal certainty in the Omnibus Law.

Keywords: *Employment, Omnibus Law, Policy.*

1. INTRODUCTION

The 1945 constitution of the republic of indonesia has mandated that every citizen shall be entitled to a job and a decent living for humanity [1]. the provisions in article 27 paragraph (2) of the 1945 constitution of the republic of indonesia expressly specify that everyone has the equal right to obtain work that does not conflict with human values. Therefore, the protection of labor rights appears as part of the protection of human rights (*ham*), which is the state's responsibility.

Law number 11 of 2020 concerning ominus law as a law appears to raise one big issue of the indonesian economy, which is getting worse [2]. economic growth, which is currently experiencing a slowdown and only reached around 5 percent, is considered incapable of avoiding the threat of the middle income trap (mit). One of the essential steps for the government to take is to create new policies that encourage investment.

One of the things regulated in the ominus law is the issue of employment. Ominus law seeks to reform regulations to ensure that these regulations remain fully responsive to changing economic, social, and technological conditions that surround them. Human resources development is carried out to realize prosperous, just, affluent, and equitable indonesian people and society, both materially and spiritually [3]. Before indonesia established the omnibus law, several other countries such as the philippines, the united states, australia, and the uk adhered to the law because they followed the standard law system. It is in contrast to indonesia, which adheres to a civil law system. several weaknesses emerged when the omnibus law was implemented: firstly, its creation did not take long even though it had to ratify multi-sectors; second, because of the fast times, the value of participatory and aspiration is not maximized.

Discussions related to employment in the manpower act, compared to the ominus law, underwent significant changes. this situation prompted the conduction of the present study to conduct a comparative study between policies regarding employment in indonesia before and after implementing the omnibus law. The object that can be used as a legal comparison is the legal system or field in a country having more than one legal system/field. there are two ways to compare laws, such as macro and micro. Macro comparison is a way of comparing legal issues in general. micro comparison is a way of considering specified problems. There is no limit to the search for each problem. the known law that will be compared is called "comparatum" [4].

This study aims to reveal the policies regarding employment in indonesia after the enactment of law number 11 of 2020 concerning the omnibus law. Theoretically, the study serves for efforts to develop scientific insight, especially the development of legal science theory, in addition to providing benefits in the development of reading materials concerning legal education to readers. Practically, the study can be used as

a guide in solving relevant problems for anyone interested.

2. METHOD

The research method used to compile this paper is the normative legal method. The method consists of finding the rule of law, legal principles, and legal doctrines to answer the legal problems encountered [5]. The normative juridical research is a research method applied to investigate secondary materials [6]. Therefore, this means that normative legal research has a role in maintaining critical aspects of legal science as a normative science [7].

3. RESULT AND DISCUSSION

Initially, the law regarding employment was referred to as labor law, and to date, both are still used, both by legal experts and in the academic world. Labor law is derived from the word "arbeidsrecht," and the term arbeidsrecht itself has many definition limitations [8]. In terms of equating the concept of the term labor with the worker. In Article 1 Number 2 of Law No. 13 of 2003 concerning Manpower [9], it is prescribed that workers contain a general definition: everyone who can carry out work to produce goods and services to meet their needs and the community [10].

In essence, Omnibus Law contains a concept unrelated to the applicable legal system. However, its substance makes the concept very appropriate to be used as a solution in forming laws and regulations [11].

In Indonesia, the concept of the Omnibus Law, as specified in the Ominus Law itself, is believed to solve the problem of overlapping regulations. The law is designed as a law governing job creation capable of balancing three general types of regulation: the first is economic regulation, which is intended to ensure market efficiency - partly through the promotion of good competitiveness among business actors. The second is social regulation, which is intended to promote actors' internalization of all relevant costs. Finally, administrative regulation aims to ensure public and private sector operations [12].

Based on Article 3 of the Omnibus Law, the purpose of the law is to create the broadest possible employment opportunities for the people of Indonesia on an equal basis. The formation of this law shows that the legal politics of the executive has existed to be continued through a legislative process [11]. Currently, the government is carrying out activities to determine the pattern or method of forming laws and updating the law through the legislative process. A legal policy - which will be applied to job creation - is formed. This means the legal politics of the Omnibus Law is the formation of law by applying it in law formulation to increase investment, so jobs are created [11].

After the implementation of the Ominus Law, many changes occurred in regulations related to employment. The Ominus Law amends 31 articles, deletes 29 articles, and inserts 13 new articles in the Law of Manpower. In this case, employment serves the welfare of society in meeting the needs of life. The matters regulated in the Ominus Law relating to employment are as follows:

1. Fixed-term Employment Agreement (PKWT)

In the Manpower Act concerning PKWT, companies are only allowed to make a work contract for a maximum of 3 years. The Ominus Law abolishes Article 59 of the Manpower Act related to the time limit for freelance workers. Every employee has the right to work within a certain period, not limited to making unilateral decisions. The government's reason for removing Article 59 is that workers can work more flexibly in its implementation. This causes a misunderstanding in private companies because they have complete authority. Moreover, other countries have implemented it because it is not regulated to be more flexible. On the other hand, the Ominus Law adds to Article 61, which can be considered a provision that provides workers with benefits. For every work decision made unilaterally by a company, the company is obliged to provide direct wages/compensation in the form of money. This provides benefits for workers, so there is no booming unemployment. Regulation regarding the number of wages is submitted to the government through regulations they made.

2. Outsourcing

According to Article 66 paragraph (2) letter (c) of Law No. 13 of 2003, the settlement of disputes that arise is the company's responsibility to provide employment services. Therefore, even though the regulation violated by the outsourced worker is the regulation of the employer, the authority to resolve the dispute is the labor service provider company. In the proposed formulation of this Ominus Law, further provisions are left entirely to the President, in this case, the President has considerable power in regulating laws, whereas, when it comes to duties and authorities, the President only performs the mandate of the law, the regulations made in the people's representative council which are technically regulated by the government appropriately.

Regarding the abolition, the public's concern is on the abolition of Article 65, in that, regarding outsourcing companies, there is no limit in submitting piece work to other institutions. However, in practice, there are many violations committed by service companies. Unfortunately, after this article was abolished, outsourcing has absolute freedom of authority in executing production work.

3. Working Hours

Article 77 of Omnibus Law stipulates that employers apply working hours that exceed the provisions as referred to in Article 77 paragraph (2) for the type of specified work or business sector. However, suppose the pre-arranged working time is sufficient and can be carried out according to regulations that might be better. In that case, it is not in line with human provisions for the working time which is already regulated is 8 hours in 1

day. The rest is regulated in the employment contract. That is to say, and the company has more authority in regulating the employee working time.

4. Remuneration

The central government will set the minimum wage that many people have been talking about. Speculation regarding the elimination of the Regional Minimum Wage is speculation containing errors. There is indeed a change in the article concerning wages in the period of work that is applied. However, the provision regarding wage protections for workers was abolished as it was considered an amendment to the previous article. This is explained in the provisions regarding decent income, wage policies, decent living needs, and wage protection as referred to in Article 88.

5. Job Loss Insurance

The Ominus Law contains a new provision that does not exist in the Manpower Act, namely regarding Job Loss Insurance (JKP). The government ensures that severance pay is indeed a right and shall be accepted by workers/laborers. JKP contains a new scheme related to employment insurance that does not reduce the benefits of various other social security such as Work Accident Insurance (JKK), Death Security (JKm), Old Age Security (JHT), and Pension Security (JP).

6. Foreign Workers

Foreign workers can be employed only in a working relationship for a specified position and a specified time and have competence according to the position to be occupied. Every employer is required to have a Foreign Worker Employment Plan (RPTKA). Individual employers are prohibited from employing foreign workers as stipulated in Article 43 of the Manpower Act.

However, in the Ominus Law, the contents of Article 43 of the Manpower Law and the formulation of the proposed results are removed because they are considered articles contained in the previous article. In simple terms, the abolition of Article 43 makes it easier for foreign workers not to have plans reported to the relevant ministers within a specified period.

Changes can be seen in Article 42, paragraph 1, which stipulates that every employer who employs foreign workers shall be required to approve the plan to use foreign workers from the Central Government. In the previous law, every employer who employs foreign workers were required to have written permission from the ministry or appointed official. Meanwhile, written permits are only replaced with plans to use foreign workers approved by the central government in the new regulation. In the new regulation, the exception to the condition in paragraph 1 is widened. It means that exceptions are no longer only for diplomatic and consular employees but also directors or commissioners. The directors or commissioners in question refer to those who own specific shares or those who are shareholders and foreign workers needed by employers in the production activities that are stopped due to emergencies, vocational, start-up companies, business visits, and research for a specified period.

On the other hand, it is the right of every human being to get humanitarian protection wherever they are. Based on these humanitarian principles, every country must protect people whose lives are threatened, even if they are not citizens of the concerned country [13]. This is the nature of the law that protects its citizens in any form. The ease for foreign workers in advancing the economy as a big issue in the Omnibus Law becomes a default when a legal product cannot emphasize the role of Indonesian Citizens.

If examined from the perspective of Theory of Justice, Benefit, and Legal Certainty by Gustav Radbruch, the law has three fundamental values, such as Justice (Gerechtigkeit), Benefit (Zweckmassigkeit), and Legal Certainty (Rechtssicherheit) [14]. Until now, the pros and cons of implementing the Ominus Law in the employment division are still happening. Principally, the Ominus Law is, of course, made to provide justice, benefit, and legal certainty for all Indonesian citizens. However, the implementation of its concept is still really span-new. The Ominus Law causes many errors in interpretation for a few parties. Coupled with the existence of the Ominus Law, it triggers many government regulations that must be made. As a result, the government must work extra to realize legal certainty, especially employment. If the government regulations as implementing Omnibus Law are not immediately completed, of course, it will cause legal uncertainty for Ominus Law itself.

4. CONCLUSION

After enacting Law Number 11 of 2020 concerning the Omnibus Law, the employment policy is a legal product that seeks to provide entrepreneurs more facilitation and bind the workers. There are significant changes related to employment in the Ominus Law when compared to Manpower Act. Moreover, many government regulations must be made in the Ominus Law, which causes the government to immediately complete the government regulations to achieve legal certainty in the Ominus Law.

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The Dynamics of Women's Position in Bali Customary Inheritace Law

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ABSTRACT
Balinese customary inheritance law refers to a patrilineal family system that follows the *kapuruasa* principle. In Bali, a woman is not an heir, but it is possible to become an heir if her parents have given her purusa status as *sentana rajeg*. The position of women according to Balinese customary law of inheritance has developed according to the situation in society. Initially, based on mere habit, Balinese women were not taken into account in terms of inheritance. The method used in this study is a normative juridical research type with a statutory and conceptual approach and uses primary and secondary legal materials supported by interviews with informants. The results of the study showed that after the *Paswara* 1900, Balinese Hindu women were determined as the party who received the inheritance, only in practice it did not take place according to the norm because the principles developed in people's lives as contained in the *awig-awig* were still the limeusa principle so that women who were *predana* did not get an inheritance. Furthermore, in the 2010 era, there was a breakthrough made by the *Majelis Utama Desa Pakraman* (MUDP) Bali with its Decree Number: 1/Kep./Psm-3/MDP.Bali/X/2010 stipulates the status of Balinese Hindu women as parties who have rights to *Gunakaya* property. His parents as limited heirs with half of the male share. In practice, it is also almost the same as in previous times. There. There are still obstacles because, in each traditional village, there is *awig-awig* which regulates inheritance based on *kapuruasa* principle.

Keywords: *Balinese Hindu women, Customary law of inheritance, Dynamics, Gender equality*.

1. INTRODUCTION

The term inheritance law (West) comes from the Dutch language, namely erfrecht. The regulation of inheritance law is contained in Article 830-1130 of the Civil Code and is placed in Book II regarding objects for the following reasons:

a. Inheritance rights are identified with material rights as regulated in Article 528 of the Civil Code;
b. Inheritance rights to obtain material rights, which are formulated in Article 584 of the Civil Code. (Rahman Syamsyudin, 2019: 127)

The placement of inheritance law in Book II of the Civil Code caused a reaction from legal experts that in inheritance law, there are not only legal aspects of objects but other legal aspects. However, it cannot be denied that inheritance law is included in property law. (Surini Ahlan Syarif and Nurul Elmiyah , 2006: 6)

Inheritance means everything related to inheritance. Inheritance in society's perception in general means the assets left by the heirs (parents or ancestors) to the next generation. According to Balinese customary law, inheritance essentially means all *swadharma* (responsibility or obligation) both to the family and to the community (traditional village) and *swadikara* (rights), as well as *arta brana* (wealth) left by the heir to the heirs to the heirs. Which should be taken care of and passed on to the next generation of heirs. The word inheritance (Bali) comes from the word *warih*, which means urine or offspring. Balinese indigenous people. In the beginning, Balinese indigenous people were still confused about inheritance, and there was inheritance which meant children or descendants, it could also mean wealth left by someone who died, it could also mean heirs and even interpreted as a responsibility that must be carried out (Windia, 2019:117-118).

According to Hilman Hadikusuma, customary law of inheritance rules governing how inheritance or inheritance is passed on or divided from heirs to heirs and from generation to generation (Hilman Hadikusuma, 2014: 203).

The history of Balinese customary law in inheritance, which is regulated in writing, began during the Dutch colonial period in 1900. At that time, an

inheritance *Paswara* (regulation) was made by the Dutch colonial government, in this case, the Resident of Bali and Lombok (with Liefrinck as Resident), known as the Resident of Bali and Lombok *Paswara* 1900. Initially, *Paswara* 1900 was only applied to Balinese Hindu residents from Buleleng Regency, but in its development in 1915, *Paswara* was also applied to residents of South Bali. *Paswara* 1900 regulates two issues of customary law, namely inheritance and adoption. (Sukerti, 2020: 206). This means that since then, Balinese people have had regulations regarding inheritance, the position of women at that time was still not as heirs.

2. METHOD

The method used in this study is a normative juridical research type with a statutory and conceptual approach and uses primary and secondary legal materials supported by interviews with informants.

3. RESULT AND DISCUSSION

3.1 Responsibilities of Heirs according to Balinese Customary Law

Before looking at the heirs in Balinese customary law, it is better to convey the existence of customary law during state law. The ethicist's view that state law is the only normative rule that can genuinely be called law is based on the modern theory that draws a clear line between modern and pre-modern times. A national legal system characterizes the modern legal system, and the law is directly related to the state. However, according to Van Den Berg, it does not mean that state law can be dominant anytime and anywhere.

State law cannot always be viewed as entirely different from other normative rules, so it is impossible to compare because there is room for different possibilities. That is where there is space for legal pluralism (Keebet von Benda-Beckmann, 2005: 27-29).

The concept of legal pluralism refers to more than one legal system that is jointly located in the same social field. Sally Engle Merry (1988) says: generally defined as a situation in which two or more legal systems coexist in the same social field. Griffiths (1986) suggests: By legal pluralism, I mean the presence of more than one legal order (Ibid).

In the concept of legal pluralism, on the one hand, there is state law. On the other hand, people's law also grows and develops, not a state-made law, but a law born from a sense of people's statements, which consists of customary law, religious law, and law. Habit. Regarding the existence of the folk law system, Griffiths further stated: Legal pluralism is the fact, Legal centralism is the mythan ideal, a claim, an illusion, Legal pluralism is the social state of and it is a characteristic which can be predicted of a social group (Sulistyowati Irianto, 2003: 67).

The ethical theory views the law as the maximum possible embodiment of justice in the social order. Hans Kelsen sees law solely for justice (Hans Kelsen, 1971: 12). While Aristotle, justice is divided into distributive justice and corrective or remedial justice (Friedman, 1990: 10). Distributive justice refers to distributing goods and services to everyone according to their position in society. In contrast, corrective (commutative) justice is justice to everyone equally regardless of their service or role in society.

Balinese customary law distinguishes the notion of inheritance from heirs, causing the emergence of differences in inheritance elements between civil (Western) law and elements of inheritance according to Balinese customary law. The elements of inheritance according to civil law consist of heirs, heirs, and inheritance. Meanwhile, according to Balinese customary law, the elements of inheritance consist of heirs, heirs, heirs, and inheritance (Windia, 2019: 118).

Heirs are people or previous generations who leave an inheritance to the next generation. Inheritance is all *swadharma* (responsibility) both to the family or to the community and *swadikara* (rights), as well as *arta brana* (wealth) left by the heir that should be taken care of and passed on to the heirs (next generation). Inheritance is assets and responsibilities in the form of mandatory work to create genuine or unreal peace (belief) from ancestors to their descendants. Inheritance means descendants or other family members within certain limits according to the undagan (upper and lower generations) and *lingsehan* (generations aside) families in order. Heirs are descendants or other family members within certain limits who have the right to inheritance (Windia, 2019: 119).

Based on this, it can be said that according to Balinese customary law, not all descendants (inheritance) are heirs. Descendants, including heirs, are only descendants carrying out and/or continuing all the *swadharma* (obligations) of the heir. *Swadharma* heirs are generally contained in every *awig-awig* traditional village in Bali, determined as follows:

Swadharmaning sang patut ngawarisin:

(a). Nerima saha ngutsahayang tatamiyan pahan saking keluhurannya, minakadi ngempon sanggah, pura dadya saha pangukarannya muwah neledinin ayah-ayahan pewaris;
(b). Ngabenang pewaris saha upacara-upacara selanturnyane;
(c). Nawuring hutang-hutang pewaris (Awig-Awig Sengkidu, 2007: 68, 69).

The meaning of free is:

The heirs' obligations are:

a. receive and manage the inheritance of the heirs, such as maintaining the worship studio and Pura dadya and performing the obligations properly;

b. perform the beneficiary ceremony and subsequent ceremonies;
c. pay the heirs' debts.

Similarly, what is contained in the Manual/Technical Preparation of Awig-Awig and Traditional Village Decrees published by the Bureau of Law and Human Rights of the Regional Secretariat of Bali Province in 2002, stipulates that:

Swadharmaning ahli waris patut:

(a). Nerima saha nguwasayang tetamian pahan kaluhurannya, mekadi ngerempon sanggah/merajan, pura saha pangupacarannya miwah ayah-ayahan pewaris;
(b). Ngabenang pewaris saha nglanturang upacara-upacara pitra yadnya;
(c). Naurin utang-utang pewaris manut pangelokika.

The meaning of free is:

Responsibilities of the heirs:

a. receive and manage their ancestral heritage, such as maintaining a worship studio, existing temples, and all their series of ceremonies or the obligations of the heirs;
b. give the heir and carry out all the *pitra yadnya* ceremonies;
c. pay the debts of the testator as appropriate.

Based on the sources and quotations above, it can be said that the responsibility of the heirs is not tiny and quite heavy because it includes many obligations ranging from maintaining the holy place with all its ceremonies, including mandatory work, performing ceremonies, and performing ritual ceremonies to worshiping ancestors and paying off all debts.

Descendants who have carried out *swadharma* properly have the right (*swadikara*) to the inheritance left by their parents or ancestors; this is called an heir. Thus, according to Balinese customary law, not every descendant (child born) can be called an heir. The heirs are only descendants (children) who carry out *swadharma* as Hindus properly towards their families and communities in traditional villages. Descendants who do not allow carrying out their responsibilities cannot be included as heirs, and their inheritance rights are void (Windia, 2019: 121)

3.2 The Development of the Position of Balinese Women in Inheritance

Since the past, the Balinese Hindu community has implemented an inheritance system that adheres to the limestone principle. This is inseparable from the family system of Balinese society, which adheres to the lineage of the male (father) side. This principle determines that the heirs are male descendants, while the women are not taken into account and are excluded as heirs because their marriage leaves their parents. This situation lasted until 1900 because since that year, the colonial government, especially the Residents of Bali and Lombok, issued a regulation (*paswara*) on October 13, 1900, concerning "Inheritance Law Applicable to Balinese Hindu Residents from Buleleng Regency," known as *Paswara* 1900.

After *Paswara* 1900, there was a change in the field of inheritance in the Hindu community in Bali, even though it only applied to Balinese Hindu residents from Buleleng Regency (North Bali). In 1915 *Paswara* 1900 was also applied to residents of South Bali. So the inheritance of the Balinese Hindu community before 1900 was only based on habits because there were no regulations governing inheritance that could be used as guidelines by the community (Sukerti, 2020: 204). Therefore, 1900 can be used as an essential milestone in inheritance for the Balinese Hindu community. From then on, the issue of inheritance began to appear transparent in writing.

Based on the provisions of Article 3 paragraph (2) *Paswara* 1900, it means that since the existence of this regulation, Balinese Hindu women have normatively started to be counted as heirs with half the share of men. Even though there are such regulations, what is practiced by the community is still the same as before. Namely, women still do not get a share of the inheritance. This is most likely the Balinese indigenous people are still accustomed to applying the *kapurusa* principle (only men are given inheritance because they carry responsibilities in the family and society).

Based on the quote from the *awig-awig* provision above, it is evident that according to Balinese customary law, women are not determined as parties who have the right to the inheritance of their parents unless the woman is located as a *sentana rajeg* (given legal status so that her position is equal to that of a son).

Along with the development of the times, there has been a new milestone in Balinese indigenous peoples, especially against Balinese Hindu women in the field of inheritance, namely the holding of the *Pesamuhan Agung* (a large meeting of a kind of congress), which was attended by all 1493 traditional villages in Bali which are the *Majelis Alit Desa Pakraman*. The Agung III, MUDP Bali congregation, resulted in a breakthrough, namely trying to update the Balinese customary law of inheritance, especially for Balinese Hindu women whose customary law system has been marginalized for years.

The Great *Pesamuhan Agung* stipulates the Decision of the Bali Provincial *Pakraman* Village Main Assembly (MUDP) Number: 1/Kep./Psm-3/MDP Bali//X/2010 Dated October 15, 2010, concerning the Great *Pesamuhan* III MUDP Bali results. An essential point of the Bali MUDP Decision, especially in the field of customary law, is the position of Balinese women in the family and inheritance, as stated in point 4 of the decision, which determines as follows: "Biological children (boys or girls) and adopted children (boys or girls) are entitled to the assets of their parents, after being deducted by one third as the *duwe Tengah* (joint property) controlled by children who

are *nguwubang* (continuing the responsibilities of their parents). In point 5, it is determined: "Children with the status of lime are entitled to one part of the inheritance, while those who are *predana* / live in limited *ninggal kedaton* are entitled to part or half of the part of the inheritance received by the purusa.

Based on the Bali MUDP decision above, it can be interpreted that normatively Balinese women are no longer marginalized because it has been determined to get half of the men's share, provided that the person concerned is still Hindu. If the Balinese woman changes her belief from Hinduism, she will be classified as a person who has left the full *ninggal Kedaton* so that her rights as heirs are nullified.

Although there has been a decision by MUDP Bali that places Balinese Hindu women as those who have rights to their parents' inheritance, it is also not easy in practice. Indigenous Balinese people are not easy to change the mindset that has been attached for years. In addition, Balinese Hindu women have a perspective that does not like to demand rights without carrying out the obligations and responsibilities. Based on the research results on several traditional village heads, the main reason for the non-optimal implementation of the MUDP Decision in the community is that the customary village *awig-awig* still regulates the distribution of inheritance based on *limeusa*, and the decision has not been socialized to the community.

4. CONCLUSION

The position of women according to traditional Balinese inheritance law has developed according to the situation in society. Initially, based on mere habit, Balinese women were not taken into account in terms of inheritance. After the *Paswara* 1900, Balinese Hindu women were determined as the party who received the inheritance, only in practice it did not take place according to the norm because the principles developed in people's lives as contained in the *awig-awig* were still the *limeusa* principle so that women who were *predana* did not get an inheritance. Furthermore, in the 2010 era, there was a breakthrough made by the Bali *Pakraman* Village Main Council (MUDP) through its Decree Number: 1/Kep./Psm-3/MDP.Bali/X/2010 establishes the status of Balinese Hindu women as parties who have rights to *Gunakaya* property. His parents as limited heirs with half of the male share. In practice, it is also almost the same as in previous times. There are still obstacles because, in each traditional village, there is *awig-awig* which regulates inheritance based on *kapurusa* principle.

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Modes of Bank Fund Transfer Crime in Digital Transactions

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ABSTRACT
Fund transfer is a form of banking service the public uses in carrying out their financial transactions. The digitalization era demands the role of bank institutions to improve their services through various forms, including e-banking, phone banking, Automated Teller Machine (ATM), transfers through real-time gross settlement systems, and others. The rise of banking crimes that occur today is caused by financial traffic that occurs very quickly through bank institutions with rapid mobility accompanied by high technology, which impacts financial traffic flow to be disguised so that it is difficult to trace it. Bank institutions are inseparable from the financial system, as a system of financial markets and a system of financial intermediaries. Along with the ease of financial transactions through the transfer of funds, many modes of crime emerged in the banking world. The modes of crime in banking are more focused on the phenomenon of victimless crimes with elements of ***mens rea***. Legal norms regarding fund transfer transactions have been regulated in Law Number 3 of 2011 concerning Funds Transfer and Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Funds Transfer. This research is normative juridical with a conceptual approach and statute approach. The research found that the mode of crime of digitalization requires ideal law enforcement in handling it so that trust in banks can be maintained**.**

Keywords: *Banking Crime, Financial Digitization, Fund Transfer*.

1. INTRODUCTION

Banking activities that are very vulnerable to crime have forced banks to continue to apply one of the main principles in banking, namely the prudential banking principles. Current bank developments tend to ignore prudential banking principles to achieve a high target market portfolio for profit. The target achieved is to gain the largest possible market share by eliminating fair business competition. The rise of banking crimes today is caused by financial traffic that occurs very quickly through bank institutions with rapid mobility, accompanied by high technology so that the flow of financial traffic can be disguised which is difficult to trace.

Even though law enforcement is finally able to uncover crimes in the banking sector, many bank institutions are still made as a means of crime. Bank institutions are inseparable from the financial system. According to frederic s. mishkin, the financial system is divided into two: the system of financial markets and the system of financial intermediaries [1]. the financial system can be defined as the collection of institutions, markets, laws, regulations, and techniques by which securities are traded, interest rates are set, and financial services are produced and offered to all parts of the world [2]. One of the banking crimes in the digitalization era is fund transfer transactions. On the one hand, this transaction facilitates business acceleration; on the other hand, it becomes a mode of crime in the financial sector.

Banking crimes involving banking individuals have resulted in a deteriorating good reputation, both in the national and international context. Even more challenging, criminal acts using banking systems and facilities allow criminal acts of inter-jurisdiction to be committed across countries, making it difficult for law enforcers to take action.

Established on the elaboration above, in this paper, the authors examine the problems related to the parties involved in the crime mode of transferring funds in digitalization transactions through banks and the legal arrangements for fund transfers, as a mode of digitalization crimes.

2. METHOD

According to Soerjono Soekanto, there are two types of legal research: normative legal research and empirical or sociological legal research [3]. This research type is normative legal research, a legal research method based

on secondary data [4]. Some mention normative legal research as research that focuses on analyzing legal norms and placing legal norms as the object of research [5]. In this study, the researcher uses a normative legal research method by examining the norms governing fund transfer transactions. The transfer of funds has been regulated in Law Number 3 of 2011 concerning Funds Transfer and Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Funds Transfer. The approach used in the study comprises the statute approach and the analytical and conceptual approach.

3. RESULT AND DISCUSSION

3.1 Fund Transfer in Banking Activities

The transfer is a bank service activity to transfer a certain amount of funds by an order from the trustee intended to benefit a person appointed as a transfer recipient. Bank Indonesia facilitates transfer transactions through two forms of activity, namely Traffic Giro (TG) and Real-Time Gross Settlement (RTGS). Traffic Giro (TG) is an interbank transfer service using a clearing facility. Transfer documents are compiled together with other documents to be exchanged between banks at Bank Indonesia through the clearing process. The clearing is a means of calculating interbank notes carried out by the administering bank to expand and expedite demand deposit traffic. Calculating interbank rights and obligations are carried out by Bank Indonesia or a bank appointed in a particular area.

Meanwhile, interbank clearing is the exchange of notes (cheques, bilyet giro, credit notes, and debit notes) between banks whose calculation results are completed at a particular time. The clearing is regulated by Bank Indonesia, both regarding the time and place of implementation. Meanwhile, Clearing participants are commercial banks within the clearing area.

Real-Time Gross Settlement (RTGS) refers to interbank transfer services in real-time; hence, the money transferred will be immediately received in the destination account. This kind of transfer system appears as an electronic fund transfer system in which the settlement of each transaction is carried out in real-time. Since being operated by Bank Indonesia on November 17, 2000, BI-RTGS has played an essential role in processing payment transaction activities, particularly for processing payment transactions that include the High-Value Payment System (HVPS), namely transactions of IDR 500 million and above and are urgent. HPVS transactions currently account for 90% of all payment transactions in Indonesia, so that they can be categorized as a national payment system that has a significant role (Systemically Important Payment System).

In addition to RTGS and clearing previously described, banks also provide fund transfer services that can be performed via internet banking, phone banking, Automated Teller machines (ATM). However, in the service using i-banking or ATM, daily transactions are limited. Judging from the condition, it can be said that the fund transfer service has provided many conveniences for customers in transacting. However, it is still unfortunate because currently, the transfer of funds is one of the banking activities used as a means of crime mode involving related parties and bank institutions. It has an impact on substantial losses for the economy of a country. Therefore, understanding the transfer of funds, legal loopholes in the transfer, and the mode of transfer crime of funds are parts of banking law that must be reviewed to provide knowledge and understanding for all stakeholders. This is done to prevent violations that can harm many parties, banks, financial institutions, and customers.

3.2 Parties Involved in Banking Crime Mode: The Evolution of White-Collar Crime

There are two terms often used in criminal acts committed or occurring in the banking world. The terminology refers to "Banking Crime" and "Criminal Acts in the Banking Sector." Banking crime implies that the crime is solely committed by the bank or an insider within the bank itself; meanwhile, criminal acts in the banking sector are a more neutral and broader term because they can include crimes committed by people outside and inside the bank. The term "crime in the banking sector" is intended to accommodate all types of unlawful acts related to activities in carrying out bank business. There is no proper understanding of criminal acts in the banking sector. There is a popular definition that banking crimes transform criminal acts that make the bank a means (crimes through the bank) and the target of the crime (crimes against the bank) [6].

The dimensions of banking crime can be in the form of a person's crime against a bank, a bank's crime against another bank, or a bank's crime against an individual; thus, banks can be both victims and perpetrators. In terms of the spatial dimension, banking crimes are not limited to a particular space; they may happen across territorial boundaries. Likewise, banking crimes may occur instantly and may also last for a long time in terms of the dimensions of form. In terms of the scope of occurrence, banking crimes may occur in the entire scope of life in the banking world or are closely related to banking activities and, more broadly, including other financial institutions. Meanwhile, the provisions that may be violated, both written and unwritten, also include customary norms in the banking sector, but criminal sanctions must still be regulated for all of that. In terms of perpetrators, banking crimes may potentially be committed by individuals or legal entities (corporations).

Mochammad Anwar, in his book entitled "Crime in the Banking Sector," also distinguishes between the definition of a banking crime and that of criminal acts in the banking sector. The difference is based on the regulation's treatment of actions that have violated the law related to running the bank's business. Furthermore, it is stated that banking crimes consist of acts that violate the provisions of Law Number 7 of 1992 concerning

Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. In this law, it is determined that criminal acts in the banking sector consist of actions related to activities in carrying out the main business of the bank for which criminal regulations can be treated outside of Law Number 7 of 1992 concerning Banking in conjunction with the Act Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, such as the Criminal Code, Special Criminal Law Regulations, Law Number 11 of the National Program for Formulation of Standards (PNPS) of 1963 and Law Number 32 of 1964 concerning Foreign Exchange Traffic.

From the definition above, it can be concluded that there are two different concepts, namely:

Criminal acts of banking refer to any act that violates the provisions as stipulated in Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

Criminal acts in the banking sector refer to any act that violates the provisions as stipulated in Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the Criminal Code and Special Criminal Law Regulations, such as Law Number 3 of 1971 concerning the Criminal Acts of Corruption, Law Number 11 of the Program for Formulation of Standards of 1963 concerning Subversion and Law Number 7 of 1995 concerning Crimes Economic Crime.

About banking crimes, it can be said the crimes referred to in this case can be classified into two types, mala in se and mala prohibita. Mala in se refers to crimes traditionally considered evil and immoral or also known as "acts against conscience" – for example, murder, rape, and physical assault of another person [7]. Having a distinguished meaning, mala prohibita refers to an act which is primarily considered a crime because it is prohibited by positive la Technological developments provide benefits for many people but not only a few of these people abuse the existing technology. These technologies are used as tools or means to create new modes of committing crimes, for example, crimes using credit cards [7].

Mala prohibita offenses (malum prohibitum - a singular term referring to a particular type of crime) refers to an act that is considered "wrongful" simply because there is a law against it. If no provision prohibits, then mala prohibita offenses cannot be said to be a wrongful act. Mala prohibita offenses are often classified as "victimless crimes," for example, prostitution, drug abuse, and gambling which are acts that make it challenging to identify who the real victim is [7]. When viewed thoroughly, mala prohibita refers to a postulate "nullum dellictum nulla poena sine praevia lege poenali" - there is no criminal act or no crime without a previously governing criminal law. Technological developments benefit many people, but not only a few of these people abuse the existing technology.

These technologies are used as tools or means to create new modes of committing crimes, for example, crimes using credit cards [8]. According to Jeffrey Robinson in his book entitled "The Laundryman," criminals in the Al Capone era around Chicago disguised their money from gambling, prostitution, extortion, and illicit liquor sales, by opening laundry services. The term money laundering itself began to be used when the Watergate scandal occurred in 1973. The use of the term in new courts occurred in 1982 in America, which then spread throughout the world. Willem Bonger was the first to develop a theory of crime regarding Crime in the Streets and Crime in the Suits. The concept became the initial reference for white-collar crime promoted by Sutherland [9].

Learning about white-collar crime will lead one to the previously mentioned above, namely that crime is no longer always interpreted as an act committed by people with a lower-middle-class economy or low education. In the concept of white-collar crime, the crime refers to criminal acts committed by people with a well-established economy and high socio-economic status [10].

In the authors' opinion, it can be said that most of the parties involved in the mode of transfer of funds here are people with a well-established economy and high social status, and it is impossible for bank insiders to do so. Criminal acts in banking have occurred in the past and are still common, especially in Indonesia.

3.3 Transfer of Funds as a Mode of Digital Crime

The criminal mode of transferring funds initially began with the traditional mode by sending or transferring money through an informal channel mechanism that was carried out based on trust. However, this mode is starting to become obsolete considering the development of more up-to-date funds methods. Moreover, the traditional transfer mode is more straightforward for law enforcement to track. Then, the mode of transferring money or funds that use technological advances takes place, namely the mode of transfer of funds or what is known as cuckoo smurfing or it can be said that the crime of transferring funds is currently only an ordinary transfer crime using the latest technological tools (old crimes, new tools). The mode is an attempt to obscure the origin of the source of money by sending an amount of money from the proceeds of crime or criminal acts such as corruption, drug sales, and other criminal acts through the accounts of third parties who do not realize that the funds they receive are "proceeded of crime."

On September 15, 2000, the United Nations (UN) adopted a convention relating to the UN Convention against Transnational. Organized Crime. This convention

is followed by most members of the United Nations, including Indonesia. Indonesia signed this convention on December 12, 2000, and ratified it on April 20, 2009 [11]. With the ratification of the convention, Indonesia is obliged to prepare legislation to implement the contents of the convention. Indonesia should be well-prepared to face every threat of transnational organized crime and international crimes that threaten social, economic, political, security, and world peace that may occur as classified in the convention.

Increasingly, the problem of crime in the banking world involves a process in the flow of funds carried out using a fund transfer process. The government specifically issued policies related to fund transfer in the form of Law Number 3 of 2011 concerning Funds Transfer in CHAPTER XII in Articles 79 to 88, which regulates criminal provisions against people or corporations who abuse these fund transfer activities. In addition, regulations regarding fund transfers are further contained in Bank Indonesia Regulation Number: 14/23/PBI/2012 concerning Funds Transfer.

The cases of the crime of digitalized funds transfer are explained as follows:

There were skimming cases that occurred, especially in Bali. In this case, the Directorate of Special Criminal Investigation (Ditreskrimsus) of Bali Regional Police arrested 45 perpetrators of skimming crimes on the Island of the Gods. Of the 45 cases, 22 cases were successfully uncovered from 2018 to 2021. Of these, 2 cases occurred in 2018, 5 in 2019, 13 in 2020, and 2 in 2021. The perpetrators of these crimes consisted of 19 Bulgaria citizens, 12 Romanian citizens, 2 Polish citizens, 2 Filipino citizens, 1 Ukrainian citizen, 1 Turkish citizen, and 8 Indonesian citizens [12].

There was a criminal act of fraud and or embezzlement in office and or money laundering. The verdict against EA, whose real name is Ronia Ismawati Nur Azizah (FS wife, the defendant). The defendant EA was found guilty by the South Jakarta District Court on April 28, 2015, with three months in prison minus the prison term. The Panel of Judges considered that EA was legally proven to have committed the Criminal Act of Money Laundering by accepting a transfer of a sum of money from her husband. According to the Public Prosecutor, at least from March 1, 2013, to September 16, 2013, there were 28 book-entries from FS's account to EA's with approximately IDR 1 billion [13].

The case of money laundering and identity fraud committed by AG (husband of MD, the defendant in the case of burglary of Citibank customer funds amounting to IDR 40 billion). The perpetrator was charged with Article 6 paragraph (1) letters a, b, d, f of Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Criminal Act of Money Laundering jo Article 65 paragraph (1) of Criminal Code. In the second indictment, the perpetrator proved to have violated Article 5 paragraph (1) of Money Laundering Law jo Article 65 paragraph (1) of the Criminal Code so that the perpetrator was sentenced to four years in prison and a fine of IDR 350 million by the South Jakarta District Court Judge [14].

From the several cases mentioned above, the authors consider that the consideration of the issuance of the government policy is due to fund transfer activities in Indonesia, which have shown an increase, both in terms of the number of transactions, the nominal value of transactions, and the type of media used. Along with the increase in transactions, some problems will occur in the development of fund transfer media. Therefore, there is a need for a legal arrangement that guarantees security and smoothness in fund transfer transactions and provides certainty for parties involved in organizing fund transfer activities.

4. CONCLUSION

From the research findings elaborated, a conclusion can be drawn. The parties involved in the crime mode of transferring funds in digitalized transactions are a group of people or individuals who can be said to have an established economy and high social status. In addition, there is a possibility that the internal bank itself committed the crime. In this case, crimes in banking have occurred in the past and are still happening frequently. Regarding the transfer of funds as a digital crime mode, the government specifically issued policies related to fund transfers in Law Number 3 of 2011 concerning Funds Transfer and is also regulated in Bank Indonesia Regulation Number 14/23/PBI/2012 concerning Funds Transfer. The legislation related to fund transfers is expected to minimize the occurrence of bank fund transfer crimes in digitalized transactions and strengthen network security. Hence, it is not easily misused by parties related to banking activities.

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The Role of Indigenous Communities and Entrepreneurs in Developing Village with an Ecological Insight in Bali by Implementing CSR

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ABSTRACT
The object of this research refers to the temples in the indigenous community at the research location, as well as the potential that exists and allows it to be collected by indigenous peoples to repair existing damage, maintain and preserve and finance ceremonies that must be carried out routinely in each temple in the community Balinese customs. This research is preliminary research that will continue to be developed according to existing needs. Starting in Badung Regency, research will then be carried out in all districts and cities in Bali to achieve the stated research objectives. The research method used is empirical through statutory social approaches. Data collection was carried out through interviews with stakeholders, namely rulers, entrepreneurs, and community leaders. The collected data were analyzed using induction and deduction analysis, and the analysis results were presented descriptively. The Local Government of Badung Regency has made a Regional Regulation on Corporate Social Responsibility. The Badung Regent has drafted a Badung Regent Regulation on the Implementation regarding Corporate Social Responsibility. The Regent of Badung also provides direct social assistance to indigenous people to repair damage in the temple and finance ceremonies that must be held regularly every six months or twice a year.

Keywords: *CSR, Ecotourism, Indigenous people, Village development.*

1. INTRODUCTION

One or more Banjar supports villages in Bali. Each Banjar is supported by members of the Banjar who are indigenous people. The implementation of the daily life of indigenous peoples is colored by habits originating from Hinduism. Tourism in Bali lives and develops by utilizing the habits that live of predominantly Hindu people. Tourism in Bali is known as cultural tourism because it sells culture that lives and develops in daily lives of Balinese people. However, the foreign exchange generated from tourism is not directly enjoyed by indigenous peoples in Bali. Although so much foreign exchange is obtained from the tourism sector in Bali, and the Indigenous Peoples do not directly enjoy the foreign exchange, the indigenous peoples in Bali continue to carry out their traditional life in their daily life without caring about the results obtained by Tourism Entrepreneurs and Regional Authorities from their activities. Indigenous people's daily activities are paid for by tourists, both domestic tourists, and foreign tourists.

Every village in Bali has the duty and obligation to maintain the ceremony's sustainability and sustainability that must be carried out in every temple in the village. Each village in Bali is responsible for carrying out a minimum religious ceremony for the Pura Kahyangan Desa or Pura Kahyangan Tiga, which consists of Pura Desa, Pura Puseh, and Pura Dalem. Even in several villages in Bali, there are other temples besides the Kahyangan Desa Temple or the Kahyangan Tiga Temple, such as the Sad Kahyangan Temple and the Kahyangan Jagat Temple. The Regional Government of Badung Regency has made a Regional Regulation on Corporate Social Responsibility. The Badung Regent also provides direct social assistance to indigenous peoples to repair the damage in the temple and finance ceremonies that must be carried out regularly every six months or twice a year. From the background of the problem above, there are two legal issues are: How does the Government organize the implementation of Corporate Social Responsibility in Badung, and What is the role of Indigenous Peoples in encouraging the implementation of corporate social responsibility in Badung.

2. RESULT AND DISCUSSION

2.1 The Regulate of Corporate Social Responsibility in Badung Regency

2.1.1 Law Number 40 in 2007 regarding Limited Liability Companies

Corporate Social Responsibility is regulated in Article 1 point 3: "Social and Environmental Responsibility is the company's commitment to participate in the development of sustainable economic to increase the quality of life and the environment that is beneficial, both for the company itself, the local community, and society in general." CHAPTER V Environmental Social Responsibility Article 74 paragraph (1), (2), (3), and (4), as follows: (1) The Limited Liability Company Law states that companies that conduct their business activities in the field of and/or related to all-natural resources are obliged to conduct social and environmental responsibilities. (2) The social and environmental responsibilities, in the paragraph (1), is the Company's obligation, which is budgeted and calculated as the expense of company, the implementation of which is done due to propriety and fairness. (3) The Limited Liability Company does not carry out the obligations as referred to in paragraph (1) is subject to the sanctions by the provisions of the legislation. (4) Further provisions regarding social and environmental responsibilities are regulated by government regulations. Law Number 40 in 2007 with regard to Limited Liability Companies explains that paragraph (1) of Article 74 contains the intent: This provision aims to continue to create the harmonious, balanced, and appropriate Company relationship with the environment, values, norms, and culture of the local community. What is meant by "Companies that carry out their business activities in the field of natural resources" are Companies whose business activities manage and utilize natural resources. What is meant by "Companies that run their business activities related to natural resources" are Companies that do not manage and do not utilize natural resources but whose business activities impact the function of natural resource capabilities.

2.1.2 Government Regulation Number 47 in 2012 of Social and Environmental Responsibilities on Restricted Liability Companies

As has been regulated in the Law Number 40 in 2007 concerning Restricted Liability Companies, furthermore regarding SER/TJSL, it is regulated in Government Regulation Number 47 in 2012 concerning Social and Environmental Responsibility of Restricted Liability Companies where this regulation is specifically on CSR from companies, as regulated in the regulations of this government, among others: Article 2 Every company as a legal subject owns social and also environmental responsibilities. Article 3 (1) Social and environmental responsibility in the Article 2 become obligation for the Company which runs its business activities in the field of and/or related to natural resources based on the Law. (2) The obligations in paragraph (1) are conducted both inside and outside. The Board of Directors carries out article 4 (1) Social and environmental responsibility based on the Company's annual work plan after getting approval from the Board of Commissioners or GMS/RUPS by the Company's articles of the association unless otherwise stipulated in the laws and regulations. (2) The Company's annual work plan, as referred to in paragraph (1), contains the activity plan and budget required to implement social and environmental responsibility. Article 5 (1) Companies that runs business activities related to natural resources, in stipulating activity plans and budgets as stated in Article 4 paragraph (2) must pay attention to propriety. (2) The realization of the budget for implementing social and environmental responsibility carried out by the Company as referred to in paragraph (1) is calculated as the Company's expense.

2.1.3 Badung Regency Regulation Number 6 in 2013 with regard to Corporate Social Responsibility

In carrying out the contribution to the social sustainability of the local community by a Limited Liability Company engaged in the tourism sector as described in the Badung Regency Regulation Number 6 in 2013 on Corporate Social Responsibility, namely as stipulated in the Article 1 paragraph 5: "Corporate Social Responsibility, hereinafter abbreviated as CSR, is the obligation of every company to finance and/or facilitate Regional Government Programs related to improving the quality of community life in the social, economic and natural environment based on the principles of equality and justice." In implementing CSR as stipulated in the Regional Regulation of Badung Regency number 6 in 2013 concerning Corporate Social Responsibility, the Company must a. Prepare for implementing CSR activities by the principles of social responsibility in the business world with the local government policies and also applicable laws. b. Cultivate, establish and develop a network system of cooperation and partnership with other parties, and carry out studies, monitoring, and evaluation of CSR implementation by always paying attention to the interests of companies, local governments, the community, and environmental sustainability. Cultivate, establish and develop a network system of cooperation and partnership with other parties, and carry out studies, monitoring, and evaluation of CSR implementation by focusing on the interests of companies, local governments, the community, and environmental sustainability as well. c. Establish a commitment that CSR is an integral part of company regulations' management policies and company development programs.

2.1.4 Badung Regent Regulation Number 39 in 2018 on Facilities for the Implementation of Corporate Social and Environmental Responsibility in Badung

This discusses the mechanisms, procedures, and procedures for the implementation and reporting of the

CSR program as enacted in Regional Regulation Number 6 of 2013 concerning the Implementation of Corporate Social Responsibility, to realize the synchronization and synergy of the implementation of the CSR program with the work program of the Regional Government. Purpose and Objectives Article 2 of this Regent's Regulation is intended to provide direction and guidance in the CSR program in the regions, including 1. poverty alleviation; 2. socio-cultural problems; 3. use of space and the environment; and 4. infrastructure development. The Regional Government coordinates the mechanism for implementing CSR in the regions, wherein Article 5 the Regent appoints the Team for implementing the CSR Forum in charge of synergizing and integrating the implementation of CSR based on the priority scale of Regional Development, as explained below: Article 5 (1) The mechanism for implementing CSR shall regulate the procedures for implementing CSR, Evaluation, and Reporting. (2) The implementation of CSR in the Regions is coordinated by the Regional Government. (3) In the implementation of coordination as referred to in paragraph (1), the Regent shall appoint an Implementing Team for the CSR Forum in charge of synergizing and integrating CSR implementation based on the priority scale of Regional Development to the CSR forum in the regions. (4) For the smooth implementation of the duties of the CSR Forum Implementation Team as referred to in paragraph (2), the CSR Forum Implementation Team is assisted by the Secretariat of the CSR Forum Implementation Team, which is based in the Development Section of the Badung Regency Regional Secretariat.

2.2 The Role of Indigenous Peoples in Supporting the Enforcement of Corporate Social Responsibility in Badung

2.2.1 Role of Indigenous Law Communities in Sustainable Environmental Management

Making policies and laws and regulations that reflect justice, democracy, and sustainable use of natural resources, by integrating at least 5 (five) Principles as follows:[i] a) Natural resource management must be more humane and in favor of environmental conservation and oriented to provide people's welfare and prosperity as well as ecological sustainability; b) Natural resources must be used and allocated equitably and democratically for present and future generations in a sustainable manner; c) Natural resource management must be able to create community cohesiveness in various layers and groups and be able to protect and maintain the existence of traditions and culture as well as legal instruments of customary law communities as living law institutions in local communities; d) Natural resource management must be carried out with an ecological system approach (ecosystem) to prevent exploitative, ego-sectoral, ego-regional management practices, do not integrate the balance of economic interests, ecological conservation, and preserve the social and cultural institutions of the community. Customary Law in the region; and (e) Natural resource management policies must be locally specific, adapted to local communities' ecosystem conditions and socio-cultural systems. Thus, the five principles above as a unit mean that the management of natural resources and the environment with Indonesian characteristics reflects the recognition and protection of the environmental wisdom of the Indonesian people by prioritizing conservation and sustainable management performance to realize the mandate of the people's welfare and prosperity in a just and fair manner. Sustainable development based on cultural pluralism and living law in the nation and state within the Unitary State of the Republic of Indonesia. Thus, the essence of the principles referred to above is as follows:[ii] 1. Natural resource management policies are not oriented to exploitation (use oriented) but prioritize the interests of conservation and sustainability of the environment and natural resources (sustainable natural environment and resources management); 2. Natural resource management is decentralized, prioritizing a holistic and comprehensive-integral approach because the environment is a living space and living system, an ecological system, and a source of human life; 3. Providing space for public participation and transparency in policy and law-making by providing genuine protection and recognition for the existence and rights of indigenous peoples over control and access to natural resources as a source of life, and Providing living space and recognition and protection of customary law institutions that reflect the community's ecological wisdom which has proven to be more effective in conservation performance and maintaining environmental capabilities and sustainability.

2.2.2 The Role of Traditional Villages in Water Management as a Local Potential based on Ecotourism

It is essential to explore community empowerment based on traditional villages by remembering that most natural resources such as tukad water sources and water sources developed as new tourist destinations are in villages within the customary village environment. All districts/cities in Bali are actively encouraging villages to empower water resources as a source of village income and local community survival that does not depend on foreign tourists.[[iii]] Through innovation on water resources in the form of exchanged water and water sources that are combined with cultural resources nicely, the appearance of local potential with its characteristics will inevitably be able to be highly competitive to be used as a source of strength to achieve mutual prosperity.[[iv]] The management of exchanged water and water sources by indigenous peoples in a container called an ancestral village is conservation in the sense of restoring the function of exchanged water as a source of life and at the same time as an economical source to lead to the mission of preserving the function and protecting it sustainably. The packaging is still developing new tourism destinations with their respective economics according to their location by coexisting religious and secular communal aspects, state law and customary Law,

between Traditional Villages and Service Villages and Local Governments. The success of conservation through education raises awareness of the importance of restoring the function of exchanged water and water sources that can be utilized for welfare by empowering local communities, which impact traditional villages. To strengthen traditional villages through the creation of new tourism destinations, public awareness is needed of the importance of innovation in exploring local potentials and conserving exchange water and water sources, so that the educational aspect becomes the most critical part to support environmental conservation, either to protect water sources or the riverbank park and integrated with other activities such as culinary, art market, jogging track, water attractions.

2.2.3 Community Strengthening and Empowerment in Source-based Waste Management in Kedonganan Traditional Village

The Kedonganan Traditional Village has an area of 1.91 Km2. The number of Banjar Adat is 6. The population consists of 1,852 families, 7,034 people, natives, 1,228 families, 4,600 people, and immigrants and immigrants, 624 families, 2,434 people.[[v]] It has a coastline of 1020 meters, with west coast activities as a place for fishing activities and café businesses and the potential for developing mangrove tourism on the east coast of the Kedonganan traditional village. Three important points of community empowerment in environmental management in the Kedonganan Traditional Village are the Seafood Café Area Arrangement, Ecomangrove Development, and source-based waste management.[[vi]] All three are regulated in customary rules in the traditional village of Kedonganan. Starting in August 2020, the 2022 clean Kedonganan was declared to realize the program in collaboration with Donors (CSR Pertamina, Rotary Club, Village Enterprises).

3. CONCLUSION

CSR regulation in Bali, especially in Badung Regency, is regulated by Law no. 40 of 2007, then further regulated by Government Regulation no. 47 of 2012. In Badung, Regency CSR is regulated by Regional Regulation Number 6 of 2013 and regulated by Badung Regent Regulation No. 39 of 2018. The role of the Indigenous Law Community in the Implementation of Corporate Social Responsibility in the Kedonganan Traditional Village, Badung Regency, Bali is by regulating community participation in customary law regulations and collaboration with donors in the form of Pertamina CSR, Rotary Club, and Village Enterprises.

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Law and Land for Investment Tourism at Bali

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ABSTRACT
The Indonesian economy is under significant pressure due to the coronavirus disease 2019 pandemic or Covid-19. Likewise, in the Province of Bali, efforts are being made to restore social and economic conditions to stop the spread of Covid-19, minimize casualties, and suppress the increase in transmission rates through implementing the health protocol system. On the one hand, the negative impact is about the singularity in Bali, which is not only about the spread of the coronavirus. On the other hand, it is also about the economic condition of the Balinese people after the pandemic. The economic sector collapsed and brought society to the brink of recession. Talking about tourism in Bali is talking about all areas in Bali. The increasing need for space, without any regulation, will harm the ecosystem. The increase in population will cause an increase in the need for spaces. Hence, changes to existing spaces occur, from nature to agricultural areas, buildings, settlements, and places of business. Therefore, for a safe, comfortable, productive, and sustainable spatial arrangement to be realized in Bali, the Regional Government necessarily needs to formulate and implement policies and technical standardization in spatial planning by statutory regulations. When the Job Creation Act is issued, it will be one of the government's strategies to deal with variants of overlapping problems and the complexity of legal land in relying on spatial planning. Based on *Bank Indonesia Perwakilan Bali* data, domestic investment in the Island of the Gods during 2020 reached IDR 5,432.7 billion for 2,513 projects. In the same period, foreign investment (FI) was valued at US $ 293.3 million for 3,967 projects. FI's portion to the hotel and restaurant sectors reached 52 percent, with a value of US $ 152.516 million or IDR. 2.19 trillion. The portion of domestic investment (DI) in the hotel and restaurant sectors is 45 percent or IDR. 2,444.7 billion. In other words, in terms of value, investment in the hotel and restaurant sector in 2020 is indeed dominated by foreign investment. Almost 80 percent of investment in the Island of the Gods' tourism sector is carried out by foreign investors. Government authorities that rely on the principle of legality in the field of government (wetsmatigheid van bestuur) aim to provide legal protection for the public from acts of abuse of government authority that may occur. The authority to use land delegated by the central government has not been carried out optimally by local governments due to the availability of norms for the Agrarian Law and its implementing regulations that are out of sync. As a result, regarding the issue of legislation related to the sector, there are many overlapping regulations, one of which is the discussion of the phrasal culture contained in Article 1 Paragraph 1 of Tourism Regulation No. 19. There is no explicit regulation regarding the culture and economic resources of tourism.

Keywords: *Law, Land, and Investment in Tourism.*

1. INTRODUCTION

Currently, the Indonesian economy is under tremendous pressure due to the coronavirus disease 2019 pandemic or the so-called Covid-19. Likewise, in the Province of Bali, efforts are being made to restore social and economic conditions to stop the spread of Covid-19, minimize casualties, and suppress the increase in transmission rates through implementing the health protocol system. It seems undeniable that tourism has been a strategic sector that has a crucial role in the economy of the Province of Bali. Undoubtedly, the leading sector is the sector most hit by the Covid-19 pandemic. During the Covid-19 pandemic, tourism in Bali has stalled due to the closure of tourist attractions, flight restrictions, and advice to work from home.

According to the monthly report of Data Sosial Ekonomi Provinsi Bali in April 2021, the Bali economy is awful. Previously, in 2020, Bali's economy was also recorded to grow negatively (contracted) to -9.31 percent. The disruption of tourism activities in Bali during 2020 was also reflected in the significant negative growth in the categories of business fields closely related to tourism, such as Category H (Transportation and Warehousing) and Category I (Accommodation and Food and Beverage Provision). This present time, the author raises an issue related to the investment phenomenon in Bali, which is in line with the policy with the title "Law and Land for Investment in Tourism in

Bali". It can be argued that the existence of customary land law is strongly influenced by the stipulation of state policies in investment at the level of basic norms, national and international regulations, and including spatial planning arrangement.

1.1 Understanding of Balinese People of the Concept of Space

Regulation of spatial planning transforms the effort of the government, local government, and the community to form a legal basis regarding spatial planning. Regulation on spatial planning is drawn up and determined by their respective authorities by the government, provincial government, and district or city governments. In the author's point of view, one of the social changes due to the use of space in the province of Bali is caused by changes in the laws governing it. In a country such as Indonesia, the law will always change; however, people do not necessarily fully understand the laws that have been in effect and then revoked and replaced with applicable laws. Conclusion: There point needs to be known of concept in Balinese culture, a structure reflects the integration and a dynamic openness. In the values of Balinese culture, there are the concepts *Bhuana Agung* (macro cosmos) and *Bhuana Alit* (microcosmos). Another concept is derived in spatial planning into an approach that provides the concept of the existence of a soul in spatial planning in Bali, known as the *Tri Hita Karana* concept, which consists of elements of soul, energy, and physical or noetic. This is then associated with *Parahyangan* (the relationship between the Supreme and Human), *Pawongan* (the relationship between human and their fellow human being), and *Palemahan* (the relationship between humans and nature).

2. METHODS

The research itself is a term derived from English *research* that consists of two words *re*, which means 'to return,' and *search*, which means 'to search'. When combined, the term means refers to an in-depth study of a scientific concept. Soerjono Soekanto said research refers to a scientific activity based on constructive analysis, carried out through structured, systematic, methodological, and consistent disclosures.

3. RESULT AND DISCUSSION

3.1 Spatial Planning to Support Bali Tourism Investment

Discussing the Bali Tourism sector, of course, we will discuss all strategic areas in all provinces in the area which are part of the province whose spatial planning is prioritized because it has a significant influence within the scope of the province in the economic, socio-cultural, natural resources and or high technology and the environment. The characteristics of the Bali Province region include the local wisdom and culture that are a concern in formulating spatial planning objectives for the province according to the potential problems, opportunities, challenges, and obstacles faced in spatial planning. The issuance of the Job Creation Act is one of the government's strategic steps in overcoming various investment and job creation problems, one of which is caused by the overlapping and complexities of law regarding land concerning spatial planning arrangement. Therefore, there needs to be a breakthrough in spatial planning policies to encourage ease of investment and sustainable use of space. In preparing regulations as the implementation of the Job Creation Act, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (*ATR*/*BPN*) has completed five Government Regulations. These regulations include the Implementation of Spatial Planning, Land Banks, Granting of Land Titles, and Implementation of Land Procurement for Public Interest and Abandoned Areas and Lands. The enactment of the Job Creation Act is expected to influence the ease of issuing tourism business permits effectively. Similar to the changes in Article 29 Paragraph 1 Letter c and Article 30 paragraph 1 letter d in the Tourism Law, which regulates the authority of local governments to carry out registration.

The changes made in the provisions on spatial planning are expected to trigger a positive stimulus for the wider community to participate in opening businesses in the tourism sector. This change also strengthens the authority of local government, which is expected to be a driving factor for increasing regional income. The abolition of articles 54 and 56 can be a weak point of the Job Creation Act because there are no clear rules for employing expert foreign nationals for tourism entrepreneurs. In addition, foreign expert workers can work without obtaining a recommendation from the association of professional tourism workers. Tourism sector policies have been removed from the Job Creation Act in Article 64 of Tourism Law. In the future, the articles of the Tourism Law that have been amended or removed from the Job Creation Act, from the author's point of view, will have a significant influence on policies in the Bali tourism sector.

The national economic crisis does not seem to have ended since the beginning of the Covid-19 pandemic until now. As a result, it becomes a factor that slows down economic development. [1]. Based on data from Kantor Perwakilan Bank Indonesia Bali, domestic investment in the Island of the Gods during 2020 reached IDR. 5,432.7 billion for 2,513 projects and foreign direct investment (FI) in the same period was US$293.3 million for 3,967 projects. The portion of FI in the hotel and restaurant sectors reached 52 percent, with a value of US$152.516 million or IDR. 19 trillion.

The development of new tourism destinations is urgently necessary to support the government's target to increase the number of tourists coming to Bali. For this reason, the area's potential that is well known by the local community can be developed as one of the leading tourism destinations in the region by determining its

localization through land or land acquisition. The Spatial Planning issues above appear as a severe challenge to the Province of Bali related to efforts to achieve the vision of Bali's development "*Nangun Sat Kerthi Loka Bali*" through the Planned Universe Development Pattern, which is stated in Regional Regulation no. 2 of 2019 concerning Changes in the Regional Long-Term Development Plan (*RPJPD*) of the Province of Bali for 2005-2025 for new era Balinese concept average.

3.2 Legal Protection for Balinese Culture as a Source of Tourism Economy

In line with the provisions of Article 88 of Government Regulation Number 15 of 2010 concerning the Implementation of Spatial Planning, that the recommendation for the need for revision of the Provincial Spatial Plan is realized if:

1. changes occur in national policies that affect Provincial Spatial Planning; and/or
2. there is a dynamic of regional development that demands a review and revision of the Provincial Spatial Plan.

In order to accommodate these conditions, adjustments to the Technical Materials for the 2009-2029 Provincial Spatial Plan of Bali have been made, which refers to the Regulation of the Ministry of Agrarian Affairs and Spatial Planning or the Head of the National Land Agency Number 1 of 2018 concerning Guidelines for the Preparation of Spatial Plans for Provinces, Regencies and Cities.

Furthermore, the content of the Provincial RTRW consists of: firstly is Spatial Planning objectives; Policies and Strategies, s*econd* is Space structure plan; t*hird* is plan the pattern of space; f*ourth* is the determination of strategic areas; f*ifth* is the direction of space utilization, and last for management controlling the use of space. Adjustment and harmonization of several articles are required so that the dynamics of development remain in harmony with the dynamics of external and internal changes in the region while still paying attention to the concepts of equitable regional development, environmental preservation, cultural preservation, and cultural preservation as accommodating local wisdom. Based on the above considerations, it is necessary to introduce amendments to several provisions in Regional Regulation Number 16 of 2009 concerning Spatial Planning for the Province of Bali in 2009 - 2029. Furthermore, in order to achieve the state's ideals for a prosperous society, it is necessary to reform the land management strategy through land acquisition and management as stated by Albertson in his research, mentioning the dimensions that surround it, among others:[2]

a Environmental Sustainability is protection for future generations.
b Economic Sustainability, which relates to each variable development economically.
c Socio-Cultural Sustainability refers to every innovation that must harmonize local socio-cultural knowledge, practice, knowledge, and appropriate technology.
d Political Sustainability is the link between the bureaucracy (government) and the community.

Land refers to an interrelated system between a subject of land rights (individuals/individuals, community groups, or government and private legal entities) with an object of land rights in specific locations, certain areas, and limits through the relationship of ownership and utilization. The strength of the relationship is indicated by the level of the juridical relationship in the form of the type of land titles owned and the physical relationship in the form of use and utilization. The strength of the relationship makes land have the value of property rights, in addition to forming other land values, such as accessibility, transferability, utility, and amenity.

One manifestation of the role of the government and local government in regulating human relations with the land is the provision of legal certainty over land rights. Since the issuance of the Basic Agrarian Law on September 24, 1960, ratified as Law No. 5 of 1960 concerning the National Agrarian Law applies. Article 2 Paragraph (3) of Law Number 5 of 1960 (*UUPA*) stipulates that the realization of the rights to control the state mentioned above may be granted to autonomous regions and communities, customary law communities as long as the provisions of government regulation implement it. Thus, the delegation of authority to realize according] need for become shall not conflict with national interests.

Particularly In order to meet Bali's plan to reopen the gates for foreign tourists, the culture of the Balinese customary law community should become an economic resource for tourism. Unfortunately, the Balinese are relatively unable to enjoy these economic benefits. Being adaptive and disciplined are the two keys to success to revive Bali's economy, which is supported by the tourism sector 70 percent. In the point of view of economic resources tourism [3] of the present author, such a situation occurs because there are no regulations that provide a definition, recognition, and protection of culture as a tourism economic resource. For example, Law No. 10 of 2009 concerning Tourism (or referred to as the *UU Kepariwisataan*) does not explicitly identify and protect culture as a tourism economic resource." The term 'culture' is contained in Article 1 (5) of the Tourism Law within a framework for the definition of Tourist Attraction." In addition, a contrasting definition of culture is provided by Law no. 11 of 2010 concerning Cultural Conservation (or referred to as *UU Cagar Budaya*), in which culture is considered a sign of civilization or human development. Similarly, Article 1 (12) of the Regional Regulation of the Province of Bali No. 2 of 2012 concerning Balinese Cultural Tourism (referred to as *Perda Kepariwisataan Budaya Bali*) emphasizes the definition of culture to the elements of the

formation of a culture. However, it does not indicate the existence of culture as one of the economic resources of tourism.

4. CONCLUSION

The authority of the central and regional governments in managing natural resources does not only rely on Article 18 of the 1945 Constitution of the Republic of Indonesia but also relies on Article 33 of the 1945 Constitution of the Republic of Indonesia. Thus, natural resources management, especially land, is carried out to develop and advance tourism in areas that have experienced a legal politics paradigm whose arrangements should be complementary. In addition, tourism arrangements also need *RTRW* for long and medium-term plans of the government and regional governments that have been made. Land management policies in the sector and scope of authority and land sector must be achieved by rearranging legal products at both the central and regional levels. Hence, the implementation of these regulations can run effectively. Nevertheless, the participation of the wider community should also not be ruled out because they provide greater access to local communities for the land resources. From that conclusion that can be drawn, The government needs to immediately revise the existing laws and regulations (Tourism Law) or form a new one that specifically regulates the management of indigenous peoples' culture as an economic resource. Thus, this profit will be reused to maintain and protect the culture of indigenous peoples in order that the economic, social, and cultural rights.

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The Existence of *Telajakan* Land as a Road Borders in the Customary Law of Traditional Villages in Bali

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ABSTRACT
This research aims to find "coexistence" between state law and customary law (awig-awig) in the conservation of *Telajakan* land as a road border in traditional villages. The method applied in empirical legal research with the statutory, analytical, case, and customary law approaches. According to observations, the existence of *Telajakan* land as a border of roads in traditional villages has been reduced due to the expansion of buildings on PKD lands, building stalls, garages, shop houses. Meanwhile, existing legal structures such as *Prajuru Adat* (The Leaders of Traditional Village) are almost helpless and allow the violations. If this condition remains, it can set a bad precedent for the utility and functions of *Telajakan* land to support the implementation of the *Tri Hita Karana* Philosophy and the concept of ecotourism, which includes elements of education conservation, empowerment, environmental preservation, and satisfaction index. Meanwhile, in Bali, with an area of 5,636.66 km2, there are currently 1,493 traditional villages spread across 9 (nine) regencies/cities in Bali, which have customary law that functions to maintain the existence of the referred land. *Telajakan* land as a road border has also been strengthened in the regional regulations in regencies and cities in Bali. With the enactment of the Bali Provincial Regulation Number 4 of 2019 regarding Traditional Villages in Bali, which carries the mission in strengthening traditional villages, it is hoped that it can be used as a milestone to restore awareness of the importance of conserving *Telajakan* land as borders as the characteristic of traditional village spatial planning in Bali.

Keywords: *Customary Law, Ecotourism, Traditional Village, Telajakan Land.*

1. INTRODUCTION

One of the leading research areas in the research strategic plan of the warmadewa university research centre in 2021-2025 is "research in the field of "social and humanities, customs and culture" with the sub-theme of customs and balinese customary law. therefore, the issues to be considered are related to the deepening of balinese customary law, which is coexistent with state law and aspects of ecotourism that support the conservation of *telajakan* land, which is generally used as a park.

One of the strengths that come from traditional villages is the arrangement of spatial patterns as ancestral heritage in the utilization and use of pkd land (village land), whose control is handed over to each villager with the width area of almost the same known as "*sikut satak*" which is approximately 6 (six) acres. the arrangement for its use is in the form of the land of merajan (sacred place space), *bale daje* (a building where religious ceremonies are as well as beds) for family members who are not yet mature (menstruation) or who have finished menstruating (elderly), *bale dauh* (bed as well as an open living room), *bale dangin* (bed) which is halfly open and closed with bamboo or rattan curtains so that it saves energy because it does not require air conditioning, *paon* (kitchen), *jineng/gelebeg* (place to store rice) as well as pigsty (bade), *natah* (yard)), and *tebe* (where to defecate/toilet).

Each of these buildings occupies its space and zone so that the shape of the building is visible and does not interfere with each other so that it is free from wall leaks during the rainy season. The treatment is straightforward because it can be reached from all sides, where each building has its prana (breathing) room, so it does not get hot. this condition is supported by the existence of an open yard which can be partially used as a home garden as well as a source of support for religious activities because the garden is more dominantly filled with flower plants for ceremonial purposes, especially in *merajan* (temple), the side of the yard is used for flowers plants. the problem now is whether this concept

can still be preserved as a reflection of "ecotourism" because there are aspects of education, conservation, empowerment, or environmental preservation.

Conceptually, the meaning of strengthening leads to trust in the local government, which will seriously pay attention to the protection and affirmation of the regulation of its traditional rights, especially regarding the management of customary land use as village *ulayat (*land belong to all villager members*).* This means that the meaning of strengthening is not justified and oriented to the interests of power politics, because in said local regulation it is intended to try to carry out a function as "social engineering," namely changing and unifying the management structure of traditional villages throughout bali and positioning its administration in the power of the provincial government directly [1].

The traditional village in bali has been known since the dutch rule in indonesia because it is an autonomous and otohton village. The village is autonomous because it has its own rules, government, territory, and manners (people). Otohton because of the existence of indigenous peoples and their traditional rights and other human rights are inherent in indigenous peoples. so a community that grows, lives, and develops based on its indigenous peoples are not given by other institutions based on state law.

The emergence of the "balinisering" movement in the 1920s, as a movement for developing balinese culture under the umbrella of colonial rule, was used to develop balinese culture, especially the arts. In that way, even though the dutch government wanted to isolate bali from its external relations, the impact made bali more famous and was visited by outside visitors. from a tourism point of view, this situation benefited the dutch colonial government. The results then became a means of promotion to attract foreign tourists during the reign of the dutch east indies[2].

It is essential to explore community empowerment based on traditional villages by remembering that most of the natural resources such as communal land, most of which are no longer oriented to the *trihitakarana* (three concepts of balance) philosophy, such as the existence of road borders in the utilization of pkd land, which is regulated in *awig-awig* (customary law) and regional regulations as state law. Therefore, the legal issues that will be discussed are related to constructing a reflection of the policy direction in *awig-awig* (customary law) to preserve *telajakan* land and building space patterns on pkd land?

2. METHOD

The type of research used is in the form of empirical legal research because it is observed that there is a gap between awig-awig (customary law) which still maintains the Telajakan land on one side, and the fact that it is used as a building. The research approach used is statutory [3], which means tracing all the regulations and legal products that regulate the telajakan land and road borders. In addition, an analytical approach is also used [4]. Another approach that is considered relevant is the case approach which is carried out by purposive sampling because it is grounded and holistic [5] and views a case as a tool to find "how the law works" in society [6]. Another very relevant approach is the coexistence approach. The data sources used are the first and second sources. Data from the second source is from secondary data referred to as Legal Materials in the form of primary and secondary legal materials collected by using the documentation technique and recording file system.[7] While the primary data was collected by using observation and interview techniques. The data were then analyzed using hermeneutic and qualitative techniques

3. RESULT AND DISCUSSION

3.1 Arrangement of Indigenous and Telajakan Land as Road Border

Customary land as "owned" (possession) of Traditional Villages, the arrangements vary significantly from one traditional village to another in Bali. In Article (Paos) 20 Awig-Awig (customary law) Traditional Village of Tumbu Karangasem, it is formulated that sane kadruwe (what is being possessed) Tumbu Traditional Village includes": Kahyangan Tiga Temple, Kahyagan Desa Temple, Bale Desa (Village Building), Palemahan desa (village physical environment) (village land), bangket (unmanaged yard) or yard, cemetery, Village road or alley, Lembaga Perkreditan Desa (Village Credit Institution), Sekancan kelebutan toya (all kind of water springs), toya anakan (part of water springs) that can be used as the place to purify the Devas, or used as holy bath place. So the property of the traditional village includes Kahyangan Tiga Temples, village hall, village land, rice field land, garden land, cemetery, roads and alleys, Village Credit Institution, all water sources.

In Article 21 of Awig-Awig (customary law) of Lantangidung Traditional Village Sukawati Gianyar, it is formulated: Padruwen Desa Adat luwire (the possession of traditional village includes): Kahyangan Desa, Bale Desa Adat, Tegalan, Karang Ayahan Desa munjuk lungsur saking 39 Karang, Setra, Pelaba Pura (carik/tegal: 0,370 ha/0,460 ha dan druwe desa sewosan (means the possession of Lantangidung Traditional Village covers: Kahyangan Desa (village temples), Bale Desa Adat (traditional village hall), Tanah Tegalan (dry land), Karang Ayahan Village, approximately 39 plots, cemetery, the land belongs to temple (ricefiled/yard: 0.370 ha/0.460 ha.

In Article 2 of Awig-Awig of Gelgel Village in Klungkung regency as old village mentioned that the druwe (possession) with the term of Kekuwuban wewidangan Desa Adate, according to the customary law, covers:

1. Pupulan Karang Pahumaan (land of house)
2. Khayangan Tiga Temples (Puseh, Dalem and Baleagung)

3. Cemetery (Bugbugan, Pijik, Seluang, Nyuhanya and Gandamayu)
4. Pekarangan Desa (village land)
5. Telajakan Pekarangan Desa (Telajakan village yards).
6. Pepayonan ring pamumahan lan ring Desa Sane mayanin anak lian. So the area of the Gelgel Traditional Village by the customary law includes a collection of residential land, Kahyangan Tiga Temple, Cemetary, Village Courtyards, Telajakan village yards.

The "Padruwen Desa" (village possession) of Kesiman Traditional Village in Denpasar is regulated in Article 19, namely: Sane kemanggehang druwe (what is possessed by) Kesiman Traditional Village, includes: Dalem Kesiman Temple, Land belongs to Dalem Kesiman Temple area of 2,0600 m2, Kahyangan Kesiman Temple, Land belongs to Kahyangan Kesiman temple, and Telajakan of temple 0.7350 m2, Cemetery 14.600 m2, Desa Temple, Land Possessed which is used as elementary school building 2000 m2, Pura Agung Petilan Temple and the land of 0.5000 Ha, Musen Temple, Temple's land and Lan belongs to temple of 1.1100 Ha. So the property of the Kesiman Traditional Village includes Dalem Temple, and the land belongs to temple covering an area of 2,0600 m2, the Kahyangan Temple and the Labuan Temple and the telajakan temple 0.7350 m2, the cemetery land area of 1,4600 m2, the village land used for Elementary School is 2000 m2. Agung Petilan Temple and temple mandala 0.5000 Ha.

In Awig-Awig Penglipuran Traditional Village as one of the "tourist villages" in Bangli Regency, Druwen Desa (the possession of the village) is regulated in Article 25, namely:

Wewangunan luwire (building includes): wewangunan suci sekadi Pahryangan-Pahryangan penyiwian desa adat, wewsangunan bale banjar dan bele kulkul (Holy building such as temple, Banjar hall, Kulkul Building).

Tanah laba pura, tanah padruwen desa adat, karang kerti miwah tanah AYDS.

Setra manut dresta (cemetery according to customary law).

Tetanguran manut padruwen desa adat. (traditional music instruments)

Arta berana, serana upakara sejangkepne padruwen desa adat (village property, ceremonial facilities)

From the awig-awig formulation of the Penglipuran Traditional Village, it is confirmed that the land controlled by the traditional village is: Tanah Laba Pura (land belongs to temple), Village Owned Land, Village Pekarangan Land called Karang Kerti, AYDS Land, and Cemetery Land. In Kerti or PKD land, this is included in the telajakan space so that in PKD and Telajakan land, they become one unified field.

These lands are used and occupied according to the rules set out in awig-awig (customary law). Karang Kerti is the land or land of the traditional village occupied by each of the krama (villager/members) of the traditional village, which functions as a place to build houses and live their communal religious life in the traditional village forum. These village members should maintain and preserve the spatial layout of each utilization and use of the coral reefs in question, which is always under the supervision of traditional leaders.

Meanwhile, in Awig-Awig (customary law) of Pulukan Traditional Village, Pekutatan Jembrana District, the Druwen Desa (possession) arrangement is regulated in Pawos (article) 16, which states that: what is called the Possession of Pulukan Traditional Village (sane sinanggeh druen Pulukan Traditional Village), namely: (1) Kahyangan Tiga Pulukan Traditional Village (Kahyangan Tiga Temple), (2) Kahyangan Tiga Desa cultivators (Land belongs to Kahyangan Tiga Temple), (3) Setra utawi Tunon (Cemetery land), (4) Devices, such as Bale Desa/Banjar (village hall), Kulkul (supporting building), (5) traditional musical instruments, such as Gong or others (art items such as Gong).

From several traditional village customary laws as stated above, it can be concluded that every traditional village has assets as property rights (possession) which used to be called Ulayat rights. However, each traditional village has different types of property rights. Likewise, regarding the existence of customary land as part of Ulayat, it varies significantly from one traditional village to another. The extent or number and narrowness or at least of the existing customary lands are strongly influenced by the legal politics of the Basic Agrarian Law, which mandates the registration of all land parcels in Indonesia through conversion so that most of the customary lands, especially PKD (Village Land) and AYDS have been converted into full individual property rights[7]. Every traditional village has a cemetery land, and the land belongs to Kahyangan Tiga Temple. As for PKD, land can only be found in several traditional villages such as the Tumbu Traditional Village, Lantangidung Traditional Village, and Gelgel Traditional Village. Specifically, for the term Telajakan land, only strict (limitative) regulations are found in the customary law of the Gelgel Traditional Village. While in other traditional villages, customary law is not formulated explicitly, but its implementation is still found in several villages.

3.2 Policy Direction for Telajakan Land Management

Land tenure rights in traditional villages are based on Ulayat rights or prabumian rights. This condition will be very relevant if related to the relationship between the occurrence of traditional villages and customary lands in its historical perspective. In addition, it is also relevant to the theory of natural law and occupation in the sense of mutual (communal) control and ownership as well as individual control and ownership. The relationship

between communal and individual rights also appears to be mutually pressing, thickening and thinning, mulur-mungkret. It is even more dominated by individual rights, especially in the use of yard land (PKD) and its exploration [8]. The process of thickening and depleting the relationship between communal rights and individual rights seems to depend very much on the sensitivity of their customary leaders and the legal culture (awareness) of villagers towards the customary lands they control in determining the conservation model to be carried out by their traditional village. Because in several cases, it was observed that the lands that used to be customary mainly had been transferred to full private ownership, better known as land certificates of ownership (SHM), such as the AYDS land in the Kemenuh Traditional Village of Gianyar after independence turned into whole individual land, as a result of the issuance of a tax letter by the government, whereas initially, AYDS was an integral part of PKD land[7]

In this case, the traditional village does not understand the implications of converting AYDS to whole individual land. The same applies to customary lands (PKD or other terms), with almost no control over customary village tenure rights. As a result, there are irregularities in its use. Some buildings exceed the limit known as the pengengker wall (the fence of the house). It can also be observed that there are efforts to expand the land by exercising excess control of what is rightfully theirs by shifting the pengengker wall (limiting wall) by merging the telajakan land as a road border into a building.

From the results of participant observations, it can be stated that most telajakan lands as road borders in traditional villages are no longer used as "telajakan parks" but are used as buildings such as stalls and garages workshops, shops, and buildings for business purposes. (rented). This condition can be seen more clearly on Telajakan lands close to markets or places considered strategic for business purposes. The rise of the transfer of the function of telajakan land to be used as a building is because the function of control or supervision over the customary village control rights is not carried out. This means that the traditional leaders who have the authority to execute the "right of control" do not carry out the conservation and protection (conservation) of the telajakan lands.

Meanwhile, the preservation and protection of telajakan lands are only carried out to image the "Tourism Village" status identity as in the Penglipuran Bangli Traditional Village. It is just that the preservation and protection of this telajakan land are partial (only on the inner road to Desa Temple). So it is not carried out thoroughly in the customary village area.

On a micro-scale, customary lands controlled by villagers individually as Karang Kerti or PKD function as places for activities related to daily activities according to the Tri Mandala concept, meaning that there is space for a sacred place (Merajan) as the Main Mandala, living space as Madya Mandala, and a room for bathing, washing, and toileting as Nista Mandala known as tebe (teben). The Tri Mandala concept is universally applicable, adapting to situations and conditions while maintaining the ulu-teben concept in the PKD soil area. Likewise, the use of druwe ngeraga lands (privately owned) is also subject to the customary village law regulations in the use and utilization of its spatial pattern. In addition, the use of private lands is also equipped with a Building Permit, which is now known as a Building Permission. This arrangement is expressly regulated in Denpasar City Regional Regulation Number 5 of 2015 concerning Buildings. In Article 25 it is formulated:

The boundary line of the building, the distance from the building to the axle, the width of the ramp, or the distance from the yard fence to the outer edge of the sewer, riverbank, beach, railroad, and/or high-voltage electricity network, taking into account the aspects of safety and health.

The building boundary line includes the front, side, and rear building boundary lines.

The regulation of the distance is regulated in Article 26 Paragraph (7), which formulates: The width of the ramp or the distance of the yard fence from the outer edge of the sewer with the following provisions:

For road widths up to 6 (six) meters, a minimum of 0.5 (zero point five) meters
For roads above 6 (six) meters to 8 (eight) meters, the minimum is 0.75 (zero point seventy-five) meters;
For road widths above 8 (eight) meters to 12 (twelve) meters, a minimum of 1 (one) meter;
For road widths above 12 (twelve) meters to 18 (eighteen) meters, a minimum of 1.5 (one point five) meters; and
For road widths above 18 meters, a minimum of 2 (two) meters.

The affirmation of the regulation of telajakan land in the context of road borders in the Local Regulation as state law indicates the coexistence between customary law and state law in the preservation and protection (conservation) of telajakan land as road borders. Therefore, both customary and state law can conduct supervision and law enforcement together (coexistence).

The existence of Telajakan land is an essential framework in realizing one aspect of the Tri Hitakarana philosophical value, which is oriented towards balance, especially in the utilization and use of PKD land, which is related to the use of unbuilt space and built space which in state law is known as the coefficient of building area.

In customary law, it is not determined in a limited way the percentage of coefficient of building area from the land for housing as in Regional Regulations as state law. However, in customary law known as awig-awig, the principle of propriety in the placement of a building follows the Tri Mandala concept, such as the placement and size of the building as a holy place, a place to live,

and a building for the function of waste disposal. In addition, in every yard, there should be a barrier called "wall pengengker" with an obligation (megaleng ke dulu or keteben), meaning that the owner of the yard is obliged to make a barrier on two sides (East and North or South and West which in awig language is called megaleng kedulu or megaleng keteben).

From the observations, telajakan lands as customary lands have been explicitly regulated in a small part of awig-awig traditional villages. However, in real terms, the telajakan lands in several traditional villages still exist and are well maintained, and some still exist but are not appropriately maintained. Maintenance of Telajakan lands is usually done by utilizing it as a Telajakan garden/park. The rest occurred when the land was converted into stalls, shop houses, mini markets, garages, places to put building materials as part of the building materials business (open storefronts). The transfer of the function of the telajakan land also includes the telajakan tukad (river border) for the expansion of buildings or other functions such as stalls, garages. The direction of the awig-awig correspondence policy is to confirm the propriety that has been sentenced so that it can be used as a reference by the next generation in its implementation, supervision, and law enforcement—likewise, affirming the arrangement to preserve and protect the treacherous land as a bollard of the road from various onslaughts of development

4. CONCLUSION

From the discussion results, it can be concluded that: Strict regulation of the use and utilization of telajakan land as a road border in one PKD plot of land is expressly regulated in the awig-awig of the Gelgel Klungkung Traditional Village. While in other traditional villages, it is not formulated explicitly, but sociologically it still exists in several traditional villages. Some of these Telajakan lands are well maintained, but some are left unattended. Violations of the use and utilization of telajakan as road borders on a massive scale occur in the form of conversion of functions into residential buildings, stalls, garages, shop houses, merchandise storefronts due to neglect and law enforcement is not carried out by the existing legal structure (customary law and state law). Meanwhile, the direction of the policy in the conservation and protection of the telajakan land as a road border has been formulated in awig-awig (both written and unwritten). In order to maintain the Tri Hitakarana philosophy, the telajakan lands in each traditional village are deemed necessary to be conserved through the affirmation of the regulations in awig-awig through the resolution of policy directions in writing the awig-awig, especially in monitoring and enforcing violations of the use and utilization of telajakan lands. As a border with the legal system coexistence approach. The function of telajakan land as a road border so that it can be returned as a village park which is a characteristic of traditional village spatial patterns and at the same time can be used as an educational function in creating a role model for new tourism destinations based on customary law wisdom.

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Arak Bali: Between Culture and Economic Recovery in Realizing the Vision of Nangun Sat Kerthi Loka Bali Based on Local Wisdom

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ABSTRACT
Ethnic diversity plays very significant role in human life as the result of culture. This is undoubtedly the sector of excellence for Indonesia with so much cultural diversity, especially in the tourism sector based on the local culture. One example of the area that is famous for its culture is Bali. Hindu tradition is the "breath" of Balinese culture where one of the well-known Balinese philosophies is the concept of "Tri Hita Karana", which has the meaning as three causes of well-being that originate from the harmonious relationship between humans and nature, humans and others, and humans and God. The method used in this study is qualitative research method with a literature study approach and interviews. The purpose of this research is one of the efforts in the economic recovery in Indonesia through local wisdom of Balinese culture. One of the prominent supporters of the economic recovery in Indonesia is through the Vision and Mission of *Nangun Sat Kerthi Loka Bali*, which contains the meaning: "to keep the sanctity and harmony of Bali, to realize prosperous and happy life of Balinese manners, *sakala-niskala* towards the life of Balinese manners." Through traditional Balinese arak drinks based on the policy issued by the Governor of Bali in Bali Governor Regulation Number 1 in 2020 concerning Governance of Balinese Fermented and/or Distilled Drinks. The existence of traditional Balinese arak undoubtedly is as the part of economic recovery in Indonesia.

Keywords: *Arak Bali, Culture, Local Wisdom.*

1. INTRODUCTION

Indonesia is a country that has many differences, consisting of multi-ethnic (ethnic groups). Each ethnic group has a cultural heritage that has developed over the centuries, making Indonesia a multicultural country that is second to none globally. Ethnic diversity that creates cultural diversity plays a significant role in human life as we know that human civilization on earth is the result of culture. It is noted that Indonesia is one of the countries with the wealthiest local culture in the world. According to the Central Statistics Agency (BPS), the results of the latest population census, it is known that Indonesia consists of 1,128 ethnic groups with different cultures. Then in today's modern life, the original culture of the Indonesian nation is slowly experiencing a shift in values by the entry of globalization which opens up the country's opportunities without borders. While on the other hand, the independence of a nation cannot be separated from its ability to maintain its nation's noble values and culture. This is undoubtedly a sector of excellence for Indonesia with so much cultural diversity, especially in the tourism sector based on local culture. Local culture is the original culture of a particular community group and is a characteristic of the culture of a local community group. In addition, the local culture in Indonesia is very diverse because Indonesia is a country with a diversity of cultures originating from various regions.

Bali is known for the uniqueness of its culture. Various traditions that reflect Balinese culture attract many outsiders to look at its uniqueness.

Hindu is "life" of Balinese culture itself. This is considering as the most Balinese people comply to Hindu teachings. One of the well-known Balinese philosophies is the concept of "Tri Hita Karana," which means three kinds of harmonious relationship between humans and human, nature, also God. With the existence of cultural diversity that is owned through noble values, it needs to be preserved so that no cultural shift can hinder the

achievement of national goals. However, on the other hand, customs as a noble value possessed by indigenous peoples have begun to show symptoms of being almost extinct due to the lack of preservation from various parties. For example, one of the local cultures that can become a sector of economic income in tourism is a traditional Balinese drink in the form of arak, or familiarly called "Balinese Arak."

2. METHOD

The method used in this study is qualitative research method through literature approach and interviews. The informants were 6 people, including the Head of the Bali Province Industry and Trade Service, the Head of the Bali Province Cooperative and MSME Service, and four wine farmers in Bali (among them wine farmers Karangasem, Tabanan, Buleleng, and Jembrana).

3. RESULT AND DISCUSSION

3.1 Arak: Bali Traditional Drink

This traditional Balinese arak drink is one of the ancestors' heritage from generation to generation, which still deserves to be preserved. Apart from being a traditional drink, Balinese wine has several benefits, including medicines, facilities for Hindu religion, community needs in supporting the MSME sector (micro, small, and medium enterprises). This Balinese wine has a positive and negative impact if it is not used according to its needs. However, with the preservation of these traditional drinks, there are still significant problems in the form of a weak competition between traditional drinks and modern drinks because traditional drinks have not been officially recognized as one of the drinks that can occupy the competitive world.

Furthermore, we all know that this Balinese arak is one of the supporting factors for the income of the economic sector in Bali itself. As for the position of this Balinese arak drink in the world of tourism, namely, the "welcome drink" from dishes that can be enjoyed by consumers, especially tourists are visiting Bali. Coupled with the COVID-19 pandemic, which significantly weakened the condition of economic income, this, of course, resulted in a multiplier effect, especially in the economic field. This is due to the loss of income felt by the arak farmers in Bali.

3.2 Vision Mission of The Province of Bali: Nangun Sat Kerthi Loka Bali

With such problems, some efforts can restore the income of the arak farmers, namely the Vision and Mission ‘Nangun Sat Kerthi Loka Bali’ which implies: “maintaining the sanctity and harmony of Bali’s nature and the contents, to create prosperous and happy Balinese life ‘sakala-niskala’ towards the life of manners and *gumi* Bali by the principle of trisakti Bung Karno: politically sovereign, economically independent, and personality in culture through development in the patterned, comprehensive, planned, directed, and also integrated within the framework of the Unitary State of the Republic of Indonesia based on values -Pancasila values June 1, 1945. In realizing the Vision, it is pursued through 22 (twenty-two) Bali Development Missions, which are the direction of the Bali Development policy as the Planned Universal Development Pattern implementation.

Vision and mission focus is on the field of culture that can be developed to become one of the tourism sectors based on local wisdom. With the protection of the policies issued by the Governor of Bali through the Governor of Bali Regulation Number 1 in 2020 on Governance of Balinese Fermented and/or Distilled Drinks, the safety of these drinks can be ensured that they can be consumed. Nevertheless, on the other hand, the existence of this Balinese arak has not been fully recognized nationally. This is because there is no official permit from the authorities at the national and international levels. Of course, this can be resolved together related to the right solution in recognizing this Balinese arak drink-through cooperation from the local community as entrepreneurs, the government, and the private sector by issuing a permit and still complying with the rules accordance with the procedure.

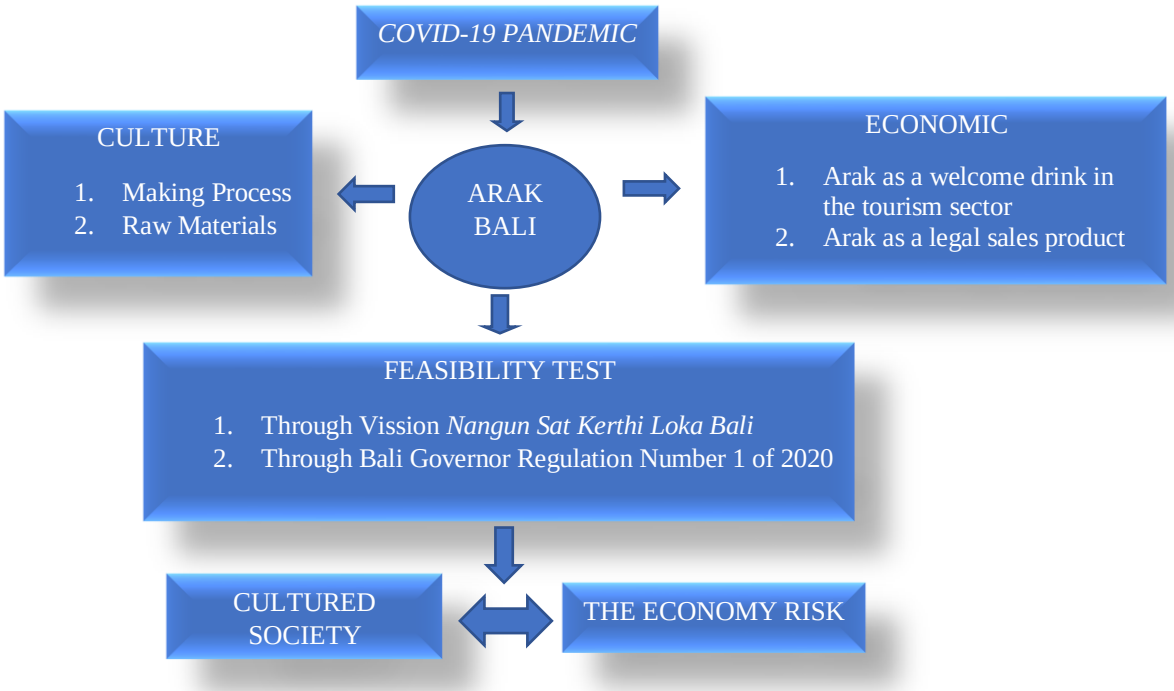
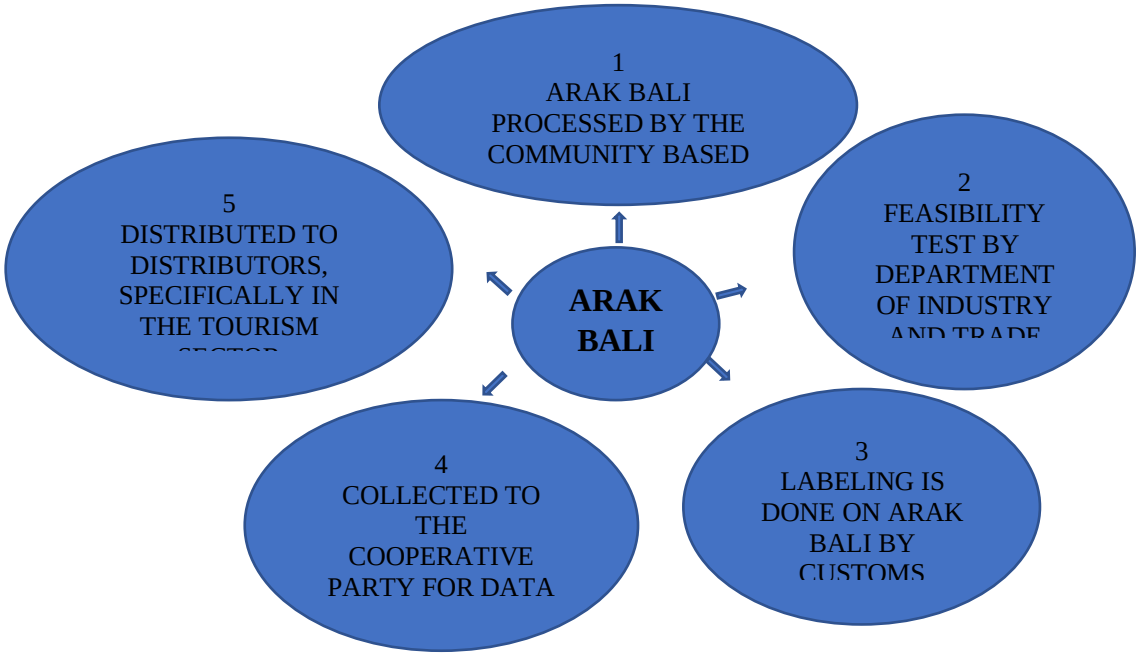


Figure 1. The Concept of Economic Recovery in The Midst Of The Covid-19 Pandemic

This traditional Balinese arak drink is closely related to culture. Why is that because Balinese wine is one of the Balinese ancestral heritage that should indeed be preserved? When culture collaborates with the tourism sector, Balinese wine can positively impact that can restore economic income among the community. Although there are still some obstacles in the form of not yet conducting a feasibility test for Balinese wine and the weak competition between traditional drinks and modern drinks, it is undeniable that Balinese arak drinks are not able to develop but can compete highly on a go global basis with clarity and certainty in recognizing this Balinese arak drink-through policy. The Governor of Bali Regulation issued it. So that with this, we can achieve economic recovery even amid the COVID-19 pandemic, according to what we want as for the hopes that can be instilled through the existence of this local wisdom-based Balinese wine, including First, the arak farmers as the community can return to prosperity. Second, there is an economic recovery. Third, Balinese wine can be preserved as an ancestral heritage. Fourth, the recognition of the traditional Balinese arak drink as one of the supporting sectors for tourism.

Figure 2. The Process of Legalizing Balinese Wine According to The Bali Governor Regulation Number 1 Of 2020



4. CONCLUSION

Indonesia is a country that has cultural diversity. With so many different cultures that are owned, of course, this is one of the opportunities for economic income, especially in tourism focused on the culture that is owned. Apart from supporting economic income, culture is also developed and packaged in the form of tourism to preserve a culture that has been passed down from generation to generation. One example of an area that is famous for its culture is Bali. Nevertheless, since the Covid-19 pandemic, the economic condition in Indonesia has begun to weaken, so there is a need for innovations that can restore economic conditions to their original state. The innovation that can be done is through the development of tourism based on local wisdom by the culture owned in Indonesia, for example, through the drink 'Balinese Arak,' which is one of the inheritances from the ancestors of Hindus. The right strategy in the development of these traditional drinks is through the Vision and Mission of Nangun Sat Kerthi Loka Bali with the Tri Hita Karana concept and the implementation of policies issued by the Governor of Bali through the Governor of Bali Regulation Number 1 of 2020 concerning Governance of Balinese Fermented and/or Distilled Drinks. With these innovations, the Indonesian economy, especially in Bali itself, will slowly improve, and the people will prosper again.

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Analysis of Gender Equality in Education Through the Pisuke Tradition in Padamara Village, East Lombok District: Karl Marx's Conflict View

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ABSTRACT
Gender equality is an equal condition between men and women with the same rights and conditions or quality of life. The pisuke tradition is carried out from generation to generation where men must pay a certain amount of money or goods to women outside of the dowry payment. This tradition usually occurs in the Lombok area, especially in Padamara Village, Sukamulia District, East Lombok Regency. In Karl Marx's view of class conflict in the case of education that occurred in Indonesia and especially in Padamara Village, it can be assumed that this social class then emerged between the social classes of men and women, both male and female. The social class of women is looking for ways to fight back. One of the differences that occur is through the pisuke tradition. The class referred to here is the difference in the position or class of men and women in the eyes of the people of Padamara Village. This is by the results of research on giving pisuke, which is adjusted to women's level of education. The higher the woman's education level, the higher the amount of pisuke that must be paid. Furthermore, one of the national goals that are in line with the existence of awiq-awiq is to increase the educational participation rate of girls in Padamara village. Whether we realize it or not, Pisuke has a fairly influential impact on women in Padamara village. One of the impacts is in the world of education, as expressed by one resident of Padamara village, especially women, Pisuke's presence is also quite influential on the level of girls' education participation, this is because if the education level of girls is high, then the number of pisukes that men want to give will adjust. Then the main reason is the feeling of pride for women if the pisuke paid by men is because of the view of society if the pisuke paid by men affects the views of women's social strata. Therefore, this pisuke became a vehicle for women's resistance to increase their social strata in Padamara village. This is because the number of pisukes given will contribute to society's view of the social status of women, not just the nobility.

Keywords: *Education, Gender Equality, Pisuke Tradition.*

1. INTRODUCTION

Gender equality is an equal condition between men and women in legal rights, and the conditions or quality of life are the same. Gender equality is one of the human rights of every human being. Gender differentiates roles, attributes, traits, attitudes, and behaviors that grow and develop in society. Gender roles are divided into productive roles, reproductive roles, and social roles. However, in reality, until now, women are often considered weak and only become complementary figures.

In education, women often do not receive support in the form of material and morals to receive a more proper education, especially in traditional communities living in rural areas. Education is essential to convey the aims and objectives of development. It is not easy to carry out developmental changes in every level of society because the values and norms have been built strongly through culture.

Education that is not discriminatory will be very beneficial for both women and men, especially to realize equality and justice to achieve growth, development, and eternal peace in human life. Education is considered and stated as the main element of the nation's intelligence and

as a product of social construction. Thus education also has a role in the formation of gender relations in society. Gender equality does not occur scientifically, especially in areas with strong subcultures (Ariyanto Nugroho in Kompas, 2011: 10). This statement was raised because there have been many gender inequalities in society that are assumed to arise due to a gender bias in education. So it is necessary to have programs or activities and traditions that can uphold gender equality justice which continues to be a taboo issue.

The pisuke tradition is a tradition that is carried out from generation to generation in which the male must pay a certain amount of money or goods to the female outside of the dowry payment. The gift in question can be in the form of money or objects when a messenger from the groom asks the woman to her guardian. The number or size of the pisuke is usually determined during the pre-wedding procession, which is usually called true-selabar. For some Lombok people, this pisuke is a gift that must be given before the marriage contract takes place, usually if there is no definite agreement on the amount of pisuke that must be given. The wedding may be delayed, even if the marriage will not happen if the family the man refuses to pay the pisuke according to the request of the woman's family. In general, the amount of pisuke that the man must pay is adjusted to the level of education of the woman who wants to be the bride. The higher the education level of women, the higher the amount of pisuke that must be paid. Traditions like this usually occur in the Lombok area, especially in Padamara village, Sukamulia, and East Lombok.

Padamara village is one of the villages in the Sukamulia sub-district, East Lombok district, which still adheres to the customs (awiq-awiq desa) that exist in the village. Padamara village, in its historical trajectory, is known as a traditional area, where almost all aspects of community life have traditional values that not only apply to the Padamara village community but are also respected by other Sasak communities outside Padamara village, especially the surrounding villages. This is because the existing customary awiq-awiq does not conflict with religious values and the goals of national development. Likewise, the concept of pisuke is still preserved by the people of Padamara village. Because according to the people, there are no conflicting customs and religions because the values contained in these customs were born as a result of the development of Islamic teachings. However, apart from the above, exciting things happened in Padamara village. Efforts to increase the level of participation in girls' education have been carried out in the village. These efforts may not be realized directly by the surrounding community. This is because these efforts are processed in such a way in the form of giving awiq-awiq pisuke by their ancestors in the marriage process in the village, which gradually changes the mindset of women and parents in the village towards education, especially their daughters. This kind of thing can increase the interest and participation of girls in Padamara village, and as an effort in order to succeed the ideals of the State which have been stated in the SISIDIKNAS Law No. 20 of 2003 chapter IV, the third part of article 8 also explains the role of the community in the continuity of education which reads: "The community has the right to participate in planning, implementing, monitoring, and evaluating educational programs."

Most of the people of Padamara village do not see the essence of the traditional role of the pisuke, which has permanently been established. Sometimes some people today only see that the pisuke custom is only a village ritual that does not have a profound and high meaning, even though if examined more deeply, it turns out that the concept of awiq-awiq pisuke has a deep meaning, namely elevating the position of women who incidentally become people second only to men, at least, equal to men in terms of education and social strata. The above is reinforced by the results of this study, especially regarding the impact of the existence of pisuke in Padamara village, including As a trigger for social dynamics in Padamara village, as a trigger for the spirit of girls' educational participation, as a medium for transforming gender equality values.

2. METHOD

The method used in this study is a qualitative method with a literature study and interview approach. The main types of references used in the study of literature are journals and scientific articles. The data obtained from the literature will be used to analyze and explain problems in a discussion. Informants interviewed in this study included the Padamara Village Head, Community Leaders, and the Padamara Village Community.

3. RESULT AND DISCUSSION

State of the art research is taken from several examples of previous research as a guide or example for research that is currently being carried out. Examples taken are related journals on gender equality in education and the pisuke tradition. One of the journals entitled "Gender Equality in Education" by Rustan Effendy, a lecturer at the State Islamic High School (STAIN) Parepare in 2014, describes efforts to provide opportunities for women to improve the quality of education. The second two, entitled "Pisuke in Marriage Customs, Maslahah mursalah Perspective" by Sri Suci Haryanti from the State Islamic University of Maulana Malik Ibrahim Malang in 2017 which explains that the pisuke tradition is mandatory for the Muslim community of the Sasak tribe so that the continuation of traditional marriages can be said to be valid under customary law.

Based on the two journals above, it can be concluded that gender equality does not mean contradicting between men and women. However, it is more interpreted as building relations and equal opportunities between men and women. The education pathway through a gender-based curriculum is an effort to realize sustainable

national development. One example of his efforts is the pisuke tradition.

3.1 Gender Equality

The term gender, according to Oakley (1972), means a difference or gender that is not biological and is not God's nature. Meanwhile, Caplan (1987) asserts that gender is a behavioral difference between men and women apart from the biological structure, most formed through social and cultural processes. *Gender* in social science is defined as a pattern of male and female relations based on their social characteristics (Zainuddin, 2006: 1). Hilary M. Lips defines *gender* as cultural expectations for men and women (for women and men). Meanwhile, Linda L. Lindsey considers that all societal decisions regarding the determination of a person as male or female are included in gender studies. (What a given society defines as masculine or feminine is a component of gender). H. T. Wilson defines *gender* as a basis for determining the differences in the contribution of men and women to culture and the collective life that results in them becoming male and female. Elaine Showalter mentions that gender is more than just a distinction between men and women in socio-cultural construction (Nasaruddin Umar, 2010: 30).

According to Oakley (1972), Gender equality is a difference or gender that is not biological and not God's nature but has the same dignity and worth. On the other hand, according to Caplan (1987), Gender equality is the difference in behavior between men and women apart from most biological structures formed through social processes and social and cultural interactions. Not only that, according to Zainuddin (2006), *gender equality* can be defined as a pattern of male and female relations based on their social characteristics. It is realized that gender is a new issue for society, thus giving rise to the disproportionate sharing of interpretations and responses about gender. One of the factors that influence it is the various interpretations of the notion of gender.

3.2 Field of Education

According to the National Education System Law no. 20 of 2003: Education is a conscious and planned effort to create a learning atmosphere and learning process so that students actively develop their potential to have religious, spiritual strength, self-control, personality, intelligence, noble character, and skills needed by themselves and society. On the other hand, according to the Big Indonesian Dictionary, education is changing the attitudes and behavior of a person or group of people to mature human beings through teaching and training efforts; process, method, and manufacture of educating. Meanwhile, according to Edgar Dalle that education is a conscious effort carried out by families, communities, and government through guidance, teaching, and training activities, which take place at school and outside school throughout life to prepare students to be able to play roles in various living environments effectively stay for the future.

3.3 Pisuke Tradition

Customary law has several processes in marriage, and one of them is pisuke. Pisuke is a process of bargaining over the security deposit between the female guardian and the male guardian. Guardians from the female side often ask for a high price for pisuke so that it is not uncommon for the male side to burden the payment. The delay in payment of pisuke money can hinder the implementation of the marriage process, breaking the relationship between the bride and the family of both parties. This is because pisuke is the determinant of a marriage can proceed to the subsequent marriage process or not.

3.4 Karl Marx's Viewpoint of Class Opposition

The class struggle is an active manifestation of class conflict seen from various socialist points of view. "The written history of all hitherto existing societies is the history of the class struggle," stated Karl Marx and Friedrich Engels. According to Marx, the conflict between the upper and lower classes is not because of envy or selfishness but objective interests. Marx wrote: "The issue is not what the proletariat or the whole proletariat envisions as the goal. The problem is what the proletariat is and what history will be forced to do by its very nature" (Franz Magnis-Suseno: 116). From this interdependence lies the hidden intentions of the working class. The employer class wants as much profit as possible in free competition, so the employer class wants to finance the working class as low as possible.

Moreover, conversely, workers want to get as many wages as possible, reduce working hours, and control the factories where they work. When the employer class weakens in the sense that it is no longer able to control its economy, it is at that time that the working class is increasingly able to control their interests so that a revolution occurs. The private property rights of the working class can be abolished. In Marx's theory, several things are essential. First, the economy and power roles are essential because their interests are primarily determined by their respective positions. Second, the upper class does not want any change because the upper class is already stable and well-off with their assets, so the upper class directly maintains its status as the upper class.

On the other hand, the lower classes want to change because they are oppressed, and change or revolution is the only way to advance. Third, the lower class that has been oppressed for a long time desires to conquer the upper class. On the contrary, the upper class will continue to maintain its decisive role as the upper class. Therefore, social change can only be achieved using revolution so that the point of view of Karl Marx can be a reference from aspects of life.

3.5 Padamara Village & Pisuke Tradition

Padamara Village is one part of Sukamulia District which is geographically expansive, Padamara Village,

Sukamulia District, East Lombok Regency, West Nusa Tenggara Province. Which until now still adheres to the pisuke customs (awiq-awiq village) that exist in the village. Padamara village, in its historical trajectory, is known as a traditional area, where almost all aspects of community life have traditional values that not only apply to the Padamara village community but are also respected by other Sasak communities outside Padamara village, especially the surrounding villages. This is because the existing customary awiq-awiq does not conflict with religious values and the goals of national development.

Likewise, the concept of pisuke is still preserved by the people of Padamara village. Because according to the people, there are no conflicting customs and religions because the values contained in these customs were born due to the development of Islamic teachings. For the people of Padamara village, customs are norms that are upheld in life. Customs also instill a firm belief in the power of Allah SWT to create humans with complete perfection. Customs create humans in life, and their lives always show good, positive attitudes and traits and are based on morality. Pisuke is several gifts from the groom's family to the bride's family. The gift in question can be in the form of money or objects when a messenger from the groom asks the woman to her guardian. The number or size of the pisuke is usually determined during the pre-wedding procession, which is usually called true-selabar. For some Lombok people, this pisuke is a gift that must be given before the marriage contract takes place, usually, if there is no definite agreement on the amount of pisuke that must be given, then the wedding may be delayed, even if the marriage will not happen if the family the boy refuses to pay pisuke pisuke according to the request of the female family. In general, the amount of pisuke that the man must pay is adjusted to the level of education of the woman who wants to be the bride. The higher the education level of women, the higher the amount of pisuke that must be paid. Not infrequently, this issue will end up in court because female guardians are usually not willing to marry off their children if the requested pisuke is not fulfilled. Traditions like this usually occur in the Lombok area, especially in Padamara village, Sukamulia, and East Lombok.

3.6 Karl Marx's Theory Based on Gender Equality in Pisuke

In Mark's view, the history of society on earth is the history of class struggles between free and slaves, nobles and commoners, masters and workers, in short, between the oppressors and the oppressed. Since humans were born, they were not motivated by big ideas such as politics, science, art, and religion, but by material needs to sustain life such as food, drink, shelter, and clothing. In classical and medieval times, human civilization was dominated by agriculture. In contrast, in modern times, capitalism emerged, namely, a new model of trade and factories, which resulted in the emergence of the bourgeoisie and the proletariat. Capitalism gives benefits to the bourgeoisie/middle class, while for the proletariat, they get nothing. They only sell labor for company owners to earn wages for their livelihood. It is from this that conflicts arise, resulting in the suffering of the proletariat. Mark's thoughts sparked the proletariat to carry out a revolution by destroying the entire socio-economic system oppressing it, but the bourgeoisie did not want to give up its wealth.

Furthermore, in Marx's view, social class is a classification of humans in a classification that is not equal to social groups. If social groups put more emphasis on grouping humans based on horizontal differences, but in social classes, humans are grouped based on differences in collective qualifications vertically. Social qualification vertically, humans are grouped according to their respective classes, such as upper class, middle class, and lower class. The problem that occurs in the social life of this society is why there is always a grouping of social classes. From these social classes, conflicts arise, resulting in the suffering of the proletariat. Mark's thoughts sparked the proletariat to revolution by destroying the entire socio-economic system cracking down on it. However, the bourgeoisie did not want to give up its wealth.

In the case of education that occurred in Indonesia and especially in Padamara Village, it can be assumed that this social class then emerged between the social classes of men and women, intentionally or not, the social class of women looking for a way out to fight the differences that occurred, one of which was through the pisuke tradition. . The class referred to here is the difference in the position or class of men and women in the eyes of the Padamara village community. This is by the results of the study that giving pisuke was adjusted to women's level of education. The higher the education level of women, the higher the amount of pisuke that must be paid. Furthermore, it is not one of the national goals that are in line with the existence of awiq-awiq to increase the participation rate and education of girls in Padamara village. If you look back at the 60s era, parents' support for girls' education is far less than that for boys. In general, the Sasak people until the 1960s still underestimated the participation of girls in formal education, especially in rural areas. The results of a survey conducted in Padamara village explained that the level of participation of girls in the 1980s-1990s ranged. Girls' educational participation was still quite adequate, but the level of education at this time was only up to high school and equivalent and was still dominated by men. Meanwhile, in 2000-present, the education level of girls is equal to that of boys, some have graduated to Strata 2 (S2), and many girls have continued their education outside the region. 24 The low participation rate of girls compared to the participation rate of boys in Padamara village, especially before the 1970s, then at this time changed completely, namely reaching an equal and even higher rate of participation of girls than boys in all levels of education is phenomenal and exciting to investigate more deeply, especially about the role of adat which is

still vigorously maintained by the Sasak people, especially the concept of pisuke which has always existed to this day.

Whether we realize it or not, pisuke has a fairly influential impact on women in Padamara village in the course of its journey. One of the impacts is in the world of education, as stated by one of the residents of Padamara village, especially women, the existence of pisuke is also quite influential on the level of education participation of girls, this is because if the education level of a girl is high, the number of pisuke to be given by the male will adjust accordingly. Then the main reason is a sense of pride for the female side if the pisuke paid by the male side is due to the opinion of the Padamara community if the pisuke paid by the male side affects the view of the female social strata. From the results of an interview with a resident of Padamara village (a woman), it can be concluded that education is a way to improve social strata in society, where pisuke plays a role in women's motivation to continue their education. This is because of the changing mindset of the Padamara village community, which begins to see someone with their capacity. Therefore, education for the community, especially women, is essential both for themselves and the community. This is what makes Padamara village women more active in increasing their level of education. The higher the education they take, the higher the pisuke they have to give them. In this way, of course, the social strata of women will also increase. In addition, in terms of gender equality, it turns out that pisuke plays a role. The gender equality referred to in this case is, when the man gives pisuke in a predetermined or agreed amount, especially in large quantities, then the man will not be easy to divorce or divorce his wife, with the consideration that he has already spent much money, especially the gift of pisuke.

4. CONCLUSION

Gender equality is justice in providing opportunities for gender men and women in terms of participation in education. Education is an essential tool to achieve gender equality in the relationship between men and women. There are still many development policies that are gender-biased and seem to ignore the role of women. There have been many good practices and other innovations in mainstreaming gender equality in education in Indonesia and internationally. One of them is the pisuke tradition which provides efforts to uphold gender equality for women through Karl Marx's class conflict perspective.

It is hoped that the future challenge is to rebuild education as part of the cultural force. To ensure the fulfillment of human rights and implementation, where women can move forward together and feel the same treatment as other citizens, namely men, because humans are also humans who have the same human rights, with the opening of broader access to education is one key to improving empowering women to be able to participate in decision-making in all areas of community life, as well as the goals of national development.

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The Synergy Between the Indonesian National Narcotics Agency Function and the Police Function in Handling Criminal Acts of Narcotics Abuse

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ABSTRACT
Various efforts to prevent the abuse of narcotics committed by adolescents, children, and adults and eradicate narcotics trafficking have been handled by the National Narcotics Agency and the Police. The National Narcotics Agency has the authority to carry out investigations and examinations. The Police can also have the same authority as the National Narcotics Agency in carrying out their functions. In this regard, this study examines 1) the function of the National Narcotics Agency and the Police in handling criminal acts of narcotics and 2) the synergy of the National Narcotics Agency functions with the Police functions in investigating and examining the cases of criminal acts of narcotics. To achieve the objectives of this study, a normative legal research method is used in examining the object of research. In addition, there are two approaches used, such as statutory and conceptual approaches. The results showed that the function of the National Narcotics Agency is to become an institution that prevents and eradicates narcotics abuse. Meanwhile, the function of the Police is as an institution carrying out arrests, investigations, and examinations of perpetrators of criminal acts of narcotics abuse and eradicating illicit narcotics trafficking. The synergy between the National Narcotics Agency and the Police is manifested in coordination in handling criminal cases of narcotics, starting from investigations, examinations, assessment of perpetrators to the process of escorting, trials, and executions.

Keywords: *National Narcotics Agency (BNN), Police, Criminal, Narcotics.*

1. INTRODUCTION

Legal protection for Indonesian citizens is stipulated in Article 1, point 3 of the 1945 Constitution of the Republic of Indonesia, which stipulates: "The State of Indonesia is a Rule of Law." The abuse of narcotics has encouraged the circulation of illicit narcotics, which is increasingly rampant and extends to an international dimension. Therefore, there is a need for efforts to prevent and combat the narcotics distribution in question and to eradicate illicit narcotics trafficking given the progress and development of communication, information, and transportation in the current era of globalization (Lydia Harlina Marton, 2006: 11). Law Number 35 of 2009 concerning Narcotics was formed because users misused the narcotics themselves. In other words, narcotics are intended for health services, medicine, and science. Thus the drug is not to be consumed excessively without any doctor's prescription, self-control, and at the same time without supervision that triggers a condition of dependence on drugs which is very detrimental to the user.

In the general provisions of Article 1 of Law Number 35 of 2009 concerning Narcotics, the definition of narcotics comprises:

> *Narcotics* in this Law are defined as substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can lead to dependence, which can be divided into groups as attached in this Law (Ruslan Renggong, 2016: 121).

In Indonesia, in the laws and regulations of the State of Indonesia, the term 'criminal offense' is generally used (Hartono, 2012: 17). In addition, Indonesia is still dominated by opium problems or excessive addiction. This trend continues to grow until it reveals that the circulation of narcotics and illegal drugs has a particular route. Law enforcement in criminal cases of narcotics trafficking is stringent. This occurs because the illicit trafficking of narcotics is a criminal offense; "A criminal act is an act which is a violating act, and anyone who violates the prohibition shall be subject to criminal sanctions (Moeljatno, 2000: 69)."

The formation of the Narcotics Law has significant underlying objectives, namely:

a. To ensure the availability of narcotics for the benefit of health services and/or the development of science and technology;
b. To prevent, protect, and save the Indonesian nation from narcotics abuse;
c. To eradicate the illicit trafficking of narcotics and narcotics precursors; and
d. To ensure the arrangement of medical and social rehabilitation efforts (Moeljatno, 2000: 61).

The National Narcotics Agency considers the four aspects above, starting from the first, namely ensuring the availability of narcotics for health services. The second is preventing narcotics abuse among adolescents, children and adults, and protecting threats to use narcotics without strict and thorough supervision. The third is eradicating the illicit trafficking of narcotics which is detrimental to users and also the nation. Lastly, the fourth, which is ensuring medical and social rehabilitation efforts for victims of narcotics.

Established on the empirical condition of the illicit distribution and abuse of narcotics in Indonesia as elaborated in the previous sections, the specific objectives of the present study are:

a. To reveal the function of the National Narcotics Agency and the Police in handling narcotics crime cases.
b. To disclose the synergy between the *BNN* functions and the police functions in investigating and examining the cases of criminal acts of narcotics.

2. LITERATURE REVIEW

As is well known by the public, the criminal act of narcotics crime refers to a crime belonging to an action that is against the Law and is very detrimental to the state and the Indonesian nation.

> Criminal Law is the science that deals with studying and explaining the principles that are the basis of criminal law regulations that apply at a certain period and time, also explaining the relationship between these principles and then placing them in a system (neat arrangement), so that what is meant by the criminal Law can be understood (Rasyid Ariman and Fahmi Raghib, 2015: 6).

Article 1 Number (1) of Law Number 35 of 2009 concerning Narcotics specifies, "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reducing to eliminating pain, and can cause dependence, which is differentiated into groups as attached in this Law."

According to Soedjono D., illegal use of narcotics by teenagers can be grouped according to three types of desire, namely:

a. those who want to experience (the experience seekers), namely those who want to gain new experiences and sensations from the consequences of narcotics users;
b. those who intend to stay away from or avoid the reality of life (the oblivion seekers), namely those who think of being drugged as the most beautiful and most comfortable place of escape; and
c. Those who want to change their personality (personality change), namely those who think that using narcotics can change their personality, such as being brave, getting rid of shame, being less rigid in relationships, and so on (Hari Sasangka, 2003: 9).

According to Dharmawan in a one-day seminar "*Dampak Ketergantungan Obat terhadap Perilaku serta Upaya Pencegahan dan Rehabilitasnya*" which was held at the University of Surabaya in August 1999 (Warta Ubaya, October 1999), in the use of dangerous drugs there are stages (Sasangka Day, 2003: 10). The stages of using narcotics are very diverse, starting from the impact of drug dependence which causes the user's behavior to become addicted to consuming drugs. Of course, every act shall be accounted for legally.

The synergy between the National Narcotics Agency and the Government agencies, in this case, the Police, can be seen in the handling of a narcotics crime.

> The National Police of the Republic of Indonesia (in Indonesian is called *Kepolisian Negara Republik Indonesia* and abbreviated as *Polri*) is the Indonesian National Police, which is directly responsible under the President. Polri has a motto Rastra Sewakotama which means Main Servant for the Homeland and Nation. Polri is in charge of carrying out police duties throughout Indonesia, namely maintaining security and public order; enforcing the Law; and providing aegis, protection, and services to the community. The National Police is led by a Head of the Indonesian National Police (abbreviated as *Kapolri*). Since November 1, 2019, the Head of National Police position has been held by General Pol. Idham Azis (https://id.m.wikipedia.org/wikidikutip pada Tanggal 13 Maret 2020).

The synergy between the function of the National Narcotics Agency and the function of the Police in the case of narcotics crime is essential. The two government agencies carry out the duties and functions of each agency or institution authorized in criminal acts, especially narcotics crime.

3. RESEARCH METHOD

This study applies a normative legal research method. There are several approaches used, such as a statutory approach and a conceptual approach. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. These legal materials are collected using methods and techniques of exploration and note-taking of materials related to the

object of study. The legal materials that have been collected are analyzed using a qualitative analysis technique.

4. DISCUSSION

4.1 The Function of the National Narcotics Agency in Preventing the Criminal Acts of Narcotics Abuse

So far, the National Narcotics Agency has played a dominant role in eradicating and preventing narcotics abuse in Indonesia. The success of the National Narcotics Agency in preventing and eradicating the act can be seen from the way they work in the field, both in their efforts to carry out socialization in the community about the severe dangers of narcotics, ensuring medical and social rehabilitation efforts for narcotics abuse and collaboration with the Police in the case of narcotics eradication. Therefore, the agency has its function in preventing the crime of narcotics. The National Narcotics Agency has the authority to make policies; strategic policies related to narcotics and precursor crimes are inevitable. In this case, the criminal acts of narcotics refer to a criminal act committed by a criminal subject who uses substances or drugs prohibited by Law because it can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can lead to dependence, both the perpetrators and other people (Rodliyah, 2017: 87).

Narcotics precursors refer to:

Substances, starter ingredients, or chemicals that can be used to manufacture narcotics are differentiated in the table as attached to this Law. Narcotics precursors are defined as:

1. substances; or
2. starter ingredients; or
3. chemical material.

Chemicals are defined as compounds with a specific composition of ingredients. The use of these substances is as an ingredient in narcotics (Rodliyah, 2017: 89). Narcotics can be said not only from plants or synthetic substances but also from chemical substances. Narcotics precursors are substances or starter ingredients that can be used in the production of narcotics.

4.2 The Role of the Integrated Assessment Team for the National Narcotics Agency in Handling Criminal Acts of Narcotics

The Integrated Assessment Team (abbreviated as *TAT* in Indonesia) has a crucial role in dealing with narcotics cases. Apart from the Police, the Integrated Assessment Team is derived from the National Narcotics Agency, which can deal with narcotics abuse. Later, the team of doctors and the medical team will check victims or drug users.

TAT consists of a legal team from the National Police, *BNN*, Attorney General's Office, Ministry of Law and Human Rights of the Republic of Indonesia (or *Kemenkumham*) plus the Correctional Center or *Bapas* (in handling child cases), which is in charge of analyzing whether acts of abuse are included in the drug syndicate network and a team of doctors (doctors and psychologists) in charge of conducting assessment and analysis medical, psychosocial and recommended drug abuse therapy and rehabilitation plans (https://*BNN*.go.id/penguatan-sinergi-untuk-tim-asesmen-terpadu/, retrieved on July 20, 2020).

The criminal acts of narcotics abuse examination process should be carried out carefully by the Integrated Assessment Team. This is mandatory because the criminal suspect himself also has rights as a suspect, protected by the applicable Law.

The rights of suspects in criminal cases are fundamental to be protected by Law. A suspect is usually a party whose personal freedom is partially taken. For example, he/she is arrested, detained, his/her belongings confiscated, and so on. Rights like that are fundamental rights for a person. Therefore, the Law necessarily needs to guarantee and supervise that taking the suspect's rights is not carried out arbitrarily or excessively (Munir Fuady and Sylvia Laura L Fuady, 2016: 7).

Criminal action suspects have ordinary rights in society, in general, including obtaining social justice for all Indonesian people, as stated in the fifth precept in *Pancasila*. Thus, the suspect is also entitled to legal protection such as rehabilitation and compensation in the form of money and vindication if they are innocent or are not involved as victims or perpetrators of the criminal acts of narcotics abuse.

4.3 Synergy between the National Narcotics Agency and the Police in Handling the Criminal Acts of Narcotics

Coordination between the National Narcotics Agency and the Police in handling narcotics crimes is essential. The National Narcotics Agency is the institution that plays the most significant role in the rehabilitation of victims of the crime of drug abuse. Meanwhile, the Police handle criminal acts of narcotics crimes, usually to eradicate narcotics trafficking. Both of these institutions have their professional ethics.

According to Notohamidjojo, in carrying out their obligations, legal professionals need to have:

1. Humane attitude, meaning that it does not merely respond to the Law formally, but rather the truth according to conscience;
2. A fair attitude, which means looking for worthiness by the feelings of the community;
3. Proper attitude, which means looking for considerations to determine justice in a concrete case;
4. Honest attitude means stating something is proper according to what it is and staying away from what is not proper and inappropriate (Supriadi, 2016: 21).

Every field of the legal profession, both from the National Narcotics Agency and the Police, has its respective functions and roles in carrying out its duties as legal professionals. Both must have a humane, fair,

proper, and honest attitude in carrying out their obligations as law enforcers, especially in the case of criminal acts of narcotics.

5. CONCLUSION

The National Narcotics Agency has a function in drafting and formulating national policies in the field of prevention and eradication of criminal acts of narcotics abuse. In addition, the Assessment Team belonging to the National Narcotics Agency has a role in conducting checks on victims or drug users by experts in their fields. The police function refers to a function of state government in guaranteeing public security and order, law enforcement, aegis, protection, and public services. The function of the Police in narcotics crime is to arrest, carry out investigations, and investigations as well as eradicate the crime of narcotics trafficking.

The synergy of investigations and examinations toward criminal acts narcotics abuse carried out by the National Narcotics Agency (*BNN*) and those carried out by the Police in uncovering the alleged Crime of Narcotics begins with investigations, arrests, searches, and other actions as an attempt to disclose allegations of the narcotics crimes. Furthermore, investigations are carried out to find bright spots for criminal acts and collect evidence to find the suspect. Meanwhile, the National Narcotics Agency will conduct a check in advance of the rehabilitation stage to determine whether if a person arrested is a victim of criminal acts of narcotics abuse or not.

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Legal Policy of Sustainable Tourism Development: Towards Community-Based Tourism of Indonesia

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ABSTRACT
Indonesia is the rich country in the terms of natural environment and resources worldwide. The region of Indonesia stretches from Sabang to Merauke that spill as the emeralds string in the equator span. Besides, Indonesia has been well-known as the multicultural country with various cultural resources, more than hundred ethnics and several religions, languages, and also races. Hence, Indonesia's official, namely "Unity in Diversity," reflects the plurality within the unitary State of Indonesia. The State should protect the entire people and control the territory and natural resources contained therein to increase the prosperity, educate and produce intelligent people, and to participate in the establishment of the world order based on the freedom, peace, and also social justice. The said Preamble shows the main objective of the development of the State of Indonesia and the sort of ideology that should be employed as the State's foundation to unify the nation and the establishment of the character-building.

Keywords: *Legal Policy, Sustainable Tourism Development, Community Based.*

1. INTRODUCTION

In the article 33 paragraph (3) of the constitution that stipulated "the land and water also natural resources should be controlled by the state and used for the prosperity of the greatest people." That is why Indonesian wealth in the terms of strategic geographical position and natural environment and also the resources, including historical heritage, has been cultural identity, cultural capital, and also cultural power that was driving the active life of nation, and the main resources.

To ensure that tourism development is incorporated with the economic, natural environment, and also socio-cultural sustainability, and the laws and regulations have to support the tourism development as the basis of legal instruments, and also the ethical tourism component to strengthen the respective country in establishing the sustainable tourism.

Sustainability has appeared as the paradigm in the tourism planning, and also the development since the growth of global tourism in 1960s and 1970s, with significant effects on the tourism system on the global and local scales throughout the world, and also the negative effects perceived outcomes of tourism growth in the destination regions. The societal context encouraged the focus on the environmental concern and global inequalities, the environmental movement had strong influence on the significant attention on the nature of the tourism development. [2]

The tourism has not been attracted attention in the academic field. There is a little attention and regulation that establish like legal issue in indonesia. This may be since the tourism right is not a fundamental right as the other human beings and ecological rights. This kind of right has the core meaning in developing sustainable tourism in the country. The paper attempts to discuss the conceptual dimension of the sustainable tourism development and give the overview on international policy framework, as well as the national legal instruments to develop the state's income for the most significant welfare of the people.

2. RESULT AND DISCUSSION

The key element of sustainable tourism is in the tourism industry. The tourism entrepreneurs and local communities in the tourism destination have to perform relative competition in the tourism business, access, and also sustainable use of the natural environment and resources, also respect to the culture and wisdom of the local community. The tourism businesses and companies should be strengthened to conserve the natural environment and resources and preserve culture and protect local wisdom of the communities as to defined within the 1999 Global Codes of Ethics for Tourism.

The core of Balinese tourism development has been cultural tourism to generate dynamic of national cultural tourism, like conserving cultural values, custom, and tradition as the essential part of the local wisdom and

genius. [13] Regional Regulation Bali Province Number 2 in 2012 concerning on Cultural Tourism, Balinese culture and tradition inspired by Hindu religion tenets namely *Tri Hita Karana* [14] that is the Hindu's philosophy for the life of human being that encouraging the dynamic practices of the tourism in term of relationship between human being and the almighty God (parhyangan), interrelation between human itself (pawongan), and relationship of human and natural environment (palemahan) in daily life. [15]

The existence of traditional Balinese villages that the so-called Desa Adat (Adat Village) have been significant role in the cultural tourism development and in preserving local genius also wisdom of the host community, conserving the natural environment, keeping the holy spirit such as tourism destination. To protect the future life of Desa Adat, the Government of Bali enacted Regional Regulation Number 4 in 2019 on Adat Village of Bali. Regional regulation has been recognized Desa Adat as the legal entity of the Balinese community system that has its traditional region (Wewidangan Desa), autonomous adat village governance (Prejuru Desa), also material and immaterial village properties (Padruwen Desa), written customary law (Awig-awig and Perarem), that incorporated with the actual existence of the three Hindu temples (Kahyangan Tiga/Kahyangan Desa) include Pura Desa Bale Agung, Pura Puseh, and Pura Dalem.

Concerning the dynamics of ecological and cultural tourism practices, the Government of Bali gives legal policy to create informed consent and the public participation principles, the involvement of the host community in the tourism governance through developing collaborative management in proportional sharing of the tourism revenue that can be used for maintaining the tourism infrastructure [16] Moreover, tourism destinations like Monkey Forest of Ubud, Monkey Forest of Sangeh, Monkey Forest of Alas Kedaton, and the Pendawa Beach of West Kuta have been organized by the respective community of the host adat village in the region under the supervision of the regional government. [17]

3. CONCLUSION

Tourism in sustainable development requires the informed consent and participation of the host community and legal policy instrument and strong political leadership to make sure the genuine commitment of stakeholders. Tourism sustainability principles refer to the integrated balance of economic, environmental, and socio-cultural interests within the national development strategy for the only purpose of enhancing people's welfare and prosperity as mandated by the 1945 Constitution. Therefore, a suitable balance between the said three significant interests should be taken into account for guaranteeing and strengthening the long-term legal policy of sustainability and the legal culture of the host community in tourism development.

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Pandan War as Potential Local Wisdom in Eco-Tourism Development in the Tenganan Pegringsingan Traditional Village, Karangasem Regency, Bali

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ABSTRACT
The purpose of this writing is to examine that *Perang Pandan* as potential local wisdom in the development of ecotourism at Desa Adat Tenganan Pegringsingan, Karangasem district, Bali. This paper uses a descriptive method and primary data collection techniques from interviews and questionnaires from villagers or krama Desa Adat Tenganan Pegringsingan. This paper shows that Perang Pandan can be followed by children and adults, usually implemented in two days. Day one is the event for villagers, and day two is the event for the general public. Perang pandan is so potentially local wisdom because their unique and sacred can be tourism attraction and improve the village's economy of the villager Desa Adat Tenganan Pegringsingan. However, the attraction from the outside or tourism on watching Perang Pandan will not affect their sacredness and the purpose of Perang Pandan at Desa Adat Tenganan Pegringsingan.

Keywords: *Desa Adat Tenganan, Ecotourism development, Local wisdom, Perang pandan.*

1. INTRODUCTION

The Vedas (the Hindu religious scriptures), the revelations revealed by Ida Sang Hyang Widhi Wasa/God Almighty through the Maha Rsi are universal and eternal teachings. Through these Vedic teachings, various sources of teachings from various domains are full of pluralism (Anutana). The concept of Anatuna is the inspiration for its democratic nature. The development of new teachings such as yoga/tapa brata, socio-religious, and others.

The Vedic teachings penetrated to the inner core of Hindus, continuously flowing through the centuries and expanding endlessly. In its journey, the Vedas are divided and become traditions that allow mixing with the life of Hindus in the world. This causes diversity in visualizing Hinduism but remains at the core of Hinduism Bali that is how the island we live in is called. With a variety of uniqueness and cultural diversity that exists. It can be seen from the way of the religious life of the Balinese people, which is dominated by Hinduism, full of rituals, offerings, and thick customs. Every day, in every corner, religious rituals dedicated to Ida Sang Hyang Widi Wasa as an endless thanksgiving can be found.

The Hindu religious tradition in Bali looks very lively because it is inspired by religious teachings and is always supported by solid and thick customs (Wijayananda, 2004:2-3).

Each region in Indonesia, especially in Bali, has differences in implementing ceremonies or rituals based on village, Kala, and Patra (place, time, and condition). Tenganan Pegringsingan Traditional Village in Karangasem Regency, Bali Province is a village whose religious teachings and ceremonies are different from the teachings and ceremonies of Balinese Hinduism in general.

The Tenganan Pegringsingan Traditional Village is still considered successful in maintaining its culture and customs. Many things in the Tenganan Pegringsingan Traditional Village have the potential to become local wisdom. Local wisdom is the activity, knowledge, and belief of a community in managing nature oriented

towards environmental sustainability. Each region has different local wisdom according to the level of understanding and intelligence and the adaptability of local humans to their environment. (Eka, Permana: 2010).

With world tourism development, it is deemed necessary to highlight unique and intrinsic things as a tourism attraction. The government's continued development of tourist villages has increasingly supported the existence of customs and culture in the Tenganan Pegringsingan Traditional Village. A tourist village is the development of a village area that does not change what already exists but is more likely to develop the potential of villages in the village, which functions as an attribute of tourism products on a small scale into a series of tourism activities or activities and can provide and fulfill tourism needs. A series of travel needs both in terms of attractiveness and as supporting facilities (AJ, Muljadi: 2012:12).

The development of tourist villages is also followed by how to protect all aspects of tourism itself. New sciences have been developed to protect these aspects, which have recently been increasingly discussed, namely ecotourism. So that traditions, customs, culture, and all kinds of things that are tourist attractions in the Tenganan Pegringsingan Traditional Village are safe from all threats of negative tourism impacts.

Based on the background above, in this study, several problems will be discussed, namely:

1. How is the pandanus war procession as potential local wisdom in the Tenganan Pegringsingan Traditional Village, Karangasem Regency, Bali?
2. How is the pandanus war as a potential for local wisdom in developing ecotourism in the Tenganan Pegringsingan Traditional Village, Karangasem Regency, Bali?

2. METHODS

In a study, the method plays an essential role because the method will provide instructions on carrying out research. With these instructions, it is hoped that reliable research results will be obtained.

This paper uses empirical research methods because there is a gap between das solen and das sein, namely theoretical conditions and legal facts. Descriptive aims to describe the characteristics of a particular individual, condition, symptom, or group accurately, determine the spread of a symptom, or determine whether there is a relationship between a symptom and other symptoms in society. The data used in this study are primary data and secondary data. Primary data is data obtained from research in the field. Whereas what is meant by secondary data is data obtained from primary legal materials sourced from statutory regulations and legal documents, and data sourced from secondary legal materials consisting of scientific books and legal writings. The primary data collection technique was obtained from interviews and questionnaires to respondents, informants, and the community/citizens/krama of the Tenganan Pegringsingan Traditional Village.

3. RESULT AND DISCUSSION

3.1 Pandan War Procession as Potential Local Wisdom in Tenganan Pegringsingan Traditional Village, Karangasem Regency, Bali

Tenganan Village is one of the traditional villages located in Manggis District, Karangasem Regency, Bali Province. Tenganan Village is also known as the Bali Aga Village. *Bali Aga Village* is a village that maintains a lifestyle whose community structure refers to the traditional rules of village customs inherited from their ancestors. The shape and size of the building and yard, the arrangement of the location of the building, to the location of the temple are made by following traditional rules that have been maintained for generations. There are several versions of the origin of the name Tenganan, the first version of the word Tenganan comes from the word "Tengah" or “Ngatengahang,” which means “moving to a deeper area.”

In contrast, the second version says that the Tenganan people come from Penedes, Gianyar, formerly known as Be predecessor. Tenganan Village is one of the traditional villages located in Manggis District, Karangasem Regency, Bali Province. Tenganan Village is also known as the Bali Aga Village. *Bali Aga Village* is a village that maintains a lifestyle whose community structure refers to the traditional rules of village customs inherited from their ancestors.

V.E. Korn (1933), a scholar from the Netherlands, who first researched about Tenganan, wrote about the religious outlook of the people of Tenganan Pegringsingan in his article entitled The Village of Tenganan Pegringsingan.” The concept and views of the people of Tenganan Pegringsingan about God and the divinity of man and humanity apparently cannot be separated from the influence of the customs and socio-cultural traditions of the community. Traditionally, religiously, and democratically, the Tenganan Traditional Village highly upholds justice. All citizens have the same rights and opportunities. The pandanus war tradition is held on sasih kalima (the fifth month of the Balinese calendar) at Bale Patemu (a meeting hall in the village courtyard), the implementation time starts at 2 pm which requires residents to wear traditional Tenganan clothes (pegringsingan woven cloth), and men without clothes superiors fight one-on-one armed with thorny pandanus tied together in the form of a club. Before the pandan war procession is held, a series of traditional ceremonies must be carried out by the residents of the Tenganan Pegringsingan Traditional Village because the pandanus war is the peak activity of the entire traditional ceremony called usaba sambah.

Before the pandanus war began, there were various processions, namely the first sangkep. This was a meeting activity held by village manners discussing the

implementation of usaba sambah activities carried out in the meeting bale, explaining the obligations of the villagers. This sangkep was attended by klian, sekaa truna, and village manners whose seats were arranged in such a way as to face the Banten or unique offerings provided at Bale Patemu. Then proceed with Geguron (explained by traditional leader I Wayan Mudita), the opening procession that indicates the pandanus war will begin by playing songs from Selonding (gamelan). When this Gegurron is sung, no one is allowed to record; even if there are tourist guests, the guests will be told to turn off the recording device right away for a while so as not to reduce or interfere with the solemnity of the Gegurron itself. The pandanus war on throwing pindo is carried out after the two initial processions. This shows a sacred dance by two village krama pretending to be fighting, then throwing out the tabuh palm wine as an offering to the motherland. The legal pandanus war procession begins when residents surround the village playing gamelan or fighting accompanied by Baleganjur beats. The pandanus war takes approximately three hours and must be followed by all youth in the traditional village of Pegringsingan. Pandan wars usually last for two days. The first day was carried out at dusk by the Tenganan Pegringsingan Traditional Village residents, and the second day the war was carried out on stage. The participants of this pandanus war are carried out by men regardless of age, from adults to children.

When starting the pandanus war, the traditional leader in Tenganan village gave a loud signal. Two young men got ready, facing each other with many pandan leaves in their right hand and a shield made of woven ata leaves in their left hand. The mediator, like a referee, stands between two young men. After the intermediary gave the signal started (by raising his hands high), the two youths were invited to start attacking. They pit each other pandanus carried in their right hands, targeting the opponent's back by embracing it first. Wrestling, dragging the opponent's back with thorny pandan leaves. That is why this pandanus war procession can also be referred to as megeret pandanus. Other pandanus war participants cheered, and the selonding gamelan musicians would beat at a fast tempo. The two young men on the stage were even more enthusiastic about embracing and dragging their opponent to the ground. If deemed sufficient, the mediator will separate the two assisted by others. One match has a short duration, even less than a minute. The fight continues continuously, not intending to kill but only to injure because every pandanus war is carried out to honor the ancestors. The mediator has an essential role because if the mediator has separated, the match cannot be continued, then the match is over. Participants back/down from the stage and return to watch the next match. Pandan war is not an attraction that will end in a losing or winning position for the players, but again as a tribute to the ancestors and worship of Lord Indra. Redcliffe-Brown, through Koentjaraningrat, states that various religious ceremonies are usually present associated with the mythology or sacred tales in question, and where their influence and effect on the structure of relations between residents in a village community (Koentjaraningrat in Aryandari, 2012: 171). Therefore, the pandanus war is a tribute to God, and the pandanus war action is carried out without revenge. They do it with a cheerful smile, even though they have to hurt each other with pandan thorns. Followed by traditional medicine explicitly made so that the scars obtained from the pandanus war recover. Followed by the tradition of megibung (eating together) by the participants of the pandanus war, which is a procession of eating together. This tradition began in 1692 AD when the King of Karangasem, I Gusti Anglurah Ketut Karangasem, fought to conquer the Sasak kingdom on the island of Lombok. The king made the rules for eating together during lunch breaks.

Until now, the megibung tradition is still carried out in Karangasem and Lombok. Recently the megibung activity has been adapted by Hindu customs and religion. The particular values and rules can be seen from the pile of rice placed in the middle of the container with a banana leaf base. The people or participants in the pandanus war who had gone up to the stage were invited to sit in a circle. A group enjoys one serving of rice called one sela, consisting of eight people or less. These people must follow the rules of etiquette; before eating, the rice is taken from the tray by clenching it with hands, then taking the meat and side dishes regularly, the rest of the food from the mouth should not be scattered on the tray. The drink provided is water placed in a clay jug, with two clay jugs being allocated for one.

Drinking water must listen to how to drag (swallowed directly from the end of the jug without touching the jug's lips)—then closed with a wine-drinking event. In addition to eating, people should not leave their seats but wait for other people or other interlocutors to finish together. Eating together is carried out at every ritual in the Tenganan Pegringsingan Traditional Village. Nyacah Jaja is also a megibung ritual in the Tenganan Traditional Village, or other names can also be called bancakan. In this tradition, all participants mingle regardless of social status. Before the pandan war is declared over, the same mabuang pindo dance will be performed as at the beginning; this dance is an offering that represents love, saying, love as the implementation of duties and obligations in life and is a Hindu religious ceremony in the Traditional Village of Tenaganan Pegringsingan Closing with panyineb Lawang which is the last procession of the pandanus war, the participants will be given a cane that has been made by the women in the traditional village of Tengan Pegringsingan and the participants will ask for the grace to their ancestors and gods for the smooth running of all traditional ceremonies and to be given smoothness in their daily activities –day.

3.2 Pandan War as Potential Local Wisdom in Ecotourism Development of Tenganan Pegringsingan Traditional Village, Karangasem Regency, Bali

With world tourism development, it is deemed necessary to highlight unique and intrinsic things as a tourism attraction. The government's continuous

development of tourist villages has increasingly supported the existence of customs and culture in the Tenganan Pegringsingan Traditional Village. A tourist attraction that can be enjoyed in Bali is its abundant natural wealth. Indonesian tourism is focused on Bali. As if deified, all brain layers twist so that the place becomes a tourist attraction by developing local wisdom. Starting from customs, religious ceremonies until finally touching the realm of ecotourism. Ecology and tourism finally merged into one in a bright idea that can be a tourist attraction and an experiment to improve the community's economy around the place that is used as ecotourism. Regulations related to tourism have been contained in Law Number 10 of 2009 concerning Tourism, the definition of Tourism which is explained in Law no. 10 of 2009 Article 1 paragraph (3) are various kinds of tourism activities and are supported by various facilities and services provided by the community, businessmen, the Government, and Regional Governments. This Law also includes the notion of Tourist Attraction (Article 1 paragraph 5), namely everything that has uniqueness, beauty, and value in the form of natural, cultural, and man-made diversity that is the target or destination of tourist visits. From these understandings, it can be concluded that tourist attraction is a significant core to attract both local and international tourists to come to visit and potentially improve the community's economy around the tourism place. Talking about ecotourism development is not an easy thing. This new term that still has many definitions has not been summarized in one definite explanation. Talking about ecology and tourism and then making it a unit incorporated into ecotourism makes it tricky for the layman to digest. However, in essence, the notion of ecotourism is a form of tourism responsible for preserving natural areas, providing economic benefits, and maintaining cultural integrity for the local community.

Based on this understanding, ecotourism is a conservation movement carried out by the world's population. This eco-traveler is a conservationist by nature. (Fandel: 2007). Minister of Home Affairs Regulation (Permendagri) Number 33 of 2009 concerning Guidelines for Regional Ecotourism Development explains that ecotourism is the potential of natural resources, the environment, and the uniqueness of nature and culture, which can be one of the leading sectors of the region that has not been developed optimally.

1. Ecotourism principles are formed to regulate the balance between the environment, community development, and sustainable tourism. The principles are 1. Minimize the impact of physical, social, behavioral, psychological;
2. Build environmental awareness, culture, and respect;
3. Provide a positive experience for visitors and hosts;
4. Provide direct financial benefits for the conservation or preservation of the environment;
5. Generate financial benefits for local communities, private industry;
6. Provide an impressive interpretive experience for visitors to increase sensitivity to tourist destinations' political, environmental, social climate;
7. Build, operate facilities or infrastructure with minimal environmental impact;
8. Recognize rights. The Spiritual wealth of indigenous communities and empowering them.

The development of ecotourism not only has a positive impact but can also have several negative impacts, including (Hijriati, 2014:146):

1. Biological resources are damaged, which will cause long-term loss of attractiveness;
2. Indiscriminate disposal of garbage, in addition to causing unpleasant odors, can also kill the surrounding plants;
3. There is often the commercialization of arts and culture;
4. There is a demonstration effect, the personality of young people is damaged.

From an ecological perspective, Tenganan Peringsingan village is located in the middle of a beautiful hilly area. Administratively, Tenganan Village is located in Manggis District, Karangasem Regency with an area of 1,176,225 ha. The boundaries of the Tenganan Village area, north of the Loaddem District; east of Karangasem District; south of Pesedahan Village, and west of Ngis Village. The climate in Tenganan Village is sub-tropical, with an average rainfall of 1,500 – 2000 mm/year, with temperatures ranging from 28 °C – 30 °C.

The world has recognized Tenganan Traditional Village as a tourist village, and there is no doubt about its validity. However, this research opens up more about the pandanus war procession, which most laypeople think is just a procession full of attractions. Many things from the Tenganan Pegringsingan Traditional Village can be potential local wisdom in developing ecotourism, including customs, religious ceremonies, traditional buildings, and handicrafts.

Pandan War in the Tenganan Pegringsingan Traditional Village will not be found in other areas because this is a cultural heritage, customs that are intensely guarded by the residents of the Tenganan Pegringsingan Traditional Village, based on the results of research conducted, pandanus war has strong potential to become local wisdom in ecotourism development because of its uniqueness and Its sacredness can increase the attractiveness of tourism and the economy of the Tenganan Pegringsingan Traditional Village community. This is evident from the Pakraman Tenganan Pegringsingan Village, which always maintains and preserves its culture as the main attraction that attracts many tourists.

4. CONCLUSION

Based on the results of the research that the author did about the pandanus war as a potential for local wisdom in the development of ecotourism in the Tenganan Pegringsingan Traditional Village, it can be concluded that the pandanus war procession begins with a procession in which residents surround the village playing gamelan or what is called fighting accompanied by Baleganjur beats. Pandan wars usually last for two days. The first day was carried out at dusk by the Tenganan Pegringsingan Traditional Village residents, and the second day the war was carried out on stage. The participants of this pandanus war are carried out by men regardless of age, from adults to children. Pandan War in the Tenganan Pegringsingan Traditional Village will not be found in other areas because this is a cultural heritage, customs that are intensely guarded by the residents of the Tenganan Pegringsingan Traditional Village, based on the results of research conducted, pandanus war has strong potential to become local wisdom in ecotourism development because of its uniqueness and Its sacredness can increase the attractiveness of tourism and the economy of the Tenganan Pegringsingan Traditional Village community.

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Legal Protection of Mutual Insurance Policyholders in the State of Default

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ABSTRACT
This research is motivated by the researcher's confusion as a party who explores the company's legal issues, especially those concerning insurance companies. In general, the legal entity for each insurance company in Indonesia is a limited liability company or at least a cooperative legal entity. However, this is contrary to the Bumiputra Joint Life Insurance Company 1912, which became a mutual business entity. A mutual insurance company is a company that places the policyholders as well as the owner. The mutual insurance company AJB Bumiputra 1912 is currently experiencing a default, where almost all policyholders in Indonesia are experiencing obstacles to obtaining their rights as the insured party. Policyholders never know that they are all owners of the company. The management of AJB Bumiputra 1912 in the form of a Mutual Legal Entity is unknown in Indonesian legal institutions, even though AJB Bumiputra 1912 was established before Indonesia's independence. This research is normative legal research that examines and analyses in depth the position of the policyholder as the insured and at the same time as the owner of the company in the event of a default, by using a statutory approach, especially those that regulate the existence of AJB Bumiputra 1912 as an insurance company in the form of a mutual business. This can be seen from the failure to follow up on the decision of the Constitutional Court Number 32/PUU-XVIII/2020 dated January 14, 2021, which ordered the government to immediately issue a law on this joint venture (mutual); Legal materials were collected using documentation and recording techniques, then analyzed with interpretation and qualitative techniques, with the output target being the design of the concept of the policyholder's responsibility as the insured and at the same time as the owner of the company in the event of a default.

Keywords: *Legal protection, Joint Business, Policyholder.*

1. INTRODUCTION

Indonesian economy for a long time and has even played a role in the course of the nation's history side by side with other sectors of economic activity. However, in line with the covid-19 pandemic, the world's economic conditions experienced a very sharp degradation, penetrating almost all life sectors, including insurance companies.

The Covid-19 pandemic seems to have created confusion for insurance policyholders and confusion about the sustainability of the premium he has paid, at some point in time, whether he can still guarantee his rights as the insured party at the time of signing the insurance agreement or not. The existence of the covid-19 pandemic has turned out to have crushed the beautiful dream of people's income. Insurance companies that have collaborated with the insured through an insurance agreement are experiencing difficulties fulfilling their obligations due to the uncertainty of when the pandemic (covid-19) will pass so that the insured has no guarantee that he will get his rights as the insured, moreover for insurance companies that take the form of a mutual business that is unknown in indonesian legal institutions such as undertaken by ajb bumiputra 1912.

A default phenomenon experienced by policyholders of ajb bumiputra 1912 impacted the loss of the policyholder's rights as the insured party. This was caused by the insurance management of ajb bumiputra 1912, who took cover behind the shield of the joint venture (mutual) adopted by ajb bumiputra 1912, so they did not want to make payments because they considered that the policyholders were also the owner of the company. after all, the company was experiencing liquidity difficulties.

According to the 2014 insurance act, a company that runs an insurance business can be a limited liability

company (pt), a cooperative, and a joint venture (mutual). The ajb bumiputra 1912 company took the form of a joint venture (mutual), but in practice until now, the law governing mutual business insurance (mutual) does not yet exist. in this case, there has been a vacuum of the norm. the manager of ajb bumiputra controls the company's operations based only on the company's articles of statute, not based on the provisions of the law.

Ajb bumiputra policyholders never know about their position in the mutual company, besides being the insured party and the company's owner (the guarantor), which creates legal uncertainty regarding the claim of policyholders' funds are due. However, the company is unable to fulfill it. When at the beginning of signing this insurance agreement, the company ajb bumiputra had promised to pay a very tempting claim to policyholders. The policyholders do not understand this form of the joint venture (mutual); their thoughts are only oriented towards limited liability companies and cooperatives. So, previous policyholders still think that ajb bumiputra 1912 is a limited liability company. so it is no exaggeration to think that the one who must be responsible is the manager, namely the management of ajb bumiputra 1912.

2. RESULT AND DISCUSSION

2.1 Position of the Policyholders as the Insured Party

The cancellation of the formation of a law that gives recognition and specifically regulates insurance businesses in the form of a Joint Venture (MUTUAL) as ordered by Constitutional Court Decision Number 32 /PUU-XI/2013 and Constitutional Court Decision Number 32 /PUU-XVIII/ 2020 has created legal uncertainty and unfairness of insurance providers based on a Joint Venture (MUTUAL) where the policyholder is also a party who acts as the owner (Insurer).

Although the insurance company AJB Bumiputra 1912 was established since 1912, its operation is not based on law but only based on the Statute ratified through the Extraordinary Meeting of the member representative bodies on May 23, 2008. This results in the position of the policyholder being ambiguous. This can be seen in the implementation of the AJB Bumiputra 1912 Insurance business, which is currently experiencing default and is unable to settle its obligations to the policyholder. The management still thinks that the losses suffered by the company must be borne on a prorated basis as determined in the Articles of Association of the company Article 38 paragraph (4), which determines:

"If the establishment of AJB Bumiputera 1921 is continued, then the remaining losses are divided on a prorate basis among the members of AJB Bumiputera 1912, in the manner determined in the Member of Representative Body session."

Based on the provisions of Article 38 paragraph (4) of the Company's Statute, it is clear that the policyholder's position is also obliged to be responsible for the company's losses because as a member of AJB, Bumiputera 1912 is also the owner of the company. In the absence of a law that regulates this MUTUAL business, the legal basis for managing the running of this mutual company is the Articles of Statute. In the event of a default, the members of AJB Bumiputera 1912 are responsible for the company's loss. Thus, it is clear that the absence of this MUTUAL Business Law will have implications for the position of the policyholders as the insured party do not obtain legal certainty of their rights as the insured party in the event of a default experienced by the company. This is what creates injustice.

Based on the provisions of Article 38 paragraph (4) of the Company's Articles of Association, it is clear that the position of the policyholder is also obliged to be responsible for the company's losses because, as a member of AJB Bumiputera 1912, he is also the owner of the company. In the absence of a law that regulates this MUTUAL business, the legal basis for managing the running of this mutual company is the Articles of Association. In the event of a default, the members of AJB Bumiputera 1912 are responsible for the company's loss. Thus, it is clear that the absence of this MUTUAL Business Law will have implications for the policyholder's position as the insured party not obtaining legal certainty of their rights as the insured party in the event of a default experienced by the company. This is what creates injustice.

Meanwhile, on the other side, implementing an insurance business based on companies in the form of Limited Liability Companies (PT) and Cooperatives has obtained legal certainty with the existence of the Law on Limited Liability Companies and the Cooperative Law, which regulates explicitly it. So, in this case, there has been unequal treatment by the state.

Considering that AJB Bumiputra is currently in a state of default, this situation will result in the policyholder's position as the party responsible for the company's losses because the mutual company has placed the policyholder as the insured and at the same time as the Insurer. So that in the event of default, all losses will be borne on a prorated basis between the policyholders.

2.2 Position of the Policyholders as the Insurer

Currently, Indonesia does not yet have a regulation regarding a joint venture legal entity (mutual). The only insurance company in the form of a mutual business is only carried out by AJB Bumiputra 1912. Although it has been recognized in Act No. 2 of 1992, as well as its substitution Act, namely Act No. 40 of 2014 but in terms of governance, it still faces challenges considering that at this time, no laws and regulations are governing the status of legal entities, including the governance of insurance companies in the form of joint ventures (mutual) as well as insurance businesses in the form of Limited Liability Companies and cooperatives.

Because the operations of the mutual insurance company run by AJB Bumiputera 1912 have placed the

policyholders as the insured and the Insurer, in the event of a default, the loss will be borne by referring to Article 38 of the Company's Articles of Statute, which determines:

If AJB Bumiputera 1912 suffers a loss, the General reserve fund will first cover the loss.

If it is still not enough, the loss will be covered by a guarantee fund and other equity.

If the guarantee fund also does not cover the loss, then an Extraordinary Session of the Member of Representative Body shall be held under the guidance of Article 40 to decide whether AJB Bumiputra 1912 is liquidated or continued its establishment by maintaining a standard business form or changing the form of another business entity.

If AJB Bumiputera 1912 is continued to be established, then the losses shall be divided on a prorate basis among the members of AJB Bumiputera 1912 in the manner determined in the Member of Representative Body session.(5)

Based on the provisions of article 38 of the Company's Articles of Statute, it is clear that the policyholder cannot avoid the responsibility to bear the company's losses in the event of a default. This is motivated by an initial agreement that his position is also the company's owner, so it is also appropriate to bear the company's losses.

2.3 Accountability of the Directors of AJB Bumiputera 1912 in the event of a default

The resolution of the AJB Bumiputra 1912 problem is getting more and more chaotic, considering that the Joint Business Act (MUTUAL) has not yet been realized, even though there has been a Constitutional Court Decision Number 32 /PUU-XI/2013 and a Constitutional Court Decision Number 32 /PUU-XVIII /2020, which orders the government and the House of Representative to issue a Joint Business Law immediately. However, the government has not followed up on it so that no one can formulate best practices for joint ventures in Indonesia1. Not by the management of AJB Bumiputra 1912, even though they have been managing this Mutual business since before Indonesia's independence. Moreover, even the policyholders do not understand this form of joint business (MUTUAL). Their thoughts are only oriented to the business of Limited Liability Companies and Cooperatives. So, from the past until now, policyholders still think that AJB Bumiputera 1912 is a Limited Liability Company. So it is no exaggeration to think that the one who must be responsible in the management of AJB Bumiputera 1912, while the management even argues that the policyholders are also the company's owner.

In Article 30 of the Statute, it has been determined that the responsibilities of the Board of Directors are as follows: Each member of the Board of Directors must be in good faith and entirely responsible for carrying out management duties for the interests and business development of AJB Bumiputera 1912. Each member of the Board of Directors is personally responsible for the loss of AJB Bumiputera 1912 caused by the personal error of the person concerned in taking actions that deviate from the Code of Conduct according to the Statute and the rules that apply at AJB Bumiputera 1912.

Based on the provisions of Article 30 paragraphs (1) and (2), it is clear that the board of directors is responsible for managing the company. In the event of a default, as currently experienced by AJB Bumiputera 1912, is the Board of Directors. Because the Board of Directors is the one who manages the running of the company. The absence of a Mutual Business Act has complicated implications for the managers of Bumiputera 1912. Apart from investigating the cause of the default, whether it was caused by an overmatch or negligence on the Board of Directors. Taking a closer look at the chaos that occurred at AJB Bumiputera 1912, it was seen that many parties intervened outside the company, and the ideas of solutions that were born from the taste of Limited Liability Company were misleading.2

The policyholders are not aware that they are all the company's owners but do not understand their position as the party who must also be responsible for all losses suffered by the company. The policyholders, who are primarily teachers, lecturers, and various company employees who are already entitled to the payment of insurance claims for the premiums that have been paid, have not been able to do so until now because the management is no longer able to fulfill their obligations. To pay claims. The policyholders do not understand what to do and demand whom, all throwing responsibilities at each other. On the one hand, the Manager is waiting for a law to regulate this mutual business. On the other hand, The Financial Services Authority, as the institution authorized to carry out supervision, still seems to move half-heartedly so that the settlement of the liability for the loss of the policyholders cannot be followed up.

Regarding the insurance company AJB Bumiputera 1912 in the form of a joint business entity (mutual). This can be seen from the Articles of Association of AJB Bumiputra 1912 as the basis for its management carried out by its organs consisting of the Member Representative Body, abbreviated as BPA; Directors and Commissioners; from the Articles of Association, it can be seen that the position of Member of Representative Body is very dominant and strong and has the right of authority to control the running of the company. AJB Bumiputera 1912 is the only mutual insurance company in Indonesia. Therefore, this Bumiputera 1912 Joint Life Insurance company does not have access to capital as does an insurance company in the form of a Limited Liability Company.

The current condition in AJB Bumiputera 1912 is that policyholders whose coverage period is due but cannot enjoy their rights as the insured party because AJB Bumiputera 1912 is in a state of default. Noting the

existence of this phenomenon, it is clear that the Manager has committed an unlawful act. The elements of unlawful acts as referred to in Article 1365 of the Civil Code are visible from the cause of the birth of the default condition, where the management of AJB Bumiputera 1912 has played an active role in creating a state of default that causes losses to the company, which has implications for the position of the policyholder as the insured party who suffers a loss in the form of not getting his rights as the insured party for the premium that has been paid by the insurance agreement that has been signed.

Due to the Board of Directors is the Manager of the company, then based on the provisions of Article 1365 of the Civil Code, those responsible for the losses suffered by the policyholders are the Directors because their actions have fulfilled the elements of unlawful acts, namely:

1) The existence of an action;
2) The act is against the law;
3) There is an error on the part of the perpetrator;
4) There is a loss for the victim;
5) There is a causal relationship between the act and the loss.3

The Board of Directors' responsibility for this default has also been explicitly regulated in the company's Statute. AJB Bumiputera 1912 is on the Board of Directors appointed through the Extraordinary Meeting of the Member of Representative Body. Suppose there is a violation of the Statute by the Board of Directors. In that case, the actions of the Board of Directors according to Indonesian law that adheres to civil law are referred to as ultra vires. The injured party cannot sue the company but becomes the personal responsibility of the concerned board of directors.4 Due to the management of AJB Bumiputera 1912 being in the hands of the Board of Directors, thus the party responsible is the Board of Directors of AJB Bumiputera 1912 as an organ formed by Member of Representative Body to manage the running of the company in good faith and full of responsibility if you need to be responsible personally to personal property at home.

3. CONCLUSION

The AJB Bumiputera 1912 policyholders in a mutual insurance company legally have a dual position, namely on one side being the Insured party who is entitled to the insured funds, and on the other side is also located as the Insurer (the owner of the company) who is obliged to guarantee the insured fund is paid to policyholders whose contracts have matured. The Board of Directors of AJB Bumiputera 1912 is authorized to run the company's operations by the Statute that has been agreed in the General Meeting of the Member of Representative Body. If the company fails to pay due to an error on the Board of Directors, the Board of Directors has committed an unlawful act. All losses suffered by the company will be borne by the Board of Directors personally in good faith with full responsibility. If necessary to be responsible for personal property.

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Parate Execution of Mortgage Right of Non-Agreement in the Deed of Mortgage

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ABSTRACT
Mortgage holder has the authority to sell the mortgage object through the auction on their power, even there was no prior agreement outlined in the mortgage deed. The authority to sell the mortgage object on is one of the manifestations and priorities position that the holder of the security authority has. There is include the promise of appointment in the mortgage deed, like the promise that the holders of the mortgage have the authority to sell on his power the object in the Mortgage if the debtor default from the public auction without requiring the approval of the guarantor of the mortgage and takes the payment of the receivables from the proceeds of the sale of the other creditors. This condition shows that there is inconsistency in Parate execution's arrangement in the provision of guarantees with mortgages. This inconsistency can decrese and also distort the legal aspect of certainty as the core element of the law. So, there will be legal uncertainty. There are legal issues to be studied: the legal position of the undertakings of Parate execution of mortgage rights in mortgage deed and the legal force of Parate in executing mortgage rights that are not agreed upon in mortgage deed. The legal position of the undertakings of Parate execution of mortgage rights in mortgage deed will give the sense of psychological security for the parties since the legal power of the Parate execution of mortgage right is born from the favorable of legal provisions regulating the security rights that must not be agreed upon in mortgage deed.

Keywords: *Mortgage Deed, Parate Execution.*

1. INTRODUCTION

Mortgage institutions provide guarantee rights enforced on the rights of land as in the law number 5 in 1960 with regard to basic agrarian law, whether or not including the other objects that become the integral part of the land.

There are 3 models that can utilize to execute the mortgage object if the debtor defaults, that is, parate execution, execution based on the executorial title stipulated in the mortgage certificate, and also underhanded sales parate execution arrangements that are stated specifically in the article 6 of act number 4 in 1996 concerning mortgage rights which states that "if the debtor fails to promise, the holder of the first mortgage has the right to bargain the object of the mortgage on his power with the auction of public and take the repayment of receivables from the sale proceeds."

Substantially the elements contained in article 6 of the mortgage rights act show 2 important things when the debtor defaults, namely the transfer of rights and the execution of rights for the creditor/first mortgage holder. The act has explicitly mandated the first mortgage holder to bargain the mortgage object in the auction, even there was no agreement outlined in the deed of granting mortgage as known as *beding van eigenmatig verkoop*. (J. Satrio, 2002: 250). The authority to bargain the mortgage object on its power is one of the manifestations and also priority position of the mortgage holder granted by the article 6 of the mortgage rights act. The authority or right is owned by law by the person concerned (henny tanuwidjaja, 2012: 37).

Furthermore, if there is such an agreement, it is only facultative. the parties are free to state or not mention the undertakings in the action of granting mortgage rights. This explicitly stipulated in article 11 paragraph (2) letter e of act on mortgage rights that "in

the deed of granting mortgage, promises can be made, including a promise that the first mortgage holder has the right to sell on his power the object of the mortgage if the debtor is injured promise."

This formulation seems to explain more than what should be explained which then contradicts the content of the main provisions. the formulation of the article is then supported by an explanation of article 11 paragraph (2) letter e of the mortgage rights act, which formulates that "in order to have the authority as stated in the article 6, the act of granting mortgage shall include this promise. this study intended to analyze from a legal perspective the building of a mortgage guarantee legal system that wants to provide legal certainty and protection for debtors and creditors, which turns out to be inconsistencies in the parate execution arrangements in the act on mortgage rights provisions. Therefore, the main issues that need to be studied are: how is the legal position of the promise on the parate of the execution of the mortgage in the deed of granting the mortgage and what is the legal force of the parate of the execution of the mortgage that is not agreed upon in the deed of granting the mortgage**.**

2. METHOD

The method in this research is normative legal to examine the level of consistency of the articles in the mortgage rights act as the materials of primary legal. The primary legal materials are complemented by secondary legal materials, like legal books, legal, scientific works of the research results, and legal literature with regard to the problems. As for the analysis of legal materials, the grouping of the equal laws and regulations, the regulations in the hierarchy below them.

3. RESULT AND DISCUSSION

3.1 Position of the Undertakings on the Execution Parate in Granting Mortgage

The parate executive institution is deliberately held for the holder of creditors Mortgage Rights in order to retrieve the repayment of their receivables quickly and inexpensively, to recess the formalities of procedural law and strengthen the position of creditors on the parties who have the authority from them. (Herowati Poesoko 2008: 282). Granting mortgage is about the material agreement including a series of legal actions from the Deed of Granting Mortgage to registration by getting Mortgage certificate from the Land Office.

The material agreement refers to an accessory agreement in the form of credit agreement, loan agreement, or the other agreements, which creates the relationships of lending and borrowing between the creditor and debtor. This mortgage was born through encumbrance, which consists of the activity process, namely: the granting of Mortgage and registration (Purwahid Patrik, Kashadi: 1996:64).

The granting of Mortgage is used to provide Mortgage as the guarantee for the repayment of certain debts, which is outlined in and an inseparable part of the debt agreement focused on the Deed of Granting Mortgage by the Land Deed Officer (PPAT) which is attended by giver and receiver of Mortgage and two witnesses. The Granting of Mortgage refers to the content that must be included and facultative content not mandatory. Facultative promise does not affect the validity of the deed, but it has binding power to the third party.

The stipulation of said undertakings in the Granting Mortgage only give the sense of stability or just psychological sense, not juridical to the Mortgage holder than if it is not stipulated (Sutan Remy Sjahdeini: 1996: 227). The stipulation of the undertakings in the Granting Mortgage provide the parties the sense of psychological security even it does not own the juridical power because it has been specified in the Mortgage Rights Act.

3.2 Legal Power of Mortgage Parate Execution of Non-Agreement in the Deed of Mortgage Granting

The execution arrangement can be known in 20 paragraph (1) letter a in the conjunction with Article 6 of Mortgage Rights Act, which explains that: if the debtor is in the breach of contract, then the first Mortgage holder will bargain the mortgaged object on his power through the public auction and take the repayment of his receivables. from the sale proceeds without having to ask for the Head of the District Court. The right to bargain the Mortgage object through the public sale on its power is as one of the manifestations and the priority position. This is the priority of the Mortgage since the Mortgage keeps the creditors who prioritize the amount of capital borrowed by the debtor with guaranteed land rights.

The holder of the first Mortgage has the right to sell on his power the object of Mortgage, when the debtor break his promise. This authority should no longer need to be agreed upon in the Deed of Mortgage Granting due to legally, the right to sell the Mortgage object on the power. The authority to sell the the Mortgage object on its power can be agreed again with the Mortgage provider. Parate execution can be conducted even though it is not agreed upon in the Deed of Granting Mortgage. As long as the creditor carrying out the execution is the creditor holding the first Mortgage. Other creditors also demand repayment of their receivables.

4. CONCLUSION

The legal position of the promise on the parate of execution of the Mortgage in granting the Mortgage will provide the security of psychological to the parties though, it does not own juridical power since it has been explicitly explained in the Mortgage Rights Act. Article 6 of the Mortgage Rights Act has determined the binding provision that if the debtor default the undertakings, the holder of the first Mortgage has the right to bargain the Mortgage object based on his power through public auction. Legislative Institutions and the Government need to revise again the formulation of the explanation of Article 6 in the Mortgage Rights Act jo. Elucidation of Article 11 paragraph (2) letter e of the Mortgage Rights Act, thus the formulation of the explanation and provisions of the norms of the article do not conflict with each other to assure the legal certainty.

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Constitutionality of Judicial Review Versus Judicial Review in Civil Cases Based on Constitutional Court Adjudication Number 108/PUU-XIV/2016

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ABSTRACT
The availability of Judicial Review as one of the legal recourses in the judicial procedural law system is intended to protect Human Rights (HAM) without sacrificing the principle of legal certainty (rechtszekerheid), which is the foundation of the rule of law. The issue raised in this article is the allowance for more than one judicial review in civil cases since the implementation of PUU Number 108 anno 2016. This article applies normative legal research, which focuses on studying the principles and norms of positive law. The implications of existing. That Supreme Court ruling was based on the conflict in findings between the High Court's ruling 360 PK/Pdt/2008, which granted legal ownership of a contested property to PT Baktiparamita Putrasma, and the High Court's ruling 568 PK/Pdt/2016, which granted legal ownership to the heir H. Abdul Rachman Saleh. The ruling 568 PK/Pdt/2016 is now considered a judicial oversight or an intentional mistake.

Keywords: *Judicial Review, the implementation of PUU Number 108 anno 2016.*

1. INTRODUCTION

As the time comes forward, more problems will occur because of mutual interests between a person or parties. Conflicts will always happen with or without consent of the person or parties, by some people, defending their rights is one of their primary rights as people who lives in the nation of the law, in the court of every degree there will always be conflict whether it formed in private case of criminal or penal case. The limitation of PK/ civil (civil) requests can only be once based on Article 66 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court and has not changed in the two amendments to the law. Paragraph (1) of this Article 66 stipulates clearly and unequivocally that "application for reconsideration can be submitted only 1 (one) time". In the article's explanation, it turns out that there is no further explanation as, why the PK can only be submitted once.[1]

The limitation of judicial review in civil cases was strengthened by the Constitutional Court Adjudication Number 108/PUU-XIV/2016, which decided that the submission of judicial review other than criminal cases was only once. The legal consequence of the adjudication is that it is permitted to carry out a judicial review more than once, which applies specifically to criminal cases and does not apply to civil law. Civil cases always end with a verdict, for every Judge's verdict usually, legal strive are requested by the plaintiffs or defendants to prevent any legal oversights from the verdict. [2] with every branch of justice, whether it is judicial justice, should not distinguish between any people, in between those who rich or poor, between those are aristocrats or not, or any absolute justice, there is no distinguished justice. [3]

In reality, the Supreme Court's adjudication Number 36 PK/Pdt/2018 annulled the judicial review of the previous case with the same case as in the Supreme Court of the Republic of Indonesia Adjudication Number 568 PK/Pdt/2016 dated 31st October 2016. This deviates from Article 24 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, Article 66 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004, and lastly by Law Number 3 In 2009, the Constitutional Court's adjudication Number 34/PUU-XI/2013, and the Constitutional Court's Adjudication Number 108/PUU-XIV/2016, all of which limit the review of more than one time in civil cases.

The conflict between facts and court adjudications and against the legal norms of the legislation, in this case, is Law Number 8 of 2015 j.o Law Number 10 of 2016

concerning the a quo case. Based on these provisions, the author wants to know about the review efforts in the context of civil law because if indeed the novum problem related to the criminal PK is something that is considered substantial, the author thinks so will the novum issue related to the civil PK or TUN, because maybe after the PK is submitted and decided, there is a substantial new state (novum) that has not been found at the time of the previous PK.

The above reality shows that the author sees the implementation of legal remedies for repeated judicial review in civil cases as evidence of legal developments in Indonesia, thus attracting the author's attention to consent in writing articles with the issue "Legal analysis of judicial review in civil cases is more once after the Constitutional Court Adjudication Number 108/PUU-XIV/2016." The problems that the authors raise are as follows:

1. What is the arrangement for judicial review of more than one time in civil cases after PUU Number 108 of 2016?
2. How is the implementation of judicial review more than once in civil cases after PUU No 108 of 2016?

2. METHODS

This research uses the normative method, using mainly primary legal materials. Legal materials are gathered by literature method by reading, analysing, and comparing the legal materials. Primary legal materials used are Codes, Supreme Court's Adjudications, and Constitutional Court's Adjudications. Statutes are also examined in this research (statutory approach). Since the implementation of PUU Number 108 anno 2016 restricts the availability of Judicial Review to only once per case, there have been legal cases where more than one Judicial Review was allowed based on the ruling 36 PK/Pdt/2018 by the Supreme Court.

3. RESULT AND DISCUSSION

3.1 Supreme Court's Adjudication Number 108/PUU-XIV/2016

In practice, reprinting in civil cases after the Constitutional Court Number 108/PU-XIV/2016, which explicitly prohibits re-establishing more than once in civil cases, is not applied in the Supreme Court. This can be seen in the judicial review of more than one civil case number 36 PK/Pdt/2018, which shows that the practice of reassembling more than once in civil cases is still practiced in the Supreme Court.

In the author's search results, that Defendant II or PT. BAKTIPARAMITA PUTRASAMA made legal efforts to request a judicial review of the case review or review of case Number 568 PK/Pdt/2016. Based on the second petition for review by Defendant II or PT. BAKTIPARAMITA PUTRASAMA The Supreme Court which examined and tried by deciding in its adjudication in case Number 36 PK/Pdt/2018, as follows:[2]

- Granted the petition for reconsideration from the Petitioner for Review of PT BAKTIPARAMITA PUTRASAMA;
- Canceled the Adjudication of the Supreme Court of the Republic of Indonesia Number 568 PK/Pdt/2016 dated 31st October 2016;

3.2 Case Position

a. Relief Sought in 230/Pdt.G/2013/PN South Jakarta Case

The relief sought by the Plaintiff's lawsuit, requesting the South Jakarta District Court to give the order that having a Subsidiary quality, so the Judges that in charge could give the best order *(ex aequo et bono).*

b. Order of the Court

Supreme Court was made a Judicial Review, with the order:

1. Denying the Plaintiff's Lawsuit *(niet ontvankelijke verklaard)*;
2. Penalized the Respondent of Judicial Review to pay the court fee in every Court decree in the sum of Rp.2.500.000,00 (Two Million and Five Hundred thousand Rupiah)

c. Reasoning Behind Judicial Review Case number 36/PK/Pdt/2018

The principal of this case, the applicant of the second Judicial Review by the date 13th July 2017, and before that, they were the respondent on the first Judicial Review in number 568/PK/Pdt/2016. The reasoning behind the applicant requesting for Judicial Review is to substantiate the court's order because there were 2 (two) contradictive orders by the assumption of the Judge's oversights in *a quo* case.

d. Legal Judgment of the 2nd Judicial Review by the Council on the Case number 36/PK/Pdt/2018

The Judge's Judgement in the 2nd Judicial Review, the reason behind the Judicial Review request was able to allow, because of the contradictive of the orders of the court number 281/Pdt/Bth/2001/PN North Jakarta, *juncto* number 111/PDT/2003/PT Special Area Capital of Jakarta *juncto* number 499K/Pdt/2005 *juncto* number 360 PK/Pdt/2008, that ordered the object of the dispute is owned by Baktiparamita Putrasama Ltd., otherwise by the case number 2652 K/Pdt/2014 *juncto* number 242/PDT/2015/PT Special Area Capital of Jakarta *juncto* number 2652 K/Pt/2014 *juncto* number 568 PK/Pdt/2016 that ordered the object of the dispute was owned by H. Abdul Rachman Saleh (deceased)/his heirs. It was found that oversights of the judges and/or mistakes that were real in the order of the court number 230/Pdt.G/2013/PN South Jakarta *juncto* number 242/PDT/2014/PT Special Area of Capital Jakarta *juncto* number 2652 K/Pdt/2014 *juncto* number 568 PK/Pdt/2016.

3.3 Legal Judgment of the 2nd Judicial Review by the Council on the Case number 36/PK/Pdt/2018

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3.4 Legal Consideration for the 2nd Judicial Review Case Number 36 PK/Pdt/2018

Judges consideration about the granting of 2nd Judicial Review with the considerations:

a.) First of all, object of dispute *a quo* that located in Nias 7 street, second district of Pegangsaan North Jakarta is owned by Sar'ih bin Paul according to Freehold Title Certificate number 78/Petukangan III dated 4th November 1974, Measurement Letter number 979/1974 named Sar'ih bin Paul 21.220m2 width, by CV Griya Tirta with H. Abdul Rachman Saleh as the Director was used to be collateral to Industri Sandang Ltd. d/h Industri Sandang Jakarta Ltd. That has States-Owned Enterprises status. Because of the unfinished debt by CV Griya Tirta, according to the deed that has been reaching an agreement, has been handed over to National Debt Affair Agency;

b.) secondly, the object of the dispute has been purchased by Baktiparamita Putrasama Ltd. Based by discharge and submission deed number 7 dated 25th January 1996, then authorized Building Rights Title Certificate number 9698/Pegangsaan Dua dated 30th November 2010 after the latest measurement, 18.762m2 width, and the object of the dispute was managed by the applicant until the dispute held;

c.) by the date 28th October 2001, the 3rd party *in casu* Baktiparamita Putrasama Ltd. Has been requested *Derden verzet* on the confiscation of the land deed has been granted by the court with justified the objection that the confiscated object is owned by the exeptant *in casu* Baktiparamita Putrasama Ltd. Declared that confiscated object is invalid and must be revoked;

d.) by the date 16th April 2013, H. Abdul Rahman Saleh requested a lawsuit to South Jakarta District Court case number 230/Pdt.G/2013/PN South Jakarta *juncto* number 242/PDT/2014/PT Special Region of Capital *juncto* number 2652K/Pdt/2014 *juncto* number 568 PK/Pdt/2016, and the court favored him;

e.) the ownership of the object of the dispute by H. Abdul Rahman Saleh is just based on his own "Self-proclaim," not by *Recht title* given by the law. Because there was not any legal-based written proof that there was an assignment between him and Sar'ih bin Paul from Freehold Title Certificate number 78/Petukangan III that was made in front of Conveyancer because the land affair agency has registered the land has been told by Supreme Court Adjudication number 2652 K/Pdt/2014 dated 17th February 2015;

f.) on the contrary, the ownership by the Judicial Review applicant as the buyer with good faith has been finalized and validated with Verdict number 281/Pdt/Bth/2001 North Jakarta *juncto* number 111/PDT/2003/PT Special Region of Capital *juncto* number 499 K/Pdt/2005 *junco* number 36 PK/Pdt/2008.

3.5 Analysis on the Implementation of Judicial Reviews More than Once in Private Case Number 36 PK/Pdt/2018 after the Constitutional Court Adjudication Number 108/PUU-XIV/2016

Based by 48th Act year 2009 about Judiciary Authority, article 24 section 2, 14th Act year 1985 about Supreme Court that has been changed by 5th Act year 2004 and the 2nd and the 2nd change with 3rd Act year 2009 article 66 section 1, declared that Judicial Review in Private Case is still in charge except in Penal or Criminal Law.

Law that regulates the restriction of Judicial Review more than once based by written above, reinforced by Supreme Court's Adjudication number 16/PUU-VII/2010, Constitutional Court's Adjudication number 45/PUU-XIII/2015, and Constitutional Court's Adjudication number 108/PUU-XIV/2016, those regulations explicitly forbade Judicial Review that occurs more than once in Private Case. However, Constitutional Courts also justify if there are 2 (two) verdicts contradict one another against the same case. According to the 10th Supreme Court's year 2009, it is possible to do the second Judicial Review.

In reality, based on the author's findings in the private case in Supreme Court's Adjudication, number 36/PK/Pdt/2018 canceled Supreme Court's Adjudication number 568 PK/Pdt/2016 dated 31st October 2016. The author was found that Supreme Court Adjudication

number 36/PK/Pdt/2018 cannot be legally allowed because it was contradictive with Act of Judiciary Authority, Act of Supreme Court, and Constitutional Court's Adjudication that explicitly allowed Judicial Review that occurs more than once only in Penal of Criminal Law.

Moreover, Supreme Court's Adjudication number 36 PK/Pdt/2018 canceled Supreme Court's number 568 PK/Pdt/2016 according to the author's finding that adjudication cannot be legally allowed. Author's argument, that adjudication based on the legal argumentation, that adjudication instead making some legal uncertainty, because of the adjudication is being contradictive with Supreme Court's Adjudication number 25 PK/TUN/2015 dated 24th June 2015 verdict; granting the Judicial Review request of H. Abdur Rachman Saleh (he was the plaintiff in the first-degree civil verdict) and canceled Supreme Court's Adjudication number 437 K/TUN/2013 dated 18th December 2013 that granted the request for cassation from the Chief of Agrarian Affair Agency in Administration City of North Jakarta, cassation applicant II by the Head of National Agrarian Affair Agency in DKI Jakarta Province.

The Judicial Review based by Supreme Court Adjudication number 25 PK/TUN/2015, the order was:

1. Granted the Plaintiff's lawsuit;
2. Canceling the object of dispute, which is:
    a. Chief of Land Affair Agency's Adjudication of DKI Jakarta number 192/HGB/BPN.31/2010 dated 20th August 2010 about Building Right Title to Baktipramata Putrasama Ltd. Authorized by the Defendant I;
    b. Building Right Title Certificate number 9698/Pegangsaan Dua, dated 30th November 2010 named Baktiparamita Putrasama Ltd. Authorized by Defendant II;
    c. Letter number 661/31/72-300.7/IV/2012, dated 18th April 2012, about Request for Substitute Certificate, authorized by Defendant II.
3. Ordering Defendant I to revoke the Chief of Land Affairs Agency's Adjudication of DKI Jakarta number 192/HGB/BPN.31/2010, dated 20th August 2010 about Building Right Title Granting for Baktiparamita Putrasama Ltd. For 18.762m2 width of the land. Furthermore, ordering to Defendant II:
    a. Building Right Title Certificate number 9698/Pegangsaan Dua, dated 30th November 2010 named Baktiparamitha Putrasama Ltd. 18.762m2 width of land;
    b. Letter number 661/31/72-300.7/IV/2012, dated 18th April 2012, about Request for Certificate Substitution.

Ordering to Defendant II to authorize Substitute Certificate of Freehold Title number 78/Petukangan III named H. Abdul Rachman Saleh (Plaintiff).

4. CONCLUSION

Arrangements for judicial review more than once in civil cases with the perspective of Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law - Law Number 3 of 2009, and the Constitutional Court Adjudication Number 108/PUU-XIV/2016, expressly limit the judicial review may only be taken once.

Where eas the implementation of judicial review more than once in civil cases Number 108/PUU-XIV/2016 which limits the judicial review to only one time, there are facts of judicial review which exceed one time in civil cases based on the adjudication of the Supreme Court Number 36 PK/Pdt/2018 with legal considerations in the adjudication, namely there are conflicting adjudications between the adjudications of Case Number 360 PK/Pdt/2008, stating that the object of dispute belongs to PT Baktiparamita Putrasama. Meanwhile, in case Number 568 PK/Pdt/2016, the object of dispute belongs to H. Abdul Rachman Saleh (late)/heirs, and there was a judge's error and/or a fundamental error in the adjudication of case Number 568 PK/Pdt/2016.

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The Legal Study of the Coastal Border Control by Tourism Entrepreneurs in Bali as a Privacy Area

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ABSTRACT
Indonesia is an archipelagic country with almost 17,000 islands stretching from Sabang to Merauke. One of the islands that is the Indonesian mainstay is Bali island. Bali is one of the provinces in Indonesia that generates the largest foreign exchange in the tourism sector. Bali tourism has penetrated the coast, where entrepreneurs claim coastal areas by making private tourist accommodation areas. This problem has generated interest between local communities and tourism entrepreneurs. However, due to the absence of an actual legal product to solve the problem, it is necessary to study coastal control by tourism entrepreneurs in Bali as a privacy area. For this reason, the author uses a normative juridical research method; therefore, the conclusions are obtained regarding the privatization of the coastal border carried out by tourism entrepreneurs by making a legal study which is then stated in a legal product under the authority of the Bali provincial government. The resulting legal product is in the form of a legal policy from the government that restores the function of the coastal border as open to the general public, intending to conserve the coastal border area.

Keywords: *Bali Provincial Government, Legal Studies, Privatization of Border Coast.*

1. INTRODUCTION

Indonesia is an archipelagic country consisting of more than 17,000 islands with a coastline of 81,000 km2 and an ocean area of about 3.1 million km2 consisting of 0.3 million km2 of territorial waters and 2.8 million km2 of archipelagic waters. [1] Bali is a small island among thousands of islands within the territory of the Unitary State of the Republic of Indonesia. Bali is one of the provinces in Indonesia as the most significant foreign exchange contributor from the tourism sector. Tourism on the island of Bali is the prima donna of international tourist destinations. The natural beauty of Bali, from the top of the hills, valleys to the beach, is the main attraction for tourists, so it is not surprising that Bali is the target of investment for tourism development and industry. The dominance of the economic cycle in Bali is through the tourism sector. In order to maintain the stability of the economic cycle in Bali, development is carried out in various fields, especially in the construction of tourism facilities and other supporting facilities. By bearing the title as one of the best tourist locations globally, Bali strives to make its guests comfortable. The rapid tourism development has a geographical impact on the island of Bali in the land sector. This development is not able to balance the availability of land for tourism management. These conditions have resulted in a shift in the movement of tourism development to penetrate the coastal areas and expose the beauty of the coast of Bali as a marine tourism attraction. [2]

The coastal is a meeting between the outermost boundary of the sea and the outermost boundary of land, which can be measured at the highest tide of seawater and the lowest low tide. The beach, in general, has a distance between the sea and the building called the beach border. The increasing rate of population growth, the increasingly rapid progress of tourism, and the increase in the rate of development in all aspects have resulted in various problems, especially in the land sector, which has the impact of increasingly limited availability of land to build buildings that will be made to support tourism. [3] Coastal areas or coastal borders are very vulnerable to changes, both caused by natural factors and human activities. The changes in ecosystems and overexploitation are very worrying phenomena. Viewed from the positive side, tourism development on the coast can be a way of conserving coastal areas because tourism entrepreneurs will strive so that the area can attract as many tourists as possible and generate substantial economic benefits. [4]. The negative impact that has become a problem from the development of the tourism sector to the coastal area which has recently occurred is quite a highlight in which the use of coastal area space is exploited in a limited way by tourism entrepreneurs.

There is the privatization of coastal borders by beachside tourism entrepreneurs who directly contact the local community area.

The development of tourism areas such as tourist lodges and hotels along the coastal border area causes the reduced function of the coastal border area to prevent abrasion and public areas open to the public. In essence, beaches throughout Indonesia should be open to the public interest. However, when hotels, resorts, cottages, and luxury settlements (villas) are increasingly being built along the coast, the beach is no longer a public space. It is limited to the monopoly of parties with significant capital. Beaches are supposed to be public spaces that are open to the public. However, when the development along with the coastal area increases, resulting in the beach is no longer an area open to the public and free from the control of the actors who want to invest big (investors) who carry out business activities. [5]. The phenomenon of the number of buildings along the coast and the damage to the coastal environment and the interests of marginalized fishers must immediately receive strict attention and handling. The area referred to as the coastal border must be made as a conservation area. The Presidential Decree No. 32 of 1990 is regulated to protect the coastline as far as 100 meters. According to statutory regulations, coastal boundaries are:

1. Land along the coast whose width is proportional to the shape and physical condition of the beach, at least 100 (one hundred) meters from the highest tide point towards the land.
2. Land along the edge of the sea where the shape and physical condition of the coast is steep or steep with a distance proportional to the shape and physical condition of the beach.

Several central points of tourism development are carried out by investors targeting coastal areas, which result in the privatization of coastal areas such as businesses providing accommodation such as owners of villas, star hotels, and inns. In addition, they are also business of providing food and beverage services such as restaurants and beach clubs.

The privatization is in private ownership of unspoiled (virgin) beach borders and beach boundaries that become public facilities. This situation is used as an argument by business actors and investors to make the coast a location for carrying out their business activities, considering that the beach can be used optimally because its location is very strategic to become a tourism area. The privatization carried out by tourism entrepreneurs on average uses reasons for the convenience of tourists. In general, the actions of tourism entrepreneurs in making the area commensurate with the beach as a private area for their business are actions that can be detrimental to the general public. Beaches in Bali are not just places for recreation or residential areas for fishing communities. Beaches in Bali have very close links with the culture, traditions, and religion of Hinduism in most Balinese people. Many series of religious ceremonies are carried out on the beach; therefore, it will be very impactful if tourism entrepreneurs compete to control the coastal area of Bali as a private area in their business. The control of coastal areas by tourism entrepreneurs is even often a public conversation in which the general public is prohibited from being in certain beach areas around which hotels or tourism suggestions are located because they are considered to interfere with the privacy of the tourism place, especially the beach area around hotels, bars and restaurants. In the Regional Regulation of the Province of Bali No. 6 of 2009 concerning the Spatial Plan for the Province of Bali, it is stated that the coastal boundaries in the use of coastal land, including nature and beaches, are part of public rights. The problem that arises is how then the beach as a public space area becomes part of the private space of tourism entrepreneurs. This problem is fascinating to be studied in which the author wants to examine the Legal Study of Coastal Border Control by Tourism Entrepreneurs in Bali as a Privacy Area.

To examine these problems of the study, the author uses a normative juridical research method, using an approach to laws and other government regulations that correlate with the problems studied. This study uses legal materials, namely primary and secondary legal materials. The primary legal materials used are all regulations according to the hierarchy of legislation starting from the Constitution of the Unitary State of the Republic of Indonesia, Laws, Government Regulations, and so on related to this research. Secondary legal materials are the views of scholars regarding the privatization of coastal borders by tourism entrepreneurs. The data sources are obtained from books in Indonesian or foreign languages related to the writing of this journal and recent studies from national and international journals. Legal materials and other supporting information obtained by the author will be processed and analyzed through descriptive, evaluative, argumentative, and systematic steps.

2. FORMS OF PRIVATIZATION OF THE BEACH BORDER BY TOURISM ENTREPRENEURS IN BALI

Coastal areas are areas that have a high level of mobility and exploitation, so there must be preparedness and prevention in dealing with the various consequences that arise from each activity carried out. [6]. The coastal area must be used wisely and efficiently so that the utilization of the natural resources contained therein can be used and utilized as much as possible for the prosperity of the people. [7] The beach is the meeting area between the highest tide and the mainland. At the same time, the coastline is another water boundary line that connects the meeting points of the water between the highest tide and the mainland. The coastline will be formed following the configuration of the coastal/land.[8]. According to the Decree of the Minister of Marine Affairs and Fisheries No. 10 of 2002 concerning General Guidelines for Integrated Coastal

Management Planning, a coastal border is an area along the coast that is designated for coastal protection and preservation. The coastal border area serves to prevent coastal abrasion and protect the coast from activities that can disrupt/damage the function and sustainability of the coastal area. Areas commensurate with the beach are only allowed for plants that function as beach protectors and safeguards. The use of public facilities does not change the function of the land as coastal protection and preservation. Based on Presidential Decree No. 32 of 1990, concerning Management of Protected Areas, it has determined that:

1) Protection of coastal borders is carried out to protect coastal areas from activities that interfere with preserving coastal functions (article 13).

2) The criteria for coastal borders are land along the edges whose width is proportional to the shape and physical condition of the beach at least 100 meters from the highest tide point towards the land (article 14).

There are two types of coastal boundaries for residential areas, namely the form of a sloping beach with waves <2m, a border width of 30-75, and a sloping beach shape with waves >2m, a border width of 50-100 m. [9]

Privatization is a process in which there is a transfer of ownership from what was initially joint property in the sense of being under the power and management of the state, which is intended as public facilities and infrastructure, turning into individual or individual ownership. [10] Privatization of the coastal border is the takeover of the coastal border area which is a public area into private ownership both by individuals and business entities which entrepreneurs in the tourism sector generally carry out. The form of coastal border privatization by tourism entrepreneurs can be from land parcels for coastal borders. Specifically for the island of Bali, the practice of privatizing coastal borders mostly occurs in the southern Bali region. Some concrete forms in the takeover of coastal areas into private areas are:

a. Tourism entrepreneurs build their private tourist facilities along the coast. For instance, Puri Santrian Beach Resort and Spa made permanent wooden floors with almost half of the area of the beach border, which is used as a base for placing restaurant facilities such as tables and chairs. In addition, there is the laying of beach chairs in front of the restaurant facilities, which further narrows the existing beach boundaries. Also, the installation of buoyancy ropes is on the beach to mark the beach area that is the facility of Griya Santria Beach Resort.

b. There is the installation of a barrier in the form of a buoy or flag that stretches on the side of the boundary of the tourism business area that occurs in the Sanur beach area and places facilities on the water for tourists. Therefore, the area cannot be used, passed, or utilized by the community.

c. There is the installation of concrete in the beach area located in front of the sea view of tourism businesses to prevent fishers from sticking boats or transacting buying and selling fisherman catches, as happened in the Candi Dasa area Karangasem Regency.

d. There is the closing of the access to the stairs to the beach, which is located under the cliff and making the route private access for tourism businesses, occurred in the Bukit Jimbaran area.

The privatization of coastal borders by tourism entrepreneurs directly impacts the people who are within the scope of the area. Privatization of coastal borders takes away the rights and freedoms of the community to benefit from natural resources around the area that have become a private area, especially for the surrounding fishing communities.

People who have lived for a long time in the coastal areas and coastal border areas already consider the area to be theirs and are accustomed to utilizing all the natural products in the area, which are then controlled by tourism entrepreneurs, of course, it changes the order of their lives significantly. [11]

Local communities do not fully benefit from tourism because the local community's space for movement is increasingly limited. Gradually local communities in coastal areas that depend on tourists visiting the beach will lose access to their jobs to fulfill their daily needs and accidentally break the trade chain at the local community life cycle level. This impacts small traders who make their living by trading around the coast, such as snack vendors, roasted corn, accessories, etcetera.

The privatization of the coastal area causes limited space for the use of the beach as a place to carry out religious ceremonies, especially for Hinduism. Like doing the *melasti* (purification) ceremony and other ceremonies whose process is carried out along the coastal border. Hindus believe that specific beaches in certain areas have religious, spiritual values to carry religious ceremonial rituals.

3. BALI PROVINCE GOVERNMENT'S LEGAL POLICY IN OVERCOMING THE PROBLEM OF BEACH BEACH PRIVATIZATION BY TOURISM ENTREPRENEURS IN BALI

The policy is a choice made by a person or group to guide, justify and explain a set of actions consisting of a collection of more minor decisions. According to Dye, as quoted by Winarno, the policy is the government's choice to do or not do something (whatever governments choose to do or not to do). [12] Policy aims to solve a problem. Government policy is a process carried out by the

government to solve existing problems and relate to its power environment related to the public interest. [13]. The government is a device that exists and is held to serve the interests and fulfill the needs of the community, especially the basic needs of the community, namely, a sense of security, order and peace in society. [14] The government is an organ of a body called the state, in the form of an organization. It has attribution authority (authority that has been regulated or stipulated in-laws and regulations). All activities of state administration must use authority. So authority is the key to the implementation of the tasks of state administration. Without authority, there will be no state administration activities. One of the authorities of the government is to make a policy. [15]

The legal policy is the policy producing products of laws and regulations and the application of laws from laws and regulations. The government has absolute authority to regulate areas under the territory of the Unitary State of the Republic of Indonesia. One form of its realization is to issue policies for specific areas legally. The implementation of the legal policies made by the local government is expected, especially in Bali. The government can make and issue a Bali provincial government policy that can protect the coastal border from the onslaught of tourism development, which makes the coastal border a privatized area of tourism entrepreneurs and how to prevent the impact of the privatization of the beach.

The principle of decentralization and the application of regional autonomy adopted by the government system in Indonesia require the government to divide its affairs into three authorities so that in carrying out its authority, the government has an extension in carrying out its authority in the form of delegation of tasks to the Provincial Government and continued to the Regency/City Government.

The Provincial Government of Bali has full authority in managing the coastal border along the coastal border in the province of Bali. As a delegation from the provincial government, the provincial government gives authority to Bali's district/city government to regulate the coastal boundaries of its area of authority. The importance of policies on securing coastal borders with proper management and use of functions is because the coastal borders are the first fortress to prevent abrasion, and mangrove conservation can protect land areas. The importance of coastal borders as environmental protection must be appropriately defined for their use and function. The coastal boundaries in Bali are up-and-coming tourist attractions. Therefore, the government needs to consider how environmental conservation and coastal border marine conservation areas can work in synergy with tourism development. With the balance of these two things, both tourism and conservation can run and be sustainable, whose impact is the benefit of the government itself. By extension to the district/city government, the provincial government of Bali has made efforts to overcome the problem of privatization of the coastal border. The subsequent efforts have been made to the coastal border, which is part of its territory:

1. Establishing a coastal border management agency whose task is to restore the function of the coastal border as a public space that is open to the general public, as a conservation area and protection of mangroves and marine biota, and restore the function of the coastal border for the benefit of local community ceremonial activities that are religious and magical especially for Hindu religion;
2. Issuing legal products in the form of regulations from the government, both provincial and district/city governments that can serve as a legal umbrella for protection for coastal border management bodies in order to carry out their duties and functions, based on the authority of the provincial government, district/city governments given to them;
3. Issuing legal policies from the provincial government of Bali, from regional regulations, decisions of the Governor of Bali Province, or decisions issued by Regents and Mayors in the Province of Bali. The policy gives rights and authority to the coastal border management agency, which includes residents of the coastal border area, to supervise, suppress and take action on the privatization of beaches by tourism entrepreneurs. Pecalang generally represents the involvement of local community members as a protector of the customary village area or the coastal border area of the traditional village or *Pakraman* village.
4. The provincial government of Bali must be able to instill an understanding in the community and tourism entrepreneurs that the greater public interest must be prioritized but not necessarily override the interests of tourism entrepreneurs. With the formation of a balance between local wisdom and tourist attraction, both the community and tourism entrepreneurs will benefit.
5. The coastal border management agency will mediate between tourism entrepreneurs and local communities. This agency will also synergize tourism needs with the needs of the general public/local community.

The involvement of the local community, especially the traditional village and *Pakraman* village, as the closest customary government institution to the environment is intended because the local indigenous village community is the closest and in direct contact. Therefore, they become the first layer of understanding well the conditions and situations of their environment. Thus, the objectives of conservation, saving the environment, protection of conservation areas, and the use of coastal borders as public spaces can be utilized optimally, including the management of tourism businesses that can run well without harming other parties.

With the formation of a coastal border management agency, the regional government and the district/city government act in supervising the implementation of the duties of the coastal border management agency. Concerning disputes arising from the privatization of coastal borders between tourism entrepreneurs and local communities, the agency can mediate this conflict of interest. It will find a balanced solution to the problem so that the two conflicting parties can synergize with each other, in which tourism entrepreneurs can sell the attractiveness of the beach by utilizing the coastal border without having to harm the interests of the local coastal border community, to get benefits economically, and also social, cultural, religious and environmental conservation. The importance of a balance between public and private interests, tourism entrepreneurs must shift from the doctrine that tourism is an expensive (luxury) industry so that middle and upper-class groups of people can only reach it. As the world tourist destination, Bali does not only sell and pamper tourists with its natural beauty, but an essential thing about Bali is the culture of the people and the local religious wisdom of the Balinese people. If it only looks at the attractiveness of natural beauty, Papua, Labuan Bajo, Sumba, and even Lombok, which are closest to Bali, also have natural beauty.

Tourism entrepreneurs cannot discriminate between the general public and tourists who use their tourism facilities. For this reason, back to the substantial control of the Bali provincial government, with the district/city government in supervising tourism actors and entrepreneurs so that they do not do everything in their power and effort to control an area which is a public area into a private area for their interests and benefits.

Setting the Coastal Border in the Province of Bali, Indonesia, is an archipelagic country and one of the countries with the longest coastline of several other countries in the world. Recently, the concentration of Non-Governmental Organizations and environmentalists has begun to criticize the use of coastal borders as tourism utilization by tourism entrepreneurs. The coastal border is protected by the central government and designated as part of a national protected area. The government has full authority over coastal border areas along the coastline in Indonesia. The coastline is included in the local protected area. The government views the coastal border as an area that is vulnerable to damage by irresponsible hands because it is a part of nature that is easily accessible by humans. The principle of the struggle to save the coastline is justice. Equal opportunities interpret the justice here in accessing and utilizing the coastline between the community and tourism entrepreneurs. Justice will be felt when the general public can together with tourists on the same beach border, enjoy the beauty of the beach, feel the same comfort, where fishers have the same opportunity to build other facilities and infrastructure along the coastal border for the development, protection, and management of natural resources.

The government issues policies, in-laws, and regulations for the protection of coastal borders, which are contained in the following regulations:

1. Law no. 1 of 2014 concerning Amendments to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands
2. Government Regulation no. 26 of 2008 concerning National Spatial Planning
3. Presidential Regulation No. 51 of 2016 concerning Coastal Boundaries
4. Regulation of the Minister of Public Works No. 9/ PRT/M/2010 on Guidelines for Coastal Protection
5. Regional Regulation of Bali Province No. 16 of 2009 concerning the Bali Province Spatial Plan for 2009-2029

Correct and just law enforcement is determined by the will and participation of all members of society,[16] including to urge the government to make and stipulate a rule regarding the privatization of coastal borders because, in the formation of the law, it must prioritize the interests of the state and also the public interest of the people contained therein. [17] The absence of specific arrangements in following up on the practice of privatizing coastal borders that can provide a deterrent effect for tourism entrepreneurs is a scourge that must be resolved immediately. The norms governing the coastline in the legislation only state that the beach is a public space that cannot be controlled privately. The absence of norms that expressly state legal action against privatization is apparent. There is a tourism area in Bali Province, and there is a blurring of norms in law enforcement. The obscurity of norms causes laws and regulations to become gray in giving strict sanctions to tourism entrepreneurs. Until now, privatizing coastal borders is still happening, and no action has been taken from the central and local governments.

In setting a rule, the Bali provincial government must be balanced with the enforcement of the rule. Law enforcement elements carry out law enforcement of a rule. In general, the rules made are firm and coercive, but in practice, there are many deviations between what is stipulated and what is happening in society. Such conditions can be influenced by several factors, the nature and mentality of law enforcement will significantly affect the success and final results of the implementation of law enforcement that has been made. [18]. There are four factors in law enforcement that must be considered, including:[19]

a. The substance factor of the rule of law;
b. The structural factors, namely law enforcement officers;
c. The cultural factors (community legal awareness); and

d. The organizational factors (management organization).

The existence of the coastal border area needs to be determined related to its function as a safety and protection for coastal sustainability. The coastline location is technically calculated based on the characteristics of the coast, the function of the area, and is measured from the highest tide line on the beach. To monitor and manage the coastline boundaries in Bali, of course, a comprehensive rule cannot be applied. Basic rules can be applied in the Bali local government regulations, which are the reference. They are applied by the district/city local government according to the needs and conditions of each region. Each district/city area is given the authority to determine the area and width of the coastal border area based on the needs, situation, and conditions at the location of the coastal border. Each coastal area has different water currents, the magnitude of the waves, and the direction of the wind, which will significantly affect the shoreline boundary with the mainland.

District/city governments will know more about the characteristics of their coastal boundaries because some coastal regions can become marine biota conservation areas such as turtle nesting locations, mangrove plant conservation, and so on. Beach conditions are also different based on the high and low from the mainland. Beaches located on the side of a cliff, the determination of a coastal boundary 100m from the shoreline is sufficient because the cliff's height can be a barrier to the flow of water rising to land. In contrast, coastal areas directly connected to the mainland require a beach border more exhaustive than the water line to prevent possible abrasion and water-rising tides that can enter the mainland.

Thus, it is very appropriate if the regulations and policies regarding coastal border areas are left to the district/city-regional governments. The utilization, management, and protection of coastal border areas should be a top priority. Apart from looking at the interests of conservation, tourism, and public space, beaches that are directly related to land and sea become a liaison for water traffic and the entry and exit of ships requiring certain areas, as well as the impact of the natural factor with the possibility of natural disasters as a form of preventing the impact of these disasters causing more significant losses. Many benefits are obtained by providing protection and regulation of coastal border areas, one of which is preventing abrasion and the sustainable impact of abrasion. In a rule, there are norms contained in the rule, one rule with another rule must have the integrity of norms that do not conflict or overlap, there must be synchronization and conformity between the norms in the rules that refer to the same concept, such as the rules whose central concept is the protection of the coastal border. The norms in the coastal border regulations in the Bali provincial regulations may not conflict or overlap with the lower rules made by the regency/city government in Bali. In principle, these rules have the same goal, namely to provide strict law enforcement to prevent damage to the coastal environment and restore the function of the coastal border as a public open area that is free to the public and is not an area of privatization for the personal interests of tourism entrepreneurs. With the implementation of these rules, the roles and functions of the parties or agencies authorized to manage coastal areas are significant. It is expected that agencies from top to bottom can carry out their functions and authorities by their responsibilities.

In other words, with a rule that has been made, the rule must be implemented not only by law enforcement officials but also by the community in a broader sense, with the function of law enforcement to provide strict sanctions indiscriminately against perpetrators of violations of these rules. The application of sanctions can be given by what has been stipulated in the regulation. For example, a tourism entrepreneur who makes a building cross the line or is within the boundary of the coastal border is dismantled and returned to its proper function. It is evident in legal products regarding coastal areas that the coast must be preserved. [20]

4. CONCLUSION

There are no strict and specific rules regarding the actions of tourism entrepreneurs who make the coastal border a private area for tourism accommodation. Due to the absence of strict and coercive rules, there is no strict legal action from law enforcers for the actions of these tourism entrepreneurs, and it does not result in the perpetrators becoming a deterrent. Although the provincial government of Bali in the Bali Provincial Regulation No. 16 of 2009 concerning the Bali Province Spatial Plan for 2009-2029 regulates the spatial planning of the coastal border, no norm regulates the privatization of the coastal border by tourism entrepreneurs. There is a blurring of norms in law enforcement, and the existing norms are gray; therefore, to make these norms clear, the Bali provincial government, together with the district/city governments in Bali, hold full authority for the management of the coastal border as a public open space, as well as to restore privatization of the coastal border for the magical religious interests of the local community in carrying out religious ceremonies by issuing a regulation as a legal umbrella to ensure the proper management and utilization of the coastal border with their respective duties and authorities.

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Digital Authenticity of Trade Agreements in the Era of Globalization

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ABSTRACT
Digital systems can ease the sellers and buyers worldwide and conduct the buying and selling transactions from electronic devices based on the communication. Information technology give impacts to the validity of agreement in digital trade and the factors of the obstacles to the validity of agreements. Article 1320 in the Civil Code is about the principal basis to make the legality of the agreement made by the parties. The article has four conditions of agreement's validity: agreement, the ability to make alliances, a sure thing, and also lawful reason. Agreements that do not fulfill the agreement and proficiency, resulting in the agreement can null and void, if there is the agreement that does not fulfill the requirements of particular object is not allowed, resulting in the agreement is null and void.

Keywords: *Authenticity, Covenants, Digital.*

1. INTRODUCTION

Information technology and telecommunications development have resulted in various telecommunication facilities and sophisticated information technology products that can become one with all information media. During this era of globalization of communication networks, cyberspace becomes popular and makes the world closer while fading its borders and sovereignty and order of society.1 Technological advance have brought rapid changes and shifts in an infinite life in this era of globalization. Globalization is a process of simplification of various controls that hinder the movement of trade and capital performance to stretch the reach as wide as the globe.

Cyberspace and information technology are innovations in human civilization that impact the human life. Human activities alterate through taking advantage of efficiency, effectiveness, and also mobility. The advancement of this technology also has problems when it is used inappropriately. Cybercrime is about an unprecedented new form of the threat to the world community. Hacking, Cracking, Defacing, Carding, Phishing, Spamming, Scam refer to a series of cybercrime that is certainly dangerous and can cause actual harm to many parties. There has been born a ba-ru legal regime known as the cyber law. Cyber Law is used for the legal terms related to the utilization of information technology. Cyber activities as the actual legal actions and actions.

So far, especially among jurists, there is a tendency to put forward some aspects of the law in every discussion of efforts to face high-tech crime. In the spreading of cybercrime in Indonesia, for instance, the failure to uncover the perpetrators is due to Indonesia's lack and imperfect cyber law. In comparison, social, economic, political, and cultural aspects are rarely worked on.

The Government considers the Law on Information and Electronic Transactions necessary for Indonesia because currently, Indonesia has used information technology widely and efficiently. Thus, the government, on April 26th, 2008, passed the enactment of the Information and Electronic Transactions Act. The Information and Electronic Transactions Act is used to provide many benefits, like ensuring legal certainty for people who conduct electronic transactions, encouraging economic growth, preventing the occurrence of information technology-based crimes, and also protecting the public by utilizing information technology.

The establishment of the Information and Electronic Transactions Law is a form of "Legal Renewal" as the influence of 7 aspects of law reform, such aspects of science and technology, which as known eight aspects of law reform, among others, aspects of globalization, political aspects, economic aspects, educational aspects, aspects of science and technology, aspects of legal supremacy and aspects of Islamic law perspective. The Law on Information and Electronic Transactions was established to maintain the pace with science and

technology in the information technology and electronic transactions. There is no legal vacuum in the case of unlawful acts.

Digital systems conduct trade transactions from the back of computers connected to the virtual world network. With Electronic Funds Transfer technology, remittances between economic actors in distant parts of the world can be carried out in seconds. The development of digital transactions shows the increase in developed countries and developing countries, especially Indonesia. Based on this background, the author is interested in discussing the legality of agreements in the digital trade and the elements that become the obstacles to determine the validity of agreements in the digital trade.

2. RESULT AND DISCUSSION

2.1 The Authenticity of Agreements in Digital Trade in the Era of Globalization

The characteristics of information technology development are characterized by the following signs: speed, capacity, alignment, ease, capability, range, and openness. In the field of speed, intra-system transmission is accelerating using superconductors and fiber optics.

Information technology successfully synchronizes various technologies and digital media into what is popularly called telematics. Cyber technology has made companies do business activities such as online marketing, distance selling, and the digital world.

Centre established by the Melbourne Institute of Technology, The Electronic Trading Opportunities. The establishment of a provider in cyber communication for international trade is directed to facilitate trade transactions. Starting from an agreement/relationship via cyberspace gives birth to an agreement or transaction between accessors. Organization for Economic Cooperation and Development, efforts that have been made are the implications of the digital world on various things, including framework, economic information, content, security, privacy, cryptography, access, telecommunications policy, enterprises, policies on consumers, taxation, and also tourism.

United Nations Commission on International Trade law sees this digital issue as the urgent to be formulated immediately. In its development, the digital world issue is in academic discourse, especially Indonesia, and there is no regulation through the law. Transactions through the digital world have not been regulated, but the United Nations Commission on International Trade Law has done several efforts to formalize the United Nations Commission on International Trade Law Model Law on Electronic Commerce. This model law was held in addition to article 5 in 1998. The legal concept is used to respond and anticipate the modern business techniques using cyber-based electronic communications. The legal concept proposed by the United Nations Commission on International Trade law consists of two parts, namely part I is the digital world in general (Article 1 to Article 15) and Part II of the digital world and the field of particular fields (Article 16 to Article 17).

World Trade Organization has emphasized the development of the digital world in the business world. With the presence of the digital world as the practical, efficient, fast, and also accurate alternative will lead to changes in industrial activities, like the insurance industry, banking, role-playing services, travel bureaus, telecommunications, advertising, also industries that provide medical and educational services. Even in the public sector, it will give the right solution in government services and investment. In addressing the digital world, the World Trade Organization, with several organs in it, conducts research, including the Committee for Trade and Development and the Council for Trade-Related Aspects of Intellectual Property Rights.

The digital world is increasingly popular in the information-based businesses, but it does not mean the digital world has no weaknesses. The law's success in playing role in the economic development, like in developed countries, is not as simple as developing countries. This is because of the still classic solid issues such as low levels of welfare and education.

2.2 Barriers to The Authenticity of Digital Trade Agreements

The elements of the agreement are essentialia elements that are part of the agreement without which the agreement cannot exist, for example, the price in the sale and purchase agreement, the naturalia element that is the part that by law is determined as a governing regulation, for example, Insurer, and accidentalia element that is the parts that the parties add to the agreement where the law does not regulate it, for example, the sale and purchase of houses and furniture. There are 4 terms of agreement (Article 1320 in the Civil Code): the agreement of those who tie themselves, the skill to ally specific thing, and a lawful reason. The first requirement for the validity of an agreement is that there must be an "agreement of those who bind themselves." An agreement, meaning that both parties to an agreement must have a free will to bind themselves, and that will must be expressed, and that statement can be made expressly or secretly.

The second condition for the validity of a covenant is the "ability to make a covenant." The meaning of proficiency is the authority to take legal action in general. According to the law, everyone can make agreements unless the persons who by law are declared incapable. Qualifications as incompetent people making a covenant are immature people, those placed under the guidance, and women who have married. The immature are those who are not even 21 years old and have not married yet. Adults are thus 21 years old. Article 330 in the Civil Code stipulates that person under 21 years of age but is married is an adult according to law. Persons placed under the care of are those in the care of their interests are taken care of and represented by others. The persons placed

under the cus to the civil code are every adult who is always in a crazy, ignorant, weak mind even if he is sometimes capable of using his mind and an extravagant adult.

As a result of the law, if an incompetent person agrees, the agreement may be annulled on the claim of the incompetent or by his representative. The legal consequence of canceling the agreement due to one of the parties being incapable is that the parties are restored in the circumstances as before the agreement was made, and the matters that have been promised/submitted must be returned. The third condition for the validity of agreement is there must be certain thing. The meaning of "a certain thing" is a specific thing meaning that the promised in a covenant must be a thing or an item that is quite clear or certain, i.e., at least determined type—for example, buying and selling rice in a warehouse. Only tradable goods can be the subject of an agreement.

The fourth requirement for the validity of an agreement is that there must be "a lawful cause." Furthermore, what the two parties intend to achieve by entering into a treaty. It is forbidden to make a covenant without a common purpose or made for a wrong or forbidden reason. As a result, if an agreement is made without any particular thing and a lawful reason, the agreement becomes null and void.

All digital world transactions that meet the requirements of Article 1320 in the Civil Code are as binding agreements for the parties. This article is related to Article 1337 in the Civil Code with regard to Prohibited Powers (contrary to decency and public order). In digital transactions, where the parties do not meet, proficiency will be the issue since the parties do not know the skills of the opponents of the agreement, including age. As stipulated in the Article 1330 on maturity.

Unlawful acts, which bring harm to another person, oblige the person who, for his fault to issue the damages, reimburse the damages. The parties to the harm in the e-commerce transaction, but that element is not provided for in the agreement, may still use Section 1365 for filing a lawsuit. A person who postulates that she/ he owns right must prove the existence of right or event. This article needs to be harmonized or revised if it is associated with digital transactions. It will be tough for those who do not master technology as an example of bank customers harmed through the transaski Mandri Cash Platform.

The concept or strategy of the validity of agreements in electronic trade (digital world) in the era of globalization, to support a trustable or trustworthy digital world requires several things, namely authenticity; concerning the truth of one's identity, integrity; concerning the correctness of the message content, Non-reputation; concerning the proof of action, confidentiality; concerning confidentiality, i.e., where a message cannot be read by others, if even if it is read and changed, then the recipient of the message knows that there has been a change and thus prevents losses.

3. CONCLUSION

The development of information technology on the validity of agreements in electronic trade (digital world) in the era of globalization is all digital world transactions that meet the requirements of Article 1320 of the Civil Code are recognized as an agreement and binding for the parties. In digital transactions where the parties do not meet directly, the element of proficiency becomes an issue in itself. Often, the parties do not know the opponents' agreement skills, including age/maturity.

The element that becomes an obstacle in the development of information technology to the validity of agreements in electronic commerce (digital world) is not uncommon for identity fraud, password breach of credit card owners or known as carding to order a product when the concerned does not have a dime bank account.

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Ecotourism Management Based on Local Wisdom in Ubud Tourism Area Gianyar Regency

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ABSTRACT
The tourism sector has contributed to development in Bali. This sector provides a multiplier effect in various fields, such as job opportunities, business opportunities, and income distribution. One of the regencies in Bali relying on the tourism sector to finance development is Gianyar Regency. Among the famous tourist objects in Ubud Tourism Area. Foreign and domestic tourists well know this area. Based on Article 1 section (4) of Act Number 10 of 2009 concerning Tourism, it regulates the shape of each person and country's needs and the interaction between tourists and local communities, among tourists, local governments, and entrepreneurs. In its implementation, the tourism development program model to promote the local community increases the functions of community-based tourism by paying attention to local wisdom. These research problems are: 1) what is the form of management of Ubud Tourism Area? Furthermore, 2) what is the management model to remain a tourist destination by paying attention to local wisdom? This type of research is empirical research. Qualitative techniques are applied in data processing, and the research location is in the Ubud tourism area. The discussion results show that the management is strengthened through a Regional Regulation on Spatial Planning which determines the tourist zone/area and several other derivative legal products. Then related to the management model, it still empowers local wisdom by adjusting technological advances, especially digitization. Moreover, through Walkable City, which puts forward its environmental aspects. So that Ubud tourism area as ecotourism can be maintained.

Keywords: *Ecotourism, Local Wisdom, Ubud Tourism Area, Walkable City.*

1. INTRODUCTION

The tourism sector has long been known as a reliable economic sector. This is possible as the scope of its activities is comprehensive, increasing the multiplier effect in employment opportunities, business opportunities, and income distribution so that the economic contribution can be experienced by the community, local governments (taxes/retributions), and the central government in the form of taxes and foreign exchange (Damanik, 2005). Through the commitment and the right government policies in achieving these conditions, more expansive space is opened for the community (particularly the local community) to obtain the distribution and redistribution of tourism resources.

Gianyar Regency is one of the regencies in Bali, has 59 tourist objects and attractions in the form of Archaeological Tourism, Nature Tourism, Marine Tourism, Wana (forest) Tourism. Based on the Regional Regulation of the Bali Province Number 16 of 2003 as amended based on the Regional Regulation of the Bali Province Number 3 of 2020 concerning the Spatial Planning of the Bali Province for the Year 2019-2029. With the issuance of this regional legal product, it is hoped that the development of tourism facilities must be controlled, and the environment is maintained and does not turn off local wisdom. This provision stipulates that the area of Bali Province is set as 15 tourism areas. In comparison, Gianyar Regency has 2 (two) tourism areas, namely: 1) Ubud Tourism Area, and 2) Lebih Areas that continue to develop. Gianyar Regency has 59 tourist objects and attractions, in the form of; Archaeological Tourism, Nature Tourism, Marine Tourism, and Wana (forest) Tourism.

Thus, the development of the tourism sector is very reliable in contributing to Regional Original Income which contributes to the posture of the Gianyar Regency Regional Revenue and Expenditure Budget. One area famous for being a tourist destination is Ubud Tourism Area, in the Ubud District area. Foreign and domestic tourists well know this area. By the provisions in Article 1 paragraph (4) of Act Number 10 of 2009 concerning

Tourism, it is affirmed: Tourism is the whole which is related to tourism and is multidimensional and multidisciplinary, which appears as a manifestation of the needs of each person and the State as well as the interaction between tourists and the local community, fellow tourists, local governments and people in business. Building tourism in Gianyar Regency is carrying out activities/programs that support tourism such as: arranging objects, digging objects, building supporting facilities, fostering/providing counseling to the community, and no less important is making the community aware and the tourism component to establish *Sapta Pesona*.

In the implementation, the model of the tourism development program to advance the local community is to improve the functions of community-based tourism (Community Based Tourism). With community involvement in the planning, management, and evaluation of tourist attractions. In the process of involvement and management of community-based tourist attractions, the community enjoys most of the economic benefits from tourism activities as is undertaken in the management of Tourist Attractions (DTW) or tourism potentials that provide socio-cultural and economic benefits for the community, namely the management of monkey forest, in the Padang Tegal Traditional Village, Ubud Village. So far, it has shown the ability of the indigenous community (villagers) to manage the tourism potential in their village and their ability to manage the economic benefits of this attraction to improve the welfare of the community.

In tourism development, it is essential to highlight the creative nature of local communities. It is necessary to provide a stimulant in appreciation in how to package social and cultural activities into one of the labels for ecotourism products. Encouraging the creation of a tourist market segment that wants unique products represented by local symbols and intangibles and Ubud Tourism Village is very appropriate to accelerate the development of Tourism Villages by aligning culture and tourism-based entrepreneurship. Therefore, its activities focus on particular programs to accelerate village progress to improve community welfare.

At present, the challenges of the tourism sector are being tested very hard. Almost a year, the challenge is in the form of the Covid-19 pandemic that has hit almost all countries worldwide. As a result, Indonesia's tourism conditions have deteriorated, including the island of Bali, which is the mainstay of the Bali Provincial Government's income—considering that this sector contributes about 69% of the total Regional Original Income. This situation is also very influential in several districts/cities in Bali Province, whose original regional income is supported by the tourism sector.

As one of the regencies in Bali that relies on the tourism sector, Gianyar Regency experiences the consequences. The Covid-19 pandemic has resulted in the stretching of tourism life, which is the people's daily livelihood as if it has died. A life that relies on the arts, every corner, and way of pacing foreign and local tourists, is currently hard to find. Congested road conditions due to transportation to transport tourists in groups and independently are now deserted. If it lasts long enough, this condition will affect the Ubud area, which is a favorite destination for foreign and domestic tourists.

Regarding that matter, to maintain the Ubud area as a tourist destination for tourists, it is necessary to adjust regulations in development, especially in the efforts to develop ecotourism. Likewise, the relationship of globalization is marked by the rapid progress of science and technology, which is well known as the era of digitalization and Industry 4.0. Today's tourism life is already part of an industry, in this case as an industry in the tourism sector. Therefore, it will be closely related to the management of a Tourist Destination Area.

In the current situation, continuing the choice of living on the tour route is inevitable. However, the heavy task currently being carried by *Krama Bali* (Balinese) is exploring the meaning of tourism within the framework of weighting the spirit of Bali tourism. At a moment like this, contemplating the internalization of the spirit must be carried out. If tourism activities are paused, there is also time for reflection or self-reflection. This process of contemplation may not have time to be carried out when the hustle and bustle of people and money fill our daily spaces. Contemplating, withdrawing, and solitude have indeed become high prices in this era.

In order to maintain the Ubud Tourism Area, which is synonymous with art, culture, and the natural beauty of the countryside, including the beauty of the royal palace. Indeed, the Ubud area as a tourist destination has been known long around 1930 before Indonesia's independence. Ubud is known as the area of Balinese arts and culture. For most of the local people of Ubud, their daily life cannot be separated from the elements of art and culture. Likewise, most of the local and surrounding communities can make a living as artists. Both work as painting artists, handicraft artists, or dance artists.

In realizing the arrangement, development, and a sense of comfort, security in a tourism area. Regulations are essential because they are applied as a guide and provide legal certainty for the direction of development, such as; spatial planning, environmental preservation, integration, usability, the realization of security, comfort, order, and smoothness. As for the guidelines for that provisions, namely; 1) Gianyar Regency Regulation Number 16 of 2012 concerning the Gianyar Regency's Regional Spatial Plan for 2012-2032, and 2) Gianyar Regent's Regulation Number 57 of 2018 concerning Provision of Parking Facilitation in the Ubud Tourism Area. Regarding these arrangements, taking into account the characteristics of the area that has a unique/distinctive make the center of attention of tourists, both foreign tourists and domestic tourists, it is essential to maintain it.

The island of Bali is a well-known tourist destination, has many tourist attractions that attract tourists. However, the Ubud Tourism Area, part of the Gianyar Regency, has its charm. Considering the explanation above, it is fascinating to examine the problems, as follows:

1. What is the Arrangement of Ubud Tourism Area in Ecotourism Development?
2. How is the Ubud Tourism Area Management Model taking into account the Local Wisdom?

2. METHOD

This paper uses empirical legal research methods (socio-legal research) because the focus of the study departs from the existing gap on the application of tourism management models that are commonly applied to several tourist destination areas. Tracing legal materials uses field study techniques, document studies, and analysis studies using qualitative analysis.

3. RESULT AND DISCUSSION

3.1 Forms of Arrangement in Ubud Tourist Area

The Ubud Tourism Area, which is located in Gianyar Regency, contributes very significantly to Regional Original Income in financing the region's development. Gianyar Regency is an area of art and culture because most people's livelihoods are engaged in arts and culture. As an art area, many people work as artists, including painters, sculptors, dance artists, and handicraft artists. The overall results of these community activities have spread to various corners of the world.

One of the tourist areas in Gianyar Regency that are famous abroad and the archipelago is the Ubud Tourism Area. As a tourist attraction, it will impact the behavior of the people in the area. In this area, there will be an interaction between local communities and tourists, even newcomers with capital owners who have great potential to put pressure on people's lives in the area. It may lead to the exploitation of the environmental area by being stuffed with various forms of buildings, and this movement is sometimes difficult to contain. Conservation of land is direct, rapid, widespread, and this fact poses an ecological challenge, weakens the *Tri Hita Karana* philosophy, encourages crowding, chaos and creates habitat problems that are stressful, stressful, easy to trigger violent conflict compared to providing the comfort, harmony, and harmony that tourists hope for Visit.

Furthermore, as a very famous tourist attraction area. Based on the Master Development Plan (RIP) of Gianyar Regency as a Heritage City, among others, the increasingly crowded and complex space (topos, village) of Gianyar Regency has an impact on increasing pressure on humans and culture. Second, the faster, instant, and time movement (Kronos, Kala) in life. Third, the denser, heterogeneous, and increasing population and human resources of Gianyar Regency with the scope of problems of heterogeneity, density, quality to various potential conflicts, distortions, and disintegration. Fourth, the development of the creative economy format and the tourism service economy, and the decline in the agrarian economy.

Based on the study results, development in the tourism sector and having a positive influence also has a negative influence. To minimize the negative influence. In the development of tourism areas in Gianyar Regency, including tourism development in the Ubud Tourism Area. The Government of Gianyar Regency issues and enforces Regional Regulation Number 16 of 2012 concerning the Regional Spatial Plan of Gianyar Regency from 2012 to 2032. In the provisions of the Regional Regulation, based on the provisions in Article 32 paragraph (3) letter g, determine the regulation regarding "Tourism Area."

Furthermore, Article 50 paragraph (1) regulates the designation of tourism areas which include; a)—natural tourism area and b) artificial tourism area. Furthermore, based on the provisions in Article 51, it regulates the designation of natural tourism areas, which include; a) Ubud Tourism Area, b) Lebih Tourism Area, and c) Natural Tourist Destination Area. Observing these provisions shows that the Ubud area's placement as an Ubud Tourism Area is regulated through a Regional Regulation. Regulations through Regional Regulations are established in the context of implementing regional autonomy and co-administration tasks. Regional regulations are the further elaboration of higher laws and regulations by taking into account the characteristics of each region. So the determination is exact, considering that the Ubud area has its characteristics as a tourist attraction.

Before explaining the purpose of making Regional Regulations, the author will first convey the legal objectives put forward by O. Notohamidjojo to formulate legal objectives, namely as follows:

Protecting human rights and obligations in society, protecting social institutions in society (in a broad sense that includes social institutions in the political, social, economic, and cultural fields) based on justice, to achieve balance and peace and general welfare.

Based on the understanding and concept of the legal objectives mentioned above, regional regulations, which are products of local government legislation, aim to regulate living together, protect human rights and obligations in society, maintain safety and public order in the area concerned so that Regional regulations are a means of reciprocal communication between the regional head and the community in his area, therefore every decision that is important and concerns the regulation and management of regional households contained in regional regulations must involve the community concerned. This provision is as regulated in Act Number 23 of 2014 concerning Regional Government.

The enactment of these provisions is expected to change the behavior of all people and institutions in managing tourism in the Ubud area. Especially those related to socio-cultural changes. Given the culture that exists in society, sometimes it can damage and worsen the image of tourism in the tourism object area.

To provide comfort for every tourist visiting the Ubud area. The Regulation of the Regent of Gianyar regency Number 57 of 2018 has also been enacted on the Provision of Parking Facilitation in the Ubud Tourism Area. This arrangement is essential in the effort to avoid congestion so that it does not interfere with the visiting schedule of tourists.

3.2 The Model of Ubud Tourism Area Management

The concept of tourism management must refer to management principles that emphasize the values of environmental sustainability, local communities, and social values of the area so that tourists enjoy their tourism activities and benefit the community's welfare around the tourism area. An increase in tourist visits to a tourist destination and bringing positive benefits also leaves a negative impact. For this reason, a very significant management role is needed to ensure that tourism activities can support the local community's economy and do not damage the environment and that their activities can be sustainable. Based on this, the Tourism Development Foundation was formed in the Ubud Village. According to its chairman, Tjokorde Gde Bayu Putra Sukawati, the Ubud area is attractive because it has magic. Based on this, that in fact, Ubud was not previously prepared as a tourist destination. Therefore, the process is very natural, which was initially only to receive guests from the Netherlands. Along the way, the arrival of other guests served in the form of; dances, invited to take a walk to see nature, given paintings, and other forms of art. For this reason, the development of the tourism sector is placed on encouraging the civilization of its people. Community participation in the Ubud tourist area is essential and strategic.

Regarding that matter, the management of the Ubud Tourism Area is very different from other tourist areas in Bali. One of the management models applied is community-based (Community-Based Tourism) with community involvement in planning, management. In the process of involvement and management of community-based tourist attractions, most of the economic benefits of tourism activities are experienced by the community as has been implemented in the management of Monkey Forest.

With its development, the Ubud area has shifted to no longer available for a broad social *spiec*. Public spaces have begun to narrow so that they can no longer enjoy the beauty of nature widely. The architectural value that has been attached to the beauty of the city is no longer enjoyed. Therefore, in the development of tourism development with the concept, "Walkable City," which is a city that has a high aspect of walkability, where the city has a supportive environment and encourages walking activities by providing pedestrians with security and comfort. With this implementation, it is hoped that the Ubud area, classified in the Gianyar Regency Regulation Number 16 of 2012 as a natural tourism area, will show its original nature. So that all forms of local wisdom that exist can be optimized. Various forms of local wisdom are unique/distinctive and not necessarily owned by other regions to be utilized.

As one of the current challenges is congestion and the development of digitalization, the rapid development of technology sometimes creates problems in tourism development in the Ubud area. Whereas at this time, it is the demand of the world market as a market share for cooperation. The condition of local communities in the tourism area is still getting rejections. Because so far, in carrying out development, it is too oriented to support tourism, forgetting other aspects. So that one day, this situation will be able to reduce tourist visits as a result of the aim of tourism objects and not to create a model that is a market demand in the world of tourism.

4. CONCLUSION

Based on the result and discussion above, it can be concluded that the form of regulation in the management of Ubud Tourism Area, based on the following provisions: (1) Gianyar Regency Regulation Number 16 of 2014 concerning Spatial Planning of Gianyar Regency in 2012-1932; and (2) Gianyar Regent Regulation Number 57 of 2018 concerning Provision of Parking Facilitation in the Ubud Tourism Area.

The Ubud Tourism Area Management Model, by considering Local Wisdom, is community-based (Community-Based Tourism) with community involvement in planning and management. Increasing the capacity of community resources by paying attention to technological advances in the field of digitalization which is the demand of the global market in tourism.

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Authority of Village-Owned Enterprises in Ecotourism-Based on Village Forest Management Rights in Selat Village, Buleleng

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ABSTRACT
Community participation, both in policy and management of forest resources, is intrinsically capable of preventing and mitigating forest damage. One of the government policies to restore the role of local or customary communities as the significant role in forestry development is through the policy on Social Forestry. The people of Selat Village believe the forest is a source of water, a source of livelihood, and an ecotourism area. It has magical values respected by the community. The problem examined in this paper is how adequate the protection of village forest management rights by Village-owned Enterprises (BUMDesa) and Traditional Villages of Selat is. The research is mixed law research. The results showed that the protection of village forests is carried out in a preventive and repressive manner. The effectiveness of the authority of Village-owned Enterprises in village forest management has not been effectively implemented when referring to the Village Forest Rights and Management Work Plan and applicable laws and regulations, both state law and customary law. The problems faced by the business enterprises as village forest managers in implementing the utilization and protection of village forests are the unavailability of human resources and insufficient capital strength needed for the management of all village forest areas based on ecotourism.

Keywords: *Ecotourism, Social Forestry, Protection, Village Forest Preservation.*

1. INTRODUCTION

Forests serve as capital for national development that has ecological, economic, and socio-cultural benefits. law number 41 in 1999 with regard to forestry explains that forest is the ecosystem unit of the stretch of land containing biological natural resources that have three functions: conservation function, protection function, and production function. along with the increasing rate of forest conversion, which is estimated to reach 2 million hectares per year for agricultural land, settlements, as well as meeting various community needs, the area and function of forests are decreasing and in turn causing many problems such as damage to ecological systems, extinction of flora and fauna, floods, droughts, and even global climate change.

One of the essential policies that can reflect the government's willingness to maintain the local communities as the main actors in the forestry development in indonesia is the social forestry policy. Through the program, community access in managing forests is reopened after being closed for a long time.

Social forestry policies open up real opportunities for communities in and around forest areas. This is manifested by providing access to communities around the forest areas. This, among other things, can be done by granting access rights to the community and placing the community as the leading actor in forest development and management. By-law number 41 in 1999 about forestry, the empowerment of local communities shall be carried out to strengthen the community institutions in utilizing the forest. In addition, the development of social forestry is a form of implementation of the decentralization policy in the forestry sector. The role of local governments, especially district/city governments, will be crucial because all technical aspects of program implementation will be the joint the liability of the central and local governments.

Social forestry licensing is not the end in community empowerment to achieve a community welfare goal. after obtaining a permit from social forestry, what needs to be strengthened by the parties to empower the communities is the implementation stage. The achievement of the permit area target in the social forestry program is not the

main indicator to measure that the program is success. The aspect of benefits for the village forest permit holders in the economic field is also the main core to consider. While, for selat village, sukasada sub-district, Buleleng, Bali, forests are believed to be a source of springs, a source of livelihood, a potential natural tourism area, and have magical values that are highly respected by the community [1].

Considering how strategic the function of forests is for nature conservation for the welfare of humanity, while there are legal facts on the ground in the form of illegal logging and forest encroachment that are against the law and irresponsible, various efforts, both preventive and in the form of firm actions, are always seeking to be made. preventive efforts are carried out by providing understanding to the community about the importance of conserving forests and strictly prohibiting people from entering protected forest areas for hunting or farming purposes in forest areas.

Based on the legal provisions above, in particular, the people of selat pandan banten's traditional village, selat village, sukasada sub-district, buleleng regency, bali province have the opportunity to participate in managing state forests. The people made various efforts of selat village to obtain the legality in question. in the end, the government approved the selat village community's request to manage the state forest and to make it a village forest by the selat village regulation no. 1 of 2011 concerning village forests. In managing state forests by the selat village government, the village-owned enterprise named "pandan harum" was formed. the establishment of the business enterprise was facilitated by the forestry and plantation office of buleleng regency, led by chairman ketut mangku and deputy chairman wayan diarka through selat village regulation number 2 of 2011 concerning guidelines for establishing village-awned enterprises.

Many benefits for the community in the village are provided. the omnibus law brings significant changes to the village community and the institutions therein. this change will facilitate the processes and mechanisms that exist in the village. one of the advantages brought by the law is the status of village-owned enterprises, which used to be only business entities. This time, in the omnibus law on village-owned enterprises, each village-owned enterprise is no longer required to make partnerships with multiple partners.

Two benefits of the omnibus law above, they will indirectly bring about a fresh impact on the economy of the village community. When village-owned enterprises and micro-enterprises advance and develop, employment opportunities will be opened for the surrounding community, especially those people in the village forest area, in the utilization of forest resources from ecological, socio-cultural, and also economic aspects.

The present research with the theme of authority and protection of village forests aims to examine and investigate the two problems elaborated below in more depth.

2. METHOD

This is an integration between normative legal research and empirical legal research. By Anton F. Susanto, this mixed law research is referred to as a type of participatory transformative legal research, or a collaboration between two types of legal research, that is to say, normative legal research and empirical legal research [2].

3. RESULT AND DISCUSSION

This research was carried out in Selat Village, Sukasada, Buleleng. It is a village with a protected forest with an area of ± 552 ha, spread over several hamlets in the village area. The results of the inventory that have been conducted reveal several types of plants that exist and grow in the Selat Village forest area; there are about 30 types of forest wood plants. The existence of protected forest in the Village needs to be saved from the touch of the surrounding community and the community outside the forest area to assure its sustainability. This is because several cases of violations have been committed, such as land grabbing, illegal logging, plantation land clearing, and hunting

3.1 Legal Protection for the Village Forests in Selat Village, Buleleng Regency

The basis for legal protection of village authority in managing village forest areas is regulated in Article 5 Paragraph (1) of Law Number 41 of 1999 concerning Forestry, which regulates community empowerment in state forest areas. In the elucidation of Article 23, it is mandated that forest as a national resource shall be utilized as much as possible for the benefit of the community so that it is not concentrated on a particular person, circle, or group. Therefore, forest use must be distributed relatively through community participation activities so that the community becomes more empowered and its potential develops.

This Ministerial Regulation is used to give the guidelines for granting management rights, permits, partnerships, and also the customary forests in social forestry. The purpose of regulation is to resolve tenure and justice issues for the local communities and customary law communities residing around forest areas for the prosperity of community and preservation of the forest functions.

The authority of provincial and district governments is managed according to the Decree of the Governor of Bali Number 2017/03-L/HK/2015 on the Granting of Village Forest Management Rights in Protected Forest Areas to Village Institutions in Buleleng. Legal protection for the existence of village forests is also regulated in the Decree of the Governor of Bali Province Number 75 in 2018 with regard to Social Forestry. Article 43 of Regional Regulation Number 16 in 2009

concerning Spatial Planning for the Province of Bali in 2009-2029 specifies that the protected areas include protected forest areas; and water catchment areas. With the affirmation of the regulations mentioned above, it can be said that the provincial government of Bali and Buleleng Regency has the authority to protect the existence of village forests from various things that can threaten them.

In order to preserve the village forest area in Selat Village as well as with the local wisdom of Tri Hita Karana, the Selat indigenous people become more confident with more protection of the village forest area because they have the task and function of maintaining the sustainability of the village forest as stated in Awig-Awig (customary law) of the Traditional Village Selat Pandan Banten. Guidance, control, and supervision of village forest management are also regulated in the Awig-Awig of the Traditional Village of Selat Pandan Banten, as stated in Sargah VI (Part 6) concerning Village Forest Pawos 71 (Article 71) Indik Alas (regarding forest).

With such an affirmation in the legislation, it shows that legally the government has protected natural resources in general or forest resources in particular. A village institution managed the existence of a protected forest in Selat Village before it - in this case, the one receiving a protected forest management permit was a Village-owned Enterprise – its condition was in deplorable condition as a result of the activities of hunting, theft of timber and non-timber forest products, encroachment and land grabbing by community members around the protected forest area. This results in the disruption of forest habitats and ecosystems that impact the surrounding environment and the environment outside the protected forest area, such as flash floods, erosion, and drought [3].

Judging from the theory of legal certainty concerning law enforcement put forward by Soedikno Mertokusumo, legal certainty is one of the requirements. Legal certainty refers tojustifiable protection against arbitrary actions, that implied a person will get something expected under certain circumstances. Controlling illegal logging and forest clearing is associated; these known as illegal logging and illegal forest encroachment, carried out by law enforcement officers to maintain village forest areas Selat Village. To protect village forest areas and the community's rights to enjoy, maintain, or earn income from the sector. However, of course, this depends on law enforcement officers because, according to research findings, law enforcement officers sometimes do not exercise their authority by-laws and regulations in law enforcement and justice in communities in village forest areas.

3.2 Effectiveness of the Authority of Village-owned Enterprises on Village Forest Management in Selat Village, Buleleng

Based on the mandate of the regional regulation, the Selat Village government, looking at the various potentials in the Village, took the initiative to make regulations regarding Village-owned Enterprises, namely the Selat Village Regulation Number 3 of 2012 concerning the Village-owned Enterprises was named "Pandan Harum." Then, in Chapter III, the types and development of businesses are explained, among others, namely trade in agricultural facilities and products, including agricultural products, agriculture, food crops, plantation forestry, fish husbandry, and agribusiness. Regarding the business activities of the Village-owned Enterprise "Pandan Harum" as stated in the Articles of Association Chapter X Article 13 Paragraph (1), it determined that the enterprise is responsible for organizing the village forest work area.

The various laws and regulations above represent the main foundation in implementing and managing Village-owned Enterprises, especially in Selat Village, Buleleng, which formally regulates management both in general and technically. Management of the Village-owned Enterprise is carried out by the mandate of other laws and regulations. It is intended in order that the economy of rural communities can develop evenly. Therefore, the role of the village government, as the person in charge of the economic condition of the Village, is, of course, essential in managing the Village-owned Enterprise.

Furthermore, in Law Number 6 of 2014 concerning Villages, especially in Article 18 of the Village Law, it is stipulated that village authority includes authority in the field of village administration, implementation of village development, village community development, and village community empowerment based on community initiatives, rights of origin, and village customs. Next, Article 19 of Law Number 6 of 2014 concerning Villages regulates village authority which includes authority based on rights of origin, village-scale local authority, authority assigned by the government, provincial government or district/city-regional government, and other authorities assigned by the government, provincial, regional government, or district/city government.

What is very noteworthy in the village forest management model by a village-owned enterprise based on traditional villages is to maintain the preservation of village forests through the formation of supervisors for Awig-Awig, in this case, the Pecalang Jagawana (traditional village security officials in Bali). Efforts to anticipate the occurrence of deforestation such as rehabilitation or reforestation activities in a sustainable manner are quite effective in environmental aspects, as can be seen from the maintenance of forest sustainability and forest development in the form of managing them to become natural tourism objects.

To maintain and avoid the destruction of the village forest from irresponsible parties, whether carried out by krama (community members) or residents from outside the village forest area, the presence of Pecalangs who are given the task of supervising or guarding the village forest area is not sufficient. This is because the village forest area is about ± 552 hectares and the number of Pecalangs - who are assigned to monitor and protect the village forest area from possible violations in the village forest area - is only 15 people.

The problem now faced by the management of the village-owned enterprise and traditional villages, as village forest managers in implementing future village forest utilization, is the unavailability of adequate human resources and capital strength needed for the management of the entire village forest area. There is a need for assistance from sustainable technical agencies to facilitate village forest actors or managers in consulting about sustainable village forest management patterns. The absence of an appropriate and efficient marketing scheme to market village forest products, non-timber products, and ecotourism services is also tricky to manage the village-owned enterprise.

Based on the village forest work program as stated in the Village-owned Enterprise "Pandan Harum" Village Forest Activity Plan (RKHD) in 2020, the activities carried out in the utilization zone encompass the utilization of environmental services, which include extensive forests; rides for selfies covering an area of 6.25 hectares, sekepat or gazebo (maintenance), tracking routes (maintenance), spiritual tourism, and waterfalls [4].

4. CONCLUSION

Legal protection for the existence and preservation of village forests in the Selat Village area, Buleleng Regency, is implemented preventively by carrying out active and continuous supervision of compliance with regulations without direct incidents involving concrete events that raise suspicions that statutory regulations, both state law and customary law, have been violated. Repressive law enforcement is implemented when actions violating regulations occur and aim to end prohibited acts that cause damage to the village forest area in Selat Village. The eficacy of the village-owned enterprise's authority realization in managing village forests in Selat Village, Buleleng Regency, has not been implemented effectively by the Village Forest Rights and Management Work Plan (RKHD) and applicable laws and regulations, both state law and customary law.

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Bali Tourism Law and Philosophical-based Ecotourism Management Tri Hita Karana

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ABSTRACT
This scientific work aims to discuss Balinese tourism law and Ecotourism management based on the Tri Hita Karana Philosophy. Balinese cultural tourism is based on sad Kerthi local wisdom, which grows and develops from Hindu religious values. In ecotourism management, the role of traditional villages in Bali is significant to be given the authority to manage tourism villages and/or ecotourism, considering that traditional villages are the bastions of Balinese culture in preserving Balinese culture. Tourism and ecotourism developed in Bali need the empowerment of indigenous peoples and synergy between Balinese culture and tourism. Data was collected through a literature study of legal materials related to the research topic and observation and in-depth interviews with seven key informants who understand the research topic. The data obtained were analyzed by applying an eclectic theory, namely the Progressive Law theory of Satjipto Rahardjo, "the law of an institution that aims to lead people to live. Prosperous and make people happy. The theory of legal protection against the Balinese Hindu indigenous community as the owner of Balinese culture is based on the value of local Balinese wisdom, Tri Hita Karana, which strengthens Balinese culture. It is used as an icon to develop Balinese cultural tourism. This study found that the value of local wisdom Tri Hita Karana became a philosophical Balinese Hindu community in implementing socio-religious life and tourism activities. The concept of Balinese cultural tourism becomes an ideology and way of life in the practice of tourism in Bali. This can be applied in actual activities by tourism actors in contract law products as a practical ideology in protecting Balinese tourism law and the happiness of mankind in tourism activities.

Keywords: *Ecotourism, Legal protection, Tri Hita Karan.*

1. INTRODUCTION

Tourism in Bali finds legal tourism products based on cultural tourism. Indeed, whatever concept is developed, if the state does not come with policies that favor the people, then capitalism/liberalization tourism will grow [1]. Ethnic Balinese can be proud in the Unitary State of the Republic of Indonesia to have inhabited the island, also called Bali. In the cultural reality of the Balinese Indigenous Peoples who inhabit the island of Bali, they have their uniqueness because they also have Bali, in particular, the majority of the Hindu religion, customs, and culture that are not found in Indonesia even the world. The greatness of Balinese cultural values is not only recognized by the Republic of Indonesia; even the world recognizes it. Therefore, legal protection for Tourism Villages in Bali, especially those based on Hinduism, local traditions, customs, and Balinese culture, is important and relevant to be researched. Community-based tourism The Balinese model appears institutionally collectively through traditional villages, not individuals, but continues to develop according to the demands of indigenous peoples [2]. The rise of the Balinese people in managing tourism in their area is mostly top-down or instructions from above [3]. In-state politics, especially in Bali, there is indeed state hegemony, especially concerning Balinese culture. When the Dutch colonial government came to power in Bali, it was hoped that Bali could contribute revenue from the cultural aspect by opening tourist trips to the island of Bali [4].

In the development of tourism in Bali, the potential of local wisdom can be developed as an alternative in maintaining sustainable cultural tourism [5]. Paying attention to the potential of Bali as a cultural tourism area, thus the potential that exists in Bali can be explored, revitalized, developed for the welfare of the local/traditional Balinese community by paying attention to the local culture, which can be an added value for the welfare and equitable development in Bali, namely the

value of local wisdom. culture) can become an economic value by raising the potential of traditional villages innovatively and creatively so that the value of Balinese local wisdom is very feasible for research [6]. Based on the legal issues mentioned above, the Legal Protection of Balinese Culture in the context of a tourist village and/or ecotourism based on local wisdom is the entry point for the welfare of the Balinese people. Based on this background, there are two issues to be studied, namely:

(1) How is the legal protection of Indigenous Peoples in tourism activities in Bali?

(2) How to interpret the value of local wisdom in Bali in the implementation of cultural tourism?

2. LITERATURE REVIEW

Writings about tourist villages with various scientific points of view provide enrichment to tourist villages. First, I Komang Gede's article, Local wisdom in the development and spatial planning of Tourism Villages in Bali, the result is how to use space for tourism purposes. However, there are problems with tourist villages, namely duplication and lack of differentiation, the absence of standardization of tourist villages, and tourism products are not based on their potential. This includes weak human resources in the village, lack of access, lack of government commitment. Second, the results of the research, AA Sri Agung Pradnya Pramita and AA Rai Sita Laksmi, focused on the ideology of tourism development in the Penglipuran Region, Bangli Regency, showing that the ideology of community-based tourism, with a description of the ideology applied, is by practicing Bourdieau theory, practice is a product of the relationship between habitus as a product of history and the realm which is also a product of history (Harker, Mahar, & Wilkes, 2010). The result of his research is that the people of Penglipuran Village have the potential in the form of village spatial patterns and uniform house structures, their natural environments such as bamboo forests and forests. Wood and community traditions and culture still maintain traditional values and have the ideology of Community-Based Tourism. From the perspective of Tri Hita Karana, this study is seen as an ideology of society, not a philosophy that researchers will find in this study. From these two articles, they have not studied the legal and philosophical aspects of Tri Hita Karana, hereinafter referred to as THK holistically, so that it is still sectoral that needs further study, and researchers have found a relationship between the values of Balinese Local Wisdom THK in the study of the philosophy of law, both sociologically, philosophically, and juridically.

3. METHOD

Empirical legal research method, by examining the law from two sides. According to Soetandyo Widnjosoebroto, on the first side, the law is a norm (statements that have a mandatory substance (sollen); and the second side is the law as a nomos, or fact (statements regarding the existence or absence of a specific behavior constancy in real collective life. The norm is a rule, and if the law as a norm is obeyed, it will transform into stable behavior over a long period and be understood collectively as a norm (Wignjosoebroto, 2009:84). The focus of this study, qualitative research through a case study approach. Data collection was carried out through a literature study of legal materials related to the research topic and observations and in-depth interviews with key informants who understand the research topic. The data obtained were analyzed by applying the theory in an eclectic manner, namely the Progressive Law theory of Satjipto Rahardjo, "law is an institution that aims to deliver people to a life fair. Prosperous and make people happy. Salmond's Theory of Legal Protection that the law aims to integrate and coordinate various interests in society. As a result of a traffic interest, the protection of particular interests can be done by limiting the various interests of the other party.

Meanwhile, Satjipto Rahardjo, legal protection protects human rights that others harm, and that protection is given to the community to enjoy all the rights granted by law (Satjipto Rahardjo, 2000: 69). To elaborate on legal protection related to the value of THK local wisdom, the theory of Legal Protection by Philip M. Hadjon is used; legal protection is preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, and repressive legal protection aims to resolve disputes that arise based on legal norms and provide sanctions against perpetrators of violators/acts against the law, both non-litigation, and litigation.

4. RESULT AND DISCUSSION

4.1 Legal protection of Indigenous Peoples in tourism activities in Bali

Bali against state hegemony in community-based tourism The Balinese model appears institutionally collectively through traditional villages, not individuals, but continues to develop according to the demands of indigenous peoples [7]. The rise of the Balinese people in managing tourism in their area is mostly top-down or instructions from above [8]. In-state politics, especially in Bali, there is indeed state hegemony, especially concerning Balinese culture. When the Dutch colonial government came to power in Bali, it was hoped that Bali could contribute revenue from the cultural aspect by opening tourist trips to the island of Bali [9]. In Bali tourism, the development of tourist villages is an inseparable part of the ups and downs of tourism development. Through tourism villages, tourism proves its alignment with the community because tourism is an absorber of rural labor, tourism is a generator of regional economic growth, and tourism is a tool for alleviating poverty (pro-job, pro-growth, pro-poor). [10]. In the legal protection of tourism activities, traditional villages arise

naturally. Therefore, the process of village tourism begins naturally in the traditional village of Kuta. Sociologically, the indigenous people of Kuta manage tourism activities starting from the wishes and interests of tourists, which are managed by the traditional customs of Kuta. Furthermore, after time passes, Kuta is the center of beach tourism, then the arrangement is carried out, which must be by the zone or zoning. Furthermore, land use is then regulated (2002) Strategic Structural Plan for Kuta, described by Zones: a) Airport zone; b) Banjar hall; c) graves; d) entertainment and recreation; e) furniture marketing storefront; f) green open space; g) handicraft and cargo industries; h) housing; i) swamp/mangrove forest; j) gardens; k) public facilities; l) retention ponds; m) office services; n) services and trade; 0) field and sports; p) social facilities; q) Special area; r) tourist accommodation; s) transportation and parking. Strategic Structural Plan Area for Kuta, which includes Kuta Village, Legian Village, and Seminyak Village. This arrangement is based on the Decree of the Regent of Badung Number: 1266 of 2002, concerning the Urban Management of Badung Regency. Article 3: is stated about the Vision, the realization of a just, dynamic Kuta, supporting tourism growth, and supporting the concept Tri Hita Karana which Hinduism inspires with a complete social order. Article 4, Objectives, to expand and improve the quality of Kuta until 2020, so that this area becomes the center of beach tourism in Kuta Bali, to improve the quality of the city's spatial structure as a whole, and to the international reputation of Kuta as a cosmopolis tourist spot, dense and dynamic [11].

Bali does not continue to be trapped in the tourism development trend of Mass Tourism. For this reason, Bali has the opportunity to develop 100 new tourist villages with funding support from the APBN. Of course, this is an exciting opportunity and should not be wasted. However, behind these opportunities, the development of ongoing tourist villages is still faced with several problems. First, no criteria or standardization can be used as a reference when mapping tourist villages. Currently, the development of a tourist village still tends to be duplication, which refers to a tourism village that has existed before and does not raise its local uniqueness. Second, no tourism village development model can function as a blueprint, especially in developing local institutions, namely tourism village managers. Third, the government needs to make regulations on managing traditional village-based tourism villages as models in Bali.

Legal protection for tourist villages in Bali Province is an essential issue in building and discovering the value of local wisdom based on traditional villages. The principle of traditional villages in Bali is to have genuine autonomy, have awig-awig or pararem, parhyangan/temples, krama/citizens, and a clear territory. Regional Regulation Number 4 of 2019 concerning Traditional Villages states that the development of traditional villages aims to strengthen the rights of origin, traditional rights, customs, cultural values, and the value of local wisdom of the Balinese people (Article 47, paragraph 1 (a). Bali tourism law: first, it must be seen from the value of Hinduism (as a culture), then it is lowered into the Tri Hita Karana philosophy (Balinese Regulation, No. 2 of 2012, concerning Balinese Cultural Tourism, Article 1, numbers (14, and 15). This is also related to tourist attraction, something that has uniqueness, beauty, and value in the form of a diversity of natural, cultural, and man-made wealth targeted and visited by tourists (Article 1, number 20)—building Balinese cultural tourism as the basis of community life and sustainable Balinese culture. Based on the Law of the Republic of Indonesia Number 10 of 2009, concerning Tourism, Article 28, the government can increase community empowerment and tourism potential owned by the community. Furthermore, each city district is creative in establishing a tourist village, for example, the Badung Regency Regulation No. 47 of 2010 concerning tourist villages. There are 11 tourist villages (1. Sangeh; 2. Bongkasa Pertiwi; these have developed; then: 3. Mengwi Tourism; 4. Kiadan Plaga; 5. Carangsari; 6. Pangsan; 7. Baha; 8. Munggu; 9. Evening; 10. This ship is currently developing, and 11. Lawak tourism village, which is an undeveloped tourist village).

As of now, the island of Bali has 110 tourist villages in the last calculation during 2018, or an increase of up to 124% compared to data collection four years ago.[12] In Tabanan Regency itself, 41 tourist villages and 22 have pocketed the Decree of the Regent of Tabanan. In its development, each tourist village has different rhythms and achievements. [13] To develop tourist villages in Bali in Bali, all tourism business activities should implement the Tri Hita Karana (THK) concept. THK is a philosophy that prioritizes strengthening the balance between the relationship between humans and God Almighty, humans with humans, and humans with their environment. This concept is stated in public policy norms or legal rules, which institutionalize good values. Norms come from the word nomos, which means value, and then narrow its meaning to become legal norms.[14]

4.2 Interpreting the value of THK Local Wisdom in Bali in its implementation of Cultural Tourism

The meaning of local wisdom in Bali is seen from the point of view of Satjipto Rahardjo's progressive legal theory. In contrast, tourism based on liberalization/capitalism is prone to conflict interests. If the state is not present in this activity, social conflicts will arise—the development of tourism accommodation in tourist villages in Bali. The value of Tri Hita Karana's local wisdom indirectly influences the policies and behavior of tourism businesses in Bali.

The THK concept can guide tourism business activities, especially cultural tourism in Bali, an icon of Bali. With the principle of regional autonomy owned by the government in Bali, the regional government has the authority to issue laws and regulations to regulate, in this case, related to Bali tourism. In the Bali Regional

Regulation Number 5 of 2020 concerning standards for the implementation of Balinese Cultural Tourism, considering (b) that in improving the quality, sustainability, and competitiveness of Balinese cultural tourism, it is necessary to standardize the implementation of Balinese tourism based on Tri Hita Karana which is sourced from cultural values and the value of local wisdom Sad Kerthi. In Article 1, number (9) sad Kerthi is an effort to purify the soul (Atma Kerthi), preserve forests (Wana Kerthi) and lakes (Danu Kerthi) as a source of clean water, sea, and beaches (Segara Kerthi), social harmony and dynamic nature (Jagat Kerthi), and build the quality of human resources (Jana Kerthi). Article 1, number (10) Tri Hita Karana are three causes of happiness: a balanced or harmonious life attitude between filial piety and God, serving fellow human beings, and loving the natural environment based on sacred sacrifices (yadnya). In implementing the value of Balinese local wisdom, it is reaffirmed in Article 1 number (12) Balinese cultural tourism is Balinese tourism which is based on Balinese culture which is imbued with the Tri Hita Karana philosophy, which is based on cultural values and local wisdom and is based on Balinese Taksu.

Tourism Villages, also expressly conceptualized in Article 1 number (29), tourist villages are village administrative areas that have the potential and uniqueness of the DTW, namely to experience the extraordinary life and traditions of rural communities with all their potential. Article 2: standards for the implementation of Balinese cultural tourism are prepared based on the principles inspired by the Tri Hita Karana philosophy, which is sourced from the local wisdom of sad Kerthi: a) Environmentally friendly; b) sustainability; c) balance; d) side with local resources; e) independence; f) togetherness; g) participatory; h) transparency; i) accountable and; j) benefits.

Article 3, paragraph (1) Standards for the Implementation of Balinese Cultural Tourism are held in one territorial unit, one island, one pattern, and one governance. (2) Setting Standards for the Implementation of Balinese Cultural Tourism aims to preserve the natural environment and Balinese culture imbued with the Tri Hita Karana philosophy based on the values of local wisdom of Sad Kerthi and to improve the quality of the implementation of Bali Tourism. The practice of this article, is it effective in legal reality, is it running well, is it only at the level of article texts. According to Satjipto Rahardjo, the destruction of the rule of law will degenerate into a state of the procedure if it has been reduced to a state of law. The rule of law of the Republic has become a big project, a humanitarian project, and a cultural project [15]. Progressive law is not seen from the perspective of the law itself but is seen and assessed from the social goals to be achieved and the consequences arising from the operation of the law. Article 3, paragraph (1) of the Standards for implementing Balinese Cultural Tourism is held in one territorial unit, one island, one pattern, and one governance. Based on the thought of the text of this article, it should be linked and refer to regional autonomy Law No. 9 of 2015, concerning the second amendment to Law Number 23 of 2014, concerning Regional Government, article 20, paragraph (1).:

Own by the Province of Bali;

By assigning districts/cities based on the principle of co-administration; or by assigning the village;

Article 20, paragraph (2) Assignment by the Provincial Region to the Regency/Municipal Region based on the principle of co-administration as referred to in paragraph (1) letter b and the village head as referred to in paragraph (1) letter c shall be stipulated by a governor regulation by the provisions of the legislation. - invitation; paragraph 3, Concurrent government affairs are under the authority of the Regency/City Region to be carried out by the Regency/City itself or may be assigned a part of its implementation to the village; paragraph 4, the assignment by the Region/city to the village as referred to in paragraph (3) is stipulated by a Regent/mayor regulation by the provisions of the legislation.

4.3 Kuta tourism management (Kuta traditional village)

Tourism Village and/or Kuta traditional village tourism from the "Hippies" tourist village around 1971, foreigners or young "hippies" came to Kuta beach and stayed at the beach by setting up tents. The development of Kuta tourism naturally came from these "hippies" and then came to people's houses for rent, and tourists were advised to make bathrooms and toilets. At that time, the residents' house had a bathroom with a shower. Residents' houses are rented for one dollar per day. Foreign tourists to the traditional village of Kuta, the goal is to sunbathe on the Kuta beach [16].

Furthermore, the people of Kuta began to develop an adaptation process in individual or familial efforts. The businesses developed are hotels, homestays, pensions, restaurants, souvenir shops, stages, stalls, and shops. The traditional village of Kuta has developed into a "tourism city," between the "native" immigrants, tourists, and foreign tourists mingling into a society that has its style and characteristics, namely the "international" Balinese people. Kuta has become a global village inhabited by multi-ethnic and multi-cultural people [17]. *Tourism* is the leading sector that has boosted Bali's economy. Planning (legal policy), social and cultural needs to get attention from the local government of Badung Regency. Hotels, discotheques, restaurants, bars are scattered in the area in the traditional village of Kuta. This should be accompanied by a "conception of law as a policy process." The anatomical conception of law as a policy process includes several components, namely:

Community process as a policy context (community process); Values (values); and Community interaction (community interaction); and

Community expectations as a policy orientation.

The community process is the context of the policies set from that process. Policymakers must respond to events in a community through the policy process in the form of policymaking. The values held by the community are used to interact with the community as a basis for strength in policy formation. Interaction affects values, and values affect the degree of policy [18]. The Kuta Traditional Village needs a holistic policy to plan a Tourism Village that can answer cultural issues, the social reality of the Kuta Traditional Village, which grows into a tourism village. From a "Hippies" tourist village to a "Capitalist" tourist village that attracts investors to the traditional village of Kuta to "scavenge dollars," and now, "mass tourism" is a necessity for the traditional village of Kuta. In the reality of the political economy of Kuta tourism towards capitalist-oriented tourism. An essential thing in the development of tourism in Kuta (Kuta traditional village). The economic progress of THK-based ecotourism, in collaboration with capitalist tourism, is developing without the control of the traditional village of Kuta. This is confirmed by the Bendesa adat Kuta, and individuals own the existing land. The traditional village manages only a few customary lands for the art market, the night market (Interview I Wayan Wasista, 16 July 2021). The condition of the COVID-19 pandemic, 90% of Kuta's customary manners live from tourism activities, feels very hit. Even the regency and provincial governments of Bali have not seen any severe problems in the traditional village of Kuta. For example, in taking a COVID-19 free zone policy, the chosen ones are Nusa Dua, Sanur, and Ubud. This is the perception/assessment of the indigenous people of Kuta. In terms of Kuta is the "Branding" of Bali Tourism.

This pattern needs to be re-knitted by the Kuta traditional village with the facilitation of the Bali Provincial Government / Badung Regency Government, so that there is a collaboration on the ecotourism model of traditional village management and investor management, with a Build, Operate and Transfer (BOT) agreement pattern [19]. This is an offer from researchers, but it is challenging to develop by the traditional village head because it has already been too late to develop Kuta as an International Tourism Village.

The concept of ecotourism as an alternative tourism concept, which provides criticism of the old paradigm of tourism. It is said that tourism development is a massive, exploitative, fast development and does not pay attention to the interests of local communities. This is an antithesis to the conventional form of tourism development (mass tourism), which tends to be greedy for natural resources and ignores the interests of local communities. One form is what is then better known as ecotourism. The point of view of ecotourism (ecotourism) is taken as a new paradigm to accommodate tourism that is pro-local people (Pro local people). [20].

The product of ecotourism is the meeting of tourists with the local community as hosts. According to Nugroho (in Nyoman Suksma Arida, 2016), it is uniquely attached to the environment and local culture. Ecotourism products meet the following criteria: (1). be responsible for the impact of the natural and cultural environment it causes; (2). Conducted in natural areas or managed by natural rules; (3) involving elements of education and understanding of the environment and culture of tourist destinations, (4) supporting conservation efforts and increasing local people's income [21].

5. CONCLUSION

Balinese Hinduism guides the Tri Hita Karana philosophy; tradition is a force in realizing Balinese cultural tourism. Balinese tourism is based on the value of Sad Kerthi's local wisdom in running a tourist village, based on the potential of traditional villages to become a new force in implementing Balinese cultural tourism, and traditional villages are the owners and managers of tourist villages. The goal is for the welfare of traditional Balinese manners as a supporter of Balinese culture. The findings in this study, that Hinduism, the philosophy of Tri Hita Karana, sociologically, philosophically and juridically, synergistically/dialectically in cultural tourism activities, and the duty of the state to form policies/laws that can "law have social meaning."

A tourism/ecotourism village that is developed by the community/traditional village is guided by the state and local community-based management, local community management, local cultural potential, such as the case of the Kuta traditional village That when new tourism "is published in the traditional village of Kuta" it is an ecotourism and/or tourism village. Precisely when the involvement of tourism capitalism (investors), traditional villages "stutter" is unable to "resist" the brunt of investment funds, the tourist village is transformed into a Global village inhabited by multi-ethnic and multi-cultural, with the model of a tourist village (mass tourism).) and "any product" may be offered at Global village.

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Mandatory Clause Implications on Arbitration Disputes in Indonesia

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ABSTRACT
Whether the other party on arbitration dispute did not have good faith to enforce the arbitral tribunal's decision, this award will require other legal remedies to be executed later. There is an obscure norm in the mandatory clause of arbitration disputes; in-depth research is needed to examine this problem scientifically. Arbitration arrangements are contained in Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which until today has not yet been reconstructed against this Law even though several provisions are not precise and not in line with business developments in Indonesia. The research questions investigated in this study are (i) Mandatory clause regulation on arbitration disputes in Indonesia and (ii) Implications of the mandatory clause on arbitration disputes in Indonesia. This study employs a normative legal research method. The characteristics of the research object guide normative legal research yet remains limited by the expected outcome of the norms initially established. The approaches used in this study are (i) the analytical and conceptual approach and (ii) the statutory approach. The theories applied in investigating the problems in this research are the effectiveness theory and economic-legal theory. Through this study, the Implications of the mandatory clause on arbitration disputes in Indonesia can be identified, and the Mandatory clause regulation on arbitration disputes in Indonesia can be determined.

Keywords: *Arbitration disputes, Mandatory clause.*

1. INTRODUCTION

The dynamics of the rapidly growing economy and business are impossible to avoid disputes between the parties involved. Disputes may occur because of differences in the interests of each party; one party believes that its interests are inequal with the interests of the other party. Every dispute occurring constantly demands that a speedy dispute resolution and settlement be realized. If not, it will result in inefficient economic development, decreased productivity, fruitless business, and increased production costs.

The presence of foreign capital in the Indonesian economic sector accompanied by an understanding that a dispute resolution through the courts can take a long time has increased interest in resolving disputes through arbitration. Moreover, some disputes are cross-border in nature. [1]

Settlement of disputes through the courts has usually been an option if the two parties to the dispute are not oriented to problem-solving that prioritizes win-win solutions but rather a win-lose decision. As a result, the dispute resolution process takes a long time, and the company or the disputing parties experience uncertainty. Business dispute resolution is considered ineffective, inefficient, too formalistic, convoluted, unresponsive, open to the public, and relatively expensive. Any court decision-oriented to a win-lose solution can stretch the relationship between the two disputing parties in the future. Therefore, litigation settlement is not accepted in the business world since it is not by its development demands. Courts are considered an ineffective institution for the resolution of business disputes. In addition to the amount of time required to go through the trial process, an open court decision can also destroy the reputation of a business person. Meanwhile, in the business world, reputation is an essential element.

Settlement of business disputes through arbitration forums has become the preferred way of resolving disputes in the business world. The arbitration forum has served as an existing "court for entrepreneurs" to resolve disputes between them (business circles) and is a forum that suits their needs/wants.[2]

By this arbitration contract, the target to be reached is an agreement (before or after the occurrence of a dispute) between the disputing parties to bring their dispute to the arbitration of each dispute.

Subekti defines arbitration as a settlement or resolution over a dispute by a judge or a body of judges according to the agreement that the parties will submit to or obey the decision given by the judge or body of judges they choose or appoint to decide their case. [3] Eisenberg and Miller assert that if a form of alternative dispute resolution, such as binding arbitration, provides more excellent social benefits than litigation, the dynamics of the process should tend to induce the parties to include a clause submitting future disputes to arbitration. [4]

Sophar Maru Hutagalung stated that business people tend to choose arbitration with several factors, namely:[5]

a. The confidentiality of the dispute between the parties is guaranteed safe because the decision is kept confidential;

b. Delays caused by procedural and administrative matters are avoidable;

c. The concerned parties may choose an arbitrator who in their belief has adequate knowledge, experience, and background regarding the issue being disputed;

d. The disputing parties may determine the choice of law to resolve their dispute as well as the process and venue of the arbitration; and

e. The arbitrator's decision represents a decision that is binding on the disputing parties and is carried out through simple procedures or can be implemented directly.

If a party chooses an arbitration institution to manage their dispute, the rules applying comprise the arbitral institution's rules. However, there is an *ad hoc* arbitration. Usually, the parties will use a national arbitration act to agree on procedures or arbitration rules designed for *ad hoc* arbitration, such as the UNCITRAL Arbitration Rules.

As previously mentioned, the parties are given the freedom to choose the place/location of the arbitration. They tend to choose a location that has no connection to either party; that is to say, a neutral venue for both parties. They will also be allowed to select an arbitrator with subject-specific expertise. If the tribunal consists of three arbitrators, two of them may be selected by the parties separately, and a third will be selected by the arbitrators to be appointed. In this way, the arbitral tribunal is considered neutral for both parties. Neutrality refers to one of the main attractions of arbitration. Another major attraction includes the international recognition and support for the arbitrations that have been achieved. The 1958 New York Convention ensures broad acceptance of treaties that refer a dispute to arbitration regardless of the jurisdiction in which they are made. Both cover several reasons why arbitration has become the favorite legal choice for resolving disputes, especially for entrepreneurs experiencing rapid developments in international and domestic trade.

Another advantage of arbitration in which the process is resolved exclusively and closed to the public is that the arbitrator chosen by the parties is a competent and experienced person or people. This is important to avoid the publicity common in open court by judges who may not have particular expertise on the matters in dispute. The non-public nature of arbitration is also considered to have played an essential role in the success of the arbitration.

2. METHOD

This research was conducted for one year using normative legal research because it was alleged that there was a norm void in the Arbitration and Alternative Dispute Resolution Act (*UUAAPS*). There are three approaches to the problems under the study used: the statutory approach, the conceptual approach, and the analytic approach. The data used are in the form of primary data and secondary data collected through documentation and note-taking. Data were analyzed employing hermeneutic and qualitative techniques.

This research belongs to normative legal research. With this type of method, the research examines legal norms through the principles of legislation. The problem approaches used to encompass the statutory approach, conceptual approach, and analytical approach. Secondary data or legal materials were collected through documentation and note-taking techniques using a file system.

3. RESULT AND DISCUSSION

3.1 Mandatory Clause Regulation in Arbitration Disputes in Indonesia

A mandate clause means the District Court is not authorized to adjudicate the disputes of the parties. [6]. This is confirmed in Article 11 of the Law of the Republic of Indonesia No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution ("*UUAAPS*"), which stipulates that:

a. "The existence of written arbitration agreement shall nullify the rights of the parties to submit a resolution for any dispute or difference of opinion contained in the agreement to the District Court;

b. The District Court is obliged to refuse and not intervene in a dispute resolution that has been determined through arbitration, except in specified cases stipulated in this Law." [7]

The general court is considered to have not provided solutions and facilities in processing cases submitted by justice seekers. In fact, the longer the judiciary is increasingly becoming a judicial body, that is difficult to be touched by all circles of society. "Science continues to develop, and the search for truth has characteristics or attributes, that is to say, always relying on the three pillars of the development of science, comprising ontological, epistemological and axiological in nature." [8] "Ontology talks about what reality exists in the universe; epistemology talks about the methodology, validation, and validity of knowledge; and axiology talks about values and goals." [9]

When an object of the arbitration agreement is about to be examined, the arbitration mandate clause, which is the object of the agreement, necessarily needs to be reviewed first by the arbitral tribunal to ascertain whether it has referred to the competence of the arbitral tribunal. [10]. With the function of the arbitration mandate clause which is the standard method, later it will serve as a determination of judicial competence that is capable of creating justice and legal certainty for all disputing parties in the arbitration institution. Thus, business actors in litigation do not have to worry about whether overlapping claims will occur in arbitration institutions and general courts in Indonesia. This is by the theory of legal certainty developed by Radbruch, a German philosopher, who views that the regulation regarding the scope of the mandate clause must be regulated clearly and firmly in the general provisions of the *UUAAPS*.

By its function in resolving disputes between the parties who have agreed, arbitration plays a crucial role for the parties who need a solution to resolve the dispute they are facing. The first thing that must be analyzed is the cause of the dispute. Differences of opinion on agreements that have previously been mutually agreed upon must be explored more deeply because in arbitration agreements and other commercial agreements, in general, the clauses have set forth the solutions and sanctions for problems or disputes between the parties. However, suppose one of the parties insists on submitting their case to an arbitration institution. In that case, the arbitration institution should first examine the competence of the case to ensure whether the case can be classified as a case belonging to international arbitration disputes.

The main reason business actors choose dispute resolution forums is a sense of trust in achieving a sense of justice and legal certainty for those who are disputing parties. If the function of this arbitration mandate clause can be stated by the actual function in national and international law products, the benefits by Bentham's theory - namely the greatest happiness of the most significant number - will be achieved; it is that legal products related to the function of the arbitration mandate clause can guarantee to maximize benefits for national and international business actors.

3.2 Implications of Mandatory Clauses on Arbitration Disputes in Indonesia

UUAAPS has regulated the arbitration mandate clause, but the limit of this mandate clause is not regulated in general provisions. The limit of the arbitration mandate clause is arbitration disputes because only disputes that are the standard of the competence of the arbitration institution, apart from disputes, it is not a national and international arbitration competence.

Problems regarding the scope of the mandate clause of arbitration often arise due to the following reasons:

1. The public is not always able to distinguish between a dispute and a case of default;
2. Legal practitioners are also not always able to distinguish between a case of default and a dispute;
3. Judges of the District Courts tend to only look at the presence or absence of a mandate clause in material facts; if so, the case will be rejected; and
4. Arbitration judges tend to only look at the presence or absence of a mandate clause in material facts; if so, it will be accepted.

The UNCITRAL Model Law, which covers the drafting of UUAAPS, has regulated the meaning of arbitration in article 7 (1): "Arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not…." An arbitration agreement is an agreement between the disputing parties to bring to the arbitral tribunal all or specified disputes that have arisen or will arise between them concerning the established law. Similarly, Article 25 (a) regulates the default of a party, especially regarding the negligence or default of the parties. In the provisions of the article, it is determined, "the claimant fails to communicate his or her statement of claim by Article 23 (1); the tribunal shall terminate the proceedings". If a plaintiff fails to file a statement of his or her claim by Article 23 (1), the court will terminate the trial. It has been mentioned that in the UNCITRAL Model Law, it is specified that there is a difference in the meaning of the word *dispute* and *default*. *Dispute* refers to a clash or disagreement, while the default signifies negligence.

Nevertheless, UNCITRAL did not confirm the nature of the dispute itself. This model law assumes that everyone has understood the concept of arbitration disputes, but it is not the case in practice. Several arbitration cases overlap and are sued through international arbitration institutions or in general courts in a particular country. This shows that there is no

apparent limit to the standard mandate clause in the arbitration agreement. Steve Ngo outlined the UNCITRAL arbitration rules, namely that the UNCITRAL arbitration rules represent comprehensive procedural rules. This covers all aspects of the arbitration process, from the appointment of arbitrators to the conduct of the arbitration process, as well as arrangements relating to the form and interpretation of arbitral awards. [11]

Model Law is designed to assist countries in reforming and modernizing their state's arbitration law, particularly regarding arbitration procedures taking into account the characteristics and needs of international commercial arbitration. [12] Also; the purpose of establishing the Model Law is stated, that is, to achieve uniformity and harmonization of arbitration laws in general.

Article 2 of the *UUAAPS* specifies, "This law provides regulation regarding the settlement of disputes or differences of opinion between the parties in a certain legal relationship that has entered into an arbitration agreement which expressly states that all disputes or differences of opinion that arise or that may arise from the legal relationship shall be resolved by arbitration or through alternative dispute resolution."

4. CONCLUSION

The mandatory clause results in the District Court is not authorized to adjudicate the disputes of the disputing parties as regulated in Article 11 of the Law of the Republic of Indonesia No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The use of mandatory clause arbitration in the recruitment of workers, consumers, and franchise contracts has generated significant controversy among legislatures, courts, administrative bodies, and scholars. Before the parties sign the arbitration agreement, the parties should have fully understood and comprehended the meaning, function, and implications of the arbitration agreement so that the risk of disputes during the agreement can be minimized.

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The Impact of Mass Tourism Concept on Tourism Development in Bali

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ABSTRACT
Tourism is growing industries in Bali. In fact, many people are, especially in Bali, really depend on the industry. The administration of tourism must, of course, be based on the concept of sustainable tourism development. Unfortunately, in reality, tourism development models based on mass tourism development are still encountered. This study examines the implementation of the mass tourism and the impact to the development of tourism in Bali. It is a normative legal that makes use of primary and secondary legal materials. All legal materials were processed and analyzed. The results show that mass tourism focuses on many tourists to be brought to an area without regard to sustainability aspects. The impact of applying the concept of mass tourism in the development of tourism in Bali is that its application in its development can have negative and positive impacts that affect the environment, economy, and socio-culture.

Keywords: *Impact; Mass Tourism; Sustainable Tourism.*

1. INTRODUCTION

Indonesia is a tourist destination that offers uniqueness and natural beauty and has a tourist attraction, especially from the cultural aspect attracting tourists to visit and tour. Bali is one of the exciting tourist destinations to visit. According to Badan Pusat Statistik Provinsi Bali, the total number of foreign tourist visits to Bali in 2018 reached 15,806,191; in 2019, it increased to 16,106,954; and in 2021, it decreased to 4,022,505. The decline was due to the emergence of Covid-19 pandemic. Meanwhile, the number of domestic tourist visits to Bali in 2018 reached 9,757,991; in 2019, it reached 10,545,039; and in 2020, it decreased to 4,596,157. pandemic has had a significant impact and dealt a tremendous blow to the development of the tourism industry, especially in Bali, where people are very dependent on the tourism industry.

The development can also negatively impact various aspects of people's lives. This negative impact arises for several reasons. One of the reasons referred to is the application of the concept of tourism development which is not based on sustainable tourism but the concept of mass tourism. One of the characteristics of mass tourism is that as many tourists as possible are brought to an area. Then all-natural and cultural resources are commercialized on a large scale, regardless of their sustainability [1]. This research is not only discussed about the concept of mass tourism but also discussed and analyzed the empirical condition which derived from mass tourism implementation practically.

The tourism industry ought to be developed without compromising the environment. However, in practice, it is undeniable that mass tourism often appears and becomes one of the solutions in developing tourism to gain big profits at the expense of the environment. This study examines two issues: the application of mass tourism and the implementation of the mass tourism in the tourism development in Bali. The things described encouraged the author to investigate research entitled "An Analysis of the Impact of the Application of Mass Tourism Concept in Tourism Development in Bali."

2. METHOD

This study is a normative legal study that makes use of primary legal materials and secondary legal materials. Both of these materials were processed then analyzed to know the mass tourism and its impact on the tourism development in Bali.

3. RESULT AND DISCUSSION

3.1 The Concept of Mass Tourism

The tourism industry is one of the growing industries in Bali. Balinese people are very dependent on the industry. The development of the industry is also

inseparable from the existence of tourism areas and tourist attractions, both natural and cultural tourism that attracts the attention of tourists to visit the area. The existence of a tourist attraction undeniably is one of the elements that attract the interest of tourists to visit Bali. This is very influential on the development of the tourism industry, especially in Bali. Tourism developing in the world can generally be described as two big boxes: the first big-box represents mass tourism, and the second big-box represents what has been proliferating in recent years, that is, alternative tourism [2]. The existence of tourism development, of course, has different characteristics and impacts from one another.

Mass tourism has been developing so far as characteristics, such as tourists bringing as many as possible to an area. Then most of the existing natural resources (water, land, views, and spaces) and culture are mainly commercialized regardless of the sustainability aspect [3]. Mass tourism can indeed bring one positive impact by bringing in as many tourists as possible. However, the essential aspect to take into account is the negative impact caused it causes on the environment as well as on natural resources and so on. The style of mass tourism in its development has proven to bring many negative impacts compared to positive impacts, both on local communities, nature and culture preservation, and on the local community's economy [5]. Based on these conditions, the concept of alternative tourism that emphasizes the element of sustainability is raised.

Through the Bali Provincial Regulation Number 10 in 2015 on Bali Province Regional Tourism Development Plan for 2015-2029, the Province of Bali itself has prescribed regional tourism development. It is contained in the provisions of Article 11, which states that the direction of regional tourism development includes five concerns, namely:

1. Quality, community-based, and sustainable tourism development;
2. Integrated regional tourism development across sectors, regions, and actors;
3. Regional tourism development that prioritizes the potential advantages of tourism areas, Special Tourist Attraction Areas (*KDTWK*), and Tourist Attractions (*DTW*) with development priorities by the theme of regional development;
4. Development of local wisdom-based tourist attractions, which is based on the potential for cultural, natural, and artificial attractions; and
5. Regional tourism development is oriented towards equitable distribution of economic growth, increasing employment opportunities, reducing poverty, and preserving culture and the environment.

Established on the provisions of Article 11 letter a, described above, it can be recognized that regional tourism development is more directed towards quality, community-based and sustainable tourism development. It is, of course, not in line with the concept of mass tourism development. Even in the provisions of Article 47 letter e, it has been emphasized that the development of the regional tourism industry includes the development of environmental responsibility. Furthermore, the development of responsibility for the environment is regulated in the provisions of Article 61. For that matter, it has been determined that the policy direction for the development of responsibility toward the environment, as referred to in Article 47 letter e, is realized in the development of tourism business management which refers to the principles of sustainable tourism development, tourism code of conduct and green economy.

3.2 The Impact of the Application of Mass Tourism Concept on Tourism Development in Bali

The emergence of mass tourism in tourism development in Bali can, of course, harm the environment. For instance, tourism support facilities that are not by the zoning and designation are still found. The emergence of various kinds of tourism activities, facilities, and services involves the role of the Government and Regional Government and involves the role of the community and entrepreneurs. Many tourism facilities have been established in areas that are not by the designation of the place; for example, the border of the coast and the border of the ravine is undeniable to have occurred. The increasing number of tourist visits and the development of the tourism industry opens up possibilities for tourism development that leads to mass tourism.

The emergence of mass tourism certainly has an impact on the environment, economy, and socio-culture. The effects of mass tourism could be observed both in constructive and destructive ways. Even though it incorporates some destructive effects, it is difficult to deny the superiority and the existence of mass tourism for a longer time. Then, the most important thing for nations to avoid the destructive effects of mass tourism is to undertake strict regulative measures to protect the natural environment and historical places, and the socio-cultural identity of people [7]. Mass tourism development not only influences the local environment, economy, and business governance but, more importantly, the people, culture, heritage, and traditions [8].

Mass tourism has many drawbacks, but it can indeed generate high income and cannot be completely put aside [9]. Preserving nature, the environment, and resources is one of the goals of tourism. However, in reality, mass tourism can harm the environment. As a result, sustainable tourism is one solution to overcome this. Sustainable tourism has begun to develop in the late 1980s and early 1990s [10]. Sustainable tourism development is significant to implement because, according to the sustainable development paradigm, it is based on the journey of realizing development that is increasingly uncontrolled in a country [11]. The

government and local governments play a crucial role in establishing the direction of regional tourism development, especially in Bali. The government also has a role in ensuring that all tourism supporting facilities are by their designation to reduce negative environmental impacts.

With the existence and implementation of sustainable tourism development, efforts to preserve the entire socio-cultural life of local communities and the environment in tourist destinations can still be a concern. It will provide economic benefits to local communities in a sustainable manner so that the three aspects (social -culture, environment, and economy) can be passed on from generation to generation [15]. The Global Sustainable Tourism Council has determined the criteria for sustainable tourism. The criteria refers to planning for the practical sustainability, optimizing the social and economic benefits for the local communities, empowering cultural heritage, and decreasing negative environmental impacts [16]. Sustainable tourism is the solution for tourism development that still utilizes environmental resources, regards the culture, and impacts economic development so that the negative impact of tourism development can be minimized.

4. CONCLUSION

Mass tourism focuses on the maximum number of tourists brought to an area so that impacts are generated both on existing natural resources and on culture regardless of the aspect of sustainability and sustainability. The development of mass tourism can have negative and positive impacts on its development, impacting the environment, economy, and socio-culture.

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Mapping of Stakeholder Legal Interests in Mineral and Coal Mining Investments in Indonesia

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ABSTRACT
Mining investment raises the controversy of the interest in its implementation. The controversies shown are economic development versus environmental conservation, national interests versus local benefits, and also community transformation versus cultural preservation and protection of indigenous right of people. This conversion often occurs since there is no regulation to regulate the differences of interest between the actors involved in implementing mineral and coal mining investments. Law Number 3 in 2020 with regard to Mineral and Coal Mining ease the interests of investors and central government, while the interests of local governments and the interests of local communities are neglected. This unequal arrangement of interests can result in inharmonious relationship between investors, the central government, on the one hand, and the local government and the community on the other. To maintain and respect the existence of each party, the government should revise the Mineral and Coal Law.

Keywords: *Coal, Interests of the parties, Mineral, Mining.*

1. INTRODUCTION

Throughout the twentieth century, the mining and minerals industry paced various criticisms for the harsh working conditions, massive environmental damage, and the deterioration of social life living around mining areas. This criticism arises since mining investment in several countries, especially in developing countries, is not transparent and it seems closed from community participation and involvement.

Mining investment often raises the controversy of interest in its implementation. The controversies often shown are the development of econoy versus conservation of environment, national interests versus local benefits, and community transformation versus cultural preservation and alsoprotection of indigenous rights. This controversy often occurs because no regulations regulate and reconcile differences of interest between the actors involved and affected in mining investments.

Furthermore, the most often affected by mining activities are the local community, the general public, and the local indigenous community. Mineral and Coal Law Number 3 in 2020 does not regulate how the community is involved in mining activities. The community is threatened with criminal sanctions if it makes a protest or demands related to their rights to the land and the environment used in the mining activities.

Regarding these problems, this study tries to regulate the mapping of the legal interests of the parties involved in the implementation of mining investment in Indonesia based on the 2020 Coal Mineral Law. The legal interest in question is how the legal instruments provided to protect the parties' interests involved, either directly or indirectly, in implementing mining investments in an area?

2. LEGAL FRAMEWORK FOR MINERAL AND COAL MANAGEMENT

The legal framework that operates in the community activity realizes the legal ideals regulated in the most fundamental legal rules. The Mineral and Coal Law is as the legal instrument in the technical position to regulate the use of mineral and coal natural resources as the translation of provisions of Article 33 in the 1945 Law, so that, its regulation can give the meaning of justice, use (*doelmatigheid*) and legal certainty.

Article 33 in the 1945 Constitution of the Republic of Indonesia (UUD 1945) is as the main joint that becomes the constitutional basis for the management of Mineral and Coal for the community's prosperity. The formulation of Article 33 in the 1945 Constitution not

only gives the instructions on the structure of the economy and the authority to organize the economic activities and natural resources contained, but also reflects the ideals and beliefs that are fought for by the leaders of the nation.

The basis for the management of Mineral and Coal is also managed in the Decree of the People Consultative Assembly of Indonesia Number IV/MPR RI/1999 concerning the Outlines of State Policy in 1999-2004, Especially Chapter IV Policy Direction Letter H Natural Resources and environment Number 4 states that;

Article 33 in the Constitution 1945, the position of the people in construction of the Mineral and Coal Law, becomes the core thing. The regulation with regard to the utilization of natural resources of mineral and coal for the sake of the interests and fulfillment of the people's welfare;

a. These natural resources provide benefits to the people
b. Distribution of the use of natural resources equally for people;
c. The level of community participation in establishing the benefits of natural resource management;
d. Respect for the rights of people from generation to generation in using natural resources.

3. MAPPING OF STAKEHOLDER LEGAL INTERESTS IN MINERAL AND COAL INVESTMENT

The mapping of the legal interests of stakeholders in the implementation of mineral and coal mining investments is about the mapping of the parties who have interests in the presence of mining investments in the local area. The parties are:

1. Investors

Investors is about gaining territory that would later be an economic mining investment area to make sure the feasible return on the investment.

2. Central government:

The Central Government has the interest in obtaining tax and foreign exchange from mining investment and interests in its position to save the national and international interests.

3. Local government

Regional Governments who represent the interests of the regions where mineral and coal mining investments are located to get the tax revenue from mining investments so that they can assist to Regional Original Income (PAD), as well as in their position as government administrators who are accountable to the community in protecting the rights of the people.

Another provision that gives the facilities for mining companies is coal mining which integrated with development and/or utilization activities for 30 years and guaranteed to obtain the extension of 10 years each time it is extended after fulfilling the requirements. Article 1 number 13b stipulates that the company whose contract period expires will extend its license. So, the mining company that operates will get the guarantee of automatic license renewal without any other conditions.

Allocation of mineral and coal mining areas is about the beginning of the investment process that will maintain the success of the development of the mining industry sector. The management of mineral and coal mining resources can run effectively and efficiently. It is necessary to use the spatial management approach. Various interests including interests related to property rights above ground level, investment returns, and interests related to the negative impacts of mining activities in the area. All of these interests need to be accommodated and protected in the investment allocation process.

4. CONCLUSION

Law Number 3 in 2020 concerning amendments to Law Number 4 in 2009 concerning Mineral and Coal Mining is about the legal instrument that has not balanced the parties' interests in implementing mineral and coal mining investments in an area or region. The Mineral and Coal Law in 2020 is to regulate the interests of investors or mining companies with the Central Government, while the legal interests of the management and utilization rights of minerals and coal in the interests of local governments and local communities are ignored. The gap in regulating interests to manage mineral and coal natural resources is undoubtedly a very fragile foundation. It can cause disharmony in relations between the parties involved in implementing mineral and coal mining investments in the region or region. This regulatory gap also results in the local government and local community not maximizing the mineral and coal natural resources in their area as a source of regional funding for economic development for the welfare and prosperity of the people in the region.

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Corporate Criminal Responsibility in the Crime of Environmental Pollution in Tourist Areas

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ABSTRACT
WWF data shows that Komodo National Park and the surrounding area collect 13 tons of waste every day. Many natural resources are sacrificed to gain more profit from tourism. Natural damages in tourist areas are due to the overcapacity usage of nature and the lack of supervision from the government in tourism. The corporations who commit the act or negligence that causes environmental damage should be charged with corporate criminal liability. The method used is normative. The corporate criminal liability to the corporations that manage tourist areas in terms of environmental destruction will provide legal clarity and protect nature from further damage.

Keywords: *Environmental Pollution, Corporate Criminal Responsibility, Tourism.*

1. INTRODUCTION

In article 1 point 3, laws of Indonesia number 10 in 2009 about Tourism, a variety of tourism activities supported by various facilities by the community, businessmen, government, and also the local government. Looking at the notion of tourism, various activities in tourism are synergistic with each other that form a system to support tourism activities, both from the community, businessmen, or the government. So that in the process of tourism activities, various facilities turn out to have a direct or indirect impact on the quality or sustainability of the environment. Tourism is one of the industries that hold an essential key towards the environmental damages. According to World Travel and Tourism Council, currently, tourism is the largest industry globally, generating more than $3.5 trillion in world revenue in 1993 or 6% of the world's gross income. The development of this industry grows very fast until it reaches the point where it causes negative impacts on the environment.

In general, human activities impact the physical condition of the environment, without exception of tourism activities that have an impact either directly or indirectly on the physical condition of the environment. Management, development and various activities related to tourism, for example, the low level of knowledge, level of education and public knowledge about the environment or the management of tourist areas, visitors' living habits can dispose of waste improperly resulting in environmental pollution So environmental pollution can be sorted out because of the community in the environment itself or tourists visiting the tourism area. So it is necessary legal awareness and sufficient environmental insight for the surrounding community and tourists who visit. Therefore, environmentally friendly tourism is needed so that tourism development can be in line with the preservation of the environment from physical pollution. The thing that needs to be considered in addition to private subjects (people) around and visitors is the Corporation.

Some corporations, such as hotels and resorts, may support this industry, but they are the ones that should be responsible for the environmental damages that occur. One of the examples of environmental damages caused by the activities of the hotels and resorts is waste disposal and water treatment that is not managed well and end up polluting the environment. Hotels and resorts should make sure the activities for their corporations will not cause damage to the environment. Corporate hotel activities should also include attention to the surrounding environment. So that it becomes clear what the hotel corporation's responsibility is to the risk of environmental damage.

Waste is one of the biggest problems in the environmental pollution in the Tourism Area. Based on the research from Bali Partnership, data was obtained that the amount of waste in Bali every day reached 4,281 tons. Of this amount, 11 percent of it flows into the sea. Each year, the amount reaches 1.5 million tons. [1] The hotel industry and other industries related to tourism activities are closely related to waste, where waste is the main issue

in preserving the environment, especially the physical condition of tourism. So when talking about cleanliness in tourism management, it will be very focused on various tourism activities. It is undeniable in this case that hotel activities, which in several cases in Indonesia, apart from supporting tourism, impact environmental pollution. In this regard, it is worth looking at some of the laws and regulations that regulate tourism, hotels, and waste.

Law of Indonesia Number 10 in 2009 with regard to Tourism and Law of Indonesia Number 32 in 2009 on Environmental Protection and Management are as the basis for the corporations' responsibility in preserving nature and the environment in tourist areas, including the charges of corporate criminal liability to the corporations that manage tourist areas in terms environmental destruction. These two laws serve as the basis for corporations conceptually the legal subjects who can carry out criminal responsibility for environmental pollution other than the private sector. This paper will review corporate criminal responsibility in the crime of environmental pollution in tourist areas because it can be understood that the elements of a crime can be distinguished from objective elements and subjective elements. Subjectively there is an element of error (schuld), so in this paper, we will investigate further what constitutes an element of error in a legal entity (Corporation). In particular, this paper will examine the specificity of the regulation regarding corporate criminal responsibility for environmental pollution in tourist areas.

The background of this research is the need to have certainty the regulation and in practice regarding Corporation's responsibility in tourist areas to protect the nature from further pollution. From the description above, the problems that become the subject of discussion in this research are: a) How is the corporate criminal liability in the act that causes environmental pollution in tourist areas according to the law? b) How is the government's supervision in the natural protection in the tourism industry?

2. METHOD

This research uses descriptive content analysis to explain and connect corporate responsibility regulation and environmental protection in tourist areas. The analysis is also connected to the normative perspective to determine how the law regulates the supervision in the tourism industry. Legal materials and related resources were used as guidance to conclude the research. Through a normative approach, it will investigate what constitutes criminal charges for corporations, in this case, hotels and resorts, in carrying out their actions of polluting the environment, causing damage to the physical environment. This study will also discuss what is meant by environmental quality standards, which become a benchmark for errors of legal subjects (corporations) in their activities that impact the environment.

3. RESULT AND DISCUSSION

The Corporation as a pseudo legal subject, its liability can come from legislation or other general provisions, from the actions or omission of its directors, employees, or agents. David O. Friedrichs defines *corporate crime* as a crime committed by corporate officials for the benefit of the Corporation or a crime committed by the Corporation itself. [3]. The purpose of corporate criminal liability is to provide an essential impact for directors to regulate effective management so that the Corporation runs by the obligations.

Regarding errors in corporations, Surprapto argues that the Corporation can be blamed if it is intentional or negligent found in the people who are the tools of the equipment. In addition, there is sufficient reason to assume that corporations have guilt because they, for example, received a forbidden advantage. Van Bemmelen and Remmelink argue that corporations can still have errors with error construction board of directors. The principle of no crime without guilt remains not abandoned. Thus, Surprapto, Van Bemmelen, and Remmelink recognize that corporations can still have faults with the construction that the error is taken from the management of board members.

Supreme Court Regulations Number 13 of 2016 also stipulates in prepossessing a crime against corporation, the judge may assess corporate fault for these reasons:

- The Corporation may gain the crime is committed for the benefit of the Corporation.
- Corporations allow criminal acts to happen.
- The Corporation does not take the necessary steps to carry out prevention, prevent more significant impact, and also assure compliance with applicable legal provisions to put off criminal acts. [4]

The tourism industry also has many corporations such as Hotels, tourism resorts, and many more. These corporations also hold the responsibility towards any action that may have harmful impacts on the environment as to how other corporations from other industries do. Article 1 number 11 UUPLH measures the limit or level of living things, substances, energy, or components that exist or must exist and/or tolerable pollutant elements its existence in a particular resource as an environmental element life. In contrast, the definition of the standard criteria for environmental damage according to Article 1 number 13 UUPLH is a limited measure of changes in physical properties and/or living environment that can be tolerated. Quality standards environment is necessary to place whether in area or area environmental damage has occurred, meaning that if environmental conditions have been above the environmental quality standard threshold, the area or area has been polluted. The violation of the quality standard can prove the occurrence of pollution to the environment in the tourist area.

When there is a loss, the Corporation must be responsible for the act or even negligence. It is then

necessary to identify who holds the responsibility for the loss.

The formulation of environmental criminal provisions as regulated in the Law Number 32 in 2009 and Law Number 10 in 2009 include the element of intentional or even negligence. If the element of intention or negligence is included, criminal liability adheres to the principle of liability based on the fault. This means the Law Number 32 in 2009 adheres to the principle of error or culpability. [7]

To asure the natural protection as regulated in Law of The Republic Indonesia Number 32 in 2009 with regard to Environmental Protection and Management Law, wise control efforts are used to exploit the tourism natural resources. One of the control efforts is the supervision so that pollution and natural damage can be prevented and controlled. Control refers to function in functional management that must be carried out by each leader of all units/work units on the implementation of work or employees who carry out their respective main tasks. Thus, supervision by the leadership, especially in the form of built-in control, a managerial activity carried out with the intention that there are no deviations in carrying out the work.

Supervision of corporate compliance in preserving the surrounding environment are internal and external. Judging from the Corporation itself, the internal segment can be conducted by the internal supervisors of corporations and associations in the corporate sector (hotels). In addition to the outside parties, there is layered supervision, namely from internal parties. Then who is the supervisor from the outside?

Based on Law of The Republic Indonesia Number 32 in 2009, environmental supervision is about the activity carried out by the Environmental Supervisory Officer to maintain the level of compliance of the person in charge of the business and/or activity to the provisions of the laws and regulations in Indonesia environmental field. Referring to this legal rule, it is necessary to cooperate the supervisory efforts of the Environmental Supervisory Officer with other environmental observers directed at the private sector in it.

It is stated in the Article 71 of Law of The Republic Indonesia Number 32 in 2009 concerning Environmental Protection and Management Law that the minister, governor, or regent/mayor are obliged to supervise the compliance of the person in charge of business and/or activity with the provisions stipulated in the legislation in the field of protection and environmental management, and may delegate their authority in supervising to the official/technical agency that is responsible for the protection and management of the environment. The official/technical agency in question is an environmental supervisory official who acts as the functional official.

4. CONCLUSION

The tourism industry is one of the industries that work close to environments. It has to hold the responsibility to ensur the environments will not be polluted beyond the quality standards regulated by the law. It is stated in Law Number 32 in 2009 and Law Number 10 in 2009 that anyone whose negligence destroyed nature will be punished. In this respect, the party that causes the nature destruction includes the Corporation in the tourism industry. Nature is a nonliving object that cannot report when it is exploited beyond the limit. That is why the government, as it is regulated in Article 71 of Law of The Republic Indonesia Number 32 the Year 2009, is obliged to supervise the compliance of the responsibilities from the Corporation. This supervision responsibility is delegated to the environmental agency in each city and province. The government, such as ministers, governors, and mayors, also hold the responsibility to supervise the permit for the Corporation to do activities concerning the environment.

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The Essence of Regulation and Dynamics of Submission of Judicial Review in Criminal Cases in Indonesia and Phenomena in Cases of Criminal Acts of Corruption

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ABSTRACT
The substance of the request for a judicial review of a court decision that has permanent legal force for justice seekers is an extraordinary legal remedy. Currently, the discussion regarding the matter is still often a matter of standard logistics. It has been regulated by the umbrella of proceedings in criminal justice, namely in Chapter XVIII, Article 263 to Article 268 of Law No. 8 the Year 1981 of Criminal Procedure Code. However, the dynamics of the development of practice have shifted and even deviated from the existing regulations. In principle, the judicial review effort of the convict or their heirs is a right, and according to the legal function, it is an effort to control the previous court decision. The applicant needs to provide reasons, such as new evidence (*novum*), in various decisions, there are contradictions, errors, or mistakes by the judge in deciding the case before. The dynamics in review efforts often deviate from formal legalities, such as the one being submitted more than one time. In this regard, the problem to be studied in this paper is the philosophical essence of the conception of judicial review efforts, the regulation of judicial review efforts in Indonesian law enforcement, and the dynamics of judicial review efforts in Indonesian law enforcement. Based on these issues, normative legal research is conducted with the aim that solutions can be discovered to solve the issues. Conclusions can be drawn by studying and analyzing the relevant theoretical foundations and conceptual frameworks. It was found that the philosophical essence of the concept of legal remedies being carried out is as a right of every justice seeker; the arrangement of legal remedies to be carried out in the Criminal Procedure Code has been regulated in a limited manner, and the dynamics of the regulation and implementation of judicial review efforts have changed and developed to give rise to disagreements according to the arguments of each party. In addition, this cross of opinion is used by convicts of corruption cases to file for reconsideration more than once.

Keywords: *Judicial Review, The Phenomenon in Corruption Cases.*

1. INTRODUCTION

The existence of law naturally and instinctively is that the law arises (made/formed), develop (applied), and dies (revoked, not followed again) by the former, namely the community itself. the great philosopher cicero in his adage, states, "*ubi societias ibi ius*," which means "there is society, there is the law [1]". Therefore, society needs and makes the law. In fact, in the end, the community is the individual or group that violates the law that has been established through the laws and regulations or potentially individually commits unlawful acts and/or acts against the law (*onrechtsmatige daad*). humans are identified as social creatures that the famous philosopher aristotle called *zoonpoliticon* [2]. When a violation of the law has occurred, the law will Start processing from the beginning, and at that time, a criminal case will emerge. Therefore, the investigation will be carried out (by the police), the prosecution will be carried out (by the prosecutor), the trial will be carried out by the court (by the judge), and the convict will be trained (by the correctional institution). if the trial process has ended marked by permanent legal force (*inkracht van geweijsde*), the law also attempts to counter the judge's decision. This legal effort starts from ordinary legal remedies, such as *verzet*, appeal, and cassation, regulated in article 233 to article 258 of the criminal procedure code.

Extraordinary legal remedies are regulated in article 259 to article 276 of the criminal procedure code. Specifically, for judicial review, it is regulated in articles 263-266 of the criminal procedure code. The focus of the discussion here is regarding extraordinary legal remedies on judicial review / *herziening*. This judicial review means an effort to control court decisions at the judex factie level for justice seekers (convicts) in certain severe cases, such as crimes classified as extraordinary crimes, crimes against humanity, and other serious crimes, such as premeditated murder. the perpetrators of this crime (the convict) will undoubtedly take advantage of this extraordinary legal remedy (review). this is because, in the legal process, the possibility is not closed for mistakes, whether done intentionally or unintentionally (there was a judge's mistake in deciding the case). the mistake, then, needs to be straightened out, corrected, and changed on the decision of the *judex jurist* court by the supreme court as a court of last resort.

Extraordinary legal remedies such as the judicial review in practice have often been used to submit requests for judicial review by corrupt convicts. because in fact, convicts of corruption are often severely punished, even sentenced to life imprisonment. As an effort to lighten the sentence, the convict asked the supreme court so that the courts at the district court and high court level reviewed their previous sentences by the courts at the final level (supreme court).

It has become material for reflection and study of several juridical-philosophical-sociological problems from the existence of this judicial review / herziening legal effort. For example, there are three issues examined in this study, namely: (1) what is the philosophical-ontological essence of the launching of judicial review? (2) how is a judicial review at the level of positive indonesian law (ius contituendum perspective) regulated? (3) what is the progress and direction of updating the judicial review arrangement from the perspective of the ius contituendum? the juridical-philosophical-sociological issue of this judicial review needs to get analysis and studied as a solution to answer the phenomena and facts of the existence of the judicial review in the realm of indonesian law both now and in the future in order to create justice/benefit and legal certainty in indonesian law enforcement.

2. RESULT AND DISCUSSION

2.1 Correlation among the Rule of Law and Rights, Human and Rights

Indonesia is law, not a power. This is confirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (amended) [3]. Before the amendment, it was only contained in the explanation of the State Government System Number 1, which reads, "Indonesia is a country based on the law (rechstaat). That means the Indonesian state is based on the law (rechtstaat), not based on sheer power (machstaat) [3].

With the statement, in the Unitary State of the Republic of Indonesia, the law serves as the basis, the benchmark for all aspects of the life of the state, government, nation, and society. It can also be said that the law determines the life of the community on all fronts. It is also intended that law is a system that plays a role in organizing and demanding social life to the national ideals and goals outlined in the preamble of the 1945 Constitution of the Republic of Indonesia, especially those stated and implied in Paragraph IV, which implies the form and type of democracy government welfare state [4], for every citizen. If Indonesia has an identity as a state of law, the law is supreme; the law is positioned above all else. The rule of law also means upholding the highest rule of law [5]. Indeed, the function and duty of the law are to maintain order and security for every citizen. The nature of the law regulates, binds, and even forces its citizens if they violate legal norms to be sanctioned by the state in the form of punishment or crime. Talking about the law means bringing up two essential elements: the existence of a positive law (ius operatum) that is fair and provides certainty and the existence of the objective, firm, and non-discriminatory law enforcement.

In principle, the state has an absolute obligation to protect the individual rights of its citizens, especially if someone conflicts with the law. Enforcement must be carried out by law enforcement institutions such as the Police, Prosecutors, Courts, Correctional Institutions, and Advocates' Organizations. With the existing set of laws and regulations, the law must be enforced at all times without discrimination (equality before the law). This is in line with Soerjono Soekanto's view that the law in its enforcement cannot be separated from its enforcement and cannot be ignored because if it is ignored, it will not achieve the law enforcement expected by the applicant judicial review [6].

The protection of the community's rights individually and in groups in the legal sector by the state through law enforcement officials and the rule of law is a human obligation. That is because the rights of each individual in the law, especially in the topic of the paper the author are writing, is anyone, including the state, can violate the right of individual freedom (independence) which cannot /.

The right to be free from any restraint is protected by a natural acquisition right that is innate from birth (even since a person is still in the womb). The right to freedom should not be reduced because it is an absolute right (derogable rights). The right to freedom, for example, was born in the first generation of human rights groupings initiated by Kalvasak [7] (French jurist and pioneer of human rights). Nevertheless, in law, even that freedom is not absolute. The law provides a priority scale for whenever a person's freedom can be reduced or violated for the sake of the law itself when needed in the legal process/mechanism itself.

2.2 A Brief History and Formal Legalistic Arrangements for Requests for Judicial Review of Decisions that Have Permanent Legal Force (Inkracht Van Geweijsde) in the Indonesian Positive Legal Treasure

Regulations for Judicial Review Applications in Several Laws Judicial Review Regulations in the Judicial Power Act. Law on Judicial Power since 1970 under Number 14 of 1970, which is named the Basic Provisions of Judicial Power in Article 21, outlines, "If there are things or circumstances that are determined by law, the court decision that has obtained legal force which can still be requested for a judicial review to the Supreme Court." In civil and criminal cases, by interested parties Law, No. 14 of 1970 has been successively revised with Law No. 35 of 1999 in conjunction with Law No. 4 of 2004 in conjunction with Law No. 48 of 2009 concerning the Law on Judicial Power (which is currently in effect) [8]. Through the provisions of Article 24 paragraph (1), there is still a formal legality guarantee regarding the request for a judicial review, as it is written, "About a Court Decision that has obtained permanent legal force, the parties concerned can submit a judicial review to the Supreme Court if there are certain things or circumstances that specified in the law."

When examined carefully, it seems that the formulation of Article 24 Paragraph (1) of Law Number 48 the Year 2009, in Paragraph (1) stipulates, "Against a court decision that has obtained permanent legal force, the parties concerned may submit a judicial review to the Court. Great if there are certain things or conditions specified in the law."; and paragraph (2) stipulates, "A judicial review cannot be carried out on a judicial review decision." As a basic rule, the law instructs the operational law to regulate technically and practically further. This refers to Number 1 of 1981 of the Criminal Procedure Code, enacted by the government starting on December 31, 1981 [9]. In that paragraph, the law is a legislation product of the independence era, which is proud of as the "Great Work of the New Order Government" to replace the Procedural Law. The criminal product of the Dutch colonial era was known as “Het Herziene Inlands Reglement” (Staatsblad 1941 Number 44).

Regulations for Continuous Judicial Review Requests in the Criminal Procedure Code Law No. 1 of 1981. Before the Criminal Procedure Code was born as a great product in law, a famous and legendary criminal case occurred, namely the Sengkon and Karta cases [10]. It happened in West Java. At that time, the judge made a mistake in deciding who the perpetrator was. From the facts of the case, the government accommodated in the Criminal Procedure Code to launch a Judicial Review Institution against court decisions that have permanent legal force. Previously, the Supreme Court also had issued Regulation (Regulation of the Supreme Court of the Republic of Indonesia) No. 1 of 1980 concerning Judicial review of court decisions that have permanent legal force. Hence, the concrete realization of the judicial review institution is an extraordinary legal remedy written in a formal legalistic-limitative manner in CHAPTER XVIII, Part Two, starting from the provisions of Article 263 to Article 269 of the Criminal Procedure Code.

Arrangements for Judicial Review requests in the Criminal Procedure Code for Indonesia or the drafters of legal norms have tried their best to satisfy the expectations of all parties, especially justice seekers who have an interest in that. However, along with the development of demands for law and justice, the previously available rules have given rise to different opinions. Each of them criticizes, examines, evaluates based on the arguments of interested parties. In general, judicial review arrangements have accommodated the basic arrangements, definitions, submission requirements, parties who can request a judicial review, procedures, time of submission, the examining authorities, the form of the decision, legal risks, and so on that arise according to the case requested by the judicial. The review. Each of these leaves socio-juridical-economic and political problems and the currents of modern globalization in all lines of human life.

As for the formulation of the provisions of the judicial review setting in the Criminal Procedure Code that need to be studied and analyzed are as those concerning the following matters: The formulation of the judicial review as legal standing is Article 263 Paragraph (1) of the Criminal Procedure Code, which reads "Against a court decision that has permanent legal force," unless the decision is free from all lawsuits, the convict or the heirs may submit a request for judicial review to the Supreme Court. (Here, it can be claimed that a judicial review can be requested only against a court decision that has permanent legal force, and the party who can file a judicial review is the convict or their heir. So, other parties/outside of that are prohibited from requesting a judicial review. This becomes logical because it is the convict or their heirs who have an interest in changing / mitigating / freeing from court decisions at the judex fatie level)

Requirements/basics for filing a judicial review according to Article 263 Paragraph (2) of the Criminal Procedure Code are: (1) If there are new solid circumstances/evidence or "Novum"; (2) If there are contradictions or differences in the various judges' decisions; and (3) If the decision has an error that the judge has made.

Article 264 Paragraph (3) of the Criminal Procedure Code stipulates, "Requests for judicial review are not limited to a period of time." This implies that a judicial review provides an opportunity for interested parties to request a judicial review at the Supreme Court.

The provisions of Article 266 paragraph (3) stipulate, "The punishment imposed in the judicial review decision may not exceed the sentence imposed in the original decision."

This implies that the judex jurist decision greatly protects the interests of the judicial review applications as a seeker of justice, and in the sense that such a judicial review decision from the Supreme Court acts as a protector against the applicant; the Supreme Court is the representative of the state and law enforcer, and the Supreme Court is the highest Court that participates as the executor for a democratic government with welfare states for its citizens.

The regulatory provisions of Article 268 Paragraph (3) of the Criminal Procedure Code relating to the frequency an applicant may request for a judicial review, as it is written that "A request for a judicial review of a decision can only be made once."

Although normatively, it has been strictly regulated, in practice, this provision is often violated by applicants for judicial review. For example, one application for judicial review was submitted more than once in the case of Antasari Azhar (with the excuse of a novum) and the case of the Bali Bombing I-Amrozi and his colleagues; the judicial review has been submitted several times. This has caused controversy among several basic arrangements for filing a judicial review.

Several parties then took legal action through a Request for Judicial Review as stipulated in Article 268 Paragraph (3) of the Criminal Procedure Code. Concerning the 1945 Constitution, the Constitutional Court once examined a judicial review regarding the limits on how many judicial review submissions may be made, with its decision Number: 34/PUU-XI/2013 dated March 16, 2014 [11]. The dictum of its decision is that the petition for judicial review is not limited; it may be submitted many times because it is considered in the consideration (ratio decidendi) that it does not conflict with consistency. Thus, the decision of the Constitutional Court contradicts the provisions of Article 268 Paragraph (3) of the Criminal Procedure Code, which states that the submission of a judicial review as stipulated may only be made once.

Eventually, the Supreme Court responded to the jurisprudence of the Constitutional Court mentioned above by issuing a Circular Letter of the Supreme Court of the Republic of Indonesia No. 7 of 2014 concerning the Submission of a Criminal Procedure Code in criminal cases, which states that the petitioner may only submit a judicial review one time. The opinions from the Supreme Court is "the Constitutional Court in its decision, which annuls the essence of Article 268 Paragraph (3) of the Criminal Procedure Code, does not abolish the legal norms contained in the provisions of Article 24 Paragraph 92) concerning Judicial Power in conjunction with Law Number 48 of 2009 and Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009 [12], all of which state that the application for judicial review is limited to one time only."

Some Socio-Juridical Facts and the Phenomenon of Submission of Judicial Review in Various Criminal Cases (Criminal Justice Practices), primarily Criminal Corruption in Indonesia

Several parties then took legal action through a Request for Judicial Review in Article 268 Paragraph (3) Criminal Procedure Code in practicing criminal law. Regarding the 1945 Constitution, the Constitutional Court had examined a material review regarding the limit of how many times it was permissible to submit a judicial review, with its decision Number: 34/PUU-XI/2013 dated March 16, 2014, that in the dictum of its decision that the application for judicial review is not limited, it may be submitted several times because it is considered that the ratio decidendi does not conflict with consistency. Thus, the decision of the Constitutional Court contradicts the provisions of Article 268 paragraph (3) of the Criminal Procedure Code that the submission of a judicial review is regulated for one time only. The Supreme Court responded to the jurisprudence of the Constitutional Court by issuing the Circular Letter of the Supreme Court of the Republic of Indonesia No. 7 of 2014, regarding the submission of a judicial review. This means that the applicant can submit a judicial review application only one time for criminal cases. The opinion of the Supreme Court that, "The decision of the Criminal Procedure Code of the Constitutional Court which cancels the essence of Article 268 Paragraph (3) of the Criminal Procedure Code does not abolish the legal norms contained in the provisions of Article 24 Paragraph 92) concerning Judicial Power in conjunction with Law No. 48 of 2009 and Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009, all of the rules in the article state that the application for judicial review is limited to one time only." As a result of the Constitutional Court's decision, convicts in corruption cases have the opportunity to apply for judicial review more than once. In addition, this has been proven to have been submitted by several convicts of corruption cases, including the convict OC. Kaligis. Convicts use opportunities for convicts to apply for judicial review more than once in corruption cases that are not in line with the state's efforts to eradicate corruption. It also alludes to the sense of justice of the people who are anti-corruption in Indonesia. With the occurrence of such phenomena and facts, for the sake of legal certainty for justice seekers, a revision of the Criminal Procedure Code is needed in order that in the future, there will be more definite, firm, and consistent arrangements for the above problem.

3. CONCLUSION

Based on the socio-juridical phenomena and facts on the regulation and application of the Judicial Review Institution on decisions that have permanent legal force, after being studied and analyzed based on legal theory, it can be concluded that the philosophical-juridical-ontological essence of the launching of the judicial review/herziening institution is a form of protection for the convict's rights. This is specifically in fighting for the rights of the convicted principal in restraining the

freedom of movement as the principal derogable right. This is done so that individual convicts' human rights are protected every time there is a conflict with the law. Moreover, if the Court Judge severely sentences the convict), they need to fight for their rights to decisions that are considered unprofessional, lacking,/unfair according to the convict's version: they can fight for their fate through judex jurist trials the Supreme Court. Regarding judicial review in positive Indonesian law, it has been regulated in a limitative, definite and precise manner as stated in the Law on Judicial Power, the Law on the Supreme Court, as well as the Criminal Procedure Code as well as the Circular Letter of the Supreme Court of the Republic of Indonesia. However, in judicial practice (criminal), many of these regulations are often violated by judicial review applicants either intentionally or unintentionally with arguments for the sake of justice and truth according to the version of each judicial review applicant (convict/heir / public prosecutor). However, the Constitutional Court of the Republic of Indonesia, through its Decision Number 34/PUU-XI/2013 dated March 16, 2014, opened an opportunity for convicts to apply for judicial review more than once, with the conditions as stipulated in Article 263 Paragraph (2) of the Criminal Procedure Code. Consequently, this has been utilized by several convicts of corruption cases as a means to apply for a judicial review that offends a sense of justice for the community; Procedural future judicial review arrangements, applicant parties, limitations on submission opportunities, and other matters need to be formulated in a firm, definite and consistent manner in the Criminal Procedure Code for the sake of upholding justice, realizing benefits and legal certainty, as a guarantee, especially for justice seekers under the auspices of Pancasila state ideology and the 1945 Constitution of the Republic of Indonesia.

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Implementation of the Determination of Indonesian National Work Competency Standards at the Institutions for Airport Job Training

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ABSTRACT
This research explores how Bali Aviation and Tourism Center applies 'Indonesian national work competency standards based on the Decree of the Ministry of Manpower of the Republic of Indonesia No 226 of 2020. The research method applied in this research was normative-empirical legal research, which examined the implementation of laws and regulations (law in action) against an event or legal phenomenon in society. The data collected for the research were in the forms of primary data and secondary data. The primary data in this research were directly collected from informants and respondents having competencies and knowledge related to this research to provide the information needed for the research associated with the stipulation of 'Standard Indonesian National Work Competency Standards' in the Institutions for Airport Job Training. Meanwhile, the secondary data were collected from literature reviews or other information related to the researched problems, such as books and notes. By the problems, the study's objectives are to reveal how 'Indonesian National Work Competency Standards' are based on the Decree of the Ministry of Manpower of the Republic of Indonesia No. 226 of 2020 Curriculum in the Institutions for Airport Jobs Training.

Keywords: *Implementation of Stipulation, Indonesian National Work Competency Standards (SKKNI), Institutions for Airport Job Training.*

1. INTRODUCTION

Tourism is a priority sector that has an essential role in a country's economy that exceeds the oil and gas sector and other industries if appropriately managed. in law number 10 of 2009 concerning tourism, tourism businesses provide goods and/or services to fulfill tourist needs and organize tourism [1].

Considering the importance of the tourism sector for the country's economy, the government is striving to make the tourism sector grow and develop. In developing tourism destinations in the country, the government needs to conduct cross-sectoral coordination in some sectors that can support tourism, such as lodging services, tourist attractions, travel sector, management of tourist destinations, and transportation [2]. of these several sectors, transportation is considered necessary in the tourism sector because it can take tourists to tourist attractions and bring tourists back to their initial places.

Various transportation services are provided to make it easier for visitors to reach destination areas, whether by land, sea, or air. Usually, air transportation is the choice of visitors for destinations. A place of transportation services that have a high flying grade in its movement is the airport as a central place for various commercial and non-commercial air travel activities. The reason people prefer to use air transportation services is that it is practical and fast. In addition, not all trips between cities or countries can be reached by land travel and sea travel. That is why many airports were established to meet the needs of the general public. The increasing number of air transportation users will increase the number of trained human resources to provide services.

The main element of the organization is human resources more than other elements such as funds and technology. This is because humans are the implementers of all elements. To get quality human resources, namely through job training.

According to law no. 13 of 2003 concerning manpower (labor law), job training is the entire activity to provide, obtain, improve, and develop work competencies, productivity, discipline, attitudes, and

work ethic at certain levels of skills and expertise by the level of and job or job qualifications. Job training is organized and directed to equip, improve, and develop work competencies to increase ability, productivity, and welfare.

Job training considers the needs of the labor market and the business world, both internal and external relationships. It is held based on training programs that refer to work competency standards carried out in stages. A ministerial decree regulates work competency standards for job training. For job training, the standard of work competence used is the indonesian national work competency standard.

The indonesian national work competency standards according to the regulation of the ministry of manpower and transmigration no. 8 of 2012 concerning procedures for stipulating indonesian national work competency standards are the formulation of work abilities that include aspects of knowledge, skills, and/or expertise as well as work attitudes that are relevant to the implementation of tasks and job requirements determined by the provisions of the legislation [3]. However, not all airport training institutions meet the indonesian national work competency standards.

Based on the above problems, the author is interested in conducting a research entitled implementation of the determination of indonesian national work competency standards at the airport job training institute.

2. METHOD

The research method is a process, principle, and procedure in solving a problem in conducting research [4]. The research method used in this study is empirical normative, namely examining the implementation of the provisions of the legislation (law in action) against an event or legal phenomenon in society [5].

The research approach used in this research is descriptive qualitative. A qualitative descriptive approach is an approach to describe descriptively how the Bali Aviation and Tourism Center applies Indonesian national work competency standards according to the Decree of the Ministry of Manpower of the Republic of Indonesia No. 226 of 2020.

The types of data used in this study are primary data and secondary data. Primary data were obtained directly from informants and respondents who have competence and knowledge related to this issue about the Implementation of Determination of Indonesian National Work Competency Standards at the Airport Job Training Institute. Meanwhile, secondary data were obtained from literature studies or other materials related to the problems studied, such as books and notes.

The data was obtained through the interview, observation of data collection guidelines, documents and notes obtained from informants and then analyzed qualitatively. In qualitative research, the process of collecting data begins with entering the research location. In this case, the researcher visited the research site, namely the Bali Aviation and Tourism Center (BATC), located at Jalan Tukad Barito Timur No 18B Renon, South Denpasar. Then proceed with meeting research informants. Furthermore, collecting the data was carried out using interview and documentation techniques. After collecting data, it is analyzed using formal and informal techniques.

3. RESULT AND DISCUSSION

According to Law Number 13 of 2003 concerning Manpower, job training is the entire activity to provide, obtain, improve, and develop work competence, productivity, discipline, attitude, and work ethic at a particular skill and expertise level by the level and qualification of the position or profession [6].

Job training is held based on a training program that refers to work competency standards. Every job training institution has its competency standards. However, for airport job training institutions such as LPKN Training Center, Tri Aviation Training Center (TATC), AVIA Kampus Penerbangan, Bali Aviation, and Tourism Center (BATC), Nasa Airline Education Center, Gapura Training Center (GLC), Jogja Flight until 2019 still uses exceptional work competency standards. Specific Work Competency Standards are working competency standards developed and used by organizations to meet the internal goals of their organizations and/or to meet the needs of other organizations that have cooperative ties with the organization concerned or other organizations that require.

On May 18, 2020, the Decree of the Ministry of Manpower of the Republic of Indonesia No. 226 of 2020 concerning the Stipulation of Indonesian National Work Competency Standards for the Transportation and Warehousing Category Main Groups of Warehousing and Transportation Support Activities in the Airport Activities Sector Sub-Sector Operations and Ground Services at Airports was approved.

The use of Indonesian National Work Competency Standards by the needs of institutions/agencies. For use in job training institutions, the Indonesian National Work Competency Standards provide information for program and curriculum development and reference the implementation of training, assessment, and certification.

The Bali Aviation and Tourism Center (BATC) has changed the Competency Standards from the Special Work Competency Standards to the Indonesian National Work Competency Standards by the Decree of the Ministry of Manpower of the Republic of Indonesia 226 of 2020.

The Decree of the Ministry of Manpower of the Republic of Indonesia No. 226 of 2020 has the Indonesian National Work Competency Standard specifically to form trained human resources with the primary objective of carrying out airport activities effectively and efficiently by applicable regulations. The

primary function is to manage ground operations and services at the airport with six main functions, namely (1) Management of occupational safety and health at the airport, (2) Baggage handling, (3) Handling Passenger Handling, (4) Ground Support Equipment Operations, (5) Ramp Operations, (6) Flight Dispatch.

Of the six main functions, 26 essential functions must be fulfilled by airport job training institutions. In addition to the primary function, 59 competency unit codes will be compiled according to the primary material. Later, the main function can be used as the mandatory (main) training subject for trainees.

In designing the Indonesian National Work Competency Standards curriculum, Bali Aviation and Tourism Center (BATC) did not use the six main functions that were arranged because the 4th primary function concerning Ground Support Equipment Operations cannot be carried out in job training institutions. Ground Support Equipment Operations must be from a specialized training ground of a particular industry.

Based on the Indonesian National Work Competency Standards, the primary function turns into a competency unit. In other words, the Bali Aviation and Tourism Center (BATC) job training institution has five mandatory competency units, or the primary materials are as follows.

Table 1. Job Training Institution's Competency Units

Competence Unit	Unit Code	Basic Function
Airport environmental occupational safety and health management	H.52POD00.001.1	Implementing Aircraft Safety Procedures (Aircraft Safety)
	H.52POD00.002.1	Implementing Occupational Safety and Health Procedures at the Airport
Baggage handling	H.52POD00.014.1	Carrying out Baggage Handling Operations
	H.52POD00.015.1	Receiving dangerous Goods on Air Freight
	H.52POD00.018.1	Complete Receipt/Shipping Documentation
Passenger Handling	H.52POD00.023.1	Providing Quality Customer Service
	H.52POD00.024.1	Serving Check-In Aircraft Passenger
	H.52POD00.025.1	Handling Arrival, Transit and/or Transfer Passenger
	H.52POD00.026.1	Managing the Check-in queue
	H.52POD00.031.1	Carrying out the Reservation Process Manually
	H.52POD00.032.1	Carrying out Process Travel-Related Documentation
	H.52POD00.033.1	Using a Computerized Reservation or Operating System
Ramp Operations	H.52POD00.043.1	Operating Communication Radio
	H.52POD00.044.1	Performing Radio Usage Procedures in Aviation Operational Environment
	H.52POD00.051.1	Creating Documents at Work
Flight Dispatch	H.52POD00.053.1	Managing Human Factors in Flight Dispatch Operations
	H.52POD00.054.1	Managing Aircraft Performance and Payload

4. CONCLUSION

Job training is held based on a training program that refers to work competency standards. Each job training institution has its Competency Standards. However, the Airport Job Training Institute, until 2019, still uses the Special Work Competency Standards. On May 18, 2020, the Decree of the Ministry of Manpower of the Republic of Indonesia No. 226 of 2020 concerning Stipulation of Indonesian National Work Competency Standards for the Category of Transportation and Warehousing of the Main Groups of Warehousing and Transportation Support Activities in the Field of Airport Operations and Ground Services at the Airport was approved and become a reference for airport job training institutions. In line with the regulation above, the Bali Aviation and Tourism Center airport job training institute uses five main functions, which become five competency units that are mandatory or main material.

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Consignment Agreement Regulation Model Between Craft MSMEs and Corporations Based on the Principle of Contract Balance

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ABSTRACT
Conducting business-related activities at this time is not only based on trust, but business actors need concrete evidence in business-related activities and a written the agreement is one of the ways that business actors can use in conducting a business cooperation relationship. If the sculptors or painters in Bali do not open their art shops as MSMEs actors will entrust their work to be sold to larger art shops or souvenir center companies with a consignment agreement system or entrusted to sell as a form of partnership. The unregulated consignment partnership pattern results in the absence of legal certainty for craft MSMEs actors, so it is necessary to find a regulation model of the consignment agreement for the parties. This study using normative research methods with legal material collection techniques used, namely, document study techniques by collecting legal materials from literature relevant to the problem then grouped systematically and then analyzed descriptively qualitatively. The Model of Consignment Agreement Arrangements Between Craft MSMEs Actors and Corporations Based on the Principle of Contract Balance is to reconstruct Article 87 point 5 of the Job Creation Law by adding regulations related to consignment to the partnership pattern and specifically regulating the consignment agreement in its derivative regulations by regulating the materials or classes, that must exist as a minimum requirement or criterion.

Keywords: *Consignment agreement, Contract principle, MSMEs.*

1. INTRODUCTION

The body text starts with a standard first-level heading like INTRODUCTION or any other heading suitable to the content and context. First level headings are in all caps. Copy the content and replace it for other first-level headings in remaining text. Reference citations should be within square bracket [1]. Headings should always be followed by text.

Conducting business relations activities at this time is not only based on trust, but business actors also need concrete evidence in business-related activities and a written the agreement is one way that business actors can use in conducting a business cooperation relationship. One of the programs currently in use is that Micro, Small, and Medium Enterprises (MSMEs) can market their products in one place. Moreover, cooperate with the mutual benefit of both parties. MSMEs need to be empowered as an internal part of the people's economy that has a strategic role and potential to realize a more balanced and developing national economic structure [1]. With the development of an increasingly dynamic and global economic environment, it is necessary to have legal protection from the government for MSMEs to ensure legal certainty and business justice. [2].

Related to legal certainty for MSMEs, the government has accommodated by enacting Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (UU MSMEs). Article 2 regulates: "Micro, Small, and Medium Enterprises are based on: a. kinship; b. economic democracy; c. togetherness; d. fair efficiency; e. sustainable; f. environmentally friendly; g. independence; h. balance of progress; and i. national economic unit."

In addition, Article 3 stipulates: "Micro, Small and Medium Enterprises aim to grow and develop their Business in the context of building a national economy based on justice economic democracy".".

With the enactment of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja), several provisions contained in the MSME Law have changed. This is because providing convenience, protection, and empowerment to MSMEs is one of the objectives of the creation of the Job Creation Law. One of them is a change related to the criteria for MSMEs. According to Article 87 point 1 of the Job Creation Law, the criteria for MSMEs can include business capital, turnover, net worth indicators, annual sales results, or investment value, incentives and disincentives, application of environmentally friendly technology, local content, or the number of workers following the criteria for each business sector.

In Bali, as a center for arts and crafts that are well-known in foreign countries, some people make a living as a sculptor or as a painter. One of the regencies with a large number of people are in Gianyar Regency. Especially in Gianyar Regency, there is a large and well-known Balinese handicraft souvenir market, namely the Sukawati Art Market and the Guwang Art Market. The sculptors or painters usually if they do not open their art shops as SMEs, and they will entrust their work to be sold to larger art shops or souvenir center companies such as Krisna Oleh-Oleh, Erlangga, and so on with a consignment agreement system or entrust to sell as a form of partnership.

The definition of partnership referring to the MSME Law is given a definition, namely: cooperation in Business linkages, either directly or indirectly, based on the principles of mutual need, trust, strengthening, and benefit involving Micro, Small, and Medium Enterprises with Large Enterprises. Partnership activities which were previously regulated in Article 26 of the MSME Law, there are changes to the Job Creation Law which is regulated in Article 87 number 5 with the addition of a supply chain partnership pattern to implement partnerships with the following pattern: a. nucleus-plasma; b. subcontract; c. franchise; d. general trading; e. distribution and agency; e. supply chain, and f. other forms of partnership.

All partnership patterns must be implemented based on a written agreement. This is under what is stated in Article 34 (1) namely:

"The partnership agreement is stated in a written the agreement which at least regulates business activities, rights and obligations of each party, a form of development, time, and dispute resolution".

Regarding the general trade partnership pattern, as regulated in the Job Creation Law, Article 87 point 6 states: "The implementation of the partnership with the general trading pattern, as referred to in Article 26 letter d, can be carried out in the form of marketing cooperation, or the provision of business locations from businesses. Micro, Small and Medium Enterprises by Large Enterprises conducted openly".

If investigated more deeply regarding the partnership pattern regulated in the MSME Law, which has been amended in the Job Creation Law, no rules govern the sale or consignment deposit pattern, mainly carried out by MSME actors. Consignment is the physical delivery of goods by the owner to another party, who acts as a selling agent. Usually, an agreement is made regarding juridical rights over the goods sold by the seller [3]. The party who delivers the goods (the owner) is called the consignor. The party that receives the goods on the consignment is called the consignee/consigner. For the consignor, goods entrusted to the consignee for sale are consignment goods (consignment out). One of the essential features of a consignment contract is the payment mechanism specified in the contract. The specific mechanism for determining supplier revenue impacts all parties to the contract [4].

The implementation of consignment agreements in the community is mainly carried out verbally [5], so it does not have strong legal protection, and even if it is stated in the written agreement, the clause that is generally included is payment for goods deposited for sale, which will be made when the goods have been sold. Of course, this does not provide justice for MSME actors who need capital in making their work, and it is not clear how long they will wait for the sales results. Not to mention if there is merchandise that was deposited lost because it was stolen or damaged, this will not be the responsibility of the consignee because it is considered as a force majeure event or outside the will and ability of the consignee so that the consignee cannot be held responsible. Furthermore, it results in a position of the weak consignor. This is not following one of the principles of the implementation of SMEs, namely the efficiency of justice which is explained: he implementation of empowering Micro, Small, and Medium Enterprises by prioritizing fair efficiency to create a fair, conducive, and competitive business climate. So that craftsmen should be able to be paid in advance to fulfill the principle of justice under what is explained in the explanation section of the MSME Law. This is also following Government Regulation Number 44 of 1997 concerning Partnerships (PP Kemitraan), Article 6 is regulated:

"If the implementation of the partnership as referred to in Article 3, Article 4, and Article 5 is followed by payment obligations that the Large Business and or must make Medium Business for the delivery of goods or services by the Small Business, the payment is made in cash".

Based on the vacuum of the norm of consignment arrangements resulting in the absence of legal certainty for handicraft MSME actors, so this research is important to be researched to find a fair consignment agreement

arrangement and has a balanced position for the parties, including entrepreneurs.

2. METHOD

This is normative research with qualitative evaluation and argumentation characteristics and uses secondary data in the form of primary and secondary legal materials. Document study techniques obtained all data obtained in this study. One of the primary legal materials used is Law Number 11 of 2020 concerning Job Creation, which discusses the partnership pattern in MSMEs and several Ministerial regulations governing franchise and leasing contracts as a comparison in finding fair contract arrangements for employers. Party. The secondary legal material used is literature that discusses contract law.

3. RESULT AND DISCUSSION

One area of law that needs attention to be regulated and developed is contract law because agreements are a manifestation of most human wealth. An essential part of one's property consists of the benefits promised by others [6]. An agreement gives legal consequences in the form of rights and obligations. Something right for one party in the agreement will be an obligation for the other party. Currently, the provisions of contract law that are widely used in Indonesia are the provisions of Book III of the Civil Code (KUHPerdata) concerning Engagement. Article 1320 of the Civil Code stipulates that a valid agreement's conditions are agreement, skill, object, and a lawful cause.

The essence of contract law is basically to meet the legal needs of business actors in that it does not merely regulate. However, more than that gives business actors complete flexibility and freedom to determine what their needs are. This is because business people are more aware and know the ins and outs of various needs in their business activities. In the business world that brings together the actors in business activities, contracts are essential instruments that always frame legal relationships and secure their transactions. There is almost no business activity that brings together business people to exchange their interests without a contract. The exchange of interests (achievement – counter achievement) is the starting point for the realization of justice for the parties [7].

The urgency of contractual arrangements in Business practice is to ensure that the exchange of interests (rights and obligations) takes place proportionally for the parties so that a fair and mutually beneficial contractual relationship is established. Not vice versa, harming one of the parties or even, in the end, harming the contracting parties. Following Article 1338 of the Civil Code, agreements made legally apply as law for those who make them. So, the agreement must accommodate the interests and provide legal certainty for the parties so that a fair business relationship can be achieved.

Related to injustice and imbalance in the positions of the parties in the contract, this is reflected in the handicraft MSME actors who enter into consignment agreements in partnership with corporations such as the Erlangga Souvenir Shop and Krisna Souvenir Shop to sell their handicrafts and only receive payment when the goods are deposited. the sale ended so that it was detrimental to the MSMEs who were unable to turn their capital back and caused an imbalanced position on the consignor's side and things were made worse if there was merchandise that was deposited lost because it was stolen or damaged by animals, this would not be the responsibility of the consignee because it is considered a force majeure event or outside the will and ability of the consignee so that the consignee cannot be held accountable and results in the position of the consignee being weak and unbalanced.

In terms of a balanced position for the parties to the the agreement, Herlien Budiono suggests 3 (three) interrelated aspects of the agreement that can be raised as a testing factor regarding the working power of the balance principle, namely [8]: first, his actions or individual behavior, second, the content of the contract, and third, the implementation of what has been agreed. The absence of precise arrangements on the contents of the consignment contract in writing will not create a balanced position for the parties.

This happens because of the absence of norms related to the arrangement of consignment agreements in Article 26 of the MSME Law as amended in Article 87 point 5 of the Job Creation Law and causes problems in the community, one of which is that many consignment agreements are made orally which will undoubtedly cause legal uncertainty for one of the injured parties. Article 87 number 5 of the Job Creation Law regulates that partnership activities can be carried out with the following patterns: nucleus-plasma, subcontracting, ranchising, general trading, distribution, and agency, supply chain, and other forms of partnership. However, other forms of partnership are not further regulated by strict regulation of the consignment agreement accompanied by its derivative regulations which can provide arrangements related to the minimum criteria/requirements that must be contained in the consignment contract. As well as the franchise agreement which has been regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Franchising, which in that regulation very firmly regulates the material or clauses that must exist in the franchise agreement. Another example is the lease agreement or leasing which in the Decree of the Minister of Finance of the Republic of Indonesia No. 1169/KMK.01/1991 concerning Leasing Activities.

Article 9 of the Minister of Finance regulates that every lease the transaction must be bound in a lease agreement and the the agreement contains at least the following: provisions regarding the accelerated termination of the lease transaction, and determination of losses to be borne by the lessee if the capital goods leased with option rights are lost, damaged or malfunctioning for any reason, and the parties' liability for the leased capital goods. So that if something happens to the goods being leased, it will be clear the responsibility of the parties to the goods. this is very different from the conditions in a business agreement with a consignment pattern, where if there is damage or loss of the goods entrusted for sale. It is not the responsibility of the consignor because it is beyond the consignor's ability (Force Majeure). Thus, it is very important to strictly regulate the consignment partnership the pattern in the laws and regulations to create legal certainty for the parties.

Related to the absence in the arrangement of the onsignment partnership pattern is also due to the development of the understanding of liberalism giving rise to freedoms of the view that the parties determine the contents of the contract, the business partnership follows the spirit and spirit of economic democracy, which is mandated in Article 33 paragraph 1) UUD 1945. Although the government provides legal protection for micro, small and medium enterprises to obtain legal guarantees, namely in the form of the Micro, Small, and Medium Enterprises Law, that the empowerment of Micro, Small, and Medium Enterprises as referred to in the letter (c)). It needs to be implemented in a comprehensive, optimal, and sustainable manner through the development of a conducive climate, providing Business opportunities, support for protection, and Business development as widely as possible to be able to improve the position, role, and potential of micro, small and medium enterprises in realizing equitable economic growth and increase people's income, job creation and poverty alleviation. Micro, Small, and Medium Enterprises of Indonesian craftsmen are considered very weak, so the government needs to pay special attention to optimizing MSME craftsmen so that state commodities through various policies can regenerate craftsmen MSMEs. Therefore, to develop its Business, it can also distribute its products, for example utilizing cooperation through partnerships as a strategic effort to anticipate increasingly fierce competition in the era of free trade.

According to the theory of Development Law from Mochtar Kusumaatmadja, for people who are developing, the the law must be oriented towards the future that is in line with development. While the function of law in development is not only as a tool, that further than that, the function of law can make efforts to move people to behave following new ways. Such as the function of law as a means of community renewal in the sense that the law can follow a society that is developing [9]. The concept of development law theory is widely used by the government in formulating various policies related to national economic development, including the protection and empowerment of MSMEs. The law must be able to become an economic frame. On the other hand, the the economy must not leave the law [10]. The law functions as a safeguard for economic policy as well as an economic stabilizer, such as in the arrangement of partnership agreements between MSME actors and corporations, it must be investigated whether the partnership agreements that have been implemented have provided justice for the parties so that corporations and MSME actors can run their Business calmly. This fair arrangement is realized by the existence of legal certainty that can eliminate the doubts of economic actors in their activities and efforts to develop their businesses so that the role of law in creating justice is intended to provide equal treatment to economic actors. [11].

Based on the explanation of the legal theory of development, it is necessary to give restrictions on freedom by regulating the consignment agreement under the legislation in force in Indonesia to provide justice for the parties, both consignees and consignors, by reconstructing the UUMKM related to the arrangement of partnership patterns by specifically regulating consignment agreements with determining the materials or clauses that must exist as minimum requirements, such as provisions regarding the payment mechanism and the responsibilities of the parties for the goods being entrusted for sale.

4. CONCLUSION

The Consignment Agreement Regulating Model Between Handicraft MSME Actors and Corporations Based on the The principle of Contract Balance is to reconstruct Article 87 point 5 of the Job Creation Law by adding regulations related to consignment to the partnership pattern and specifically regulating consignment agreements in its derivative regulations by regulating the materials or clauses that must be made. exist as minimum requirements or criteria such as: provisions regarding the payment mechanism and the parties' responsibilities for the goods being tipped off as a consignment contract model that is fair and has a balanced position for the parties. The advice that can be given is for the perpetrators of MSME crafts and corporations so that in implementing the partnership pattern with consignment agreements always make a written agreement so that the parties know their rights and obligations clearly to create legal certainty for the parties. The Indonesian government should specifically regulate consignment agreements in the laws and regulations in force in Indonesia so that no party is harmed and can eliminate the doubts of economic actors in their activities in their business development efforts.

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The Strengthening of Agrarian Customary Law in Minahasa Indigenous Community Through Local Regulation

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ABSTRACT
This study aimed to strengthen customary Agrarian law in the Minahasa Indigenous community through local regulation. The method used in this research is the empirical approach and is also supported by local norms, both unwritten and written. The emphasis is on the realities of customary law issues in customary Agrarian law in Minahasa Indigenous people. The Indonesia Agrarian law (UUPA) states that national Agrarian law is based on customary law but on realities, many law issues faced by Minahasa Indigenous community because the basic of Agrarian Law shows the concept of pluralism. As we know, The Republic of Indonesia has various customs and cultures from Sabang to Merauke. Therefore, to study land in an area of Indonesia, one must find out in advance the structure of the indigenous people. It is very appropriate to resolve the conflict by local regulation, which has local adat or local wisdom of Minahasa Indigenous people.

Keywords*: Customary agrarian law, Local regulation, Minahasa indigenous people, Strengthening.*

1. INTRODUCTION

Indonesia is a large nation consisting of more than 300 ethnic groups [1], or according to census data from the Central Statistics Agency, there are 1,340 ethnic groups [2]. Therefore, Cornelis Van Vollenhoven divides Indonesia into nineteen [3] communities of customary law. There is pluralism in the cultural structure of the people spread from Sabang to Merauke. Differences are seen in ethnicity and religious beliefs and differences in community interests, which often lead to various incidents of communal conflict in indigenous communities. The communal conflict or social unrest happens due to different choices of law in the agrarian sector in several places. Thus, it portrays an imbalance in the country's access to law and social justice. [4]

In paragraph IV of the Indonesian 1945 Constitution (UUD 1945), it is stated that the Government of Indonesia protects the entire Indonesian nation and the entire homeland of Indonesia, also contributes to promoting public welfare as a form of upholding the human rights of every citizen through creating a safe, peaceful, orderly and prosperous atmosphere, both physically and mentally because communal conflicts of indigenous communities caused by conflicts of interest between community groups can be the cause of national instability and hinder national development.

Indeed, national development is a series of sustainable development efforts covering the entire life of the community, nation, and state to realize the National Goals. The implementation of national development covers aspects of the nation's life, namely aspects of political economy, social culture and defense and security in a planned, comprehensive, directed, integrated, gradual, and sustainable manner to drive the improvement of national capabilities in order to realize a life that is equal and equal with other developed nations. As the basis of the nation's philosophy in the realization of the Ideal of Law (Rechtsidee), especially in the 2nd principle "Just and civilized humanity" and the 5th principle "Social Justice for all Indonesian people.

Infrastructure development is an integral part of national development and the driving wheel of economic growth, and it can be said that infrastructure development is the motor of regional development. Infrastructure development has an essential role in strengthening the unity and integrity of the nation. Connected transportation and telecommunications from Sabang to Merauke and Sangihe Talaud to Rote are one of the unifying elements of the Unitary State of the Republic of Indonesia, the smooth distribution of food and other goods and is an essential aspect in increasing the productivity of the industrial sector.

The government has the authority to procure land for the public interest based on the principle stated in Article 6 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA), which stipulates "All land rights have social functions." Furthermore, the explanation of article 6 stipulates that:

> "There is no justification for any land rights that a person has, that his land will be used (or not used) solely for his interests, especially if it causes harm to the community. Land use must be adapted to its conditions and the nature of its rights so that it is beneficial both for the welfare and happiness of those who own it and the community and the state. However, at the same time, this provision does not mean that individual interests will be suppressed by the public interest (society). The Basic Agrarian Law also takes into account individual interests. The interests of the community and the interests of individuals must balance with each other. In the end, the main goal will be achieved: prosperity, justice, and happiness for the people as a whole."

Disputes about land in Indonesia today are an issue that has received much attention from various parties who have studied it from various disciplines. The reason is that land in social life is related to economic and welfare aspects and has a close relationship with social, political, juridical, psychological, cultural, and religious issues. The solution taken to resolve problems related to land is not only emphasizing legal (juridical) principles but also having to pay attention to the welfare principle, the principle of public order and security, and the principle of humanity so that land disputes do not widen into public unrest which results in disrupting the stability of unity. And national unity.

Of the several land disputes faced, namely regarding land issues located within the environment of a customary law community, sometimes there is an overlapping issue of the authority of the local customary law community on the one hand and the use of land for the government for development in Indonesia. This should be given serious attention in the context of implementing national agrarian affairs.

The development of the customary law system of a community has a close relationship with the structure of the customary law community (Adatrech gemeenschap), which is the supporter and implementer of customary law in the process of their life. In addition, customary law is a supporter and implementer of custom in the life process of an indigenous people and the basis for the authority for the community to act in the legal process.

So it is appropriate if someone wants to study the land in an area in Indonesia to know in advance the structure of the indigenous peoples in that land. As stated by the Father of Indonesian Customary Law, Prof. Cornelis Van Vollenhoven, that: "In order to know customary law, it is necessary to investigate in any area the nature and structure of the legal alliance in which the people who are controlled by the law live their daily lives." [5]

An orderly human unit, settled in a specific area, has rulers and has tangible or intangible wealth. The members of each unit experience an everyday life according to nature, and none of the members have any thoughts or ideas. The tendency to dissolve the bond that has grown or leave in the sense of breaking away from the bond for good is called the customary law community (adatrech gemenschaap).[6]

The relationship between customary law communities and land use is very close and cannot be easily separated. "Ulayat rights" are rights owned by legal alliances to freely utilize customary lands that are still undergrowth within their territory for the benefit of the law itself and its members or the benefit of outsiders, but with permission and interference, always with the payment of recognition from the legal alliance, as well as on lands that have been cultivated by people located within their territory. According to Van Vollenhoven's term, this right is called "Beschikkingrecht [7] or the right to control entirely. For Indonesian, this term is translated into various terms such as lordship rights, ulayat rights, ancient rights, etcetera [8]

Based on the explanation above, the community within the Minahasa Customary Law has the authority to utilize the land within the Minahasa customary law alliance. Of course, this authority is based on a customary land tenure right based on the rights of customary law communities to manage these lands for the common good. The existence of these customary lands, in fact, still exists in line with current developments with the increasing need and limited availability of land for national development, especially after the construction of infrastructure, especially toll roads in the Bitung and North Minahasa areas, causing customary lands to receive attention from the government as an alternative for land acquisition for development because no specific regulations are governing the use of customary land in the Minahasa customary law environment, especially those intended for national development.

The existence of customary rights raises many perceptions. At least it can be said that there are two views on the issue. On the one hand, there is a concern that customary rights that previously did not exist are revived. On the other hand, there are concerns that with the increasing demand for land, there will be more pressure on customary rights whose existence is guaranteed by Article 3 of the UUPA [9]. Recognition of existence by the UUPA is natural because customary rights and customary law communities existed before forming the Republic of Indonesia long before the birth of our national land law. Article 3 of the Basic Agrarian Law confirms this recognition. In the provisions of this article, it has been explained that it is recognized with certain limitations, namely regarding its existence and implementation. Even among ordinary people, the basic understanding of customary land rights varies. Some people interpret customary rights as ownership that leads to individual ownership, while in fact, customary rights

are shared rights of all customary law communities (civil aspects of customary rights).[9]

Based on the reasons mentioned above, the formulation of the problem that became the subject of the discussion in this research are:

- What are customary law communities in Minahasa?
- How are land rights under customary law?
- How to the strengthening of Agrarian Customary Law in Minahasa Indigenous people through local regulation.

2. RESULT AND DISCUSSION

2.1 Minahasa Indigenous Law Community

In the analysis of this study, we first distinguish the meaning between indigenous peoples and customary law communities to see which customary law applies in an area in Indonesia. Many experts argue that the notion of indigenous peoples must be distinguished from customary law communities. The concept of indigenous peoples is an understanding to refer to specific communities with specific characteristics. Meanwhile, customary law community is a technical juridical understanding which refers to a group of people who live in a specific area (ulayat) where they live and live in a specific environment, have wealth, and a leader who is in charge of protecting the interests of the group (outward and inward), and has a legal system and government.[10]

Society in Indonesia has a specific structure and pattern [11], but overall it can be described as follows:

1. Customary law has a strong communal nature, meaning that humans, according to customary law, are creatures in close social ties; this sense of togetherness covers the entire field of customary law.
2. Customary law has a *magisch religieus* style, which is related to Indonesia's natural way of life.
3. Customary law is filled with concrete thoughts; that is, customary law is very concerned about the number and repetition of concrete life relationships.
4. Customary law has a very visual nature, meaning that legal relations are considered only to occur because they are determined by a visible bond (i.e., a visible "sign").

The Minahasa tribal customary law community is a group of people who have lived, settled for generations living on Minahasa land since ancient times, allying with customary law communities both territorially with the territory of the alliance of customary law institutions in a village alliance, regional alliance (sub-tribe), our alliance of several villages; as well as genealogical or affinity with fellowship as one descendant in a patrilineal manner.

The management of the Minahasa customary law community is genealogical territorial, occupying a residential area called "walak," consisting of members of relatives of a patrilineal genealogical unit under the leadership of "Tua un Teranah" as the head of the family. "Walk" the meaning of communal agricultural land, but by the Dutch government, "Walak" was changed to "Negeri" or "negorij," which has certain territorial boundaries and has different meanings. Previously the unity of the country was based on kinship, and now it is a neighbor that is open to outsiders.[3]

Currently, the villages as administrative units are inhabited by the Minahasa indigenous people led by "Hukum Tua" or "Kuntua" derived from the word "Ukung," which means head or also called "Paedon tu'a" or "Pamatu'an." Farms, rice fields, gardens, and "Sabuwa" or Popo, Lekou, Terung, are emergency buildings erected on garden land, included in the village unit. "Wanna" is a unit of several villages located side by side. This area is at the same level as the sub-district area headed by "Kumara." [3]

From the research results of the National Legal Development Agency (BPHN) of North Sulawesi Province, in running the village government "Kuntua" or the Village Head is assisted by several staff such as:

1. "Pala" or "Head of Guard" has the task of being the leader of a "Guard" or community group in the area or village environment;
2. "Meeting" has the task of assisting the head of "guard" in one of the "guards" in the village area, namely managing guests who come in the village area or guard. The meeting comes from the word "weteng," which means to arrange or divide.
3. The clerk is in charge of administering the village administration.
4. The land surveyor's task is to carrying out land measurements in the village area and recording them in the village land register.
5. "Mantri air" duty is to evenly regulate water distribution for farmers in the fields and fields.
6. Kepala Jaga is in charge of maintaining security in the village. Positions such as the Kepala Jaga guard are now known as "village hansip commanders."
7. The Kepala Jaga is a person who represents the Hukum Tua (Village Head) when unable to do so. Usually, one of the guards in the village is appointed who is old or who is considered intelligent or wise to represent the Hukum Tua.
8. "Tukang Palakat," his job is to convey announcements or instructions from the Hukum Tua to the village people.
9. Raad Negeri, or aka in wakum Tua as traditional leaders (other than the Hukum Tua), consists of village elders (poenden tua = people who are elders in the village). The task of the State Raad is to provide opinions or considerations on matters relating to customary issues of customary law in the village to the Hukum Tua. The opinion of the Raad Negeri is not binding on the Hukum Tua because the final decision rests with the Hukum Tua itself as chairman of the

Raad Negeri. This State Raad is independent of the village administration (apart from the duties of the village civil servant).

10. "Pamong Tani" duty is to guide the village community in agriculture.
11. Suru is in charge of managing and supervising guard property.
12. The role of the legal community government (ukung wangko, walak head, and ukung tua) in Minahasa is only to regulate and maintain the use of land by its citizens so that it is not transferred to other members of the legal community.

2.2 Land rights according to Mihanasa customary law

The land is one of the gifts of God Almighty for humans in living their lives in the world, starting from a foothold, daily activities, and as a place to earn a living, so that land has economic value and social functions for human life itself. Land can be valued as an essential property with permanent properties and economic value for humans and can be used as a guarantee for the survival of human life on this earth.

According to Black's Law Dictionary, that right is correlative to duty; where there is no duty, there can be no right.[12] Indonesian Basic Agrarian Law Act No. 5 0f 1960 in article 4 point has given the definition, that :

1. Based on the state's right of control referred to in Article 2, it is necessary to determine the types of rights to the surface of the earth, which is called land (land), that can be granted to, and held by, persons, either individually, jointly with others as well as bodies corporate.
2. The land rights referred to in paragraph (1) of this article confers authority to use the land in question as well as the mass of the earth and the water existing under its surface and the space above it to the point that is essentially required to allow for the fulfillment of the interests that are directly related to the use of the land in question, such a point being within limits imposed by this Act and by other legislation of higher levels.

According to customary law, land rights can be owned through land clearing, land tongue, inheritance, buying and selling, and expiry. Land clearing must be based on a permit from the local village government, and if the permit is not given based on the rules and mechanisms, then land clearing cannot be done. At the same time, the tongue is obtained due to natural processes that occur due to the turning of the river current or the land that arises on the coast. Customary law communities have rights to existing land and have certain rights to the land and can exercise these rights both outside and into the alliance. The total ownership of the customary law community is called "Ulayat Rights," while limited land ownership is the embodiment of personal rights.

In Minahasa, every member of the customary law community is given the right to clear forest to be used as agricultural land or fields. This right is the right to clear land, which is called "pasisi" land (from the word "I pesin"), which means to motivate residents to be diligent in doing business in agriculture. The custom of the Minahasa indigenous people to clear forests to be used as agricultural fields is called "Tumani." [13]

One way of land ownership through customary law is through inheritance. In Minahasa customary law inheritance, there are two inheritance systems, namely:

1. The individual inheritance system is called "Pasini" land. Pasini land ownership rights can be carried out legally according to customary law and national law by registering the Pasini land as property rights on private land at the local Land Office. Pasini land in the Minahasa area cannot be contested for ownership of the land. However, these rights can be transferred through inheritance, exchange, buying, selling, or grants.
2. A collective inheritance system is known as "boedel" or a joint inheritance, also known as "Kalakeran" land. The ownership of Kalakeran land has an element of togetherness as a source of life for the customary law community. The goal is that the community continues to coexist with each other in the hope of not causing divisions in it. There are several types of kalkeran soil, namely:
    a. Tana' one Taranaki = family land remodeled or purchased by a family head (dotu = Datuk) and has never been divided from generation to generation.
    b. Tana' kalakeran OEM banoea = land of state/village kalakeran, which was originally remodeled and worked by a country for coffee plants.
    c. Tana' kalakeran oem balak - land of kalakeran pakasan or district, an example of which is in Wenang (now Manado). For example, the lands of the districts of Tomohon, Langowan, Kakas, Tondano and others.[14]

There are several rights [15] of the Minahasa customary law community to customary lands, both Pasini and kalakeran, namely:

1. Right to enjoy the results (Genotrecht).
   The right to enjoy the results of the Kalakeran land-based on Minahasa customary law may not be sold. The processing is done according to a schedule, and the one who manages it is usually the oldest.

2. Profit Sharing (Tumoyo/Toyo/Matuke).
   In the form of a profit-sharing agreement, the agreement is made communally for Kalakeran land and individually for Pasini land. The agreement's content is a profit-sharing agreement between the plantation manager and the owner based on their respective distributions based on the agreement of the

parties when making. Each gets the proceeds deducted from processing the remaining 1/3 for the owner and 2/3 for the processor.

3. Boarding Rights.
   The right to ride usually occurs at the owner's request to be lived in and maintained or also managed for plantation land. Usually, feed rights occur when the owner is not in place. This right is given the opportunity for people who do not have houses or agricultural fields to manage land that has not been occupied or managed by the owner until the time limit of the agreement agreed by the parties.

4. Lease.
   This lease agreement is between the owner of the land or house and the tenant, and if one of the parties dies, the heirs continue the agreement.

5. Right to purchase authority (naastingrecht).
   Landowners usually first offer to family or neighbors. If the land is inherited, the family or neighbors cannot afford it, which is offered to someone else. In particular, for inherited land (boedel) such as the family Kalakeran, the offer is given first to the family at a lower selling price. This means that the selling price is not comparable to the price of unity and harmony of a family, which is commonly known as "the price of the relatives."

2.3 The Strengthening of Agrarian Customary Law in Minahasa Indigenous people through local regulation.

The application of Regional Autonomy through the legal basis of the 1945 Constitution Articles 18, 18A and 18 B, MPR Decree No. XV/MPR/1998 concerning Regional Autonomy Law no. 22 of 1999 as amended by Law no. 32 of 2004 is the forerunner to the growth and development of customary law, which has been marginalized. This emergence was accompanied by community voices regarding customary law over several customary land conflicts in almost all regions of Indonesia. This is a bright spot for strengthening local community law. As we know, customary law is a law that comes from the soul of the Indonesian nation itself and has existed for a long time. So the opinion of Prof. Soepomo and Prof. Koesnoe is that customary law. The science of customary law are laws that, even though they are not written, live and are obeyed in everyday life because they radiate and incarnate the thoughts and feelings of the people's laws that continue to grow and develop originating from the soul, feelings, and beliefs of the nation's law. Indonesia itself.[16] Implementation of regional autonomy focuses on the area closest to the community, which is taken from customary law, customs, and socio-cultural values in the local community, such as land ownership rights for Pasini and kalakeran. This is important because the essence of regional autonomy is the meaning of political maturation of the local people, where there is participation and empowerment and the increase of welfare of the community. This is justified by the opinion of Satjipto Rahardjo [17] that a good legal policy will certainly not leave the facts (customary law) that have long existed in Indonesia. Although in social development, the Indonesian people tend to incline toward modern society.

Regional autonomy has rights and obligations in its implementation in autonomy regions, namely based on Article 21 of Law no. 32 of 2004, the regional rights are:

a. regulate and manage their government affairs;
b. elect regional leaders;
c. managing local officials;
d. managing regional wealth;
e. collect local taxes and regional levies,
f. get a share of the results of the management of natural resources and other resources in the region, get other legitimate sources of income get other rights regulated in the legislation.

Meanwhile, regional obligations are regulated in article 22, namely:

a) protecting the community, maintaining national unity and harmony, and the integrity of the Republic of Indonesia,
b) improving the quality of people's lives,
c) developing democratic life
d) actualizing justice and equity,
e) improving basic educational facilities,
f) improving health services,
g) providing adequate social and public facilities,
h) developing a social security system,
i) preparing regional planning and spatial planning,
j) developing productive resources in the region,
k) preserving the environment,
l) managing population administration,
m) preserving socio-cultural and establish their values,
n) applying laws and regulations by their authority,
o) regulating other obligations directed in the laws and regulations.

In particular, in Article 22 point (n) listed above, one of the regional obligations is to form and apply laws and regulations by their authority, including making regional regulations that contain provisions on customary lands based on customary law sources in the area of Minahasa legal communities. This needs to be done because, in a democratic country, it requires community participation based on the consideration that sovereignty is in the hands of the people and its implementation carried out together to determine common goals and the community's future. This conception of society is directly related to the idea of democracy wherein truth democracy is "of the people, by and for the people."

3. CONCLUSION

The Minahasa tribal customary law community is a group of people who have lived, settled for generations living on Minahasa land since ancient times, allying with customary law communities both territorially with the territory of the alliance of customary law institutions in a village alliance, regional alliance (sub-tribe), our alliance of several villages; as well as genealogical or affinity with fellowship as one descendant in a patrilineal manner.

In Minahasa, every member of the customary law community is given the right to clear forest to be used as agricultural land or fields. This right is the right to clear land, which is called "pasisi" land (from the word "I pesin"), which means to motivate residents to be diligent in doing business in agriculture. The custom of the Minahasa indigenous people to clear the forest to be used as agricultural fields is called "Tumani." One of land ownership through customary law is through inheritance.

In Minahasa customary law inheritance, there are two inheritance systems, namely an individual inheritance system called "Pasini" land and a collective inheritance system called "boedel" or a joint inheritance which is also known as "Kalakeran land." Regional autonomy strengthens customary law in the Minahasa area as regulated in Article 22 point n. It is the regional obligation to form and apply laws and regulations by their authority, including making regional regulations that contain provisions on customary lands of Pasini and Kalakeran based on customary law sources in the Minahasa community.

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Implementation of the Principle of Justice in Implementing the Death Penalty Against Criminal Acts of Corruption Procurement of Social Assistance in Handling Covid-19

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ABSTRACT
This research is related to applying the principle of justice in imposing the death penalty for the perpetrators of corruption in the provision of social assistance for handling covid-19. The research method used is normative juridical using secondary data. The study results show that implementing the principle of justice in implementing the death penalty against criminal acts of corruption procurement of social assistance in handling covid-19 can be applied through distributive justice because covid-19 has been officially declared a national disaster. The corruption committed by Juliari Peter Batubara as The Minister of Social Affairs is corruption in providing social assistance for handling covid-19. However, to provide a deterrent effect and also serve as a warning to potential perpetrators of criminal acts of corruption besides the death penalty. Another more important thing is confiscating the perpetrators' assets and increased KPK supervision from passive to active by providing a written warning to the potential perpetrator of a criminal act of corruption to cancel his intention to commit a criminal act of corruption.

Keywords: *Corruption, Covid-19, Death, Justice.*

1. INTRODUCTION

Corruption is an act that is very serious and very dangerous for the survival of the state. The losses incurred in criminal acts of corruption are more devastating than natural disasters or even war. In Indonesia, corruption grows and thrives like mushrooms in the rainy season. Its existence will be challenging to eradicate if there is no real action from the government and related parties. The eradication of corruption that has occurred so far has not been carried out optimally. Therefore, eradicating criminal acts of corruption needs to be improved professionally and comprehensively, intensively, and continuously because corruption has harmed state finances, the state economy and hindered national development.

The essential thing in eradicating all forms of corruption is formulating laws and regulations as the legal basis for eradicating corruption. In Indonesia today, Law Number 31 of 1999 jo. Law Number 20 of 2001 regarding Eradication of Criminal Acts of Corruption is expected to support the formation of a clean and free government of corruption, collusion, and nepotism. It also requires a shared vision, mission, and perception of law enforcement officials in overcoming it. The similarity of vision, mission, and perception must be in line with the demands of the conscience of the people who want the realization of state administrators who can carry out their duties and functions effectively, efficiently, free from corruption.

The hallmark of a particular criminal law is that there are always certain deviations from the general criminal law. Thus the criminal system for criminal acts of corruption has deviated from the general principles in the criminal system according to the Criminal Code. As for the things that deviate from the general criminal system, both regarding the type and the criminal system.

In eradicating corruption in Indonesia, the law provides rules that, in principle, deviate from what is regulated in the general criminal law (KUHP). An example of its specificity is the Corruption Crime Act which deviates from the Criminal Code, one of which is

the imposition of the death penalty for perpetrators of corruption.

The death penalty for perpetrators of criminal acts of corruption is regulated in Article 2 of Law Number 20 of 2001 regarding the Eradication of Corruption Crimes which states that:

> (1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).
> (2) If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

The explanation of "certain circumstances" in this provision refers to the situation when the country is in a dangerous situation by applicable laws, during a national natural disaster, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. Based on this explanation, the condition for the imposition of the death penalty for perpetrators of criminal acts of corruption is corruption carried out during a national natural disaster or a state of economic and monetary crisis, resulting in state losses.

Problems arise when corruption occurs during a national natural disaster, but the perpetrators escape the death penalty. This situation is as happened in corruption in the procurement of social assistance for handling COVID-19.

Based on the Presidential Decree (Keppres) of the Republic of Indonesia Number 12 of 2020, regarding the Designation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, it is stated that Indonesia is experiencing a period of Covid-19 pandemic. President Joko Widodo has officially declared COVID-19 as a national disaster. Based on this determination, the Ministry of Social Affairs of the Republic of Indonesia in 2020 held social assistance for handling Covid-19 in the form of basic food packages worth Rp. 5.9 trillion with a total of 272 contracts and carried out in two periods.

Juliari Peter Batubara, as Minister of Social Affairs, appointed Matheus Joko Santoso and Adi Wahyono as Commitment Making Officers (PPK) in the implementation of the project by direct appointment of partners. This effort is suspected that there will be a fee for each work package that the partners must deposit to the Ministry of Social Affairs through Matheus. The fee for each social assistance package agreed by Matheus and Adi is Rp. 10 thousand per food package from a value of Rp. 300 thousand per social assistance package.

During the first period of the basic food assistance package, it was suspected that a fee of Rp. 12 billion was distributed in cash by Matheus to Juliari through Adi with a value of around Rp. 8.2 Billion. In this case, the suspects are threatened with Article 12 of Law Number 20 of 2001 regarding the Eradication of Criminal Acts of Corruption, the punishment for which is life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and maximum imprisonment of 20 (twenty) years. a minimum fine of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Referring to the background described above. The main issue to be discussed is how to implement the principle of justice in implementing the death penalty against criminal acts of corruption, procurement of social assistance in handling covid-19?

2. RESEARCH METHODS

This research is normative juridical research because the target of this research is law or normative methods in the form of legal principles and legal systems.[3] The normative research in this study describes or describes in detail, systematically, thoroughly, and deeply the implementation of the principle of justice in implementing the death penalty against criminal acts of corruption procurement of social assistance in handling covid-19. This research is descriptive because it describes the applicable laws and regulations and is associated with legal theories in their implementation practices related to the problems to be studied. The data obtained will be analyzed by qualitative analysis.

3. RESEARCH RESULT AND DISCUSSION

Corruption is said to be a perfect crime because the perpetrators are considered people who are already in a good economic condition, financially prosperous people, so it is unreasonable if there are still parties who continue to commit corruption solely. To enrich themselves, Actors who should carry out their responsibilities as public officials, serve the community and provide adequate facilities for the community in such a way as to deviate the budget to be used for the perpetrator's interests. The modus operandi is organized so that it is difficult to decipher and find the main perpetrator. It is increasingly difficult to do if political interests and forces also play a role in covering up the government's corruption phenomenon.

The crime of corruption in Indonesia every year has increased,4 even though the punishment given by the law is hefty and provided legality to law enforcement officers to take action and punish perpetrators of corruption, up to

the death penalty as regulated in Article 2 of Law Number 20 of 2001 regarding Corruption Eradication.

The death penalty in Indonesia is still a debate because several parties such as Human Rights NGOs oppose the death penalty for violating Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that the right to life, the right not to be tortured, the right to freedom thoughts and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before retroactive laws are human rights that cannot be reduced under any circumstances.

The right to life is a non-delegable human right, meaning that a person's right to life cannot be served under any circumstances, in an emergency, or for reasons regulated in-laws and regulations, for example committing a crime punishable by death Referring to the term non-derogable rights, as the origin of the phrase "human rights that cannot be reduced under any circumstances" contained in Article 28I paragraph (1), it can be stated that as a law, the death penalty should be abolished since the second amendment to the 1945 Constitution. in year 2000.

Based on this, a question arises: is it fair to impose the death penalty on perpetrators of corruption in the procurement of social assistance for handling COVID-19? The author argues that it is necessary to know the meaning of fair according to the view of legal science before answering this question.

According to Aristotle, justice is created from the ethical, social heart of every citizen and ruler. Law is only used as a tool to guard justice. Law is essential to bind every citizen so that justice is achieved, so justice itself must be seen from various meanings, namely:

1. Distributive justice, namely justice that gives each person a share or share according to his services. He cannot demand that everyone get the same amount because the merits of each person are not the same, so it is not equality but proportionality.
2. Commutative justice, namely justice by giving everyone as much as possible without considering individual services, emphasizes that everyone must get the same.

Based on this, justice can be used in several ways, namely commutative justice, suitable for all people to be equal before the law. In contrast, distributive justice is the punishment of criminals seen from the severity of the crimes committed by the perpetrators. Therefore, should the perpetrators of corruption in the procurement of social assistance for handling COVID-19 be sentenced to death?

Based on poverty data from the Central Statistics Agency (BPS) for the period 2015-2020, it is stated that the trend of the number of poor people for the period March 2015 to September 2019 has consistently fallen from 28.59 million people to 24.79 million people. The number of poor people in Indonesia in March 2018 was around 25.95 million people, decreased by 280 thousand people in September 2018, decreased professional backgrounds. The total state loss that was calculated was Rp. 18.1 trillion. Meanwhile, the number of bribes that were successfully revealed by law enforcement was Rp. 20.2 billion, and the number of illegal levies was Rp. 44.6 billion. Again by 530 thousand people until March 2019 and 350 thousand people in September 2019. In the same semester, the total population of poor people in urban areas fell by 13.1 thousand, 530 thousand, and 137 thousand people. In contrast, it fell by 262.1 thousand (27 thousand) and 880 thousand people in rural areas, respectively. The number of poor people in urban areas has started to increase since March 2019, while the number of poor people in rural areas from March 2019 to September 2019 has decreased.

From September 2019 to March 2020, the number and prevalence of poverty in urban, rural, and national areas showed an increase. The increase in the number of poor people was 1,300 thousand, 333 thousand, and 1,630 thousand people, respectively, or an increase in prevalence of 0.82% points, 0.22% points, and 0.56% points. The number of poor people in March 2020 reached 26.42 million people, or an increase of 1.63 million people (9.78%). By region, the increase in poverty in urban areas is much higher than in rural areas. The poverty disparity between urban and rural areas is still relatively high.8

Based on this, the Covid-19 pandemic has dramatically affected the amount of poverty in Indonesia. Therefore, to deal with residents affected by the COVID-19 pandemic, the government held social assistance programs such as basic food assistance packages, cash assistance, and direct cash assistance (BLT) from village funds. This assistance scheme is in addition to the assistance distributed through the Family Hope Program (PKH) and Non-Cash Food Assistance (BPNT).

The existence of a criminal act of corruption in the procurement of social assistance for handling COVID-19 carried out by Juliari Peter Batubara as the Minister of Social Affairs is undoubtedly a very despicable act and deserves the death penalty as stipulated in Article 2 of Law Number 20 of 2001 regarding Eradication of Corruption Crimes. The crime of corruption causes it to be an extraordinary crime (extraordinary crimes). After all, it is systemic, endemic with a comprehensive impact (systematic and widespread) that harms state finances and violates the social and economic rights of the wider community. So that the enforcement efforts need extraordinary comprehensive measures so that the government forms many regulations, institutions, and commissions to overcome them.

This regulation is as stated in the Considering section of Law No. 20 of 2001 regarding the Eradication of Criminal Acts of Corruption, which states that corruption crimes that have been widespread so far have harmed the state's finances and have also constituted a violation of social and economic rights. The community's economy at large, so that the criminal act of corruption needs to be classified as a crime whose eradication must be carried out extraordinarily.

The great crime is an act carried out to eliminate other human rights, has been agreed internationally as a gross violation of human rights within the International Criminal Court and the Rome Statute, receiving the maximum sentence, including the death penalty for the perpetrator of the crime.

International criminal law uses the term the most severe crimes of concern to the international community, similar to extraordinary crimes. Since the establishment of the Rome Statute of International Criminal Court in 1998, the term the most severe crimes concern to the international community has been introduced, a crime that falls within the jurisdiction of the International Criminal Court. Article 5 of the Rome Statute translates the most severe crimes of concern to the international community into four types, namely genocide, crimes against humanity, war crimes, and crimes of aggression. This crime is considered an extraordinary crime because it has seriously injured the conscience of humanity and is a severe violation that threatens world peace, security, and prosperity.

Based on this, it is clear that the criminal act of corruption in the procurement of social assistance for handling COVID-19 is a crime against humanity because it violates the social and economic rights of the wider community. However, in its implementation, Juliari Peter Batubara, as the Minister of Social Affairs, was only charged with Article 12 of Law Number 20 of 2001 regarding the Eradication of Criminal Acts of Corruption. The heaviest threat of which is life imprisonment considering that the KPK has not found strong evidence to ensnare Article 2 of the Law. Law Number 20 of 2001 regarding the Eradication of Corruption Crimes. Based on distributive justice stated by Aristotle.

The author argues that justice is not equality but proportionality. The sentencing of corruption crimes against natural and non-natural disaster funds must, of course, be distinguished so that the death penalty for perpetrators of corruption in the provision of social assistance for handling COVID-19 is very fulfilling. A sense of justice, because covid-19 has been officially declared a national disaster, and the corruption committed by Juliari Peter Batubara as the Minister of Social Affairs is corruption in the procurement of social assistance for handling COVID-19. However, to provide a deterrent effect and serve as a warning to potential perpetrators of criminal acts of corruption, apart from the imposition of the death penalty, another more important thing is the confiscation of the perpetrators' assets and increased supervision of the KPK.

The confiscation of the perpetrators' assets is carried out to minimize state losses as regulated in Article 38B and Article 38C of Law Number 20 of 2001 regarding the Eradication of Criminal Acts of Corruption. Apart from that, the KPK needs to increase its supervision. In this case, the KPK's supervision is active.

Currently, the KPK's supervision of corruption is still passive. This situation means that the KPK acts when corruption has occurred. In the future, the KPK should be able to carry out active supervision and prevention. It means that when the KPK knows and has evidence of conversations or communications that lead to acts of corruption, the KPK can give a written warning to potential perpetrators of corruption to discourage them from committing crimes. Acts of corruption.

With active supervision from the Corruption Eradication Commission and law enforcement officers, it is hoped that crimes of corruption in general and acts of corruption in the procurement of social assistance funds can be minimized. With a reduction in the number of corruption crimes, it is hoped that the corruption eradication index in Indonesia can be increased.

4. CONCLUSION

Implementing the principle of justice in implementing the death penalty against criminal acts of corruption procurement of social assistance in handling covid-19 has been officially declared a national disaster, and corruption committed by Juliari Peter Batubara as Minister of Social Affairs is corruption. Providing social assistance for handling COVID-19. However, to provide a deterrent effect and also serve as a warning to potential perpetrators of criminal acts of corruption, apart from the imposition of the death penalty, another more important thing is the confiscation of the perpetrators' assets and also increasing the supervision of the KPK from passive to active by providing the written warning to potential perpetrators of criminal acts of corruption to discourage their intention to commit acts of corruption.

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Land Ownership for Tourism Business Investment

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ABSTRACT
As an agricultural country, Indonesia makes land the most crucial source related to economic and social aspects. Land as the primary resource was compared to capital and labor resources. Globalization makes land used for agricultural and plantation purposes and trading commodities, the mining industry, and tourism. The land position has become important until there have been more widespread disputes over land and the existence of land mafia because the economic value of land has also increased due to the population increasing, but the number of existing land remains. Formulation of the problem, How is land ownership for tourism business investment? This writing uses qualitative analysis using secondary data as main data and primary data as supporting data. Legal regulations and the results of literature studies are used as secondary data sources. The results of the research showed provisions regarding land ownership and tourism had been issued through laws, government regulations, presidential instruction decrees, ministerial decrees, director-general decrees, decisions of the land agency head (BPN), and joint ministerial decisions; however, those provisions have not been able to protect the interests of the community due to overlapping regulations issued by each related agency without consolidating with higher regulations even though it was adjusted in Law number 11 of 2020 concerning Work Creation (Omnibus Law). The Disharmony of Laws regulating the protection of investment law such as the Basic Agrarian, Tourism, and Investment Law still need to be integrated with the Umbrella Law and harmonized with existing statutory regulations.

Keywords: *Investment, Land Ownership, Tourism Business.*

1. INTRODUCTION

Globalization causes changes in people's lives; human life is getting closer in any part of the world with the internet of things, networking. Even millennials no longer need to work in the office but carry their laptops on trips to tourism while releasing their boredom from working in an office space. They need natural scenery to get their inspiration.

This change in living standards has encouraged people to work while traveling and no longer need a house to live in and an office to work. This tourism is now in demand by millennials, so the tourism industry is proliferating.

Tourism investors, both local and foreign, consider tourism a great opportunity. Tourism business investment is growing rapidly, making the land an essential source for investment related to economic and social aspects. The government also encourages the tourism business as an opportunity to improve the economy and people's welfare.

From the description above, the formulations of the problem that become the subject of the study/discussion in this research are: How land ownership for the tourism business investment?

2. METHOD

The focus of normative judicial research is to examine the application of rules or norms in positive law by checking library materials or secondary data composed of primary, secondary, and tertiary legal materials.

3. RESULT AND DISCUSSION

Changes in the world, with the changes in the global travel lifestyle, the government encourages the development of tourism in order to obtain benefits, and to meet the challenges of local, national and global life changes.

Nature, flora, fauna, artistic and cultural heritage are a resource and capital for the development of tourism in order to improve the well-being and well-being of people.

The development of tourism undoubtedly leads to land use, and the government undoubtedly manages the land sector, land ownership, ownership, business use rights, building use rights and use rights. , Lease rights, management rights, apartment ownership. A land right is the right to permit the owner of the right to use and use the land in which he or she has the right.

Property rights are the hereditary right and the most important and complete right possessed by people on land, who can be Indonesian citizens and legal entities designated by the government.

The right to use a business is the right to cultivate land directly managed by the state for agriculture, fishing, or agriculture, which is established under Indonesian law and is owned by Indonesian citizens and corporations residing in Indonesia.

The right to use a building is the right to build a building that can be extended for up to 30 years and up to 20 years on land that he does not own, and can be owned by Indonesian citizens and corporations established under Indonesia. Resident in law and Indonesia.

Indonesian citizens have the right to use, collect the proceeds from land that is directly controlled by the state or land owned by another person, which a foreign national can own in Indonesia. Foreign legal entities with representatives in Indonesia.

Lease Rights are the Rights of a person or a legal entity that has Rights to lease on land by paying the owner a certain amount of rent and which can be owned by Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law, and domiciled in Indonesia and foreign legal entities that have representatives in Indonesia.

Lease rights are the right to lease land by paying a fixed amount of rent to the owner, Indonesian citizens, foreigners residing in Indonesia, corporations established under Indonesian law, and residing in Indonesia, a foreign corporation with a representative in Indonesia.

There are secondary land rights like liens, dividend business rights, residence rights, agricultural leases. Since the implementation of the Agriculture Ministers Ordinance No. 9 of 1965 on the implementation of the conversion of state land ownership rights, it has been known that there are administrative rights and legal persons with administrative rights are Regency / City Governments, Public Enterprises (PERUM), National Housing Settlement (PERUMNAS), PT Pelabuhan Indonesia (Persero), PT Kereta Api Indonesia (Persero), PT Angkasa Pura (Persero), Batam Authority Agency, PD Pasar Surya Surabaya, PD Pasar Jaya DKI Jakarta, PD Sarana Jaya DKI Jakarta, PT Surabaya Industrial Estate Rungkut (SIER), and PT Pasuruan Industrial Estate Rembang (PIER).

The Management Rights position is the State's Right to control land / land rights. Types of Management Rights came for Ports, Authorities, Housing, Local Governments, Transmigration of Government Agencies, Industry, Agriculture, Tourism, and Railways.

On top of Management Rights, there are Building Use Rights, Use Rights, Ownership Rights that can be granted to a third party or a Department, Bureau, Autonomous Region to carry out their duties.

The position of Management Rights in the National Land Law is divided into 2 (two) groups, namely:

1. Management Rights are State Controlling Rights over Land.
2. Management Rights are aligned with Land Rights [1].

Management rights are not granted to individuals, both Indonesian citizens and foreign citizens residing in Indonesia, private commercial organizations, legal entities established in accordance with Indonesian law and residing in Indonesia, and foreign legal entities with representatives in Indonesia, representatives foreign countries, representatives of international organizations. legal entities, religious and public organizations.

The requirement to own managed land is a legal entity with key obligations and functions related to land management. Management rights can be obtained in the following ways:

1. Conversion.

Management Rights that existed when the Basic Agrarian Law came into effect were derived from the conversion of control Rights or beheer Rights (Minister of Agrarian Regulation No. 9 of 1965). Through the confirmation of conversion, the state land control Rights owned by the Ministry, Directorate, and Autonomous Regions are converted into Management Rights.

2. Granting of Rights to State Land.

Government provisions under Article 1 (8) Minister of Agriculture Regulations/Secretary of the Land Agency No. 9 of 1999 regarding the granting of land rights is the State's rights to land, extension of the term of rights, renewal of rights, It is to give a change of rights, including the granting of land rights with control rights.

The strengthening of land in the Employment Creation Law and the Government Regulation on Management Rights are as follows [2] :

1. On land with Management Rights can be granted land Rights
2. Business Use Rights grant 35 years, the extension of 25 years, and renewal of 35 years.

3. Building Use Rights grant 30 years, the extension of 20 years and renewal of 30 years
4. Building Use Rights to Apartment Units on state land and Management Rights can be granted at the same time with specific conditions
5. Building Use Rights on Management Rights can be requested for extension and renewal with certain conditions
6. Building Use Rights grant 30 years, the extension of 20 years and renewal of 30 years
7. Commercial use rights, building use rights and use rights after the expiration of the grant, renewal and renewal of the land passes into the direct control of the state or HPL.
8. Land which directly controlled by the state after the granting, extension, and renewal finished can be given priority Rights to former Rights holders with certain conditions (P4T arrangement + certain conditions).

Management Rights have 2 (two) authority characteristics, namely:

1. Public Authority: planning the use and handing over part of the Management Rights to third parties.
2. Private Authority, the power to use the land only for the performance of its tasks, the primary purpose is to provide land for use by other parties who need it with a specific right.

Based on Article 2 paragraph (3) of Law no. 21 of 1997 concerning BPHTB, it mentioned that the Management Right and Ownership Right to the Apartments are the Right to land. Article 1 point 3 of Law no. 20 of 2000 stated that Rights to land and buildings are Rights to land, including Management Rights. In addition, section 2 (3) of Law No. 20 of 2000 also states that land rights include property rights, rights to use buildings, rights to use for commercial purposes, rights to use, property rights to apartments and management rights. Government Ordinance No. 40 of 1996 on commercial use rights, building use rights and use rights was issued, one of which is aimed at restoring understanding of the rights to administer public functions [3].

The right of the state to dispose of land is the authority provided for in paragraph (2) of Article 2 of the Basic Agrarian Law, namely:

a) regulate and manage the purpose, use, supply and maintenance of land, water and space;
b) defines and regulates the legal relationship between people and land, water and space;
c) defines and regulates legal relations between people and lawsuits concerning land, water and space.

Also regulated in article 4 paragraphs 1 and 2 of the Basic Agrarian Law.

There are two types of Apartments ownership:

1. Apartment Ownership Certificate / Apartment SHM is the ownership of the apartment on the land that has the ownership, the right to use the business or the right to use the state-owned land, and the right to use the building or the right to manage the land. It's a proof.
2. Certificate of Ownership of the Apartment Building / SKBG Apartment Building is a proof of ownership of the apartment in a state / region property in the form of land for rent or land in Wakaf.

Property rights to apartments can be held by Indonesian citizens, Indonesian legal persons, foreigners who have a permit in accordance with the provisions of the legislation, foreign legal persons who are represented in Indonesia, representatives of foreign countries and international institutions that have or have a representation in Indonesia, are granted to Indonesia.

On the Law of Apartments for Apartment Units [2]:

1. Application of the Horizontal Separation Principle on Ownership of Apartments for Foreigners
2. Building Use of Apartments rights on state land can be extended at once after the issuance of the Letter of Appropriate Function (SLF)
3. Building Use of Apartments rights on the land with Management rights can be extended and renewed after the issuance of the Letter of Appropriate Function (SLF).

Legal protection against the booming tourism industry for the ownership of land rights and tourism investors because land rights described above are still considered too expensive for investors. Therefore, a new agreement model is needed, such as the Build Operate Transfer agreement. (BOT). Build Operate and Transfer (BOT) is a rental right so that the community does not lose its land rights. This new concept is not only Build Operate and Transfer (BOT), but there are other types such as Build Operate Own (BOO), Build Rent Operate Transfer (BROT), Joint Operations (KSO), joint ventures, ruislag. Build Private investors also carry out operations and Transfer (BOT) for hotels, offices, shops, and factories. The agreement in the Build Operate and Transfer (BOT) is a mixed agreement of 3 (three) types of agreement which is a combination of a lease agreement, a profit-sharing agreement, and a grant agreement after the end of the agreement period [4]. All of them still have 4 (four) conditions for the agreement's validity, as in Article 1320 of the Civil Code, namely agreement, competency, certain things, and a lawful cause.

Tourism business investment is growing with the advancement of the Internet of Things and Networking, which changes the way of life by making it possible to work, not having to be in the office but can travel while working. With a laptop, they can enjoy the beautiful

natural scenery to create new inspiration, not only to work in a confined space.

The utilization of land for the benefit of the tourism business turns land for agriculture into a tourism business. Nature, cultural heritage, and traditions support the tourism business so that land ownership also changes in increasing income for the community's welfare from the tourism sector.

The balance of interest theory helps strike a balance between understanding the tourism business and people's welfare. Roscoe Pound's law theory can be implemented as a tool of social engineering by enabling the law to organize the interests in society. In order to achieve a proportional and beneficial balance for the construction of a community structure in such a way as to achieve maximum satisfaction needs with minimum conflict and waste avoidance.

Pound divides into three interest groups: public interest, social interest, and personal interest [5]. The public interest consists of the state's interest as a legal entity and the interest of the state as the guardian of social interests.

Personal/individual interests are private, interests in household relations, substance interests include the protection of ownership rights. Social interests include:

1. Social interest in public safety issues
2. Social interest from the perspective of social system
3. Social interest in general morals
4. Social interest in the safety of social resources
5. Social interest in social progress
6. Social interest in personal life [5]

Tourism is an integral part of national development. It is conducted in a systematic, planned, integrated, sustainable and responsible manner, while still protecting the religious and cultural values living in society.

The development of the tourism industry needs to encourage the equal distribution of business opportunities, obtain benefits, and face the challenges of changing local, national and global lives (Review of Law No. 10 of 2009).

The utilization of land resources must balance understanding the tourism business and the welfare of the people, including public, social, and private interest groups.

- Every tourism entrepreneur is entitled to equal opportunities and legal protection in business and provides a service that is not discriminatory, ensures tourists' security and safety, and provides insurance protection in high-risk activities.
- The Government and Regional Governments are obliged to create a conducive climate for tourism businesses, to facilitate and provide legal certainty.
- Every person is obliged to help create a safe atmosphere, orderly, clean, behave courteously and maintain environmental sustainability of tourism destinations.
- Every tourist is obliged to maintain and respect the rule of religion, tradition, culture, and values in the local community.

(Articles 22-26 of Law No.10 of 2009)

Land ownership for tourism business investment is sometimes still considered burdensome, so investors will choose land ownership that is not burdensome, namely by purchasing a Limited Liability Company for land with Building Use Rights, Use Rights, Management Rights because on land with Management Rights can be granted Business Use Rights, Building Use Rights, Certificate of Ownership of Apartments, and Lease Rights. This Lease right is what investors are more interested in to realize a tourism business with a Build Operate and Transfer (BOT) agreement model, and the community does not lose their land rights.

Although the Employment Creation Law contains substances regarding land, namely the Spatial Planning and Land Cluster, the Cluster for Strengthening the Concept of Management Rights, the Apartments Unit Cluster, the Cluster for the Establishment of a Land Bank, the Land Rights Cluster also provides support for improving the investment system and business activities, including simplifying business licenses with Online Single Submission (OSS) so that licensing can be done online.

The Employment Creation Act coordinates regulations in the area of land acquisition. However, some agreements have an effort called the Nominee Agreement, which is an agreement between foreigners and Indonesian citizens as a means of acquiring land ownership by foreigners, so Article 26 paragraph (2) of the Basic Agricultural Law. For the party who committed the serious breach, the substance is an indirect transfer of rights from Indonesian citizens to foreign citizens [6].

The tourism business provides confidence that this business is promising for investment or investing for the welfare of the people, which has national and international reach and is a business that has high uniqueness and moves continuously to follow the situation and conditions of the community to meet tourism needs [7].

Tourism is an overall activity related to tourism. It is multi-dimensional and multi-disciplinary. It appears as the embodiment of the needs of each person and each country, as well as the interaction between tourists, communities and entrepreneurs, and presents a good trend with governments and regional governments. So tourism is provided to provide the best service to tourists.

These services must regulate the interaction of all components of tourism, such as tourists, communities, entrepreneurs, government, and local governments, and each has a responsibility for the common good and welfare.

4. CONCLUSION

In the current era of globalization, land ownership has changed not only for the benefit of agriculture and plantations but also for trading commodities, mining, and the tourism industry. The importance of land causes many land disputes, the economic value of land increases, and the number of residents increases so that the land mafia has grown. However, the government has issued many provisions regarding land ownership and tourism through laws, government regulations, Presidential Instruction Decrees, Ministerial Decrees, Decrees of the Head of the Land Agency, and the Omnibus Law. There has been no harmonization between these regulations so that they have not regulated the protection of tourism investment. And land ownership. Land ownership for tourism business investment needs to be revised to balance land ownership and land use for tourism business interests.

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Reconstruction of Immigration Control Arrangements for Refugees

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ABSTRACT
The increasing number of asylum seekers and refugees to Indonesian territory causes social disturbances, political security, and order in society. Their presence can be exploited by human smuggling networks, human trafficking, drug trafficking, and international terrorist networks. This can have an impact and various problems in Indonesia, primarily surveillance. However, Immigration Supervision according to Law Number 6 of 2011 concerning Immigration does not regulate the authority of Immigration in supervising the entry and exit of refugees. For this reason, this paper discusses the Reconstruction of Immigration Supervision Arrangements for Refugees with the main question, namely, how is the mechanism for the immigration control function of refugees in Indonesia's status as a transit country. To answer this problem, the researcher uses normative research methods. The study results indicate that there are laws and regulations by the agreement of transit countries. It can be seen how far Indonesia can participate in the refugee problem. Furthermore, related to the structure of involvement in the supervision of refugees, it must involve the Directorate General of Immigration of the Republic of Indonesia, the Supervision and Action section in maintaining the territorial sovereignty of the Republic of Indonesia, and the supervisory function within the scope of Human Rights and Sovereignty.

Keywords: *Immigration, Reconstruction, Refugees.*

1. INTRODUCTION

Indonesia is one of the countries that has not ratified the convention on refugees or asylum seekers, namely the 1967 Protocol 1951 Convention on the Status of Refugees, so that Indonesia is not obliged to be involved in handling refugees and asylum seekers, as stipulated in the refugee convention that Indonesia's involvement in handling refugee problems, temporary nature, in this case, Indonesia's status as a transit country, Indonesia's position is a country that participates in handling refugees and asylum seekers only temporarily, as the term category of country, in the flow of migrant arrivals, where Indonesia places a position in a transit country or transit country So that the authority and involvement of UNHCR for refugees in Indonesian territory are appropriate.

The number of arrivals of asylum seekers and refugees to Indonesia to date is 14,016 people. This number is not comparable to the number of settlements or placements to recipient countries (Australia), including voluntarily repatriated and deported from Indonesian territory. In the last two years, there has been a significant decline in refugees placed in third countries. If it was around 1,000 people per year in previous years, now the number of refugees is 500 or even 200 people per year. With the increasing number of asylum seekers and refugees into the territory of Indonesia, it begins to cause concern and discomfort. It has the opportunity to cause social disturbances, political security, and even order in society. Their existence is very vulnerable in terms of status, economy, and psychology, so they have the opportunity to be exploited by human smuggling networks, human trafficking, drug trafficking, including international terrorism networks. This can have an impact and various problems in Indonesia.

As one of the countries that recognize and respects human rights, as stated in the Preamble to the 1945 Constitution, Indonesia also looks at the 1951 Convention regarding the status of refugees. Therefore, Indonesia handed over the handling of refugees to UNHCR. Therefore, Indonesia does not have the authority to determine whether a person or group of people who request refugee status are recognized as refugees. This authority is exercised by UNHCR, considering that Indonesia is not a country with the 1951 convention and the 1967 protocol. Apart from this constitutionally, the handling of asylum seekers and

refugees has not yet been regulated explicitly by law. Handling asylum seekers and refugees are only the first steps in the context of inspection and shelter.

2. METHODS

How is the reconstruction of immigration control for refugees from abroad in Indonesia based on the description above? The research method used is normative legal research. The results show that the Government of Indonesia has issued Presidential Regulation No. 125 of 2016 concerning the Handling of Overseas Refugees. The Government has a reference standard for dealing with asylum seekers and refugees and Immigration supervision.

3. RESULT AND DISCUSSION

With the issuance of Presidential Regulation No. 125 of 2016 concerning the Handling of Overseas Refugees, the handling has been carried out by government agencies. The handling is carried out by the Indonesian National Army (TNI), the Indonesian National Police (POLRI), Ministries and non-Ministries in the field of maritime affairs, Immigration (Rudenim), and Regional Government (PEMDA). According to the Presidential Regulation, Rudenim has the function of Immigration supervision. Immigration supervision is carried out when found, at the shelter and outside the shelter, dispatched to the destination country, voluntary repatriation, and deportation. Presidential Regulation No. 125 of 2016 concerning Handling of Refugees from Overseas but the legal instrument is considered not comprehensive enough in dealing with this problem, such as the issue of claims of foreign asylum seekers to obtain recognition of refugee status even though this country is not a destination country but as a transit country.

The issuance of Presidential Regulation No. 125 concerning the Handling of Refugees from Outside was raised in the Asia Pacific region in the Bali process agreement, namely the cooperation of Central Asian and surrounding countries to handle refugee and migration cases in the region. The Bali Process is a collaboration that is almost similar but also relates to the issue of smuggling and human trafficking, which the Indonesian Government organized in August 2013, which was attended by 13 countries in addition to the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). The Government's responsibility and attitude towards refugees are sole because it upholds human rights values.

In addition to the Human Rights Principles, there is also the principle of Indonesian sovereignty, which allows the Government to make regulations related to the traffic in and out of foreigners into Indonesian territory and regarding the supervision of foreigners in Indonesia. Foreign citizens who come to Indonesia are obliged to respect the applicable positive law. Based on the principle of sovereignty, the state has other rights in the form of power, namely:

1. Exclusive power to control domestic affairs
2. The power to receive and expel foreigners
3. The privileges of diplomatic representatives in other countries
4. Full jurisdiction over crimes committed in its territory

Indonesia has the power to determine whether to accept or reject foreign nationals who want to enter Indonesian territory, where the sovereignty of the Indonesian state in regulating the entry of foreigners into Indonesian territory in Article 8 Paragraph (1 of Law Number 6 of 2011 concerning Immigration is stated, "Everyone who enters or leaves the Indonesian Territory is required to have a valid and still valid Travel Document." In Paragraph (2), it is formulated, "Every Foreigner who enters the Indonesian territory is required to have a valid and valid Visa unless otherwise stipulated by Law This law and related agreements, as for the handling of refugee issues are also regulated in Article 25, Article 26, and Article 27 of Law No. 37 of 1999 concerning Foreign Relations, which are stated as follows:

In analyzing the problem of how to reconstruct refugee control arrangements in Indonesia, in this study, we quote the opinion of Hans Kelsen explaining that the state is a subject of international law (an international person) because the state is a subject of international legal rights and obligations. Indonesia as a subject in international law has responsibility for refugees based on one of the general principles recognized by civilized nations, namely jus cogens, which implies that every act of the nation in carrying out its obligations must protect humanity in the realm of protecting human rights, including in international customary law, namely with the recognition that human rights law is part of customary international law.

The concept of a state of law that Indonesia owns is Pancasila being one of the concepts that were born from the recognition of the Indonesian state of its position in carrying out international problems, on the concept of a state of law Pancasila, of course, the soul contained in it rests on three principles, namely; the principle of harmony, the principle of propriety and the principle of harmony, all of which reflect the philosophical values of Pancasila. Pancasila is used as a source, foundation, filler, controller, and barometer in Indonesia's design, formation, renewal, replacement, implementation, and enforcement. In applying the concept of a constitutional state based on Pancasila, there is also the principle of state sovereignty, which is the supreme power of a state and an essential characteristic of a state over a specific territorial area, namely the territory of the Indonesian state. Within the scope of authority.

4. CONCLUSION

As a transit country, Indonesia does not have a legal umbrella for comprehensive supervision and handling of

refugees because the Immigration Law does not regulate the supervision of refugees. Therefore, the suggestion is to reconstruct immigration control arrangements by amending or perfecting law number 6 of the year 2011 concerning Immigration and the improvement of Presidential Regulation Number 125 of 2016 concerning handling refugees from abroad. The second conclusion is that, in the current immigration control of refugees, only consider their human rights, not commitments from countries of origin, transit, and destination, so they become the basis for the flow of settlement of the refugee problem.

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Controversy on Regulation of Foreigners Property Ownership in Indonesia

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ABSTRACT
This article aims to analyse the principles of land ownership by foreigners in the era of globalization in Indonesia. Copyright Law No. 11 of 2020, or omnibus law that grants foreign rights to sectors that own land and housing. The purpose of this law is to encourage foreign investment and boost the country's economic growth. Data is qualitatively analysed, and inference statements are used in deductive logic. Legal documents relating to the arrangement of foreign property are specifically intended to be used as a guide for an investigation. This study shows that although this policy has good faith, there is still much controversy regarding concessions on ownership of apartments and housing units to foreigners. Solutions provide processes to prevent them.

Keywords: *Foreign, Property, Regulation of property.*

1. INTRODUCTION

Law Number 5 of 1960 concerning Basic Agrarian Law explains that customary law is the legal source of land law in Indonesia [1] which is adjusted with the people's interests in its relations with the international world. [2]. The Indonesian government has intensified efforts to recognize customary land rights by formalizing them. [3] National Land Law in its implementation to date, besides being proven to be able to provide support for development activities in all fields that require land control and use, also shows weaknesses in the formulation of its contents and arrangements. During the New Order era, these weaknesses carried out development based on policies that prioritize industry growth [4] allowed implementation based on interpretations that deviated from the principles and objectives of the National Land Law, with all the consequences that are currently being felt. Thus, the National Land Law needs to be perfected. Improvement is also required to face the era of globalization that has begun to be handled at this time. [5]

International investment is a strategic step for the country due to lack of capital and technology transfer. [6]. Indonesia, as a developing country, is an attractive place for developed countries to invest in expanding their global business activities. According to Thomas L Friedman, globalization is not a trend but an international system that uses a psywar system. [7]**.** In the global era, the openness and competition of the ASEAN Economic Community will cause professionals from all the Association of Southeast Asian Nations (ASEAN) to come freely. [8]

Currently, Indonesia is trying to catch up with other countries in terms of economic growth. One that significantly affects economic growth is the level of investment that is still relatively low in Indonesia. The government responds quickly and accurately in formulating policies in social welfare services and development.

On the initiative of the government and the Department of Agriculture Land Use / Land Authority, the Basic Law of Agriculture was revised. Law No. 11 of 2020 (commonly known as the Comprehensive Law) on job creation was revised. November 2 in the rice sector. 2020. Increase all sectors that drive economic growth from 5.7% (5 points 7%) to 6.0% (6 points 0%) through job creation, investment, and economic growth. This stimulates achievable structural economic changes. Increase productivity.

The land sector is one of the essential factors in the growth and development of the country's economy. However, the current problem is that the Covid-19 pandemic has put pressure on the economy regarding demand and supply. Hence, the government must boost the economy and investment through Law Number 11 of 2020 by removing regulatory barriers. This law aims to create jobs and increase investment to increase domestic economic growth by changing and easing various aspects

of the arrangement. [9] Despite the noble purpose of this policy, there are still many controversial substances, and the public is divided in their agreements regarding the issue of granting apartment property rights to foreigners. [10]. However, there has been an ongoing rejection from the public towards the ratification of Law no. 11 of 2020. The rejection of the substance of this law is due to those who argue that the aim is to establish an investment ecosystem but contains problematic articles on farmers that potentially create moral danger and will harm small communities, especially workers and indigenous peoples. Thomas R Dye explains the elitist policy model of formulation,[11] namely the formulation process that describes the political will of the ruling elite. [12] It is stated that the resulting policy becomes a paradox with the public interest. Perhaps it was Thomas Day who provided the most famous, short and straightforward definition of public policy, "anything a government chooses to do or not to do." [13]

This document contains Land Law No. 11 of 2020 concerning Property Rights, Farmer's Rights, Housing Units, Land Registration, and Government Regulation No. 2021, which explicitly regulates apartments' foreign ownership and property rights. Describe the subject. Consider the subjects of the 18 entities. Indonesia is still controversial.

2. METHODS

This research is a normative legal study that is a process of seeking the rule of law, legal principles and legal doctrines to solve legal problems, develop arguments, theories or new concepts as recipes for solving problems. [14]. Therefore, the study using statute approach, conceptual approach and descriptive. Data analyzed qualitatively, and conclusions statements using deductive logic.

3. RESULT AND DISCUSSION

Based on Article 16 juncto Article 4 paragraph (1) Law Number 5 of 1960 regarding Basic Agrarian Law, land rights consists of 1) Primary Land Rights, namely rights that are directly granted by the government to the landowner, through an application for rights to the state (Land Office), consists of Rights of Ownership/Freehold Title, Rights of Cultivation, Rights of Building, Right of Use. 2) Secondary Rights or Derivative Land Rights, namely rights derived from an agreement between the landowner and the right owner, consists of Rights of Building, Use Right, Lease/Leasehold Title Right, Land Clearing Rights, Collect Forest Products Right, other rights other than those mentioned above which are stipulated by acts and rights of a temporary nature as referred to in Article 53 (Rights of Pawn, Rights of Share Cropping, Rights of Lodging and Rights of Agricultural Land Lease). [15]

The Ministry of Land Affairs and Spatial Planning of the Republic of Indonesia/National Land Agency has issued regulations for the implementation of the Employment Creation Law, especially land-related regulations, such as Government Regulation No. 18 of 2021, concerning management rights, land rights, units, and Land registration.

I. Rights of Foreigners to Own Apartment Units and Landed Houses

With the advent of foreign investment and business in Indonesia, foreign investors need building or land rights. A foreigner is not an Indonesian citizen, but a person whose existence benefits, does business, does work, or invests in Indonesia. By law, foreigners can have certain land and building rights, such as land use rights for a certain period, lease rights for buildings (leasehold title), ownership rights over Apartment units, and residential dwellings (landed houses). Ownership of these rights includes Law No. 5 of 1960 on the Basic Regulations on Agricultural Principles (Basic Agricultural Law), Law No. 11 of 2020 on Job Creation, and management rights, land rights, and apartment-based rights. It is regulated under Government Regulation No. 18 of 2021. , And land registration.

1. Right of Use over Land for a Certain Term:
   Article 42 letter b of Basic Agrarian Law jo. Article 49 paragraph (2) letter e-Government Regulation Number 18 of 2021 stipulates that a foreigner domiciled in Indonesia can have a Right of Use over Land for a certain period. Use rights are the right to use and / or collect land directly controlled by the State or land owned by others, giving them the powers and obligations specified in the decisions granted by the authorized officials. increase. It is not a lease contract or land cultivation contract unless it violates the spirit and provisions of the Land Distribution Law. Land parcels that can be granted a right of use for a certain period are state land, property rights land, and manage land with the following provisions.
   a. The right to use state-owned land: The right to use state-owned land is granted by decree by the Minister of Land Affairs and Space Planning. The maximum period of the right to use is 30 years, can be extended for a maximum of 20 years, and can be renewed for 30 years. The requirements for extending or renewing the right of use are: 1) According to the situation, nature and purpose of the transfer, the land is still cultivated and properly used; 2) The right holder meets the conditions for granting rights; 3) The right holder still meets the requirements of the right holder; Use and/or plan for the public interest.
   b. Right to use on controlled land: This right is granted by a decree granted by the Ministry of Agriculture and Space Planning, with the approval of the owner's right of

control. The maximum term for this right is 30 years, which can be extended up to 20 years and renewed up to 30 years. The conditions for extending or renewing the right to use land under control are the same as for extending/renewing the right to use state-owned land, including the approval of the owner of the control.

c. The right to use land with the right of ownership: The right to use land by right of ownership arises by agreement between the holder of this right to use and the holder of the ownership right on the basis of an act concluded by an official under the land contract. This document must be registered with the land office to be included in the land register. [16]. This right is valid for a maximum of 30 years. It can be extended on the basis of an act on granting the right to use land with the right of ownership, drawn up by an official under a land contract and registered with the Land Office under an agreement on the right to use with the copyright holder.

The right to use under certain conditions can be used as security for debts associated with mortgage rights, and can be transferred, given to other parties, or changed. Rights of Use can be cancelled due to the following reasons: a) the term is expired as stipulated in the decision on granting, extending, or renewing the rights, for usage rights with specific term; b) The Minister of Land Affairs and Space Planning cancelled this right before his term of office due to the following reasons: (1) Failure to fulfill the obligations and/or prohibitions specified in Article 57 and Article 58 of the Government Regulations No. 18 of 2021; (2) Failure to perform the conditions or obligations stipulated in the use right transfer agreement or the land use agreement with the management right between the use right holder and the owner; (3) Administrative defects; (4) Court judgments obtained permanent legal effect; (5) Change of rights For other land rights; (6) The right holder voluntarily terminates before the expiration of the time limit; (7) released for public interest; (8) revoked by law; (9) designated as a wasteland; (10) designated as destroyed land; (11) the end of the agreement on granting rights or agreement on land use for use rights over rights or management rights; and/or (12) the right holder no longer meets the requirements as the subject of the right.

2. Lease Rights for Buildings: Foreigners domiciled in Indonesia can become holders of lease rights. If another person's land can be used for construction purposes by paying the owner an amount of rent, that person has the right to rent the land. You can pay the rent as follows. a) Once or at any time. b) Before or after the land is used. The land lease agreement must not be accompanied by conditions that include elements of extortion.
3. Ownership of the residential unit: A residential unit is a residential unit whose main purpose is individual use with the main function of living and has connection options to public roads. Apartments can be built on land with building rights or rights of use on state land or land with administrative rights. Moreover, ownership over Apartment units is an ownership right over Apartment units which is different from the joint rights to shared parts, ordinary objects, and communal land.

Apartment unit for foreigners sets in Article 143-145 Law Number 11 of 2020. According to Article 144(1) of the Employment Creation Act, the ownership of condominium units can be granted to Indonesian citizens, Indonesian legal entities, foreigners with permits required by laws and regulations, foreign entities legally represented in Indonesia, or Indonesia has representatives from foreign and international institutions that are represented. Pursuant to Article 144 Paragraph (1) of the Employment Creation Act, property rights can be granted to residential units The property of residential units by foreigners is in Article 67 Paragraph (1) letter c of Government Decree No. 18 of 2021 that foreigners who have a permit according to the statutory Have provisions that property rights can be granted to the residential units.

The regulation expressly extends the rights to own apartment units to foreigners who possess the required immigration documents and foreign legal entities with representative offices in Indonesia. Further, foreigners who hold the required immigration documents may own landed houses built on Right of Use land and apartment units built on Right of Use land or Right to Build land. Therefore, foreigners can hold Apartment Unit Freehold built on Right to Build land. [17] Immigration document is a visa, passport, or residence permit issued by the authority by the provisions of the legislation regarding immigration. This article is considered unclear and has the potential to cause a prolonged polemic in the community. However, the Agrarian Affairs Minister and Spatial Planning/National Land Agency has determined that foreigners may only own Apartment Units. This permit is granted to foreigners because Apartment Units or Flats are different from landed houses.

Therefore, three factors became obstacles: land rights status, price limits, and immigration or foreign citizens' residence permits. The government must synchronize it with the Basic Land Law regarding the status of apartment land, price limits must also be set, and immigration

issues. If everything is in sync, it will attract foreigners to buy condominiums in Indonesia. Of the three factors, foreign immigration is considered to be the biggest obstacle. Only foreigners who already have a Limited Stay Permit Card and a Permanent Stay Permit Card can buy apartment units. This is different from Singapore, where foreigners can buy condominiums even though they do not live and settle (domicile) in that country. The Job Creation Law should be a catalyst for foreign investment. If the government then makes derivative regulations from the Job Creation Law, it must stimulate foreign ownership by eliminating the obligation to have a Limited Stay Permit Card and a Permanent Stay Permit Card. This regulation must be made immediately as a follow-up to the Job Creation Act if the enthusiasm is to make it easier and stimulate the interest of foreigners to buy apartment units for condominiums in Indonesia. Property transactions require ease of residence permit processing. Furthermore, foreigners allowed to own residential property in Indonesia are foreign nationals whose presence benefits, do business or invest in Indonesia.

The ownership rights over Apartment units can be split or merged by attaching the amendment to the deed of separation of ownership rights to the Apartment unit, which has been approved or ratified by the authorized official. In addition, ownership of the apartment unit may be transferred to another party or inherited and pledged as collateral by encumbered with a mortgage. Mortgage loans provided by institutions have a vital role in actualizing potential housing demand. Competition spurs lenders to offer loan products that meet client preferences. [18] Securitizing residential mortgages have been used effectively to manage mortgage-related risks. [19]. Thus, it is necessary to simplify licensing, granting loans, and mortgage rights by foreigners.

Apartment units can be built on the land right of build or right to use on State land or land with management rights. Rights of build may be given simultaneously with the correct extension after obtaining a function-worthy certificate. At the same time, rights of use may be granted an extension and renewal of rights if they have obtained a function-worthy certificate.

Unfortunately, there are several provisions of the regulation regarding the new rights of foreigners to obtain Apartment units that seem to contradict other existing laws. In particular, it is difficult to see how the certificate of the apartment unit can be issued to foreigners in the case of the apartment located in a block that is built on the land with the right to build, in that case, the certificate of the apartment unit can only be issued to those who legally fulfills the requirements to hold the right of the build.

Since foreigners cannot own the Building Use Rights, it is logically impossible for the Land Office to issue a certificate for an apartment unit built on land with a Rights of Build. Because it is contrary to Law Number 5 of 1960 concerning the Basic Agrarian Law and Law Number 20 of 2011 concerning apartments, even article 34 Government Regulation Number 18 of 2021, according to the law, the Rights of Build can be granted to Indonesian citizens and Indonesian legal entities only. This means that the Job Creation Law changes the Basic Agrarian Law and the Apartment Law.

II. Residential Dwelling/Landed Houses

Foreigners who are allowed to own a home have an ID letter according to the provisions of the legislation. The work that can be stopped is as follows.

a) Housing: Right to Use. or
b) The house under the above usage rights.
   (1) Contractual rights permit the use of property deed.
   (2) Management rights are based on land use contracts with authorized managers.

   Another requirement is that the apartment is built on a parcel of land with Rights of Use or Rights of Build on State Land, land with Management Rights, or land with Ownership Rights that is built-in special economic zones, free trade areas and free ports, industrial areas, and other economic zones. However, foreigners may only acquire apartments in special economic zones, free trade or port zones, industrial zones, or other economic zones. “Other economic zones” means urban or suburban zone, tourism zone, or a zone suitable for vertical housing development, and which have a positive impact on the community's economy.

Ownership of residential dwellings by foreigners is granted with the following limitations: a) minimum price; b) area of land parcels; c) the number of land parcels or Apartment units, and d) designation for residential or residential houses as previously regulations stipulate that property owned by foreigners is subject to minimum price restrictions, floor area, land area, several apartment units, and zoning (they must be in areas zoned for residential purposes). Currently, minimum-price restrictions are sets in Minister of Agrarian Affairs Regulation Number 29 of 2016. For example, the minimum price for an apartment unit permitted to be owned by foreigners in Jakarta Province is IDR 3 billion (approx. USD 200,000). Regulation of the Minister of Agrarian and Spatial Planning/Head of The National Land Agency Number 13 of 2016, which set the lowest price list for foreigners buying single-family homes or flat units, have been revoked.

If the foreigner passes away, the residential dwelling can be inherited by the heirs. If the heir is also a foreigner, he must have immigration documents according to the provisions of the legislation. The beneficiary is a foreigner who owns a house built within one year based on the land of use or building rights or based on an agreement with the owner of the land right that no longer resides in Indonesia. will do. In that case, the beneficiary must waive or transfer the rights to the house and transfer the land to another party that meets the requirements.

Indonesian citizens married to foreigners have the same territorial rights as Indonesian citizens if they are joint owners. The agreement d4 on the property between spouses (marriage). This regulation can also avoid "legal smuggling." Violations of the Law are often carried out by foreigners who want to buy assets in Indonesia through contract marriages, nominee agreements, the absolute power of attorney. [20] An application to extend the term of a Rights of Cultivate, Rights of Build, Rights of Use must be made before its expiry. In contrast, an application for renewal of any of these titles must be made within two years of expiry. The government will be granted an extension of the land rights term only after the land has been used or utilized.

Other provisions on the procedure of granting and restricting the ownership of a home or residence to foreigners, as referred to in Article 69 to Article 72, are stipulated in the Ministerial Regulation. No value yet.

4. CONCLUSION

Law Number 11 of 2021 concerning Job Creation introduces new provisions. The Ministry of Agrarian and Spatial Planning must maintain the concepts and principles of the National Land Law in order to avoid legal uncertainty. In the past, foreigners could only buy apartments if the land had use rights. Now, foreigners can also buy flats with building rights. However, the interests of Indonesian citizens must be prioritized.

Foreigners have not bought apartments in Indonesia if there is no legal certainty, political-economic stability, and a good investment climate, even though the regulations are well regulated. Issues related to the clarity of permits for foreigners to obtain housing and apartment units are still being questioned. This will lead to some complicated interpretations in practice. In addition, the rights of Indonesian citizens living in the metropolitan area will be threatened by foreigners to obtain flats or landed houses related to inheritance and long-term foreign ownership residences. Therefore, the Government of the Republic of Indonesia can use the Australian government's concept of a Foreign Investment Review Board (FIRB) to assess the feasibility of a person's assets in a residential investment application. There are special requirements for foreign investors who want to own a residence or apartment unit in Indonesia, such as eligibility, minimum monthly income, minimum liquid assets, certain fixed deposits and so on.

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Law Enforcement Against Illegal Tourists in Bali Province

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ABSTRACT
Bali as a tourism area that is visited by many tourists, both foreign and local. In order to provide security and comfort protection for tourists, it is necessary to supervise Illegal Tour Guides. This study uses empirical legal research that examines problems based on facts in the field and is supported by existing laws and legal theories. The Bali Provincial Government is given authority by-laws and regulations, namely Law Number 10 of 2009 concerning tourism and Bali Provincial Regulation Number 5 of 2016 concerning Tour Guides to carry out preventive supervision through a tour guide exam which is conducted to obtain a competency certificate, certificate of knowledge about Balinese Culture and Tour Guide Identity Card (KTPP) as well as repressively carried out by conducting inspections and imposition sanctions against illegal tour guides. The Civil Service Police Unit can conduct inspections at each tourist attraction by cooperating with relevant agencies, namely the Prosecutor's Office, the Judiciary, the Tourism Office. If a violation is found, action can be taken on the spot. The illegal tour guide will be given administrative sanctions in the form of an oral warning, written warning, suspension of KTPP, or revocation of KTPP fines, and criminal sanctions. The application of this sanction is intended so that the tour guide in carrying out his duties has the knowledge and provides clear information to tourists so as not to damage the image of Balinese cultural tourism.

Keywords: *Supervision, Sanctions, Tour Guide, Illegal.*

1. INTRODUCTION

As the largest and most diverse industry, tourism is developed worldwide as an inseparable part of human life regarding social and economic activities. The existence of tourism as the most significant industry has given rise to a series of opportunities and challenges for countries that depend on the tourism industry, including the Province of Bali, as one of Indonesia's most popular tourist destinations.

Tourism and the island of Bali cannot be separated. Art, culture, traditions, and natural conditions that support this become a unified whole and cannot be separated make tourism in Bali progress rapidly. Nowadays, the international community views the tourism business as a tireless effort over time, unlike limited natural resources. Therefore, most countries in the world develop tourism businesses with all their characteristics to increase the country's foreign exchange and prosper the community.

As a tourist destination and a favorite tourist destination in Indonesia, Bali consistently places the tourism sector as the mainstay sector. Tourism development in Bali generally applies the concept of Cultural Tourism, which implicitly includes the mission of Balinese culture in every development activity. In line with that, tourism has become one of the industries that significantly impact Bali's economic growth. The trade sector for handicrafts and arts, hotels, and restaurants has always been the mainstay sector of the Bali Province. So it is not wrong to say that the level of Bali's economy is very dependent on sustainable tourism. The development of the world of tourism in the Bali area has reached a critical point. Even now, tourism villages are being developed to the Banjar level.

The Bali Regional Government and Regency/City must regulate this tourism with regulations in the province and reach the district/city level. The Bali Provincial Regulation Number 5 of 2016 concerning Tour Guides should be disseminated to the district/city areas. The Regency/City Government should make regulations governing tourism because the regional government carries out the broadest possible autonomy and regulates Tour Guides so that the enforcement and control of Tour Guides are maximized.

Balinese culture embodies the creativity, taste, and initiative of the Balinese people, such as dance, music, and architecture that synergize with the rituals and religions of the Balinese Hindu community, which is a separate tourist attraction for tourists. These traditions and cultures give birth to distinctive and unique works, such as traditional clothes, traditional musical instruments, and traditional clothes, to sacred buildings called temples. All of these things are a powerful attraction in the tourism sector. This is one of the requirements needed by a place to become a tourist spot, namely attraction. Tourism is a new type of industry that can generate rapid economic growth in providing employment, increasing income, living standards, and stimulating other productivity sectors.[Nyoman S. Pendit;1999, 35]

The number of tourists who come to make the island of Bali become an international tourism icon. The expanse of tourist attractions and tourists who come to visit is endless on this island, generating a variety of new jobs. One of them is a guide or tour guide. A tour guide means someone who is in charge of providing instructions about a tourist attraction.[Ismayanti; 2010, 118]

A tour guide must have good foreign language skills to avoid confusing tourists who want to be guided when on vacation in Bali. A tour guide must also explain and introduce various traditions, and customs carried out by the Hindu majority community. This introduction and explanation are intended to increase knowledge for tourists and aim to avoid harmful misperceptions about traditions in Bali. Therefore, an accurate explanation and introduction need to be done by a tour guide. This automatically makes a tour guide. In addition to being equipped with foreign language skills, he must also equip himself with various information related to the traditions of the Balinese people, which cannot be separated from the tourist attraction itself. So a tour guide must be someone knowledgeable.

However, there have been many cases that are considered harassment of Balinese culture by tourists in recent times. This is detrimental to the image of Bali tourism but also detrimental to the natural balance of Bali in a nod. If we examine further, the harassment in Balinese cultural tourism occurs because of the lack of information or understanding of tourists about the culture.

Law Number. 10 of 2009 concerning Tourism stipulates that every tourist has the right to obtain information about tourist attractions. To support the realization of these tourist rights, based on the provisions of Article 23 of the Tourism Law, the government is obliged to provide tourism information, and tourists are obliged to maintain and respect religious norms, customs, and traditions. Culture and values that live in the local community.

Increasing tourist visits to Bali must be supported by adequate service quality with a tour guide's excellent and correct information. As the front line in maintaining Balinese cultural tourism through the quality of services and information provided to tourists, a tour guide must know Balinese culture and be certified incompetence.

To carry out the task of guiding tourism properly, a general tour guide on duty must have a clear identity in the form of a Tour Guide Identity Card (KTPP) issued by the Bali Provincial Government. The reality is that currently, there are still many illegal tour guides who do not meet the competencies and requirements in the Bali Provincial Regulation Number 5 of 2016 concerning Tour Guides.

Based on this background, several problems can be formulated, namely:

1. How is the supervision of illegal tour guides in the province of Bali?
2. How is the application of sanctions against Illegal Tour Guides in Bali Province?

2. METHOD

This study uses empirical legal research. The problem approach used in this study is a legal sociology approach, which examines the problems studied based on facts in the field and is supported by statutory regulations and legal theories.

3. RESULT AND DISCUSSION

3.1 Supervision of Illegal Tour Guides in Bali Province

In Administrative Law, there are two means of law enforcement: supervision and application of sanctions by government organs. Supervision is a preventive measure to enforce compliance, while the application of sanctions is a repressive measure to enforce compliance.

In administrative law, *supervision* is defined as supervising activity in the sense of looking at something carefully. There are no other activities outside that or activity process that compares what is being carried out, carried out, or held with what is desired, planned, or ordered.

Sondang P Siagian said that supervision is the process of observing rather than implementing all organizational activities to ensure that all work being carried out goes according to a predetermined plan. [Sondang P. Siagian;1987, 135]

Victor M. Situmorang said that supervision is every effort and action to determine the extent to which the tasks carried out are carried out according to the provisions and targets to be achieved. Supervision is a form of mindset and pattern of action to provide understanding and awareness to a person or persons who are given the task to be carried out using various available resources correctly and adequately so that there are no errors and irregularities that can create losses by the

institution or organization. The organization was concerned.[Victor M. Situmorang, Jusuf Juhir; 2010, 98.]

With supervision, various activities that have been outlined in the laws and regulations will be carried out correctly in the sense that they are by what is intended. Regarding the discussion of the problems above, the intended supervision is the supervision carried out by administrative supervisors in implementing Administrative Law norms towards citizens. Supervision in enforcing administrative law norms is more directed at providing information and counseling on administrative, legal norms to citizens. If information and counseling have been provided, and then there are indications of violations of legal norms, the supervisory apparatus will conduct an investigation or investigation. The results of the investigation are used as the basis for the application of sanctions.

The Bali Provincial Government can supervise illegal tour guides by the Bali Provincial Regulation Number 5 of 2016. Supervision of tour guides is regulated in Chapter VIII with the title Guidance and Supervision.

Based on the Bali Provincial Regulation Number 5 of 2016 concerning Tour Guides, it can be seen that the supervision carried out by the Bali Provincial government includes preventive and repressive supervision. Preventive supervision is carried out through a tour guide exam conducted to obtain a competency certificate, a knowledge certificate about Balinese Culture, and a Tour Guide Identity Card (KTPP). Based on Article 3 paragraph (1) of the Regional Regulation of the Province of Bali Number 5 of 2016, to become a Tour Guide, a license is required in the form of a Tour Guide Certificate and a Tour Guide Identity Card (KTPP). The Tour Guide Identity Card aims to support the role of tour guides as a liaison between tourists and tourist attractions, whose duty is not only to introduce tourists but also to guide and understand every tourist attraction that attracts tourists.

To obtain an ID card, a tour guide must go through training, technical guidance, and socialization to increase the tour guide's knowledge. After that, the tour guide must pass a competency test and a knowledge test about Balinese culture determined by the Certification Institute and a team formed from the Provincial Government, Academics, Parisada Hindu Dharma Indonesia, Pakraman Village Main Assembly, and tour guide organizations. After passing the two tests, the tour guide will receive a certificate of competency in guiding and a certificate of passing the Balinese cultural knowledge test, which can be used as a requirement to obtain a KTPP.

As a form of repressive supervision, according to Mr. Dewa Rai Dharmadi, Head of the Bali Provincial Civil Service Police Unit, raids are often carried out by a combination of the Civil Service Police Unit with several members of the Bali Indonesian Tour Guide Association as an effort to enforce the law against illegal tour guides. Things that are of concern at the time of the raid are the completeness of the tour guides such as KTPP, Membership Cards of the Indonesian Tour Guides Association, and clothing when guiding tourists. Even though raids have been carried out in tourist places, many illegal tour guides are still working to guide tourists. Tour guides who do not have a certificate or KTPP (Illegal Tour Guide) will be sanctions.

3.2. Application of sanctions against Illegal tour guides in Bali Province

J.B.J.M Ten Berge, quoted by Ridwan, said that applying sanctions is the core of the enforcement of Administrative Law.[Ridwan: 2009, 68-69] Sanctions are an essential part of the legislation. The regulation of sanctions in the body of laws and regulations is intended so that all provisions that have been formulated (regulated) can be carried out in an orderly manner and are not violated.

According to Utrecht, what is meant by sanctions is the result of an action or a reaction from another party, be it a human being or a social institution for a human act.[Utrecht ; 1992, 17]

According to Hans Kelsen, *sanctions* are defined as the coercive reaction of society to human behavior (social facts) that disturbs society. Every system of norms, in Hans Kelsen's view, always relies on sanctions. The essence of law is the organization of power, and law rests on a system of coercion designed to maintain specific social behavior. Under certain conditions, power is used to keep the law, and an organ of the community does this. Every norm can be "legal" if sanctions are attached, even though the norm must be seen as related to other norms.[Antonius Cahyadi dan E. Fernando M. Manullang; 2007, 84]

Every activity carried out illegally must, of course, be legally accountable. In this case, the responsibility in providing legal certainty is the government's authority where the government as an authority in the State is authorized to carry out various forms of regulations in every general activity and provide legal sanctions for any violators of these government regulations.

Regarding the implementation of tourism, the government has the authority to make regulations and legal sanctions, and this certainly has a clear goal, namely the regulation of activities in tourism.

Based on the Regional Regulation of the Province of Bali Number 5 of 2016, Tour Guides who in carrying out their duties do not comply with the professional code of ethics for tour guides (Article 12 paragraph (1); do not wear KTPP (Illegal) according to their classification; do not comply with the agreed travel program (Article 9 paragraph (2).); not wearing Balinese Traditional Clothing, except if the tour guide carries out the duties of water tourism, climbing, hiking, and camping activities, he will be subject to administrative sanctions in the form of verbal warnings, written warnings, freezing of KTPP, or revocation of KTPP.

Oral reprimand is a warning stated and delivered orally by an authorized official to punish a tour guide who makes a mistake. Within 6 (six) months since the verbal warning is given to the tour guide and the tour guide makes the same mistake, an administrative sanction in the form of a written warning will be imposed. A written warning is stated and delivered in writing by the official authorized to punish the tour guide who makes a mistake. If the tour guide still makes the same mistake within 6 (six) months from the written warning, it will be continued with the freezing of the tour guide's identification card (KTPP). Freezing, namely the temporary revocation of the KTPP of the Tour Guide concerned, will be carried out for 3 (three) months. After the freezing period expires, the KTPP of the Tour Guide is returned and allowed to carry out scouting duties as usual. Revocation of KTPP is taking KTPP of a tour guide by an authorized official if the tour guide concerned has been given an oral warning, written warning and suspension of KTPP and when supervision is held the tour guide makes the same mistake, the KTPP will be revoked If the tour guide concerned wants to register again as a tour guide, he must go through the initial stages by the applicable regulations. Based on Article 18 of the Bali Provincial Regulation Number 5 of 2016, Tour Guides who do not have a Tour Guide Identity Card or are Illegal will be punished with imprisonment for a maximum of 3 (three) months or a fine of a maximum of Rp. 50,000,000 (fifty million rupiah).

4. CONCLUSION

Based on the Bali Provincial Regulation Number 5 of 2016 concerning Tour Guides, it can be seen that the supervision carried out by the Bali Provincial government includes preventive supervision through a tour guide exam conducted to obtain a competency certificate, a certificate of knowledge about Balinese Culture, and a Tour Guide Identity Card (KTPP) and repressive supervision. Namely, supervision carried out by conducting inspections of illegal tour guides who do not have certificates or ID cards. Tour guides who do not have certificates or KTPP (Illegal Tour Guides) will be subject to administrative sanctions in the form of verbal warnings, written warnings, freezing of KTPP, or revocation of KTPP, fines, and criminal sanctions.

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Determination of Non-Performance of Contract in an Orally Made Loan Agreement Without an Agreement on a Return Period in Terms of Contract Law

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ABSTRACT
The agreement is an activity that cannot be separated from life Public. Through community agreement very helpful in doing everything business-related activities. Whether buying and selling, borrowing, employment agreements, and other business ventures who need an agreement, people often make oral agreements because they are based on a belief system. The parties already trust each other even though the agreement is made unwritten and there are no other supporting letters. Nevertheless, a legal problem frequently occurs between the parties who make a Loan Agreement orally without an agreement on a return period, especially on the debtor in a state of Non-Performance of the Contract. The normative legal research method (normative juridical) collected the secondary data and a relevant statute to answer this legal problem. The result showed that the Oral agreement has legal force. The validity of the agreement is regulated in article 1320 of the Civil Code. One of the Non-Performance of Contracts elements is the non-fulfillment of Performance exceeding the specified return period. According to the principle of legal certainty, to determine the return period in an oral agreement, one must look at the available evidence, and special arrangements are needed to determine the return period of an oral agreement.

Keywords: *Contract of Law, Non-Performance Contract, Oral Agreement.*

1. INTRODUCTION

The agreement is regulated in Article 1313 of the Indonesia Civil Code. The provisions of the article state that "An agreement is an act by which one or more persons bind themselves to one or more persons." According to Subekti that "An agreement is an event where one person promises to another person or where two people promise each other to do something" .3 While the loan agreement is regulated in the provisions of Article 1754 of the Civil Code, which states that "A loan agreement is an agreement where one party gives another party a certain amount of consumable goods due to use, provided that the last party will return the same amount with the same type and conditions."

In an agreement known as "Performance," the debtor must fulfill the definition of Performance in every contract. *Performance* is an obligation born of a contract either by law or by agreement. According to Article 1234 of the Civil Code, there are three forms of Performance. Namely, the contract is intended to give something, do something, or not do something. In order for the contract to be reached and fulfilled by the debtor, it is necessary to know the nature of the Performance, namely:

1. Must be specific or determined, and If the Performance is not specified, the Performance will be canceled.
2. Must be possible, and this means that the Performance can be fulfilled by the debtor somewhat with all his efforts. If not, then the contract is canceled.
3. It must be allowed, meaning that it is not prohibited by law and does not conflict with decency and public order. If Performance is not prohibited, then the contract is canceled.
4. There must be benefits for creditors, meaning that creditors can use, enjoy, and take the results. Otherwise, the contract can be canceled.
5. Can consist of an action or a series of actions

Meanwhile, suppose one of the parties does not accomplish the Performance or the contents of the agreement/contract. In that case, it is called a non-

performance of the contract; what is meant by non-Performance of the contract is not fulfilling or failing to accomplish the obligations as specified in the agreement made between the creditor and the debtor. As Subekti's claims, a debtor is said to be negligent if he does not fulfill his obligations or is late in fulfilling them but not as agreed.4 The Non-Performance of contract has been regulated in the provisions of article 1243 of the Civil Code, which states that

> "Reimbursement of costs, losses, and interest due to non-fulfillment of an engagement, then begins to be required, if the debtor, after being declared negligent in fulfilling his engagement, continues to neglect it, or if something that must be given or made, can only be given or made, can only be given or made. In the elapsed time".

The form of the non-performance of the contract can be in the form of 1. not carrying out what has been agreed to be carried out. 2. Accomplished what has been agreed but is not the same as the contents of the agreement. 3. Late in performing the obligations of the agreement. 4. Doing something that was promised not to be done.

Agreements can be divided into two forms, namely agreements made orally and agreements made in writing. An oral agreement is an agreement made and agreed orally by the parties. At the same time, the written agreement is made in written form and can be in the form of an underhand deed or an authentic deed. There is no special arrangement that an agreement must be made in writing because both forms of the agreement have valid legal force. After all, Article 1320 of the Civil Code only stipulates that the validity of an agreement must meet four elements, namely agreement, skill, a sure thing, and a lawful cause.

In practice, people often make verbal agreements, especially lending and borrowing agreements, because they are so easy to do without making them in front of a notary. This verbal loan agreement is made based on the trust of the parties. A loan-borrowing agreement can be implemented and appropriately implemented if the parties can fulfill the loan-borrowing agreement regarding the terms and obligations of the parties, as agreed, without any of the parties being harmed in this loan-borrowing agreement. However, this can be a problem if the verbal agreement is not limited in time. If there is a default, this can harm the creditor and debtor because there is no legal certainty. The creditor can be harmed because there is no certainty in getting his achievements, while the debtor can also be harmed by the creditor who can benefit in collecting his achievements.

2. LEGAL PROBLEM AND METHOD

Soerjono Soekanto's benchmark in his discussion of normative legal research is from the nature and scope of the legal discipline, where *discipline* is defined as a teaching system about reality, which usually includes analytical discipline and prescriptive discipline, and legal discipline is usually included in prescriptive discipline if the law is seen as only covers the normative aspect. Furthermore, it is also explained that the nature of legal dogmatics (the science of the rule of law and the science of basic understanding in law) is theoretical-rational, and the reasoning model used is logic-deductive. In contrast, the science of legal reality (legal sociology, legal anthropology, legal psychology, comparative law, and legal history) is theoretical-empirical, and the reasoning model used is inductive logic.

Normatively, default is regulated in article 1243, which in the provisions of the article it is explained that a party has defaulted if something that must be given or the gift is only given or given within a predetermined time, then one that has been determined, then the one that has been determined is in default. It is beyond the specified time; if there is a loan agreement verbally and the time limit is not agreed upon, while in Article 1243 apart can be said to be in default if it has exceeded the predetermined time limit, therefore the author is interested in researching with the aim of Non-Performance of Contract in an oral loan agreement without an agreed time limit in terms of the Agreement Law. Because of that, it is an interesting problem and needs to be researched about how to Determine Non-Performance of Contract in an Orally Made Loan Agreement without an Agreement on a Return Period in terms of Contract law. The normative legal research method (normative juridical) was used to collect the secondary data and a relevant statute to answer this legal problem.

3. RESULT AND DISCUSSION

The agreement is an activity that cannot be separated from people's lives. The community can be beneficial in carrying out all activities related to the economy, business, whether in borrowing, buying, selling, or any activity requiring an agreement. The provisions in article 1233 of the Civil Code states that "Every contract is either due to an agreement or due to law." Contracts born from an agreement can be made through an agreement by the parties to the agreement. The agreement will be born because of the agreement or approval of the parties involved. Agreement on the main things that are the object of the agreement is a form of freedom of contract as regulated in Article 1338 of the Civil Code.

According to article 1754 of the Civil Code concerning Borrowing and Borrowing, "Lending and Borrowing are" agreement with which one party give the other party a certain number of items that exhausted by use, with the condition that the latter party will return the amount the same from the types and circumstances the same."

The object of the loan agreement Borrowing in article 1754 of the Civil Code can be from goods exhausted due to use, as money. In the case of borrowing money, the party who binds himself to the agreement must comply with regulations in the debt agreement to which he

agreed. Elements contained aspects as bellow in a debt agreement or borrow and borrow money including:

1) The existence of the parties

2) There is the agreement

3) The existence of a certain number of goods

4) Loan repayments

After there was an agreement between the parties, an agreement arises, in which the parties must carry out their respective obligations to fulfill the rights between the parties. So that the result of the debt agreement is the emergence of Performance; namely, there are three kinds of Performance:

1) Doing something

2) Give something

3) And do nothing

In this case, creditors and debtors must understand each other's obligations. Namely, the debtor receives the money and is obliged to return the money by the agreed time. By the elaboration of Article 1243 of the Civil Code, an agreement or contract can be said to be in default if one of the two conditions stated, namely:

1) If the debtor, even though it has been declared negligent, still fails to fulfill the engagement; or

2) If something that must be given or done can only be given or done in a time that exceeds the specified time.

The statement of negligence regarding the implementation of a contract or agreement is regulated in Article 1238 of the Civil Code, which states that "the debtor is negligent if he has been declared negligent by a warrant or by a similar deed, or for the contract itself if this stipulates that the debts must be considered negligent by the lapse of the specified time. A Legal Notice or a letter of reprimand is a warning or reprimand so that the debtor excels at a time specified in the Legal Notice. The Legal Notice can be carried out three times. If the debtor does not undertake to carry out the Legal Notice 3 times, then the debtor can be said to be in a state of Non-Performance of Contract.

In addition to giving a Legal Notice, of course, there must be valid evidence that proves the Non-Performance of the Contract. So for the determination of the evidence that must be used, refer to Article 1866 of the Civil Code Jo. Article 164 HIR/284 Rbg. where the evidence consists of 1) Written evidence; 2) Witness; 3) Prejudice; 4) Confession; 5) Asseveration.

If there is a dispute between the debtor and the creditor in which the debtor is declared in Non-Performance of Contract, even though after being warned several times the debtor does not pay off the debt, then to prove that the debtor is in Non-Performance of Contract, it can be seen from the documentary evidence, because the value of the proof of the letter or written evidence, especially the deed authentic is very high to perfect. This is regulated in Article 1870 of the Civil Code states, "An authentic deed provides between the parties and their heirs or those who have rights from them, a perfect proof of what is contained therein." The forms of documentary evidence include:

1) A letter of agreement signed by the parties

2) Letter of submission, proof of transfer, payment check, and others.

3) Warning letter or Legal Notice

4) Another letter as supporting evidence.

Legal certainty, according to Jan Michael Otto claim defines as the possibility that in certain situations:5

1. There are transparent (clear), consistent, and easy to obtain rules issued by and recognized because of the state (power).

2. Ruling agencies (government) apply these legal rules consistently and are also subject to and obedient to them.

3. Citizens, in principle, adjust their behavior to these rules.

4. Independent and thoughtless judges (judicial) apply law rules consistently when they resolve legal disputes.

5. Judicial decisions are concretely implemented.

Sudikno Mertukusumo, as mentioned by Asikin Zainal, claims6, legal certainty guarantees that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in-laws made by parties who apply and are authoritative so that these rules have a juridical aspect that can guarantee the availability that the law works as a rule that must be obeyed.

The purpose of the current study is to determine Non-Performance of Contract in an Orally Made Loan Agreement without an Agreement on a Return Period in terms of Contract Law. From the data, it can be found a solution that in ensuring the implementation of the Oral agreement, among others, it is hoped that the parties can carry out good faith to avoid an act that deviates from the rules contained in the agreement. In making an oral agreement, it is necessary to specify explicitly when the deadline for the Return period is, if the provisions are not contained, The Return Period of an agreement can be seen from the substance of the agreement, the background of the agreement, then what is the object of the agreement used for. Then the determination of the return period can also be seen from the evidence owned by the parties in the agreement.

Several principles can be used to determine the usual maturity of an agreement based on the prospective debtor's character, personality, and behavior. The capacity or ability of the debtor to pay off, the capital or capital of a debtor that must be known, the condition of

the economy of the prospective debtor that must be analyzed. From the analysis of these principles, it can be determined that a contract must be returned. Thus it can also be determined when a person can be declared Non-Performance of a contract in an agreement. According to the principle of legal certainty, legal certainty is one of the legal principles that should be the basic principle of forming the legislation. Therefore, it is necessary to have an arrangement that regulates explicitly when an achievement must be returned, especially in an oral agreement that does not specify when the deadline for returning it is.

4. CONCLUSION

An agreement is born when an agreement is reached between the two parties who are agreeing. Agreements made orally can be found in social life because of an agreement between the two parties, such as shopping activities in markets for daily needs. An oral agreement is still valid and has legal force, but if there is a dispute between the parties, the proof is difficult, especially in an oral agreement that does not have a deadline for the return period. Therefore, to avoid non-performance of the parties' contract, it is necessary to ensure certainty regarding the rights and obligations of each party.

So that, in a debt agreement, a written agreement is still needed, namely an underhand agreement, and it is still necessary to regulate the return period of an agreement from an addendum. The determination of the return period of an agreement can be seen from the background of the agreement and the background of the parties who are bound, which will be helpful for legal certainty and as valid and robust evidence if a problem occurs between the parties, according to the principle of Legal Certainty as well as the need for a unique arrangement that discusses or regulates oral agreements, especially arrangements regarding the usual return period for returns in order to guarantee legal certainty and provide a sense of security and comfort for the parties to carry out legal action.

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Legal Protection for Tourists by Doing Law Enforcement on Travel Bureaus That Do Not Have Permit (Illegal) in Bali Province

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ABSTRACT
The provisions of Law Number 11 the Year 2020 on Copyright Work (Omnibus Law) determine that online Travel Bureaus that do not have permits should follow the provisions to apply for business permits to obtain validity / or legality in the tourism business sector. How was the law enforcement for the Travel Bureau that does not have a business license in the Province of Bali, and how are the legal efforts to take action against the Travel Bureau. The research method used in this study is an empirical research method, using the Fact Approach and the statute. Then the data results of research in Bali Provincial Tourism Office by interviewing Mr. I Nyoman Gede Gunadika were then analyzed based on qualitative analysis, which was then presented in a descriptive analysis. This study showed that the implementation of law enforcement against the Travel Bureaus had not been done optimally. Legal action that can be taken against fraud and default in the travel bureau may be subject to administrative sanctions by the provisions of Article 16 paragraph (1) of the Bali Provincial Regulation Number 1 of 2010 concerning Travel and Tourism Services Business in the form of closure of business premises. The fraud that the travel bureau has done may be subject to the provisions of Article 28 paragraph (1) of Law of the Republic of Indonesia No. 11 of 2008 and section 378 of the Penal Code (KUHP). This can be resolved by the provisions of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Keywords: *Illegal, Law Enforcement, Legal Protection, Travel Bureaus, Tourists.*

1. INTRODUCTION

In the 1990 Republic of Indonesia No. 9 on Tourism, all tourism entrepreneurs in carrying out their businesses is obliged to protect the comfort, safety, and security of traveling, in order to optimize the achievement of the tourism objectives. Therefore, it is essential to arrange or regulate tourism in indonesia which is international that does not conflict with the philosophy of pancasila. Recognition of the right to travel as a human right also means applying human rights principles to the right to travel. The principles of human rights in question are the universality principle, human dignity principle, non-discrimination principle, equality principle, indivisibility principle, rights principle that cannot be transferred or taken away or exchanged for certain things, the principle of interdependence, and responsibility principle.[1] recognition of tourism activities as part of human rights (ham) has been regulated in article 26 of the law of the republic of indonesia number 9 of 1990 concerning tourism concerning the obligation of every tourism entrepreneur in carrying out his business to protect the comfort, safety, and security of traveling. As a country based on the law (rechtstaat), the republic of indonesia must carry out its obligations to fulfill human rights by means: respect, protect, and fulfill.*[2]* the travel bureau occupies a critical position in the tourism industry because the travel bureau (bpw) acts as an intermediary between tourism industry companies on the one hand and tourists on the other. the travel bureaus (bpw) that do not have permits to operate in bali province have received complaints from travel bureaus and official travel agents who already have a travel service business permit. [3] Based on these problems, the author is interested in raising this issue in an article entitled “legal protection for tourists by doing law enforcement on travel bureaus that do not have permit (illegal) in bali province.”

2. METHOD

The Empirical Legal method is the method used in this study, another approach model in researching law as

an object of research. In this case, the law is not only seen as a discipline. Prescriptive and applied, but also empirical or legal reality. Empirical Legal Research is research on legal identification and research on legal effectiveness.[4] This study focuses more on studies related to how the implementation of supervision/or law enforcement on Travel Bureaus (BPW) that do not have a business permit (illegal) in Bali Province and what legal remedies can be taken by foreign tourists (overseas) against fraud. The default option by the Travel Bureau is based on the provisions of the laws and regulations that have governed it. The type of writing I am using is the Fact Approach and the Law Approach. The main legal material used in this research are laws and regulations related to the problems, especially the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism. In this study, the data were analyzed based on qualitative analysis, then compiled systematically then processed and compiled in the form of a description as a written paper in the form of a paper and presented in a descriptive analysis to examine the problems in the discussion related to the implementation of the Regional Regulation of Bali Province Number 1 of 2010 concerning Travel and Tourism Services Business in the context of the supervision of online Travel Bureaus (BPW) that do not have a permit (illegal) in Bali Province.[5]

3. RESULT AND DISCUSSION

3.1 Implementation of Supervision/or Law Enforcement on Travel Bureaus That Do not Have Business Permit (Illegal) in Bali Province

Tourism development activities are growing very rapidly, occurring in one of the regencies in Bali Province, namely Badung Regency, thus demanding hard work from the Travel Bureaus (BPW) towards tourists in providing tourism services to prioritize comfort and safety in traveling.[6] Regional Regulation of Bali Province, Number 1 of 2010 concerning Travel and Tourism Services Business, the agency that serves as a supervisor in implementing the Travel Bureau in Bali Province both conventionally and online, is the Bali Provincial Tourism Office. The provisions of Article 3(1) of Law No. 32 of 2004 of the Republic of Indonesia concerning Regional Government stipulates that "Registration of Tourism Businesses is addressed to the Regent or Mayor of the domicile of the office and / sales outlets." The Bali Provincial Tourism Office collaborates with the Association of The Indonesia Tours and Travel Agencies (ASITA) and the Badung Regency Civil Service Police Unit (Satpol PP) to manage online Travel Bureaus not have an operating permit. ASITA is an association of travel agents and travel bureaus whose purpose is to promote and protect the interests of travel companies in general and the interests of members in particular.[7] According to ASITA, if the Travel Bureau does not accept the claims of tourists as service users, then the membership of the Travel Bureau can be revoked by ASITA. As an intermediary between tourism entrepreneurs and tourists, the Travel Bureau (BPW) is responsible for providing products, services, and management according to standards. Based on the existing legal protection theory, the two types of legal protection theory are preventive and repressive. If it is associated with these problems, one of the preventive steps as a form of legal protection is holding certification for the Travel Bureau (BPW) as a tourism services provider. Meanwhile, related to repressive legal protection that can be used to support tourism activities and tourism security, it requires the role of the police, the role of the prosecutor's office, and the role of the court.

In order to provide protection for human rights for tourists when traveling, of course, the State, in this case, supervises the implementation of the Travel Bureau in the Province of Bali both conventionally and online. Law is a human act that is categorized into three things, namely commands, prohibitions and permissions. The discussion that becomes the focus of discussion in legal philosophy is about the nature of law, its purpose, why it exists, and why people must submit to the law. In this case, the essence of the regulations related to the obligation to legalize the Travel Bureau is to protect the human rights of tourists when traveling by specific standards determined in the legislation so that later tourists feel their human rights in carrying out their activities. The tourism sector can be fulfilled.

Meanwhile, when analyzed based on aspects of legal theory, the legal theory used in analyzing the case is the theory of legal protection. This is because the country is obliged to provide legal protection to its citizens, just like in Indonesia, Indonesia has established its legal status in accordance with Article 1(3) of the Constitution of the Republic of Indonesia in 1945 (hereinafter referred to as the Constitution of the Republic of Indonesia in 1945). Notes that "Indonesia is a rule of law." Legal protection is a state of security granted to legal subjects (from someone's arbitrary actions) by means of legal instruments, both preventive and repressive, both written and unwritten. The function of law is to provide justice, order, certainty, benefits, and peace.

This, of course, applies in analyzing problems related to supervision/or law enforcement against travel agents that do not have a business license (illegal) in the Province of Bali. It should always be based on existing legal theory to provide justice, certainty, and benefit for tourists. This also provides legal protection for honest business actors, namely travel agents who already have a (legal) business license. The government should be more assertive in taking a policy or making specific regulations so that business actors, in this case, tourist travel agencies that do not have a business license (illegal), especially in Bali Province, will not repeat their actions and immediately take care of their permits so that their business becomes legal.

Based on the existing legal protection theory, the two legal protection theory types are preventive and

repressive. If it is associated with supervision/or law enforcement problems against travel agencies that do not have a business license (illegal) in the Province of Bali, one of the preventive steps as a form of legal protection is to hold certification for travel agencies as tourism service providers. The purpose of this preventive protection is to focus on being more predictive in making decisions at the discretion of the government, and oppressive protection is to prevent disputes, including judicial treatment.

3.2 Legal Actions That Can Be Taken Against Fraud and Default in Online Travel Bureaus that Do Not Have Permit (Illegal) in Bali Province

Travel Bureau (BPW) as a service provider is a type of business that adheres to trust. The trust of tourists as users of travel services is an essential asset for the progress of a travel service business. The Travel Bureau (BPW) is obliged to supervise travel products that have been carried out so that they are carried out correctly. In dealing with online travel bureaus that do not have an operating permit, they may be subject to administrative sanctions by the provisions of Article 16 paragraph (1) of the Regional Regulation of Bali Province Number 1 of 2010 concerning Travel and Tourism Services Business which stipulates that "Every tour operator operating without The Business Registration Certificate as referred to in Article 8 paragraph (1) shall be subject to administrative sanctions in the form of closing the place of business".[9] Against fraud committed by the Travel Bureau (BPW) operating online, criminal legal action can be taken by Article 28 paragraph (1) of the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions and Article 378 of the Indonesian Law Criminal Code (KUHP) on Fraud.[10] Settlement of problems through alternatives or arbitration is another way to be able to resolve the problem of fraud or default by the online Travel Bureau, it is regulated by the Republic of Indonesia Law No. 30 of 1999 regarding arbitration and alternative dispute resolution, and several solutions have been decided. Disputes, ie: arbitration, consultation, negotiation, mediation, mediation, or expert evaluation.

When analyzed based on the theory of legal responsibility put forward by Hans Kelsen, what is meant by accountability is that a person is is legally responsible or liable for a specific act by his position. Legal responsibility based on default is based on a contractual relationship. A contractual relationship arises because of an agreement or because of the law. The rules regarding contract law in Indonesia are regulated in the Civil Code (KUH Perdata). The third book on engagement means that in this case, the business actors of the Travel Bureau are obliged to be responsible for providing safe, comfortable, and adequate tourism services for tourists, including for tourists. Certify their business.

4. CONCLUSION

Implementing supervision/or law enforcement on travel bureaus that do not have a business permit in the Bali Province cannot be optimally carried out due to the absence of strict regulations regarding procedures for making permits to ratify the online Travel Bureau (BPW). It is carried out concerning preventive legal protection by providing a sense of security, justice, and comfort to tourists according to their primary duties and authorities through its respective institutions. The repressive legal protection that can be used to support tourism activities and tourism security requires the police's role, the role of the prosecutor's office, and the role of the court. Legal actions that can be taken against fraud and default in online travel agencies that do not have a permit (illegal) in Bali Province, the business actor may be subject to administrative sanctions by the provisions of Article 16 paragraph (1) of the Regional Regulation of Bali Province Number 1 of 2010 concerning Travel and Tourism Services Business in the form of closing the place of business. Frauds committed by the Travel Bureau operating online without a permit (illegal) may be subject to the provisions of article 28 of the Law of the Republic of Indonesia No. 11 of 2008 on information and electronic transactions and article 378 of the Criminal Code. The (KUHP) Fraud Code. In a civil context, any dispute that arises may be resolved through arbitration, dispute resolution or alternative dispute resolution in accordance with the Law of the Republic of Indonesia No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

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The Position of the Corruption Eradication Commission in Indonesia's Constitutional Law Perspective

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ABSTRACT
The Corruption Eradication Commission (KPK), as in Law Number 19 of 2019, article 3 reads, "The Corruption Eradication Commission is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power." However, in carrying out its functions, it does not position itself as one of the "three institutions of power" as in the trias politica theory. As a state institution born from the womb of the reform era, there are many mentions of this new type of institution, including auxiliary institutions, sampiran institutions, state auxiliary institutions, or state auxiliary organs. Some call them sampiran state institutions, state aid agencies, or state commissions. But in principle, the Corruption Eradication Commission (KPK) places itself as an independent state institution related to judicial power but is not under the control of the judicial power. The birth of the KPK in a democratic country is a logical consequence of perfect governance by the principle of checks and balances free from extraordinary corruption crimes. The presence of the KPK in order to answer all public anxiety about corrupt practices in the Republic the KPK is believed to be the god of saving state money rather than other state institutions.

Keywords: *Constitutional Law, KPK, State Assistance.*

1. INTRODUCTION

After the Indonesian State became autonomous over seventy years prior, Indonesia has encountered different significant occasions in the field of statehood. The disturbances of the nearby individuals, the shift of holders of government power, to the difference in the essential Law of the State have become an indivisible piece of the historical backdrop of this country since its initiation until the most recent couple of years. Perhaps the most noticeable advancements, according to an established perspective, started when the nation experienced unrest after the money-related emergency that brought about the expelling of President Suharto from influence in 1998. After going through a progress period drove by President B.J. Habibie for around two years, the requests for a superior state organization framework started to be acknowledged by the VIP in this country.

In 1999, it turned into an achievement that made the Indonesian individuals mindful of the possibility of sacralizing the 1945 Constitution of the Republic of Indonesia4. One of the helper state organizations framed during the change time in Indonesia is the Corruption Eradication Commission (KPK) which arose dependent on Law Number 30 of 2002 concerning the Corruption Eradication Commission, which has now been changed to Law Number 19 of 20195. This foundation was shaped like a piece of the defilement annihilation plan, which is possibly the preliminary plan for further developing Indonesia's administration. In this manner, the situation of assistant state establishments in the protected framework received by the Indonesian State is intriguing to examine.

The Corruption Eradication Commission is a State foundation that is autonomous and liberated from the impact of any force in carrying out its obligations and specialists. The KPK was framed fully intent on expanding the proficiency and adequacy of endeavors to kill defilement.

2. RESULT AND DISCUSSION

2.1 Definition of State Institution

The standard term for state organizations is now and again alluded to as government establishments, government offices, departmental hubs, or simply state foundations. Some are shaped dependent on or because the Constitution engages them, some are framed and get their force from the law, and some are even shaped dependent on a Presidential Decree. The chain of command and its situation rely upon the guidelines as per the appropriate laws and guidelines.

The situation of state foundations that are managed and framed by the Constitution are protected organs. At the same time, those shaped dependent on the Act are legitimate organs, while those shaped simply because of a Presidential Decree, obviously, the level and level of lawful treatment of authorities sitting in it. In like manner, If the foundation being referred to is shaped and given force dependent on provincial guidelines, the level is lower.

Since it is a tradition of the old framework, it should be accepted and recognized that in our general public, there is as yet a comprehensive agreement that the idea of state foundations is related to the customary parts of authoritative, chief, and legal force. State establishments are related to the thought of organizations in the domain of authoritative force called administrative foundations. Those in the leader domain are called government establishments, and those in the legal domain are called court establishments.

Accordingly, before the change to the 1945 Constitution, the terms government establishments, departmental foundations, non-departmental government organizations, state organizations, high state organizations, and the most influential state organizations were generally known. In established law, terms are additionally commonly utilized, which allude to a more restricted arrangement, specifically state gear, which is typically connected with the parts of authoritative, leader, and legal power6.

As one of the alterations to the 1945 Constitution of the Republic of Indonesia, there are different translations of the term state foundations because of the absence of lucidity of the 1945 Constitution of the Republic of Indonesia in directing state establishments. This can be seen from the shortfall of measures to decide if an establishment can be managed or not in the Constitution.

One of the various interpretations that exist is the interpretation that divides state institutions into state main organs and state auxiliary organs. The central state institutions refer to the trias politica understanding, which separates power into three axes (executive, legislative, and judicial). Using this mindset, the prominent state institutions according to the 1945 Constitution of the Republic of Indonesia are the MPR, the President and Vice President, the People's Representative Council (DPR), the Regional Representatives Council (DPD), the Supreme Audit Agency (BPK), the Supreme Court. (MA), the Constitutional Court (MK), and the Judicial Commission (KY).

Thus, other institutions that are not included in this category are auxiliary state institutions. After understanding what state institutions are, it is continued by discussing the meaning of auxiliary state institutions and their position in the constitutional system of the Republic of Indonesia7.

2.2 Position of KPK as a State Institution

In the KPK law, that the position of the Corruption Eradication Commission (KPK) is that the Corruption Eradication Commission is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power8. In carrying out its duties and authorities, the Corruption Eradication Commission is based on:

a. legal certainty;
b. openness;
c. accountability;
d. public interest;
e. proportionality; and
f. respect for human rights.9

For this situation, it was likewise accentuated regarding the situation with the presence of a state establishment. The Constitutional Court expressed that in the Indonesian state organization framework, the expression "state foundation" was not generally included as a state organization that was just referenced in the 1945 Constitution of the Republic of Indonesia or shaped dependent on religious orders. Nevertheless, other state organizations are also framed based on orders from guidelines under the Constitution, like laws and surprisingly official pronouncements (Keppres).

The existence and position of the KPK in the structure of the Indonesian State began to be questioned by various parties. The duties, powers, and obligations legitimized by Law Number 19 of 2019 concerning the Corruption Eradication Commission make this commission seem like a super body. As a state organ whose name is not listed in the 1945 Constitution of the Republic of Indonesia10.

The nature of being independent and free from the influence of any power is feared to make this institution absolute power in its scope of work. In addition, the particular authority unifying the functions of investigation, investigation, and prosecution in one organ also strengthens the argument that the existence of the KPK tends to deviate from applicable legal principles and does not rule out the possibility of conflicting with the Constitution.

One of the results of the Amendment to the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution of the Republic of Indonesia) was the shift

of the incomparability of Individuals' Consultative Get together (MPR) to the matchless quality of the Constitution. Subsequently, since the reconstruction time frame, Indonesia no longer places the MPR as the most elevated state establishment. All state organizations have an equivalent situation in the arrangement of balanced governance. This is a result of the incomparability of the Constitution, where the Constitution is situated as the most noteworthy law that controls and restricts the forces of state managerial institutions11.

The improvement of the idea of trias politica likewise impacted changes in the institutional construction in Indonesia. In numerous nations, the old-style idea of partitioning forces is considered unimportant because the three existing elements of force cannot bear the weight of the State in regulating the public authority. To answer these requests, the State shaped another state foundation, which is required to be more responsive in managing genuine state issues. Accordingly, different assistant state organizations were set up as gatherings, commissions, boards, bodies, or specialists, with their obligations and specialists. A few specialists arrange assistant state organizations inside the extent of the leader, yet there are likewise researchers who place them independently as the fourth part of government power.

In the context of Indonesia, the presence of auxiliary state institutions mushroomed after the Amendment to the 1945 Constitution of the Republic of Indonesia. The various auxiliary state institutions were not formed on a uniform legal basis. Some stand on the constitutional mandate, but some are legitimized based on laws or presidential decrees. One of the auxiliary state institutions established by law is the Corruption Eradication Commission (KPK). Even though it is independent and free from any power, the KPK still relies on executive power concerning organizational matters and has a special relationship with judicial power in the prosecution and trial of corruption cases.

In the future, auxiliary state institutions such as the KPK require firmer legal legitimacy and more significant support from the community12.

This institution was also formed as a part of the corruption eradication agenda, one of the essential agendas in improving governance in Indonesia. Thus, the position of auxiliary state institutions in the constitutional system adopted by the Indonesian State is still interesting to discuss13.

2.3 Definition of Auxiliary State Institutions

In carrying out their functions, the emergence of state institutions does not position themselves as one of the three trias politica institutions has developed in the last three decades of the 20th century in countries that have established democracy. The term "auxiliary state institution" is the most commonly used by experts and scholars of constitutional law. Some argue that the term "supporting state institution" or "independent state institution" is more appropriate to refer to this type of institution.

M. Laica Marzuki will, in general, keep up with the term state helper foundations rather than "assistant state establishments" to stay away from disarray with different organizations situated under-protected state establishments. The situation of these establishments is not inside the domain of the chief, administrative, or legal parts of the force. Be that as it may, neither can these establishments be treated as private associations or non-legislative associations, which are regularly called NGOs (non-administrative associations) or NGOs (non-legislative associations).

The birth of these supporting state institutions primarily functions as a supervisor for the performance of existing state institutions and is a form of distrust of the existing supervisory institutions. This is part of the crisis of confidence in all law enforcement institutions, from the Attorney General's Office, the Supreme Court, to the Indonesian National Police. Common symptoms faced by these state institutions are often the issue of accountability mechanisms, their position in the state administrative structure, and the pattern of their working relationship with government power, the power to make laws, and the judiciary.

One of the assisting state institutions is the Corruption Eradication Commission (KPK). This institution was formed as a part of the corruption eradication agenda, one of the essential agendas in reforming governance in Indonesia14. The formation of this commission is a mandate from the provisions of Article 43 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Through Law Number 19 of 2019 concerning the Corruption Eradication Commission, this commission is also legally established and has the legitimacy to carry out its duties. The KPK was formed in response to the ineffectiveness of the police and the prosecutor's office in eradicating rampant corruption. The existence of the KPK is expected to encourage the implementation of good governance15.

From the outset, this state help office looks like an NGO since it is outside the chief government structure. In any case, its public presence, subsidizing sources that come from general society, and focused on the public interest, settle on it challenging to decision it a NGO in the genuine feeling of the word. A few specialists arrange this sort of free establishment inside the extent of leader power. However, a few researchers also place it independently as the fourth part of government power. Hypothetically, state help offices come from the desire of the State to make new state organizations whose individuals are drawn from non-state components, given state authority, and financed by the State without becoming state representatives.

The possibility of a state help office began from the craving of the State, which was already solid when managing the local area, willing to give freedoms to the local area to direct. Along these lines, even though the

State is solid, it is checked by the local area, so upward responsibility and level responsibility are made. The development of assistant state foundations is likewise expected to answer the requests of the local area for the making of majority rule standards in each organization of government through accountable, independent, and trustworthy institutions.

In addition, another factor that triggers the arrangement of helper state organizations is the tendency in contemporary authoritative hypotheses to move administrative and managerial assignments to be essential for the errands of autonomous establishments. Regarding its inclination, John Birch groups this sort of establishment into two, in particular:

(1) administrative, what capacities to make governs and direct private relations exercises; and

(2) warning, what capacities to give information or exhortation to the public authority.

As cited by Alder in Constitutional and Administrative Law, Jennings specifies five fundamental purposes for the foundation of state assistant establishments in an administration. These reasons are as per the following:

1. There is a need to offer social types of assistance and individual administrations that are relied upon to be liberated from the danger of political impedance.
2. There is a longing to direct the market with non-political guidelines.
3. The requirement for guidelines concerning autonomous callings, like the callings in the fields of medication and law.
4. The need to obtain guidelines in regards to administrations of a specialized sort.
5. The rise of different establishments that are semi-legal and the capacity to determine questions outside the court (elective debate goal).16

3. CONCLUSION

Based on the results regarding the Analysis of the Position of the Corruption Eradication Commission In the perspective of constitutional law in Indonesia, it can be concluded that the position of the Corruption Eradication Commission (KPK) is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power related to legal force however not under the ward of the legal executive. For this situation it was additionally accentuated concerning the situation with the presence of a state establishment, the Protected Court stated that in the Indonesian sacred framework, the expression "state foundation" is not constantly included as a state organization which is just referenced in the 1945 Constitution of the Republic of Indonesia, or which shaped dependent on established requests, yet there are likewise other state organizations that are framed based on orders from guidelines under the Constitution, like laws and surprisingly official declarations (Keppres).

The Corruption Eradication Commission (KPK) is explicitly regulated in Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK) as a form of legal politics to eradicate corruption in the country. Thus, the Corruption Eradication Commission (KPK) as a vital corruption eradication institution is not outside the constitutional system but is placed in a judicial system within the state administration system whose basic framework is already in the 1945 Constitution of the Republic of Indonesia.

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Reconceptualization Ideal Model for the Construction of Corporate Social Responsibility in the Context of Realizing Social Justice

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ABSTRACT
The research results show that the model for implementing corporate social responsibility by the conditions of companies in Indonesia is legal responsibility by adopting a tax and capital social approach. In addition, corporate social responsibility reconceptualization is carried out in the context of realizing social justice, including reconceptualization of TJSL Implementation Ideas is carried out with the application of the concept of tax and social capital social, the clarity of the paradigm and the subject of Corporate Social Responsibility/TJSL, namely through the legal paradigm, and the determination of the subject of companies that are subject to corporate Social Responsibility / TJSL obligations, the form of Corporate Social Responsibility/TJSL is limited to two forms, namely environmental impact recovery and other activities, the reconceptualization of the implementation of TJSL, namely carried out by the application of the concept of tax and social capital social, reconceptualization of funding, reporting Transparency publication, namely the company submits a written report on the results of the implementation of TJSL to the TJSL forum in the province or district/city, the reconceptualization of the Duties of the Central Government and Local Governments, namely in the Implementation of TJSL, the Central Government is tasked with accommodating social, environmental responsibility funds, in addition to preparing policies, standards and guidelines in implementing TJSL, while the Regional Government is tasked with compiling a map of the social and environmental impacts of the company's business activities in regions, prepare data on the social and environmental conditions of the community, provide information on the TJSL the program needed by Beneficiaries, carry out monitoring and evaluation and disseminate policies, standards, and guidelines in implementing TJSL; coordinate with the TJSL forum; and give awards to the company for the proposed TJSL forum and the other.

Keywords: *Corporate Social Responsibility, Reconceptualization, Social Justice.*

1. INTRODUCTION

Article 4 of the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 9 of 2020 concerning Corporate Social and Environmental Responsibility is precisely the same as Article 4 of the Minister of Social Affairs Regulation Number 6 of 2016, which regulates the revoked Social Responsibility targets, namely the Goals of Corporate Social and Environmental Responsibility. Business is intended for a person, group, or community who lives not worthy of humanity. Humanly unfit has the following criteria: a. poverty; b. neglect; c. disabilities; d. remoteness; e. social disabilities and behavioral deviations; f. disaster victims; and/or g. victims of violence, exploitation, and discrimination. Companies are forced to commit to giving priority to work opportunities to people with social welfare problems around the company according to the needs and requirements of the Business Entity; b. provide support in the provision of various social facilities for the community, especially people with social welfare problems; c. support environmentally sustainable social development; d. prioritizing local resources in the environment, and e. carry out social empowerment for the environment around the company. It is as if the state is forcing the company to take responsibility, which is its responsibility.

2. DISCUSSION

The legal basis for implementing Corporate Social Responsibility must meet 3 (three) foundations, namely

philosophical, sociological, and juridical. Based on these three foundations, the legal basis for applying Corporate Social Responsibility is complete, obtaining philosophical, sociological, and juridical validity.1

The objectives and functions of the Indonesian state are established explicitly in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. According to Barda Nawawi Arief, when compacted, the objectives and functions of the Indonesian state are to social welfare and social defense. To achieve this, all Indonesians are guided by Pancasila as the Nation's Way of Life. The Indonesian people will not be able to achieve the goals they aspire to without the noble values it upholds as a way of life, namely Pancasila.2

The implementation of the obligation of Corporate Social Responsibility is carried out to realize the state's goals and functions by Pancasila. To explain briefly, that one of the principles in Pancasila is the Indonesian Unity. If this principle alone can be understood, to achieve the country's goals and functions, it would require action from all components of the nation to unite in helping the Government. Corporate Social Responsibility is a concrete form of effort to provide welfare to the community while protecting people in line with the values of the Indonesian Unity. The reality in society is the basis for the need to regulate Corporate Social Responsibility as business ethics. Empirically, Corporate Social Responsibility has a relationship with the community. Thus the existence of companies can be in dialogue with the community and the environment in which the company lives.

The norming of corporate social responsibility in Article 74 of Law 40/2007 has reflected social justice. John Rawls connects the concept of justice with two fundamental values of social order, namely freedom, and equality. Everyone has the same right to the most basic guarantees of freedom. In a society that runs the free market competition, where there are different interests due to socio-economic differences, the policy must prioritize the interests of the least benefited (the slightest advantage). Thus, social inequality does not get more expansive, and it will bring social justice closer. Corporate Social Responsibility can be seen as a means of creating justice while providing justice for future generations.3

To carry out the distribution of state justice must create institutions that are built based on three backgrounds, namely:

a. Just laws and regulations that can guarantee freedom to equal citizenship, freedom of consciousness and non-negotiable freedom of thought, and freedom in politics;
b. Equal and fair opportunities and opportunities in the fields of education, culture by providing subsidies to private schools or through the establishment of public schools, providing equal opportunities and opportunities in economic activity, employment, and preventing monopoly on jobs that are in high demand (desirable position);
c. The government can guarantee a minimum social income and special treatment for the sick by making a subsidy scheme.4

Based on that background, Rawls suggested that the government be divided into four branches: 1. The allocation branch, 2. The stabilization branch, 3. The transfer branch, 4. The distribution branch. The first branch is tasked with maintaining a competitive tariff system to prevent unreasonable market forces.

The second branch is in charge of providing rational employment to needy people based on free choice of employment. The third branch functions to ensure the creation of minimal social needs by providing the services needed. The fourth branch is responsible for maintaining fair tax enforcement and guaranteed ownership rights. This fourth branch institution plays a role in ensuring the realization of the three previous backgrounds.

The meaning and purpose of Pancasila for Indonesia: Divinity, Humanity, Unity, Democracy, and Justice are general and universal characteristics that apply not only to Indonesian people but to people throughout the world. Meanwhile, as a practical guide for Indonesia, Pancasila is collective in general.5 At a practical level, although there have been many views stating that Corporate Social Responsibility activities provide many benefits for both the community and the company itself, many companies have still not implemented It. As a result, the community's contribution from Corporate Social Responsibility has not been maximally felt. Corporate Social Responsibility programs that reflect social justice in reality still have to be seriously fought for, given the many facts that show otherwise, namely the existence of disharmony between the company and the community and between the company and its environment. This disharmony in the relationship between the company and the community and/or the environment is often manifested in the form of various conflicts that we currently encounter in Indonesia. The condition of the environment, which is increasingly worrisome, is one of the reasons for the need for the government to establish regulations that support environmental sustainability by Article 33 of the 1945 Constitution of the Republic of Indonesia. Economic development at the expense of the environment will have a terrible impact. Environmental damage will reduce the benefits of economic growth due to the depletion of natural resources and vulnerability to climate change. Therefore, issues concerning economic development and community welfare should be regulated in Law.

Good economic growth and climate are some things that support the growth and development of a company's

business. So, social responsibility carried out by a company can be said to be an activity that does not just waste funds or costs because there is a profit that will be obtained by the company that runs it. The concept of Corporate Social Responsibility reminds companies that it is not only profit that is pursued, but also must contribute and provide benefits to society (people) and also pay attention to environmental sustainability (planet) or what is called the "3P" concept as suggested by John Elkington.

Based on the description above, the ideal model of Corporate Social Responsibility in the implications of the sustainability of community life in the context of realizing social justice is as follows:

2.1 Reconceptualization of Implementation Ideas TJSL

Taxes are public contributions to the state (which can be imposed) owed by those who are obliged to pay them according to general regulations (laws) with no return of achievement that can be directly appointed and whose use is to finance general expenses related to the state's duties to run the government. According to Rochmat Soemitro, the definition of *tax* is the people's contribution to the state treasury based on the Law (which can be enforced) without receiving lead services (counter-achievement) which can be directly demonstrated and used to pay for general expenses. 8

The government, as the central facilitator, will later connect the TJSL forum with companies. Indonesia is a country that prioritizes deliberation to reach consensus, so the preparation of a budget allocation plan is also carried out through deliberation, where later the steps to operationalize the Corporate Social Responsibility/TJSL fund can be realized either in environmental impact recovery activities or other objectives.

Funding for Corporate Social Responsibility using this mechanism is known as social capital. As a sociological concept, social capital is an approach that is increasingly being used in overcoming poverty in many countries, including Indonesia. Starting from this thought, this paper will describe the notion of the concept of social capital and how this concept has been applied in various efforts to improve the welfare of society.

2.2 Harmonization of Corporate Social Responsibility Regulations with the Concept of Social Justice based on Tax and Capital social

Based on the concept of social justice based on tax and capital social, the Government as the central facilitator, will later connect the TJSL forum with companies. The income of corporate social responsibility funds will later be managed by the Government and channeled to the Corporate Social Responsibility.

Forum/TJSL to be distributed to the community or even used as a recovery for environmental impacts resulting from company operations. This concept will later become a blueprint and can be applied simultaneously in each region by changing the social responsibility regulations that have been regulated and implemented so far.

2.3 Clarity of Paradigm and the subject of Corporate Social Responsibility/TJSL

Corporate Social Responsibility is not just voluntary (voluntary) but is a legal obligation. The relationship between morals and ethics with Law is gradual, where Law is the formalization or legalization of moral values. In this connection, moral and ethical values accepted voluntarily (voluntary) and considered essential can be changed gradually into Law or legislation to make it more binding.

Corporate Social Responsibility, which was initially a moral, ethical, and voluntary (voluntary) provision, was later used as content material in the Law; this is solely so that the provisions of Corporate Social Responsibility (Corporate Social Responsibility) become a legal obligation, which is obeyed. The TJSL regulation with legal obligations has more legal certainty when compared to voluntary corporate social responsibility, so the built paradigm is solely the legal paradigm for social justice.

The Corporate Social Responsibility Program / TJSL is part of the obligations and social care for every large and small scale company, so it is appropriate to make company categorization rules that oblige Corporate Social Responsibility. This is also to avoid misperceptions about companies that are obliged to carry out responsibility Corporate Social.

Categories can be defined based on the primary type of activity, namely activities related to using natural resources. In addition, categorization can also be carried out based on the size of the investment or the form of the company. In this case, it is aimed at companies that have significant and medium SIUP. With the categorization of companies, it is expected to regulate the categories of companies that carry out Corporate Social Responsibility / TJSL because if you pay attention to the PT Law No. 40 of 2007, actually almost all forms of business are required to implement TJSL from the service sector to manufacturing, as well as need to scale (range) based on the company's ability to carry out Corporate Social Responsibility.

2.4 Forms of Corporate Social Responsibility/TJSL

TJSL must be a shared need between the government, society, and companies based on the principle of mutual benefit (partnership). Not solely based on charity but more on the development of the community in a sustainable manner. Corporate Social Responsibility has positive implications for improving community welfare, reducing the burden on government financing and development, strengthening corporate investment, and

strengthening partnership networks between communities, government, and companies.

The form of Corporate Social Responsibility/TJSL with the capital social and tax approach, which the author means, can be defined into two forms, namely environmental impact recovery and other activities. Environmental impact recovery includes floods, landslides, water pollution, sea pollution, air pollution, reforestation of forests, and bioremediation. Other activities include educational activities, skills, employment, community welfare, supporting community events, and building community infrastructure.

2.5 Funding Reconceptualization

Corporate Social Responsibility can be a competitive advantage and not a burden. If a company can manage the environment well and build community relations in harmony, it will foster a good image. If the image is good, the product is loved by consumers, so that, in turn, it will increase productivity and multiple profits.

Corporate Social Responsibility is essential not only because society is increasingly critical but also in line with Law Number 40 of 2007 concerning Limited Liability Companies, Article 47, that Corporate Social Responsibility must be carried out by companies that run their business related to natural resources. Based on this Law, the Minister of State-Owned Enterprises (BUMN) issued Decree Number 9 of 2015, which stipulates that companies under BUMN must allocate a maximum of 4% of Corporate Social Responsibility funds of gross profit.

To support TJSL activities, regulations regarding funding are required. Social responsibility should be directed so that CSR funds are calculated as costs and budgeted in the company's work plan and budget. The budgeting and calculation of TJSL funds are carried out with due observance of appropriateness and fairness as determined by the decision-making mechanism of the company concerned. Meanwhile, the accountability for the use of TJSL funds is carried out through the company's decision-making mechanism.

2.6 Reporting Transparency Publications

Supervision and Imposing Sanctions The weakness of the current model for implementing Corporate Social Responsibility in Indonesia is the absence of supervision. The Law only requires accountability through an annual report submitted to the GMS. The Investment Law mandates administrative sanctions. However, the Capital Investment Law does not regulate the measuring instrument. Therefore, the government must be present to cover these weaknesses. His first attendance was to actively supervise the implementation of Corporate Social Responsibility, preceded by setting clear standards. Second, the government must have the courage to apply the sanctions in the Capital Investment Law.

The company submits a report on the implementation of TJSL in writing to the TJSL forum in the province or district/city. The submission of reports on the results of the implementation of TJSL contains at least:

1) Targets achieved in the implementation of TJSL;
2) The number of TJSL beneficiaries; and
3) Realization of the TJSL implementation budget.

2.7 Reconceptualization of Central Government and Local Government Duties

The answer lies in the awareness and conscience of the officials, especially as individuals. The reason is apparent: officials' various decisions in the public domain cannot be separated from their conscience as human beings who have social relations with other humans. Developing a caring relationship regarding the lives of others is an aspect that should not be abandoned and left just like that. The concern is what develops responsibility to others, more so if the individual is an official. Because no one cares about others, no one should be allowed to feel the injustice in the existing systems and procedures. Instead, he focused on rechtsidee, namely justice. As pointed out by Aristotle, Justice as a mind cannot say anything other than: "the same is treated equally, and the unequal are treated unequally." To fill this ideal of justice with factual content, one has to look at the aspect of its finality. Moreover, to complete justice and finality, certainty is needed. So for Radbruch, Law has three aspects, namely justice, finality, and certainty.9

The aspect of justice refers to "equal rights before the law." The aspect of finality points to the goal of justice, which is to promote goodness in human life. This aspect determines the content of the Law. While certainty refers to the guarantee that Law (which contains justice and norms that promote goodness) functions as a rule obeyed. It can be said that the first two aspects are the ideal framework of Law. Meanwhile, the third aspect (certainty) is the legal, operational framework.

2.8 Reconceptualization TJSL Forum

Corporate Social Responsibility must contribute to improving the welfare of the community. For the SCR program to be more focused, it must actively involve the community's participation. The concept of community development itself has an empowerment goal. The community development process invites the community to participate in developing.

In implementing Corporate Social Responsibility, companies must stay away from the model of merely assisting. Corporate Social Responsibility Funds provided to the community must be prepared together and implemented because the community knows and understands their needs best. This is called the concept of Community Development, which invites and embraces all communities to work together and participate fully in community development and development through the Corporate Social Responsibility program. The target of

this involvement is that the community becomes more independent, the mapping of problems is more explicit, the programming is more focused.

At this time, Corporate Social Responsibility can be considered as a future investment for the company. The interest of capital owners in investing in companies that have implemented Corporate Social Responsibility is more significant than those that do not implement Corporate Social Responsibility. Effective communication can be built through the Corporate Social Responsibility program and a harmonious relationship between the company and the community.

To implement TJSL activities to be effective, efficient, and right on target, it is necessary to establish a TJSL Forum facilitated by local governments by their respective authorities. The TJSL forum is a coordinative forum for the effectiveness, efficiency, and accuracy of targeting the implementation of TJSL.

The TJSL forum consists of representatives from companies or company associations. Meanwhile, the operational costs for the TJSL forum come from company fees.TJSL forums were formed in provinces and districts/cities. In relation to the TJSL Forum in districts/cities, it will only be formed for companies whose operational areas are located within the district/city. Meanwhile, the TJSL Forum in the provinces will be formed if companies whose operational areas are located across districts/cities. The TJSL forum can hold regular meetings for:

1) Synergize the TJSL program between companies;
2) Developing the TJSL program;
3) Reporting the implementation of the Company's CSRR to the Regional Government;
4) Provide recommendations to the Regional Government for awarding; an
5) Report the implementation of activities to the Regional Government.

2.9 Reconceptualization of Awards

The Regional Government will give companies that have implemented TJSL well an award in an award certificate. The award in the form of a charter was given based on a recommendation from the TJSL Forum. The compensation that the government can provide can also be in the form of:

a. Withholding tax, tax reduction, or even tax amnesty, which can be included in the formulation of the Tax Amnesty Law;
b. Providing awards for the company's appreciation and actions in carrying out Corporate Social Responsibility;
c. Provide easy access to loans and various other forms of compensation.

2.10 Punishment Reconceptualization

Law is a norm that regulates people's life. The existence of Law, long before it entered the era of positivism, along with the development of human civilization, is believed to be a means of solving concrete problems in society. Justice is an essential factor for a reason for the existence of law enforcement. The purpose of Law is to bring about justice, and for that, law enforcement is needed.

Based on this, it is necessary to provide administrative sanctions for companies that do not implement TJSL to be subject to administrative sanctions in the form of:

1) Written warning;
2) Restrictions on business activities;
3) Suspension of business activities/temporary suspension of business licenses; or
4) Revocation of business license

3. CONCLUSION

The model for implementing corporate social responsibility by the conditions of companies in Indonesia is legal responsibility by adopting a tax and capital social approach. In addition, corporate social responsibility reconceptualization is carried out in the context of realizing social justice, including:

1. Reconceptualization of TJSL Implementation Ideas is carried out with the application of the concept of tax and social capital social
2. The clarity of the Paradigm and the subject of Corporate Social Responsibility/TJSL, namely through the legal paradigm, and the determination of companies subject to corporate Social Responsibility/TJSL obligations.
3. The form of Corporate Social Responsibility/TJSL is limited to two forms, namely environmental impact recovery and other activities
4. Reconceptualization of the implementation of TJSL, namely carried out by applying the concept of tax and social capital social.
5. Reconceptualization of Funding, namely TJSL funding, is calculated as a cost and budgeted in the company's work plan and budget
6. Reporting Transparency publication, namely, the company submits a written report on the implementation of TJSL to the TJSL forum in the province or district/city.
7. Reconceptualization of the Duties of the Central Government and Local Governments, namely in the Implementation of TJSL, the Central Government is tasked with accommodating social, environmental responsibility funds and preparing policies, standards, and guidelines in implementing TJSL. In contrast, the Regional Government is tasked with compiling a map of the social and environmental impacts of the

company's business activities in regions, prepare data on the social and environmental conditions of the community, provide information on the TJSL program needed by Beneficiaries, carry out monitoring and evaluation and disseminate policies, standards, and guidelines in implementing TJSL; coordinate with the TJSL forum; and give awards to the company for the proposed TJSL forum.

8. Reconceptualization of the TJSL Forum, namely that the implementation of TJSL activities is effective, efficient, and right on target, it is necessary to establish a TJSL Forum facilitated by local governments in accordance with their respective authorities
9. Reconceptualization of awards, namely compensation that can be provided by the government, including tax cuts, tax deductions, or even tax amnesty, which can be included in the formulation of the Tax Amnesty Law, awards for company appreciation, and actions in carrying out corporate social responsibility and ease of access to loans and various kinds. Other forms of compensation.
10. Reconceptualization of administrative sanctions in the form of written warnings, restrictions on business activities, freezing of business activities/temporary suspension of business licenses, or revocation of business license.

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Personal Data Protection Related to Operation of Unmanned Aircraft (Drone) in Indonesia

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ABSTRACT
The development of transportation technology at this time is unmanned transportation technology. One of the most popular unmanned technologies is the Unmanned Aerial Vehicle (UAV), more popularly known as the drone. The use of drones is ubiquitous and is used by various groups, both the government and the wider community. However, in practice, various problems can harm the community, one of which is violating the right to privacy. The research method used in this study is descriptive legal research, which explains the aspects of personal data protection in the operation of drones in Indonesia. Concerning this issue, the government has issued a legal instrument that regulates the operation of drones in Indonesia. However, the regulation on the operation of drones is still not sufficient to accommodate the community's interests, especially those that protect against violations of privacy rights.

Keywords: *Drone, Privacy, Personal Data Protection.*

1. INTRODUCTION

The era of globalization has placed technology and information in a strategic position where it also affects people's daily lives. The development itself describes human life in this era of globalization. Naturally, humans tend to desire to have a good and decent life, so the idea arises that humans must make changes to get a decent life. Human life currently is in the era of the use of very sophisticated technology. If humans only thought about how to survive in ancient times, now with changing times and technological developments, these thoughts have developed, and there is a desire to plan for life in the future.

Humans make discoveries that aim to penetrate the existing space in the world, one of which is by creating various technologies in the field of transportation that can facilitate the movement of people from one place to another. Suppose in the past, humans with conventional conveyance had to travel long distances and time, now with the development of technology in transportation. In that case, humans can move from one place to another in a relatively fast time. One of the most widely used types of transportation is air transportation. Airfreight is considered fast and efficient. In addition, air transportation has the characteristics; able to reach the destination quickly, use high technology, know no national borders, and have a higher level of security and safety than other types of transportation.[1]

The faster the development of technology, the newer discoveries are found to support human needs. The direction of the development of transportation technology is transportation technology without using a controlling crew, such as an autonomous vehicle and the most popular today, an unmanned aerial vehicle (UAV), which is more popularly known as a drone. The use of drones is rife and used by various groups, both the government and the wider community. The government uses drones for various purposes, especially in the military, to carry out reconnaissance and missions in dangerous areas. However, at this time, the use of drones is not only for military activities, but the wider community also uses them because drones themselves are relatively easy to obtain and freely sell in the market. In terms of community use, drones are used, among others, for shooting, filming, and other activities.

Drones can be categorized as air transportation, but in Law no. 1 of 2009 concerning Aviation which regulates Air Transportation, no provisions govern drones. Regulations regarding drones are regulated in the Minister of Transportation Regulation No. 180 of 2016 concerning Control of Unmanned Aircraft Operations in Indonesian Airspace. One of its provisions prohibits drones in Prohibited Air Areas, Restricted Air Areas, and Aviation Operation Safety Areas of an Airport. Although it has been regulated regarding the prohibition of the use of drones in certain areas, drones that have a remote pilot system can harm third parties and violate one's privacy.

Drones have cameras and voice recorders that can be used to take pictures and record motion pictures. This capability can potentially invade privacy if image capture and recording are not authorized by the person concerned.

Regulation of drones, specifically in Indonesia, is needed considering the widespread use of drones mainly by civil society. Drones are not officially controlled under In-Law Number 1 of 2009 regulating Aviation. As a result, there is no clarity about the status of drones. If drones are considered aircraft, they must have the same credentials as planes, such as airworthiness certificates, nationality certificates, and so forth. In addition, neither the Law Number 1 of 2009 concerning Aviation nor the Minister of Transportation's Regulations Number 180 of 2015 nor the Minister of Transportation's Regulations Number 47 of 2016 clearly restrict the obligation of drone operators to third parties. Furthermore, if there is a violation of privacy in drone use, what should the victim do? Or what is the operator's responsibility for privacy violations? The lack of clarity regarding the drone operator's responsibility system has not yet been regulated. Of course, it will create legal uncertainty. Therefore, with the great potential for privacy violations, according to the author, it is vital to debate drone operators' liability to third parties.

2. METHOD

Peter Mahmud Marzuki said “Legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced”.[2] Therefore, the research type used is normative juridical research, which has a descriptive nature, which explains the aspects of personal data protection in the operation of drones in Indonesia.

3. RESULT AND DISCUSSION

3.1 Study Regarding Drones

Drones are unmanned aircraft that can be controlled remotely. Drones have an aircraft control system that relies on an outside pilot (a computer system programmed to manage the drone).[3] Drones are equipped with cameras, specific sensors, communication equipment, and several other technologies that make them useful for various purposes, including taking pictures.[4] In various parts of the world, drones are used by members of the military who are used for various purposes, one of which is shooting enemy territory, conflict areas, or spying on the enemy. Meanwhile, drones may be used for remote mapping, volcano monitoring, traffic monitoring, and civilian shooting in post-disaster situations.

Drones offer significant benefits over conventional military aircraft technology in carrying out military missions. Various activities, such as reconnaissance, seeking suspected terrorists, carrying out operations in difficult locations, conducting normal military patrols, and supporting police, may all be completed accurately and promptly. Drones are more commonly utilized as military instruments in practice. Drones are widely used in the military because they provide a lesser risk of carrying out risky missions, have a high degree of efficiency, and have cheaper production costs than human aircraft. These benefits have led to drones being widely employed and developed in a variety of countries. Drones, on the other hand, are now employed for military objectives including shooting. Drones are now employed for military objectives, as well as shooting, filmmaking, and other activities.

3.2 Review of Privacy

Warren and Brandheis, in a Harvard University law journal article titled "The Right to Privacy," were the first to develop the notion of privacy. [5] According to the essay, technological advancements have increased public awareness of the right to enjoy life. According to Warren and Brandheis, with the advent and development of technology, there has been a general understanding that a person's right to enjoy life has been recognized. The right to enjoy life is described as a person's right to be free from interference in his or her personal life, whether by other individuals or the government. As a result, the right to privacy must be recognized and protected by the law.

This right states that a person has the right not to be bothered in his private life by others or the government. As a result, the government must control and acknowledge this. There are reasons why privacy must be protected. First, in interacting with other individuals, an individual must cover his personal life to protect his position in certain circumstances. Second, there is the time one needs to be alone (solitude), which of course, requires privacy. Third, because privacy is a right that exists independently of other rights, it will be violated if someone discloses personal information to the public. Fourth, privacy also includes a person's right to have domestic relations, including how a person maintains a marital relationship, raises his family, which is not a public assumption, and other people should not know these things, this right by Warren identified as the right against the world. Fifth, if this right is violated, it will be difficult to judge where the loss lies because a person's personal life has been disturbed; of course, the victim needs to receive compensation for the loss he has suffered.[6]

In the case of taking pictures through the camera, images can occur in the form of people and/or other objects. If the image is a person, we refer to Law Number 28 of 2014 concerning Copyright (UUHC), especially Article 12 to Article 15, which regulates economic rights to portraits. Article 12 paragraph (1) and paragraph (2) of the Copyright Law states that:

a) Without the express agreement of the person being photographed or their heirs, commercial duplicating, publicizing, distributing, and/or transmitting

photographs taken for commercial ads or advertising is banned.

b) Portraits may be used commercially, reproduced, announced, distributed, and/or communicated as referred to in paragraph (1) containing portraits of 2 (two) or more persons must seek approval from the persons in the Portraits or their heirs.

3.3 Rules regarding Privacy Rights

Taking pictures through drones has created problems, especially with constitutional rights such as privacy. In the United States, there have been various cases of using drones that violate privacy, one of which is the case of taking pictures near a hospital. As a result, the operator was fined $85.

Regulations regarding privacy rights themselves have been regulated by various countries, including Britain, Germany, and America. In the United Kingdom, the right to privacy is regulated in the Data Protection Act 2018. According to this law, personal data must be processed fairly and have the valid consent of the person concerned. According to this law, operators must consider the privacy impact of the people recorded in the UAV data before carrying out operations. Furthermore, the operation of the UAV must be fit for purpose and inform the subject that they are being recorded. However, these arrangements only apply to commercial uses.

In Germany, arrangements regarding personal data protection can be found in the Act concerning Copyright in Visual Arts and Photography. According to this law, recorded images may be distributed without permission, provided they depict a public event, parade, or similar event.[7] In addition, images taken from civilian UAVs are not allowed to infringe on the image rights of others.[8]

In the United States, privacy rights in data regulations can be explicitly found in the FAA Small UAS Rule. According to this regulation, the UAV cannot be operated on any person who is not directly involved in the flight of the UAV unless these people are in a protected or closed place. In addition, if the purpose of operating the UAV is known to violate privacy matters, a warrant from the authorized official to carry out the operation of the UAV is required.

3.4 Legal Aspects of Unmanned Aircraft Based on International Law and National Law

Drone operation is not specifically regulated under the Chicago Convention of 1944. The Convention simply clarifies the categorization of aircraft, which is divided into civil and military aircraft. This Convention also exclusively governs civilian aircraft's usage of the air. [9] So that there are no provisions regarding the use of air by state aircraft causes the rules regarding state aircraft to be determined by the laws and regulations in each country and the safety of civil aviation must be prioritized. As a result, the Chicago Convention's signatory nations must enact rules and regulations that coordinate the operations of civil aircraft and the state in order to maintain flight safety.

Talking about the legal aspects of drones, it is very influential from the classification of drones themselves. If it is classed as a state aircraft, it is exempt from the Chicago Convention's restrictions. However, if it is classified as a civil aircraft, it must comply with the Chicago Convention. Consequently, it must fulfill several essential elements that fall within the scope of the Chicago Convention itself, such as drone design, registration mark, ownership, and type of operation. In terms of drone operation, specific requirements have been set by the Convention in terms of safety. One of the requirements is aircraft registration because the primary function of aircraft registration is to determine the aircraft's nationality, considering that drone operations, mainly in the military field, can cover areas between countries. Another requirement that must be met is related to airworthiness, in accordance with Article 31 of the Chicago Convention, which states, "Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.".

Meanwhile, the Minister of Transportation Regulation No. 180 of 2016 on Control of Unmanned Aircraft Operations in Indonesian Airspace addressed national legal issues in Indonesia. The rule governs the standards, regulations, and permissions for the operating of unmanned aircraft, among other things. A drone is defined in this regulation as a flying vehicle that can be controlled remotely by the operator (pilot) or can control itself using aerodynamic rules. This regulation also prohibits drones in Restricted Air Areas, Restricted Air Areas, and Aviation Operation Safety Areas of an Airport.

3.5 Rights to Privacy

The capacity of unmanned aerial vehicles (UAVs) to fly at certain altitudes without being seen or identified by the human eye frequently infringes on a person's right to privacy. Privacy is a fundamental human right that is protected by international and state law, and it is one of the most basic human rights that must be preserved. The state is obligated to defend its people' private rights.

Warren and Brandheis, in a Harvard University law journal article titled "The Right to Privacy," were the first to develop the notion of privacy. [10] According to the essay, technological advancements have increased public awareness of the right to enjoy life. According to Warren and Brandheis, with the advent and development of technology, there has been a general understanding that a person's right to enjoy life has been recognized. The right to enjoy life is described as a person's right to be free from interference in his or her personal life, whether by other individuals or the government. As a result, the right to privacy must be recognized and protected by the law.

This right states that a person has the right not to be bothered in his private life by others or the government.

As a result, the government must control and acknowledge this. There are reasons why privacy must be protected. First, in interacting with other individuals, an individual must cover his personal life to protect his position in certain circumstances. Second, there is the time one needs to be alone (solitude), which of course, requires privacy. Third, because privacy is a right that exists independently of other rights, it will be violated if someone discloses personal information to the public. Fourth, privacy encompasses a person's right to establish domestic ties, such as maintaining a marriage and raising a family, which is not assumed by the general public. Other people should not know these things. This right by Warren was identified as the right against the world. Fifth, if this right is violated, it will be difficult to judge where the loss is because a person's personal life has been disturbed. Of course, the victim needs to receive compensation as compensation for the loss he has suffered.[11]

In Indonesia, cases of violation of the right to privacy have not occurred, but that does not mean that the protection of one's right to privacy is not protected. If someone feels disturbed by the operation of the UAV in the surrounding environment, then that person can sue based on the legal grounds mentioned above. Based on Cooley's scope of privacy, the operation of a UAV may violate the right to privacy if it results in the following:

a) The passing UAV has given a threat so that it creates a feeling of insecurity, discomfort, and insecurity, both for himself and his family.

b) The operator or owner of the UAV takes pictures or records someone's activities without that party's permission.

c) The data generated by the UAV is distributed without the permission of the people in it.

d) The data has the potential to damage the reputation of the parties contained in it.

e) The data contains matters that are confidential for the aggrieved party.

3.6 Responsibilities of Drone Operators Against Privacy Breach

When it comes to responsibility, there are three theories: the theory of responsibility based on the element of error (fault liability theory), the theory of responsibility based on presumptions (presumption of liability theory), and the theory of absolute responsibility (strict liability theory).

In the event of a risk of invasion of privacy in the operation of the drone, the theory of responsibility that can be used is absolute responsibility. This principle focuses not on the fault. The drone operator must be responsible for any losses it causes without having to be proven guilty first. According to this principle, drone operators cannot be free from liability for any reason regarding the occurrence of losses. This principle can be formulated with the sentence: the carrier is responsible for any losses that arise due to any event in the operation of the drone. This is regulated in Article 1365 of the Civil Code concerning illegal acts generally. Violation of privacy rights by drones can be subject to criminal sanctions based on article 167 paragraph (1) of the Criminal Code and be sued civilly based on article 1356.

4. CONCLUSION

Based on the analysis that has been submitted previously, the authors put forward the conclusions in this paper as follows:

1. The Minister of Transportation No. 180 of 2016 about Control of Unmanned Aircraft Operations in Indonesian Airspace reflects unmanned aircraft regulations. The rule governs the standards, regulations, and permissions for the operating of unmanned aircraft, among other things. The current regulations regarding the operation of UAVs are not sufficient because the content is only limited to air space usage limits, permits, and permit requirements. The provisions in the Regulation of the Minister of Transportation are only limited to setting altitude limits. Moreover, protected areas are only national strategic areas, but how low a UAV can pass in one's private area has not been regulated.

2. Considering the practice of other countries such as the United States, England, and Germany, other relevant laws and regulations can apply and serve as a legal basis to avoid a legal vacuum. Through the integration of existing UAV regulations with other related regulations, it can be in the form of new regulations.

3. In the event of a risk of invasion of privacy in the operation of the drone. The drone operator must be responsible for any losses it causes without having to be proven guilty first. Violation of privacy rights by drones can be subject to criminal sanctions based on article 167 paragraph (1) of the Criminal Code and be sued civilly based on article 1356.

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Legal Protection for Bali Tourism Amid the Covid-19 Pandemic

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ABSTRACT
Tourism is a global business. Its development is directly proportional to the development of the world's economic capacity. Article 1 Paragraph 3 of Law Number 10 the Year 2009 concerning Tourism defines tourism as various activities. It is supported by various facilities and services provided by the community, business actors, government, and local governments. The role of tourism is quite strategic in the economic growth of a country. Especially in the province of Bali, tourism is a sector that contributes quite a lot of foreign exchange to the country, absorbs many workers, and reduces unemployment. By Article 5 of Law Number 10 of 2009 concerning Tourism, tourism necessarily needs to be organized by the principles used to regulate them. If the tourism business is run according to these principles, the functions and objectives of tourism by Articles 3 and 4 of Law No. 10 of 2009 will be achieved. This study aims to obtain and present information on legal protection measures that the Government has provided to micro, small and medium enterprises in the field of tourism services. The approach or method chosen is the normative-empirical research method. The results with the discussions how the governments do it as fast as possible is proof that the governments are present in every event. Regulations are used as stimulants such as in taxations, authorized to aid the entrepreneurs and those who moved in tourism. That stimulant was made to intensify the workers and the entrepreneurs in tourism that gave aid on tax payment in income tax and increased value tax.
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Keywords: *Foreign Exchange, Tourism, Tourism Objective.*

1. INTRODUCTION

The tourism business is a source of foreign exchange for the country. Therefore, the tourism business should be appropriately managed by relying on the charm of tourist objects, infrastructure readiness, community friendliness, natural support, in a multidimensional perspective, and protection and legal certainty [1].

For the Province of Bali, which is bestowed with unique nature and culture, the tourism business holds an essential key in development that brings prosperity and prosperity because the tourism business is proven to be able to encourage the development of the people's economy and reduce the number of unemployed by absorbing a large number of workers. Unfortunately, the Covid-19 pandemic has had a significant impact on the world's tourism business, and the island of Bali is no exception. The Covid-19 pandemic has forced restrictions on community mobility and the closure of activities at various tourism business spots, entertainment, and recreational objects. People prefer to stay at home, while restaurants, restaurants, hotels, and various tourism-supporting businesses are the dearth of visitors. The pressure on economic growth began to be felt, and the contribution of foreign exchange from the tourism business, which was previously significant, slowly declined. Bali had been relying on tourism as the largest source of income, has felt the impact of Covid-19.

The impact of the decline in tourist visits, both international and domestic, on the tourism business in the country is enormous. Revenues from this sector continue to decline; many workers are forced to be laid off, and entrepreneurs in the tourism sector are screaming - they are waiting for government action to mitigate tourism problems. According to data from the Indonesian Ministry of Tourism, employment in 2019 reached 13 million people. The number increased by 3.17 percent compared to the years before 2020. Since the Covid-19 pandemic entered Indonesia on March 2, 2020 (officially delivered by the President of Indonesia), the tourism business has slowly begun to be affected. As a result, employment in the sector is slowly starting to decrease.

On March 18, 2020, the Ministry of Law and Human Rights of the Republic of Indonesia issued Regulation of

the Ministry of Law and Human Rights Number 8 of 2020 concerning Temporary Suspension of Visa-Free Visits on Arrival and Granting of Stay Permits in Forced Conditions. Then, the Government issued Regulation of the Ministry of Law and Human Rights Number 11 of 2020 concerning the temporary prohibition for foreigners to enter or transit in the territory of the Unitary State of the Republic of Indonesia, which came into force on April 2, 2020. The tourism business was hit hard even though the government had enlightened the prohibition with a Regulation of the Ministery of Law and Human Rights Number 26 of 2020. From the descriptions on the previous page, a problem needing to be investigated further arises, namely, "What is the legal protection for the tourism business in dealing with the impact of the Covid-19 pandemic?".

2. METHOD

Research is conducted to find the absolute truth of a problem under study. To discover the answers to the questions formulated for the present research, it was conducted by employing a normative-empirical legal research method, which is translated into a term of legal research equipped with empirical data [1]. The author used qualitative data in the form of written data, letters and numbers sourced from the literature, research results, and dissertations containing information, especially those directly related to the problems examined in this study. The data used in this study are in the form of legislation as primary legal material and previous scientific studies collected from journals as secondary legal material.

3. RESULT AND DISCUSSION

The tourism business is global, and each country globally is a tourist attraction that is its mainstay. For Indonesia, Bali is one of the internationally known tourist destinations. The island can be regarded as an indicator to measure the development of Indonesia's tourism business. It is undeniable that the Bali tourism business has a substantial contribution to the Indonesian economy. The existence of Bali tourism is highly dependent on foreign tourist visits. The level of tourist visits to Bali continues to show an encouraging increase. According to Antonius Purwanto, Bali has been visited by domestic and foreign tourists with an average increase of 15% every year, or around 800,000 tourists. In 2017 alone, the number of tourist visits to Bali reached 8.2 people [6]. This condition has changed since the beginning of 2019 when the Covid-19 pandemic hit Indonesia, which caused all businesses, including the tourism business, slowly.

Covid-19, which is a global epidemic, has had a devastating impact. Starting from China, the Covid-19 virus spread very quickly to all countries in the world, including Indonesia. The tourism business is under pressure; tourist visits, both domestic and foreign, are slowly but surely decreasing. The decline in domestic tourist visits occurs because people feel unsafe to travel. Likewise, with foreign tourist visits, they cancel their visits to tourist destinations on a large scale. As a result, tourism businesses and the supporting sectors of tourism are stuck. Many workers were forced to be laid off, and few were forced to be terminated because the companies were no longer able to pay salaries.

The Covid-19 pandemic has hit the world's tourism business, as well as Bali tourism. Tourism actors are squealing, including hotels, restaurants, recreation, and entertainment areas empty of visitors.

The Bali Province Central Statistics Agency recorded that the foreign exchange earnings of Bali's tourism sector decreased by 82% year on year (YoY) in 2020, which is now US$0.73 million from the previous year's US$2,618 million [7]. The data from the Central Statistics Agency also shows that national economic growth in the second quarter of 2020 contracted by -5.32% (the lowest decline since 1999), while Bali's growth rate in the second quarter of 2020 fell drastically 10.98% year on year (YoY). Visit of foreign tourists visiting the country in early 2020 has decreased. During January 2020, foreign tourist visits reached 1.27 million times. The number decreased by 7.62% compared to the number of foreign tourist visits in December 2019, 1.37 million visits. The total number of foreign tourist visits to Bali throughout 2020 is 1,050,060 visits. The number shows a decrease of 54.47% from the same period in the previous year. Throughout 2020, Australia became the country that visited Bali the most, with 222,359 visits [8]. The absorption of labor in the tourism sector in 2020 also shows the same fact. Based on data from the Bali Province Manpower Service, as conveyed by Ida Bagus Ngurah Arda, Head of the Bali Province Manpower Service, it was stated that 800 workers were terminated and 46,000 other workers were laid off [9].

Considering the condition, the government is present by launching various aid programs; the expectation is that the assistance can provide an injection for business sectors, including tourism businesses. Entrepreneurs in the tourism sector who are still classified as micro, small and medium enterprises are dispensing in paying taxes. The income tax for employees/employees is borne by the government to increase purchasing power. Entrepreneurs outside of micro, small and medium enterprises are also given relief in their monthly tax payment obligations.

Law Number 10 of 2009 concerning Tourism mandates "Tourism is an integral part of national development which is carried out in a systematic, planned, integrated, sustainable and responsible manner while still protecting religious values, the culture that lives in society, environmental sustainability and quality, as well as the national interest since tourism development is needed to encourage the equal distribution of business opportunities and gain benefits and be able to face the challenges of changing local, national and global life."

Previous research conducted by Subrada at Triatma Mulya University published in the Journal of bal Studies examined cultural tourism and the Covid-19 pandemic. With the topic in mind, the study examines government

policies and the reactions of the Balinese people to the impact of the pandemic. In essence, the study examines the adverse effects of the Covid-19 pandemic on Bali tourism. Likewise, with the research conducted by Puspitadelia entitled "Perlindungan Hukum Bagi Wisatawan di masa Pandemi Covid-19 ditinjau dari Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen", the study examines the Covid-19 pandemic, which has an impact on many industrial sectors in Indonesia - especially the tourism sector which has been one of the supporters of the progress of the Indonesian economy. The study focuses more on the protection provided to tourists as connoisseurs of the tourism business.

Yanti conducts the subsequent research at the Faculty of Law, Dwijendra University, with the title "Community-based Tourism Dalam Menyongsong New Normal Desa Wisata di Provinsi Bali" which was published in the Journal of Legal Communication Volume 7 November 1, February 2021. Furthermore, Isharyanto et al. examined tourism law and the welfare state (between policy and local pluralism). This study discusses how policies in tourism based on pluralism at the local level are constructed from the perspective of local government and how models of tourism policies based on local pluralism are formulated to create a welfare state.

Of the last two studies, there is no study on legal protection for tourism business actors during the Covid-19 pandemic era. However, these studies are used as material to broaden the horizons of thinking. Reading previous relevant articles, the current author assures that the present study contains a novelty in that the object under study is different from previous studies.

One of how the government realizes legal protection for tourism actors during the Covid-19 pandemic is by issuing a policy to provide incentives in the taxation sector. Since the beginning of the Covid-19 pandemic, the policy has been implemented in March 2020 by the Regulation of the Ministry of Finance of the Republic of Indonesia Number PMK-23/PMK.03/2020 [10]. Subsequently, the policy was extended several times, each with PMK-44/PMK.03/2020 [11], PMK-86/PMK.03/2020 [12], PMK-110/PMK.03/2020 [13], and PMK-9/PMK.03/ 2021 [14]. The government provides legal protection, including for tourism actors. Tax on income for workers up to IDR 200,000,000, which the employer deducts, is entirely borne by the government; thus, the government's effort is expected to increase the economic capacity of the employees concerned. The government also exempts Article 22 of Import on Income Tax, and Article 25 of Income Tax which is an obligation for the current year's income tax instalments, is given a reduction. For entrepreneurs who have been confirmed as Taxable Entrepreneurs, the government provides legal protection in the form of convenience in the process of returning tax overpayments (restitution) with an overpayment amount of up to IDR. 5,000,000,000; it can be given a preliminary return, simplified and accelerated to only one month.

4. CONCLUSION

The tourism business is global, and for every country, it is a reliable foreign exchange earner. The Covid-19 pandemic has had a significant impact on the world of tourism, including tourism businesses: such as hotels, restaurants, restaurants, and recreational areas that have had to be temporarily closed since the issuance of government policies as an effort to break the chain of the spread of Covid-19. Reductions in the workforce have been carried out frequently; many workers were forced to be laid off, and some were even terminated due to the negative impacts of the pandemic. The government acted quickly indicates the evidence that the government is present in every event. Policies in the form of stimulus, especially in taxation, were issued to help entrepreneurs, including tourism businesses and their employees. The stimulus is manifested in the provision of incentives to workers and entrepreneurs in tourism that, in turn, provide relief in the payment of Income Tax and Value Added Tax. The types of incentives are:

Article 21 Income Tax is given to employees who already have a Taxpayer Identification Number (NPWP) who work for companies engaged in one of 1,189 specific business fields, companies with accessible import facilities. These employees get additional income because the tax on their income is not deducted, but the government bears the tax.

For micro, small and medium enterprises, including business actors in the tourism sector, incentives are provided in Article 21 Final Income Tax at a rate of 0.5% by Government Regulation Number 23 of 2018 (Final PPh PP 23), which the government bears. This means that micro, small, and medium-sized taxpayers do not need to pay/deposit taxes on income every month. Likewise, parties conducting transactions with micro, small, and medium lenders do not need to withhold or collect taxes when making payments to micro, small and medium lenders.

Not only that, but the government also provides incentives for Article 25 Income Tax to all taxpayers engaged in one of the 1,018 specific business fields, such as companies that beneficiaries of Ease of Import for Export Destinations (KITE), or companies in bonded zones in the form of reducing the instalment obligation of Article 25. 25 Income Tax of 50% of the instalments that should be owed each month. In the import sector, incentives provided by the government are in the form of exemption from levies on Article 22 of Income Tax. The last are incentives in the field of Value Added Tax. The government provides incentives in the form of acceleration in applying for Value Added Tax restitution with a limit on the amount of restitution submitted up to IDR 5,000,000,000 (five billion rupiahs).

Low-risk taxable entrepreneurs (PKP) operating in one of 725 specific business fields (previously 716

business fields), KITE companies, or companies in bonded zones receive incentives for accelerated restitution up to the amount of overpayment, a maximum of 5 billion rupiahs. This is a form of legal protection provided by the government to micro, small and medium entrepreneurs, including tourism business actors. The government issued a Ministry of Finance Regulation that provides incentives in taxation to entrepreneurs affected by the Covid-19 pandemic.

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Formulation of the Principle of Fairness in Settlement of Industrial Relations Disputes

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ABSTRACT
A crucial problem in the scope of employment is the issue of severance pay in terms of termination of employment (PHK). Particularly in the current situation of the Covid-19 pandemic, layoffs are very massive. Some employers ignore the normative provisions regarding severance pay as regulated in Law Number 11 of 2020 concerning Job Creation. In this condition, the settlement of disputes between workers and employers must be based on a professional and proportional, and dignified manner. The type of research in this study is normative law with a statute approach. The data used are secondary data, including primary legal materials, secondary legal materials, and tertiary materials collected through a literature study that is analyzed qualitatively. Industrial relations disputes must be pursued first through bipartite negotiations by deliberation to reach a consensus. If bipartite negotiations fail, one or both parties shall register their disagreement with the authorized local agency responsible for employment by attaching evidence showing that efforts to resolve through bipartite negotiations have been carried out. After receiving a record from one or both parties, the local agency responsible for employment is obliged to offer the parties to agree on the option of resolving the problem, either through conciliation or arbitration. If the two parties do not reach an agreement in the settlement process, either through conciliation or mediation, either party may file a lawsuit with the Industrial Relations Court. With the legal formulation on the settlement of labor disputes which follows the stage of deliberation by both parties, then the presence of the state, and comes to the stage of judicial review, the normative provisions have represented the principle of legal fairness based on Pancasila justice.

Keywords: *Fairness, Labor disputes, Unequal relations.*

1. INTRODUCTION

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that one of the ideals of the Independence of the Republic of Indonesia is to protect the whole people of Indonesia and the entire homeland of Indonesia from advancing general prosperity. In order to protect the whole people of Indonesia and advance general prosperity, the Indonesian nation is based on law. As stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the 3rd Amendment states: "The State of Indonesia is a state of law".

Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia above, according to Janpatar Simamora, one of the characteristics of a legal state is that the state provides maximum protection for human rights or basic human rights.1

One of the essential elaborations related to fundamental human rights is the right to live in prosperity, namely getting a job and a decent living. Constitutionally, this right is stipulated in the Body of the 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (2), namely, "Every citizen has the right to work and a decent living for humanity".

The provisions of Article 27 paragraph (2) of the 1945 Constitution above indicate that the state has the obligation and responsibility to provide jobs with decent incomes and decent living facilities for its people. In other words, every citizen must exist within the limits of a prosperous life. Consequently, the state (Government including the Local Government) has the obligation and responsibility to protect the interests of laborers/workers in obtaining their rights, especially rights related to the prosperity of workers.

This government protection is very crucial considering the unequal relationship between laborers/workers and employers. The laborers/workers are always the ones who get "beaten" by the employers. This unequal relationship results in several vile treatments experienced by workers in Indonesia, even in all countries. Marsinah's case is one of the proofs of this unequal relationship. Marsinah, along with hundreds of other workers, demanded an increase in wages, but they were met with intimidation and inhumane treatment. In this case, Marsinah died horribly. Allegedly, Marsinah's death was the aftermath of action against workers' demands.

Marsinah's case is only a tiny phenomenon from what befell. There are still many incidents of exploitation and discrimination experienced by laborers/workers. The most common occurrence is the discrepancy of employers with their commitments in fulfilling the rights of laborers/workers, particularly the right to receive salaries/wages by the provisions regulated by the Government. In addition, there are many cases of workers being dismissed (Termination of Employment/PHK) unilaterally. The termination of the workforce is only based on the "likes and dislikes" of the employers in a particular field of work.

This unilateral layoff case is a "prima donna" for employers. The employers use the layoff as an instrument to "scare" workers, so workers carry out their work according to the will of the employers. Layoff conflicts are quite dominant among industrial dispute cases.

Several facts show that many factories in Indonesia mistreat their workers. Jim Keady, Director of the NGO Educating for Justice, said that "Our research found workers from about 30 factories that produce various products for brands, including Converse, New Balance, Adidas, and Puma, also have the same problem." During the investigation, activists found that many factories still verbally and physically abused their workers. "Workers are called by harsh names, such as 'pig' and 'dog,'" he said. In addition, many factories do not treat their workers humanely. "In a meeting with workers from another factory on Wednesday night, the workers said that their rice rations contained worms. Besides that, there is documentation showing workers being stabbed with rattan when they are late for work in the morning, "[2]

Based on the above record, the role of the state (Government), both the Central Government and the Local Government, is crucial to protect the interests of the workers' rights. For laborers workers, the Government is their "last bastion," which can protect their rights.

This expectation is in line with the legal principles that have been stipulated in Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning Industrial Relations Disputes. From the regulatory aspect, the substances specified in the two laws and regulations are adequate. However, it is necessary to admit that the enforcement of these laws and regulations still requires the commitment of the Government.

Yusmedi said that, in their implementation, the two laws and regulations had not discussed the disputing parties. Therefore, in solving problems, strikes and demonstrations by workers against employers and the Government are often carried out. Industrial relations disputes occur in the form of opinion differences, resulting in conflicts between employers or a combination of employers and workers or labor unions. These disputes are often regarding rights and interests, termination of employment, and disputes between trade unions in one company. This has been considered in part (b) of Law Number 2 of 2004 concerning the settlement of industrial relations disputes which states: "In the era of industrialization, the problems of industrial relations disputes are becoming increasingly complex and increasing; hence, institutions and mechanisms for the settlement of industrial relations disputes that are time-efficient, precise, fair, and cheap are necessary." [3]

As an extension of the laborers/workers, the Government is often unreliable in resolving the settlement of industrial disputes. Therefore, the laborers/workers go on strike or demonstration to resolve the problem of the industrial relation.

A time-efficient, precise, fair, and cheap mechanism for resolving industrial relations disputes is needed as part of the Government's commitment to place human resources as a crucial element. The workforce is the central supporting pillar and the driving force of the organization to realize the company's vision, mission, and goals. The lives of the workforce must be increasingly considered, given the significant contribution to the survival of a country[4].

In carrying out their work, the workforce has a great responsibility, which is achieving the goals of the company that employs them. However, in reality, the great responsibility of these workers is not in line with the protection of their rights and treatment from the companies/employers.

Formulating a series of laws and regulations on industrial relations accompanied by provisions for the settlement of labor disputes is crucial. These laws and regulations can guide workers and trade unions, management, and arbitrators. In addition, various rules in industrial relations can facilitate the Government's task in supervising the course of industrial relations and its role as a trigger for the settlement of mutually beneficial labor disputes.

2. METHOD

This research is normative legal research with a statute approach. Researchers examined all regulations or policies related to employment issues, particularly Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The data used is secondary data covering primary legal materials, secondary legal materials, and tertiary materials collected through literature study. This data is then analyzed qualitatively where the data is analyzed using legal theories, legal principles, legal rules to find a prescription.

3. RESULT AND DISCUSSION

Fairness comes from the word fair. In the Dictionary of Indonesian Language, fair is not arbitrary and impartial. Fair mainly means that a decision and action are based on objective norms. Fairness is a relative concept where everyone has a different definition of fairness. What is fair to one is not necessarily fair to the other. When someone asserts that they are fair, their assertion should be based on a public order that recognizes a scale of fairness. The scale of fairness varies significantly from place to place. Each scale is defined and wholly determined by the community according to the public order where the community lives.5

Fairness is the crown of the law. Many experts associate fairness with legal goals, giving birth to various theories about fairness, including the figures.

According to Roscoe Pound, fairness is in the concrete results he could deliver to society. He saw that the results obtained should be in the form of the most considerable satisfying human needs with the most negligible sacrifices. Pound said that he was pleased to see. "The more widespread recognition and satisfaction of human needs, demands, or desires through social control; the more widespread and effective the guarantee of the social interests of an effort to eliminate continuous waste and avoid conflicts between humans in utilizing resources. In short, social engineering is getting more effective," said Pound.6.

In Indonesia, fairness is described in Pancasila as the basis of the state, which is social justice for all Indonesian people. This fifth principle contains values functioning as objectives to be able to live side by side. Fairness is based on and imbued with the essence of human fairness, namely fairness in the relationship between humans and themselves, humans with other humans, humans with society, nation and state, and human relationships with God7.

The values of fairness must be a basis applied in the life of the state to realize the state's objective, which is the prosperity of all its citizens and the entire territory, as well as to educate all its citizens. The values of fairness are also the basis in the association between countries and fellow nations globally. In addition, these values also contain the principles to create order to live side by side in an association between nations in the world based on a principle of independence for each nation, eternal peace, and fairness in living side by side (social justice).8

Legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules that will be able to protect one thing from another.9

In Indonesia, the legal protection referred to is always based on Pancasila as the ideal foundation even though its formulation uses western world ideas whose emphasis on the concept rests on the protection of human rights. Thus, in simple terms, the concept of legal protection for workers in Indonesia still relies on protecting the dignity of workers, along with their human rights, both as an individual and as a "worker." Aspects of protection for workers include two basic protections, which are protected from the power of employers and protection from government actions. According to Philipus, legal protection is always related to two powers: economic power and government power. By not taking any action against rights violations, the Government is considered to have taken legal action. Other legal actions are in the form of preventive legal actions, which is the Government's prudence in formulating policies.10

Legal protection from the power of employers is implemented when the laws and regulations regarding labor that require or force the employer to behave as in the legislation are implemented by all parties. This is because the validity of the law cannot be measured in a juridical manner but is measured sociologically and philosophically.11

Worker protection is strictly regulated under Article 5 of Law Number 13 of 2003 concerning Manpower. The article states that every worker has an equal right and opportunity to have a job and decent life without discrimination based on gender, ethnicity, race, religion, and political view, by his interests and abilities, including equal treatment to workers with disabilities.

Furthermore, Article 6 requires employers to provide workers' rights and obligations without discrimination based on gender, ethnicity, race, religion, skin color, and political view. Other rights regulated in detail under the Manpower Law are contained in the following articles:

1. Article 11 contains the right to acquire and develop competence;
2. Article 12 paragraph (3) contains the right to attend (get) training;
3. Article 31, in conjunction with Article 88, contains the right to choose work type and earn income, both at home and abroad;
4. Article 86 paragraph (1) contains the right to be healthy and safe.
5. Article 99 paragraph (1) contains the worker's and his family's right to have social security for workers (Jamsostek);

6. Article 104 paragraph (1) contains the right for a worker to be involved (form or become a member) in a trade/labor union.

A crucial issue in the scope of employment is severance pay in terms of employment termination (PHK). To facilitate the conflict resolution on the severance issue, Law Number 11 of 2020 on Job Creation states the following:

(1) In the event of employment termination, the employer shall give severance pay and/or service pay and compensation for entitlements.
(2) The severance pay as referred to in paragraph (1) is given under the following conditions:
    1. The working period of less than 1 (one) year, 1 (one) month's salary;
    2. The working period of 1 (one) year or more but less than 2 (two) years, 2 (two) months' salary;
    3. The working period of 2 (two) years or more but less than 3 (three) years, 3 (three) months' salary;
    4. The working period of 3 (three) years or more but less than 4 (four) years, 4 (four) months' salary;
    5. The working period of 4 (four) years or more but less than 5 (five) years, 5 (five) months' salary;
    6. The working period of 5 (five) years or more but less than 6 (six) years, 6 (six) months' salary;
    7. The working period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months' salary;
    8. The working period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months' salary;
    9. The working period of 8 (eight) years or more, 9 (nine) months' salary.
(3) The service pay as referred to in paragraph (1) is given under the following conditions:
    1. The working period of 3 (three) years or more but less than 6 (six) years, 2 (two) months' salary;
    2. The working period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months' salary;
    3. The working period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months' salary;
    4. The working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months' salary;
    5. The working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months' salary;
    6. The working period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) months' salary;
    7. The working period of 21 (twenty-one) years or more but less than 24 (twenty-four) years, 8 (eight) months' salary;
    8. The working period of 24 (twenty-four) years or more, 10 (ten) months' salary;
(4) The compensation of entitlement that shall be received as referred to in paragraph (1) includes:
    1. Annual leave that has not been taken and has not been expired;
    2. Costs and fees for returning worker/laborer and his family to the place where the worker/laborer is accepted to work;
    3. Other matters stipulated in the employment agreement, company regulations, or collective labor agreement.
(5) Further terms on giving severance pay, service pay, and compensation of entitlement as referred to in paragraph (2), paragraph (3), and paragraph (4) are stipulated in the Government Regulation.

In Article 157 of Law Number 11 of 2020, it is stated that:

(1) The components of salary used as the basis for calculating severance pay and service pay are a. basic salary; and b. fixed allowances are given to workers/laborer and their families
(2) If the worker's/laborer's income is paid daily, one month's salary is equal to 30 (thirty) times daily salary.
(3) If the worker's/laborer's income is paid based on output unit calculation, one month's salary is equal to the average income in the last 12 (twelve) months.
(4) If one month's salary is lower than the minimum wage, as referred to in paragraph (3), the basis for calculating severance pay is the minimum wage applicable in the company's domicile area.

Under the provisions of the articles of Manpower Law above, the scope of worker protection for workers includes:

1. The worker's/laborer's fundamental rights to negotiate with employers;
2. Occupational safety and health;
3. Special protection for female worker/laborer, children, and persons with disabilities;
4. Protection of worker's salary, welfare, and social security.[12]

Industrial relations are an exciting relationship between worker/laborer and employer, which potentially causes differences of opinion and even disputes between the two parties. Disputes in industrial relations that have been known so far are related to the rights that have been established in or labor conditions that have not been established in the work agreements, company regulations, collective labor agreements, or laws and

regulations. The termination of employment can also cause industrial relation disputes.

If one of the parties no longer wants to be bound in the working relationship, it is difficult for the parties to maintain a harmonious relationship. Therefore, it is crucial to find the best solution for both parties to resolve the dispute in a fair and dignified manner.

For solving labor disputes in a fair and dignified manner, the Government stipulates Law Number 2 of 2004 on Settlement of Industrial Relation Dispute with the following points:

1. Disputing parties are an individual worker/laborer, a trade/labor union organization, and an employer or employers' organization. The disputing parties may also be a trade/labor union organization and another trade/labor union organization within the same company;
2. Any industrial relation dispute is initially resolved by deliberation to reach a consensus by the disputing parties (bipartite);
3. If the negotiation between the disputing parties (bipartite) fails, one of the parties or both parties shall register their dispute to the relevant agency responsible for the local human resources affairs;
4. Disputes of interest, disputes over employment termination, or disputes between trade unions/labor unions that have been registered in the relevant agency responsible for the local human resources affairs can be resolved through conciliation upon the mutual agreement. In contrast, the settlement of disputes through arbitration upon the mutual agreement can be done only for disputes of interest and disputes between trade unions/labor unions. Suppose there is no agreement between the two parties to resolve the dispute through conciliation or arbitration. In that case, the settlement shall be done by mediation before submitting it to the Industrial Relation Court. This is intended to avoid the accumulation of industrial relation dispute cases in court;
5. The Dispute of Rights that has been registered in the relevant agency responsible for the local human resources affairs cannot be resolved through conciliation or arbitration, and it shall be first solved by mediation before submitted to the Industrial Relation Court;
6. If Mediation or Conciliation does not reach an agreement as stated in the mutual agreement, one of the parties can file a lawsuit to the Industrial Relation Court;
7. Settlement of Industrial Relation Dispute through arbitration is carried out upon the agreement of the parties, and a lawsuit cannot be filed to the Industrial Relation Court because the arbitration award is final and binding, except in some instances, an annulment may be filed to the Supreme Court;
8. The Industrial Relation Court is within the general judiciary and is gradually established at the District Court and the Supreme Court;
9. In order to ensure a fast, precise, fair, and cheap settlement, the settlement of industrial relation disputes through the Industrial Relation Court, which is within the general judiciary, is limited in its process and stages by not opening an opportunity to file an appeal to the High Court. The Decision of Industrial Relation Court within the District Court related to the dispute of rights and employment termination dispute can be appealed by directly requesting a cassation to the Supreme Court. Meanwhile, the decision of Industrial Relation Court within the District Court related to the dispute of interest and dispute between trade unions/labor unions in one company is the first and final decision that cannot be appealed to the Supreme Court;
10. The Industrial Relation Court, which examines and adjudicates industrial relation disputes, shall be held by a Panel of Judges consisting of 3 (three) persons, which are 1 (one) District Court Judge and 2 (two) Ad-Hoc Judges, whose appointments are proposed by the employers' organization and the workers'/labors' organization;
11. The decision of the Industrial Relation Court within the District Court regarding the dispute of interest and dispute between the trade unions/labor unions in one company cannot be appealed to the Supreme Court;
12. To enforce the law, sanctions are determined to be more substantial coercion means to obey the laws and regulations.

4. CONCLUSION

Industrial Relation Disputes shall be first resolved through bipartite negotiation by deliberation to reach a consensus. Dispute settlement through bipartite shall be resolved no later than 30 (thirty) working days from the negotiation date. Within 30 (thirty) days, one of the parties refuses to negotiate, or the negotiation has been carried out, but it does not reach a consensus. The bipartite negotiation is deemed to have failed. If the bipartite negotiation fails, one or both parties shall register their dispute to the relevant agency responsible for the local human resources affairs by attaching evidence that a settlement through bipartite negotiation has been carried out.

If the evidence is not attached, the relevant agency responsible for the local human resources affairs will return the document to be completed no later than 7 (seven) working days from the date the document is returned. After receiving a record from one of the parties, the agency responsible for the local human resources

affairs shall offer to resolve the dispute through conciliation or arbitration. Suppose the parties do not resolve the dispute through conciliation or arbitration within 7 (seven) working days. In that case, the agency responsible for the local human resources affairs will delegate the dispute to the mediator. If the settlement through conciliation or mediation does not reach a consensus, one of the parties may file a lawsuit to Industrial Relation Court.

The legal formulation on the settlement of labor dispute is deliberation between the parties, and the state is present when it reaches the judicial stage. The normative terms have represented the principle of legal justice based on Pancasila

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Legal Protection of Geographical Indications for Local Handicrafts in Tourism Activities in Indonesia

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ABSTRACT
Indonesia is the country that has enormous potential for Intellectual Property (IP), especially those related to Geographical Indications. There are many Geographical Indication products found in Indonesia. One of them is local handicrafts that are still not registered. If this is allowed, it does not rule out the possibility that one day a dispute may occur with a unilateral claim by an irresponsible party. Geographical Indication provides legal certainty. Registration is the main requirement for legal protection. By the existence of legal protection for local handicrafts, it will increase the attractiveness of tourists to visit a tourism area that has distinctive features through the local handicrafts of the area. This research has a formulation of how to Protect Geographical Indications of local handicrafts in tourism activities in Indonesia. The method of this research is using the normative juridical method.

Keywords: *Geographical Indications, Local Crafts, Protection.*

1. INTRODUCTION

It is well known that Indonesia is geographically located between the continents of Asia and the continent of Australia, and between the Indian Ocean and the Pacific Ocean. Thus, the territory of Indonesia is in a cross position, which has an essential meaning in the climate and economic situation.

The territory of Indonesia is located in a strategic and advantageous position for several reasons as follows:

1. The location of Indonesia between the continents of Asia and the continent of Australia.
2. The location of Indonesia between the Pacific Ocean and the Indian Ocean.

Some of the advantages obtained based on the geographical location of Indonesia, among others, are as follows Indonesia, which is located between two continents and two oceans, allows it to become a crossroads of world traffic, both air and sea traffic. Indonesia is a point of intersection of world economic activities between industrialized countries and developing countries. For example, between Japan, Korea, and China with countries in Asia, Africa, and Europe.

Because of Indonesia's geographical location, Indonesia is also influenced by various cultures and world civilizations and is also influenced by monsoons. October-April Around the wind blows from Asia to Australia, which brings a lot of water vapor from the Pacific Ocean, causing the rainy season. Around April-October, the wind blows from Australia to Asia, which brings a little water vapor from the Indian Ocean, causing the dry season.

The influence of the above seasons causes Indonesia to become a leading agrarian country. Agriculture in Indonesia is progressing rapidly and produces many materials such as rice, corn, vegetables, fruits, rubber, coffee, sugar, tobacco, and others which are very useful for the prosperity and survival of the Indonesian population and participating in international trade. The geographical location of Indonesia is as follows: Astronomically, it is located between 60 North Latitude – 11 0 South Latitude and 95 0 East Longitude – 1410 East Longitude. It is located between the Pacific Ocean and the Indian Ocean Located between the continents of Asia and the continents of Australia. Indonesia's potential for Intellectual Property is enormous, especially concerning Trademarks and Geographical Indications. Geographical Indication is one part of Intellectual Property. The regulation regarding Geographical Indications in Indonesia joins with trademark regulation, Law Number 20 of 2016 concerning Trademark and Geographical Indications and its implementing regulations through Government Regulation Number 21 of 2019 concerning Geographical Indications. Geographical Indications are protected as a sign

indicating the area of origin of an item. Geographical, environmental factors, including natural factors, human factors, or a combination of the two factors, give specific characteristics and qualities.

Geographical Indication is a sign of Indication or identity of an item originating from a particular place, area, or region, which indicates the existence of quality, reputation, and characteristics, including natural factors and human factors used as attributes in the goods. Geographical Indications include the name of the origin place and the origin of the goods. Agricultural products have qualities that stem from their local production and are explicitly influenced by local factors, such as climate and soil. Protection of Geographical Indications is not limited to agricultural products only. All products related to geographical factors, including natural and human factors, as the dominance of the formation of characteristics and quality, can be protected by Geographical Indications.

In contrast to other aspects of intellectual property, such as the naming of a product, it is accompanied by a logo and specific writing. In Geographical Indications, some products reflect the results of an area by adding the region's name to the resulting product, which is helpful as a differentiator between similar products or objects produced by other regions.2 Indonesia is a country that is rich in natural resources, so it has a wide range of potential products for Geographical Indications.

Currently, many local crafts have not been registered as Geographical Indications at the Director-General of IP. The government must take the initiative to see local crafts as a product of Geographical Indications at the Director-General of IP. This effort is made in order to obtain legal protection. In Indonesia, every product potential as a Geographical Indication product must be registered first before obtaining legal protection. Thus, legal certainty is guaranteed, and it is easy to prove if there is a dispute related to the Geographical Indication product one day. They were considering that concerning tourism transactions, and it is urgently needed to protect business actors against geographically indicated intellectual property rights products so that a countermeasure to prevent intellectual property rights disputes in Indonesia. The ultimate goal is legal protection in supporting systemic tourism in Indonesia.

Therefore, it is necessary to make efforts so that local handicrafts obtain legal protection through Geographical Indications, considering the development of tourism in Indonesia is relatively developed, which is increasingly open to providing guarantees for producers and consumers.

Based on the description of the background above, the formulation of the problem can be formulated, that is, how is the protection of Geographical Indications for local crafts in tourism activities in Indonesia?

2. METHOD

This study belongs to normative law research whose character is with the character of Law; normative research is a hallmark of Law. Thus, the researcher used descriptive content analysis to analyze the Law on Intellectual Property in Indonesia to examine the notion of its existence within national and international. Legal material and related literature to national and international Intellectual Property law were used as accurate guidance in obtaining the object of the study. This research aims to find research results in the form of protection of Geographical Indications for local crafts in tourism activities in Indonesia.

3. RESULT AND DISCUSSION

3.1 Regional Local Craft

Crafts are hobbies or occupations that require specific abilities and knowledge to create works skillfully. People who work in this field are called craftsman. The term of craft is often used to describe practices within the decorative arts group that are traditionally related to products that have a function (such as the form of sculpture in the jar-making tradition) or also related to the use of natural materials, such as wood, clay, ceramics, glass, cloth, and metal.

Local crafts are ideas and types of traditional culture that exist in the community. Where traditional culture objects or products can be a source of inspiration to be developed into handicraft products, all regions in Indonesia can develop local handicrafts with the inspiration of their respective traditional cultures. From a different point of view, Indonesia has a large area with a rich culture and traditional customs that vary in each region. The traditions or culture of each region are summarized in beliefs, activities, and objects that support each other in carrying out the traditions and culture in each region. Each object related to each region's history, beliefs, and traditions will bring up the characteristics of the markers for each region so that each group of indigenous peoples in each region has differences from one another. Some examples of handicrafts taken from local culture can be miniature building objects, accessories, or handicraft products with various functions.

3.2 Legal Protection of Geographical Indications

In order to obtain the protection of Geographical Indications, an application must be submitted to the Minister. The applicant in this Law is an institution that represents the community in a specific geographical area that operates an item and/or product. Then the products that can be applied for include natural resources, handicrafts, and industrial products.

The period of protection and elimination of Geographical Indications is as long as the reputation, quality, and characteristics that are the basis for protecting for Geographical Indications are maintained. Geographical Indications may be deleted if the reputation, quality, and Characteristics on which the protection is based have not complied.

This case becomes important in realizing quality standards to protect consumers from obtaining goods that are under quality and following the history and value of their cultural existence.

In-Law Number 20 of 2016 concerning Trademark and Geographical Indications also stipulate that the one who carries out the guidance and supervision of Geographical Indications is the central government and/or regional governments by their respective authorities.

The coaching referred to includes:

1. Preparation for the fulfillment of the requirements of the Application for geographical indications;
2. Application for registration of geographical indications;
3. Utilization and commercialization of geographical indications;
4. Socialization and understanding of the protection of geographical indications;
5. Mapping and inventory of potential geographic indication products;
6. Training and mentoring;
7. Monitoring, evaluation, and coaching;
8. Legal protection; and
9. Facilitate the development, processing, and marketing of goods and/or geographically indicated products.

Some of these steps are not easy. Strategic steps are needed, from all parties' legal awareness to administrative procedures to the synergy between various interested parties, including the community, business actors, consumers, or the government.

3.3 Protection of geographical indication products in the region

The potential for geographical indications in areas where Indonesia's geographical condition has a tropical climate causes Indonesia to have a diversity of natural products and is an advantage and Indonesia's national identity. Many regional specialties are scattered in various parts of Indonesia, but, unfortunately, the diversity of these products has not been inventoried and appropriately managed.

This regional specialty product is an excellent regional potential to be developed because this product will not be obtained in other areas where the product is located. The government is expected to play a role in managing these products to obtain economic value of these products. Local governments can encourage regional specialties to be registered as geographical indications because geographical indications can protect various natural products, food, handicrafts, and various products produced from indigenous knowledge containing the peculiarities of an area. By Examining the perspective of interests of the local community barely realizes the importance of indicating the need for awareness by the local government, which is close to people's lives and how the life of the local community is; it is also essential to know what are the characteristics or advantages of the culture or traditions of local communities in their area. Indirectly, local governments can help provide legal awareness to local communities on their characteristics or advantages that can distinguish them from other regions so that the distinguishing characteristics of the local community can provide income for the region for the welfare of the local community. Of course, this is an added value that can become an identity for local communities or specific areas and, more broadly, become an identity for the Indonesian nation.

3.4 Benefits of Geographical Indications in Indonesian Tourism Activities

Protection of geographical indications has various benefits, both for producers and consumers. For producers, the benefits of having geographical indications from an economic point of view include:

1. Prevent the transfer of ownership of the rights to use the uniqueness of the product from the local community to other parties. There will be a very high riskif a product that is not naturally a product of the local community in question. Because the quality and value contained in it are not necessarily achieved as a standard of the product.
2. Maximizing the added value of the product for the local community. Products that have so far been designated as products to support the culture and traditional activities of the local community, without reducing the meaning, are then increased in value to the economy so that the community can earn additional income by allocating the product for the benefit of souvenirs in tourism activities.
3. Protects from product counterfeiting. The possibility of counterfeiting or imitation of products of interest in the tourism sector is very high because a product or goods with economic value will be directly proportional to the possibility of committing acts against the Law on the following products. The higher value of a product, the higher the possibility of people committing acts against the Law on the product or object.
4. Increasing marketing of distinctive products. This point is related to point no. 2 above in local community-specific products with economic value to be traded in the tourism sector. It is necessary to increase the income of local communities with the help of several parties who have a synergistic

relationship with sellers of local specialty products to promote sales, which will increase the income of local communities.

5. Increase the provision of employment. This point is related to the previous point, which is related to the economy and people's incomes, increasing economic transactions for unique regional products. From the employment perspective, local communities have more significant potential in obtaining employment. The subsequent implication is reducing unemployment in areas whose distinctive feature or regional identity is the product.
6. Supporting the development of agro-tourism. Agrotourism is intended as a form of tourism. Moreover, the main tourism object is agriculture, so it can be said that agrotourism utilizes agricultural objects. Agrotourism is also a tourism activity integrated with the whole agricultural system and uses agricultural objects as tourism objects, as agricultural technology, and as agricultural commodities. This point means that the development of a more visionary Indonesia, which is historically an agrarian country, means that several regions in Indonesia have a history in agriculture or agriculture. Creative development to explore and develop the potential of local communities, then agrarian history becomes a field with great potential. This is because agriculture absorbs labor, produces results, and processing it becomes a character or identity for the local community.
7. Ensure business continuity. This point is very close to the explanation in the previous points regarding the tourism business.
8. Strengthen the regional economy. The regional economy, of course, has a very strategic position in the legal protection of geographical indication products because an increase in people's income will affect increasing regional income.
9. Accelerate regional development. The increase in regional income, which is supported, among other things, by legal protection of regional specialties in geographical indications, will, of course, accelerate the journey of regional development plans.
10. Improve community welfare. This section is the final goal of the legal protection of geographical indications in particular and regional development and national development in general. As contained in the 5th Precept of the Pancasila, namely "Social justice for all Indonesian people," there is nothing but welfare for the entire community.

From the legal perspective, the benefits of geographical indications include:

1. Provide legal protection and certainty for producers and consumers.
2. Provide quality assurance based on Law by consumer expectations of geographically indicated products.
3. Provide legal guarantees for consumers if the product does not meet the expected standards.

Judging from those points cannot be denied that the urgency of legal protection for geographical indications for local community products is very high. Considering some of the benefits mentioned above, it is hoped that it will lead to the community's welfare, which is supported by geographical indication products.

4. CONCLUSION

Protection of geographical indications in Indonesia can be seen with Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The essence of all the provisions in this Law is to protect local handicraft products with distinctive characteristics that are not owned by other regions. The protection of geographical indications is not only protecting the product but also guarantees for consumers. However, in its implementation, there are still some weaknesses. The role of each party, both central and regional, has not been explicitly stated in the guidance and supervision of geographical indications. This ambiguity has resulted in many barriers to pre-registration and post-registration of geographical indications in the regions.

Along with the progress of the tourism industry, which can be relied on as an opening for business, employment, and as a source of state income, even further, the creative industry and tourism industry are national assets that are always renewable in line with the changes and progress of human civilization. Therefore, it is necessary to get protection by registering intellectual property, primarily related to geographical indications.

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Rebuilding the Tourism Area of Palu City After Three Years of Earthquake: An Overview of Spatial Law Studies

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ABSTRACT
Natural disasters (earthquake, tsunami, and liquefaction) that were hit Palu City in 2018 had massively damaged the structure of Palu City. One of the affected areas is the tourism area. The tourism area is one of the sources of regional income for Palu City so that the destruction of the area automatically reduces the source of regional income. To rebuild the tourism area after the natural disaster, the Palu City Government needs to update the spatial planning plan for the tourism area. The problems raised in this paper include, firstly, the steps of the Palu City Government in preparing a spatial planning plan for the tourism area after three years of the earthquake and secondly, the obstacles experienced by the Palu City Government in the process of compiling the spatial arrangement. Based on the research conducted, we know that preparing the spatial plan for the tourism area in Palu City has been running for three years but has not yet received the final draft to hampers the process of restoring tourism Palu City. Secondly, the obstacles experienced by the Palu City Government during the spatial planning preparation include the lack of coordination between the bureaucracy in Palu City and central government, lack of budget support, and lack of human resources. This research is included in doctrinal legal research that uses a sociological juridical approach (applied law research). The sociological juridical approach uses case studies in the form of normative-empirical law that focuses on looking at legal behavior and the implementation of legal provisions that apply to a problem in society. There are two kinds of discussions, firstly a discussion on the law of the spatial arrangement of the tourism areas after the disaster in Palu City. Secondly, there is a discussion on the law implementation in the spatial arrangement of the tourist areas and the obstacles. The obstacles experienced in revising the spatial planning document in the tourism sector are lacking budget support, lacking qualified human resources, and lacking coordination between agencies in the regions.

Keywords: *Palu City Government, Palu City, Spatial Planning, Tourism Object*.

1. INTRODUCTION

Natural disasters, such as floods, drought, earthquakes, tsunami, and others, are part of this nature. Geographically, Indonesia is placed between three tectonic plates that crossed each other: Eurasia Plate, Indo-Australia plate, Pacific plate. Those crossed plates that made Indonesia prone to natural disasters such as volcano eruption and earthquake. The earthquake and tsunami that struck Palu City three years ago, precisely on September 28th, 2018, have destroyed the city massively and caused physical, property, and infrastructure damages as well as psychosocial, social-demographic, social-economic, and social-politic disorders. The disaster killed 2.045 people and resulted in 18,4 trillion rupiahs material losses [1]. One of the most severely affected sectors was tourism. The disaster caused the paralysis of tourism in Palu City and significant losses, such as the decrease in the number of tourists, which reached 17,822 people, economic loss of 62 billion rupiahs, job losses of entrepreneurs, workers, and street vendors around the tourist destinations [2].

Palu City tourism is a source of Palu City's regional income; therefore, the tourism sector is a priority for regional development objects. Reviewing from the Long-Term Regional Development target of Palu City 2005-2025, tourism and trade, and industry sectors become one of the pillars of long-term development of Palu City [3]. Unfortunately, the development was constrained by the natural disaster, which caused the postponement of the tourism development process set in the Long-Term Regional Development target of Palu City 2005-2025. The Palu City government needed to rehabilitate and reconstruct tourism areas destroyed by the natural disaster.

Three years after the earthquake, liquefaction, and tsunami in 2018, the regional government of Central Sulawesi has arranged a Master Plan for the Recovery and Redevelopment of the Post-Disaster Area of Central Sulawesi in 2018. The master plan, particularly in Section V, is about social-economic rehabilitation and economic reconstruction. Measures to accelerate economic rehabilitation and reconstruction are by doing trauma healing for the society, financial relaxation in the form of easy verification of financial prerequisites, rehabilitation of tourist destinations (accessibility, amenity, attractions), and marketing rehabilitation (branding, advertising, selling) [4]. The master plan then became a basis of the Master Plan for the Acceleration of Recovery in Post-Disaster Areas of Palu City, which was stated in The Palu City Government Annual Work Planning and the General Draft of the Palu City Post-Disaster Spatial and Regional Planning.

In three years after the disaster, it was known that the progress of rehabilitation and reconstruction of the Palu City tourism area had not run optimally. It could be seen from the substantial the Palu City regional regulations No.16 of 2011, which was not arranged based on disaster study. This hindered the data collection of area reconstruction and rehabilitation, which caused the slow pace of the Palu City rehabilitation process.

Based on that basis, therefore, it is necessary to conduct a comprehensive study that discusses spatial planning implementation in tourism areas after the disaster in Palu City and the obstacles in doing it.

2. METHOD

There are two research methods available, the normative method and the empirical method. The normative method focuses on library and statute study, analyzing problems and questions in researches based on the law that already applied but has some contradictive measures, blurry definitions of the law. Even that an incident happened without any law as the basis to make the best decision. Secondly, there is the Empirical method, and this method focuses on field study, whereas if the application of the law is already held as it should be or not, an empirical study using informant and/or respondent as the consideration, compiling it by using interview methods and compare the answer gathered by an interview with the law that as the basis of the incident.

This research uses a mixed-method, which means this research uses both normative and empirical methods, but library research and field research was held to fulfill this research's question. This research is included in the type of doctrinal legal research that uses a sociological juridical approach (applied law research). The sociological juridical approach uses case studies in the form of normative-empirical law that focuses on looking at legal behavior and the implementation of legal provisions that apply to a problem in society [6].

In this study, there are two kinds of discussions, firstly a discussion on the law of the spatial arrangement of the tourism areas after the disaster in Palu City, and secondly discussion on the law implementation in the spatial arrangement of the tourist areas and the obstacles. The data used in this study includes primary data in the form of interviews and secondary data in the form of primary legal materials in the form of legislation in the field of spatial planning and tourism, secondary legal materials are literature reviews in the form of books, journals, popular articles that discusses spatial planning of tourism areas, and finally tertiary legal materials in the form of legal dictionaries.

3. RESULT AND DISCUSSION

The arrangement of the tourism areas of Palu City has been included in the third phase of the Long-Term Regional Development target of Palu City in 2005-2025 (RPJMD) as stated in Section V regarding the Targets and Directions of the Regional Long-Term Development Policy [7]. Tourism is directed to be a priority for investment receivers in order to encourage urban economic growth.

In order to achieve the goal, the Palu City Regional Government is directed to arrange a development master plan and development of tourism infrastructure, which are expected to be completed in 2010 for the sub-district area (RPJPD phase one or RPJMD phase one). The master plan is generally known as an Urban Tourism Plan or a Master Plan for City Tourism Development arranged in stages.

The Master Plan for Tourism Development itself, as regulated in Article 8 of Law Number 10 of 2009 on Tourism (Law No. 10 of 2009), basically orders the arrangement of the master plan in stages starting from the provincial to district/city levels. Following these orders, the Central Sulawesi Provincial Government has arranged a Master Plan for Tourism Development by issuing Central Sulawesi Provincial Regulation Number 5 of 2019 (Perda Provinsi Sulawesi Tengah No.5 Tahun 2019).

The Central Sulawesi Provincial Regulation No. 5 of 2019 is a legal umbrella for the Palu City Government to arrange the Palu City Tourism Development Master Plan immediately. Even though the directions for the preparation of the master plan have been ordered in advance through the RPJPD of Palu City for 2005-2025, until 2016, the Palu City Government has not had the study [8].

Normatively, the directions for the arrangement of the master plan for the tourism development can be prepared based on the spatial planning study carried out. Looking at the Palu City Regulation No. 16 of 2011, the regulation regarding the development of tourism areas is regulated more clearly in Article 49 *jo*. Article 36 section (1) letter b. The article regulates tourism areas developed into three

types, namely cultural tourism areas, natural tourism areas, and artificial tourism areas.

Furthermore, Article 49 section (3)-(5) of the Palu City Regulation No. 16 of 2011 has stated the designation of each tourism area in each sub-district. This information can indeed be followed up to prepare the Master Plan for the Tourism Development of Palu City, but until now, the document has not been formed [9]. This condition, of course, becomes one of the inhibiting factors for the advancement of tourism development in Palu City.

Not only the aspect of the absence of the Palu City Tourism Development Master Plan, the natural disaster that was occurred in 2018 indeed forced the Palu City Government to update the aspect of structuring the tourism area due to the many damaged tourist attractions, for example, the Palu Bay area. The Palu Bay area is classified in a red zone, which means a high earthquake-prone zone, so it is included in a prohibited area. The areas included in the red zone include [10]:

Table 1. The List of Red Zone Areas

4L	:	Massive liquefaction zone after the earthquake (Kws Petobo, Balaroa, Jono Oge, Lolu, and Sibalaya)
4T	:	The tsunami swamp coastal border zone is at least 100-200 meters from the highest tide point (100m swamp coastal border for Teluk Palu, except in Kelurahan Lere, Besusu Barat, and Talise are decided 200m)
4S	:	Active fault border zone Palu-Koro 0-10m (Danger zone of Active Fault Deformation)
4G	:	Zone prone to high ground motion – post-earthquake

Based on the table, red zone areas are advised not to redevelop or built new ones. These locations are prioritized as protected areas, green open spaces, and monuments [11]. Such conditions indicate a change in space function that was initially a natural tourism area onto a protected area or green open space. It requires a spatial planning update that is also aimed at rehabilitating the post-disaster area of Palu City.

The main idea that needs to be added to the Spatial Planning and Spatial Planning formulation plan for the City of Palu is the Spatial Planning and Regional Planning based on disaster risk mitigation [12]. Based on Article 1 point 9 of Law Number 24 of 2007 on Disaster Management (Law No. 24 of 2007), what is meant by disaster risk mitigation is a series of efforts to reduce disaster risk, both through physical development as well as awareness and capacity building in dealing with disaster threats. One of these ideas is realized in a spatial plan whose enforcement is optimized through control (licensing and imposition of sanctions).

In its implementation, the post-disaster spatial planning of Palu City is focused on paying attention to mitigation risk studies, especially on the threat of geological disasters such as earthquakes, active faults, ground motion, tsunamis, and liquefaction, and hydrometeorology. These studies have also been presented in Focus Group Discussions in the regions that involve coordination with relevant stakeholders, academics, the private sector, and the community. It is hoped that in addition to presenting a more comprehensive study with a mitigation risk study, the FGD can be used as a forum to educate the public about natural disasters [13].

Furthermore, the Technical Team for the Detailed Spatial Planning (RDTR) of Palu City has also divided the roles to facilitate the division of planning areas into four (4) namely: a) BWP 1 in the fields of cultural areas, service trade, and tourism; b) BWP 2 in the central gate area of Central Sulawesi Province; c) BWP 3 in the city service center area based on trade, services, and tourism; and d) BWP 4 in the field of industrial development centers and movement nodes [14]. Although it has been arranged in such a way, it was conveyed by Syaifullah Djafar as Head of the Office of Highways and Spatial Planning of Central Sulawesi Province that the condition of the Regional Governments, both the Province and Palu City after the disaster, had difficulties in coordinating and determining regional zoning to prepare a Strategic Environmental Study and Risk Assessment. Disaster Mitigation is due to the lack of availability of qualified human resources, funds, and competencies [15]

Revising the RTRW of Palu City takes a long time because the formulation process takes three years. Until now, the Regional Regulation on the RTRW of Palu City has not been stipulated, whereas the regional regulation on RTRW will be the foundation for spatial management, including, in this case, the rehabilitated tourist area.

The rehabilitation of the tourism area itself received special attention from the Palu City Government. It can be seen from the local government's efforts to include the development of tourism areas in the 2020 Palu City Government Work Plan (Palu City RKPD 2020). Based on the attachment to the Palu Mayor's Decree Number 13 of 2019 concerning the 2020 Palu City Government Work Plan (Perwali No. 13 of 2019), it is known that the development of the tourism sector is targeted to be achieved by the end of the fourth phase of the Palu City RPJPD. Furthermore, the tourism area is included in the designation of the function of the cultivation area that must share a land area of ± 17,216 ha and a marine area of ± 10,460 ha with other sectors such as residential areas, trade, and service areas, office areas, industrial areas, space areas, non-green open areas, and disaster evacuation areas.

Natural disasters may destroy tourism objects but, on the other hand, open opportunities for new tourist

destinations. These tourist destinations can only be developed if the Spatial Planning Document has been issued in a regional regulation and then directed by the mayor to prepare a Master Plan for Strategic Tourism. The master plan is a legal umbrella for the Regional Culture and Tourism Agency to open and build cooperation with relevant stakeholders at the provincial and ministry levels to build tourist destinations. Without a master plan, the Regional Culture and Tourism Agency cannot coordinate with these stakeholders. Furthermore, the discourse related to the preparation of the master plan has been conveyed with minimum budget, so that it causes delays in the preparation of the master plan [16].

4. CONCLUSION

Based on the discussion above, revising the Spatial Planning document for Palu City is going well, although it is slow. The spatial planning draft takes up to three years after the earthquake and has not been legalized in a regional regulation. The spatial planning document will be the basis for relevant stakeholders to develop a Strategic Master Plan for Tourism as the legal basis to develop the tourist destinations in Palu City. Furthermore, the obstacles experienced in revising the spatial planning document in the tourism sector are lacking budget support, lacking qualified human resources, and lacking coordination between agencies in the regions.

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Responsibility of the Board of Directors for the Activities of a Limited Company That Does Not Have Legal Entity Status

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ABSTRACT
This paper talks about the duty of the chiefs on the exercises of the restricted responsibility organization that is not yet legitimate status. This paper plans to distinguish and dissect the lawful results and duties of the overseeing chiefs who have restricted risk legitimate status. Kinds of exploration in this examination, utilizing the regulating idea of the exploration clear. This paper introduced an examination that from a restricted responsibility lawful status, then, since that time the Law treats investors and chiefs separated from the restricted obligation organization itself. Subsequently, investors who do not have a premium in a restricted risk organization riches, likewise not liable for the organization's obligations.

Keywords: *Corporation, Responsibility, Limited company.*

1. INTRODUCTION

One piece of public advancement is a financial improvement that understands individuals' government assistance dependent on the 1945 Constitution of the Republic of Indonesia (UUD 1945). This is expressed in Article 33 section (4) of the 1945 Constitution, which expresses that:

> "The National Economy is coordinated dependent on financial majority rule government with the standards of fellowship, effectiveness, equity, manageability, ecological knowledge, freedom and by keeping an equilibrium in huge, medium and independent company exercises in an association design."

Financial improvement essentially cannot be isolated from the lawful turn of events, so lawful advancement strategies are done with the monetary turn of events, specifically by adjusting laws and guidelines that offer help to financial exercises in confronting the time of streamlined commerce without hurting the public interests.[1]

The advancement of the business world today has developed so quickly, so finance managers who work together will make the most of the chances that exist. In this condition, there are a few options that should be possible by the money manager, in particular through existing business substances and as yet being kept up with by opening branches in regions/areas that are viewed as potential to work together and the individuals who do or set up a business element as a Limited Liability Company (PT) in light of the arrangements of enactment, to be specific the Law of the Republic of Indonesia Number 40 of 2007. This will affect the business world, particularly if the conversation is identified with the issue of common risk of a legitimate element. The advancement of the business world today has developed so quickly, with the goal that finance managers who work together will make the most of existing freedoms. In this condition, there are a few options that should be possible by the finance manager, in particular through existing business elements and as yet being kept up with by opening branches in regions/areas that are viewed as potential to work together and the individuals who complete or build up a business element as a Limited Liability Company (PT.) because of the arrangements of the enactment, in particular, the Law of the Republic of Indonesia Number 40 of 2007. This will affect the business world, particularly if the conversation is identified with the issue of common risk of a legitimate element.

Limited Liability Company is one of the organizations that is relied upon to be a way to work on the financial turn of events. Limited Liability Company is a type of organization set up to run with a specific organization capital isolated into shares. The investors (Persero) partake in taking at least one offer and do lawful

activities made by the joint name with no duty own obligation regarding the organization's approvals.[2]

As indicated by Article 1 point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter alluded to as UUTP), what is implied by Limited Liability Company is a Legal Entity which is a capital union set up dependent on an understanding, directing business exercises with approved capital which is isolated into shares and satisfies necessities applied in this Law and its executing guidelines.

The decision of Limited Liability Company as a type of organization over different structures is because of two reasons: initial, a regional risk organization is a relationship of capital, and second, a regional responsibility organization is a legitimate autonomous element. As a capital affiliation, it is simple for investors of a restricted responsibility organization to move their offers to others. As an autonomous lawful substance dependent on the Company Law, the obligation of offers is restricted.

As a legitimate substance, a restricted risk organization has attributes, among others: the presence of discrete resources, having a particular reason, having its advantages, and the presence of a collaborative organization.[3]

The legitimate substance status of a restricted risk organization is gotten during the time spent its foundation to have the option to understand its exercises as an autonomous business element. As indicated by Article 7 point (1) of the Company Law, it is resolved that a restricted risk organization is set up by 2 (two) or more people with a notarial deed drawn up in the Indonesian language. The foundation and notarial deed of foundation of a restricted responsibility organization should be endorsed by the Minister of Law and Human Rights (HAM).

The deed of foundation of a restricted responsibility organization as a legitimate deed, which at the hour of its assembling was stayed away from by the gatherings who have consented to tie themselves in the foundation of a restricted obligation organization, it cannot be supposed to be a lawful substance before the deed of the foundation is endorsed by the Minister of Law and Human Rights.

A regional responsibility organization that has been with a legitimate substance will turn into a free foundation, and as an ally of rights and commitments, can complete lawful activities both in court and in court and have different resources from the administration and originators. Likewise, they are lawful subjects like people, so the authors who are additionally investors cannot be considered responsible for more than the ostensible worth of the offers they own.

In the act of the business world, deviations are regularly made by the authors of a restricted responsibility organization, for example, not consenting to the arrangements of the enactment concerning the strategies and methods for building up a restricted risk organization where the restricted obligation organization has completed its exercises however has not yet gotten endorsement as a lawful substance. Fundamentally can make misfortunes the restricted responsibility organization itself.

In light of the foundation above, defined a few issues will be examined in this investigation, to be specific: what are the duties of the Board of Directors of a restricted risk organization as the supervisor of the organization's exercises, and how are the game plans concerning the foundation of a restricted obligation organization to have the situation with a lawful element?

2. METHODS

This composing utilizes a regulating lawful examination strategy, particularly an interaction to decide Law and order, legal guidelines, and lawful teaching to answer the lawful issues faced.[4] The essential lawful materials are enhanced by optional legitimate materials, to be specific lawful books, logical lawful works of exploration results and other lawful writings identified with the issues contemplated, concerning the investigation of lawful materials, the gathering of equivalent laws and guidelines, the guidelines in the pecking order underneath them. Then, at that point, dissected utilizing deductive, inductive rationale utilizing the hypothesis of assurance and legitimate security.

3. RESULT AND DISCUSSION

3.1 Legal Consequences on Limited Liability Companies that are Not Legal Entities

Indonesia is a legitimate express that perceives everybody as illegal, which implies that everybody is perceived as a lawful subject. Article 27 of the 1945 Constitution specifies that all residents have a similar situation in Law and government and are obliged to maintain the Law and government no matter what.

As indicated by Subekti, singular Law is guidelines seeing people as subjects in Law, guidelines concerning the capacity to have rights and act freely to do their privileges and things that influence those abilities.[5]

Individual Law, as indicated by Van Apeldoorn, purusa law, is the entire guideline of purusa or lawful subjects. Purusa law has legal position guidelines (Rechtbevoegdheid) and the power to act (handelingsbevoegheid).[6]

Law directs relations between the citizenry and between legitimate subjects. The legitimate subject is who can have the right and is fit for acting under the Law or who is proficient as indicated by the Law to have the right at the end of the day. Legitimate subjects have a vital position and job in Law, particularly respectful Law because lawful subjects can have lawful power. In the field of common Law, perceiving lawful subjects as a component of the lawful class cannot be disregarded because lawful subjects are essential ideas and understandings (idea en Begriff).

Individuals as lawful subjects are recognized in 2 (two) implications, namely:8 a. Natuurlijke persoon or menselijk persoon, who is known as an individual in

human structure or individual human. b. Rechts persoon is an individual as a legitimate substance or an individual made by Law in fiction or persona ficta. In the meantime, legitimate substances (Rechts persoon) are likewise separated into two sorts, in particular:

1) A lawful public substance (Publiek Rechts Individual) whose nature is viewed as a component of public interest taken care of by the state.
2) Private lawful substances (privaat Rechts persoon) are components of individual interests in legitimate private elements.

Of the different organizations in Indonesia, like firms, regional associations, cooperatives, etcetera, the PT type is the most well-known structure. It is usually said that the PT is the predominant type of organization.

As per Law Number 40 of 2007 concerning Restricted Obligation Organizations. "Organization" alludes to its capital which comprises of property or offers. While "restricted" alludes to the duty of the investors, which does not surpass the ostensible worth of the offers bought in and claimed. An organization is a legitimate subject who can make lawful moves or activities or make a commitment, which is restricted to things unequivocally managed in the articles of an organization's relationship.

The quintessence of the organization, in this UUPT it is accentuated that the organization is a legitimate element which is a capital association, set up dependent on an understanding, leading business exercises with approved capital which is isolated into shares and satisfies the prerequisites specified in this Law and it is carrying out guidelines to get quick administrations. This UUPT manages the methodology for:

1. Accommodation of utilization and allowing of legitimate substance status
2. Accommodation of utilization and endorsement of revisions to the articles of affiliation
3. Accommodation of warning and receipt of notice of changes to the articles of affiliation or potentially notice and receipt of notice of different changes in the information, which is helped out through data innovation administrations for the electronic, managerial arrangement of lawful elements, notwithstanding the chance of utilizing manual frameworks in specific conditions.

A regional responsibility organization is an organization dependent on Law. This makes the organization uncommon, contrasted with other business elements, if CV, UD, or Firma must be a business element. Nevertheless, the organization is supposed to be a legitimate substance. Accordingly, the organization is additionally a legitimate subject that can remain solitary, be arraigned, and sue under the watchful eye of the court, which is addressed by its approved organ. On the off chance that at least two individuals will set up a PT, an arrangement is required. A Deed of Foundation likewise contains the articles of affiliation and even runs the organization's activities. However, there has been no specification from the Menkumham, seeing its status as a PT.[7]

In Article 7 point (4) of Law 40/2007, it is expressed, "The organization acquires the situation with a legitimate substance on the date of the issuance of an ecclesiastical pronouncement in regards to the legitimization of the organization's lawful element." To get the situation with a Legitimate Substance, it should initially be gone before by the accommodation of the name of the organization, then, at that point, present an application to the clergyman for endorsement in regards to the foundation of a lawful element of the organization which is done mutually by the originators or approval to a public accountant which is helped out electronically through the Lawful Element Data Framework.

The situation with lawful activities done by organizations that have not gotten lawful element status can be seen from a few angles dependent on the Law on PT. Lawful activities for the organization that has not gotten the situation with a lawful element may just be done by all individuals from the Governing body along with all authors, and all individuals from the Leading body of Chiefs of the Organization and every one of them are together and severally liable for such legitimate activities. Besides, the legitimate activities completed together will turn into the lawful duty of the organization after the organization has acquired the status as a lawful entity.[8]

The author does the lawful activity in the organization's interest, which has not gotten the situation with a lawful substance. The lawful activity is the obligation of the originator concerned and is not restricting on the organization. Furthermore, this legitimate activity is just restricting. It turns into the organization's obligation after the lawful activity is endorsed by all investors in the GMS, which is gone to by all organization investors. The GMS being referred to is the primary GMS and is held no later than 60 days after the organization has acquired the assurance as a lawful substance.

It is extraordinary to assume that the organization has gotten the status as a lawful substance, and the organization naturally becomes the legitimate subject itself. Hence, the activities taken by the organization's organs are the organization's duty as long as they do not struggle with the pertinent laws and guidelines. Moreover, with the investors, the investors of the organization are not mindful by and by or for the commitment made for the organization and are not liable for the deficiency of the organization in overabundance of the offers claimed, aside from:

1. The prerequisites of the organization as a lawful substance have not been or alternately are not met;
2. The investors concerned either straightforwardly or by implication in

dishonesty exploit the organization for their advantages;

3. The investor concerned is engaged with an unlawful demonstration submitted by the organization or;

The investors concerned either straightforwardly or by implication unlawfully utilize the organization's resources, which brings about the organization's resources being deficient in taking care of the organization's obligations.

3.2 Responsibilities of the Board of Directors for the Processing of PTs that are not yet Legal Entities

For this situation, there is a PT that has made a lawful move. Nevertheless, the actual PT has not gotten the situation with a lawful substance because, in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter alluded to as UUPT), PT is a managed business element that enjoys numerous upper hands over the type of a business element. Another, to be specific, the honest conviction of the Limited Liability Company is ensured by order of the Company Law itself. This way, the PT makes lawful moves for the organization, although the PT is not yet a lawful entity.[10]

The obligations of the directorate fundamentally go connected at the hip with the presence, obligations, authority of rights. After getting the endorsement from the Minister of Law and Human Rights (HAM), the PT is lawful as a legitimate substance and becomes itself and can go into arrangements. The resources of the organization are isolated from the resources of the proprietor. Since a PT has a situation with a lawful substance, from that point forward, the Law treats investors and the executives (chiefs) independently from the actual PT. In this way, investors who have no revenue in the resources of the PT are likewise not answerable for the obligations of the organization or PT. As a legitimate substance, on a fundamental level, PT can have every one of the rights and commitments that can be possessed by every person, except for things that are close to home, which must be done by people who are in a specific relationship, with PT.

The obligations of the directorate fundamentally go inseparably with the presence, obligations, authority, rights, and commitments appended to them. An *authority* is a right that is acquired after satisfying certain conditions. An authority does not remain solitary. That authority is consistent as a trade-off for commitments that are its responsibility.[11] Likewise, the power and abilities of the organization's chiefs will consistently go connected at the hip with their duties as chiefs, who are approved to deal with the organization as per the points and targets contained in the articles of affiliation and other relevant arrangements.

The Company Law sticks to the rule of the assumption of the blame for the obligation of all individuals from the top managerial staff. This implies that the Law thinks about all individuals from the directorate to be mutually and severally dependable, in particular separately and together for all misfortunes of different gatherings, which obligation applies to all activities taken by the governing body for and in the interest of the organization.

With the arrangement of the joint and a few obligations, every individual from the directorate must be a boss for one another. In any case, practically speaking, the administrative capacity through the instrument of governing rules is hard to complete. Thus, it is essential to have a particular division of obligations, specialists, and duties. With this dispersion, the issue of demonstrating that individuals from the governing body really must be answerable for activities that hurt the interests of the organization becomes simpler.

The Limited Liability Company helps out lawful activities through its administration, specifically the directorate so that the PT will not work without the top managerial staff. The reliance among PT and chiefs is the motivation behind why a trustee relationship is conceived among PT and chiefs, which is trusted to act and utilize its power just for the organization.

Risk for lawful activities in the interest of a PT that is not yet legitimately consolidated, if the activities are completed by all individuals from the top managerial staff along with all organizers and all individuals from the Board of Commissioners, even though when a lawful activity is done the Company has not yet had the situation with a lawful element, then, at that point the duty on a fundamental level turns into the obligation of together and severally responsible (hoofdeljken gezameljk aanspraakelijk, mutually and severally at risk) for the lawful demonstration. As an assertion that an individual from the governing body cannot make a legitimate move for the benefit of an organization that has not acquired a lawful substance status in the interest of an organization that has not gotten a lawful element status, without the endorsement, everything being equal, different individuals from the directorate and individuals from the leading group of chiefs and their duties mutually together. Furthermore, suppose the individuals who complete lawful activities in the Company's interest have not acquired the situation with a legitimate substance. In that case, the obligation turns into the moral duty of the originator concerned, and the lawful activity is not restricting on the Company.[12]

As to duty regarding legitimate activities completed for the organization, even though the PT has not yet acquired the situation with a lawful substance. Such legitimate activities are controlled in Article 14 of the Company Law as follows:

1. Legal activities are completed by all individuals from the top managerial staff alongside all organizers and individuals from the leading body of chiefs for the organization.
2. The duty regarding activities completed for a restricted obligation organization that has not acquired the situation with a legitimate substance, for example, if a legitimate activity is done for the organization by all individuals from

> the governing body along with all authors and all individuals from the chiefs, it will be their obligation to bear the duty mutually and severally even though when it is completed the lawful activity of the organization has not yet been enrolled as a lawful substance and assuming, the individual doing lawful activities in the interest of the organization has not acquired a lawful element. [13]

Concerning the type of duty of the top managerial staff, overall, the governing body can be arraigned dependent on the overall arrangements specified in the Civil Code as:

1. Requests for taking organization resources unlawfully taken by the directorate;
2. Cases for return of benefits that ought to be delighted in by the organization; and
3. Wiping out of agreements made straight by the organization through a claim in the District Court or Actio Paulina by loan bosses of the organization regarding bankruptcy.[14]

In a subsidiary claim, which implies a claim recorded by at least one investor representing and for the benefit of the organization, which claim is documented on another gathering, a case can be recorded against the directorate as follows:

1. Pay to comprise of misfortunes, expenses, and interest;
2. Compelled to accomplish something; or
3. Constrained not to do something,[15]

The moral duty of chiefs in a standard way does not preclude the chance of their activities being criminally handled, and this is as per Article 155 of the Company Law, which peruses:

> "The arrangements concerning the obligation of the governing body and additionally the leading body of officials for their blunders and oversights controlled in this law do not diminish the arrangements specified in the law on criminal law."

The arrangements of this article build up the rule that common obligation (civilrechtelijke aansprakelijkheid, risk under common Law), nor legitimate corporate responsibility (obligation under corporate Law) does not dispose of or decrease criminal (obligation under criminal Law) for mistakes and oversights carried out by chiefs. or potentially the leading group of magistrates on the off chance that incidentally, the mistake or oversight contains components of a criminal offense. [16]

Since a criminal demonstration is not just illegal in criminal Law, however, in specific conditions, it very well may be illegal in the feeling of common Law.[17] Therefore, beginning from the arrangements of article 155, the chiefs or potentially the leading group of officials can be all the while sued for common risk and criminal obligation regarding the missteps or oversights they have perpetrated on the off chance that it just so happens, the mistake or exclusion disregards one of the criminal arrangements. For instance, an individual from the governing body or an individual from the leading body of officials "steals" the organization's resources. In such cases, simultaneously, the considerate and criminal risk is appended. Concerning criminal duty, it tends to be arraigned under Article 372 of the Criminal Code, deliberately taking or having against the privileges of a thing which completely or somewhat has a place with a restricted obligation company.[18]

4. CONCLUSION

Risk for legitimate activities for a PT that is not yet lawfully consolidated, if the activities are done by all individuals from the Board of Directors along with all authors and all individuals from the Board of Commissioners, even though when the lawful activity is completed, the Company is not yet a lawful substance, then, at that point, the obligation on a fundamental level turns into the duty mutually and severally liable for the lawful activity. As an insistence that an individual from the Board of Directors cannot make a legitimate move for a Company that has not acquired the situation with a lawful substance, without the endorsement, different individuals from the Board of Directors and individuals from the Board of Commissioners and their duties, they bear mutually and severally. Also, if by some stroke of good luck the organizers have made a legitimate move for the Company and at the time the lawful activity has completed, the Company has not acquired the situation with a lawful substance, then, at that point, the obligation turns into the moral duty of the individual concerned, and the lawful activity is not restricting on the company.

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Legal Consequences of Termination of Employment in Hospitality Tourism Sector Due to Force Majeure Amid the Covid-19 Pandemic

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ABSTRACT
The condition of tourism businesses in the hotel sector in Bali is now experiencing a significant decline since the emergence of Covid-19, which hit the whole world and impacted the absorption of workers, which decreased drastically. Many workers have experienced termination of employment due to economic congestion, especially in the hospitality tourism sector. Issues becoming problems comprise: what are the legal consequences of the termination of employment in the hospitality tourism sector in the force majeure of covid-19, and what efforts can be made by workers who experience the termination of employment to ensure their economic survival? The type of research used in this study is normative legal research with a statutory study approach. Primary legal materials are used and were collected from applicable laws and regulations, such as Law Number 11 of 2020 concerning Omnibus Law and Government Regulation Number 35 of 2021. Secondary legal materials are also used and were collected from literature, such as from relevant journals. Legal materials were analysed qualitatively through legal argumentation, and the results were presented descriptively. This study concludes that the legal consequences of termination of employment due to force majeure amid the Covid-19 pandemic are that workers are entitled to severance pay, award money, and compensation according to Article 45 of Government Regulation Number 35 2021. Efforts made by workers who have experienced termination of employment to ensure their economic survival include seeking new jobs, such as selling food, drinks, and clothes. Some are even becoming construction workers to support themselves and their families.

Keywords: *Covid-19, Force majeure, Legal consequence, Termination of employment.*

1. INTRODUCTION

The tourism sector in Indonesia generates enormous foreign exchange for the Indonesian state, supported by geographical conditions, culture, customs, and adequate facilities and infrastructure. Indonesia has become a tourism destination, and one of the most visited areas is the Island of Bali which is famous for its traditional culture and thick with customs. Tourism has become a leading sector in the Indonesian economy. This is because tourism is the key to development and prosperity. The tourism industry can provide a multiplayer effect for the stakeholders involved, increasing income and absorbing labor. Hence, it has an impact on increasing poverty reduction in the community. In addition, tourism has provided tangible benefits in various fields, not only in the economic sector but also in the social and cultural sectors [1]. The development of the tourism business can absorb labor to reduce unemployment.

However, since the emergence of the Covid-19 pandemic that hit the world, including Indonesia, which began on March 2, 2020, the President of Indonesia, Joko Widodo, has announced that there are Indonesian citizens who have been confirmed positive for Coronavirus Disease 2019 (Covid-19) in Indonesia [2]. The Covid-19 pandemic has an impact on the health sector and has an impact on the social and economic sectors in Indonesia and even the world. The state of the economy is growing weaker and is even experiencing congestion due to the implementation of restrictions on community activities which also had an impact on the space for movement in the business field. Due to the emergence of the spread of the Covid-19 in Indonesia, the Indonesian government issued a policy on March 31, 2020, in the form of Government Regulation (*PP*) Number 21 of 2020 concerning Large-Scale Social Restrictions (*PSBB*) for an acceleration of the handling of the Covid-19 [3]. Tourism will never exist if no people travel out of their neighborhoods to visit other places [4].

Considering such conditions, the Covid-19 pandemic has had a broad impact on the economy and society. Hence, the economy slumped, and many employees experienced layoffs because companies engaging in the

hospitality tourism sector reduced their employees. What will happen to workers experiencing the termination of employment during the pandemic? The condition motivated the conduction of the present research entitled "Legal Consequences of Termination of Employment in Hospitality Tourism Sector due to Force Majeure amid the Covid-19 Pandemic". The following is the Formulation of the Problem

1) What are the legal consequences of termination of employment in the hospitality tourism sector due to force majeure amid the Covid-19 Pandemic?
2) What measures can be taken by workers who have been terminated to ensure their economic survival?

2. METHODS

The research belongs to normative legal research, which was conducted out using a statutory approach. There are three types of legal materials used: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials were collected from applicable laws and regulations, and secondary legal materials were taken from literature collected from journals related to this study's object. Tertiary legal materials are collected from the English Dictionary, Legal Dictionary, and the Internet. These legal materials were collected through note-taking. Data were analyzed deductively- inductively with evaluative, argumentative, and descriptive techniques [5]. The data collection of this research was also carried out through interviews with several respondents, who were hotel employees and had experienced layoffs

3. RESULT AND DISCUSSION

3.1 Legal Consequences of Termination of Employment in Hospitality Tourism Sector in the Force Majeure of Covid-19

The working relationship between an employer and an employee/labor does not always run smoothly. Sometimes, a dispute occurs between the employer and the employee/labor, resulting in employment termination. As an example, there is a case where several employees who are members of the Bali Regional Federation of Independent Trade Unions (FSPM) came to the House of Representatives of Bali Province (*DPRD*) to ask for protection. This happened because many employees in the tourism sector experienced layoffs amid the Covid-19 pandemic (Tuesday, 27/10/2020). The reason for the termination of employment is that the hotel management has terminated their employment relationship. The hotel management intended to do so because the pandemic conditions forced them to terminate their employment for hotel employees due to the unstable financial condition of the Company, and they compensated employees who were laid-off in the form of severance pay. On the other hand, the Governor of Bali Province had issued a Circular in order that companies, including hotels, do not terminate the employment of employees [6].

In a statement by the Head of the Bali Province Manpower and Energy and Mineral Resources Office, Ida Bagus Ngurah Arda, (Tuesday 12/4/20), the number of formal employees who have been laid off and have experienced termination of employment since the emergence of the Covid-19 Pandemic on the island of Bali continued to grow. These employees include most of those who worked in hotels, restaurants, and other places. According to Arda, there were 65,594 laid-off formal workers and 2,189 workers who had been laid off; the figure is temporary. The Manpower Office claimed that the government (Ministry of Manpower) had appealed and made every effort to prevent companies from terminating workers [7]. Then, in September 2021, the Governor of Bali Province I Wayan Koster said the Covid-19 pandemic had dealt a moderately severe blow to the province of Bali. He revealed that around 75,000 more employees had been laid off and experienced termination of employment due to the impact of the tourism sector by the pandemic. The number is sure to continue to grow if the Covid-19 pandemic continues. More than 73,000 employees have been laid off; Meanwhile, more than 2,500 employees have experienced layoffs, said Koster at the event titled "Naker Tanggap Covid-19" in Nusa Dua Bali, Saturday, September 13/2020 [8].

Termination of employment may not be done unilaterally and arbitrarily. Termination of employment due to force majeure is regulated in Article 36 letter of Law Number 11 of 2020 concerning Omnibus Law (employment cluster) [9]. The legal basis for a company so that it may carry out Termination of Employment is Article 154 A of Law No. 11 of 2020 concerning Omnibus Law (Employment Cluster) which stipulates that Termination of Employment may take place for several reasons, such as the Company merges, merging, taking over, separating the Company. An employee/labor is unwilling to continue the employment contract, or the employer is unwilling to accept the employee/labor. A company may perform efficiently caused by situations that cause the Company to suffer losses. A may company close as a result of it experiencing continuous losses for two years. The Company may close due to a Force Majeure. The Company may be in a state of suspension of debt service obligations or bankruptcy.

Termination of employment may also occur due to a request for termination of employment submitted by the employee/labor because the employer has committed acts such as: molesting, insulting, or threatening the employee/labor, persuading workers to commit acts that violate the law, not paying wages on time, and not working outside the contract. It may also occur because of the decision of the industrial relations dispute settlement institution. Other things that may cause termination of employment are employee/labor resigning of their own accord, being absent for five working days without written information, committing a violation,

being unable to work for six months due to being detained by the authorities, prolonged illness, entering retirement age, and the employee/labor died. The first procedure that needs to be taken by both parties is a bipartite settlement, that is to say, conducting deliberation to reach a consensus. If it cannot be resolved bipartitely, the parties involved may request assistance from the local Manpower Office so that mediation, conciliation, or arbitration will be carried out. However, if the process cannot resolve the termination of employment dispute, the issue may be resolved through the industrial relations court.

The amount of severance pay received by employees of victims of termination of employment has been regulated in Government Regulation No. 35 of 2021 concerning Fixed-term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment which was promulgated on February 2, 2021, in Jakarta. In this regulation, the rights of employees related to termination have been described. Matters regarding workers' rights due to termination of employment are regulated in Article 40 of the Government Regulation No. 35 of 2021, as elaborated below:

1) In the event of Termination of Employment, the employer is obliged to pay severance pay and/or service award money, compensation for entitlements that should have been received.
2) Severance pay as referred to in paragraph (1) is provided with the following conditions:
   a. less than 1 of service, one month of wages;
   b. one year of service or more but less than two years, Two months wages;
   c. two years of service or more but less than three years, Three months wages;
   d. three years of service or more but less than four years, Four months of wages;
   e. four years of service or more but less than five years, Five months wages
   f. five years of service or more but less than six years, Six months of wages;
   g. six years of service or more but less than seven years, Seven months wages;
   h. seven years of service or more but less than eight years, eight months of wages;
   i. eight years of service or more, nine months of wages;
3) The period of service award as referred to in paragraph (1) is as follows:
   a. three years of service or more, but less than six years, two months of wages;
   b. six years of service or more, but less than nine years, Three months of wages;
   c. nine years of service or more, but less than twelve years, four months wages;
   d. 12 years of service or more, but less than 15 years, five months of wages;
   e. 15 years of service or more, but less than 18 years, six months of wages;
   f. 18 years of service or more, but less than 21 years, seven months of wages;
   g. 21 years of service or more, but less than 24 years, eight months of wages; and
   h. 24 years of service or more, ten months wages.
4) The compensation money received as referred to in paragraph (1) includes:
   a. annual leave that has not been taken and has not fallen;
   b. the fee or cost of returning the worker/labor and their family to the place where the worker/Labor was accepted to work;
   c. other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.

Nevertheless, in the event of force majeure such as the Covid-19 pandemic, the rights of the workers affected by the termination of employment are in accordance with Article 45 of the Government, No. 35 of 2021. The provisions are as follows:

1) Employers may terminate the Worker/Labor relationship due to the reason that the Company is closed due to force majeure, then the Worker/Labor shall be entitled to:
   a. severance pay of 0.5 times from the provisions of Article 40 paragraph (2);
   b. service award of 1 time from the provisions of Article 40 paragraph (3); and
   c. compensation for rights by the provisions of Article 40 paragraph (4).

2) Employers may terminate the Worker/Labor for reasons of force majeure which do not result in the Company to close; and therefore, the Worker/Labor shall be entitled to:
   a. severance pay of 0.75 times from the provisions of Article 40 paragraph (2);
   b. payment for a service period of 1 time from the provisions of Article 40 paragraph (3); and
   c. compensation for rights by Article 40 paragraph (4).

Established on the provisions of Government Regulation No. 35 of 2021 mentioned above, the conditions regarding the rights of a worker/labor affected by the termination of employment due to force majeure are classified into: if the termination of employment occurs due to force majeure resulting in the Company closing, the legal consequences for the rights received by the worker affected by the termination of employment is in the form of severance pay of 0.5 (zero point five) or half of the provisions of Article 40 paragraph (2). The reward for the service period is only one time from the provisions of Article 40 paragraph (3), but the compensation for entitlements is the same as the provisions of Article 40 paragraph (4). Suppose the termination of employment occurs due to force majeure but does not result in the Company closing. In that case, the rights received by the worker/labor affected by the

termination of employment are in the form of severance pay of 0.75 times of the provisions of Article 40 paragraph (2), the reward for years of service is one time from the provisions of Article 40 paragraph (2), and compensation for rights by the provisions of Article 40 paragraph (4).

Workers with a Fixed-term Work Agreement (or so-called *PKWT*) only get compensation money as stipulated in Article 15 of Government Regulation Number 35 of 2021 and does not apply to foreign workers. Regarding the amount of compensation paid to employees of a Fixed-term Work Agreement according to Article 16, it is as follows: compensation to workers with a Fixed-term Work Agreement who has served for 12 months continuously shall be given at the rate of 1 month's wages; Compensation money for workers with a Fixed-term Work Agreement who has worked for one month or more but less than 12 months is calculated proportionally with the following pattern: work period divided by 12 times one-month wages (The calculation of the wages referred to in this case is the primary wage and fixed allowances (if any).

Regarding Job Loss Insurance, it is regulated in Article 46 A to E of Law Number 11 of 2020 concerning Omnibus Law (Employment Cluster), which specifies that workers who have been terminated shall be entitled to receive job loss insurance. Job loss insurance benefits are cash, access to job market information, and job training. After having a membership period, a maximum of 6 (six) months of wages shall be insured (Article 46D). In Article 1 point 1 of Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Insurance Program, it is stated that the Job Loss Guarantee, abbreviated as *JKP*, refers to social security provided to Workers/Labors who experience termination of employment in the form of cash benefits, access to labor market information, and Job Training. *JKP* participants shall be workers/labors whom employers have included in the social security program (Article 4 of Government Regulation 37/2021). Cash disbursement is organized by the Social Security Administering Body (*BPJS*) for Employment (Article 24 of Government Regulation 37/21). Benefits of access to information and job training shall be organized by the Ministry of Manpower (Articles 29 and 34).

3.2 Efforts the Workers Affected by Termination of Employment Could Take to Ensure Their Economic Survival

The Covid-19 pandemic having hit the whole world has brought about a very significant impact on social and economic aspects. The economy has become exceptionally down, especially in the tourism sector. With the implementation of large-scale social restrictions (*PSPB*), the movement of the economy is automatically restricted, including hospitality tourism, which is the sector most affected by Covid-19, especially in Bali. Most of the business world in the tourism sector has been closed, resulting in many workers being laid off and even being terminated due to force majeure. The termination, as a result, cause workers to lose their livelihoods.

From the results of interviews conducted with several respondents (employees affected by the termination of employment), it was found that there were various efforts made by workers affected by the termination of employment to ensure their economic survival, including seeking other jobs, which made them who initially were as a hotel employee become a construction worker, trader, motorcycle/taxi driver, shop assistant, parking attendant, and others. Some work as construction workers, some sell goods online, and some sell necessities, food, and drinks. In addition, some also sell clothes, children's toys, masks, hand sanitizers, and so on. Some sell their wares by using a car to do outdoor selling on the side of the road to earn a fortune; they dare to do so as long as they can earn money to support their lives with their families, including to pay their children's school fees.

4. CONCLUSION

Legal consequences of termination of employment in the hospitality tourism sector due to Force Majeure amid the Covid-19, based on Government Regulation No. 35 of 2021, includes. Suppose the termination of employment is done due to force majeure, which causes the Company to close. In that case, the legal consequence is the Company shall fulfill the rights of workers affected by the termination in the form of severance pay of 0.5 from the provisions of Article 40 paragraph (2); the period of service award shall be given only one time of the provisions of Article 40 paragraph (3), but the amount of compensation shall be the same as the provisions of Article 40 paragraph (4). Meanwhile, suppose the force majeure does not cause the Company to close. In that case, the rights that shall be obtained by the workers/labors who are subject to the termination of employment are in the form of severance pay of 0.75 times of the provisions of Article 40 paragraph (2), a period of service award of 1 (one) time from the provisions of Article 40 paragraph (2). The compensation for rights is under the provisions of Article 40 paragraph (4). Then, effort made by workers affected by the termination of employment to ensure their economic survival is seeking other jobs. Originally hotel employees have now become construction workers, traders, motorcycle/taxi drivers, and others. They are willing to do all the jobs as long as they can make money to support themselves, their families, and their children's needs and school fees.

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Investment Policy According to the Direction of Investment Policy in Indonesia

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ABSTRACT
To attract investors to invest, a country needs to determine a conducive and investment-friendly investment policy. A *conducive investment policy* is a policy that can facilitate and attract private investment in general and foreign investment in particular, encouraging foreign investors and domestic investors to invest by increasing the level of comfort and minimizing uncertainty, discretion, and ambiguity. Some countries provide restrictions on investment entry (especially foreign investment) by setting a minimum capital limit. The government creates a fundamental investment strategy to stimulate the formation of an investment-friendly national business climate in order to boost the national economy's competitiveness and accelerate investment growth. Article 4 of Law Number 25 of 2007 declares the essential investment policy. The investment climate is a policy, institutional and behavioral environment, both current and expected conditions, which affect the level of risk and the rate of return on capital investment. The investment climate is dynamic, meaning that every element in it will change as business dynamics and time change. The national development program, which is the direction of Indonesia's investment policy, stipulated that it is possible to implement investment in Indonesia by fulfilling specific requirements. In addition, foreign investment is directed at strengthening the growth of the national economy in order to support the achievement of national development goals. The need for government regulation of investment is intended to provide direction for investment carried out in Indonesia to play a role in national development.

Keywords: *Investor, Investment, Policy.*

1. INTRODUCTION

The government creates a fundamental investment strategy to stimulate the formation of an investment-friendly national business climate in order to boost the national economy's competitiveness and accelerate investment growth. Article 4 of Law 25/2007 declares the essential investment policy.

According to Article 4 paragraph (2) of Law 25/2007, the government, in establishing the basic investment policy, is obliged to:

1. Give fair treatment to both domestic and foreign investors while keeping the national interest in mind.
2. The provisions of the law ensure legal clarity, commercial certainty, and business security for investors from the licensing procedure to the completion of investment operations.
3. Opening opportunities for development and protecting MSMEs and Cooperatives.

A General Investment Plan is used to carry out the core investment policy (GIP). Presidential Regulation No. 16 of 2012, relating to the General Investment Plan (hence referred to as Perpres 16/2012), was issued by the government. GIP is a long-term investment planning document that will be effective until 2025 and will serve as a guide for Ministries and Non-Ministerial Government Agencies in developing investment policies. GIP's role is to bring all connected sectoral interests together and operationalize them so that there is no overlap in choosing which sectors should be developed and promoted through investment activities. GIP consists of investment policy directions and a roadmap for the implementation of the general investment plan. Article 2 letter d of Presidential Regulation 16/2012 regulates the direction of investment policy. [1]

2. METHOD

The research method employed was normative legal research, which entailed evaluating materials from numerous laws and regulations, as well as other materials

from related literature. Normative legal research or library law research is defined as legal research undertaken by evaluating library documents or secondary data. [2]

3. RESULT AND DISCUSSION

3.1 The direction of investment policy in improving the investment climate in Indonesia

The investment climate is an institutional environment policy and behavior, both current and expected conditions that affect the level of risk and the rate of return on investment. This investment climate has a significant impact on investors' motivation to engage in investment activities, both new investments and growth of existing ones. The investment climate is dynamic, meaning that every element in it will change as business dynamics and time change. In addition, the investment climate is also locational, meaning that although the investment climate will be strongly influenced by the situation and conditions of the national economy, the different characteristics of each regional and regional economy will give different directions of emphasis in efforts to improve the investment climate in Indonesia.

Improvement of the investment climate is carried out through strengthening investment institutions (such as the development of a One-Stop Integrated Service system in the field of investment that is more effective and accommodating, increasing coordination between institutions/agencies in the context of investment services, directing investment institutions in the regions to effectively proactively being the initiator of investment, regulating closed and open business fields with conditions, management of business competition (regulation, supervision, enforcement, and improvement of competence of business competition supervisory agencies), improving industrial relations (increasing worker competence and code of good faith for employer-employee relations), and improvement of the taxation and customs system. [5]

3.2 The Direction of Investment Policy

The national development program, which is the direction of Indonesia's investment policy, stipulated that it is possible to implement investment in Indonesia by fulfilling specific requirements. Furthermore, foreign investment is aimed at bolstering the national economy's growth in order to aid in the attainment of national development goals. In addition, in the national development program, it is expressly stated that the policy and implementation of investment, primarily foreign capital, is determined and carried out by the government, which is embodied in a policy instrument in the form of laws and regulations such as through government regulations, presidential decrees, ministers, and Capital Investment Coordinating Board. In setting these objectives, the government wants to achieve a specific objective. The policy and management of investment, which began in the Fifth period of Five Years Development (1989-1994) and was described in the Presidential Decree of the Republic of Indonesia Number 13 of 1989, concerned the Fifth Period of Five Years Development Plan, chapter 7 concerning the Development of the Business World, it was explained that "investment, especially foreign capital is still needed for development in various fields, especially those that can produce goods and services for export, encourage development and transfer of technology, as well as create jobs and are directed to encourage the ability and growth of the national business world." This policy further formulates that foreign investment is carried out basically in joint ventures accompanied by certain conditions, including opening up enormous job opportunities, enabling the transfer of skills and technology transfer to the Indonesian people in the shortest possible time, and maintaining quality and environmental balance.

The Government's policy on investment from time to time continues to experience ups and downs. Sometimes stringent policies are treated, then loosened again. This fact can be seen from the government policy on January 22, 1974, which required every investment, especially foreign capital that would carry out its business in Indonesia, to cooperate in the form of joint ventures with the national capital. The stipulation of business fields followed this policy declared to be completely closed to foreign investment, open but must be through joint venture cooperation with the national capital.

The need for government regulation of investment is intended to provide direction for investment carried out in Indonesia to play a role in national development. In other words, both foreign and domestic investment policies are founded on the assumption that investment activities must contribute to the building and strengthening of the national economy's structure. In other words, the existence of various arrangements for investment is nothing but intended to provide wider opportunities for investors in carrying out their activities through the support of a conducive investment climate. [6]

Moreover, various deregulation and debureaucratization efforts are needed to create a better implementation of investment licensing services by simplifying investment regulations and licensing. This is one of the government's efforts to provide more investment opportunities to carry out their business smoothly, safely, and in an orderly manner.

Because no matter how good the investment climate created by the government for both foreign and domestic investment, if it is not accompanied by efforts to deregulate and debureaucratize investment services, then, of course, it will not provide adequate results so as not to cause doubts from investors to invest in Indonesia.

The direction of government policy on the implementation of investment must be clear and consistent so that it cannot and does not easily change according to the tastes of policymakers. In other words,

tailored policies are supposed to give legal certainty for investment to play a larger role in national development implementation, rather than the other way around. For this reason, the government must be able to coordinate the activities of fostering and supervising investment as well as possible so as not to cause friction or conflict between investors on the one hand and the government and/or society on the other.

With the enactment of Law Number 25 of 2007 on investment as a replacement for Law Number 1 of 1967, jo. Law No. 11/1970 on foreign investment and Law No. 6/1968, jo. Law No. 12 of 1970 on domestic investment, the regulation of investment activities in Indonesia has changed and is expected to be in accordance with or in line with Law Number 32 of 2004 on regional government, which grants regions broader authority to carry out investment.

The regional authority is limited to investment licensing. It includes further regulation of top-level policies relating to the provision of various investment facilities and fostering and controlling investment in the regions.

From data on investment applications for both Foreign Investment and Domestic Investment from 1967 until January 2008, the total investment projects that Investment Coordinating Board has approved are valued at approximately US$ 63.1 billion (approximately Rp. 126.2 trillion). This gives the impression that the policies adopted by the government in attracting investment, especially foreign capital to enter Indonesia, have not fully shown maximum results. This is due to several technical, operational constraints. Therefore, it is necessary to continue to strive strategically by the government to create and encourage a standard mechanism in the implementation or management of investment to provide greater stimulation or impetus for investment, especially foreign capital, to carry out business applications in Indonesia.

Although various supporting instruments have been put in place to complement the new investment law, which no longer distinguishes between foreign and domestic regulations, such as the improvement of investment application procedures through Presidential Decree No. 97/1993 in conjunction with Presidential Decree No. 115/1998 on Basic Provisions Investment method that stipulates a one-door service system licensing service for entrepreneurs who will invest their capital in Indonesia, and even now with a one-roof service system through the Presidential Decree No. 29 of 2004, but not yet show interest for the owner of the capital to take advantage of the investment facility. With this presidential decree, Investment Coordinating Board and Domestic Investment Coordinating Board act as the executor of all matters relating to the completion of the investment process in Indonesia. The decision is also intended to assist investors so that their dealings with the government and local governments related to investment can be carried out smoothly.

Furthermore, in conjunction with Presidential Decree Number 96 of 1998 concerning the List of Business Fields Closed to Investment and Presidential Decree Number 99 of 1998 concerning Fields/Types of Business Reserved for Small, Medium, and Large Businesses with Partnership Terms, the President of the Republic of Indonesia issued Decree Number 32 of 1992 as an elaboration of Article 6 of the Foreign Investment Law. The President of the Republic of Indonesia issued Instruction No. 5/1984 on Guidelines for Simplification and Control of Licensing in the Business Sector, as well as Investment Coordinating Board Decree No. 37/SK/1999 on Investment Guidelines and Procedures, to help investors apply for permits in Indonesia by reducing the number of permits available and simplifying procedures. Then the Investment Coordinating Board Decree Number 10 of 1985 and further elaborated in the Minister of Home Affairs of the Republic of Indonesia Number 20 and 21 of 1986, which aims to secure and regulate investment fees in the regions.

Besides that, to support the smooth flow of investment in spurring investment growth, especially foreign capital to Indonesia, various deregulations in the fields of finance, transportation, and trade, as well as industry have been carried out, including the permitting of foreign ownership of shares, regulation of commerce, increased efficiency in sea transportation, especially in the determination of free ports, import duties, formation of bonded zones, as well as industry, monetary policy, improvement of the investment climate and capital market, improvement of physical infrastructure, and promotion of investment promotion. [7]

The establishment of investment regulations by Law Number 25 of 2007 in place of Law Number 1 of 1967 about Foreign Investment and Law Number 6 of 1967 concerning Domestic Investment has eliminated the duality of regulation of investment, whether foreign or domestic. Furthermore, the inclusion of this new Law supports and clarifies Indonesia's investment regulation policy.

The government is clearly specified to adopt fundamental investment policies in order to (a) stimulate the formation of a favorable national business climate for investment in order to boost the national economy's competitiveness; and (b) expedite the rise in investment. Furthermore, while establishing the primary policy alluded to in this, the government would treat local and international investors equally while keeping the national interest in mind.

Furthermore, through the provisions of laws and regulations, the government will ensure legal certainty, business, and business security for investors from the licensing process to the end of investment activities, as well as opening opportunities for development and protecting micro, small, and medium enterprises cooperatives.

To reinforce the direction of the primary investment policy, the government will make it happen in a general

investment plan. The direction of investment growth in Indonesia is intended to be included in the government's general investment strategy, particularly in terms of regional investment development. One of the goals of forming a state government is to promote public welfare, thus the development of a fundamental investment strategy will be in keeping with that goal. Where the mandate has been stated, among other things, in the terms of Article 33 of the Republic of Indonesia's 1945 Constitution and as a constitutional mandate that underpins the formulation of all economic laws and regulations.

According to the constitution, national economic growth must be built on democratic values in order for Indonesia to achieve economic sovereignty. The People's Consultative Assembly of the Republic of Indonesia issued Decree Number XVI of 1998 addressing Economic Politics in the Framework of Economic Democracy as a source of material Law, reinforcing the relationship between economic growth and people's economic actors. As a result, the primary investment policy includes investment development for micro, small, medium, and cooperative businesses.

In this regard, an investment must be made as part of the national economy's implementation, with the goal of increasing national economic growth, job creation, long-term economic development, national technological capacity and capability, people's economic development, and community welfare in a competitive economic system.

The goal of implementing investment can only be achieved if the supporting factors that stifle investment can be overcome, such as better coordination between central and regional government agencies, the creation of an efficient bureaucracy, legal certainty in the investment sector, highly competitive economic costs, and a favorable business climate in the fields of human resources and business security. It is envisaged that when these numerous supporting variables improve, the investment realization would increase dramatically.

The mystical atmosphere surrounding the establishment of the Law on Investment is based on the spirit of creating a favorable investment climate, with the Law on Investment regulating matters such as the scope of the Law, basic investment policies, forms of business investment entities, treatment of investment, business fields, and so on, as well as the linkage of economic development with people's economic actors, which is embodied in the regulation regarding the development of investment for micro, small, medium, and cooperative enterprises, rights, obligations, and responsibilities of investors, as well as investment facilities, ratification and licensing coordination, and implementation of investment policies, which regulates institutions, the implementation of investment affairs, and provisions governing disputes. All direct investment operations in all areas are covered by this law. This law also ensures that all investors are treated equally. In addition, the government is required by this law to strengthen cooperation between government agencies, the government, and Bank Indonesia, as well as between the government and regional governments. [8]

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4. CONCLUSION

From the description above, it can be concluded as follows: repair of the Investment Climate is carried out through strengthening institutional investment (such as the construction of a one-door integrated service system in the field of investment that is more effective and accommodating, increasing coordination between institutions/agencies in the context of investment services. This policy further formulates that foreign investment is carried out basically in joint ventures accompanied by certain conditions that can open considerable employment opportunities, enabling the transfer of skills and technology to the Indonesians as soon as possible and maintaining quality balance and environmental planning.

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Zoning the People's Market in the Middle of the Modern Shops in the Badung District Aspect of Business Competition

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ABSTRACT
The existence of people's markets in Indonesia is not just an economic matter. However, it is also a matter of norms, cultural domains, and civilizations that have long been going on in various parts of Indonesia and are an essential aspect of the national trade system. People's markets throughout Indonesia continue to withstand attacks from modern markets. Especially in the Badung Regency Regional Regulation Number. 3 of 2017, to support the business or economy of the small community, it is hoped that they will be able to organize the rules of the game for supermarket business so as not to turn off the traders in the people's markets. This study will examine and analyze people's markets in Badung Regency and the form of community market management in providing legal protection in Badung Regency. This research method is adopted through socio-legal research, looking at the arrangement from a juridical, sociological, and philosophical point of view and its application in society. The output of this research is the discovery of a model for managing and fostering people's markets so that there is healthy business competition amid the spread of supermarkets. The input is expected to benefit economic development, tourism, and the welfare of the people in Bali, especially the Badung Regency, more concretely as an aspect in regulating and managing the people's market in Badung Regency.

Keywords: *Business Competition, Modern Shops, People's Market, Zoning.*

1. INTRODUCTION

The development of the business world today is very rapid, especially in the world of trade. Economic actors feel the impact of this free market—especially the fast-growing modern shops with various ways of offering. The people's market in Badung Regency will undoubtedly have an impact, so the regional government needs to pay special attention to protecting the community's citizens, especially in Badung regency. If left unchecked, it will result in the displacement and reduction of the people's market in Kab. Badung. The problem in this study is how the protection provided by the regional government of Badung Regency is related to the rapid development of modern markets. What are the obstacles in the implementation of supervision related to the zoning of modern markets in Kab. Badung, this research is a normative and descriptive juridical research by studying and reviewing books and regulations related to the legal protection of the people's market and modern shops known as literature study. field studies were also carried out through interviews with the head of the office of industry, trade, and cooperatives in Badung Regency as a resource person and conducting direct interviews with small business owners in Badung Regency. In this way, it is hoped that the objectives to be achieved can be met or answered.

The type of research used in this research is the normative legal research to find out the zoning implementation of the Badung Regency Regional Regulation Regulation Number 3 Of 2017 in business competition. It seems that in its implementation, it has not provided legal protection, has not been effective due to non-compliance of modern shops in fulfilling the completeness of permits and not heeding the zoning rules that have been set as well as the indecision of law enforcement officers in providing a deterrent effect: the legal protection carried out by the Badung Regency government is felt to be not optimal because it is more directed to preventive legal protection, which is only in the form of prevention before the occurrence of violations, by providing guidance and socialization to people's market businesses and supermarkets.

2. METHOD

The method used in this research is normative legal research with a statutory approach. Primary legal materials in legislation, namely the 1945 Constitution of the Republic of Indonesia, Civil Code Law. Law no. 5 of 1999 concerning monopolistic practices and unfair business competition. Law no. 8 of 1999 concerning consumer protection, Badung Regency Regulation Number 3 of 2017, and secondary legal materials in literature, journals, documents related to modern store zoning against the public market. In the practice of the people's market, business competition in Indonesia is increasingly shifting by the proliferation of modern shops. In raising the problem more using qualitative data analysis, namely the data that has been collected from the results of the study and then analyzed descriptively by selecting the data obtained according to their quality and truth and then connected with theories and laws and regulations in order to obtain answers in this study**.**

3. RESULT AND DISCUSSION

3.1 The Existence of People's Markets and Modern Stores in Badung Regency

The island of Bali is an area that is the leading destination for domestic and foreign tourists. Tourist visits to Bali are not evenly distributed in all cities/districts. The distribution of tourism destinations in Bali is not evenly distributed in each city/regency. The tourism climate supports increased investment in Indonesia, especially in the province of Bali. Like other regional or local governments, Badung Regency as a tourism destination that has the right to make regulations also has regulations relating to supermarkets and people's markets, namely Regional Regulation 3 of 2017, which contains the establishment of people's markets and supermarkets, the number and distance of supermarkets, floor area and land, working hours, partnerships, people's market management, licensing, guidance and supervision as well as sanctions.

The issuance of Regional Regulation 3 of 2017 by the Badung Regency Government aims to create business certainty and orderly business that synergizes and is balanced between people's markets and supermarkets to grow and develop together in carrying out their business activities. It is supported by the Badung Regent Regulation Number 62 of 2017 concerning the Implementation of Regional Regulation Number 3 of 2017 concerning the Arrangement and Development of People's Markets, Shopping Centers and Supermarkets (hereinafter referred to as Regent Regulation 62 of 2017), which also regulates the number of supermarkets, the distance of supermarkets from other supermarkets and the distance of supermarkets from people's markets, and empowerment of people's markets.

Then the Regent's Regulation Number 46 of 2018 concerning Amendments to Regent's Regulation Number 68 of 2017 concerning Procedures for Submitting Applications and the requirements for Issuing Business Permits for the Management of People's Markets, Shopping Centers and Modern Shops (hereinafter referred to as Regent Regulation 46 of 2018) regulates the requirements for submitting applications IUP2R, IUPP, and IUTS. All these regulations must not overlap so that when establishing, managing, and zoning supermarkets and people's markets, there are continuous or harmonious rules. This situation can harmonize laws and regulations with business competition regulations in Law No. 5 of 1999.

Table 1. Distance from People's Markets, Shopping Centers and Supermarkets Badung regency

Districts	Distance
South Kuta	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 50-100 meters outside the radius of Pasar Rakyat
Kuta	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 0-50 meters outside the radius of Pasar Rakyat
North Kuta	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 50-100 meters outside the radius of Pasar Rakyat
Mengwi	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 101-200 meters outside the radius of Pasar Rakyat
Abiansemal	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 200-500 meters outside the radius of Pasar Rakyat
Petang	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 300-500 meters outside the radius of Pasar Rakyat
South Kuta	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 50-100 meters outside the radius of Pasar Rakyat
Kuta	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 0-50 meters outside the radius of Pasar Rakyat
North Kuta	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 50-100 meters outside the radius of Pasar Rakyat
Mengwi	The distance between Pasar Rakyat and Supermarkets/Shopping Centers is 101-200 meters outside the radius of Pasar Rakyat

Table 2. Number of People's Markets, Shopping Centers and Supermarkets Badung regency

Districts	Number of Supermarkerts	Supermarket Classification		
		Networking	Not Networking	Managed Independent (Local)
South Kuta	400	120	280	Unlimited
Kuta	389	116	273	Unlimited
North Kuta	408	122	286	Unlimited
Mengwi	264	78	186	Unlimited
Abiansemal	222	71	151	Unlimited
Petang	77	21	56	Unlimited
Total	1.7760	528	1.232	Unlimited
South Kuta	400	120	280	Unlimited
Kuta	389	116	273	Unlimited
North Kuta	408	122	286	

Foreign retailers or Modern Stores began to arrive and enliven the Indonesian retail industry. The presence of modern stores, in addition, in having a positive impact on the local and national economy, on the other hand, has a negative impact due to the proliferation of modern shops so that people's market business actors are reduced. Specifically, what can be noted is the folk art market which is increasingly being displaced by the proliferation of shopping centers and modern shops selling various objects that are needed by the local community. The Badung Regency Government has made a Regional Regulation as stated in Regional Regulation 3 of 2017 to support a small business or the community's economy. It is expected to regulate the game rules for supermarket businesses so as not to turn off traders in the people's market.

The people's market is managed with traditional management and implementation, namely the meeting of sellers and buyers. A price agreement occurs, and the transaction occurs after going through a direct price bargaining process. The presence of modern stores, in addition to having a positive impact on the local and national economy, on the other hand, has a negative impact due to the proliferation of modern shops so that people's market business actors are reduced. Specifically, what can be considered is the people's market which is increasingly being displaced by the proliferation of shopping centers or modern shops that sell various objects such as the people's market, which is the need for local communities to improve regulations in order to support healthy business competition in Badung Regency.

In order to create a strong economic foundation and economy that is efficient and free from market distortions, Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The emergence of this law reminds us that negative behavior from the economic system may appear in business activities that cause uncompetitiveness. Business competition is helpful as an effective way to achieve optimal utilization of resources; besides that, business competition can also be a fundamental basis for average performance for the long term and is called a sustainable competitive advantage that can be obtained through three strategies, namely cost advantage, differentiation and cost focus, (Jhony Ibrahim, 2009, page.1).

So in the economic aspect, small businesses in the form of a people's market in Badung Regency as a tourism development area are necessary so that constitutionally everyone (business actors) has equal access to existing economic resources. Thus, the importance of the Badung district government in regulating the existence of modern shops. Many parties are finally worried about the existence of the people's market seeing the increasing number of modern shops. As a result of this phenomenon, the Denpasar city government issued a regulation on modern shop management packaged in the mayor's regulation no. 9 of 2009 concerning the arrangement and development of traditional markets, shopping centers, and modern shops. This Denpasar mayor's regulation regulates the terms and quotas for minimarkets or modern stores in Denpasar. , the Regional Government of Badung Regency also continues to improve the management of the people's market. Based on an interview with Mr. I Wayan Marka as the Head of the Regional Public Company Planning Section of Pasar Mangu Giri Sedana, the primary strategy to manage people's markets is first, focusing on improving competitiveness programs. Management that is not neatly organized, dirty, and slum becomes its weakness for the survival of the people's market. Internal improvements are needed in managing the people's market to encourage the competitiveness of the people's market in balancing the presence of supermarkets.

Second, carry out a revitalization program that includes the physical construction of buildings and improvements to market facilities, including sanitation, aesthetics, and the provision of parking spaces. However, this program usually does not solve the problem. It creates new problems such as increasing kiosks but being narrower, the construction of upper floors. However, the traders do not want to sell in the area, and they often oppose this revitalization plan.

Third, good quality management through socialization and training on the importance of quality management to improve service to buyers in terms of behavior, quality, and cleanliness of goods so that they dare compete with supermarkets.

Based on the data that the author obtained from the Cooperatives, SMEs, Industry, and Trade Office, the number of supermarkets recorded until 2018 was only 679 (six hundred and seventy-nine) store units. The supermarkets owned by local people only amount to 59 (fifty-nine) units, and the rest are networked supermarkets such as Alfamart, Indomaret, Circle K, and Mini Mart. When associated with the parameters of effectiveness, whether or not the law is effective is determined by 5 (five) factors (Soerjono Soekanto, 1985; 7) as follows: The legal factor itself, in this case, Perda 3 of 2017, is a legal umbrella for the management and development of people's markets and supermarkets,

Law enforcement factors, namely the parties who form and apply the law carried out by the Civil Service Police Unit, Factors of facilities and facilities, in this case, the number of technical teams is not proportional to the number of supermarkets in Badung Regency, so it cannot be checked regularly, Community factors, namely supermarket business actors who are reluctant to take care of the completeness of licensing and establishment procedures according to what has been determined. Cultural factors, namely the culture of the people who currently have shifted where they prefer to shop at supermarkets.

Based on the author's observations, there are still many modern shops that do not heed the provisions of Perda 3 of 2017, many modern shops have erected their

buildings regardless of distance, modern open stores beyond the specified operating hours, only complete analysis of socio-economic conditions and do not carry out partnerships. What also affects the ineffectiveness of the implementation of Perda 3 of 2017 is the lack of coordination between the relevant agencies that issue permits, supervise, and enforce the law. Therefore, it can be said that the implementation of Regional Regulation 3 of 2017 in the Badung Regency has not been optimal. Based on the author's observations, there are still many supermarkets that do not heed the provisions of Perda 3 of 2017, many modern stores have erected their buildings regardless of distance, open supermarkets beyond the specified operating hours, only complete analysis of socio-economic conditions and do not carry out partnerships. What also affects the ineffectiveness of the implementation of Perda 3 of 2017 is the lack of coordination between the relevant agencies that issue permits, supervise, and enforce the law. Therefore, it can be said that the implementation of Regional Regulation 3 of 2017 in the Badung Regency has not been maximized. So it affects the existence of the people's market.

3.2 Zoning Management of People's Markets with Modern Stores in Badung Regency in Realizing Fair Business Competition

The people's market is a forum for the community as business actors in the trade sector and provides broad business opportunities for the community to create jobs. Protection of the people's market must be carried out because, especially in the case of licensing, which is a policy to control investment entering an area.

People's market and supermarket business actors who will set up their business must have a supermarket business license (IUTS) and a people's market management business permit (IUPPR) as legality from the Badung Regent. Based on an interview with Mr. I Ketut Gede Suwedharma as the Head of the Trade Division said that so far, only 85 (eighty-five) supermarkets have complete permits, the remaining 594 (five hundred and ninety-four) units do not have complete permits such as information Spatial Planning (ITR)), Building Construction Permits (IMB), Environmental Permits (UKL/UPL/SPPL), especially Supermarket Business Permits (IUTS). In 2019, based on data obtained from Satpol PP, it was written that only 12 (twelve) supermarkets had a follow-up permit.

He said licensing is one of the efforts of the Badung Regency Government in providing legal protection for the people's market. Furthermore, it is necessary to supervise the ownership of the permit carried out by the Office of Cooperatives, SMEs, Industry, and Trade which is carried out in direct supervision and indirect supervision. This is where the role of the Civil Service Police Unit is needed.

Law enforcement functions as the protection of human interests, so the law must be enforced to become a reality. Law enforcement contains 3 (three) elements, namely legal certainty, expediency, and justice. If a violation occurs, law enforcement officers can provide law enforcement in the form of preventive law enforcement by providing suggestions and solutions and coaching so that business actors are more aware and aware of the rules.

Then the form of repressive law enforcement is divided into 2 (two) namely non-judicial repressive law enforcement is carried out by giving administrative sanctions in the form of warning letters for 3 (three) times in a row within 7 (seven) days, if not followed up, the business license is suspended for a maximum period of 3 (three) months, and if it persists, the business license will be revoked. As for law enforcement in a pro-judicial repressive manner, if the Civil Service Police Unit Service steps down to conduct an investigation and a violation is found, it has the right to bring it to court.

The concept of legal protection for the people's market has been pursued through the issuance of Regional Regulation 3 of 2017, which has a philosophy so that the existence of supermarkets does not become a threat to the existence of the people's market as a weaker party so that a more robust party does not exploit it.

The Badung Regency Government has provided preventive legal protection by controlling the people's market by tightening the licensing process, limiting operating hours, and regulating the distance and number of supermarkets. Empowerment is carried out on people's market traders through partnership programs, funding, physical improvement, market management, and increasing the professionalism of people's market traders.

For repressive legal protection, it is carried out by providing administrative sanctions and criminal provisions for business actors who violate the provisions mandated in Regional Regulation 3 of 2017.

4. CONCLUSION

The implementation that regulates zoning through Perda 3 of 2017 in Badung Regency has not been implemented effectively. There are still many violations committed by supermarket business actors who operate without fulfilling the establishment procedures and do not have the required legal documents. The ineffectiveness of the implementation of Perda 3 of 2017 is supported by the lack of firmness of the relevant agencies in applying the applicable rules, the indecisiveness of law enforcement officials in imposing sanctions, and the legal culture of business actors who are reluctant to take care of permits due to complicated procedures. The impact caused by the ineffectiveness of the implementation of Regional Regulation 3 of 2017 disrupts the business competition climate. So that with the legal protection carried out by the Badung Regency Government, both preventively, namely through structuring and fostering as well as repressive legal protection by imposing administrative sanctions and criminal provisions, it can provide a deterrent effect to

violators for the realization of optimal legal protection for the people's market.

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The Principle of Balance to Realize Justice of the Parties in Standard Agreements for Business Format

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ABSTRACT
Business people in various contracts commonly use standard business format agreements; progress in the economy with the development of digital businesses today demands efficiency in costs, energy, and time. Standard business contract agreements do not reflect the principle of balance of the parties in the agreement, which emphasizes the realization of a balance (similarity) between the rights and obligations of the parties. The position imbalance in the standard business contract agreement is caused because the parties have different bargaining positions. The position imbalance in the standard business contract agreement is caused because the parties have different bargaining positions. This research aims to understand the implementation of the principle of balance in a standard business format agreement that provides justice for the parties. The research method is a normative research type, which refers to the legal norms contained in the legislation. Primary and secondary legal materials and qualitative analysis are presented in an analytical descriptive manner. The study results indicate that an imbalance occurs, which places the parties in different economic powers. Instead, they should be faced with a parallel position and harmony, with the fulfillment of the rights and obligations of the parties; in other words, if the business actor has fulfilled the obligations and rights, then the consumer will no one be harmed. So the principle of balance is the basis for the creation of a good and fair agreement.

Keywords: *Fairness, Principle of Balance, Standard Business Format Agreement.*

1. INTRODUCTION

The association of life between humans cannot be separated from specific dynamic patterns that grow and develop, are agreed upon, and are set as guidelines for people's lives. The more complex a society, the more complex things must be regulated and agreed upon to maintain the balance of life among community members, including building the community concerned so that there are agreements and contracts in society. (rachmad baro, legal theory, 2005, p.65).

Agreement/contract law is a significant field of law in the era of globalization, especially in supporting activities in the trade sector and business transactions.1 (rachmad baro, legal theory, 2005, p.65). Agreement/contract law is a significant field of law in the era of globalization, especially in supporting activities in the trade sector and business transactions. moreover, in today's dynamics of modern life, developing a standard business format agreement that unifies the relationship between the parties within the scope of socio-economic interests is not a simple matter. In the existence of agreement law, the parties' interests must be appropriately accommodated based on the principle of balance in the agreement/business contract that protects the parties. in the civil code, the agreement is regulated in book iii (article 1233-1864) concerning engagement. article 1313 of the civil code states: "agreement is an act by which one or more people bind themselves to one or more other people." an agreement has competent parties, agreed subject matter, legal considerations, mutual agreements, and mutual rights and obligations. based on the above understanding, the agreement consists of the parties; There is an agreement between the parties; there are achievements to be carried out; in oral or written form; there are certain conditions as the contents of the agreement; there is a goal to be achieved. (Niru Anita Sinaga And Siberius Zaluchu, 2017, P.39) . In General, an agreement between the parties gives birth to a legal engagement/relationship, giving rise to rights and obligations. if it is not carried out as agreed, there will be sanctions. an agreement in the form of an agreement is essentially binding, even by article 1338 paragraph (1) of the civil code. this agreement has binding power as law for the parties who make it. 2 (huala adolf, 2007, p.15). Making of an agreement should pay attention to essential things, including the conditions for the validity of the agreement, the principles of the agreement, the rights and obligations of the parties, the structure and anatomy of the making of the contract, the settlement of disputes and the termination of the contract. in an agreement made in

general, it should be able to accommodate the interests of the parties. The principle of balance here also plays a role as a forum for interests. The principle of balance aims to balance the position of the parties in fulfilling their rights and obligations. Starting from the above background, several problems want to be studied in this research, namely how to implement the principle of balance that creates justice for the parties in a standard business format agreement. Through this research, terrorist ideas will be formulated to perfect a standard agreement for a balanced business format for the parties to achieve justice. The results of this study can be used as theoretical material for research in the field of business contracts that have an impact on fair business competition.

2. METHOD

This type of research is normative legal research that finds the truth of coherence, namely whether there are legal rules according to legal norms and are there norms in the form of orders or prohibitions by legal principles and whether someone's actions are by legal norms (not only by legal rules) or the law. Sources of legal materials, namely primary and secondary legal materials, namely legislation, theories, and concepts related to the problems to be studied. all legal materials related to this research are systematically processed, compiled, and analyzed qualitatively to produce descriptive conclusions3. math and equations.

3. RESULT AND DISCUSSION

The law of engagement contained in book III of the Civil Code is a law that is specific in entering into agreements and legal actions that are economic in nature or legal actions that can be assessed from the assets of a person or legal entity. National development is the essential thing to realize a just and prosperous society that is evenly material and spiritual in this democratic era, by supporting the growth of the business world so that it can produce a variety of goods and services that are useful for improving people's welfare, while at the same time obtaining certainty on goods and services that are available—obtained from trade without causing consumer losses.

In economic activity, there is an effort to get profit or profit. However, it must be based on the rules and norms in the applicable laws and applicable laws. With a legal relationship, there is a relationship between the legal subject and the legal object (the relationship of material rights).

Developments in business and trade where companies enter into a form of contract as part of stabilizing market relations. The form of a contract that has been prepared and determined in advance unilaterally is a standard agreement. An agreement is an event where two people promise each other to do something by prioritizing mutual trust to keep promises. The agreement is not enough to use oral media but also needs to be made in written form. A written agreement can be used by the parties to supervise the other party to obey and comply with the agreement's contents.

The disobedience of one party to the contents of the agreement will harm the other party's interests. The standard agreement, according to Prof. Johanes Gunawan, an expert on consumer protection, said that what Bliau called a standard agreement is an agreement in which there are certain conditions made by business actors, without involving consumers in drafting contracts, so that consumers have no other choice, and are under their control. In comparison, the standard clauses are the articles contained in the standard agreement. Either electronic/digital or non-digital form. The Indonesian nation does not yet have a law of agreement for the products of the Indonesian nation itself. The contract law used still refers to the provisions stipulated in the third book of BW concerning engagement. To have a national legal product in contract law, the legal principle is fundamental as the legal basis itself. There is legal certainty for the parties, especially the fulfillment of balanced rights and obligations. The following table presented the principles of contract law according to Islamic Law, BW, Customary Law, Symposium on Engagement Law.

Table 1. Comparison of the principles of contract law

Islamic law	BW	Customary law	Bond Law Symposium
divine	habit	works of kindness	trust
ability	consensualism	family	Legal Equation
justice	Freedom of contract	harmony	balance
Equation	certainty	trust	Legal certainty
Honesty/ truth	personality	Mutual help	morality
written	Good intention	Bonding sign	protection
Benefits/ problems		communal	propriety
Willingness/ consensualism		Outline	habit
Freedom of contract		The importance of motive	
binding		casuistic	
balance		real	
Legal certainty			
worship			
Trust/trust			

Good intention			

The principle of balance in the engagement law symposium is a principle that is a continuation principle of the principle of legal equality, which requires a balance of rights and obligations between the parties in the agreement. In addition to having particular characteristics, the principle of the balance must also be consistently focused on concrete truths. So the principle of balance has an essential role in every stage of the contract as a process.

The principle of balance encourages and at the same time becomes a working principle of the principles of treaty law, both from Indonesian treaty law and from Dutch treaty law, which represents modern law. In Dutch treaty law, applying the principle of balance is seen in the obligation to refer to decency, good faith, propriety, and appropriateness in carrying out the rights and obligations in an agreement. (Anita Kamilah, 2012, p.104)

This fully aims to improve the protection of the dignity of consumers in increasing awareness, knowledge, care, ability, and independence to protect themselves from developing responsible business behavior.

Implementing these provisions is necessary for several business actors as a preventive measure to protect from consumer actions that can harm business actors. However, even though the standard contract states restrictions or transfers of responsibility for business actors, in its implementation, most business actors take advantage of public ignorance in the inclusion of standard business format clauses because business actors must remain fully responsible for providing compensation to consumers by the actual loss is based on proper consideration as long as the consumer's loss is caused by negligence or error on the part of the business actor in the standard business format agreement.

A standard business format agreement must also pay attention to the equality of the principle of legal equality, which places the parties inequality; there are no differences regarding differences in skin, nation, wealth, power, and position. The principle of balance is a continuation of legal equality because the principle of legal equality also places the parties in the balance between the rights and obligations of the parties to provide justice, which is implemented from the principle of balance in standard business format agreements.

In an agreement that no one's interests are more important in part but are faced with the same bargaining value, parallel or in harmony, what is meant by the fulfillment of the rights and obligations of the parties until they are faced with a harmonious position is that there is no gap between the fulfillment of rights and obligations, with In other words, if business actors have fulfilled the obligations and rights, consumers must also fulfill their rights and obligations to business actors so that no one is harmed in the standard business format agreement. So the principle of balance in the standard business contract agreement is the basis for creating a good and fair agreement for all Indonesian people.

According to Agus Yudha Hernoko in his book, the principle of balance is the principle that places the same position between the parties. In principle, the balance of the determining factors is not the outcome that is agreed upon but the equality of the parties who promise.

The development of the principle of balance in the standard business format agreement shows that the need for balance and equality of position of the parties is the primary condition for creating an agreement. There needs to be an understanding of this principle's application by the parties that carry out business relations in the agreement so that there is no invalidity in the agreement due to non-fulfillment of equality in making agreements. Standard business format agreements should emphasize the principle of balance; many business actors use one-sided standard clauses because the principle of balance aims to balance the parties' position in fulfilling rights and obligations. The agreement has three primary purposes: to enforce a promise and protect the reasonable expectations that arise from it; To prevent any attempt to enrich oneself that is done unfairly or improperly by a party; To prevent certain kinds of harm (Atiyah, 1995, P.45). In addition to the three objectives mentioned above, Herlien Budiono added a fourth objective of the agreement: achieving a balance between one's interests and the related interests of other parties.

The condition of balance as the fourth goal is achieved through social propriety, immaterial existence, which is achieved in the spirit of balance. In an agreement, the interests of individuals and society will be simultaneously guaranteed by objective law. From the point of view of substance or intent and purpose, the agreement turns out to be contrary to decency and or public order will be null and void by law, and essentially the same thing will apply concerning agreements that are contrary to the law. With this, it is clear that social propriety is intangible through such an agreement. In an unbalanced agreement, it can arise as a result of the behavior of the parties themselves or as a consequence of the substance (content) of the agreement or the implementation of the agreement.

Concerning the agreement's content or intent and purpose, the parties expand by increasing expectations to achieve the entrusted performance. From the rationale of the parties, it can be seen if future expectations can be objective or even contain the sacrifices of the opposing party, which results in such a way that future expectations lead to imbalance. Achieving a state of balance implies efforts to prevent harm to one of the parties to the agreement in the context of objective future expectations. Understanding the agreement's contents is necessary, and a balance in the contract is essential in an agreement (Taufik Kurrohman. (2016), p. 61).\

The agreement has several aspects, namely the parties' actions, the contents of the agreement agreed by the parties, and the implementation of the agreement. The three interrelated aspects of the agreement above can be raised as testing factors regarding the working power of the balance principle.13 The same thing was also stated by Mariam Darus Badrulzaman, who said that an agreement has several aspects, namely the parties' actions, the contents of the agreement, and the implementation of the agreement, which the parties have agreed. Three interrelated aspects of the agreement can be raised as criteria regarding the conditions for the existence of balance and become criteria for the existence of imbalance if the conditions for balance and the three aspects are not met. (Anita Kamilah, 2012, p. 106).

Salim H.S stated that the principle of balance is a principle that requires both parties to fulfill and implement the agreement. (Salim HS, 2010,13-14). That the principle of balance is a continuation of the principle of equality, where creditors have the power to demand repayment of achievements through the debtor's wealth, but creditors also bear the burden of carrying out the agreement in good faith, so that the position of creditors and debtors is balanced (Mariam Darus Badrul Zaman, 1994, p. .43).

The principle of balance as the balance of the bargaining position of the parties carrying out the standard business contract agreement can be interpreted as to the working power of the balance principle, among others, namely the distribution of rights and obligations in the legal business contract agreement relationship as if without regard to the ongoing process in determining the final result of the distribution; Balance reflects the result of a process; It is more directed to the balance of the positions of the parties, meaning that in terms of the standard business contract agreement, the position of the parties is balanced; and the existence of a balance between the parties with a position that can only be achieved on the same terms and conditions.

The use of standard contracts in today's business world creates legal problems that require attention and resolution. An agreement occurs based on the principle of freedom of contract between two parties who have a balanced position. The agreement obtained in the agreement is the result of an agreement between the parties. Such a process is not found in standard business contract agreements. There is almost no freedom in determining the contents of the agreement in the negotiation process. The contents or terms of the agreement have been determined unilaterally by the business actor.

In practice, standard business contract agreements do not reflect the principle of balance between the parties in the contract. The imbalance of position in the standard business contract agreement does not yet have the same bargaining position between the parties. The imbalance of position in standard business contract agreements is caused by the following: The makers of standard contracts generally have higher control over resources (economics, technology, or science) than the recipients of the standard contracts. One of the forms is seen in the clauses contained in standard or standard forms whose contents tend to be one-sided or referred to as exclusion or exoneration clauses. This clause provides limitations and/or transfer of responsibility for a business risk to another party so that it can cause an unfair loss or profit to one of the parties.

The existence can see this imbalance in the position of clauses in the standard contract, which are solely concerned with the interests of the business actor or the owner of the capital whose bargaining position is more substantial. Limited access to information that the recipient of the standard contract should obtain. Contract recipients in signing standard contracts only focus on essential things in the contract, such as choosing a dispute resolution forum, compensation in case of default, changing policies, and so on. Hampered because the contract recipient is faced with the choice of "take it or leave it," especially if the contract recipient is faced with the object of the contract that is to fulfill basic needs such as the need for clothing, food, and shelter, then this choice will create a dilemma. The existence of weakness in the economic field or weakness in the field of knowledge on the part of the recipient of the standard contract causes the aspect of the balance of position to be unfulfilled. The recipient of the standard contract generally signs the offered contract due to the need for the object of the contract. The existence of power or authority possessed by one party is more significant. This can be seen in contracts entered into between the government in its capacity as private legal subjects in civil relations, for example, contracts for the procurement of goods and services. The unbalanced position can be seen in the clauses written in an agreement. The clause provides limitations for the parties in bank credit contracts, contracts in the housing sector, parking services, electricity, and other contracts. Contracts of this type contain clauses of standard business contract agreements.

4. CONCLUSION

The principle of balance in the standard business contract agreement has not been maximized to provide justice for the parties, because in the process of implementing the contract, what rights and obligations regarding the conditions that constitute the contents of the standard business contract have not been fulfilled, and without prior negotiation or agreement. In making a standard business contract agreement, it is necessary to contain the principle of balance to provide justice; the principle of balance is a guideline in regulating and making a standard business contract agreement and is valid and binding as law for the parties making a business contract, which can be enforced. Or the fulfillment of rights and obligations. The existence of the principle of maximum balance will balance the parties' interests and provide legal certainty for the parties and provide justice

in an agreement. The balance of an agreement is determined not only by the parties' position but also by the principle of good faith that must be carried out. So that balance in standard business contract agreements can be achieved and fulfill a sense of justice and legal certainty, namely the parties' actions, the contents of the agreement, and the implementation of the agreement. So that standard business contract agreements can be more effective and efficient in their implementation.

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The Concept of Regulations of Spatial Planning in Rural Areas Based on Local Wisdom in a Sustainable National Spatial Planning System

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ABSTRACT
In regulating the sustainable spatial planning in rural areas based on local wisdom, the cultural dimension should precede other dimensions as it contains a set of values. Prioritizing cultural dimension, among other dimensions considering Indonesia's plurality as a state, nation, and community. The set of values in the cultural dimension will become the foundation of the formulation of the policy, which the establishment of the law follows as a juridical guide in the life of rural communities in terms of spatial planning. This process involves reinforcing participant culture, local wisdom, and sustainability, which reflect Indonesian people's noble values, rooted in Pancasila as the state philosophy. In the future, rural areas will become the local entity that strengthens the Republic of Indonesia through its independence.

Keywords: *Local Wisdom, Regulations, Spatial Planning in Rural Areas.*

1. INTRODUCTION

Indonesia has many rural areas. the large numbers of rural areas in indonesia are evident in the areas' vast expanse and large population. the public often misunderstands rural areas, including planning experts, who tend to exhibit "urban bias," which prioritizes urban areas over rural areas. rural planning has not been a concern of professional planners for a long time, making it seem like rural areas do not require development planning and spatial planning. [1]

Expert in rural development in developing countries, dalal-clayton concludes that the prevalent issues of rural development in the third world (developing countries) are: poverty and employment, sustainable management and access to agrarian resources.

Rural-urban linkage (spatial links and sectoral links). The issues in indonesian rural areas are not that different from dalal-clayton's general description. Rural Areas in indonesia have many problems because they accommodate more than two-thirds of indonesia's poor. [2]

From the perspective of philosophy, which includes ontology, epistemology, and axiology, space means activities that utilize said space to form interconnected spatial design. Thus, the utilization of space or region reflects the relationship between fellow human beings and the relationship between humans and the environment. Space, in general, is seen as a place that accommodates humans' private and social life and to carry out activities that improve their welfare, quality of life, and cultural pride. On various scales, space is also a place of actualization for humans as the primary space users with their social behavior and characteristics. [3]

Meanwhile, space in a juridical sense is a means to formulate spatial planning as a juridical instrument for the optimization and integration of the utilization of natural resources through three main pillars: planning, utilization, and management. [4]. Spatial planning as a system is regulated in article 1 number 5 of law number 26 of 2007 concerning spatial planning (state gazette of the republic of indonesia number 68 of 2007, supplement to state gazette number 4725) (hereafter referred to as law on spatial planning). [5] The law is a crucial component in spatial planning, and it also indicates that spatial planning is strongly connected to constitutional law and administrative law. Planning is a form of wisdom, and as such, it is considered a species of the genus of wisdom. [6]

Spatial planning consists of three interrelated components: planning, utilization, and management. These components then produce a plan in the form of a

regional spatial plan, which hierarchically consists of a national spatial plan, provincial spatial plan, and regency/city spatial plan. furthermore, management of space utilization is carried out systematically by establishing the regulations concerning zoning, licensing, granting incentives and disincentives, and the imposition of sanctions.

In the discussion about the spatial planning bill and the government regulation concerning the implementation of spatial planning, the problem of spatial planning in rural areas is not considered as the domain of the village government since the drafting and stipulation of spatial planning in rural areas fall to the regional government's domain.

The village's independence in regulating rural areas' spatial planning is not considered as rural areas are regarded as part of regional development. This matter can be studied in the spatial planning bill, which states that: in the implementation of spatial planning that concerns matters directly related to the community's crisis, it is necessary to have a regulation that includes aspects that encourage improvement in the quality of spatial planning and performance of space management. the improvement in the quality of the spatial plan is expected to be achieved through a clear distinction of content in the national spatial planning, provincial spatial planning, and regency/city spatial planning, which should be complementary. [7]

This research is essential because rural areas tend to be perceived as "residual areas" in development policies. however, the passing of law number 6 of 2014 concerning villages (state gazette of the republic of indonesia number 7 of 2014, supplement to the state gazette of the republic of indonesia number 5495) allows the rural area development policy to be an order of law number 6 of 2014. Juridical limitations in article 1 number 9 of law number 6 of 2014 include the phrase rural areas as follows:

"Rural areas are areas characterized by agriculture as the primary activities, including natural resource management, and their functions as a place for settlements, government services, social services, and economic activities."

The phrase "rural areas" contains an explicit policy on spatial planning in rural areas, which is centered on agricultural livelihood. this pattern is supported by natural resource management. additionally, rural areas have four functions: rural settlements, government services, social services, and economic activities

2. METHOD

This paper is legal research. [8]. It means that "as a know-how activity, legal research is conducted to solve the legal issues at hand." Thus, it is necessary to have the ability to identify legal problems, conduct legal reasoning, and provide solutions to those problems. As a branch of science, legal studies are prescriptive rather than descriptive. Therefore, legal research does not begin with a hypothesis. When applying this approach, the researcher needs to understand the hierarchy and the principles in statutory regulation. [10]. Thus, a statute here refers to legislation and regulation or an approach that uses legislation and regulation in analyzing the political synchronization of the law on sustainable regional spatial planning. This approach helps the researcher to understand the philosophy of legal regulations from time to time. This approach also allows the researcher to understand the changes and development that underlies a legal regulation. Finally, this approach helps to analyze the development of spatial planning in rural areas in terms of forming legislation on spatial planning in Indonesia. This approach focuses on the views and doctrines in legal studies. This approach makes it easier to describe and analyze the problems and respond to the existing legal issues since legal concepts can also be found in the law, although not explicitly.

3. RESULT AND DISCUSSION

3.1 Building the Concept of Participant Culture in Spatial Planning

There must be a balance between law and society in developing and realizing the law in people's lives. In short, the law is created to protect the interests of society. Bernard L. Tanya argued that the pivot of all legal theories is the relationship between humans and law. In other words, if the paradigm aims only to make a regulation, then it would be seen as a formal and legalistic closed theory, while if the paradigm aims to make a regulation for the benefit of the people, it would be seen as an open theory that touches the social mosaic of humanity. [11]

The development of national law is inseparable from the legal system. The system itself consists of several interrelated elements, which work to achieve the legal aim. The diversity of ethnic groups, language, culture, and religion in Indonesia will also affect the process of national law development for sure. According to Friedman's legal system theory, the legal system consists of three elements: legal substance, legal structure, and legal culture. The legal substance is a product of legal structure. It can be the regulations made through formal structure mechanisms or those born out of habits. The legal structure is a structural component that moves within the mechanism of the making and the implementation of regulations.

Meanwhile, the legal culture values, thoughts, and expectations of the rules or norms in the community's social life. These three interrelated elements work in harmony to achieve the legal aim. Furthermore, strengthening the national legal culture is inseparable from the norms or fundamental values that the nation agreed upon, Pancasila and the 1945 Constitution of the Republic of Indonesia. Every citizen in the legal system can take over in the legal culture subsystem. [12]

In Indonesian political, national, and social life, the cultural dimension should precede other dimensions because it contains a system of value. It becomes the foundation for policy formulation, followed by establishing the law as a juridical guide and code of conduct in people's lives that are expected to reflect the nation's noble values. According to Friedman, of the three elements forming the legal system, legal culture should precede the other two elements. [13]

Understanding the community's legal culture is essential as it allows people to know the structure, the legal system, legal concepts, legal norms, and the behavior of the local community. [14]. Legal culture is not unique culture but a comprehensive culture of a particular society, a unity of attitudes and behavior. Therefore, the study of legal culture is inseparable from the condition, system, and community structure to which the legal culture belongs. Legal culture is a response, either an acceptance or a rejection, to a legal event. It shows human's attitude towards legal issues and legal events faced by society. [15]

There are three types of legal culture, classified based on human behavior in social life: parochial culture, subject culture, and participant culture. The members of parochial society have a narrow way of thinking. Their response towards the law is also still confined to their society. In addition, if the leader is egocentric, he will be more preoccupied with himself. On the contrary, if the leader is altruist, he will pay more attention to his citizens as he sees himself as primus inter pares, a first among equals. [16]

According to the aim of the strategic policy, the most important thing is the institutions' commitment of policy formulation and legal regulations drafting to adhere to the philosophical value system consistently to ensure that every policy and legal regulation accommodate and respond to the community's aspirations equitably. Political wisdom with a cultural approach becomes a constitutional demand for Indonesia, which possesses heterogeneous social structures as seen in its diverse ethnics, religion, customs, and cultures.

Legal culture is a response, either acceptance or rejection, to a legal event, which shows humans' attitude towards legal issues and legal events in society. Meanwhile, the legal system is a link that connects humans, society, authority, and rules. As such, the focus of legal anthropology lies in the behavior of the people involved in legal events. Therefore, any actions taken by anyone, primarily actions related to law, are formulated and accepted as a legal culture. Legal norms are only one part of legal life.

Adopting Lawrence Friedman's concept, legal norms are a substantial aspect of the law, in addition to legal structure and legal culture. Legal structure refers to the institution of formation and implementation of the law, while legal culture refers to the society's values, orientation, and expectations of the law. The legal apparatus and culture must be the focus of legal development. It means that the formation, management, values, orientation, and expectations of the law in society should be the utmost priority. Although the legal norms in positive law are considered a guide of every person's values and orientation, empirically, they always have flaws. People will not adhere to the norms if the norms do not live up to their orientation and expectation. [17]

Participation has two meanings: 1) the willingness to contribute to the success of each program according to the ability of each person and 2) taking part in joint activities or the implementation of government services. [18]. Participation plays a crucial role in spatial planning because the result of spatial planning must give benefits to society. The society acts as a partner of the government in spatial planning by actively utilizing its abilities as a form of community participation in achieving spatial planning objectives.

Community participation in spatial planning means the management of the lands. People's rights to land are attached to these lands. Thus, the community should be involved by providing valuable input regarding their interests in the context of common interest, without ignoring the interests of each holder of land rights. It is a manifestation of the protection of the holders of land rights. [19]

Budihardjo stated that "in the ongoing regional development process, it seems that community participation is still at an undetermined level." [20]. The community should actively share their aspirations since determining the goals and targets of regional development. So far, community participation is seen as the transfer of information about development plans and programs prepared by decision-makers and policy-makers. Furthermore, according to Satjipto Raharjo, legislation has three functions: accommodating the community's needs, institutionalizing social conflict, and offering solutions to conflict in the community. This notion suggests that legislation reflects the conflict of interest and power within the community. Therefore, community participation (as stakeholders) in regional development is crucial. [21]

Drafting the regional regulation must begin with preparing the Academic Manuscript. It contains the conception of a regulation of a problem (a type of legislation), studied from theoretical and sociological perspectives. Theoretical perspective, specifically, examines the philosophical, juridical, and political foundation of a problem to have a strong regulatory groundwork. The philosophical foundation means the philosophical view that becomes the basis of ideals when transforming a problem into legislation. Meanwhile, the juridical foundation is the legal regulations that become the legal basis (rechtsgrond) for making legislation. There are two types of juridical foundations: formal and material juridical foundations. The formal juridical foundation refers to regulations that give authority (bevoegdheid) to an institution to make specific regulations. Meanwhile, the material juridical foundation

is the legal foundation for regulating the problem (object). Thus, the juridical foundation is vital because it provides the groundwork for regulating the legislation and prevents legal conflict from happening. [22]

In spatial planning in rural areas, the concept of participant culture can be implemented in the planning, utilization, and management of space, which adhere to Pancasila and society's values as the paradigm of national legal development.

To make an effective legal instrument, lawmakers of legislation concerning the preservation of forests and environment, during the stage of content drafting (het onderwep), need to create a balance between legal substance and principles and evolving values and living law in the community. [23]

In contrast to western science that claims to be universal, traditional wisdom is local as it has a solid connection to a specific place. It is always related to a specific group (the local community), nature (the surrounding environment, including trees, mountains, caves, lakes, or seas), and the relationship between the community and nature. However, humans and nature are universal, and thus, traditional wisdom naturally becomes universal without being engineered. [24]

Managing diverse natural resources should be integrated with other resources following a sustainable model by developing a humanopolis spatial plan. Humanopolis spatial plan prioritizes the community's interests and creates a beautiful environment which adheres to archipelago insights and national tenacity. Based on this concept, the fundamental principles in spatial planning guidelines are as follows:[25]

a. Allowing the community to be a crucialactor in space utilization;
b. Assigning the government as a facilitator in space utilization;
c. Respecting the community's rights, local wisdom, and socio-cultural diversity;
d. Upholding transparency and ethics; and
e. Following technological advancement and upholding professionalism.

3.2 The Concept of Regulations of Sustainable Spatial Planning in Rural Areas Based on Village Autonomy

Two Laws explicitly mention rural areas, namely Law on Spatial Planning Number 26 of 2007 and Law on Village Number 6 of 2014. The Law on Spatial Planning emphasizes that spatial planning in rural areas has to follow six principles in the Law on Spatial Planning. This notion, then, is translated into the Regional Spatial Plan. Rural areas are treated equally with urban areas, mining areas, and others.

Meanwhile, the Law on Village asserts that rural areas are shaped through a bottom-up process (Village regulations and Regional policies), covering matters related to the physical and non-physical infrastructure of the village. Physical infrastructure includes roads, electricity, telecommunications, markets, etcetera. Non-physical infrastructure includes technology in production and consumption, institutional cooperation between villages, and many others. Both of these are urgently needed to encourage development in rural areas. [26]

In rural sociology, rural development is a process of deliberate or conscious change to achieve physical and spiritual prosperity for all members of the rural community. Rural development covers all aspects of rural community life, such as economic, social, political, cultural, religious, defense, and security. In essence, rural development is a development process aimed at rural communities. Thus, it should differ from urban development. The aim of rural development is not to change the characteristics of rural communities from wesenwille and non-market economy to kurwille and market economy. Even though a change does occur, rural communities will not become a total market economy, but rather a wesenwille with a hint of a market economy, a change caused by two elements: the intervention from the state and the socio-cultural dimension of society. [27]

Synergy in the development of rural areas is essential for several reasons. First, rural development is an effort to improve the standard of living to achieve the welfare of the village, carried out in combination with development efforts based on the region's potential. Therefore, the concept of rural areas in Law No. 6 of 2014 concerning the village, where rural areas function for agriculture and management of the natural resource, must synergize with the Regional Spatial Plan. Second, the government needs to provide and synergize the documents of rural development planning with Regional Spatial Planning documents. [28]

Historically, all local communities in Indonesia have vital local wisdom that contains a spirit of sufficiency, balance, and sustainability, especially in managing natural and human resources. They also have local wisdom that regulates matters concerning the government, resource management, interpersonal relationships, etcetera. In principle, these local regulations are intended to maintain the balance and sustainability in human relationships with fellow humans, nature, and God. Meanwhile, from a philosophical perspective, it is clear that the village exists before the government. Therefore, the village should be the basis and part of the government that comes after. The older, more experienced government in the village should spearhead every implementation of government, development, and societal affairs. [29]

As part of national ideals, efforts to strengthen regional and "village autonomy" aim to build Indonesia's strong and perfect imagination, which goes beyond centralism and localism. Indonesia will be stronger if it is supported by the people's sovereignty and local independence (the region and village). In other words, the center "respect" the local while the local "respect" the

center. The independence of the village is the key to the foundation, strength, and imagination of Indonesia. If the village remains marginal and dependent, it will just become a heavy burden on the government.

Furthermore, it will disrupt the foundation of Indonesia. In the future, we need the village as a local entity that possesses strong and unique characteristics, political sovereignty, economic empowerment, and cultural dignity.

Independence means village autonomy. Village autonomy has objectives and benefits as follows:

a. Strengthening the independence of the village as the basis of Indonesian independence;
b. Strengthening the village's position as the subject of development;
c. Familiarizing the community with development planning;
d. Improving public services and implementing equitable development;
e. Creating efficient development financing per under local needs;
f. Stimulating the local economy and the livelihoods of the village communities;
g. Giving trust, responsibility, and challenges to the village to increase its initiatives and potential;
h. Forging village capacity in managing the government and development;
i. Providing a valuable learning arena for the village government, institutions, and communities; and
j. Encouraging local communities' Participation. [30]

The regulation on village autonomy is a response to globalization, characterized by the liberalization of information, economy, technology, culture, and so on. As such, there must be a rational division of tasks and authority in the state and society so that each can carry out its functions. There is a fundamental principle that people must adhere to in executing the division of tasks and authority, which is imagining the regions and villages as a flexible part within an entity called a state. A politically sovereign, economically empowered, and culturally dignified village becomes the ideals and local-bottom foundation that strengthen the nation-state.

4. CONCLUSION

There are several principles that underlie the concept of sustainable spatial planning in rural areas based on local wisdom:

The cultural dimension is the basis for formulating policies on the formation of laws in spatial planning in rural areas. The village government's authority in village-based spatial planning in rural areas through the principle of recognition and subsidiary, in the form of authority, to establish rural areas following village initiatives to the village government through the village regulation. Community participation in spatial planning in rural areas as a form of democracy in planning, utilization, and management of village-based spaces by the village government, the Village Representative Body, and the community, facilitated by the regional government. The importance of planning experts' assistance in preparing spatial plans as a reference in preparing the Village Medium-Term Development Plan. The village government (administrative village or desa dinas) and traditional village (desa adat) should synergize in planning, utilization, and management in developing spatial planning in rural areas.

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Traditional Market Revitalization in the Persfective of Cultural Tourism Development in Denpasar City

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ABSTRACT
The tourism developed by Denpasar City is cultural tourism based on the Tri Hita Karana as a philosophical foundation for tourism development. Traditional markets are a supporting element of cultural tourism by the Vision of the City of Denpasar, "Creative Denpasar with Cultural Insights in Balance Towards Harmony." The Government of Denpasar City through Perwali Number 9 of 2009, as a legal basis for revitalizing traditional markets in Denpasar City. The existence of traditional markets is currently experiencing setbacks and lethargy. The factors that cause the need for the revitalization of traditional markets are that traders are still challenging to regulate and regulate themselves in the problem of structuring traders, the increasing number of traders, neglect of spatial planning, low awareness of traders and market visitors to discipline, cleanliness and order, irregular parking management. The impact of the revitalization of traditional markets in Denpasar City is that physically the revitalized traditional markets are getting cleaner and tidy. However, from a non-physical point of view, there is a shift in the image where initially all traders mingle into one with the buyer without any isolation, and bargaining occurs there, and information exchange is reduced. To avoid changing the image of the traditional market as a supporter of cultural tourism, the government of Denpasar City should still maintain the image of the traditional market as a "peken" or a gathering place that is different from the concept of modern markets.

Keywords: *Cultural tourism, Revitalization, Traditional Markets*.

1. INTRODUCTION

Traditional markets, which are hereditary inheritances from the predecessors of economic actors in Indonesia, are currently experiencing a decline and sluggishness. In addition, traders are still challenging to regulate and regulate themselves in terms of structuring traders, the increasing number of traders will narrow the space for visitors, this results in neglect of spatial planning, low awareness of both traders and market visitors towards discipline, cleanliness, and order, irregular parking management, and one of the most important is a common understanding of consumer behavior where demand conditions are changing. However, market traders cannot follow due to limited information and capabilities and a lack of preparation to face competition. If appropriately managed, the role of traditional markets will have the potential to promote and increase economic growth for the people because they become jobs for the weak and middle economic community, especially tens of millions of small traders and transporters. People consider the presence of modern markets very profitable at this time. This raises concerns for traditional business actors who have many shortcomings both in terms of facilities and services. Specific and detailed implementation relating to traditional markets is regulated by Presidential Regulation Number 112 of 2007 concerning the Arrangement and Development of Traditional Markets, Shopping Centers, and Modern Stores, then followed up by Regulation of the Minister of Trade Number 70/MDAG/PER/12/2013 concerning Guidelines for Arrangement and Development of Traditional Markets and Modern Shopping Centers and Stores as well as Regulation of the Minister of Trade number 53/MDag/Per/12/2008 policies issued by the government that will protect the existence of traditional markets.

The tourism developed in Denpasar City is cultural tourism based on the values of Tri Hita Karana as a philosophical foundation for tourism development. With the concept of developing cultural tourism, tourism in Denpasar City is developed to provide optimal benefits for cultural preservation, sustainable environmental conservation, and improving community welfare. Its development is directed toward safe, comfortable, and

quality tourism destinations, a competitive tourism industry, and integrated tourism marketing and management. In addition, the concept of developing culture-based tourism is considered very important considering that Denpasar City has a cultural tourism attraction and other tourist attractions. Cultural tourism attractions such as temples, castles, markets. If only one of the pillars of Denpasar City tourism, namely the traditional market, would undoubtedly affect the face of cultural tourism promoted by the City of Denpasar.

Starting from the background mentioned above, several problems arise about the title of the proposed research. The problem can be formulated as follows:

1. What factors influence the implementation of the Traditional Market Revitalization in Denpasar City?
2. What is the impact of the revitalization of traditional markets on the development of Cultural Tourism in Denpasar City?

2. METHOD

By the problems posed, the type of research used in this paper is empirical juridical, sociological, legal research that can also be referred to as field research, namely examining applicable legal provisions and what is happening in society.

3. RESULT AND DISCUSSION

3.1 Factors Affecting the Implementation of Traditional Market Revitalization in Denpasar City

Traditional markets are a representation of the people's economy, the lower class economy, as a place to depend on small and medium scale traders. Traditional markets are the hope of farmers, breeders, craftsmen, or other producers as suppliers. Most of the Indonesian population, who are still classified as a lower middle class, still depend on traditional markets. As the economic center of the small people, traditional markets are pretty numerous and spread in various parts of the country. Some people identify today's traditional markets as slum, messy, muddy, stuffy, smelly, and stuffy places. In certain areas, traditional markets are often accused of being a source of congestion because traders often use road borders to hold their wares, resulting in disrupted vehicle speed. Not only that but traditional markets are also often associated with imaging issues. Some people, especially the upper-middle class and teenagers, have the impression of avoiding shopping at traditional markets.

Such traditional market conditions make some people shop at modern markets, such as malls, supermarkets, minimarkets, hypermarkets, and the like. It is hard to deny these days that people with modern lifestyles prefer to shop in markets with a management system that is more organized, clean, comfortable, and strategic. Shopping in modern markets is considered much more prestigious for particular societies and teenagers than shopping in traditional markets. As a result, shopping at traditional markets becomes a second choice or can be entirely abandoned by customers. So that this does not happen, it is very urgent to make various efforts, especially for traders, to improve the quality of service (HR). Meanwhile, the government's involvement in the development and management system is essential so that traditional markets' bad/negative image can be suppressed or wholly eliminated.

There are several reasons why people, especially teenagers, prefer to shop at modern markets. 1) a sense of pride or prestige to friends; 2) wants in one place to be able to choose the goods to be purchased; 3) want a sense of comfort and fun (safe and excellent); 4) the desire for a fixed price for each type of goods sold because there is no desire to negotiate with consumers as in traditional markets and facilitate the allocation of funds for shopping; and 5) reasonable price level, not too flashy. (Herman Malano; 2011,85).

3.2 The Impact of the Revitalization of Traditional Markets on the development of Cultural Tourism in Denpasar City

Revitalization is intended to revive the development and development of the role and function of traditional markets so that they can be competitive with modern markets to support the community's convenience of shopping activities, which aims to create a conducive traditional market. In addition, the revitalization of traditional markets can also improve the welfare of traders who sell in turnover income.

The concept of market revitalization carried out by the central government is adjusted to environmental harmony that maintains local wisdom values that adhere to a people's economy. In addition, this year's policy, the Ministry of Trade, revitalized as many as 1037 People's Markets in Indonesia because of the market revitalization in the previous year. Turnover increased by 20% after the revitalization of the traditional market.

Improving the traditional market to become a shopping place that is comfortable, safe, attractive, and has a positive image is the desire of the people, especially people who love traditional markets. Changing this bad image is a challenge for traders and must pursue a sense of responsibility to the community. The growth and development of the modern market cannot be inhibited, let alone frozen. One of the efforts that must be made so that traditional markets do not die is to establish a synergistic partnership with modern markets not to kill each other. The basis for establishing partnerships has been regulated in Presidential Regulation No. 112 of 2007 and Minister of Home Affairs Regulation No. 53 of 2008 regarding the arrangement and development of traditional markets, shopping centers, and modern shops, which lead to permits issued by local government officials.

As the capital city of Bali Province and as the center of activity and influence of globalization, Denpasar City will cause a shift in people's interest to visit traditional markets and switch to modern markets. Traditional markets should get the government's attention; apart from being a public facility that supports the community's economic activities, it also maintains local culture. The existence of traditional markets must be maintained and preserved because there are values not found in modern shopping centers. This statement prompted the Denpasar City government to revitalize traditional markets, which manifests the government's commitment to the people's economy. In Denpasar City, there are 51 traditional markets, and there are 10,187 traders. Data shows that PD Pasar Kota Denpasar has 17 traditional markets and 7,519 traditional market traders.

Market revitalization is carried out to regulate and organize traditional markets for the better, but what needs to be considered is that the "spirit" of traditional markets must not be lost. What changes are only the appearance? Suppose the revitalization of traditional markets carried out by the Denpasar city government changes the "spirit" of traditional markets. In that case, the existence of traditional markets as a supporter of tourism may be eroded. So tourists who come to Denpasar City who want to witness the culture supported by the existence of temples, castles, and markets will be reduced.

One of the "spirits" that must be maintained in traditional markets is that communication as in traditional markets will not be found in modern shopping centers. Traditional markets have advantages that modern shopping centers do not have, namely a bargaining system that shows the intimacy between the seller and the buyer.(Oka; 2015,64)

The bargaining system in buying and selling transactions in traditional markets creates a separate relationship between sellers and buyers. In contrast to modern shopping centers, where the price of goods is fixed, and there is no communication between the seller and the buyer. (Rukini;2015,137) Traditional markets in Bali have a uniqueness not owned by modern shopping centers or other traditional markets in other areas.

In addition to marketing daily necessities like in other markets, traditional markets in Bali also market various materials needed for community ceremonies from the lower to the upper levels, which will buy ceremonial needs products in traditional markets. Different market with the modern shopping mall.

4. CONCLUSION

Traditional markets are identified by some people as a slum, messy, muddy, stuffy, smelly, and stuffy places. Due to the bad image of traditional markets, the image of traditional markets is increasingly being abandoned and must get serious handling from the government.

Market revitalization is carried out to regulate and organize traditional markets for the better, but what needs to be considered is that the "spirit" of traditional markets must not be lost so that what changes are only the appearance. Suppose the revitalization of traditional markets carried out by the Denpasar city government changes the "spirit" of traditional markets. In that case, the existence of traditional markets as a supporter of tourism may be eroded. So tourists who come to Denpasar City who want to witness the culture supported by the existence of temples, castles, and markets will be reduced.

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Creating Certainty, Benefits, and Justice in Contract Law for Tourism Investment in Indonesia

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ABSTRACT
The tourism industry has an essential role in the development of a country. Creating a good contract did not guarantee it would be appropriately executed (default). The conformity of contract law principles can be used as a basis for settlement. These principles are related to one another, cannot be separated, applied proportionally, and serve as a binding framework for the contents of the contract. Thus, law enforcement in resolving contract problems can be realized, the creation of certainty, benefits, and justice for the parties. This is by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "The State of Indonesia is a constitutional state." This research discusses: How to realize the certainty, benefits, and justice of contract law in tourism investment in Indonesia using normative juridical research methods.

Keywords: *Benefit, Certainty, Contract Law, Justice*

1. INTRODUCTION

The Government and Local Governments encourage domestic and foreign investment in the tourism sector through national, provincial, and district/city tourism development master plans. Investment has an essential role in the development of the tourism industry. The development of the tourism industry can increase economic growth, improve people's welfare, eradicate poverty, overcome unemployment, preserve nature, the environment, and resources, promote culture, elevate the nation's image, foster a sense of love for the homeland, strengthen national identity and unity, and strengthen the friendship between nations.

In running a tourism business, the role of the contract is significant both in the contract drafting phase and the contract implementation phase. In the contract drafting phase, it is to regulate the rights and obligations of the contracting parties. Meanwhile, in the contract implementation phase, it is a guideline in implementing the contents of the contract as referred to in Article 1338 paragraph (1) of the Civil Code (Burgerlijk Wetbook= BW). The contract applies as a law for the parties who make it. If a problem arises, it can be used as evidence to prove the rights and obligations of each contracting party.

The purpose of making tourism investment contracts in Indonesia is the same as the legal objectives, i.e., certainty, benefits, and justice.

In the implementation, sometimes the contract has been made based on the principles and provisions of the applicable law, there are still defaults that cause harm to one of the parties.

The settlement process will tend to be based on the principle of legal certainty, and this is in line with the principle of *pacta sun servanda* and Article 1338 (1) BW. Therefore, the principle of utility and justice is neglected as a legal goal and the contract's purpose. The purpose of the law, according to Gustav Radbruch in the theory of legal objectives, includes three principles, that is the principle of legal certainty (*rechtmatigheid)*, the principle of legal justice (*gerectigheit*), the principle of legal expediency (*zwech matigheid* or *doelmatigheid* or *utility*).

To overcome these problems is done by applying the harmony of the contract of law principles. Because all of these principles are interrelated, they cannot be separated, applied simultaneously, take place proportionally and somewhat, and serve as a binding framework for the contents of the contract. Thus, it is hoped that the ideal and desired application of the law can be realized.

From the description above, the formulation of the problem that becomes the subject of discussion in this study is: How to create certainty, benefits, and justice in contract law on tourism investment in Indonesia?

2. RESEARCH METHOD

This research is normative law research (juridical normative) using a statutory approach and concept approach. The statutory approach is carried out by reviewing the laws and regulations regarding tourism investment contracts in Indonesia. The conceptual approach is made by examining the principles of contract law and the principles contained in the theory of legal objectives. The data used are secondary data obtained from primary, secondary, and tertiary legal sources.

3. RESULT AND DISCUSSION

3.1 Tourism Investment in Indonesia

In accelerating national economic development through the tourism sector, it is necessary to increase investment to process the economic potential of tourism into natural tourism economic strength by using capital originating from within the country and from abroad. For this reason, the Government and Local Governments encourage domestic investment and foreign investment in the tourism sector by the national, provincial, and regency/municipal tourism development master plans.

Investment is carried out based on the following principles: legal certainty, candor, accountability, equal treatment and does not discriminate against a country of origin, fair efficiency, sustainability, environmentally friendly, and others. The objectives of organizing investment in tourism businesses are the same as those of investment in general, which is: To increase national economic growth; create jobs; promote sustainable economic development; improve the competitiveness of national business; increase national technological capacity and capability; encourage the development of the people's economy; cultivate potential economy into real Economic strength by using funds originating both from within the country and from abroad and improve the welfare of society [1].

The investment must be a part of the implementation of the national economy and placed as an effort to increase national economic growth, create jobs, increase sustainable economic development, increase national technological capacity and capability, encourage the development of people's economy and realize the welfare of society in a competitive economic system.

The purpose of implementing investment can only be achieved if the supporting factors that hinder the investment climate can be overcome, such as through improved coordination between central and regional government agencies, the creation of an efficient bureaucracy, legal certainty in the investment sector, highly competitive economical costs, and conducive business climate in the field of employment and business security. With the improvement of these various supporting factors, it is hoped that the realization of investment will improve significantly [2].

Tourism funding is a shared responsibility between the Government, Local Governments, entrepreneurs, and the community. The management of funds is carried out based on justice, efficiency, transparency, and public accountability.

In this regard, the Government and Local Governments are obliged to: provide tourism information, legal protection, as well as security and safety to tourists; create a conducive climate for the development of tourism business which includes the opening of equal opportunities in doing business, facilitating, and providing legal certainty; maintain, develop, and preserve national assets that serve as tourist attractions and potential assets that have not been explored; as well as supervising and controlling tourism activities in the context of preventing and overcoming various negative impacts on the community as a whole [3].

3.2 The Role of Contracts in Tourism Investment in Indonesia

The tourism business includes various things, which is doing this business requires a contract. In making tourism investment contracts, it is guided by the provisions of contract law, including investment contracts in Indonesia which are regulated in the Investment Law, and its implementing regulations as general provisions in investment. And the Tourism Law as a special provision. This rule is in line with the principle of *lex specialist derogat lex generali.*

3.3 Principles of Certainty, Benefits, and Justice in Tourism Investment Contracts in Indonesia

In the design of tourism investment contracts, must pay attention to and apply the principles of contract law, namely: the principle of freedom of contract, the principle of consensual, the principle of *pacta sunt servanda*, the principle of good faith, the principle of personality. It also fulfills the conditions for a valid contract as regulated in Article 1320 BW: the parties' agreement, the parties' skills, particular objects, and lawful causes. In implementing tourism investment contracts, it must pay attention to and apply the principle of good faith as stated in Article 1338 paragraph (3) BW, which reads: "Agreements must be carried out in good faith."

If a problem arises regarding a tourism investment contract, the ideal solution is to reflect the three principles of the theory of legal objectives as proposed by Gustav Radbruch, and the law must contain 3 (three) identity values, which is as follows:

1. The principle of legal certainty (*rechtmatigheid*), this principle is reviewed from a juridical point of view;
2. The principle of legal justice (*gerectigheit*), this principle reviews from a philosophical point of view, where justice is equal rights for all before the court;
3. The principle of legal expediency *(zwech matigheid* or *doelmatigheid or utility*).

Legal certainty in a normative contract is when it is made with certainty because it regulates clearly and logically. It will not cause doubt because of the existence of multiple interpretations so that it does not conflict or cause a conflict of norms. The contract is a law for the parties that contains the rules that serve as guidelines in carrying out the contents of the contract. The existence of rules and their implementation creates legal certainty.

The legal benefit is the principle that accompanies the principles of justice and legal certainty. The benefits of the contract need to be considered because the parties expect benefits in carrying out the contract. Justice is indeed one of the central values, but expediency is also critical. So in law enforcement, the comparison between benefits and sacrifices must be proportional.

Legal justice, according to L.J Van Apeldoorn, should not be considered the same as equalization. Justice does not mean that everyone gets the same share [4]. It means that justice requires that each case be weighed separately, meaning that what is fair to one person is not necessarily fair to another.

Satjipto Rahardjo formulated the concept of justice to create justice based on the values of balance on equal rights and obligations. Fence M. Wantu said, "fair is essentially putting things in their place and giving to anyone what is their right, which is based on the principle that all people are equal before the law." [5].

Some scholars propose ideas about justice based on contracts include J. Locke, JJ. Rousseau, Immanuel Kant, and John Rawls. These scholars realize that the business community will not run without a contract that gives birth to rights and obligations. With a contract, it is hoped that each individual will keep his promise and carry it out. Therefore, there is a relationship between justice and a contract that is binding, so forming a contract must be based on justice. The purpose of making a contract is not only when desired at that time occurs, but also hopes in the future realized through related legal actions [6]. The issue of fairness is reciprocally related to business activities. In practice, although the principle of freedom of contract is put forward to reach an agreement on forming a contract. It still causes many legal problems, especially those related to the implementation of the contract itself. It is still unable to accommodate balance and protection between the parties, resulting in not guarantee fairness in contracting.

In understanding it, the principle of proportionality cannot be separated from the basic principles of contract law [7]. This understanding is necessary to know how the principle of proportionality works with other principles of contract law. These principles are not separate, but in many ways filling and complement each other. This approach aims to create a proportional contractual relationship between business people, as a pattern of *win-win solution* that a symbiotic relationship of mutualism. In principle, the contract is made to give trust to the parties of different interests. Through the contract, it is hoped that the goals of the parties can be achieved. Contracts in their achievement cannot be separated from benefits, certainty, and justice.

For parties who fail to carry out something that has been agreed upon, then the other party can use the authority of the judiciary to carry out the contract even to obtain compensation or other reparation that is permitted by law" [8]. Considering the above, it is hoped that the purpose of making a contract, that is, the creation of expediency, justice, order, and legal certainty, can be realized. The contract contains the meaning of "a promise must be kept" or "a promise is a debt." With a contract, it is hoped that each individual will keep his promise and carry it out [9]. When problems arise regarding contracts, justice seekers certainly really want to be resolved fairly. In order to uphold justice, the settlement must be by its true purpose, namely to provide equal opportunities for litigants. Thus the ideal solution must fulfill these three principles. However, sometimes there is a particular emphasis on one of the dominant aspects. It does not mean that the decision has ignored other related principles. These three principles are closely related to make the law a guide to behavior in every legal action. However, if the three principles are related to reality, there is often a conflict between justice and legal certainty or legal certainty against benefits. Every case cannot be generalized, and it can change from one principle to another, which is deemed relevant to be stated in the legal considerations. In making legal considerations, it must be with good reasoning, and this is what makes the reason to prioritize certain principles without leaving other principles, of course. Thus the quality of the settlement can be assessed from the reasons and legal considerations used in the case. Based on the description above, if problems arise in the field of contracts, efforts must be made to resolve them by applicable regulations, considering the harmony of all principles of contract law. Because all of these principles are interrelated, applied simultaneously, take place proportionally and somewhat, and serve as a binding framework for the contents of the contract. Thus, it is hoped that the ideal and desired application of the law can be materialized.

4. CONCLUSION

To create certainty, benefits, and justice in the law of tourism investment contracts in Indonesia. In drafting tourism investment contracts, must pay attention to and apply the principles of contract law, that is: the principle of freedom of contract, the principle of consensual, the principle of *pacta sunt servanda*, the principle of good faith, the principle of personality and the provisions of Article 1320 BW, i.e., agreement of the parties, the skills of the parties, particular objects and lawful causes. Moreover, in implementing tourism investment contracts, they must pay attention to and apply the principle of good faith as stated in Article 1338 paragraph (3) BW.

The settlement process is based on three theoretical principles of legal objectives. It is the principle of legal certainty (rechtmatigheid), the principle of legal justice (gerectigheit), the principle of legal expediency (zwech matigheid or doelmatigheid or utility) proportionally and by the principles of contract law. Because all of these principles are interrelated, they cannot be separated, applied proportionally, and used as a binding framework for the contract.

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Investigation of the Economic Criminal Action of Subsidied Fertilizer Abuse in the Solok Resort Police's Criminal Reserse Unit

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ABSTRACT
The abuse of subsidized fertilizer that occurred in Solok Regency is not an official retailer appointed by the Government to sell the subsidized fertilizer. The act of the perpetrator violates the provisions as referred to in Article 1 of Perpu No. 21 of 1959 concerning Aggravating the Threat of Punishment Against Economic Crimes in conjunction with Article 1 and Article 6 of the Emergency Law of the Republic of Indonesia Number 7 of 1955 concerning Investigation, Prosecution and Judiciary of Economic Crimes in conjunction with Article 4 and Article 8 of Perpu Number. 8 of 1962 concerning Trade in Goods Under Supervision in conjunction with Article 2 of Presidential Regulation of the Republic of Indonesia Number 15 of 2011 concerning Amendments to Presidential Regulation of the Republic of Indonesia Number 77 of 2005 concerning Stipulation of Subsidized Fertilizer as Goods Under Supervision in conjunction with Article 106 of Law Number 7 of 2014 About Trade. The defendant was found legally and convincingly guilty of committing the offense in this instance "selling subsidized fertilizer without a permit" so that he was sentenced to imprisonment for 3 (three) months and 15 (fifteen) days with the provision that the crime does not need to be served, except in the future. There is another order in the judge's decision that the convict has been guilty of committing a crime before the probationary period of 1 (one) year ends. The abuse of subsidized fertilizer can be qualified as an economic crime. "Any conduct that violates rules and regulations in the economic and financial spheres and has criminal repercussions", according to B. Mardjono Reksodiputro.

Keywords: *Crime, Rules, Subsidized Fertilizer.*

1. INTRODUCTION

The Republic of Indonesia's 1945 Constitution (UUD 1945) is the highest written legal basis and the fundamental framework for organizing governmental authority and growth. Therefore, in running the Government, the law and the state's goals must be based on the provisions as regulated in state institutions.

One of the things that the government must accomplish and actualize, as prescribed by the constitution, is to promote the welfare of the people in order to achieve growth with integrity, as stated in Article 34 paragraph (2) of the 1945 Constitution, which states: "The state shall develop a social security system for all people and empowering the weak and incapable by human dignity".

In order to carry out Article 34 paragraph (2) of the 1945 Constitution's mission, the Government has sought various work programs by facilitating various facilities and infrastructure in various fields, one of which is agriculture. The government's attempts to facilitate or improve the agricultural sector, particularly in terms of national food security, must follow six (six) principles: type, quantity, price, location, time, and quality. As a result, the government has implemented a fertilizer subsidy scheme for the community.

The Regulation of the Minister of Trade of the Republic of Indonesia Number: 15/M- DAG/PER/4/2013 concerning the Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector regulates the distribution and procurement regulations, as well as the definition of subsidized fertilizer. The following is the definition of subsidized fertilizer as stated in Article 1 point 1 of the Minister of Trade of the Republic of Indonesia's Regulation:

Urea fertilizer, SP 36 fertilizer, ZA fertilizer, NPK fertilizer, and other types of subsidized fertilizers

determined by the minister who oversees government affairs in the agricultural sector are examples of goods under supervision whose procurement and distribution receive subsidies from the government for the needs of farmer groups and/or farmers in the agricultural sector.

The goal of controlling the purchase and distribution of subsidized fertilizers is to ensure that fertilizer is available at a reasonable cost. In addition to Minister of Trade of the Republic of Indonesia Regulation No. 15/M-DAG/PER/4/2013, the Government also issued Minister of Agriculture of the Republic of Indonesia Regulation No. 60/Permentan/SR.130/12/2015 on Determination of the Highest Retail Price Requirement (HET) Subsidized Fertilizer for the Agriculture Sector. With this ministerial regulation, the Government expects the distribution and use of subsidized fertilizers by the target. Therefore, commitment and support for escort and supervision from various parties, especially the Regional Government, is highly expected.

The amount, quality, allocation, area, Highest Retail Price (HET), and distribution method are all supervised in the delivery of subsidized fertilizers. Regulation of the Minister of Trade of the Republic of Indonesia Number: 15/M-DAG/PER/4/2013 about the Purchase and Distribution of Subsidized Fertilizers for the Agricultural Sector specifies the following processes for the procurement and distribution of subsidized fertilizers:

Producers carry out the procurement of subsidized fertilizers up to Line III (the location of fertilizer distributors in the Regency determined by the producer) in the area they are responsible for.

1. Producers sell subsidized fertilizers to wholesalers through Line III warehouses.
2. Farmers buy subsidized fertilizers from distributors in Line IV (retail warehouse sites selected by distributors).
3. The merchant is responsible for controlling the warehouse in Line III in the region under his authority.

Based on the background of thought above, the problems to be studied can be formulated as follows:

1. How is the investigation of the economic crime of misuse of subsidized fertilizer conducted in the Criminal Investigation Unit (Satreskrim) of the Solok Resort Police?
2. What obstacles are faced in investigating the economic crime of misuse of subsidized fertilizer at the Solok Police Criminal Investigation Unit?

Thus, this study aims to find out and analyze the investigation into the economic crime of misuse of subsidized fertilizer in the Criminal Investigation Unit (Satreskrim) of the Solok Resort Police and to analyze the obstacles faced in investigating the economic crime of misuse of subsidized fertilizer in the Criminal Investigation Unit (Satreskrim) of the Solok Resort Police.

2. INVESTIGATION OF THE ECONOMIC CRIMINAL ACTION OF SUBSIDIED FERTILIZER ABUSE IN THE SOLOK RESORT POLICE'S CRIMINAL RESERSE UNIT

The distribution of subsidized fertilizers must be carried out on a legal basis, applicable terms, and procedures and in stages starting from producers, distributors, retailers, to farmers. Article 1 of Law Number 7 of 1955 concerning Investigation, Prosecution, and Economic Criminal Justice defines hoarding subsidized fertilizers as an economic crime (UUTPE). As stated in Article 2 paragraph (1) of Presidential Regulation of the Republic of Indonesia Number 77 of 2005 concerning Stipulation of Subsidized Fertilizers as Goods Under Supervision, as an implementation of Law Number 8 Prp of 1962 About Control Items, the government classifies subsidized fertilizers as goods under government supervision.

The abuse of subsidized fertilizer can be qualified as an economic crime. "Any conduct that violates rules and regulations in the economic and financial spheres and has criminal repercussions," according to B. Mardjono Reksodiputro.

Abusing subsidized fertilizer is a criminal act that not only violates the law, but also violates the community's socio-economic rights, requiring law enforcement officers who are members of the criminal justice system, such as the Police, Prosecutors, and Courts, to enforce the law against the crime.

Law Number 2 of 2002 concerning the Indonesian National Police (Polri) and Law Number 8 of 1981 concerning the Criminal Procedure Code, hereinafter referred to as the Criminal Procedure Code, give the State Police of the Republic of Indonesia the authority to conduct criminal investigations as part of the criminal justice system.

Based on the provisions of Article 1 point 2 of the Criminal Procedure Code, it is stated that an investigation is: "a series of actions by investigators in terms of and according to the method regulated by law to seek and collect evidence with which evidence makes clear the crime that occurred and to find the suspect." Meanwhile, what an investigator means is regulated in Article 1 point 1 of the Criminal Procedure Code, which states that: "Investigators are officers of the Indonesian National Police who are authorized by law to conduct investigations."

Economic crimes in the form of misuse of subsidized fertilizers carried out by trading in Government-subsidized fertilizers without a valid permit also occur in the jurisdiction of the Solok Resort Police (Polres Solok).

They are handled by the Criminal Investigation Unit (Satreskrim) by conducting investigations into alleged criminal acts of trafficking subsidized fertilizers. Government without a valid permit.

The chronology of the misuse of subsidized fertilizers that occurred in Solok Regency begins with the arrest of the perpetrator by officers on Thursday, August 4, 2016, at around 11.30 WIB at Jorong Bawah Duku Nagari Koto Baru, Kubung District, Solok Regency, with the owner, Sister Elvia Kasmita Call Evi by selling subsidized fertilizers of the types Urea, NPK Phonska, Sp 36 and ZA to other people while the perpetrators are not official retailers appointed by the Government to sell the subsidized fertilizers. The act of the perpetrator violates the provisions as referred to in Article 1 of Perpu No. 21 of 1959 concerning Aggravating the Threat of Punishment Against Economic Crimes in conjunction with Article 1 and Article 6 of the Emergency Law of the Republic of Indonesia Number 7 of 1955 concerning Investigation, Prosecution and Judiciary of Economic Crimes in conjunction with Article 4 and Article 8 of Perpu Number. 8 of 1962 concerning Trade in Goods Under Supervision in conjunction with Article 2 of Presidential Regulation of the Republic of Indonesia Number 15 of 2011 concerning Amendments to Presidential Regulation of the Republic of Indonesia Number 77 of 2005 concerning Stipulation of Subsidized Fertilizer as Goods Under Supervision in conjunction with Article 106 of Law Number 7 of 2014 About Trade. Against this case, the defendant Elvia Kasmita Pgl Evi has been legally and convincingly proven guilty of committing the crime of "selling subsidized fertilizer without a permit" so that he is sentenced to imprisonment for 3 (three) months and 15 (fifteen) days with the provision that the crime is not necessary. Be served, unless in the future there is another order in the judge's decision, that the convict before the probationary period of 1 (one) year ends has been guilty of committing a crime.

The rules (codes of laws) and regulations that make up the legal system are referred to as the legal system (regulations). However, it encompasses a wide range of topics, such as the structures, institutions, and processes (procedures) that fill them, as well as the law that exists in society (living law) and legal culture. (legal frameworks).

The legal structure includes executive, legislative and judicial bodies and related institutions, such as the Prosecutor's Office, Police, Courts, and others. While the substance.

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Recovery of State Losses in Corruption Law Enforcement Effort

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ABSTRACT
The Law on corruption which should be a solution to the process of eliminating corruption in Indonesia, turns out to have some problems in its implementation, primarily related to the articles on state losses as referred to in Article 2 and 3 of Law Number 31 of 1999 as amended in Law Number 20 of 2001. The problems arise because there are different interpretations related to the state losses and different opinions regarding the recovery of state losses during the ongoing legal process, as well as the issuance of other laws that regulate the existence of state losses against the Law and its recovery mechanism, particularly in Law Number 15 of 2004 concerning the audits of management and accountability of the state finance and Law Number 30 of 2014 concerning government administration. The dimensions of the corruption problems in Indonesia are vast, such as the existence of overlapping legislation, expensive court costs, general geographical conditions, limitations, and doubts about the accountability of law enforcement officers in Indonesia. Although it still invites polemics, the research found that the process of recovering the state losses administratively was one of the solutions to the Settlement of corruption-indicated cases, which could guarantee legal certainty.

Keywords: *Corruption, Recovery, State loss.*

1. INTRODUCTION

The enforcement of laws and regulations on Criminal Acts of Corruption in Indonesia was performed by the Corruption Eradication Committee (KPK), Public Attorney, and Indonesian National Police (INP) specifically in connection with the implementation of article 2 and article 3 of the Law Number 31 of 1999 as amended in the Law Number 30 of 2001 on the Eradication of Criminal Acts of Corruption with a focus to fulfill the act against law element or arbitrary acts that may harm the country. In this context, corruption crime investigators are very dependent on the result of the state's loss calculation by the Indonesian Audit Board (BPK) or Indonesia's National Government Internal Auditor (BPKP) auditors.

Corruption crime formulation, especially regarding the state's loss as specified in article 2 and article 3 of the Law on the Criminal Acts of Corruption, as of promulgated and implemented in the Indonesian law system, arising debate that until today is not over yet in practitioners or experts' circle. Another opinion related to the implementation of this article, as well as the fulfillment of elements potentially harming the country, so far is discussed in several other perspectives, among others:

a. The country' loss concept in article 2 or article 3 of the Law on the Criminal Act of Corruption, related explicitly to the terminology "may," is a concept overlapping with embezzlement offense as referred to in article 8 and article 9 of the Law on Criminal Act of Corruption. There is a notion that the formulation of these articles 2 and 3 is too broad, potentially causing polemics, the difficulty for law enforcers in the implementation, and promotes misuse in the case adjudicative process 1.
b. Determination of the state's loss element is deemed one of the continuous obstacles for law enforcers in the case handling. The forms, among others, are debates on whose authority serves the right to determine the state's loss calculation and cross-agency coordination that sometimes is too formal, thus consuming law enforcement process time. From this fact, it can be concluded that state's loss method determination becomes one of the crucial variables, hence becoming one of the legal loopholes debated at all times and sometimes becoming an entry to weaken corruption crime prosecution.

Multi interpretation of Law on the criminal act of corruption, especially in the fulfillment of article 2 and

article 3, more specific regarding the state's loss caused and state's loss reimbursement mechanism in its relation with other laws and regulations that cannot be set aside, but can be an opportunity in looking for a new settlement for corruption crime case without prejudice to the perpetrator's or victim's sense of justice in this matter is the country that is financially harmed. Fulfillment of the purpose of Law exists in society.

From the description above, the problems of this study are:

- What are the problems in the implementation of article 2 and article 3 of the Law on the Criminal Act of Corruption?
- How is the state's loss in the state administration concept and its relation with corruption crime?
- How is the implementation of the state's loss reimbursement through sentencing and out-of-court Settlement?

2. METHODS

This study used the qualitative normative juridical method focusing on the studies regarding law principles and norms. The approach used in this study included the law approach with prescriptive descriptive analysis. Data were based on primary law material in various laws and regulations related to the study and secondary legal material as a complement in the form of books related to this study.

3. RESULT AND DISCUSSION

From articles in Law Number 31 of 1999, it could be seen why this Law is mighty and provides almost everything needed by Law enforces to handle corruption crimes and trap corruptors more flexibly. For instance, in article 2 and article 3, even though in the offense formulation, it is clearly stated that an act against Law or abusing power performed by someone can cause harm to the country's finance either formally or materially. It means that the activities within the scope have caused the state's loss or potentially harms the country. This formulation is strengthened in article 4, stating that the state's loss reimbursement does not remove the crime. It can be seen here that the state's loss reimbursement act is not a remover an offense (bestandeel delict) of article 2 and article 3. This is in line with the teaching on fulfillment of opzet element according to Va Hattum elaborating crime acts that can be described from the forms of the act (opzet als oogmerk) or situations accompanying the act (opzet als wetenschap) 2.

In implementing Article 2 and Article 3 containing state's loss elements, law enforcers often met various problems such as pretrial charge or PTUN on which institution authorized to calculate state's loss as a result of Circular Letter of Supreme Court No. 4 of 2016 on the Institution authorized to declare the existence of state's loss which is BPK while other institutions such as BPKP/Inspectorate/SKPD are still authorized to investigate and audit the country's finance management but not authorized to declare the existence of country's finance loss. With the charge, law enforcers must face other problems adding cost, time, thought, and power to themselves.

Another problem is the discrepancy in the Determination of the state's loss calculation method. So far, the state's loss calculation method patterned by Theodorus M. Tuanakotta in his research on corruption cases occurred in Indonesia, by using REAL (Receipt, Expenditure, Asset, Liability) concept adapted from Fraud tree ACFE3 showing various methods in state's loss calculation. In judicial practice, a specific calculation method often is denied by using another method deemed more fit. This will affect the evidentiary process of corruption offense primarily related to the state's loss, forcing examiners, investigators, or auditors of KPK or BPKP to work extra carefully in formulating the form and potential of state's loss arise in a corruption case. From a criminal law perspective, the state's loss problem becomes a block in the law enforcement process. This problem can be seen from another perspective from an administrative aspect. From the administrative aspect, the state's loss concept is specified in Law Number 1 of 2004 article 2 number 22 and Law Number 15 of 2006 article 1 number 15 on Financial Auditor. After this concept, new legislations referring to the state's loss formulation were issued, especially in government administration and management legislation.

The new legislation by Law Number 15 of 2004 regarding State Financial Management and Liability Audit, article 13 on BPK is authorized to disclose state's loss indications or crime elements, and article 22 and article 23 regarding state's loss reimbursement imposition process with its implementation mechanism regulated separately in BPK Regulation Number 3 of 2007 on Settlement Procedure of the State's Loss Reimbursement to the Treasurer. The BPK Regulation is a regulation governing monitoring mechanism related to the state's financial use where the state's loss is found during the monitoring. In this regulation, it is elaborated how to settle the state's loss from the administrative aspect, although the state's loss formulation used is almost the same as the state's loss formulation in Law on criminal acts of corruption, which is due to acts against Law.

Another legislation is Law Number 30 of 2014 on government administration forcing government internal apparatus monitoring or often called as APIP who will provide assessment if in a decision-making process there is an administrative mistake, or administrative error causing state's loss. In this Law, one of the reimbursement principles is in case of administrative error, causing losses to the state; hence, the

reimbursement is no later than ten days as of the issuance of monitoring result from Government Internal Apparatus (APIP).

With various problems in implementing Article 2 and Article 3 and the overlapping legislation to determine the state's loss, Supreme Court issued a circular letter Jampidsus Number B - 1113/F/Fd.1/05/2010 dated 18 May 2010. The circular letter causing polemics is interesting to be studied since this circular letter provides new insight on the Settlement for corruption crimes, also providing evidence that state's loss is an essential bestandeel delict in corruption crime formulation in Indonesia.

The content of this Circular Letter is related to the priority scale preparation process of corruption crime to significant cases from the perpetrator aspect and state's loss value and the possibility that this case is a repeated case. The second point of this circular letter is that the corruption crime perpetrator reimbursing the state's loss in small amounts needs to be considered not processed lawfully. The rationalization of this circular letter issuance is that the cost of corruption handling will be greater than the small amount of the state's loss value. The state's financial reimbursement benefit principle is greater than the perpetrator's punishment. This is normal because sometimes the perpetrator's act is due to negligence (culpa) or uneducated budget-user authority or commitment-making official on budget management aspects, and imitating their predecessors' or seniors' lousy habit or not abiding the budget management principles.

The notion from the Office of Attorney General to implement Settlement of corruption crime outside the court (out-of-court Settlement) as one of the alternatives must be appreciated well since the out-of-court Settlement is a normal thing in criminal justice practice, especially in countries adopting Anglo Saxon law doctrine. Many benefits can be obtained, namely cheap and fast criminal justice, and law enforcement aspect more oriented to benefit principle.

Out of court settlement has been implemented in Indonesia for a long time, namely article 12 B and article 12 C of Corruption Law, where gratification to the city employee is deemed as a bribe if it is related to his/her position becoming invalid if the gratification receiver reports the gratification he/she received to KPK no later than 30 days as of the gratification received.

This circular letter indeed caused polemics. One of the entities giving the strongest reaction was ICW stating that the circular letter potentially weakens corruption eradication efforts, harassing the Law specifically article 4 of Corruption Law, stating that the state's loss reimbursement does not remove the crime. This circular letter is prone to be misused by the prosecutor individual. The criticism indeed emerged due to two problems: ICW distrust in law enforcer integrity presumably will manipulate this process, and law entities in Indonesia are not accustomed to the out-of-court settlement idea proposed in this circular letter.

Polemics regarding this circular letter were restudied by the Office of Attorney General using measurement in theories on law certainty principle and benefit principle, sentencing, and restorative justice purpose. From the study, it was concluded by the Office of Attorney General that the state's loss categorized as small is ranging from fifty million rupiahs to three hundred million rupiahs, it is the basis that if there is corruption with losses under fifty million rupiah, then it will not be followed-up by Judiciary and Police if reimbursement has been given. However, there is an exception, especially in cases concerning public lives such as rice procurement for the vulnerable or school operational fund 4. The second conclusion was that losses above 50 million to 300 million rupiahs would not be directly stopped if reimbursement was given, but it must be investigated further.

Office of Attorney General also concluded that 55.38 respondents agree on the cessation of corruption case with small losses by referring to the clause that the cessation applied does not affect and harm the general public, and cessation of corruption case with small losses is more fitting to be implemented during the investigation because no big-budget charge incurred yet and no pro-justice effort performed or suspect Determination yet, hence facilitating the case cessation process or indicating legal certainty for the perpetrator if the case will be terminated or followed-up. This cessation is also in line with fast, simple, and cost-effective criminal justice system implementation, especially related to the operation cost of corruption crime handling at Police and Public Attorney, considering the vast geographical location of Indonesia making corruption case handling, especially in secluded areas will need high cost.

4. CONCLUSION

In the implementation of article 2 and article 3 of Law Number 31 of 1999 as amended in Law Number 31 of 2001, there are several problems among others which institution is authorized to calculate the state's loss and discrepancy in determining the state's loss calculation method causing pretrial charge or PTUN that add up the cost, time, thought, and power of the law enforcers.

From an administrative aspect, there is overlapping legislation to determine the state's loss, where the Law regulating state's loss reimbursement mechanism becomes a loophole continuously debated and sometimes is made as an entry to weaken law enforcement of criminal corruption act.

With various problems in the implementation of Article 2 and Article 3 of Corruption Law and overlapping legislation to determine the state's loss, the Office of Attorney General issued a circular letter for the

Settlement of corruption cases outside the court (out of court Settlement), especially cases with small loses that have been reimbursed. With the implementation of out-of-court Settlement, many benefits can be obtained, namely cheap and fast criminal justice and law enforcement aspect-oriented to benefit principle. However, monitoring, integrity, capability, and professionalism improvement of the law enforcers are necessary not to misuse the implementation of out-of-court Settlement.

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Legal Regulation for Coastal Areas for the Purpose of Traditional Ceremonies and Tourism Activities

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ABSTRACT
Coastal areas have the potential to improve the economy and community welfare. The area can be used as an ecotourism object and a sacred place for the Hindu community, used for traditional ceremonies. Each has the right to the activities carried out. However, visitors can interfere with ceremonial activities both regarding feelings, beliefs, culture, traditions, and the sacredness of traditional ceremonial activities, such as wearing clothes that is not by local norms, swimming activities in places where the ceremony is taking place, and even the conducts that are not by the Hindu religious and customary norms in Bali. Therefore, there is a need for a legal regulation for ecotourism activities and traditional ceremonies from both the government and village managers. The problems studied in this paper include legal regulation governing the implementation of traditional ceremonies and ecotourism on the coast in the traditional village of South Kuta and the implications of the relationship between ecotourism and traditional religious ceremonies in ecotourism sites. The research method applied to achieve the objectives of the present research is the normative-empirical legal method. With this method, the provisions of the applicable laws and regulations are reviewed, and the applicability in society is observed. The study results found that regulations set by the government and awig-awig formed by traditional villages and traditional religious ceremony activities were prioritized, compared to ecotourism activities during the ceremony.

Keywords: *Ecotourism, Law Enforcement, Implication.*

1. INTRODUCTION

Indonesia is an archipelagic country rich in abundant natural resources from biological and non-biological [1]. One of the natural resource-based tourism developments that live in the traditional villages of south kuta sub-district in the coastal area. A beach is where the highest tide meets the mainland. Furthermore, the coastline is the water line connecting the highest tide's meeting point with the mainland. The coastline will be formed following the configuration of the coastal land/land itself, while the coast is a meeting area between the influence of land and the influence of the ocean [2]. Thus, in coastal areas, the effects of activities on land are still felt or visible (for example, the appearance of pollutants, sedimentation, and watercolor). In line with this thought, the notion of the coast was also put forward by ammirudin. he distinguishes the meaning of the coast used in indonesia and that used in the international world. The definition of *the coastal area* used in indonesia is the meeting area between land and sea, towards the land the coastal area which includes the land part, both dry and submerged in water, which is still influenced by the characteristics of the sea, such as tides, sea breezes, and saltwater infiltration.

Meanwhile, towards the sea, the area is still influenced by natural processes on lands, such as sedimentation, freshwater flow, and those caused by human activities, such as deforestation and pollution. according to the international agreement, the coastal area refers to the transitional area between the sea and the land towards the land, which includes areas still affected by seawater splashes or tides, and towards the sea, which includes the continental shelf area [3]. From this definition, it can be concluded that the coast covers a broader area than the definition of the coast.

The coastal area has a magnificent ecosystem, ranging from coral reefs, mangroves, beaches, and sand. In addition to abundant natural wealth, coastal resources also can improve the economy and welfare of the community in that they can be used as tourism objects. Tourism is a form of cultural utilization obtained from coastal ecosystems as a tourist area by exploring its beauty [1].

The coastal area, apart from being used as an ecotourism object, is also used as a sacred place for the activities of local wisdom of the local community, such as traditional hindu religious ceremonies, which are a form of the local cultural identity of a community or traditional village that must be preserved and passed down from generation to generation [4].

Apart from being an object of tourism, the coast is one of the sacred places of hinduism to carry out traditional-ceremonial activities. Each has the right to the activities carried out. Tourists have the right to travel as regulated in the law of the republic of indonesia number 10 of 2009 concerning tourism, namely article 18 paragraph (1) letter a and regarding religious activities such as traditional ceremonies are also regulated in article 22 paragraph (1) of the law of the republic of indonesia number 39 of 1999 concerning human rights [5].

In carrying out ecotourism activities and traditional ceremonies, traditional villages are based on regional regulation number 4 of 2019 concerning balinese traditional villages, which include traditional village tasks, such as advancing custom, religion, tradition, art, culture, and local wisdom, which can be the implementation of applicable customary law to maintain cultural traditions and the smooth running of traditional religious ceremonies. Hence, in this case, legal arrangements for tourists visiting these areas need to be established, considering the number of visitors who do not respect the ceremonial activities, both in terms of wearing clothes that are not by hindu traditional and religious norms in bali, swimming activities at the ceremony is taking place, to the conducts of the visitors that can interfere with ceremonial activities - whether it involves feelings, beliefs, culture, traditions and the sacredness of the place where the traditional ceremony is held.

In regional regulation number 16 of 2009 concerning spatial planning of the province of bali, the implementation of the concept of *tri hita karana* - which is the philosophy of life of the balinese people - is regulated. The concept of the *tri hita karana* contains three elements to build balance and harmony, namely the relationship between humans and their fellow humans, the relationship between god and humans, and the relationship between humans and the environment. The concept is expected to be applied by tourists, both local and international tourists. to realize this expectation, legal regulations need to be established to regulate the relationship between ecotourism and local communities carrying out traditional hindu religious ceremonies. of course, this is intended to create a sense of mutual respect so that the religious aspect can become a tourist attraction that offers the values of local wisdom, especially in religious ceremonies, without eliminating the traditions passed down from to generation.

Based on the description above, the problem studied in this paper is the issue of legal arrangements for coastal areas in traditional ceremonial activities and tourism activities, especially on the coast of traditional villages in south kuta, and the implications of the relationship between tourists and local communities who are carrying out traditional religious ceremonies in ecotourism areas.

2. METHOD

According to Kartini Kartono, research methods are ways of thinking and doing, which are well prepared to conduct research and achieve goals [6]. From the description above, it can be understood that research is a planned activity carried out with the scientific method to obtain new legal materials to obtain the truth or untruth of an existing symptom. Research is a (scientific) means in the development of science and technology. This is because research aims to reveal the truth in a systematic, methodological, and consistent manner. The analysis is carried out through the research process, and construction is made on the collected and processed data [7]. Legal research is conducted to discover solutions to legal issues that arise, so it can be said that legal research is research within the framework of know-how in law to obtain prescriptions (regulatory instructions) regarding what should be done to the issues raised [8]. In the present research, the researcher applies normative-empirical legal research. This research method combines elements of normative law and empirical law in the form of added data. Normative-empirical legal research will deepen understanding of the implementation of normative legal provisions (laws) in reality in every particular legal event in a community, especially on legal arrangements for coastal areas and the relationship between ecotourism activities traditional ceremonies.

3. RESULT AND DISCUSSION

Indonesia is a country consisting of islands, which has a strategic value in terms of the potential for developing a vast national territory due to the many various advantages. This shows that the coastal area has functioned as a center for the activities of a significant number of communities. The many regulations governing the management of coastal and marine resources sometimes lead to overlap in their management.

Management of coastal areas is carried out in a planned manner by considering the characteristics, uniqueness, geomorphology of beaches and their ecosystem conditions, and the size of the island. This means that the management of coastal areas in one area will vary, following the differences in the characteristics and uniqueness of the coastal area. These forms of management can be seen in Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, which has been amended to become Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Zone and Small Islands. The form of management can be described as follows:

In coastal areas with sloping beaches and open to the high seas, conversion of mangroves into ponds or

settlements will cause strong coastal erosion and degradation of water quality, so it needs to be limited.

The rapidly increasing rate of coral reef damage due to mining and destructive fishing activities needs to be controlled with strict regulatory norms and sanctions.

Utilization of small islands needs to be limited and prioritized for conservation, ecotourism, limited aquaculture, research/research, and small-scale fishing industry bases; because small islands generally have limited freshwater with shallow soil solum, intensive management of small islands need to be limited so that the islands do not sink or sink.

In coastal areas above folds/faults, earthquakes and tsunami disasters will often occur, so disaster mitigation actions are needed in their management.

In coastal cities, the need for land encourages the development of coastal reclamation activities or the construction of coastal structures. Reclamation or construction of coastal buildings that do not pay attention to the characteristics of the coastal area can cause damage to adjacent coastal areas. So it is necessary to set up a mechanism so as not to cause victims to other parties.

In coastal areas whose ecosystems have been damaged, rehabilitation is needed to recover to support the life of marine biota and humans.

The relatively rich coastal resources are often the center of economic growth, and the population is densely populated. However, most of the population is relatively poor, and this poverty triggers pressure on the coastal resources that are the source of their livelihood. If this is ignored, it will have implications for increasing damage to coastal ecosystems. In addition, there is still a tendency that industrialization and economic development in coastal areas often marginalize local coastal residents, as happened in Aceh, Riau, and Pantura Java. Therefore, community empowerment norms are needed.

In the management of coastal areas, their vulnerable nature needs to be protected but can also be used to meet the needs of life. Therefore, a policy in the management of coastal areas is needed to balance the level of utilization of coastal resources for economic purposes without compromising the needs of future generations through the development of conservation areas [9].

Indonesia is a state of law. It is stated in Article 3 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia that Indonesia is a state that adheres to the rule of law and places the law as the highest position [6**,** 7]. The Coastal area serves as one of the tourism objects based on ecotourism and is being used as a holy place to implement religious ceremonies. Therefore, the management of coastal areas needs to be carried out based on the provisions in Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands. To find out which areas are tourist attractions on the coast of South Kuta, it is necessary to look thoroughly at Regional Regulation Number 7 of 2018, especially Article 26 Paragraph (5), which regulates the Detailed Spatial Planning and Zoning Regulations of the South Kuta Sub-district.

The development of ecotourism in regions in Indonesia is supported by Ministerial Regulation Number 33 of 2009 concerning Guidelines for Development of Ecotourism in Regions. In addition, the Provincial Government of Bali also issued Regional Regulation Number 2 of 2012 concerning Cultural Tourism which aims to regulate tourism activities based on local wisdom. In ecotourism activities, tourists have the right to the activities they carry out. This is regulated in the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, namely in Article 18 Paragraph (1) letter a and Article 20.

In a context like in Bali, besides being used as a tourist attraction, the coastal areas are also used as a holy place to carry out religious ceremonies, namely traditional ceremonial activities carried out by Hindu religious communities who also have the right to carry out religious activities. This has also been regulated in Article 18B of the 1945 Constitution of the Republic of Indonesia, which states that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and by community development and the principles of the Unitary State of the Republic of Indonesia, which is regulated by law [12]. Then, in Article 29, it is stated that the State guarantees the independence of each resident to embrace their religion and worship according to their religion and belief. This is also regulated in the provisions of Article 22 paragraph (1) of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, which states that everyone is free to embrace their religion and worship according to their religion and beliefs.

Judging from this, related to traditional ceremonies which are part of religion and the coast is a sacred place for Hinduism, the Regional Government of Bali Province issued Regulation Number 7 of 2018. In Article 14, Paragraphs (2) and (3) of the regulation regarding a sacred beach subzone used for religious ceremonies for Hindus in South Kuta is regulated [13]. Various potentials are owned and used as ecotourism objects (tourism) on the coast of South Kuta Beach, such as beach beauty, culinary tourism, marine tourism, and culture. Local wisdom such as traditional Hindu ceremonies carried out on the coast cannot be separated from the right to the activities carried out. In addition to the role of the government, the role of traditional villages is also significant in maintaining the traditions and culture of local wisdom.

Based on the Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali, the duties of a traditional village include advancing customs, religion, traditions, arts, culture, and local wisdom, which can be the implementation of applicable customary law to maintain cultural traditions. In Article 13 Paragraph (a)

of the Regional Regulation of the Province of Bali Number 4 of 2019, every traditional village has an Awig-Awig. Article 14 Paragraph (1) of Awig-Awig of Traditional Village mentions parahyangan, pawongan, and palemahan of traditional village. Then, Article 14, Paragraph (2) explains that it aims to maintain an ordinary life in the traditional village. Hence, it is harmonious, orderly, and peaceful and efficient, and effective by the principles of giliksaguluk, parasparo, salunglung sabayantaka, and sarpana ya [14]. Traditional villages are given the authority to compose awig-awig, which have magical religious characters. The sanctions are strictly adhered to and obeyed by indigenous peoples compared to formal laws. In addition, Awig-Awig is a basic rule regarding the behavior of Balinese people, which cannot be separated from the "rechtsgemeenschap" of the traditional village [15].

With the activities of ecotourism objects carried out by tourists and traditional religious ceremonies carried out by Hindu communities on the coast, based on Law Number 10 of 2009 concerning Tourism in Article 5 points a and b, tourism is organized under the following principles:

Upholding religious norms and cultural values as the embodiment of the concept of life in the balance of the relationship between humans and God Almighty, the relationship between humans and fellow humans, and the relationship between humans and the environment; and

Upholding human rights, cultural diversity, and local wisdom. Furthermore, Article 25 Paragraph (a) of the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism states that every tourist is obliged to maintain and respect religious norms, customs, culture, and values that live in the local community. This was followed by the Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali, namely Article 3 Paragraph (c), which stipulates that the regulation of traditional villages aims to promote custom, tradition, art, and culture, as well as local wisdom of the traditional village community in a Sakala and Niskala manner.

From the explanation above, in the author's opinion, in traditional ceremony activities on certain days, traditional ceremony activities are prioritized over ecotourism activities by upholding religious norms and cultural values, such as respecting ongoing traditional ceremony activities both in terms of clothing to behavior. This certainly should be known by tourists before visiting the coastal areas, that is to say, whether the area is being used for religious ceremonies.

In addition to the above, with the activities carried out in the coastal area by tourists and local communities, legal protection of coastal ecosystems needs to be made so that coastal sustainability is maintained. This has been regulated in Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems and Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management [12, 13]. In this case, the author believes that in the relationship between the two activities, in the context of sustainability, there is an obligation to jointly maintain the preservation of natural resources on the coast, especially in the South Kuta area.

4. CONCLUSION

From the discussion that has been elaborated in the previous section, conclusions can be drawn, namely that with the regulations that have been set by the government and also the awig-awig that traditional villages have made, it can be said that activities related to traditional religious ceremonies are prioritized and prioritized, compared to ecotourism activities during the ceremony. Concerning the relationship between ecotourism and local communities that carry out traditional Hindu religious ceremonies and established regulations, ecotourism activities and traditional ceremonies can both run on mutual respect. This is because traditional ceremonies nowadays are seen by local and international tourists as a tourist attraction that deserves attention in religious ceremonies without eliminating the traditions passed down from generation to generation, which will undoubtedly be the main attraction for a region.

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Waste Management Policy Model in Order to Reduce Plastic Waste Hacks

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ABSTRACT
The goal of this research is to find a solution to the waste problem, which involves determining how to govern management rules in order to limit the development of plastic garbage. How to model waste management in order to decrease plastic trash creation. This is normative law study, which examines the law from a statutory standpoint. The study's findings show that waste management is covered by legislation, including Act Number 18 of 2008 on Waste Management, Government Regulation Number 81 of 2012 on Household Waste and Waste Similar to Household Waste, Regional Regulation Number 5 of 2011 on Waste Management, Governor Regulation Number 97 of 2018 on Reduction of Plastic Waste Hacks, and Denpasar City Regulation Number 3 of 2018.. However, these policies need to be complemented by public awareness to sort waste from the household, supervision of waste sorting at temporary landfills by relevant stakeholders, and purchases of plastic waste (plastic bags) by the government, tightening single-use plastic production permits.

Keywords: *Management, Policy, Plastic Waste.*

1. INTRODUCTION

Environmental conditions influence public health because environmental factors are the most decisive factors for public health. Suppose there is a change in the environment around humans. In that case, there will be a change in the health condition of the community's environment. [1]. Environmental factors and behaviour factors significantly affect the degree of public health, so they need serious attention. Healthy behaviour factors are expected to maintain, improve health and protect from the threat of disease, while a healthy environment is expected to create a conducive, pollution-free environment, healthy settlements, and healthy waste management. [2]

Until now, waste has become the main problem that plagues not only cities, villages, roads, rivers, public places and all corners of the environment, and it can be ascertained that there is always garbage scattered about which after that must be found a good, precise and correct solution to the problem can harm the environment. Social, economic, and environmental aspects. this is a result of the lack of public awareness regarding the importance of waste management in life. [3]

According to the terms of Act No. 18 of 2008 on waste management, waste management is a systematic and ongoing activity that involves trash reduction and handling. Waste is defined as the solid remnants of everyday human activity and/or natural processes. Based on the constituent substances (biological and chemical), waste is divided into organic waste (wet waste) and inorganic waste (dry waste). Wet waste is also called garbage that easily decomposes (garbage) due to the activity of microorganisms, such as leaves, trunks, and twigs of trees, leftovers of significant vegetables, fruits, old wood, animal carcasses, etcetera. Dry waste is also called waste that is difficult to decompose (refuse) such as paper, plastic, scrap, cloth, metal, glass, rubber, etcetera.[4]

Waste hacks is the volume of waste or the weight of waste generated from types of waste sources in a particular area per unit time. [5] Waste hacks originating from single-use plastic waste (psp) in the form of plastic bags, polystyrene (styrofoam) and plastic straws cannot be reused, recycled, and/or readily biodegradable, or vice versa. waste heaps in indonesia in 2016 reached 65,200,000 tons per year with a population of 261,115,456 people. indonesia's population projection shows a population that continues to grow and will undoubtedly increase the amount of waste generation. garbage generation and waste disposal harm the environment and health. Therefore, it is necessary to take security measures.

The waste management policy is based on the Waste Management Act of 2008, which defines garbage management as a long-term, systematic, and complete activity that includes waste reduction and management. Follow-up to Presidential Regulation No. 97 of 1917, which established the national policy and strategy for the management of garbage and other domestic waste, and Act No. 18 of 2008, which dealt with household waste management. These three requirements necessitate a fundamental paradigm shift in waste management, notably a shift away from the waste treatment idea, which still emphasizes the final approach. At a final waste treatment plant, garbage is collected, transported, and disposed of.

It's time to replace the waste management paradigm that depends on the final approach with a new one. The new paradigm considers garbage as a resource with economic value that may be used for energy, compost, fertilizer, or industrial raw materials, among other things. The governor of Bali regulation no. 97 of 2018 concerning restrictions on single-use plastic waste hacks and Denpasar mayor regulation no. 36 of 2018 concerning reducing the use of plastic bags are the implementation of the three rules above in the province of Bali related to reducing the use of plastic bags. The regulations above do not ensure that waste is free of plastic waste; plastic waste in rivers can reach 20.7 tons per m3, 3.9 tons per m3 on the shore, and 2.1 tons per m3 on land, thus management in this situation has to be revised.

2. METHOD

This is a normative legal study that looks into the law. The law is the subject of the research, which is defined as a social standard or regulation that serves as a guideline for everyone's conduct. As a result, normative legal study concentrates on a list of positive law, legal principles and doctrines, legal conclusions in specific instances, legal systems, synchronization levels, legal comparisons, and legal history.

The statutory method is used in this research. Of course, normative research must use a statutory method because the focus and key issue of the research will be on numerous legal norms. The legal resources utilized are primary and secondary legal materials, including primary legal elements in the form of waste management legislation and regulations. In the meantime, secondary legal resources come in the form of books about the subject of study.

The processing of legal materials is carried out systematically on written legal resources in normative legal research. The term "systematization" refers to the classification of legal documents in order to make analysis and construction work easier. The received legal papers are then debated, evaluated, and divided into sections before being processed into information. The outcomes of the legal materials analysis will be interpreted utilizing a systematic (a) interpretation technique, (b) grammatical, and (c) teleological interpretation method. The legal framework of this study will be determined by the systematic interpretation chosen. Other legal writings are interpreted using systematic interpretation (systematische interpretatie, dogmatische interpretatie).

3. RESULT AND DISCUSSION

3.1 Waste Management Policy Setting

Based on data from the Head of the Bali Provincial Environmental Service dated February 7, 2019, it was proven that the volume of plastic waste in 2017 reached 414 tons per day and increased by 1.61% in 2018, so that plastic waste in 2018 reached 414.7 tons per day. Even based on the results of the clean up voice one island activity which involved 13,000 people in Denpasar City on February 19, 2019, the amount of plastic waste collected was 30 tons with the composition: food packaging (22%), bottles and glasses (16%), shopping bags (15%), straws (12), and others, especially styrofoam (7%), as explained by Ujang Solihin Sidik, Directorate of Waste Management, Directorate General of B3 and Waste Management of The Ministry of Environment.

Based on the condition of the massive volume of plastic waste generation in the Province of Bali, it is urgent to regulate waste management policies and strategies, including regulating waste reduction through limiting waste generation, especially from the type of Single-use Plastic Based on Act No. 18 of 2008 concerning Waste Management related to the implementation of integrated and comprehensive waste management from law to downstream, indicating that a product that has the potential to become waste has been utilized before it reaches the production phase, causing it to become waste, which is then securely returned to the environment medium.

Article 19 of the substance-related to waste management laws governs the management of residential trash and waste that resembles household garbage. "Management of domestic waste and comparable household waste comprises of minimizing waste and managing waste," according to the text. Article 20 describes "three main activities in implementing waste reduction activities: limiting waste generation, recycling waste, and reusing waste." The 3R principle of ecologically sound waste management is embodied by these three actions (reduce, reuse, recycle). Article 22 states that "the five main activities in implementing waste handling activities include sorting, collecting, transporting, processing, and final processing of waste."

The purpose of implementing a comprehensive approach in waste management is to prevent and limit waste generation, increase recycling, optimize the use of waste, reduce waste that is piled up in the landfill, especially the type of plastic waste, because of the inappropriate use of plastic causes various kinds of

diseases, besides that plastic is tough to decompose by microorganisms.

What is meant by minimizing trash creation, according to Government Regulation No. 18 of 2012 concerning the Management of Household Waste and Types of Household Waste, is an endeavor to minimize waste generation prior to the manufacture of a product and/or product packaging. Use of products and/or packaging that can be recycled and readily created by nature, restricting the use of plastic bags, and/or minimizing the use of single-use items and/or packaging are all examples of implementing waste generation limitations.

That in order to implement the provisions of Government Regulation No. 81 of 2012 concerning Household Waste Management related to national policies and strategies in waste management, the government needs to stipulate Presidential Regulation No. 97 of 2017 concerning the National Policy and Strategy for the Management of Household Waste and similar Household Waste. The direction of the Regional Strategy Policy states that the target for managing household waste and similar household waste is to reduce waste by 30 percent from the number of waste piles before the direction of the Regional Strategy Policy in 2025. As well as handling waste by 70 percent through sorting, collecting, transporting, processing, and final processing. [6]. Strategic handling in waste management carried out by the government is the handling of household waste, including those related to sorting, separating, handling and managing household waste.

Bali Province is a province that residents densely populate because it is a center for industrial development and a tourism area destination, with a population density found in Bali, it will undoubtedly have positive and negative impacts, to create a life order that cares about cleanliness and environmental sustainability in the area. Therefore, the Bali Provincial Government makes a written regulation and enforces policies used to overcome things that can damage the beauty and sustainability of the environment. The problem of waste, if it is not managed correctly and adequately, can harm social, economic, and environmental aspects. Based on the authority, the Provincial Government can manage waste in its territory, either through establishing policies, forming legal products, and implementing actions. Based on these considerations, the Bali Provincial Regulation Number 5 of 2011 was formed regarding waste management.

In the Regional Regulation of the Province of Bali, Number 5 of 2011 concerning Waste Management related to implementing waste management, waste reduction, and handling activities are carried out. Waste reduction activities include limiting landfills. The limitation of stockpiling in the Bali Provincial Regulation Number 5 of 2011 in article 12 states that everyone is obliged to use materials that can be reused, recycled, and/or are readily decomposed by natural processes. To carry out the activities of Restriction of landfill waste, further provisions are needed for the Provincial Government to formulate policies through the Governor of Bali Province Regulation Number 97 of 2018 concerning the Limitation of the Use of Single-use Plastic Waste Heaps. This regulation prohibits single-use plastic bags, styrofoam (polystyrene), and plastic straws by producers, distributors, and business actors throughout Bali.

The Regional Regulation regulating cleanliness and public order in the Denpasar City area is Denpasar City Regional Regulation number 3 of 2015 concerning Waste Management. The cause of the importance of waste management in Denpasar City is the rapid rate of population growth in Denpasar City, which means that the larger the population, the more waste generated. Plastic garbage, particularly packaging debris that is difficult to degrade by natural processes, is becoming more prevalent as the population grows and people's consumption patterns change.

Denpasar City Government supported national policies and strategies for Household Waste Management and considered the negative impacts caused by waste problems, especially plastic waste; therefore, the Denpasar City Government made an innovation. Among them is the stipulation of the Denpasar Mayor Regulation on Procedures for Management and Development of Waste. Denpasar Mayor Regulation No. 36 of 2018 on Plastic Bag Reduction and Instruction No. 1 of 2018 on the Establishment of Waste Banks and the Development of Web-Based Replicas of Waste Bank Services.

3.2 The Model of Waste Management Policy

The mechanism for managing plastic waste in Denpasar City is in waste handling activities, including selection, collection, transportation, processing, and final processing.

3.2.1 Waste Selection

Regarding waste selection, based on Denpasar City Regulation Number 3 of 2015 concerning Waste Management which states that "sorting is an effort to handle waste in the form of grouping and separating waste according to the type, amount and/or nature of waste." Selecting waste is a very tough job in waste management. Waste that has been separated produces organic and inorganic waste.

3.2.2 Waste Collection

Article 19 paragraph (3) of Denpasar City Regional Regulation Number 3 of 2015 on Waste Management states that, "The City Government is obliged to provide TPS and/or TPST." Denpasar City has provided 13 Waste Disposal Site 6 3R Waste Disposal Site T and 1 Temporary Waste Disposal Site. This collection is an act of collecting waste from the source to the TPS by using a wheelbarrow or a particular garbage pick-up truck. [7]

3.2.3 Waste Transportation

Transportation is an endeavor to handle trash by transporting waste utilizing garbage trucks from the source and/or from the Waste Disposal Site/Temporary Waste Disposal Site to the Landfill. Based on the findings of interviews with residents from several villages in the Denpasar City region, waste transportation is generally carried out 2 (two) times a day in the morning and afternoon. With the use of waste transportation services, the community is charged various retribution fees, starting from Rp. 35.000,- to Rp. 55.000,- per month. Garbage transportation services in Denpasar City that are available in 2019 are 56 transportation services.

3.2.4 Waste Management

Management is an effort to handle waste by changing the characteristics, composition, and amount of waste. One of the waste management programs established by the government is through the Waste Bank. In waste management regarding waste reduction and handling, the Denpasar City Government established a 3 R Waste Bank of Waste Disposal Site/Temporary Waste Disposal Site. The Waste Bank is a program formed by the Denpasar City Government based on the community, which means that community participation in waste management programs where the community can manage the waste becomes valuable items such as making bags, clothes, and other equipment from community waste can also make organic fertilizer from this waste. Community participation is community participation in carrying out every activity or program set by the government to empower and build the community so that the community wants to take an active role in the planning, implementation, and maintenance process. [8]. The manifestation of community participation in implementing the waste bank program is by sorting waste, both organic waste and inorganic waste, waste based on the type of material includes plastic, paper, glass, and metal. So the waste bank system can be used as a tool to carry out social engineering so that a good waste management order or system is formed in the community. [9]. The classification of waste in the waste bank is classified into two types, namely organic waste and inorganic waste.

Inorganic waste includes glass waste (glass bottles, cups, jars, etcetera.), which will crash and be smelted as raw material for new products. Metal waste (minimum and canned food) to be melted down to become the primary material for new products. Paper waste (newspapers, magazines, cardboard, etcetera) will be crushed and made into pulp as the primary material for new products. Plastic waste (plastic bottles, plastic packaging, etcetera.) to be melted down into plastic pellets as the primary material for new products.

3.2.5 Waste Final Processing

The final processing site, referred to as a landfill, is a place to safely process and return waste to environmental media for humans and the environment. In the waste management mechanism, the most decisive stage is waste sorting, namely the grouping and separation of waste according to the waste's type, amount, and nature. As stated in article 2, paragraph 3 of Denpasar Mayor Regulation No. 11 of 2016. Waste segregation starts at the household as regulated in the Bali Governor's regulation no. 47 of 2019 concerning household-based waste management. Can reduce the volume of waste at Garbage Disposal Site and Landfill because what is transported by waste carriers to Garbage Disposal Site and Landfill is waste that has been sorted between organic and non-organic waste, collected in certain places and then taken to the Waste Bank. At this stage, the most critical role is sorting household waste. To maximize this, it is necessary to supervise from the official village through the Village Regulation regarding waste management, traditional villages through perarem (decision of traditional community group), youth organizations, and the private sector.

4. CONCLUSION

Based on the analysis above about waste management policies, it can be concluded as follows:

1. Laws, Government Regulations, Provincial Regulations, Governor Regulations, Regency/City Regional Regulations, and Regents and Mayors Regulations are all suitable in terms of waste management.
2. Waste management with the model of sorting, collecting, transporting, managing, and final processing of waste has not been able to reduce the separation between organic and non-organic waste at Garbage Disposal Site and Landfill. To overcome this, it needs supervision from the Official Village, Traditional Village, Youth Organization, and private sector in the form of assistance with waste processing equipment.

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Legal Aspects in Indonesian Digital Marketing Business: What should Be Complied With?

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ABSTRACT
This article examines the types of legal compliance that must be carried out by digital marketing business actors based on normative juridical methods accompanied by a statutory approach and a conceptual approach. Business actors who will perform actions or business processes on digital campaign content should comply with at least three main legal aspects: legality content, personal data protection, and intellectual property protection. The legality content is mainly related to the legality of the products being marketed, the legality of content that does not violate the illegal content, to the legality of legal relations between business actors. Aspects of personal data protection include the written consent of the owner of personal data, consumers, and business partners and guarantees not to misuse personal data. Aspects of intellectual property protection include the legality of ownership of intellectual property rights and licenses.

Keywords: *Digital marketing business, Digital campaign content, Legal compliances.*

1. INTRODUCTION

Marketing is one of the most significant factors in determining a business's success. The marketing function plays a significant role in establishing and maintaining contacts between companies and markets [1]. On the other hand, human life itself is constantly evolving. Globalization and technological development have brought a significant change to human life. These changes also impact business. In this current era, especially in this pandemic, digital marketing is one of the most preferred forms of marketing [2].

Digital marketing is a term that refers to promotional techniques that are used to reach customers using digital technologies [3]. The importance of digital marketing grows alongside the growth of internet usage. By 2016, 3.5 billion people used the internet, while in 2000, only 400 million people used the internet. Those numbers represent a growth rate of 875% [4]. The development and the rise of the modern trend in digital marketing have been the incentive for creating new internet marketing strategies [5]. Those internet marketing strategies are based on digital marketing services, such as Search Engine Marketing (SEM), Pay Per Click (PPC), Search Engine Optimization (SEO), Social Media Marketing (SMM), Email Marketing, Content Marketing, and Web Analytics [3]. Every business act or business process carried out in a specific jurisdiction must not violate various rules set out in that jurisdiction, including the digital marketing business model.

Therefore, every business actor must strive to carry out legal compliance procedures to avoid law violations and avoid risks that bring losses to the business actors themselves. This understanding of the purpose of legal compliance stops at avoiding the risks of loss to the company and various related parties and on several acts that violate the law in a business context, which must be understood as an inherently wrong act by nature. Cases such as an influencer or digital marketer who promotes gambling or a web developer who lists the promotion of the alcoholic beverage business show how crucial legal compliance is for digital marketing business people. The legal rules that cover the digital marketing business process are spread not only on one type of rule but also several types of rules and include several substances that are not simple to understand. Based on the explanation above, this study discusses the formulation of legal compliance that must be carried out by digital marketing business actors, particularly related to legal compliance with digital marketing content.

2. METHOD

The study in this article is based on a normative juridical method using a statutory and conceptual approach. Starting from several facts, the analysis begins by compiling and systematizing several related

regulations and legal concepts so that a legal compliance formula for digital marketing content can be drawn up.

3. RESULT AND DISCUSSION

The main character of the digital marketing business is business actors who will perform various actions or business processes on digital content as digital campaigns, both in the production process and distribution of digital campaign content. Digital campaign content plays an essential role because it is intended to influence consumer behavior [6] (attracting and retaining customers), which in turn impacts the brand value or brand awareness of a product or service or achieve other goals that benefit a company [7]. The parties involved in digital marketing business activities certainly do not only consist of companies or individuals who manage marketing services (marketers) but also various parties including (each in the form of companies or individuals):

- Digital marketing specialist or business actors who manage digital campaign content as services (marketers).
- Digital developers such as website developers.
- Influencer or celebrity endorser [8].
- Digital campaign service users (customers of digital marketing services).

The business actors or related parties mentioned above in perform various activities or business processes for digital campaign content must at least have compliance with three legal aspects.

The first aspect relates to the legality of digital campaign content that will be produced or distributed. This aspect relates to the legality of the content according to the law. The validity of the content can be viewed from two parts, namely the validity of the content that does not violate the prohibited contents by law and the validity of the goods or services that are the material of the digital content. The validity of the content that does not violate the prohibited contents mainly refers to Law No. 11 of 2008 concerning Electronic Information and Transactions as amended by Law No. 19 of 2016 (ITE Law). The ITE Law strictly regulates content that is prohibited from being distributed and/or transmitted.

This means that digital marketing actors in producing or distributing digital campaign content may not contain information that contains information that violates the prohibition. Based on Article 27 to Article 29 of the ITE Law, specifically, there are seven types of content prohibitions regulated, namely [9] :

- Prohibition of decency violation content (related to pornography and obscene acts).
- Prohibition of gambling content.
- Prohibition of insulting content and/or defamation.
- Prohibition of blackmail and/or threatening content.
- Prohibition of false and misleading content that harms electronic consumers.
- Prohibition of hateful or hostile speech content.
- Prohibition of personal threatening or frightening content.

In addition to the validity of the content related to the seven prohibitions according to the ITE Law, digital marketing actors must also comply with the validity of the goods or services that are the material of the digital campaign content. The validity of this product can refer to various applicable legal rules, depending on the type of goods or services that are the material of the digital campaign content. Digital marketing actors must pay attention to and comply with every legal aspect that leads to certainty to answer whether the goods or services that are the material in the digital content can be legally commercialized, traded, or marketed. Some goods or services are illegal products or activities, such as drug trafficking, illegal firearms, or human trafficking. However, some products require more in-depth scrutiny and audit of legal aspects.

For example, regarding the validity of digital campaign content materials to promote the trade in alcoholic beverages. Business actors must at least know some of the main rules governing the trade in alcoholic beverages, including Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages, Minister of Trade Regulation No. 20/M-DAG/PER/4/2014 of 2014 concerning Control and Supervision of the Procurement, Distribution, and Sales of Alcoholic Beverages, which has been amended by Minister of Trade Regulation No. 25 of 2019 and Food and Drug Supervisory Agency Regulation No. 8 of 2020 concerning Drug Control and Food Distributed Online. Based on compliance with these three legal rules, alcoholic beverages may not be circulated online and may only be traded directly in a particular place and have obtained a permit. For compliance with these legal rules, it is clear that business people are not allowed to produce or distribute digital campaign content that promotes the online trading of alcoholic beverages.

After paying attention to and complying with two parts related to the legality of digital campaign content, digital marketing business people also need to build transparent legal relationships. This aims to support certainty on the validity of the content, the product validity and prevent parties in business from being responsible for violating the law. For example, a social media marketing service provider can sign an agreement containing specific clauses with the product owner to be promoted using social media. Several clauses that can be regulated are mainly related to the obligation of the product owner to show and guarantee the legality of the product to be promoted (legal permit, registered trademarks, and so on). These obligations can

undoubtedly guarantee the validity of the products that are the material of the digital campaign content.

The second aspect of legal compliance in the business process of digital campaign content relates to protecting personal data. According to positive law in Indonesia, regulations related to the protection of personal data refer to the ITE Law and implement regulations such as Government Regulation No. 71 of 2019 and Minister of Communication and Informatics Regulation No. 20 of 2016. Indonesian regulations also refer to the European Union General Data Protection Regulation (EU GDPR) as one of the international benchmarks for personal data protection compliance. The aspect of personal data protection implies that every individual has the right to privacy over his data. Owners of personal data as subjects who have the right to control their data determine whether they will share or exchange their data or not, including the conditions for the implementation of the transfer of personal data, such as which subjects have access rights to the personal data, for how much the length of time the access is granted, what is the reason for the access, and how the data modification can be done. [10] [11] This personal data protection also requires certain obligations for data recipients and processors based on the owner's consent, including having technical-organizational policies and procedures to ensure that the law carries out the personal data processing. [11]

According to Indonesian regulation, personal data itself means specific personal data stored, maintained, and kept true and protected by confidentiality [12]. This data concretely includes data of a general nature such as name, date of birth, to sensitive ones such as data on health, habits, health to personal finances, or other personal data that may harm and harm the data subject's privacy. Indonesia's ITE Law stipulates that the use of personal data without the owner's consent is a violation of the law that can give rise to the right to file a claim for losses. Therefore, Indonesian law provides arrangements for protection obligations for electronic system operators who carry out processes related to personal data consisting of:

- Electronic systems must be certified according to law.
- Have internal rules for protecting personal data
- Take preventive measures to avoid data protection failures.
- Provide a written form in the Indonesian language for approval of personal data requests.

Thus, if digital marketing business actors also implement electronic systems and carry out processes for personal data, then the business actors must comply with the personal data protection obligations mentioned above. Regarding business processes for digital campaign content, business actors must also perform several compliance procedures. First, it must be understood that legally personal data is an absolute privacy right of the personal data owner. Any action on personal data requires the owner's consent. Second, the consent must be in writing. Suppose there is digital campaign content containing personal data such as name, telephone number, home address, etcetera.). In that case, there must be written consent from the owner of the personal data that the data is to be used in the digital campaign content. The consent, of course, contains what type of personal data is shared, when it is shared, the period, and the form of protection provided. In the written agreement, there must also be a clear purpose for the use of personal data and a guarantee from the digital marketing service provider not to misuse personal data. Third, digital marketing business actors who are also the organizers of electronic systems must have internal rules regarding protecting personal data that can be read and accessed by users. This internal rule aims as a preventive mechanism to avoid failures in protecting personal data that is managed.

The third aspect of legal compliance relates to the protection of intellectual property. This legal aspect refers to the design process of each digital campaign content used. This design process should comply with the legal aspects of intellectual property so that the content produced does not result in the consequences of violating the law related to intellectual property to the consequences of claims for compensation from related parties, both as parties who commit violations or parties who are victims or are harmed due to violations. Regarding this design process, designers must, of course, comply with Indonesian Law No. 18 of 2014 concerning Copyrights (Copyrights Law). In any digital campaign content design process, designers can become creators who create original digital content works or become users of other people's digital works [13].

Creators of digital works according to the law have moral rights and economic rights over their digital works. The law provides a framework for licensing agreements to protect the economic rights of digital work. In addition, content designers can also register the copyright with related institutions and take advantage of various technological control facilities to protect their copyrights, such as watermarking, encryption from copying protection [14]. Meanwhile, as a user, the designer must understand the types of licenses attached to a digital work because each type of license has different requirements. Particular digital works have a license attached which can be used directly. If this license does not exist, the user must make his license agreement with the creator. Copyright in the digital campaign content business process concerns the content design and includes website addresses to related e-mail addresses. This is undoubtedly related if the digital marketing business actor also acts as the organizer of the electronic system. The use of this domain name is subject to the first to file principle registered with the Indonesian Registry Organization or Domain Name Registrar Indonesian [9].

Three aspects of legal compliance related to digital campaign content can be formulated in the following figure:

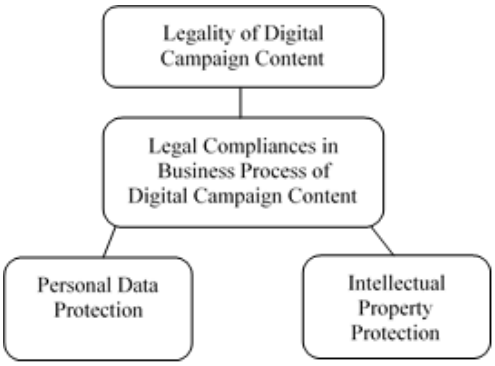

Fig. 1. Three aspects of legal compliance in Business Process of Digital Campaign Content

Compliance audits on the three legal aspects described above are carried out on business processes for digital campaign content, which are not solely built on avoiding business risks. These legal aspects are primarily aimed at protecting the community's interests, including the protection of content that has a negative impact (damaging cultural and religious values in Indonesia), the protection of personal data to prevent misuse and the protection of digital works for the sake of protection. Macro creativity of a society. Therefore, legal compliance must also be based on the awareness that the violation of the law is an act that is morally evil and detrimental to society.

4. CONCLUSION

Digital marketing business actors will carry out various business processes for digital campaign content, both in the production process and distribution of digital campaign content. The formulation of compliance by business people or parties related to digital marketing in carrying out various activities or business processes for digital campaign content consists of 3 legal aspects. Aspects of compliance with the legality of digital content are mainly related to the legality of content that does not violate illegal content, the legality of marketed products, and the legality of legal relationships between business actors. The compliance aspect of personal data protection includes the written consent of the owner of personal data, both consumers and business partners, as well as guarantees not to misuse personal data to the formulation of internal rules for personal data protection if the business actor is also the operator of the electronic system—intellectual property and license. Compliance audits on three legal aspects must be built on the awareness that violations resulting from non-compliance with the law in the business processes carried outacts morally evil and harms the wider community's interests.

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Contercyclical and Omnisbus Law: Sustainable Welfare Regulation Model in Accelerating Economic Benefit in Tourism During the Unintended Consequences of Covid-19 Pandemic in Coastal Areas

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ABSTRACT
The Indonesian government's response to the Covid-19 pandemic is Government Regulator Number 23 the Year 2020 on National Economic Recovery Policy (Kebijakan Pemulihan Ekonomi Nasional/PEN). This paper aims to elaborate policy response due to the economic sustainability for the community and analyze the consequences of those policies. Firstly, we found that the PEN policy is a survival and recovery kit to guard business sustainability through a stimulant implementation policy by OJK based on POJK No.48/POJK.03/2020. This policy is a Countercyclical policy on the impact of Coronavirus Disease 2019, especially in business operations. Secondly, the Indonesian government creates a structural reform through Law No. 11 the Year 2020 on Omnibus Law to regulate and accelerate foreign investment in Indonesia. These two policies target four sectors of the economy, namely tourism, textile, housing, and automotive. The recent Omnibus Law needs to create models and variant modules as an alternative regarding its implementation of the law, especially during the Covid-19 pandemic. This research mainly focuses on the regulation model as an alternative to the policy implementation on tourism, particularly in the society living in the coastal areas. Tourism has many potential benefits in Indonesia. Nevertheless, it has been impacted negatively due to the Covid-19 pandemic. The coast area is significant since those places contribute to tourism and economic benefit to surrounding and national financial. Based on this research, the regulation model aimed to discuss the land utilities and how the Omnibus Law will challenge and support the structural reformation of tourism. This research elaborates and analyses the impact of the Omnibus Law and the current Indonesian government policy towards indigenous people on land and environment sustainability issues. This research conducts the Check and Balance analyses on sustainability and development towards society, economy, and environment (particularly on land). The research uses mixed methods with judicial normative and empirical approaches and gains data and legal cases to be analyzed.

Keywords: *Coastal Utilization, Covid-19, Tourism, Regulatory Model, Sustainable Welfare-Based.*

1. INTRODUCTION

The outbreak of a disease pandemic caused by the Covid-19 virus has been spread to various countries. The rapid outspread of the Covid-19 virus is caused by transmission through physical contact of body fluids from human to human. Hence the effort required to prevent the spread is the restriction of human mobility. Similar conditions also perceived in Indonesia, Covid-19 cases in Indonesia have reached the following: Positive Patients: 2,345,018; Cured Patients 1,958,553; Deceased Patient: 61,868. [1] Policies taken by Indonesia to prevent the spread of the virus include (1) conducting *social distancing* which in its application the compliance rate is 72%, (2) compulsory healthy lifestyle by constantly washing hands which in practice the compliance rate is 80%, and (3) by Independent Isolation and Work from Home which in the implementation process the compliance rate is 49% [2]. This implemented policy in Indonesia has impacted various aspects consisting the following: (1) impact on workers who have been laid off by 2.57%, causing the unemployment rate in Indonesia to become 25.26%. (2) impact of a decrease in income of 41.91%**.** (3) impact on the Tourism, Textile, Housing, and Automotive sectors decreased up to 70.39 %.

Indonesia's reaction to the impact of the pandemic is to issue PEN or known as the National Economic Recovery Policy, which is regulated in Government Regulation No. 23 of 2020. The focus of the implementation of PEN in 2021 includes (1) *survival and recovery kits* by enacting Countercyclical Policy by OJK according to OJK Regulation Number 11/Pojk.03/2020 as amended by OJK Regulation No. 48/POJK.03/2020 regarding National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019, which aims to provide Credit Relaxation to Debtors to maintain business continuity through implementation. (2) Structural Reform, through Law No. 11 of 2020 regarding Job Creation to form policy and regulation on accelerating foreign investment to Indonesia, especially the tourism sector. The objective to be achieved by the Indonesian government is that the given Credit Relaxation stimulus makes business activities, particularly the tourism sector remains to survive, simultaneously balanced with the regulatory facilitating investment from outside parties, in order to develop the tourism sector in the coastal region.

Why is development in the area of a coastal region significant? This relates to the Indonesian Ministry of Tourism policy direction, which was launched in 2018, which is commonly known as the "10 New Balis". This program aims to introduce 10 tourist destinations in Indonesia in addition to Bali Island including Lake Toba, North Sumatra, Tanjung Kelayang Bangka, Mandalika NTB, Wakatobi Southeast Sulawesi, Morotai North Maluku, and Labuan Bajo NTT, Seribu Islands Jakarta, Tanjung Lesung Banten, Borobudur Central Java, and Bromo-Tengger-Semeru, East Java.[3] This program is implemented by facilitating these areas with developing the infrastructure as well as promoting and empowering the area.

The implementation of this program requires no small amount of money to carry out. Therefore, through the policy, the government has created an instrument that can facilitate foreign investment, which is stated in Law Number 11 of 2020 regarding Job Creation or better known as the Omnibus Law. The current regulatory conditions related to the use of coastal areas are regulated in Law No. 27 of 2007 in conjunction with Law Number 1 of 2014 regarding Management of Coastal Areas, and Small Islands states that local governments are required to prepare a Zoning Plan for Coastal Area and Small Islands (known as *Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil* or RZWP-3-K) by their respective authorities. This policy facilitates various development activities in coastal areas such as housing, industry and trade, transportation, and tourism, which have significantly contributed to the overall development process.

The progress of the implementation of this policy raises further problems, namely due to the piling of interests among stakeholders towards the sea and water areas which tend to cause overlapping activities, such as shipping, fisheries, mining, telecommunications, marine tourism, conservation, and others. As a result, the case of conflicts of spatial utilization in marine and coastal islands may occur in local and regional contexts as well as national and international. Conflicts that appear on spatial utilization include modern traditional fishing activities, industrial activities-fishery cultivation, marine sand mining, conservation-tourism, telecommunications cables, underwater pipelines, and shipping and water tourism (an area where recreational services are provided carried out in the sea and coastal waters). [4] What caused this to happen? It is known that based on the search results on the documents of statutory regulations including, we found that the mandated regulation and they are implementing among those regulations were not stipulated within a period of ± two years as appropriate. For this reason, it is necessary to integrate stakeholders to revise various ecotourism laws and policies in Indonesia comprehensively, systematically, and objectively so that in the dynamics of their implementation, they can optimize the seven pillars of ecotourism development. [5]

Based on those findings, we conduct a study on regulatory models that can be used as an alternative to implementing policies in the tourism sector, especially on the utilization of Coastal Land. The Regulatory Model focuses on elaborating the application of the Land Use Paradigm Shift in line with the spirit of Structural Reform through the Job Creation Act by considering the following: First; the synergy of Regional Regulations and National Regulations. Second, adjustment of disaster-responsive regulation to the conditions of the Covid-19 pandemic. Third, the Utilization Requirements for investors and local governments who apply reinforcement/empowerment culture as a plus point, human resources, and the community economy around the coast through the transfer of knowledge by paying attention to the selling value of each region for the tourism sector.

2. RESEARCH METHODS

The method used is normative legal research through analyzing Countercyclical Policies and Omnibus Law, especially in the issue of sustainable welfare regulatory models in accelerating tourism economic benefits during the unintended consequences of the Covid-19 Pandemic in coastal areas. The research was conducted with a *library-based* approach that focuses on reading and examining primary and secondary legal sources. Primary legal sources are actual sources of law, namely, laws and court decisions and regulations related to countercyclical and Omnibus Law and economic sustainability to suggest the best models that aim to accelerate the tourism economic benefits. Meanwhile, secondary legal sources

include commentary on the law discovered in legal literature and journals. The approach used by the author for this legal writing in this study is statutory (the *statute approach*).

3. RESULT AND DISCUSSION

3.1 The Effect of Countercyclical Policies and Omnibus Law on Regulation of Coastal Utilization Conditions and Spatial Planning

The Indonesian government responded to the first Covid-19 pandemic through Government Regulation Number 23 of 2020 concerning the National Economic Recovery Policy (PEN). The PEN policy is a survival and recovery kit to maintain business continuity through the OJK stimulant implementation policy based on POJK No.48/POJK.03/2020. This policy is a Countercyclical policy on the impact of the 2019 Coronavirus Disease, especially in business operations. Second, the Indonesian government carried out structural reforms through Law Number 11 of 2020 concerning the Omnibus Law to regulate and accelerate foreign investment in Indonesia. The two policies target four economic sectors, namely tourism, textiles, housing, and automotive. Omnibus is a relatively new law, and the Covid-19 pandemic is still a challenge. Therefore, it is urgently needed to create alternative models and module variants. Hence the following discussion related to the relationship between the National Economic Recovery Policy can support the development of coastal utilization and spatial planning.

Law No. 27 of 2007, in conjunction with Law Number 1 of 2014 regarding Management of Coastal Areas and Small Islands, states that regional governments are required to prepare a Zoning Plan for Coastal Zone and Small Islands (RZWP-3-K) in line with their respective authorities. In-Law Number 1 of 2014 regarding Management of Coastal Areas and Small Islands Article 16 paragraph 1 states that permanent use of space from part of coastal waters and small islands must have a location permit. Furthermore, Article 17 explains that the location permit is granted in line with the Zoning Plan for Coastal Zone and Small Islands (RZWP-3-K) that has been stipulated. Law Number 23 of 2014 regarding Regional Government Article 14 states that the administration of government affairs in the forestry, marine, and energy and mineral resources sectors is divided between the Central and the Provincial Regions Government. In addition, Appendix Y states that the management of marine space up to 12 miles outside of oil and gas and the issuance of permits and utilization of marine space below 12 miles outside of oil and gas are the authority of the Provincial Government. This has implications for the obligation of the Provincial Government to stipulate a Regional Regulation on the Zoning Plan for Coastal Zone and Small Islands (RZWP-3-K). [6]

The spatial utilization in coastal areas and small islands requires supervision and control in its performance. Therefore, for this purpose, it is conducted by the regional head or an official appointed by the regional head accordingly given special authority to ensure the use of space in the coastal and small island's areas in an integrated and sustainable manner. In addition, it is also expected that the participation of the community in supervising the utilization of coastal and small islands areas. According to the results of the Corruption Control Commission (known as *Komisi Pemberantasan Korupsi* or KPK) study in 2014 on the Indonesian Marine Space and Resources Management System, which was conveyed during the activity of the Indonesian Marine Sector's Natural Resources Rescue Movement, displayed several issues, among others: (1) marine spatial planning which is incomplete and remain partial; (2) marine and fishery licensing arrangement; (3) the data and information system related to the sea area, the use of marine space, and the utilization of the resources contained therein, is incomplete and unintegrated; (3) uncontrolled pollution and damage in the sea. [7]

Thus, it can be concluded that various development activities in coastal areas such as housing, industry and trade, transportation, and tourism activities have significantly contributed to the overall development process. However, this development simultaneously has an impact on environmental sustainability and supporting capacity and economic and social changes in this area which, if not handled properly, will ultimately reduce the level of community welfare. The reason for this policy mechanism is not well developed, according to an explanation provided by the Indonesian Forum for the Environment (WAHLI) in its article entitled "The State Failed to Overcome the Crisis," is due to the regulatory principles of the RZWP-3-K, which include (1) conformity, harmony, and balance of power support; (2) the integration of the use of types of natural resources; (3) the obligation to allocate space and access for residents,[8] has not been carried out effectively and unwittingly caused the current prevailing policy opening its access to strategic projects by the government and investors for the utilization of coastal areas which do not prioritize the socio-economic needs of residents.

The development of the policy's implementation to actualize the Zoning Plan's objectives for Coastal Areas and Small Islands has found another problem: the pandemic situation as we acknowledge that one of the objectives of the Zoning Plan of Coastal Areas and Small Islands is tourism development. However, this pandemic situation has caused tourism in Indonesia to suffer a slump. This is indicated by (1) the decrease in the number of tourists by 61 percent when compared to the previous

year; (2) 13 million workers in the tourism sector and 32.5 million workers who are indirectly related to the tourism sector; (3) the decline in foreign exchange earnings from tourism in 2020 between US$4-7 billion, which was initially targeted at US$19-21 billion. [9] This condition is very influential in socio-economic life, especially tourism business activities established in coastal areas. This condition reduces an individual's income, thereby reducing their ability to meet their daily needs, including paying off their debt liability, which can appear as an addition to business capital, the repayment of which is highly dependent on whether the business is operating correctly or not.

The reaction given by the government in response to these conditions is the fiscal policy issued by Indonesia in the face of weakening economic development in Indonesia as a result of the global crisis caused by the Covid-19 pandemic, namely the issuance of fiscal policy through countercyclical stimulus. Sri Mulyani Indrawati explained [10] that one of the focus sectors in implementing this fiscal policy is tourism. Intending to increase tourism interest, the government provides several assistance packages, one of which is reducing hotel and restaurant taxes for six months in 10 Indonesian tourism destinations with a compensation of Rp. 3.3 trillion, therefore the Regional Government does not suffer losses from local taxes.

The direction of the Fiscal Policy applied by Indonesia, especially in the tourism sector by reducing taxes with compensation for local governments, is accurate. It is in line with the opinion of Amanda Page-Hoongrajok, who explains the vital role of increasing and strengthening regional income to achieve the effectiveness of implementing countercyclical policies. It is expected that the regions will be able to make regional expenditures with a focus on developing tourist attractions; thus, it will increase foreign investment interest, which will have a significant impact on state revenues. [11] This mindset is also in line with the focus of the subsequent policy development, namely the Omnibus Law Regulation in Indonesia, which aims to shorten the bureaucracy to increase interest in foreign investment in Indonesia.

The previous description has explained that one of the government's reactions to surviving and solving problems caused by the pandemic is through the PEN policy. In addition, providing relaxation on credit is to carry out Structural Reforms, through Law Number 11 of 2020 regarding Job Creation (hereinafter called the Job Creation Act) to develop policies and arrangements for accelerating foreign investment to Indonesia. Especially in this paper is the tourism sector that is expected by being given a credit relaxation stimulus. Business activities, especially the tourism sector, can survive, simultaneously balanced with regulations that facilitate foreign investment, to develop the tourism sector in coastal areas. Policies with similar objectives have emerged since 2014, as discussed previously, and as we all know, their implementation has not yet met expectations.

The current government solution being offered is by applying the method of drafting regulation of Omnibus Law [12] which is actualized in the Job Creation Law. This regulation is expected to solve the previous problems related to regulation in Indonesia. Why can Omnibus law solve the problem? Because the characteristics of the Omnibus law arrangement are (1) Multisectoral and consists of many content sources with the similar theme; (2) Consists of many articles due to the various sectors covered therein; (3) Consists of many laws and regulations which are collected in one new legislation; (4) Independent, without being affected by other Regulations; (5) Reformulate, negate or revoke part or all of other regulations. [13]

Using the omnibus method in various countries globally, the formation of laws and regulations has the same ontological basis. They will overcome the non-dynamic conditions of applying the law by reformulating regulations that replace them with a new arrangement resulting from reformulation. Therefore, departing from this reasoning, it is expected that in the future, with the enactment of the regulations produced by the omnibus method, it is possible to resolve obesity regulation and the overlapping interests of both from the regulators or the implementers, and thus becomes a solution to solve any problems that arise from the implementation of the policy on the Zoning Plan for Coastal Areas and Small Islands.

3.2 Regulatory Models formulated in the form of Policies by the Central Government and Regional Governments to Support Coastal Community Empowerment in the Tourism sector in order to achieve a sustainable economy during/after the Covid-19 Pandemic

The purpose of the legal methods offered by the author is to become a solution to the regulatory problem in Indonesia; thus, it may be in line with the Omnibus Law method that has been determined as the drafting method of the regulation. Accordingly, the following is the stage pattern in the regulatory model formulating the policies by the Central Government and Regional Governments to Support Coastal Community Empowerment in the Tourism sector in order to achieve a sustainable economy during the period of/post-Covid-19 Pandemic, as follows:

Stage one is to identify the regulatory issues in Indonesia. It has been acknowledged through literacy studies that the main regulatory issue is the difficulty of creating a synergy arrangement. By regulatory synergy

means the synergy between Regional Regulations and Central Regulations. This condition is caused by a conflict of norms resulting in distortion of norms and content of norms and legislation obesity. Norm conflicts arise as a result of 4 (four) main problems, including (1) *Lawmaking process problems*, (2) *Interpretation Problems*, (3) *Capacity Problems*, (4) *Implementation problems*. These problems are also a challenge in the enforcement of the Omnibus Law, where the regulatory system is expected to be a superpower that meets the technical rules and material content that is wrapped by legal morality. [14]

The author tries to compare with other countries in ASEAN which conduct its laws and regulations drafting by using the omnibus method, namely Vietnam. In drafting its laws and regulations, Vietnam keeps holding to the constitutional and legal frameworks and different cultures and historical traditions; thus, in the implementation of drafting the laws and regulations, Vietnam constructs the statutory regulations by adding the consolidation law. This consolidated regulation is interpreted as a process of selecting and grouping regulations in a cluster according to a determined theme with a priority agenda according to the country's needs at that moment [15]. Hence in the context of this course, to achieve synergies through the omnibus law method. It is necessary to have a regulatory consolidation mechanism by compiling all regulations regarding coastal areas' utilization and spatial planning. It will be clarified on these regulations and revoke overlapping and vague provisions, and formulate re-regulation that can facilitate the needs of all stakeholders and the community in the development of coastal utilization and spatial planning.

Stage two, changes of policies to be adjusted to the pandemic situation for investors. Policies were related to planning, decision making and formulation, implementation of decisions, and evaluation of the impact of implementing these decisions on many parties targeted for the policies. Consequently, it is indispensable for the government to be careful and sensitive to enact a public policy. The authors adopt theories and concepts about legal effectiveness. There are several concepts about how to measure or observe the effectiveness of a rule in a society. One that is quite widely used in the literature is the theory of legal effectiveness from Soerjono Soekanto, which conveys that whether or not a law is effective is determined by 5 (five) factors, namely [16]:

1. The legal factor itself
2. Law enforcement factors, namely the parties who form and apply the law
3. Factors of facilities that support the law enforcement
4. Community factors, which is the environment in which the law applies or is applied
5. Cultural factors, namely as a result of work, creativity, and sense according to a human initiative in social life

In relation to changes in policies that adapt to the pandemic situation for investors where the subject to be analyzed is the effectiveness of laws and regulations, it can be said that the effectiveness of law depends a lot on several factors, including [17]:

1. Knowledge of the substance (content) of the regulations
2. Ways to acquire such knowledge
3. Institutions related to the scope of regulations within the community
4. How is the creation process of a regulation, which should not be rushed for instant (momentary) interests, as termed by Gunnar Myrdal as *sweep legislation*, which has poor quality and is incompatible with the public needs

The following is the hierarchy of spatial planning that the law has mandated:

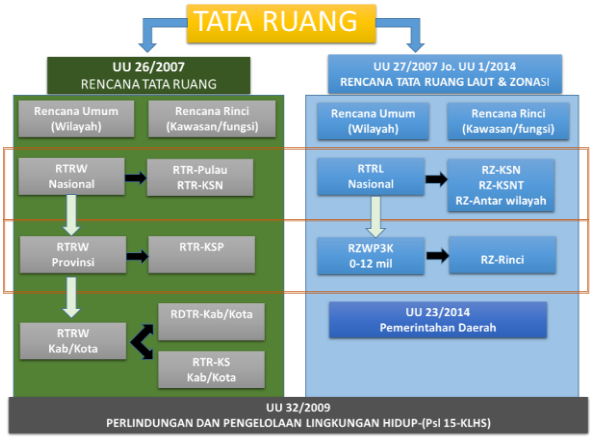

Figure 1. The Hierarchy of Spatial Planning

"Overall, there are four integration clusters, namely two provinces that have obtained approval for the substance of the RTRWP (in the process of confirmation), one province has carried out cross-sectoral discussions, 20 provinces in the process of review/revision, and 11 provinces have not entered the reviewing period/recently stipulate the revised regional regulation," thus stated by the Director of Regional Spatial Planning Development for Region I, Reny Windyawati [18] The integration of RZWP3K (Zoning Plan for Coastal Areas and Small Islands) into RTRWP as mandated by UUCK (Law No. 11/2020) and Government Regulation of Implementation of Spatial Planning (PP No. 21/2021). Several concepts of regulatory integration of RZWP3K and RTRWP in Government Regulation No. 21 of 2021 regarding the Implementation of Spatial Planning and local clustering based on the revised status of the RTRWP.

Stage three, Utilization of Coastal Area by investors and local governments who apply the reinforcement/empowerment of culture and surrounding communities to be resilient against the pandemic situation. The discussion will be commenced with the direction of policy the Ministry of Tourism and Creative Economy in 2020 is to develop sustainable tourism to actualize the Tourism Premium in Indonesia by applying 4 (four) principles that prioritize environmental conservation and cultural preservation community and tourists. These principles are applied by taking into account the following: (1) Rich in traditional values; (2) Respect for Nature and Culture; (3) Quality service products; (4) supporting infrastructure; (5) An authentic and exclusive travel experience. To make it happen in development.

Accordingly, pursuant to the direction of the policy, the Regulatory Model formulated in the policy by the Central Government and Local Government to Support the Empowerment of Coastal Communities in the Tourism sector in order to achieve a sustainable economy during the/post-Covid-19 Pandemic, the authors argue that the primary key lies in the pattern of cooperative relationships between the Central Government and Regional Governments and stakeholders and the Community. The reference to form the pattern of cooperative relationships is based on the *Collaborative Governance Assessment. This* cooperative pattern was introduced by Ansell C. and Alison G in 2007 [19] with the following scheme:

One or more public institutions directly involve non-governmental stakeholders in a formal, consensus-oriented, deliberative collective decision-making process to make and implement public policies and managing programs or public assets. In this pattern, the background for the formation of collaborative relationships are the parties, namely the government and stakeholders and the community which conditions are interdependent with each other thus; by applying policy instruments related to mutually beneficial interactions in order to achieve their respective goals, they are still based on the good faith of each party. This pattern consists of 3 stages, as follows: [20] (1) Identifying Obstacles and Opportunities (Listening Phase) ; (2) Debating Strategies to Influence (Dialogue Phase); (3) Planning Collaborative Actions (Optional Phase). Furthermore, for the Collaborative Governance Success Criteria, Goldsmith and Kettl mention that there are essential things that may be used as criteria for the success of a network or collaboration in governance, namely: Networked Structure, Commitment to a Common Purpose, Trust Among Participants, Governance, Access to Authority, Distributive Accountability/Responsibility, Information Sharing, Access to Resources. [21] Therefore based on the description above, when it is associated with the model for the formation of the Omnibus legislation, which is made based on a government collaboration pattern or *Collaborative Governance Assessment*, in relation to Coastal Community Empowerment in the Tourism sector in order to achieve a sustainable economy in the period/post Pandemic Covid-19, are as follows:

First, carry out the identification phase regarding the issue. This identification is meant to conduct a structured mapping based on legal subjects and the interests and needs of each party. In addition, mapping is also conducted on the applicable regulation according to the hierarchy level and the field of regulation. Classify articles that are considered one-sided or overlapping according to the regulatory hierarchy. This stage is done with the expectation of obtaining a holistic mapping of needs that arise from each party.

Moreover, the gap between each need is the root of the problems. The problems in this essay are

1. marine spatial planning, which is incomplete and kept partial;
2. Marine and Fishery Licensing Arrangement;
3. The data and information system related to the sea area, the utilization of marine space, and the resources contained therein is incomplete and unintegrated;
4. Uncontrolled pollution and damage at sea.

These problems may be used as directions in determining regulations that may cover their individual needs based on the theory of utilitarianism by Jeremy Bentham. The purpose of the law is to provide the most significant benefit and happiness to as many citizens as possible. Hence, the concept is to put benefit as the primary purpose of the law. The measure is the greatest happiness for as many people as possible. The assessment of good or bad, fair or not of the law, is dependent on whether the law can provide happiness to humans or not. The benefit is defined as happiness. Therefore, the *Networked Structure* condition will be achieved, a condition in which there is no hierarchy of authority, domination, and monopoly. Thus, all parties have equal rights, obligations, responsibilities, authority, and the opportunity for accessibility in achieving common goals. This grouping mechanism is also in line with the method applied in the omnibus law system in drafting legislation.

Secondly, initiating a dialogue with the parties. The dialogue is intended further to identify the purposes between the government and stakeholders and the community to ensure that each has the same Commitment. Thus, it will be the basis for determining policies; consequently, according to the Commitment to a Common Purpose, these parties will be applied to form negation and reformulation of regulations that have been identified as problems to achieve common goals. The authors' common goal referred to in this essay is Community Empowerment in the Coastal area in the Tourism sector. Thus, the current policy direction will be achieved, namely Premium Tourism in Indonesia, by

paying attention to 4 principles that prioritize environmental conservation, cultural preservation, society, and tourists. These principles are applied by taking into account the following: (1) Rich in traditional values; (2) Respect for Nature and Culture; (3) Quality service products; (4) supporting infrastructure; (5) An *authentic and exclusive* travel experience. Thus, Trust Among The Participants and Governance will be seized. The basis of collaboration between the parties is a trust which automatically encourages the appearance of order according to the agreed provisions.

Third, the process of implementing collaborative governance. This stage is a follow-up after collaboration between parties based on trust is formed, and then an order is formed. Further, Access to Authority is required. It is the availability of clear and widely accepted measures or procedures. Therefore, there are authority rules which are clear and accepted by each stakeholder to carry out the role according to their authority. The management mechanism is performed with Distributive Accountability/Responsibility, which is structuring, managing together with stakeholders, sharing several decision-making to all networking members, and sharing responsibilities to achieve the desired results. Hence, in collaborative governance, there must be a clear division of responsibilities, and each stakeholder (including the community) must be involved in making policy decisions.

Furthermore, the formation of information sharing means easy access for members, privacy protection, and limited access for non-members as long as all parties accept it. Accordingly, there must be explicit information sharing and easy access to information obtained for each stakeholder in collaborative governance. When implementing collaborative governance establishes sustainability, it will result in Access to Resources, which is the availability of financial, technical, human, and other resources needed to achieve networking goals. Hence, there must be clarity and availability of resources for each involved stakeholder. Thus, when associated with this discussion, in implementing collaboration, the government needs to have provisions for procedures related to the division of responsibilities in connection with Community Empowerment in the Coastal Area in the Tourism sector.

Furthermore, collective management with stakeholders and sharing a number of decision-making to all members, as well as explicit information sharing, and easy access to information can be shared by each stakeholder, are indicated by the transfer of technology provided to the community from the stakeholders thus becoming a mechanism that empowers residents, significantly to develop tourism in coastal areas.

4. CONCLUSION

The sustainable welfare-based regulatory model encourages the potential utilization of coastal areas for tourism during the Covid-19 period in Indonesia by focusing on:

1. Identification of regulatory problems in Indonesia,
2. Changes of policies to be adjusted to the pandemic situation for investors,
3. Utilization of the coastal areas by investors and local governments who apply reinforcement/empowerment culture and surrounding communities can be resilient against pandemic situations by forming a collaborative government pattern.

The pattern that can be carried out in 3 stages as follows: (1) performing identification stages regarding problems in order to obtain mapping problems; (2) conducting dialogue with the parties to negate and reformulate the regulations that have been identified as problems, thus creating collaboration between the parties is trust that breeds obedience; (3) the process of implementing collaborative governance which is carried out according to procedures as well as to create a management system that concerned to technology transfer between the government, stakeholders and the community, thus creates empowerment and sustainable utilization of coastal areas in order to achieve prosperity.

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Comparison Between the Provision of Fair Compensation in the Implementation of Patents by the Government and Compensation for Procurement of Land for Public Interest

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ABSTRACT
Property rights such as land and intellectual property can be taken over in the public interest. There is an attempt to undertake conversations or debate that includes landowners in establishing the amount of compensation due to property purchase in the public interest, as governed by Act Number 2 of 2012 Governing Land Procurement for Development in the Public Interest. In implementing patents by the government for social or public interests as regulated in Act Number 13 of 2016 concerning Patents, there is no regulation regarding deliberation or negotiation in determining reasonable compensation if the government implements a patent. In determining compensation in the form of reasonable compensation for intellectual property, especially patents, the government is carried out without considering the opinion of the patent holder as the owner of the right. With the negotiation or deliberation process, it is hoped that justice will exist for all parties, both for the public interest and the patent holder as the owner of "equality before the law" property rights. Land as a tangible asset, which is the property of tangible objects and is private, also has a public aspect. Property rights to land have a hereditary nature, the strongest and the fullest, but they also have a social function, just like Intellectual Property. There are similarities between material ownership rights to intellectual property and land ownership rights; namely, both are individual property rights. However, it can be seen that the arrangement between the two property rights, when used for the public interest (social interest) by the Government, is unequal.

Keywords: *Fair compensation, Government Patent Implementation, Patent, Land Acquisition, Public Interest, compensation.*

1. INTRODUCTION

The patent act has accommodated “trips safeguards,” including government use of patents by article 31 of trips. the implementation of patents by the government justifies or permits the implementation of patents without the patent holder’s permission for specific conditions. Article 109 stipulates that: “the implementation of patents by the government is for the defense and security of the state and or for very urgent needs.” In the following article, article 115 stipulates that: “the implementation of patents by the government is carried out by providing reasonable compensation to the patent holder." Then, if the patent holder does not agree with the amount of compensation determined by the government, the patent holder may file a lawsuit to the commercial court (article 117). Indonesia's regulation of fair remuneration is not sufficient because neither article 109 nor article 117 of the patent act provides for a negotiation or deliberation process in determining the fair remuneration as compensation for the implementation of patents by the government.

Philosophically, an intellectual work that someone has produced must be awarded a balance for his creative efforts in finding intellectual property. Creative people who have spent energy, time, money, even sacrificed togetherness with family should obtain back what they have spent. Creative development by providing incentives for creative people aims to encourage helpful research and development activities to create new intellectual works. furthermore, these new intellectual works can eventually be used by the wider community.

Protection of property rights, especially intellectual property, should be able to provide welfare for the community. In terms of patent protection, legal protection is reserved for inventors and patent holders and the public and the public interest at large. This is evident from the existence of "the trips safeguard," which is harmonized into national legislation aimed at protecting the community and or the public interest at large. On the one hand, the public interest has been protected by the patent law. On the other hand, this law has not been optimal in accommodating the interests of both patent holders and inventors because there are no adequate appreciation for their efforts in terms of time, finances, energy, and thoughts if an invention or patent is taken over. In this case, the government must strike a balance between the community's and the patent holder's interests. Fair, in this case, means not arbitrary, impartial, and impartial. Justice is essentially relative, where the measure of justice felt by everyone is not the same. what is fair to one person is not necessarily fair to another. When does one have to assert that he is doing justice, or when one asserts that the justice required. This must be relevant to public order where a scale of justice is recognized [1].

If the analogy is the same as land objects with a personal aspect and a public aspect, intellectual property is the same. intellectual property, if necessary, for some issues and conditions, its implementation can be carried out by the government. however, there has been no regulation regarding deliberation efforts regarding the implementation of patents by the government. based on the above review, the philosophical foundation of patent protection as part of intellectual property protection, in general, is an appreciation of property rights as individual rights that are not separated from humans. humans are born free and equal in the eyes of natural law, which prohibits anyone from eliminating or destroying life, freedom, and property rights. In the fourth amendment to the Republic of Indonesia's constitution of 1945, this guarantee is implied, especially in articles "28 c, 28 d, 28 g, and 28 h". social justice must also include the goal and prosperous state equally in all levels of society based on kinship. Without justice, the state is nothing but an organized group of robbers. based on this background, the formulation of the problem can be formulated as follows: what is the justification for setting up patents as property rights in Indonesian laws and regulations? how is the comparison between providing compensation for the implementation of patents by the government and land acquisition for the public interest?

2. METHOD

The scientific merit of a conversation and problem-solving session on the legal issue under consideration may be determined by the method used. This study employs normative legal research, as the normative element of legal science is one of its distinguishing features. Qualitative research is a term used to describe normative legal research. Because law is a unique discipline, normative legal research should not be confused with qualitative legal research [2]. This research limits itself to one Law and several laws related to the comparison between the implementation of patents by the government and land acquisition, both of which are intended for the public interest.

3. RESULT AND DISCUSSION

3.1 Justification of Intellectual Property as an Object

The emergence of Intellectual Property Rights (IPR) as a topic of discussion at the national, regional, and even international levels cannot be separated from the World Trade Organization (WTO) formation. One of the essential parts in the document establishing the WTO is Appendix 1C, which deals with Trade-Related Aspects on Intellectual Property Rights (TRIPs) [3].

Intellectual Property Rights are rights that originate from the consequences of the brain's thinking, which result in a product or procedure that is helpful to humans. IPR regulates works that emerge or are born as a result of human intellectual talents, granting the right to enjoy the fruits of intellectual innovation [4] economically.

Intellectual property rights are derived from the English word intellectual property rights. In material law, rights are a portion of intangible or immaterial substances. Article 499 of the Civil Code stipulates that objects comprise both things and rights. Article 503 of the Civil Code further states that objects are made up of both physical and immaterial elements. Thus, under Article 503 of the Civil Code, the rights in Article 499 are intangible goods.

Object (thing) is zaak in Dutch. According to Article 499 of the Civil Code, what is defined as zaak is all goods and rights. Furthermore, it is known that zaak is part of the wealth (vermogensbestanddeel). Whereas what objects are meant in the legal sense is everything that is the object of property rights [5]. The rights attached to an object are referred to as material rights (zakenlijk recht), which is a right that gives direct power over an object, which can be defended against everyone [6]. Both tangible objects and intangible objects can be objects of rights. The right to tangible objects is called an absolute right to an object, while the right to an intangible object is called an absolute right to a right. [7].

Intellectual property is an award of property rights as personal rights. This right is given by the state to creative people for their creations or findings and is the perfect right in material rights, namely property rights. However, unlike other property rights, intellectual property rights are impure. This is due to the limitation of intellectual property rights, among others, by the length of time for legal protection. If the creation is needed for the public interest, the state may require the rights holder to permit other people/or the state to use their rights, even though they are given compensation [8].

Meanwhile, the definition of property rights based on Article 570 of the Civil Code is the right to enjoy the use of an object freely and act freely on that object with complete sovereignty. By controlling the object based on property rights, a person has the right to enjoy the object safely without interference from other parties. This also implies that the property owner who has full sovereignty over the object also has the right to defend his rights from others. If another person takes the object controlled by the property without the right owner's permission, then the right owner can demand the object's return (Article 574 of the Civil Code) [9].

3.2 Comparison of Compensation for Land Acquisition and Compensation for Patent Implementation by the Government

Because it is governed in law, the regulation of land acquisition for development in the public interest has a strong legal foundation since the adoption of Act Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. The word "land acquisition" is defined in Article 1 point 2 of the Law as "the activity of giving land by offering suitable and fair remuneration to the entitled party." The proper party is the one who owns or controls the land being acquired. Furthermore, land, above-ground and subsurface space, buildings, plants, and objects connected to land or other things that may be appraised are the objectives of land acquisition. While ensuring the legal interests of the entitled parties, land procurement for the public interest strives to provide land for the execution of development to increase the welfare and prosperity of the country, state, and society.

Land procurement consists of three (three) elements: first, land acquisition activities in the context of fulfilling development land for the public good; second, compensation for those harmed by land acquisition activities; and third, the transfer of legal relations from landowners to other parties [10]. Land purchase may be divided into two categories: land acquisition for government reasons and land acquisition for private purposes. Land purchase by the government is separated into two categories: public interest acquisition and non-public interest acquisition (e.g., commercial interests). Then, land acquisition for private interests can also be divided into commercial and non-commercial interests, i.e., those that benefit the public good or are used in the development of public and social amenities [11].

Protection of property rights, especially Intellectual Property, should be able to provide welfare for the community. In terms of patent protection, legal protection is reserved for inventors and patent holders and the public and the public interest at large. This is evident from the existence of "the TRIPs Safeguard," which is harmonized into national legislation aimed at protecting the community and or the public interest at large. On the one hand, the public interest has been protected by Act Number 13 of 2016 concerning Patents. On the other hand, this Law has not been optimal in accommodating the interests of both Patent Holders and Inventors because there are no adequate appreciation for their efforts in terms of time, finances, energy, and thoughts if an invention or patent is taken over. The government, in this case, must act fairly between the interests of the community and the interests of the patent holder. Fair, in this case, means not arbitrary, impartial, and impartial.

Intellectual property can produce knowledge, but not all knowledge is something that can help humans. Science must be used wisely and must be proportional to the values of goodness and humanity. Science can produce technology that gets patent protection from the state, which can then be applied to the community. The development of wise knowledge should be produced so that the community can widely use it. The technology created by a scientist or even a person who is not a scientist will then be faced with two interests, namely personal interests and community or social interests. Therefore, scientists, inventors, or inventors must be instilled in the thought that they have an academic responsibility and a moral responsibility for the things they have produced with the conditions in society.

Patent, an intangible asset, and land as a tangible asset besides having a private nature, also has a public aspect. Land which is privately owned can also be used for the development of public interest. Likewise, Intellectual Property, especially patents, which are also private property rights of the patent holder, can serve social functions if the public interest requires it. The same is the case with intellectual property rights, and land is also the owner's personal property. Intellectual property is an intangible asset, while the land is a tangible asset with two sides, namely the public and private sides.

In contrast to Intellectual Property, in the event of land purchase for public development, there are efforts to carry out negotiations or deliberation even to the stages of procedures or mechanisms in determining the amount of compensation due to land acquisition. The government establishes an Appraisal Team to assess the land in question. The assessment results become the basis for deliberation between the government and the community as landowners. In addition, the outcomes of the discussion serve as the foundation for pay. However, if an agreement is not reached, the people who feel aggrieved can file a lawsuit in the District Court.

The government should provide efforts for negotiation or deliberation by involving the Patent Holder in determining a reasonable fee before the objection is submitted to the Commercial Court. This creates an empty norm. In this case, the government should be represented by the Director-General of Intellectual Property Rights or related agencies to provide negotiation efforts before determining fair compensation for the implementation of patents by the government. If a win-win solution is not found between the government and the patent holder, an attempt is made to file a lawsuit to the Commercial Court. Do not let the absence of

adequate negotiation efforts as well as legal certainty over such legal remedies. Patent holders or inventors feel that they do not get the legal protection to appreciate and appreciate their works. They no longer trigger them to make new inventions or even register their work in other countries considered more representative of their work.

There is a general basic principle in the Government's takeover of private property assets that "No private property shall be taken for public use without just and fair compensation." To avoid damages to the Property Owner, the state's execution of the transfer of ownership of personal assets should adhere to the concept of fairness. Adequate legal protection can spur creative people to continue to produce new Intellectual Property. By producing new inventions, the community will also feel the benefits because they can utilize and use these inventions.

The government may implement a patent owned by a patent holder for the public and the public interest. The urgency of the implementation of patents by the government is carried out for specific reasons as regulated in Article 109 paragraph (1) of the Patent Act, which stipulates that: "The government may implement patents in Indonesia on its own for reasons of national defense and security; and urgent needs for the benefit of society." However, the protection of the Patent Holder is also essential to be appointed as a study because if the interests of the Patent Holder are neglected, it is feared that it will reduce or even eliminate new inventions, which will eventually harm the public interest. Therefore, protection is not only for the public interest and the general public but also synergizes to provide a harmonization and protection for the Patent Holder's interests.

John Locke argues that there are two types of property rights, firstly, God-given property rights, and secondly, property rights based on the efforts of thought and work. God-given property rights can be said as natural rights/natural rights owned by every person/individual which are universal (broad), which means general in nature, for example, the right to live, have an opinion, work, have something, and others. Civil acquisition implies that property rights can be obtained according to the social, economic system. The acquisition of rights based on civil acquisition is based on the *suum cuque tribuere*, which means giving everyone what they should be entitled to [12]. This principle guarantees a person's ownership of the object he has obtained.

The Government can execute its patents in Indonesia based on the following considerations, according to Article 109 of Act Number 13 of 2016 respecting Patents: a. pertaining to national defense and security; or b. a pressing requirement for societal benefit. While the allotment of land acquisition is regulated in Article 3 of Act Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, which states that "Land Procurement for Public Interest aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state, and society by continuing to guarantee the legal interests of the Entitled Party by continuing to guarantee the legal interests of the Entitled Party."

Article 115 of Act Number 13 of 2016 concerning Patents on the implementation of Patents by the government for state defense and security and very urgent needs for the benefit of the community are carried out by providing reasonable compensation to the patent holder. The Government shall provide reasonable remuneration to the Patent Holder as compensation for implementing the patent by the Government. In the meanwhile, Article 9 of Act No. 2 of 2012 Governing Land Procurement for Development in the Public Interest states that the Implementation of Land Procurement in the Public Interest considers the balance between development and community interests. In order to purchase land for the public good, adequate and reasonable pay is paid. The concept "fair" appears in the provision of compensation in land acquisitions for the public good. The government has attempted to strike a compromise between the public interest and the rights of the landowner as the entitled party while purchasing property for the public good. In contrast, in the provision of reasonable compensation in the implementation of patents by the government, there is no "fair" phrase.

The government itself determines compensation for implementing a patent based on Article 115 or a Third Party appointed by the Government to implement the patent as stipulated in Article 116 of the Patents Act. Meanwhile, in land acquisition, Article 31, Article 34, and Article 37 of Land Procurement for Development in the Public Interest Act stipulates that "the Land Agency determines the Appraiser by the provisions of the legislation. After being determined by the Appraiser, the Compensation Value based on the results of the appraiser's assessment becomes the basis for deliberation to determine compensation. The next stage is that the Land Agency conducts deliberation with the Entitled Party within a maximum period of 30 (thirty) working days since the results of the appraisal from the Appraiser are submitted to the Land Agency to determine the form and/or amount of compensation based on the results of the Compensation assessment".

Legal efforts are also provided for Rightsholders in Patents and Patents if the Patent Holder does not agree with the amount of compensation given by the Government as referred to in Article 115 of Act Number 13 of 2016 concerning Patents, the Patent Holder may file a lawsuit to the Commercial Court. A lawsuit must be filed within a maximum period of 90 (ninety) days from the date of sending a copy of the Presidential Regulation concerning the implementation of Government Patents. If the Patent Holder does not file a lawsuit as referred to in paragraph (1), the Patent Holder is deemed to have received the amount of compensation that has been determined. In land acquisition, the Entitled Party may submit an objection to the local district court within 14 (fourteen) working days following the discussion on the

determination of compensation if there is no agreement on the form and/or amount of compensation.

4. CONCLUSION

Intellectual property rights are derived from the English word intellectual property rights. In material law, rights are a portion of intangible or immaterial substances. Article 499 of the Civil Code stipulates that objects comprise both things and rights. Article 503 of the Civil Code further states that objects are made up of both physical and immaterial elements. Thus, intellectual property rights, especially patents, can be classified in Article 499 and Article 503 of the Civil Code. The government itself determines compensation for implementing a patent based on Article 115 or a Third Party appointed by the Government to implement the patent as stipulated in Article 116 of Act Number 13 of 2016 concerning Patents. Meanwhile, in land purchase, Articles 31, 34, and 37 of Act No. 2 of 2012 Concerning Land Procurement for Development in the Public Interest state that the appraiser is chosen by the land agency based on the legislation's stipulations. The Compensation Value based on the outcomes of the appraiser's evaluation forms the foundation for consideration to decide compensation when it is determined by the Appraiser. The Land Agency then conducts deliberation with the Entitled Party within a maximum of 30 (thirty) working days after the appraiser's results are submitted to the Land Agency in order to establish the form and/or amount of compensation based on the Compensation assessment's conclusions. As a result, the right holder is involved in calculating compensation in land acquisitions for the public good.

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Legal Protection for Workers' Rights in Company Bankruptcy Due to the Covid-19 Pandemic in Indonesia

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ABSTRACT
The Covid-19 pandemic has been spreading worldwide and has paralyzed various sectors of people's lives, especially the economy, including Indonesia. As a result, many companies went bankrupt, resulting in many terminations of employment contracts. In-Law Number 13 of 2003 concerning Manpower, workers who experience termination of employment shall obtain their rights as determined by law. This study uses a legal research method which is a literature study with a statutory approach. The ambiguity of norms between Law Number 13 of 2003 concerning Manpower and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations has often ignored workers' rights. Grounded with a request for judicial review submitted to the Constitutional Court by workers in case Number 67/PPU-XI/2013, on September 11, 2014, the Constitutional Court granted the request by establishing two new norms and determined that payment of workers' wages shall take precedence over all types of claims and other creditors and other rights of workers shall be paid in advance of all kinds of bills and other creditors unless the debtor has a separatist creditor.

Keywords: *Bankruptcy, Covid-19 pandemic, Employment, Legal Protection.*

1. INTRODUCTION

In July 1997, the monetary crisis occurred in Indonesia. The moment appeared as a point in which legal regulations regarding bankruptcy began to be needed because when the monetary crisis hit Indonesia, many companies and debtors went bankrupt. At the same time, the debt restructuring road could not proceed well. The IMF as the lender to the Indonesian government, believes that the Faillissements-verordering must be replaced immediately. At the IMF's insistence, Legislation Number 1 of 1998 concerning Amendments to the Bankruptcy Law was born. The legislation has amended and added several articles of the Bankruptcy Regulation (*Faillissements-verordening*). The regulation was then ratified on April 22, 1998, into Law Number 4 of 1998. However, in the process, it was replaced by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as *UUK-PKPU*).

In line with 1997, in March 2020, Indonesia was hit by the Covid-19 outbreak, and not only in Indonesia, but the epidemic also hit the whole world and paralyzed the economic sector in various countries, including Indonesia. The Covid-19 also impacts the employment sector, including everything related to employment before, during, and after the work period. [1] According to survey data from the Indonesian Institute of Sciences (*LIPI*), from the perspective of workers, entrepreneurs, and independent business actors, the impact of the Covid-19 pandemic on the world of work in Indonesia, Public Relations of the *LIPI* provides the following data:

"In terms of workers, there has been a wave of termination of employment contract and a decline in income as a result of disruption to business activities in most sectors. A total of 15.6% of workers experienced termination, and 40% of workers experienced a decrease in income, of which 7% of workers' income fell to 50%. Meanwhile, from the business side, the Covid-19 pandemic has caused the cessation of business activities and the low ability of entrepreneurs to survive. The survey results noted that 39.4 percent of businesses stopped, and 57.1 percent of businesses experienced a decline in production. Only 3.5 percent are not affected. The ability to survive in the business world is also limited. As many as 41% of entrepreneurs can only survive less than three months. This means that in August, their efforts will stop. As many as 24% of entrepreneurs can survive for 3-6 months.

This condition causes many companies to be unable to continue their business and even go bankrupt. *Bankruptcy* is a condition in which the debtor cannot make payments on the debts of their creditors. The condition of being unable to pay is usually due to the financial distress of the debtor's business which has experienced a setback. Companies that go bankrupt will have an impact on the survival of the workers. With the bankruptcy of a company, many workers will lose their jobs. Then what about the payment of workers' wages if the company is declared bankrupt?

Bankruptcy, according to Haman, is a legal procedure that debtors can use to get out of debt and start their business again: "bankruptcy is a legal procedure that allows you to get out of oppressive debt and get a fresh start financially." [3]. According to Ventura, bankruptcy is a constitutional right: "bankruptcy is a constitutional right of protection against creditors." [4] In Indonesia, according to *UUK-PKPU*, bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and a curator carry out a settlement under the supervision of a judge. Supervisors as regulated in the bankruptcy law. The definition of bankruptcy, according to Blum, explains: "bankruptcy takes different forms and is flexible enough to provide different goals. It is therefore difficult to devise a general definition of bankruptcy that is both precise and meaningful." [5] There is no standard definition of bankruptcy to date because of the flexible nature of bankruptcy with complex issues.

The confusion of workers' bills in bankruptcy is indeed a dilemma, especially when the Covid-19 virus outbreak hit many companies that went bankrupt and had difficulties resolving their workers' rights. One of the rights of workers that is normatively regulated in Law Number 13 of 2003 concerning Manpower (Labor Law) is the right of workers to receive wages and severance pay, and other benefits. However,-in reality, the workers' rights to wages and severance pay are in the process of bankruptcy, they are no longer to be accommodated, and even they are forgotten. In the bankruptcy process, the party obliged to settle it is the curator appointed by the commercial court to resolve all problems related to the company affected by the bankruptcy.

Working relations are grouped into three components: basic wages, fixed allowances, and variable allowances. The Manpower Act does not recognize the definition of other rights. In the Manpower **Act**, the position of workers in bankruptcy is as a preference creditor or a privileged creditor whose payment takes precedence over other debts. However, in the event of bankruptcy and termination of employment in a company, the curator is more inclined to use *UUK-PKPU* and forget about the normative rights of workers as contained in the Manpower Act.

Based on the background of the problem, it can be seen that there is a blurring of norms between the UUK PKPU and the Manpower Act. It would be exciting to conduct a study entitled “Legal Protection of Workers’ Rights in Company Bankruptcy Due to the Covid-19 Pandemic in Indonesia.”

2. METHODS

The research method used is legal research with literature studies. The approach used is the statutory approach. In this approach, things that need to be understood are the hierarchy and the principles in the legislation. A legislative approach is an approach using legislation and regulation. Therefore, in the statutory approach, it is not only the form of legislation seen, but it also examines the content of the material, studies the ontological basis of the birth of the law, the philosophical basis of the law, and the ratio legis of the provisions of the law. [6]

3. RESULT AND DISCUSSION

As a result of the Covid-19 outbreak, many companies have unilaterally terminated employment. In the Manpower Act, the company shall not terminate the relationship unilaterally if the worker/laborer complies with the obligations stipulated in the work agreement, labor agreement, and company regulations. However, during the Covid-19 pandemic, many companies have terminated their employment because they could no longer fulfill workers' rights.[8]

The law does not stipulate termination of employment as the only consequence of a bankruptcy decision. Therefore, the bankruptcy decision can provide two alternative possibilities for the company, namely:

a. First, even though the bankrupt company has been declared bankrupt, the curator of the bankrupt company can continue to carry out its business activities, with the consequences of continuing to pay business costs such as electricity, telephone costs, salary costs, taxes, and other costs;
b. Second, the curator of a bankrupt company has the right to terminate employment based on Article 165 of the Manpower Act.[9]

Bankruptcy is a condition where the debtor is no longer able to make payments on the debts of his creditors. Due to financial difficulties, the obligation to pay salaries to workers is experiencing obstacles, and the company tends to be unable to pay these obligations. A curator replaces the company's position as a bankrupt debtor during the bankruptcy process. The curator should be guided by the laws and regulations in the field of Manpower in carrying out the provisions for layoffs and determining the amount of severance pay.

Article 28D of the 1945 Constitution states that everyone has the right to receive fair and proper remuneration and treatment in an employment relationship. Article 4 of the Manpower Act explains that human resources development aims to empower the workforce optimally and humanely, create job opportunities, provide protection for workers in realizing

welfare and improve the welfare of workers and their families.

Workers or laborers are the resources of a company. Under normal conditions and the company can still operate well, the company's management can still accommodate the interests and rights of workers, but when the company is hit by a crisis or financial problem (bankruptcy), workers' rights often cannot be accommodated anymore and are even forgotten by the company management.

During the Covid-19 pandemic, which has paralyzed most sectors of the economy, the protection of workers is intended to guarantee the fundamental rights of workers and ensure equal opportunity and treatment without discrimination on any basis to realize the welfare of workers and their families while taking into account the progress of the business world.

When bankruptcy problems and termination of employment occur in a company, workers often have difficulty accessing their rights. This can be seen from the rights of workers ruled out by the curator who manages the bankruptcy estate, which is more concerned with other creditors and the curator's interests. [10] We know that workers' position in the Manpower Act is a preference creditor or a privileged creditor. All payments of their rights must take precedence over paying debts to other creditors. However, there are often disputes between workers and the company represented by the curator, who is more inclined to use the *UUK-PKPU* rules, which tend to override the normative rights of workers/laborers as mandated by the Manpower Act. Article 165 of the Manpower Act stipulates that employers shall be allowed to terminate workers/laborers because the company is bankrupt, provided that the worker/labor is entitled to severance pay for one time as stipulated in Article 156 paragraph 3 and compensation for rights by the provisions of Article 156 paragraph 4, the provisions are also stated in Article 39 paragraph 1 *UUK-PKPU*one However, in practice the curator applies the no work no pay principle when workers demand wages after the bankruptcy decision or during the bankruptcy settlement process, and Article 29 of the *UUK-PKPU* is also a barrier to the fulfillment of workers' rights. In this provision, it is stated that lawsuits against debtors cannot be filed after the bankruptcy decision is made, provided that workers/laborers are entitled to severance pay for one time as stipulated in Article 156 paragraph 3 and compensation for rights by the provisions of Article 156 paragraph 4, the provisions are also stated in Article 39 paragraph 1 of the *UUK-PKPU*.

Many factors generate labor problems when the company is declared bankrupt, for example, the curator factor itself, the company, the understanding of workers and the interests of all shareholders that must be met, and the company's assets are already minimal to pay all its obligations.[11] The main problem is the difference in legal and economic positions related to payments in bankruptcy between separatist creditors and workers. For separatist creditors, payments in bankruptcy are guaranteed with mortgage, fiduciary, pledge and mortgage collateral. For workers, as particularly preferred creditors, their position is different under the separatist creditors. Workers cannot get anything if the debtor's assets have been used as collateral and are controlled by the separatist creditors.

There are significant differences in protecting workers' rights in the Manpower Act and the Bankruptcy Law by seeing this fact. In the Bankruptcy Law, workers' wages before and after bankruptcy include debt for bankruptcy assets, meaning that workers' wages must be paid earlier than other debts, but it is not clear. Other debts are regulated and how the settlement process is.

On September 11, 2014, an application for judicial review was submitted to the Constitutional Court by workers consisting of three groups, namely:

1. Managers of trade unions/labor unions at the national level and the enterprise level;
2. Workers who have been terminated, whose cases have obtained a final and binding decision from the Industrial Relations Court (*PHI*);
3. Workers who do not experience concrete cases according to the object of their application.

Concerning differences of opinion regarding workers' rights, the Constitutional Court submitted a petition for judicial review to interpret the phrase "payment comes first" contained in the Manpower Act. However, in implementing the bankruptcy decision, the word "precedence" is placed after the settlement of the state's rights and the separatist creditors.

The Constitutional Court in case No. 67/PPU-XI/2013, dated September 11, 2014, granted the request by making two new norms if a company is declared bankrupt, the Constitutional Court decides:

1. The payment of workers' wages takes precedence over all types of claims and other creditors, including from separatist creditors and state tax claims;
2. Other workers' rights are paid in advance of all claims and creditors unless the debtor has a separatist creditor.

Workers' wages which are a constitutional right by Article 28D Paragraph (2) of the 1945 Constitution, must take precedence over all types of claims and creditors because wages for workers are the only source to sustain life, so they cannot be abolished or reduced. When the company goes bankrupt by the courts, the main problem for workers is the payment of severance pay. However, other rights owned by workers besides wages, such as severance pay, allowances, and other rights, can be paid after paying off the debts of the separatist creditors.

4. CONCLUSION

The Covid-19 pandemic has paralyzed the economic sector in various countries, including Indonesia. Many companies cannot continue their business and end up bankrupt. The position of workers who are preferred creditors in bankruptcy according to the Manpower Act whose rights must take precedence overpayment is often

overlooked by curators who are more inclined to use the Bankruptcy Law, payment of workers' rights, be it wages, severance pay, and other payments made after the debtor's debt to the state and creditors secessionist paid. Therefore, if the debtor's assets are not comparable to the debtor's debt to the separatist creditor, the worker is less likely to get their rights payment. Based on the application for judicial review to the Constitutional Court from the workers in case No. 67/PPU-XI/2013, on September 11, 2014, it was determined that the protection of workers' rights such as payment of wages should take precedence over debts and other creditors, while other rights of workers such as severance pay and others shall be paid after the separatist creditors. However, especially since the Covid-19 pandemic has paralyzed the Indonesian economy, many workers have been terminated. They do not receive wages and severance pay because the debtor's assets are sufficient to pay debts to separatist creditors. Bankruptcy institutions that should have an essential role in realizing legal certainty in settlement of debt and receivable disputes are no longer effective in protecting workers' rights due to corporate bankruptcy in Indonesia so that it does not reflect justice, certainty, and benefit for the parties, especially workers who have been terminated during the Covid-19 Pandemic.

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Observing the Role of Local Governments in Bali in Stimulating the Business Sector

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ABSTRACT
During the Covid-19 pandemic, the economic situation of Bali declined sharply. As foreign tourists suddenly did not go to Bali, we disastrously affected locals mainly engaged in tourism and tourism-related industry. They tend to look for alternative jobs, mainly in the informal sectors, to ensure their survival in a pandemic situation. Some of them changed their work by creating startup entrepreneurs in the form of micro and small businesses. People are curious about how the government, especially the local government, can solve this problem in a health emergency and economic crisis. This paper aims to analyze the role of the local governments in Bali in encouraging and stimulating people to generate income to survive during and after the pandemic. Specifically, this paper evaluates the normative contents of law and regulation related to economic improvement and observes the dynamic adjustment of technical policies issued by local government. It is designed as normative legal research that applies a statutory approach. It collects relevant legal documents and reports as well as scientific analysis provided in journal articles. This paper suggests that local governments in Bali have complied with national law and regulation when addressing the issues related to the pandemic and have also issued policies and creating programs that are in line with the national policy and schemes. Bali's local governments faced uncertainty and dilemma when responding to the economic problem arising from the Covid-19 pandemic. The gradual decrease of regional revenue entails that local governments in Bali have to rely on the national government's economic policies, schemes, and programs.

Keywords: *Local government, Business sector, Covid-19 pandemic, Law and policy, Bali.*

1. INTRODUCTION

The tourism situation undeniably affects the macroeconomics situation in Bali. In 2019, the tourism sector contributed 78 percent to Bali's economy, compared to the agricultural sector, which only contributed 14.5 percent.[1] In line with the restriction policy activities due to the Covid-19 pandemic, open unemployment increased from 1.57% in August 2019 to 5.63% in August 2020. [2] More than 52% of the Balinese economy depends on tourism activities, and for the first time in history, Bali's economic growth experienced the deepest contraction, currently reaching 12 percent.[3] Therefore, this pandemic has had a significant economic impact on the Balinese people.

The role of local governments in Bali has become essential. From a theoretical perspective, the local government deals with matters concerning the people living in the particular locality representing the microscopic local interests. The local government occupies a critical position to directly affect the daily lives of individuals in the region by giving services necessary for civilized life. Under a framework of decentralization, local governments received a transfer of authority and fund management to perform public service to the public. In Indonesia, decentralization is combined with other authorities such as regional autonomy, deconcentration, and co-administration.[4]

The Ministry of Home Affairs, a national minister responsible for implementing local governance, encouraged various efforts in terms of policies and regulations for local governments. It emphasizes the synchronization of various policies at the national government level in handling the Covid-19 pandemic, and national economic recovery in the regions, as the basis for policies taken by regions in carrying out their authority optimally.[5]

In addressing this issue, the Government of Bali Province adopts some regulations and policies in line with the national law and directions. Regulation of Bali

Province Governor No. 15 of 2020 concerning the Policy Package for the Acceleration of Handling Corona Virus Disease 2019 (Covid-19) in Bali Province provides a legal framework that handles health aspects and impacts to the economy and Balinese people. Further, in July 2020, Regulation of Bali Province Governor No.46 of 2020 declared a 'new normal' in implementing discipline and enforcement of health protocols to prevent and control the pandemic. In the context of economics, this regulation aims to restore various aspects of socio-economic life productively and safely to reduce the psychological impact of the community due to the pandemic. This governor regulation also obliged business entities that carry out business activities in various economic fields to carry out socialization and education to increase the obedience of the health protocol, prevent Covid-19, and enforce discipline on the behavior of people who are at risk of transmitting Covid-19.

This paper analyzes the role of local governments in Bali in encouraging and stimulating business in the region during and after the pandemic. It evaluates the normative contents of the law and regulation related to economic improvement and observes the policy of local governments in response to the dynamic situation of the pandemic.

2. METHOD

The paper is designed as normative legal research that applies a statutory approach. It collects relevant legal documents and reports and scientific analysis provided in journal articles and website contents. The legal sources and resources are analyzed descriptively.

3. THE COLLAPSE OF TOURISM

Statistics reveal the extreme decrease of the international visitors to Bali before the pandemic and after the pandemic outbreak, as indicated by the number of monthly foreign tourists by airport entrance. As a comparison, 438.928 international tourists visited Bali in May 2019, while in May 2020, only 34 persons, and in May 2021, only eight persons.[6] The outbreak of Covid-19 has hit the hotel occupancy in Bali horribly, while famous tourism destinations have to close temporarily.[7]

The local governments have made various efforts to attract visitors to Bali. Based on the direction and permission of the Minister of Health and the Minister of Tourism and Creative Economy, the Bali Province in March 2021 determined three tourist areas in Bali, namely Sanur in Denpasar City, ITDC Nusa Dua in Badung Regency, and Ubud in Gianyar Regency, to be protected zones from Covid-19 disease or called as 'green areas.' They provide the Covid-19 vaccine to all tourism sector workers and local communities in these covid-free corridors to restore the tourism industry in Bali, in line with the Covid-19 free travel scheme.[8] To handle the pandemic, the government targeted 2.996.060 people to be vaccinated. According to the Health Office of Bali Province, until 2 July 2021, there are 2.276.758 people (75,99 %) who have been given first step vaccination; some 748.548 (24, 98%) given second step vaccination; and 100% on the green zones.[9]

Bali is not the only region that faces the problem. Almost all regions in Indonesia and in other countries that very much rely on tourism were also affected. For example, In California, the United States of America, significant declines in travel and tourism likely have impacted transient occupancy tax revenue.[10] Tourism can also be a significant "driver" of the local economy and thereby substantially impact a local government's revenue collections.[11]

In many cities, regions, and countries, tourism plays a critical role as a strategic pillar of the economy's gross domestic product. It has become a key driver of cultural and socio-economic progress and creates millions of job opportunities within the travel industry.[12]

4. ECURING THE LOCAL ECONOMY

Local governments have redistributed their regional revenue and expenditure budget to focus on solving health and economic issues. Besides, local governments have also received and utilized funds from the national government. The only problem is how to ensure that the funds will not be misused. For example, eight apparatus of the Buleleng regency tourism office were accused of corruption of the National Economic Recovery fund in a trial at the Denpasar Corruption Court.[13] The following sections discuss the role of local governments in the fields of investment, cooperatives and micro, small, and medium enterprises, and tourism, and also analyze social safety net programs during the pandemic.

4.1 Investment

Investment indeed plays a vital role in the development of a region as well as generates economics. In order to ease the investment in the region, the Minister of Home Affairs issued Circular No. 903/145/SJ dated 12 January 2021, expecting the willingness of the investor to bring capital to the region. At the national level, a national economic growth target of five percent in 2021 requires IDR 5.800-5.900 trillion of investment to support the recovery.[14]

There is no guarantee how Bali would assist the achievement of the national investment target. Reflecting data released by the Indonesian Investment Coordinating Board, investment in Bali in 2020 decreased around 31 percent from the previous year.[15] Investments in the tourism sector in Bali seem to be no longer the mainstay.[16] In 2021 there is an opportunity to increase

investment along with several new projects, such as the construction of toll roads, hotels, ports, railways, and the arrangement of tourist destinations and other types of non-building investments. This investment projection is based on increased investor optimism after the implementation of the Covid-19 vaccination program.[17]

4.2 Tourism Industry

Hospitality industries need to apply business model innovation to ensure their survival and recovery during the pandemic.[18] Indonesian hotel and restaurant association noted that around 125 to 150 restaurants were closed per month, and hundreds of thousands of workers from that sector were laid off from October 2020 to February 2021. The Association then encourages the government to provide grants, relaxation of land and building taxes, and abolishing restaurant taxes.[19] As an example of how this issue is addressed in Bali, Badung Regency has granted a reduction or abolition of administrative sanctions for hotel, restaurant, and entertainment taxes through Regulation of Badung Regent No. 27 of 2020.

It was evident that local governments rely on the national government to assist the improvement of the tourism sector in Bali. The Indonesian Minister of Tourism and Creative Economy in Circular No. 2 of 2020 prioritized maintaining the economic resilience of the tourism sector and the national creative economy, especially to put maximum efforts to prevent dismissal. In October 2020, the ministry launched a program, 'We Love Bali,' as an educational campaign to implement health protocols based on cleanliness, healthy, safety, environment (CHSE). Since the issuance of the policy to open Bali tourism to local (Bali) and domestic (Indonesian) tourists, the wheels of the economy have started to move again.[20]

The national government granted a tourism sector incentive in a total IDR 3.3 trillion, to be used for economic recovery in the tourism sector, divided 70% for tourism businesses and 30% for local governments. As described in the letter from the Minister of Finance of the Republic of Indonesia No: S-244/MK.7/2020 dated October 12, 2020, the tourism grant was given to 101 regencies/cities in Indonesia is in which some IDR 1.183 trillion (36,4%) was granted to 8 regencies and one city in Bali Province.[21]

In its press release on 20 May 2021, the Coordinating Ministry for Maritime Affairs launched a program called "Work from Bali" (WFB) for its State Civil Apparatus and apparatus of the seven ministries/agencies under the coordination of the ministry. This program aimed to increase the confidence of domestic tourists to visit Bali, giving a multiplier effect (direct, indirect, or induced impacts) for the local economy in Bali.

4.3 Cooperatives and Micro, Small, and Middle Enterprises

Due to uncertain business situations, industries rely on stimulus packages and interventions by the government to continue their productivity.[22] The government policy of physical distancing made people stay at home and do not go out shopping to meet their daily needs. It impacts the existence of micro, small and medium enterprises (MSMEs) that mainly depend on the selling of essential products of the society.[23]

Article 12 (2)(k) Law 23/2014 determines that the local government has the authority to deal with cooperatives and small and medium-sized enterprises. In March 2020, the Minister of Home Affairs issued a circular No. 440/2436/SJ that requests the head of regions strengthening the community's economy through the provision of incentives/stimulus in the form of reducing or eliminating regional taxes and levies for business actors, including MSMEs in the regions to avoid production declines and mass work termination.

One of the recent national schemes is a Fund Assistance Program for Entrepreneurs by the Indonesian Ministry of Cooperatives and Small and Medium Enterprises. Through this program, Entrepreneurs who have business ideas and business startups whose business capacity has the potential to be developed can be given funding assistance of a maximum IDR seven million. In executing this national program, local governments, through the apparatus of Cooperatives and Small and Medium Enterprises Office to, among others, verify the proposal and recommend the nomination of the beneficiaries.

The Association of Indonesian State-owned banks expressed its commitment to support the economy in the Bali Province through lending to the MSMEs sector, especially for debtors whose businesses are hampered by the Covid-19 pandemic. The credit distribution is expected to be used as working capital and additional investment.[24]

Reflecting on the difficulty of managing regional finance during the pandemic, the Bali Provincial House of Representatives encourages the Bali Provincial Government to support the MSMEs sector and the creative economy that may include the capacity development of new entrepreneurs through training. It is expected that the quantity of MSMEs increases, which impacts the availability of job opportunities.[25]

4.4 Social Safety Nets

The Indonesian Minister of Home Affairs and the Minister of Finance concluded a Join Decree No. 119/2813/SJ and No. 177/KMK/2020 that enables budget differences resulting from the adjustment of regional income and expenditure adjustments to be used to fund the provision of social safety nets through the provision

of social assistance to the poor who have decreased purchasing power. In addition, the budget differences can also be used to deal with economic impacts, mainly to keep the sustainability of business in the regions, among others, through the empowerment of micro, small and medium enterprises and cooperatives to restore and stimulate economic activity in the regions. In addition, it is also directed that heads of regions prioritize the use of the budget to apply the 'cash for work' method in the implementation of infrastructure development or improvement.

As previously explained in the introduction part of this paper, a Policy Package for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) was stipulated by the Governor of Bali through Regulation No. 15 of 2020. It provides a legal framework that handles health aspects and impacts on the economy and Balinese people.

This policy package covers a social safety net that aims to ensure the survival of meeting the minimum basic needs for formal sector workers who have been terminated and laid off without receiving wages. The most related policy on the business sector in this policy package is the stimulus assistance to support the survival/business of the following five business categories: (1) informal business actors; (2) small and medium industry; (3) micro, small and medium enterprises; (4) cooperatives, and (5) print media and online media. The first category of informal business actors includes traditional stalls; Street vendors, cadgers; traveling merchants; home industry; craftsmen; small machine workshops; conventional/online motorcycle taxis; fisherman; stock farmer; and daily workers. To decrease the number of students drop out, the Governor of Bali provides cash social assistance to support education financing at the elementary, junior high, high school, and private university levels, directed to those who fund the students. However, the job has been terminated, laid off, or lost of income.

5. ECURING THE LOCAL ECONOMY

The previous description has shown, or at least indicated, how local governments in Bali have complied with national law and regulation when addressing the economic matters resulting from the pandemic. The local governments have also issued policies and created programs in line with the national policy and schemes.

In response to the economic problem arising from the Covid-19 pandemic, local governments in Bali faced uncertainty and dilemma. There is no guarantee that the tourism industry will improve anytime soon, not even by the end of 2021. Investment as a sector that generates jobs and income seems potentially developed only in the non-tourism sector. The social security net provided by the local government will undoubtedly have a limit. It depends on the gradually decreasing regional revenue. Therefore, Bali will rely a lot on the national government's economic policies, schemes, and programs.

The only sector that can be supervised and assisted by local governments is cooperatives and micro, small, and middle enterprises. These sectors work hand in hand with society, responding to people's basic needs, occupying informal sectors, and creating job innovation. Proven for their resilience in the past global economic crisis, cooperatives, and micro, small, and medium enterprises will run effectively during and after the pandemic. In this regard, local governments may play a vital role in enacting regulation that simplifies the establishment and the implementation of business of these sectors and issuing a policy that aims to add the capital, enhance the capacity building, open the access, and expand the market.

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Regulation for the Tradition of *Ngaben* Through Crematorium According to Balinese Society's Customary Law and Local Wisdom

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ABSTRACT
Ngaben is a tradition that has been passed down from generation to generation. It has become a nation's cultural heritage and is still being implemented to date. The ritual of *Ngaben* is a cremation ceremony that is accompanied and equipped with ceremonial facilities called *Banten*, carrying the corpse body, a place for burning the corpse in the form of an ox, or other forms. In the context of Bali, its implementation involves the extended family of the corpse, neighbors from Banjar residents, traditional local villagers, and is a family and mutual cooperation. Recently, a new method and place for cremation have emerged, such as the method of cremation in the crematorium. The method has become a new phenomenon that meets the requirements of modern society, such as time efficiency, low cost, no need for much energy, including anticipating everyday problems. The phenomenon is unlikely to become a new tradition in cremation activities. How to make this phenomenon an option without eliminating cultural traditions and local wisdom that attract tourists is a condition that requires good regulation. Therefore, a norm void appears in the arrangements for the implementation of *Ngaben* at the crematorium that requires attention. This research uses a normative juridical study method, which, with a good arrangement, will later create a condition that remains in maintaining the *Ngaben* ritual tradition with all its uniqueness and characteristics, passed down from generation to generation into local wisdom, and with exceptions in certain situations, the implementation of the *Ngaben* ritual through a crematorium is an option.

Keywords: *Crematorium, Regulation, The Tradition of Ngaben, Tourism.*

1. INTRODUCTION

The development of the times in each decade, inevitably, will impact the order of people's lives. the more advanced technology in all fields, the more it will impact the mindset resulting from the increasingly complex demands of life. the more open the spaces for movement, the more open the community will be, and the more ideas to meet the standards of modern society will also develop. likewise, with every action or decision taken, it will require consideration of its efficiency. The efficiency of time, place and cost, conditions and circumstances like this, is referred to as the influence of globalization [1]. Globalization represents an international integration that occurs due to the exchange of world viewpoints. This phenomenon involves the integration of economic, cultural, government policies, technology, science, and political movements around the world. It is a significant factor, and globalization is increasingly encouraging every economic and cultural activity to be interdependent. The process of globalization will cause many changes in the community's attitudes, values , and behavior patterns. the positive impact is that the government system will be more open, a democratic system will be created, and domestic economic growth will be increasingly encouraged. The negative impact that will come to pass is that globalization can fade the sense of nationalism and love for domestic products. Without realizing it, shifts in values underlying every decision taken occur either personally or communally. Also, without realizing it, it will erode the cultural traditions that are the community's pride, especially in this case, the balinese people. the cultural tradition is known to make bali a world tourist destination is "*ngaben*."

Established on the above background, the present study is limited to one form of cultural tradition, the ritual of *ngaben*, with all its uniqueness. on the other hand, cremation through the crematorium is currently growing rapidly and popping up everywhere. is it a phenomenon of the influence of globalization as a fulfillment of the

everyday needs of modern society or as a solution to a situation?

The issue that will be examined in this paper is related to whether the *ngaben* cultural tradition will survive, its impact on tourism, and what efforts must be made to maintain the tradition.

2. METHOD

The research method used in this research is a mixed-method, a combination of normative legal research and empirical (sociological) legal research. It is research that uses secondary data or data obtained by collecting library materials that have a relationship with the phenomenon being studied in the research being conducted [2]. Empirical facts are taken from the behavior and habits of the community, both verbal behaviors obtained through interviews with several informants and natural behavior through direct observation [3]. This study aims to reveal the phenomena that occur in the Ngaben tradition of the Balinese community, which is carried out through the crematorium, and to maintain cultural traditions as a supporting element for tourism, which is an advantage from the point of view of legal and economic studies. Thus, an effective regulation governing it is needed. This study maintains the cultural tradition of Ngaben of the Balinese people as a tourism destination excellence. It can be said that the Nritual of Ngaben, which is carried out from generation to generation, requires an effective regulation because it is performed through the crematorium.

3. RESULT AND DISCUSSION

3.1 Cultural Tradition of Ngaben and Its Impacts on Tourism

Tourism is regulated in Law Number 10 of 2009 concerning Tourism (by the Indonesian people it is also referred to by the abbreviation "UU Kepariwisataan"). Based on Article 1 point 3 of the Tourism Law, tourism refers to various activities supported by various facilities and services provided by the business community, government, and local government. The Tourism Law distinguishes the notion of the tour from tourism. Based on Article 1 Number 4 of the Tourism Law, tourism refers to "all activities related to tours and are multidimensional or multidisciplinary, arising as a manifestation of the needs of each country and the interaction between tourists and local communities, fellow tourists from the Government, Regional Governments and entrepreneurs [4].

By looking at the history of its development, notions, and concepts, both related to traveling, touring, excursion, tour, tourism, and tourism objectives, it can be stated that the tour contains various dimensions. Tours are issues related to one aspect, such as the economic aspect, and include socio-cultural aspects of politics and even other aspects. Tour is a very multi-complex system with various aspects that are interrelated and influence each other. Even in the last few decades, the tour has become a driving force for community dynamics and has become one of the primary movers in socio-cultural change. Studies in various fields continue to roll on, as well as in tourism law studies. As the Island of the Gods, Bali is still very thick with customs and traditions that are still preserved by the surrounding community for generations. Even Bali's rich culture and customs are also one of the main attractions for tourists to witness firsthand.

`Although the island of Bali has a relatively small geographical area, its cultural wealth is not inferior to those of other regions in Indonesia. One very well-known tradition in various parts of the world is the Ngaben tradition, always crowded with visitors. Some of the world's known cultural traditions include (1) Ngaben, (2) Melasti, and (3) Omed-omedan. Of these three traditions, the one having experienced the most pronounced development is the Ngaben tradition. Ngaben referred to burning corpses, ancestral heritage, and carried out for hundreds of years in Bali. Balinese Hindus believe that the ancestral spirits become holy by burning corpses, and they can rest in peace. The Ngaben ritual is a Pitra Yajna ceremony, a mandatory ceremony for families to be carried out as a form of respect and devotion to parents or the deceased. It must be carried out to serve with willingness, both materially and spiritually. Yajna, or sacrifice to the ancestors (Pitra Yajna), is held in a lively dedication procession and is full of proper equipment [5].

In the book entitled "Ngaben Sarat" (Sarwa Prataka – Sawa Wedana) written by Drs. I Nyoman Singgin Wikarman, Ngaben is derived from the word Nga + beya + in or Ngabeyain, then pronounced short as Ngaben. Ngabeyain or cremation means giving “beya” or provisions for those who have passed away. The holding of the Ngaben ritual usually occurs in July-August or by the Balinese Hindu community known as Sasih Karo. Generally, the holding of Ngaben is very lively, full of proper equipment. Because the ceremony is full of proper equipment, it is called Ngaben Sarat. Ngaben Sarat, performed by Hindus, especially in Bali, serves as their devotion to their ancestors. Devotion refers to the manifestation of deep love - love that is realized in the form of a cremation ceremony, which is supported with sincerity [6].

Judging from the fact from the author's point of view, Ngaben can embody the Balinese Hindu community's love by sacrificing many items, from the most beautiful to the grandest items. Yajna, or sacrifice to the ancestors of Pitra Yajna, is held in a lively procession of Ngaben activities, full of proper equipment. In this case, the Ngaben ritual requires substantial funds and a long time to prepare. It is done as proof of their sincerity of devotion to the ancestors by offering something majestic and noble, which is only done once in a life.

Economically, with the Ngaben ritual, the surrounding community's economy can be raised because

the money spent on Ngaben revolves around the ceremony area. The surrounding community prepares all the ritual equipment. The nuances of cooperation and a powerful sense of family are felt. Considering the motivations and goals of Ngaben, if it is associated with the people's higher income and positive impact on the socio-economic field, it is still relevant in the future. Ngaben, which is carried out full of symbols, is also a unique attraction for tourists; Ngaben, whose uniqueness only exists in Bali. This makes Bali a sustainable tourist destination, and thus Ngaben has added economic value for the welfare of its people.

In terms of tourist attraction, Ngaben is included in the level of tourist attraction caused by certain events, the order of which is: a) traditional institutions, b) traditional lifestyle, c) ritual ceremonies, d) religious activities, e) historical heritages, f) sports events and g) art creation.

Ngaben is included in the ritual ceremonies and ritual activities. Some examples of Ngaben ceremonies that can attract tourism arrivals are:

Ngaben which was held on August 18, 2011 for Anak Agung Niang Rai at Puri Ubud. The deceased was the mother of Tjokorda Oka Ardana Sukawati. Ngaben is included in the colossal category because it uses a very high bade up to 24 meters with almost 10 tons. Bade refers to the place to put the corpse that is carried towards the setra. Besides bade, an attractive ceremonial facility is a 9.5-meter-high bull weighing about 5-6 tons. The ritual was witnessed by thousands of tourists who poured over the highway that connects Puri Ubud with setra with a distance of 0.5 km. The tourists stood and captured this sacred moment (http://m.detik.com).

Mass Ngaben was held on August 2, 2018, in Bitera Village, Gianyar-Bali, as reported by Antara News on August 2, 2018. The mass Ngaben (cremation) ceremony became one of the tourism sector's cultural attractions, resulting in occupancy or occupancy lodging and hotels in the Ubud area, Gianyar Regency to reach 90%. "This August will indeed be filled with many mass Ngaben ceremonies or the burning of the bodies of several Hindus who have died. Almost all banjars will carry out mass Ngaben rituals. It is the season for mass Ngaben, a ritual as well as a cultural activity that will be an interesting spectacle for tourists," said Head of the Gianyar Tourism Office, A. A. Ari Brahmanta, in Gianyar.

The process of the Ngaben ritual elaborated above has proven there is a tourist attraction inviting visitors to come to visit Bali. Nevertheless, in the current development due to globalization as described above, many Ngaben traditions are practiced. The cremation is performed in the crematorium, making the procession very easy, fast, and practical. Crematoriums are increasingly popping up in Bali, which in turn, offer various packages of ceremonial levels. All activities to carry out the ceremony can be done quickly, very simply, and much lower cost. The crematorium is a new phenomenon that fulfills the requirements of modern society today, including time, cost, energy efficiency, and avoiding everyday problems.

According to Prof. Dr. Nengah Bawa Armaja via baliexpres.jawapos.com on March 19, 2021, Ngaben at the Crematorium received Hindu religious legitimacy. It was legitimized through the Paruman Sulinggih conducted by the Klungkung Culture and Tourism Service in November 2014, attended by Pedanda, Pandhita, Mpu, and Sri Mpu. In the paruman, it was decided that the holding of the Ngaben ritual in the crematorium could be justified for several reasons: firstly, there are no literary sources that prohibit Ngaben in the crematorium; secondly, Hindu religious teachings are flexible; and thirdly, the fire of the mind which is the fire of the power of jnana (mind), jnana sulinggih, remaining as the primary means of cremation. The decision was strengthened by five considerations: ikhsa, sakti, desa, kala, and tattwa. "With the Paruman Sulinggih decision regarding Ngaben Crematorium, it can be emphasized that Hinduism legitimizes Ngaben Crematorium. Thus, more and more Balinese will carry out Ngaben rituals at the crematorium," he said. Prof. Bawa added that apart from being legitimized by Hinduism, there are several other considerations as reasons for Hindus to use the services of a crematorium in holding funeral ceremonies.

In the past, people chose a crematorium because they experienced kesepekang by custom or were not adaptable. "It could be poor with economic capital, poor with social capital, not adapting in the village of pekraman, so they experienced kesepekang or kanorayan or contracted an infectious disease that people are afraid to take their bodies, or their nationality is not clear in a traditional village," he explained. However, nowadays, it is undergoing a shift; people who do not have problems with customs voluntarily choose their death rituals in the crematorium without any coercion. In addition, efficiency is also mentioned as a separate consideration for the krama (customary village community) to carry out the Ngaben rituals at the crematorium, such as cost, energy, and time efficiency. In this way, the Ngaben ritual does not require much activity because most of them have been taken over by the available workers in the crematorium. Thus, the person's family carrying out the Ngaben ritual ceremony only needs to sit and enjoy the intended Ngaben ritual process. The party's role in carrying out the Ngaben ritual is minimal; they only need to pray at certain times. The Ngaben ritual process at the crematorium takes one day; the crematorium management provides the necessary offerings at their expense. They are also responsible for bathing the corpse, ngeringkes (wrapping the corpse), and burning it so that the family carrying out the Ngaben ritual does not need much energy. Because it takes only a day, the costs automatically become more economical. Without realizing it, the ease and efficiency

of carrying out the Ngaben ritual at the crematorium have eroded traditional and cultural traditions based on cooperation and a sense of kinship and, at the same time, caused tourist attraction to fade. Initially, the holding of Ngaben rituals at the crematorium was only an exception to karma or residents subject to customary sanctions as a solution.

In this study, data collection was carried out by conducting interviews with several informants whose results are elaborated below.

Name: I Made Bambang; Age: 47 years old; Address: Br. Tengah, Singakerta, Ubud, Gianyar-Bali

Ngaben: Ngaben represents one of the elements of tradition that should be preserved; in addition to religious values, it maintains and cultural values.

Crematorium: Crematorium is only appropriate in urban areas with different populations, whereas, in rural areas where traditional villages are still strong, it still cannot be applied. [1]

Name: I Ketut Karmadi; Age: 39 years old; Address: Br Dajan Lebah, Singakerta, Ubud, Gianyar-Bali

Ngaben is a noble ceremony, which is a culture that must be preserved. It intensely evokes social and cultural ties between one another, which is the essence of the implementation of Hinduism. The conclusion is that Ngaben must be preserved by using the Yadnya level according to the community's ability.

Crematorium refers to cremation, which can reduce customs and culture because, in practice, cremation only focuses on ceremonies and ignores social and culture, so that residents may have social problems and have certain infectious diseases. [2]

Name: I Made Didi Dona Wyanantara; Age: 28 years old; Address: Banjar Jukut Paku, Singakerta Ubud, Gianyar-Bali

Suppose the Ngaben ritual continues to be carried out in traditional villages. In that case, it will have an impact not only on strengthening traditional villages through the activities of residents to build villages but also on the tourism and cultural side, which has traditionally supported the economy of Balinese people in general. The traditional attraction of Pitra Yadnya of Ngaben ritual is a unique thing that attracts international tourists.

A good crematorium globally can help the nomads to manage the pitra yadnya process. However, there are loopholes to weaken the Traditional Village, weakening it in the form of the activity of some (lazy) residents in the traditional village environment because they choose not to be bound by custom. Meanwhile, what binds residents to be active in traditional villages is, among other, namely, the pitra yadnya ceremony. [3]

From the results of the interviews described above, the informants stated that they still want the Ngaben cultural tradition to be carried out according to the cultural and customary traditions of each region.

3.2 Efforts Made to Maintain Tradition of Ngaben

The Tourism Law stipulates the meaning of tourism destinations: "Tour destination areas hereinafter referred to as destinations, are geographical areas located within one or more administrative areas in which there are tourist attractions, tourist facilities, public facilities, accessibility, and interrelated communities that complement each other for the realization of tourism." If the definition of a destination is comprehended, there are essential elements to make an area a tourism destination. It is a tourist attraction that refers to everything with uniqueness, beauty, and value in the form of a diversity of natural, cultural, and man-made wealth, which is the target and purpose of tourist visits. In each tourism destination developed, their brand images serve as an effort to influence the interest of tourists to visit a destination. Indonesia is currently promoting the Wonderful Indonesia Brand Images as a marketing force for Indonesian tourism. The importance of the role of image for a tourism destination is stated by Bulk (1993) and Law (1995), "Tourism is an industry based on imagery, its overriding concern is to construct, through multiple representations of paradise an imagery (of the destination) that entices the outsider to pace himself or herself into the symbol defined space" [7].

Destination resources refer to everything that can be developed and managed to support the development and management of a tourism destination. Destination resources include natural resources and cultural resources. In this study, the object studied is cultural resources which include everything related to the human initiative, work, creativity, and taste. Culture has a significant role in tourism. One of the reasons tourists visit a tourist destination, or another country is the desire to see and learn about other people's cultures. Culture can be seen as an opportunity for tourists to see, experience, appreciate and perceive the richness and diversity of its culture. Cultural resources utilized by and complement a tourist destination include arts, historic buildings, sculpture and painting, religious relics, and community traditions that are still preserved for generations serving as the community's pride in a tourism destination.

In essence, one of the essences of tourism development is to build reliable and durable tourism, which is a component of economic, social, cultural, and environmental development carried out sustainably to achieve prosperity and progress of the nation. Thus, an integrated arrangement between the central government and local governments will be created to develop and maintain tourist destinations. In order for the development and management of efficient and successful destinations to support tourism development, there is a need for management supported by all tourism stakeholders, both directly and indirectly related to tourism development [8]. In Adam Smith's theory and the

theory of Absolute Advantage, it is stated that "Each country will specialize in the production and export of goods whose costs are relatively low (relatively means more efficient compared to other countries); on the other hand, each country will import goods whose production costs are relatively higher (in other words, less efficient than other countries). Adam Smith's theory is applied to tourism destinations in Indonesia, where a brand image is currently being developed, namely Pesona Indonesia as a marketing force for Indonesian tourism. Quoted from the official website of the Indonesian Ministry of Tourism, Wonderful or Pesona Indonesia is a promise of Indonesian tourism to the world, a promise that Indonesia is rich with wonders, both in nature and culture. Indonesia is a place for everyone to enjoy the "World of Wonderful."

Bali as a tourist destination has advantages in the field of cultural traditions, one of which is the tradition of Ngaben which has been included in the international order. With all its uniqueness, beauty based on cooperation, kinship - the tradition will become a charm that attracts tourists to visit Bali. However, back again with the influence of globalization and the rapidity of technology creating a society that efficiently creates the phenomenon of Ngaben through the crematorium. It is a phenomenon that should be of concern to everyone. Therefore, it should be reviewed in its implementation without neglecting technological advances. In order to provide legal protection and certainty in the implementation of Ngaben, which follows tradition or Ngaben through a crematorium, there is a need for regulation either by custom or through the Regional Government of the Province of Bali [9]. This is done to put back the philosophical basis of Ngaben's existence through the crematorium to solve people who are subject to customary sanctions or afflicted with infectious diseases. Hence, there needs to be an effort to regulate through customary village awig-awig or regent regulations at the district level or regional regulations at the provincial level.

4. CONCLUSION

From the discussion presented in the previous section, conclusions can be drawn, namely the cultural tradition of Ngaben with the completeness of the ceremony, its uniqueness and excitement can still be maintained and is still desired by the community to be carried out and still have an influence on the attractiveness of tourists' visits to Bali. Thus, in connection with the current emerging phenomenon, the Ngaben through the crematorium, there is a need for a more transparent and firmer arrangement in its implementation as an alternative.

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Crimines and Corruption Culture Related to Tourism Business Investment

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ABSTRACT
It is an indisputable fact that Indonesia is a rich country. However, there is rampant poverty that prevails due to the widespread culture of corruption in this country. Especially in Tourism Investment, while the State of Indonesia is a State of Law (rechtsstaat); a classic question arises why there are still poor citizens even though its tourism is excellent: there are seas, mountains, lakes, etcetera. Waterfalls but not well developed because of money. The incoming levies are only corrupted or for personal enrichment, ranging from airport transportation that charges very high prices and vehicle rentals beyond reasonable limits. If visiting tourist destinations, the entrance fee is not transparent, especially tourism objects managed privately or not by the government, parking attendants who charge high fees, expensive food up to souvenir shops that force to buy goods. Hotel/accommodate rates that raise high prices on certain days are almost no resident's hospitality unless we want to spend much money for them. It is a pity that the beauty of nature and Indonesian culture is partly corrupt in tourism investment in Indonesia. Indonesia has tremendous potential to be developed into a good tourism business, and it appears that there is a corruption crime in the tourism sector. Corruption is the biggest challenge to the Pancasila ideology and Indonesian independence. How it is not so, the culture of corruption has existed since Indonesia was under Dutch colonial rule, so it is challenging to eradicate this habit. Closely, almost every year, there are always examples raised in various media. *Corruption* is an act that violates criminal law in Indonesia. A group of people or individuals usually commits corruption in the form of abuse of power, opportunities, and/or means to enrich themselves and their groups. Either directly or indirectly. Acts that violate the law can be categorized as corruption among them: giving/receiving bribes, offering gratuities to employees/authorities, embezzlement or abuse of power, extortion by officials and employees Reputation and brand image are highly relevant for the tourism sector; particularly when it comes to health and safety. The proliferation of the internet and social media has created a new reality for companies who have a vested interest in containing the publicity of crime and corruption incidents. The line between reputation management and unethical/corruption practice is relatively thin. Arguably, the “age of transparency” has arrived, and victims and non-profit organizations now have the means to expose malignant practices and exercise pressure on tourism companies. Nevertheless, there is another side to the coin. The availability of online published statistical data and information on tourism-related crime rates has been criticized as limited and somewhat inaccurate (i.e., biased) due to methodological and legal classification/definition issues. Combined with victims' comparatively limited online presence, this may lead to the web's underrepresentation of “yellow tourism phenomena”. In this respect, the financial leverage and digital expertise of tourism/cruise corporations have been characterized as the source of an imbalance of “online visibility” power and “platform bias”.

Keywords: *Crime and corruption, Tourism destinations, Reputation, Age of Transparency.*

1. CULTURAL ASPECTS OF CRIMINAL AND CORRUPTION RELATED TO THE TOURISM BUSINESS INVESTMENT

Corruption is undoubtedly a form of crime. This evil has an impact on public distrust, whether carried out by officials, public and private. Corruption harms various joints life, not only the economy but also politics and social impact public. Corruption has become a common enemy and globally has been It is agreed that corruption is a serious problem that threatens and community security, democratic institutions and values ethics and

justice and threatens sustainable development and supremacy law. Preventing and eradicating corruption are all countries' responsibilities and pillars of governments, private and community organizations.

The global agreement to fight corruption is contained in a Convention United Nations on the Eradication of Corruption, otherwise known as the United Nations Convention Against Corruption (UNCAC), 2003. Indonesia has ratified this convention through Law no. 7/2006 and has implemented it through various national legislation and policies and various efforts to prevent and eradicate corruption.

The definition of corruption can be found in various perspectives, both through the meaning of the word “literally, the opinions of various experts, and based on setting it up. Internationally there is no single definition that is the only reference in the whole world about what is meant by corruption. Even UNCAC, as an agreed international convention on corruption eradication and becomes a reference for almost all countries not specifically defining what is meant by corruption, but describes the forms of action which can be sanctioned as a criminal act of corruption. Judging from the origin of the word, corruption comes from the Latin “corruption” or “corruptus” from the verb “corrumpere”, which means decay, depravity, dishonesty, bribery, immorality, and deviation from chastity. This word later came down in several languages in Europe, in English and French known as “corruption” and in Dutch "korruptie" and so on in Indonesian as “corruption”. In the Great Dictionary of Languages In Indonesia, the definition of corruption is contained as "deviation or embezzlement." (state or company money, etcetera. for personal gain or other people."[1].

In the perspective of distinguishing the types of corruption based on the size of the funds, modus operandi, as well as the level of public officials involved, there are two types of corruption:[2]

1. Grand Corruption, namely corruption committed by officials high-level public sector, concerns public policy and major decisions in various fields, including the economic sector or called corruption because of greed (by greed). The modus operandi is generally collusion between economic power, political power, and public policymakers. Wrong One form is state capture, where the influencer seems to be able to control public policy.
2. Petty Corruption, namely corruption committed by employees government to support the needs of daily life, due to income inadequate or known as corruption out of necessity (survival corruption /by need).

Based on Chapter III UNCAC (Article 15 to Article 25), there are several types of acts that must be regulated as acts of corruption are prohibited and can be subject to sanctions, namely:

1. Bribery of national public officials is a bribe to national public officials.
2. Bribery of foreign public officials and officers of the public international organization constitutes bribery of foreign officials and officials from public international organizations.
3. A public official's embezzlement, misappropriation, or other diversions of property is a transfer of wealth otherwise by a public official.
4. Trading in influence is the influence of obtaining administrative/public authority to obtain an undue advantage.
5. The public official's abuse of function or position to obtain inappropriate for himself or another person or any other entity.
6. Illicit enrichment is an act of illegally enriching by public officials who cannot be reasonably explained concerning legitimate income.
7. Bribery in the private sector is bribery in the private sector.
8. Embezzlement of property in the private sector is embezzlement wealth in the private sector.
9. Laundering of crime proceeds is the laundering of crime in the form of conversion or transfer of wealth or concealment or disguise the origin of wealth.
10. Concealment is concealment or continuously holding back wealth that comes from crime.
11. Obstruction of justice is an act that hinders the process of the court.

Tourism in Indonesia's national development program is one of the sectors of economic development. From tourism, it is hoped that foreign exchange can be obtained, both in the direct expenditure of tourists and from investors, both foreign and domestic.

The corruption that is still rampant in Indonesia, besides involving those who serve in government agencies, also impacts investment in tourism businesses in Indonesia. It also involves people who hold positions in the tourism business or other private businesses that still cover the world of tourism in Indonesia. Concern for the prevention of the Corruption Eradication Commission, making the tourism sector in Indonesia one of the focus areas of work in supporting efforts to combat corruption in the tourism sector, the Indonesian government in collaboration with the Directorate of Education and public services plays a role in encouraging:

1. Build a good trip tourism agency in order to avoid nepotism.
2. The establishment of regulations to strengthen efforts to prevent corruption in the tourism business.

3. Realizing collaborative actions for prevention and eradication in the tourism sector
4. Provide very severe criminal witnesses for any officeholder who commits corruption in the tourism world so that there are deterrent effects for perpetrators of corruption in tourism investment in Indonesia.

A clear legal basis is made to be snared with severe criminal articles based on the law of criminal acts of corruption both under national and international law. The world of tourism in Indonesia is avoided from nepotism and corruption practices.

- To encourage the participation of employees within the ministry of tourism in Indonesia to prevent and eradicate corruption and abuse of authority by officials within the ministry of tourism for the services provided, it is necessary to handle public/internal complaints.
- Whereas an internal complaint (whistleblowing system) that is appropriately managed and correctly can prevent irregularities in the implementation of good tourism to create a tourism world that is clean and free from corruption and nepotism.
    1) Based on Law No. 28 of 1999 concerning the administration of a pristine and free state of collusion, corruption, and nepotism (State Institution of the Republic of Indonesia Number 3852).
    2) Based on Law Number 31 of 1999 concerning the eradication of criminal acts of corruption (State Institution of the Republic of Indonesia of 1999 Number 140)
    3) Regulation of the Minister of Tourism and Creative Economy Number PM. 07/ TTK001 /MPEK /2012 concerning the organization and working procedures of the ministry of tourism and the creative economy.
    4) Regulation of the Minister of Tourism and Creative Economic Number 4 of 2014 concerning guidelines for settlement state losses within the tourism and creative economy ministry.
    5) Regulation of the Minister of Tourism concerning procedures for handling complaints of tourism corruption within the ministry of tourism.

- In the Ministerial Regulation, what is meant by internal complaints (whistleblowing) are officials/employees within the ministry of tourism who have information/access and complain of acts that are indicated as irregularities.
- The ministry of tourism and creative economy/tourism and the creative economy agency has never stopped inviting the public and officials in the tourism sector to avoid corruption, maintain integrity in their work, and avoid corruption. Ministries and institutions within our Ministry of Tourism and Creative Economy must also minimize opportunities for corruption, improve the quality of services to the community, and be assisted by good collaboration between the Corruption Eradication Commission and the Ministry of Tourism.
- To prevent corruption in the tourism sector must include the collaboration of supervision and accountability between the owner of the tourism agency and the Government Internal Supervisory Apparatus (APIP). For example, electronic performance reporting is made with the E-Performance application and simplification of the organizational structure and public information services managed by The Information and Document Management Officer (PPID) implements structured bureaucratic reforms to reduce the scope for corruption. It would also be nice for officials who hold positions in the tourism ministry to submit their respective State Administration Wealth Reports (LHKPN) to the Corruption Eradication Commission (KPK) to minimize the scope for corruption. The legal basis for corruption in the tourism sector, Law no. 32 of 1999 concerning eradicating criminal acts of corruption in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code, additional.

The strategy to prevent corruption eradication in the tourism business is to legally prevent and combat corruption by applying severe sanctions to anyone who unlawfully commits acts of enriching themselves or others that can harm the economy. Legally, corruption is an act that is not commendable, contrary to the importance and function of Pancasila as the way of life of the Indonesian people. Besides that, acts of corruption also injure the noble values of Pancasila as the basis of the Indonesian state. In the era of globalization that is developing today, corruption is like a culture in society. Therefore, the Indonesian government seeks to take steps to prevent corruption. Especially in the tourism business sector, due to the many market opportunities that can be corrupted in the tourism business, corruption prevention is currently entering and targeting the Indonesian state not experiencing a decline in several aspects and fields due to the impact of corruption. The Efforts made by the government in eradicating corruption consist of prevention efforts, enforcement efforts, and educational efforts.

1. Efforts to prevent the occurrence of corruption is by taking preventive measures. This effort is intended to choose a solid fortress to avoid acts that reflect corruption in everyday life. Additionally, prevention efforts are carried out by the government based on the fundamental values of Pancasila so that it does not conflict with its prevention the values of Pancasila itself.
2. An appeal to the public also needs to be made. So those efforts to eradicate corruption in the tourism business can be avoided by conducting counseling in the community that opens tourism

businesses and emphasizing the latent dangers of corruption in the Indonesian state, emphasizing who the Indonesian people are.

3. Other efforts in eradicating corruption in the tourism business sector, the government can work together to control tourism agents, the regulation of people's welfare by the government is not only physical welfare but also physically and mentally. The hope is through efforts to improve the welfare of the living community to create a civil society that is free from acts of corruption in everyday life.
4. The efforts of the Indonesian government to take action since the KPK was established in 2002 have produced results that can be called the maximum results in the tourism business. Likewise, the judiciary's role is needed in upholding justice in Indonesia, especially those related to corruption. Of course, the implementation of the judicial process is carried out by the mechanisms of the justice system in Indonesia, and based on applicable laws and regulations, the government, through the Corruption Eradication Commission, against the perpetrators of the crime of corruption in question. In order to provide a deterrent effect to the perpetrators and indirectly provide shock therapy to people who commit or have corrupt intentions, whether in government or daily life.

The Cause of the Culture of Corruptions

1. Light penalties for corruption perpetrators
   In Article 2 and Article 3 of the Anti-Corruption Law, corruption crime can be subject to a maximum sentence of up to 20 years in prison or life. Meanwhile, as stated in Article 5 and Article 11, criminal acts of corruption are subject to a maximum sentence of only five years in prison. The average sentence is only one year and seven months in prison for corrupt defendants charged with Article 5 or Article 11 of the Anti-Corruption Law. It was also very unsatisfactory to the public. Very far from the theory of providing a maximum deterrent effect.
2. Ineffective supervision
   The low quality of human resources responsible for supervising the occurrence of corruption and lack of professionalism in carrying out their duties make the supervision ineffective.
3. The wrong state administration system
4. Law enforcement is not going well
   Let alone eradicating corruption, even preventing new corruption, law enforcers stumble. The proof is that so many new corruption cases keep popping up on a scale just getting more significant. Currently, law enforcement agencies in Indonesia have failed in their solve corruption cases. There are still many perpetrators of corruption come from the ranks of government, local government, DPR, DPRD, to law enforcement officers. Eradicating corruption as an extraordinary crime must be carried out in extraordinary ways, typical too. There should be no intervention against law enforcement agencies in eradicating corruption. Interventions like this will create a sense of injustice. Let the law work with its mechanism and way of finding justice.
5. Deep-rooted community culture
   Corruption behavior in Indonesia has historically become a problematic habit (culture). To be eradicated, because of the many problems in various aspects that support corruption occurs. The complexity of this corruption does not seem to be a priority problem that must be resolved together. However, instead, corruption is used as a tool for the authorities who can provide opportunities and opportunities for himself and his group (party). The culture of corruption will mirror personality in a dilapidated nation and make this country poor because of the country's wealth stolen for the benefit of a few people regardless that his actions will make millions of people miserable.
6. The absence of an exemplary leader.
   The position of the leader in a formal or informal institution has an influence significant to his subordinates. Suppose the leader cannot set a good example in front of subordinates, for example, corruption. In that case, their subordinates will likely take the same opportunities as their superiors.

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3. HOW TO ERADICATE CORRUPTIONS

a. Giving severe punishment to corruptors will have a deterrent effect. This can also be a lesson for all people not to do the same thing.
b. So, a leader with integrity as a leader should be an excellent example for each member. If all the leaders of a country, government, company, or business do not commit a criminal act of corruption, the world of tourism will progress.
c. Take advantage of technology in telecommunications systems and technology. Even with technology such as the internet, anyone can do business. The prevention is both of the global levels that can be adjusted to the scale and scope of the community itself.
d. Establishing the proper steps when making decisions and strategies, of course, there must be an evaluation that can later become a benchmark in the community regarding the steps taken and anticipating by working together with all parties.

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Juridical Review of Investment Problems with an Environmental Inspection According to Provisions of Law Number 25 of 2007 Concerning Investments

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ABSTRACT
In the advancement of the business, particularly in the current business area, it cannot be rejected that the Coronavirus pandemic impedes financial improvement exercises in Indonesia. This does not preclude the chance of affecting venture issues in the business venture in carrying out and creating organizations in all areas. The Speculation Organizing Board as an administration organization, additionally puts forth attempts to keep up with the venture environment, one of which is improving the permitting cycle. This is done to react to the exorbitant interest of business entertainers. Notwithstanding, financial backers should focus on a few things so that in maintaining the business, they can give legitimate sureness and apply administration standards in maintaining the business both in strong and ecologically solid corporate administration and on the condition of local area culture as a corporate social obligation to society. As specified in Law Number 25 of 2007 concerning Speculation, in the issue of the venture, it should likewise focus on the climate, natural manageability, and save the climate as directed in Article 3 passage (1), Article 16 letter d, and Article 18 section (3) letter g In Article 18 section (3) letter g. Obviously, in the venture, financial backers should give offices to the climate. In its execution, there have been numerous deviations submitted by financial backers to get the most extreme benefit and affect because of not focusing on natural viewpoints not to cause legitimate assurance, sureness of rights, and lawful insurance. In this way, it is essential to have courses of action to accomplish the issue of naturally sound speculation.

Keywords: *Environmental Inspection, Investment Problem, Natural Speculation.*

1. INTRODUCTION

The venture is a significant necessity for a country in financial turn of events and supportable turn of events. Its execution should focus on the relevant standards and rules, like focusing on the insurance of the climate to assist people in the future and did economically. Speculation as one of the financial exercises to back different advancement programs, both to support the business world and the public authority, is exceptionally important to acknowledge economic improvement objectives and benefit society overall.

Indonesia's improvement, which adroitly started in 1969, cannot be isolated from Indonesia's new financial arrangement in the field of capital, particularly foreign capital. Starting with the arrangement on foreign capital and homegrown capital. This approach has started the origination of Indonesia's turn of events, whose execution started in 1969. The natural angle has not yet been remembered for the origination of improvement. Then, in the phases of talking about natural issues being developed at the UN gathering, it continued until 1972. Around then, an arrangement was reached to connect issues and improvement, particularly in non-industrial nations. These advancements have assisted with reformulating the origination of Indonesia's improvement, which has come to be known as the earth sound turn of events.

Every nation can apply the methodologies, dreams, models, and devices accessible to every nation, as per its general conditions and needs, to accomplish feasible improvement in three measurements which are the general objectives. Green economy with regards to economic turn of events and neediness easing as one of the significant devices accessible to accomplish supportable turn of events. It can give alternatives to

strategy making; however, it ought not to be a bunch of unbending principles. The Assembled Countries stresses that it should add to destroying neediness just as manageable financial development, expanding social consideration, upgrading human prosperity, and setting out business open doors and fair work for all while keeping up with the sound working of the World's environments.

Concerning the issues in this examination, to be specific, what should be satisfied by financial backers in putting resources into naturally solid capital dependent on Law Number 25 of 2007 concerning Speculation, and what are the results if financial backers contribute their capital are not earth sound?

2. METHODS

This research was conducted using secondary data and a normative juridical approach. The studies in this research are legal principles, legal conceptions, expert views, and legal doctrines and legislation.

3. RESULT AND DISCUSSION

3.1 Meaning of Venture

Venture as one of the financial exercises to fund different public advancement programs. Both to support the business world and the public authority is significant to acknowledge manageable improvement objectives and have benefits for society overall. For this, the public authority makes a strategy to utilize the venture. Additionally, an after effect of the inescapable worldwide monetary relations is likewise upheld by understanding the global-local area on financial advancement and globalization, bringing about an increment in worldwide speculation relations.

In the Enormous Indonesian Word reference, it is expressed that speculation implies putting cash or capital in an organization or task to acquire benefit, while in Law Number 25 of 2007 concerning Speculation Article 1 number 1 clarifies that venture is all types of venture exercises, either by speculation or speculation. Homegrown capital and unfamiliar speculation to direct business in the domain of the Republic of Indonesia.

Unmistakably, there is no critical contrast between venture and speculation from the meaning of speculation or venture. The venture or speculation is a movement completed by an individual or legitimate element. It leaves a portion of his assessment, so it very well may be utilized to do a business in the expectation of getting results or benefits.

Ida Bagus Wyasa Putra expressed that, "The expression speculation law comes from an English interpretation, to be a specific venture of law, while there is no venture term in the enactment. The meaning of venture law is the legal standards regarding the opportunities for speculation, speculation conditions, assurance, and in particular coordinates with the goal that speculation can make thriving for individuals.

Among individuals, the word venture or speculation is a term that refers to day-by-day business exercises just as in the language of enactment. The term speculation is a famous term in the business world, while the venture is usually utilized in enactment. In any case, fundamentally, the two terms have a similar significance.

Law Number 25 of 2007 concerning Speculation has separated between direct venture and aberrant speculation. It can be found in the clarification of article 2 of the law. It is said that interest in all areas in the region of the Republic of Indonesia is immediate speculation and does exclude backhanded ventures. Then, at that point, this law additionally does not recognize homegrown speculation and unfamiliar venture.

As per Komaruddin's view, likewise detailing venture from a monetary perspective and survey speculation as one of the variables of creation notwithstanding different elements of creation, the thought of venture can be separated into three, specifically:

1. An activity to purchase offers, bonds, or different speculations. b. A demonstration of giving capital merchandise.
2. Usage of accessible assets for creation with future payments.

Venture exercises can be grouped into two, specifically as follows:

a. Direct venture is characterized as a speculation movement that includes the exchange of undertaking supports that have an extended period determined to acquire customary pay, interest from the gathering making the exchange of assets and a business hazard. This immediate speculation should be possible by building up a joint endeavor with a nearby accomplice, directing joint activities without shaping another organization, changing over credits into more significant part investment in neighborhood organizations, giving specialized and material help just as by giving licenses.
b. Roundabout Venture (Portfolio Speculation) is a transient venture movement that remembers exchange exercises for the capital and currency markets. This speculation is called a momentary venture. As a general rule, purchasing and selling offers or monetary forms in a moderately brief timeframe relies upon changes in the worth of offers or potentially the money they need to exchange.

The contrast between direct speculation and aberrant venture is as per the following:

1. In a circuitous venture, investors do not have authority throughout the day-to-day administration of the organization.
2. In a direct venture, the danger is typically borne by the actual investors so that essentially they cannot sue the organization that does its exercises.
3. Losses on roundabout speculations are by and large not covered by common global law.

3.2 Standards and Targets of Speculation

There are a few standards in investing, and it is as per the following:

1. The rule of legitimate assurance is a rule in a condition of law that sets out the laws and arrangements of laws and guidelines as the reason for each strategy and activity in speculation exercises.
2. The rule of transparency is that being available to the public is on the right track to acquire correct, fair, and non-biased data about venture exercises.
3. The guideline of responsibility is the rule that discovers each movement and the eventual outcome of the execution of speculation, which should be responsible to the local area or individuals as the holder of the most significant power of the state as per the arrangements of the enactment.
4. The guideline of equal treatment and no qualification of the nation of beginning is the standard of non-unfair treatment of administrations dependent on the arrangements of laws and guidelines, both between homegrown financial backers and unfamiliar financial backers.
5. The rule of harmony is the rule that empowers the job of all financial backers together in their business exercises to understand the government assistance of individuals.
6. The guideline of reasonable proficiency is the rule that underlies the execution of
7. Venture by focusing on reasonable proficiency with an end goal to make a good, helpful and serious business environment.
8. The standard of maintainability is the rule that, in an arranged way, takes a stab at the improvement interaction through the venture to guarantee thriving and progress in all parts of life in the present and for what is to come.
9. The rule of ecological understanding is the rule of venture completed by yet focusing on and the insurance and upkeep of the climate.
    1. The guideline of autonomy is the rule of venture did by proceeding to focus on the capability of the country and state by not shutting itself on the passage of unfamiliar capital for the acknowledgment of financial development.
10. The guideline of equilibrium of progress and public financial solidarity.

In addition to the above legal principles, the Agreement on Trade-Related Investment Measures (TRIMs) has determined a principle, namely non-discrimination. This means that this principle in investing does not distinguish between foreign and local Investment. It was considering that Investment does not recognize national borders. In other words, that Investment invested by investors is not distinguished between foreign Investment and local Investment, which seeks to maintain a balance of regional economic progress, in a unified manner, national economy.

Law Number 25 of 2007 concerning Investment contains the objectives of implementing Investment, while the objectives of organizing Investment are to:

a. Increase national economic growth.
b. Create jobs.
c. Promote sustainable economic development.
d. Improving the competitiveness of the national business world.
e. Increase the capacity and capability of national technology.
f. Encouraging the development of the people's economy.
g. Processing the potential economy into real economic strength by using funds originating from both within the country and abroad.
h. Improving people's welfare. [1]

The objective of implementing such Investment can only be achieved if the supporting factors that hinder the investment climate can be overcome, among others, by improving coordination between central and regional government agencies, creating an efficient bureaucracy, legal certainty in the investment sector, highly competitive economical costs, as well as a conducive business climate in the fields of employment and business security.

Meanwhile, the benefits obtained from this domestic Investment will be able to save foreign exchange, reduce dependence on foreign products, encourage the advancement of domestic industry through forwarding linkages and backward linkages, and contribute to efforts to absorb labor. Meanwhile, the benefits of foreign Investment or capital are to create jobs, technology experts and valuable skills, and a source of savings or foreign exchange.

3.3 Types of Investment

In general, investment activities can be classified into two major parts. According to Jonkers S., Types of Investment, namely, direct Investment or also called

long-term Investment, and indirect Investment or also called portfolio investment.

a. Direct investment (direct investment) or also called long-term Investment. The meaning of this type of direct Investment is generally associated with the existence of capital management activities. Activities can be carried out in the form of:
    1) Establish a joint venture company together with local partners.
    2) Conduct joint operation schemes without forming a new company.
    3) Converting company technical and managerial assistance (technical and management assistance).
    4) Licensing, etcetera.
b. Indirect Investment (indirect Investment) or also called portfolio investment. Types of Investment in the indirect concept are usually characterized by:
    1) Shareholders do not have control over the management of the company/company in day-to-day business.
    2) The risk factor is borne by the shareholders themselves so that basically, it is ensured not to interfere with the company in controlling the course of its activities.
    3) Generally not protected by generally applicable international customary law. [2]

Based on this explanation, it can be stated that investment activities are classified into two parts, namely direct Investment, and indirect Investment. Direct Investment is an investment activity generally carried out directly by investors, namely establishing joint ventures, converting technical and managerial assistance to companies, and so on. Indirect Investment is an investment activity carried out by investors indirectly or generally only in capital flows without active involvement, such as stock trading and others. Meanwhile, if viewed from the source of funding, Investment is divided into domestic Investment (PMDN) and foreign investment (PMA).

"Domestic investors are individuals who are Indonesian citizens, Indonesian business entities, the Republic of Indonesia, or regions that make investments in the territory of the Republic of Indonesia. Foreign investors are individual foreign citizens, foreign business entities, and/or foreign governments that make investments in the territory of the Republic of Indonesia." [3]

3.4 Sources of Investment Law

The sources of law in the implementation of Investment in Indonesia are as follows:

a. Law Number 25 of 2007 concerning Investment.
b. Government Regulation of the Republic of Indonesia Number 45 of 2008 concerning Guidelines for Providing Incentives and Providing Ease of Investment in the Regions.
c. Government Regulation Number 52 of 2011 concerning the Second Amendment to Government Regulation Number 1 of 2007 concerning Income Tax Facilities for Investment in Certain Business Fields and/or in Certain Regions.
d. Presidential Regulation of the Republic of Indonesia Number 39 of 2014 concerning List of Business Fields Closed and Business Fields Open with Conditions in the Investment Sector.
e. Government Regulation Number 18 of 2015 concerning Income Tax Facilities for Investment in Certain Business Fields and/or in Certain Regions.
f. Presidential Regulation Number 044 of 2016 concerning List of Business Fields Closed and Business Fields Open with Requirements in the Investment Sector.
g. Presidential Regulation Number 16 of 2012 concerning General Investment Plans.
h. Regulation of the Head of the Investment Coordinating Board Number 13 of 2017 concerning Guidelines and Procedures for Licensing and Investment Facilities.
i. Regulation of the Head of the Investment Coordinating Board Number 06 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities.

3.5 Rights, Obligations, and Responsibilities of Investors

Law Number 25 of 2007 concerning Investment also regulates the rights, obligations, and responsibilities of investors so that there is legal certainty, emphasizes the obligations of investors to apply the principles of sound corporate governance, pays respect to the community's cultural traditions, and carry out social responsibility. The regulation of investor responsibilities is needed to encourage a healthy business competition climate, increase environmental responsibility, fulfill the rights and obligations of workers, and encourage smooth implementation of Investment.

a. Investor Rights

Regarding the rights of investors, it is regulated in Article 14 of Law Number 25 of 2007 concerning Investment which stipulates that every investor is entitled to:

1) Certainty of rights, law, and protection.
2) Open information about the line of business it runs.
3) Service rights.
4) Various forms of convenience facilities in accordance with the provisions of the legislation.

b. Investors' Obligations

Regarding the obligations of investors, it is regulated in Article 15 of Law no. 25 of 2007 concerning Investment, which stipulates that every investor has the obligation to:

1) Applying the principles of good corporate governance.
2) Implement corporate social responsibility.
3) Make a report on investment activities and submit it to the Investment Coordinating Board.
4) Respect the cultural traditions of the community around the location of investment business activities.
5) Comply with all statutory provisions.

The obligations of investors are precisely regulated to provide legal certainty, emphasize the obligations of investors to apply the principles of sound corporate governance, respect the cultural traditions of the community, and carry out corporate social responsibility. The regulation of investors' responsibilities is needed to encourage a healthy business competition climate, increase environmental responsibility, fulfill the rights and obligations of workers, and encourage efforts to comply with the laws and regulations of investors.

Regarding the obligations of investors as contained in Article 15 of Law no. 25 of 2007 concerning Investment, it can be concluded that corporate social responsibility is the responsibility inherent in every investment company to continue to create harmonious, balanced, and in accordance with the environment, values, norms, and culture of the local community in which it invests. The capital.

c. Responsibilities of Investors

The responsibility of investors is regulated in Article 16 of Law no. 25 of 2007 concerning Investment, which explains that every investor is responsible for:

1) Ensuring the availability of capital originating from sources that do not conflict with the provisions of laws and regulations;
2) Bear and settle all obligations and losses if the investor stops, leaves, or abandons his business activities unilaterally according to the provisions of the legislation.
3) Creating a fair competition business climate, preventing monopolistic practices, and other detrimental things to the state.
4) Maintain environmental sustainability.
5) Creating safety, health, comfort, and welfare of workers.
6) Comply with all statutory provisions.

Article 17 also explains that investments seeking non-renewable natural resources are obligated to allocate funds in stages to restore locations that meet environmental feasibility standards, the implementation of which is regulated in accordance with the provisions of laws and regulations.

These provisions anticipate environmental damage caused by investment activities, whether carried out by domestic investors or foreign investors.

3.6 Environmentally Friendly Investment

Speaking of environmentally sound Investment, we cannot be separated from the provisions of Law Number 25 of 2007 concerning Investment. The law explains that Investment must pay attention to environmental problems. This can be seen in the provisions of Article 3 paragraph (1) point h, which explains that Investment is carried out based on the principle of environmental insight. Article 16 letter d also explains that every investor is responsible for preserving the environment. Then Article 18 paragraph (3) letter g also explains that Investment that gets the facilities as referred to in paragraph (2) is one that at least meets one of the following criteria, namely preserving the environment.

From these provisions, it is clear that in Law Number 25 of 2007 concerning Investment, in the sense that the direction of investment development policy is towards a green economy development program, where the target of economic growth must be in line with the issue of preventing global warming and the goals of sustainable development. Environmentally sound Investment needs to be in synergy with environmental development policies and programs, development of priority sectors and environmentally friendly technology, green economy development, provision of investment facilities, and/or incentives. (Nurasmah, 2015:562).

In Indonesia, green Investment with green industry is also part of the effort to realize a green economy (Green Economy). According to Law no. 3 of 2014 concerning Industry, Article 1 number 3 explains that the green industry is an industry that in its production process prioritizes efficiency and effectiveness in the use of resources sustainably to be able to harmonize industrial development with the preservation of environmental functions and can provide benefits to the community.

a. Making a suitable Investment in natural resource capital means that investments and economic activities carried out in natural resource sectors need to be managed in a green/environmentally friendly manner. Covering the agricultural, fisheries, water resources, and forest sectors, there is also a wealth of biodiversity (biodiversity).
b. Invest in energy efficiency and natural resources.
c. Creating and growing conditions that support the development of Investment and efficiency, which can be in the form of fiscal/expenditure policies that are directed towards green Investment in various sectors, policy reforms, and regulatory changes in a direction that is more conducive to

efficiency, low emissions and low pollution, and maintenance of natural resource capital.

This explanation means that green Investment refers to the Investment needed to reduce greenhouse gas emissions and air pollution without significantly reducing the production and consumption of non-energy goods, including public and private Investment. So there is no definite understanding of green Investment or green investment implementation standards in Indonesia. However, recently, natural resources and environmental services have only been seen from the perspective of production factors to support the flow of the economy. Nevertheless, it is also not limited to supporting economic activities and unlimited ability to absorb the resulting degradation and pollution.

The Ministry of Industry of the Republic of Indonesia has explained seven (7) characteristics of the green industry, namely efficient use of input materials, alternative input materials, low energy intensity, low water intensity, talented human resources, minimization of waste generated, and technology low carbon. Article 18 of Law no. 23 of 1997 concerning Environmental Management, explains the requirements for environmental management, in which every business and/or activity that causes a large and significant impact on the environment is required to have an analysis of environmental impacts to obtain a permit to conduct business and/or These businesses and activities are granted by the authorized official in accordance with the applicable laws and regulations, and the permit includes the requirements and obligations to carry out efforts to control environmental impacts.

In issuing a permit to conduct a business and/or activity, attention must be paid to the spatial plan, public opinion, and the considerations and recommendations of the competent authority relating to the said business and/or activity.

Where the permit is given must be announced because the announcement of the permit to do business and/or activity is the implementation of the principle of government openness. Announcement of the permit to conduct business and/or activity allows community participants, especially those who have not yet used the opportunity in the objection process, hearings, and others in the permit decision-making process. Decisions on permits to conduct business and/or activities must be announced. Without a permit decision, everyone is prohibited from disposing of waste originating from outside the territory of Indonesia into the Indonesian environmental media, and everyone is prohibited from importing hazardous and toxic waste.

The concept of a one-stop integrated licensing service has been implemented in the provisions of Law no. 25 of 2007 concerning Investment as regulated in Article 25 explains. Investments making investments in Indonesia must comply with Article 5 of this Law. Ratification of the founder of a domestic investment business entity in the form of a legal entity or not a legal entity is carried out in accordance with statutory regulations. Ratification of the founder of a foreign investment business entity in the form of a limited liability company is carried out in accordance with the laws and regulations. An investment company that will carry out business activities must obtain a permit in accordance with the provisions of the legislation from the agency that has the authority unless otherwise stipulated in the law. As referred to in paragraph (4), the permit is obtained through a one-stop integrated service.

While in Article 4 of Government Regulation no. 45 of 2008 concerning Guidelines for Providing Incentives and Providing Investment Facilities in the Regions explains that the provision of investment facilities in the form of accelerated licensing as referred to in Article 3 paragraph (2) is carried out through one-stop integrated services in accordance with the provisions of the legislation. In order to attract as many investors as possible, Indonesia must prepare good and more comprehensive incentives. The incentive is in the form of simplification of licensing, which has been a frightening specter for investors. This is because licensing issues take quite a long time and are convoluted and with a long bureaucracy. It also affirms the obligations related to the arrangement of provisions regarding environmental management that must be carried out by the person in charge of the business and/or activity in carrying out the business and/or activity.

For businesses and/or activities required to make or carry out an analysis of environmental impacts, the management plan, and environmental monitoring plan. Which must be implemented by the person in charge of the business and/or activity must be clearly stated and formulated in the permit to conduct a business and/or activity, such as the obligation to treat waste, requirements for the quality of waste that may be disposed of into environmental media, obligations related to waste disposal, the obligation to report results to the agency responsible for controlling environmental impacts.

3.7 Objectives of Environmentally Friendly Investment

The presence of investors has broad benefits from both domestic and foreign investors because a country's economy that wants to grow sustainably requires continuous capital. So the problem of Investment is an essential pillar for the economic growth of a country. The benefits obtained by Investment for the Indonesian state are providing employment opportunities, developing import substitution industries to save foreign exchange, encouraging the development of non-oil and gas export

goods industry to earn foreign exchange, development of underdeveloped areas, and transfer of technology.

Therefore, it is clear that Investment is one of the dilemmas for financing development that can facilitate continuous economic development and can be stimulated to balance the economic capabilities of other countries. Investment in a country is related to the demands to carry out national development in that country. In general, the difficulties faced in implementing national development, which focuses on economic development, include lack of capital, technology, knowledge, experience, and abilities/skills. Developing countries generally experience these obstacles because every national development is always multidimensional, which requires significant sources of financing and resources, both from within and outside the country.

In order to increase per capita income, in the sense of increasing economic activity and the level of community welfare, one of the sources of financing and resources that can be utilized for the benefit of national development is Investment which is carried out in various forms of investment, both domestic and foreign. Utilizing Investment optimally, maximum profit will be sought, so that in turn, will be able to carry out capital accumulation, have capital equipment, experience, and skills independently.

4. CONCLUSION

The obligation of Investment in the implementation of Investment is to emphasize the obligations of investors to the application of sound corporate governance principles and to carry out corporate social responsibility and is a legal certainty. As the provisions of Law Number 25 of 2007 is a law that pays attention to environmental problems, in accordance with the provisions of Article 3 paragraph (1), Article 16 letter d, Article 18 paragraph (3) letter g. Because in its implementation, investors make many deviations to get the maximum profit and have an impact due to not paying attention to environmental aspects. So that it does not create legal certainty, for this reason, it is necessary to have arrangements to achieve environmentally sound investment problems.

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The Effectiveness of Renewing the State Property Data Collection System of the Supreme Court of the Republic of Indonesia

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ABSTRACT
This paper analyzes the renewal of the State Property (BMN) data collection system of the Supreme Court of the Republic of Indonesia. This study uses normative analysis. Indonesia is a developing country. These developments cover every sector of social life and governance, including systematic data collection of all goods used and obtained at the State Revenue and Expenditure Budget's expense to create professional and accountable asset management governance. In this globalization era, good digitalization in managing State Property is needed to ease the monitoring, fostering, supervising, and controlling processes. The old, convoluted, and inefficient way of managing and administering BMN harms the country. One is that the expenditure in the officials' travel budget for collecting BMN data is significant. As one of the highest judicial institutions, the Supreme Court of the Republic of Indonesia has launched an Information System Application for the Supreme Court of the Republic of Indonesia, namely SIPERMARI, a guardian of state assets. SIPERMARI was launched to facilitate the BMN management carried out in the Supreme Court and the judicial bodies. Various positive and negative factors emerged, both from the internal and external factors of the SIPERMARI application.

Keywords: *Asset Management, State Property, Supreme Court, System Updates.*

1. INTRODUCTION

The Indonesian government has provided welfare guarantees for the people (welfare state). It is a fundamental state awareness that cannot be separated from the democratization concept of the public sector. In order to realize this, the government has the right and obligation to manage public services. Law Number 25 of 2009 concerning Public Services is intended to provide legal certainty in the relationship between the community and public service providers. One of the fundamental things that have to be appropriately managed is the state financial system in supporting the realization of state goals. State financial management, as referred to in the Constitution of 1945, needs to be carried out in a professional, accountable and responsible manner for the interest of the people, which is manifested in the State Revenue and Expenditure Budget (APBN) and Regional Revenue and Expenditure Budget (APBD).

The constitutional basis on the State Budget of the Republic of Indonesia is stipulated in Chapter VIII, Article 23 of the Constitution of 1945. This is also regulated in Law Number 1 of 2004 concerning the State Treasury because it is in line with the development needs of state financial management in the context of managing financial resources. The government needs to manage the State Budget efficiently and transparently.

The State Treasury, as referred to Law Number 1 of 2004, includes the management of State or Regional Property (BMN/D) in which the ministers or heads of the institution are the users of budget or the users of goods.

The Supreme Court (*Mahkamah Agung*) is a high state institution in the Indonesian constitutional system that holds the highest judicial power and the Constitutional Court [1]. It has a responsibility to create the excellent management of BMN. Therefore, the Supreme Court issued Circular Letter (SEMA) Number 1 of 2017 concerning Guidelines for the Use of State Property in the Supreme Court of the Republic of Indonesia and the Judicial Body under it. Such a circular letter aims to guide within the Supreme Court and the judicial bodies under it regarding the implementation of

recording and to report the use of BMN to have the same perception so that uniformity in using BMN is achieved.

Every development has advantages and disadvantages that must be continuously improved to create effective and transparent management of state assets.

Considering the background above, the problem formulation to be discussed in this study are a) how is the data updating system for State Property (BMN) in the SIPERMARI application? b) what are the advantages and disadvantages of using the SIPERMARI application to manage data collection on State Property (BMN) within the Supreme Court and its judicial bodies? And c) how effective is updating the State Property (BMN) data collection system with the SIPERMARI application?

2. METHOD

The research method used in this study is a normative juridical method with a statutory approach that begins with a search for related regulations, followed by a study of the implications accompanied by a SWOT analysis on the implementation of the SIPERMARI application in the Supreme Court and the judicial bodies under it.

3. RESULT AND DISCUSSION

The management of BMN has been regulated in detail by the laws and regulations of the Republic of Indonesia. Law Number 1 of 2004 concerning the State Treasury as a new paradigm can be the beginning of good practice in the arrangement and management of state assets. It can make state assets management becoming more orderly, accountable, and transparent. Modern and professional state assets management carried out by prioritizing good governance will undoubtedly increase the trust of the public and policymakers in the management of state finances.

Good governance will be one of the essential factors in creating good BMN governance. This will become a corridor for the management of state assets in providing a reference that state assets must be used to their maximum extent to support their core services and allow the budgetary function to utilize assets to generate revenue for the state.

The vision of managing state assets in the future is to become the best state asset management in the world. It is not only technically but also cognitively. An asset manager must be able to formulate the needs for national State Property (BMN) accurately and indeed and increase the benefits and value of the State Assets.

In order to make this vision comes true, it requires hard work from all parties, considering that the problems on state assets management are so complex now. Therefore, the management of state assets must be handled by professional and reliable people who understand the laws and regulations governing state assets owned by Indonesia [2].

The public services must be open to create a clean, effective, and transparent governance, easily accessible to all parties who need it, adequate and easy to understand [3], accountable, and good quality. Therefore, an electronic-based government system is needed. This is in line with Presidential Regulation Number 95 of 2018 concerning Electronic-Based Government Systems.

This regulation aims to increase the integration and efficiency of the Electronic-Based Government System (SPBE) nationally. Technology-based government, also known as e-governance, gives citizens a choice on when and where they can access government information and services [4]. The success of good governance in terms of public services can be indicated by the support and trust of the public in the government [5]. The practice of good governance can be translated easily and significantly through public services.

Values such as efficiency, fairness, transparency, participation, and accountability can be measured easily in the practice of providing public services [5]. Service is essentially a series of activities that are carried out regularly and continuously.

In using public authority, the government is obliged to follow the applicable state administrative laws so that there is no abuse of power in implementing state duties.

The presidential regulation that regulates the electronic-based the government system strongly supports the BMN arrangement system, which must be implemented with effectiveness, integration, sustainability, efficiency, accountability, and security. This becomes the foundation for the Supreme Court, as a high state institution in the Indonesian constitutional system, to renew the BMN data collection system.

The realization of this SPBE began with the issuance of the Decree of Chief Justice of the Supreme Court Number 269/KMA/SK/XII/2018 concerning Governance of Information and Communication Technology within the Supreme Court. This decree is the direction, foundation, and legal basis for implementing Information and Communication Technology (ICT). Within the Supreme Court and the judicial bodies under it.

In the Decree, ICT is regulated in detail, encouraging the Supreme Court to realize the renewal of the BMN data collection system. The Decree of the Chief Justice of the Supreme Court point D explains that the principle of data, in this case referring to the data owned by the Supreme Court, is an asset managed according to the HATTA (Reliable, Accurate, Integrated, Up-to-date and Safe) principle. The state officials responsible for managing BMN within the Supreme Court and the

judicial bodies under it must follow the principles that have been determined.

In its implementation, ICT activities are carried out in coordination and cooperation between the Supreme Court's ICT and judicial bodies under it. ICT governance applies Good IT Governance (GIG) with standards adopting international standards of IT Governance or best practices. Such international standards of ICT governance have been recognized and have clear stages based on gap analysis and priority scale for strategic or operational goals of ICT.

In order to update the BMN data collection system, in August 2018, the Supreme Court has observed the Supreme Court's electronic data collection system through the Information System for the Supreme Court of the Republic of Indonesia or the SIPERMARI application.

The phases in implementing the best practice are as follows:

a. Preparation Phase

In preparing shared service applications, the Supreme Court's ICT unit collects the details of requirements based on the best practice related to the work processes, and the results become the primary input in terms of Reference (TOR).

b. Selection Phase

At this stage, in order to achieve a successful application implementation, the scope of application implementation contained in terms of Reference (TOR) needs to concern with the aspects of integration which include the following:

1) Selection of technology (application and supporting infrastructure);
2) Changes in the work processes, including the creation of SOPs;
3) Organizational changes (including change management); and
4) Implementation of methodology based on the best practice.

c. Development Phase

The development phase is carried out by professionals who can improve the function of the application, facilitate the way the application works and avoid system errors.

d. Testing Phase

This stage is carried out to assess whether the application works as expected or not. If any weakness is found in the SIPERMARI application, it has to be repaired.

e. Implementation Phase

If the process involves many locations, the Supreme Court must form a pilot working unit that gives technical guidance to all working units to minimize the risk of implementation failure.

f. Maintenance Phase

In this process, the Supreme Court's ICT unit must conduct periodic evaluations to ensure that the system runs by applicable specifications and standards.

In December 2018, the Supreme Court coordinated with the Ministry of Finance of the Republic of Indonesia (Kemenkeu) to synchronize the State Asset Management Information System (SIMAN) database managed by the Ministry of Finance. The SIMAN application is an application that is generally used by all ministries and institutions, so it does not accommodate the unique needs in asset management, especially in the Supreme Court and judicial bodies under it.

Finally, in July 2019, the Supreme Court Chief Justice officially launched the SIPERMARI application, which was attended by the head of the Supreme Court and the Director of State Property representing the Minister of Finance. In that event, the Decree of the Chief Justice of the Supreme Court Number 99/KMA/SK/VII/2019 concerning the Enforcement of Information System Applications was also issued. The Supreme Court stipulated using the SIPERMARI application as an application for managing BMN data within the Supreme Court and the judicial bodies under it.

The launch of the SIPERMARI application is supported by the Supreme Court to realize the President's decree regarding the Electronic-Based Government System (SPBE) by updating the BMN data collection system at the Supreme Court and the judicial bodies under it. It is also a commitment to create a new era of modern justice based on information technology. This commitment is a part of the Supreme Court's relentless efforts to create a tremendous Indonesian judiciary.

The SIPERMARI application for the State Property (BMN) management has 5 (five) functions as follows [6]:

- As an accurate and detailed BMN data processor.
- As a means of supervision and control or monitoring and evaluation of BMN.
- As an application that can be used for reporting and printing BMN data.
- As an application that can be used to consider making policies related to budget allocation for planning, procurement, and asset maintenance.
- As an application that can be used as a tool for the stakeholder to find any information on asset data used by working units within the Supreme Court and judicial bodies.

In addition, SIPERMARI also gives some benefits for BMN governance is as follows:

- Asset Management Automation, which means changing the old ways of convoluted, inefficient, and ineffective management and administration of State Property (BMN) to the modern one. This leads to the simplification of

procedures (SOP) on Big networks and Big Data.

- Expanding the Network, the use of internet-based applications can create extensive networks, in this case, People to People, People to Things or Machines, and Things or Machines to Things or Machines in real-time in interacting with millions of data without boundaries time and space.
- Valid Asset Data, which means that the asset data can be monitored at any time so it can minimize the practice of misuse of state budgets and assets.
- Strategic Policy Making Tool means that with the support of valid and fast data, it is easier for Leaders to take strategic policies related to assets in terms of planning, procurement, and asset disposal.
- Budget Savings means that the supervision and control can be done online so that the officials' traveling budget to monitor each working unit can be minimized.
- Real-Time Data Asset means that asset managers can obtain real-time asset data to carry out asset management analysis more efficiently and effectively.

In developing the SIPERMARI application, the Supreme Court cooperates with the Ministry of Finance in several crucial matters:

1. Monitoring the Director of State Property in terms of data policy on BMN reports.
2. Monitoring the Director of State Asset Management and Information Systems (PKNSI) related to the SIMAN application.
3. Monitoring the Head of the Information and Technology Center in terms of connection and flow of the BMN database.

The collaboration integrates the existing data in SIPERMARI with the BMN database located at the Ministry of Finance. This method cuts down the process of re-entering data and ensures that there is no duplicate in BMN data and no BMN that has not been inputted.

The previous collaboration is the first one carried out between the Ministry of Finance and other ministries and/or institutions in Indonesia and is hoped to be replicated by other institutions outside the Supreme Court. Moreover, SIPERMARI's success in managing the State Property at the Supreme Court and the judicial bodies below it earned the 2020 BMN Award.

However, the renewal of BMN data collection on MA through SIPERMARI, which has been proven to be successful, certainly has advantages, weaknesses, and threats in its implementation, as follows:

1. Advantages of internal and external factors of the SIPERMARI application
   a) The advantage of the Internal Factors is the full support of the Supreme Court Leader, in addition to human resources for further development. Moreover, the single-entry input system can prevent human errors in inputting data. Furthermore, the ease in searching for data and information can be done because the application system is web-based to be accessed anytime and anywhere.
   b) The SIPERMARI's advantage at External Factors is the permission to synchronize data on the main assets of the SIMAN application and has been awarded first place in the category of Continuous Improvement or Improvement of Sustainable Governance through Information Technology; it can be stated that the SIPERMARI application can be a model for other ministries and institutions in their management of BMN assets.
2. Weaknesses of internal and external factors of the SIPERMARI application
   a) The weaknesses of the Internal Factors include the limited budget allocation, substandard socialization to work units within the Supreme Court and the judicial bodies under it, inadequate human resources to develop applications to achieve the SIPERMARI's grand design targets, and the unsatisfactory use of this application.
   b) The weakness of the External Factors is that changes in government policies related to asset management through the SIMAN application, which SIPERMARI relies on, may not be reused.
3. The threat is outside interference to the SIPERMARI's server system and networks, such as malware, bugs, and hackers.

The Supreme Court must be aware of the above advantages, weaknesses, and threats to improving the SIPERMARI application, which has succeeded in assisting the management of BMN within the Supreme Court of the Republic of Indonesia and the judicial bodies under it. This is essential because the success of asset management can be realized through supervision, overall control over asset management, and the ability to solve problems and find solutions. Of equal importance is the possession of comprehensive knowledge overall assets owned (i.e., the amount, the existing condition, and the problems) of asset managers at the Supreme Court, ranging from the Secretary of the Court as the Budget User Proxy and the Proxy of the Property User to the Secretary of the Supreme Court as the Property User and Budget User at the Supreme Court, who must have.

Furthermore, an asset manager must

1. have an understanding of the rules and regulations in asset management and administration,

2. be orderly in reporting and recording BMN,
3. be able to utilize information technology as a valid database, and
4. be able to optimize the utilization of existing assets within the Supreme Court and the judicial bodies below it.

4. CONCLUSION

The application of Information System Equipment for the Supreme Court of the Republic of Indonesia (SIPERMARI) is an effort to renew BMN management within the Supreme Court of the Republic of Indonesia and the judicial bodies under it to realize clean, effective, transparent, and accountable governance. This application proves to help get good real-time data assets, affording big data and extensive networks to encourage automation of BMN asset management that is not complicated, efficient, and effective, and even able to save on budget. However, this application has advantages and disadvantages and even threats that need to be considered and monitored by the Supreme Court to develop the best solutions for any weaknesses and threats faced in using the SIPERMARI application.

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Protection of Local Products Through the Law of Geographical Indication

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ABSTRACT
Indonesia's potentiality currently enhances significantly of its local products. Those are necessary to be protected due to their attachment to their locals, man, and natural resources. By geographical indication (GI), local products should be protected from counterfeit or infringement from other illegal parties of other countries. *Gayo* or *Toraja* coffee have been registered by Japanese and the Netherlands companies, which responded by Indonesia through the prohibition of words *Gayo* and *Toraja* to use. This lesson learned from these cases, Indonesia sees the importance of geographical indication protection. It is not easy to protect Indonesia's GI. It was shown by the facts that are, unfortunately, many obstacles to register 1000 GI. By early 2021, Indonesia only has below 100 registered GI. In the meantime, Indonesia had enacted Law No. 14 of 1997 of Trademark, which has been revoked by Law No. 16 of 2020 of Trademark and GI. It could be said that the failure is due to the lack of the importance of GI protection of Indonesian people and government. Moreover, the registration system of GI contributes to the Indonesian failure. By learning of other countries' experiences, GI is usefully to protect local products and improve the quality of life of local people's economy. The critical success of GI protection lies in the cooperation between the government and local people. The cooperation will accelerate the realization of GI' protection.

Keywords: *Protection of local products, geographical indication.*

1. INTRODUCTION

Local products made by people in the country currently have an essential role in supporting the economy. With a considerable potentiality of the whole land, Indonesia has many products of every province or municipality. The potential supply of local product markets reaches 140 million transactions every month. [i]

Local products generally explore and rely on the peculiarities of the area concerned. Indonesia's various natural resources, ranging from forests, sea, natural gas, petroleum, coal, and regional handicrafts, can significantly form national and international market shares. Some local products have been known globally, such as Gayo coffee (Aceh), Toraja coffee from North Sulawesi, Luwak coffee, Batik, woven fabrics, and many more.

Marketing products abroad has proven that Indonesian products can compete and not be inferior to other foreign products. Therefore, it is time for the citizens of Indonesia to be proud of using Indonesian products. Moreover, starting in 2021, the government, through Communications and Information Technology. They have set the date of May 5 as *Bangga Buatan Indonesia* [Indonesia's Proudly Made Day]. [ii]

The National Movement for Proud Made in Indonesia aims to make Indonesian people love and use the work of the nation's children, especially local products produced by SMEs. These SMEs are the backbone of the nation's economy that needs to be appreciated and saved to succeed, especially during difficult Covid-19 pandemic times the like today. The stipulation of this BBI Day will encourage to be the primary consumption of Indonesian manufactured goods. During the time, the use of local products is expected to reduce the impact of the pandemic and then create consumption as layoffs of labor termination. [iii]

Technological developments require the market to be managed virtually through the internet. Various marketplaces are already available to be used. In addition, there also social media are available to offer products. These various online ways of marketing can make it easier for exporters to meet the need of foreign buyers. This facility is expected to encourage an enhancement of Indonesian exports and help SMEs reach the global market. [iv](4) By worldwide online marketing, a product can be absorbed without being

restrained by time and place. However, this condition requires the owners of local products to be careful, especially in anticipating infringement of these local products by foreigners, as happened to Gayo coffee and Toraja coffee.

Violations of GI of Gayo and Toraja coffee by The Netherlands and Japanese farmers are discouragedly prohibited from using the Gayo and Toraja names because these names had already been registered as trademarks of foreign companies. This can happen because the names of Gayo and Toraja coffee have not been protected in their own country (Indonesia).

Local products characterized by nature or local skills or both of them, such as Gayo and Toraja coffee, can be protected by the term of GI. GI indicates the area of origin of product due to geographical, environmental factors including natural and human factors or both of these, gives a particular reputation, quality and characteristics. The regulation of GI is stipulated in Law No. 20 of 2016 concerning Brands and Geographical Indications. Through IG, the products made and owned by the local community will be well protected.

Considering that Indonesia has a lot of potential products, the Directorate General of Intellectual Property Rights target 1000 registered GIs in 2020. In fact, until June 2021, the registered GIs are still less than 100. This failure shows that there are still obstacles to the protection of GIs in Indonesia. Therefore, this paper will explore the obstacles to protecting GIs in Indonesia and what efforts have been made to overcome these obstacles.

2. THE PROBLEM OF PROTECTING GEOGRAPHICAL INDICATIONS IN INDONESIA BENEFITS OF GI PROTECTION FOR LOCAL PRODUCTS

Protection of Geographical Indications, commonly abbreviated as GI, as other Intellectual Property Rights, aims to protect rights owners from third parties who violate their rights and the protection of GI. The definition of GI is stated in Article 22 paragraph (1) of TRIPs which reads: *For this Agreement, Geographical indications identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation, or other good characteristics are essentially attributable to its geographical origin.*

The GI concept adopted by Indonesia adopts the TRIPs agreement on the minimum standards regulated in Article 22 TRIPs. The scope of GI includes:

1) Natural resources,
2) Handicrafts and
3) Industrial products.

GI, according to the Law on Marks and Geographical Indications Article 1 number (7) is defined as:
"A sign indicating the area of origin of an item and/or product due to geographical, environmental factors including natural factors and human factors or a combination of these two factors gives a particular reputation, quality and characteristics to the goods and/or products produced.

Based on this definition, there are 3 (three) essential elements in GI, namely:[v] (5)

1) Identification of goods originating from the region, region, or localization within the territory of a country.
2) the area shows the quality, reputation, or other characteristics of the goods
3) Essentially gives the attribute of geographic origin. The geographical area determines the quality, reputation, or specific characteristics of an item that will receive GI protection.

IG ownership cannot be owned individually. Based on Article 53 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, the applicants for GI are:

1) An institution that represents the community in a particular geographical area that operates an item and/or product in the form of:
   a) Natural resources;
   b) Handicraft items; or
   c) Industrial products;
2) Provincial or district/city government.

Thus, the owner of GI is not an individual but the local community represented by an institution that represents the community in a specific geographical area, among others;

1) manufacturers association,
2) Cooperative, and
3) Geographical indication protection society (MPIG).

Geographical, environmental signs, and factors are determinants of GI ownership. The meaning of 'sign' is the same as a brand as a distinguishing force. For trademarks that distinguished goods and/or services of the same kind, GI must refer to the area/region of origin of goods and/or products. The said goods and/or products show specific characteristics and qualities due to geographical [vi] environmental factors consisting of natural or human factors or a combination of these two factors. [vii]

Below are some examples of products that are influenced by geographical, environmental factors:

1) Natural factor
   What is meant by natural factors, the characteristics of which lie in their geographical location and influence? For example, Java Sindoro Sumbing Arabica coffee has a characteristic tobacco aroma because it is planted near tobacco plants on Sindoro Sumbing, Temanggung.
2) Human factor
   What is meant by human factors are technical factors, namely, examples of silk weaving techniques and Jepara furniture carving techniques.

3) Combination of Natural and Human Factors
4) Gayo Arabica coffee from Aceh is a quality IG product and has a characteristic taste and aroma. The influence of the geographical environment, Gayo coffee only grows and thrives in Bener Meriah and Central Aceh districts with an altitude of 1200 meters above sea level, so it is very supportive of coffee growth. In addition, the manufacture of Gayo Arabica coffee with a distinctive taste must use specific techniques. the espresso machine method can be used because the bitter taste will dominate and eliminate the original taste. (8)

Law No. 20 of 2016 concerning Trademarks and Geographical Indications stipulates that protection of must have the following elements:

1) Signor name indicating the place of origin of an item and/or product.
2) Goods and or products.
3) Influence of geographical, environmental factors, including natural factors, human-human factors, or a combination of both.
4) A particular reputation, quality, and characteristics on the goods and/or products produced.

Based on Article 56 of Law No. 20 of 2016 concerning Marks and Geographical Indications, applications for Geographical Indications cannot be registered if:

1) Contrary to state ideology, laws and regulations, morality, religion, decency, and public order;
2) Mislead or deceive the public regarding reputation, quality, characteristics, origin, source, the process of making goods, and/or their use.
3) similar. It is a name that has been used as a plant variety and is used for a similar plant variety unless there is an addition of equivalent words that indicate a geographical indication factor.

Application for Geographical Indications is also rejected if:

1) Documents Description of Geographical Indications cannot be verified; and/or
2) Have similarities in overall with the Geographical Indications that have been registered.

GI is based on a constitutive system that only protects registered geographical indications, products. In other meaning, unregistered GI will certainly not be protected even if the GI has been known and used for a long time. This system does show more legal certainty. Because GI adheres to the constitutive system, proof of the protection of its rights is in the form of a certificate, in this case, a GI certificate.

The protection period of IG is different from other Intellectual Property scopes, which have a certain period, such as brands, industrial designs, integrated circuit layout designs, and simple patents, which have a protection period of 10 years, for ordinary patents 20 years. While the protection of registered GI ownership has no time limit, as long as the reputation, quality and characteristics are maintained, the protection of the GI will continue. [viii]

Thus, Geographical Indications protect a sign indicating the area of origin of an item and/or product which due to geographical, environmental factors including natural factors, human factors, or a combination of these two factors gives a particular reputation, quality, and characteristics to the goods and/or products produced. Protected geographical indication products include natural resources, handicrafts, and industrial products.

The definition of *natural resources* here is everything that is based on nature that can be used to meet the needs of human life, which includes not only biotic components such as animals, plants, and microorganisms but also abiotic components such as petroleum, natural gas, various types of metals, water, and land.

In addition to protecting local products, geographical indications can also be a quality indicator that informs consumers that the goods are produced from a particular location. The influence of the surrounding environment produces quality goods with specific characteristics, which will continue to maintain its reputation. Geographical indications can also be a business strategy that can add commercial value to products because of their originality and product limitations that cannot be produced in other regions. On the other hand, GI is a culture that must be preserved and cultural heritage. For example, handicrafts. In addition, the GI protection of local products, showing uniqueness, is influenced by the nature of expertise and the traditional processes of the community for generations. GI protection of local products increases the selling value. In turn, it affects the welfare of the community; below are examples of well-known GI products:[ix]

a) *Roquefort cheese* is made in the Roquefort-Sur-Soulzon area of France, where most cheese producers live. Roquefort cheese is famous for its quality and uniqueness because of its distinctive taste from other cheeses. The cheese is made in a very dark cave with a darkness level of up to 90 percent, stored in it for 6 to 8 weeks after being molded. After that, the cheese is ready to be sold or consumed. This traditional method has been practiced since the 2nd century. Since the beginning of the 20th century, it has been protected by the Appellation d'Origine Contrôlée (AOC). Roquefort became the first cheese of AOC certification in 1925. [x]
b) Gayo coffee, planted at an altitude of 1,000 to 1,200 meters, comes from the Gayo, Central Aceh. It locates in Takengon and closes to Lake Tawar, and this is why Gayo coffee tastes distinctive. Most of the tribes living in this area are coffee farmers. Gayo coffee is very well-known, especially in the United States and

Europe, due to its strong flavor and low acidity with spice. Gayo Arabica Coffee tends to have an inconsistent taste. This is because of the different heights of coffee plantations, as well as various cultivation methods. If coffee is grown in different areas, with different heights and varieties, the physical quality and taste characteristics may also differ. Kopi Gayo is registered of IG ID G 000000005 and with Protected Geographical Indications (PGI) of the European Union. Bilateral cooperation promotes and enhances the Gayo Coffee branding through the ARISE+Indonesia program worth EUR 15 million (2019-2023). [xi]

3. SEVERAL OBSTACLES IN REALIZING IG PROTECTION

It is time to elaborate on the potential and create added value for underestimated products. It is time to not just focus on the advanced technology or magnificent infrastructure that tends to be elitist and lack attention to the need of the people as a whole. Many potentials are often ignored, even though this can be a solution if appropriately processed and correctly. IG potential, for example. However, there are several obstacles in protecting GIs in Indonesia that cause the lack of GIs. This is extensive homework for Indonesia. Considering the bulk of potential GI, Indonesia has many regions with the potential for GI. The latest data still show that the number of IG is below 100. It is dangerous for Indonesia due to repeated infringement of GI by foreigners, such as Gayo and Toraja coffee. It will ultimately harm the local people of the GI.

Some of the obstacles in the protection of GIs in Indonesia are caused by:

a) Lack of Public Understanding About IG

The classical problem with the development of intellectual property rights in Indonesia is dissemination. The lack of understanding of IPR protection is one of the obstacles, as is the understanding of GI. Many people, especially local communities with GI potential, do not understand the importance of protecting GI for their products. Likewise, with the regional apparatus, many local government officials do not understand GI. For this reason, there is the failure of local government to increase the number of GI in Indonesia as stipulated by law.

b) IG Protection Is Not Important

Even though the law delegates the Guidance of Geographical Indications, the government, especially the regional government, is by its authority. The coaching as intended includes several things:

1) preparation for the fulfillment of the requirements for Applying for Geographical Indications;
2) Application for registration of Geographical Indications;
3) utilization and commercialization of Geographical Indications;
4) socialization and understanding of the protection of Geographical Indications;
5) mapping and inventory of potential Geographical Indications products;
6) training and mentoring;
7) monitoring, evaluation, and coaching;
8) legal protection; and
9) facilitation of development, processing, and marketing of goods and/or products of Geographical Indications.

Looking at data up to early 2021, it is known that there are less than 100 GIs, to be exact 88 GIs from the 1000 GI target. It shows that the obstacles to the development of GI in Indonesia are due to the lack of understanding of GI and ~~a~~ priority scale of local governments. So that the potential local products of GI, in general, are not appropriately managed. A small example in the Kepulauan Riau, the role of the Riau local government so far is still limited to inventorying and submitting product data that has the potential to be registered with the Regional Office of the Ministry of Law and Human Rights. [xii]. There have not been other, more tangible measures to protect GIs in their area.

c) Inappropriate Protection System,

The constitutive system adopted by IG requires registration. Unregistered IG will not be protected. With the condition of the community and the performance of the local government as described above, of course, it is not easy to apply for GI registration. The constitutive system relies on the activeness of the two components above to apply for and carry out GI registration, plus the book or description documents requirements. The GI description document contains ~~i~~information, including the reputation, quality, and characteristics of the goods and/or products related to the GI factor of the goods and/or products for which the requested GI. Documents like this, of course, have to be made by a team of experts as needed according to the requirements of the GI. For example, in determining the existence of a relationship between products and geographical factors, of course, there must be a scientific description, and experts can only make it. Thus, the use of the constitutive system in Indonesia is not by the conditions of society and the current performance of the local government.

4. CONCLUSION

The primary purpose of GI is to protect producers and consumers from counterfeit products. Other goals are:

a) Maintaining the quality of regional products
b) Maintaining the sustainability of the area
c) Preserving the culture and traditional knowledge of the local product producing community
d) Strengthening community institutions producing regional specialties
e) Increase the income and welfare of the people who do business with unique regional products.

Some solutions in tackling IG problems include:

a Considering Indonesia with natural and human resources with great potential, the protection of products of GI should be prioritized. The government is obliged to socialize the benefits of GI more vigorously, both to local governments and communities.

There must be an adjustment between the GI protection system and the conditions of the community and local government officials, as Liza Mariana suggests a reform of the constitutive system in the GI. The use of the declarative system to replace the constitutive system would solve the current GI problem. As a system that provides GI protection without registration, the declarative system is considered more in line with the conditions in Indonesia. According to Liza, this option is not a setback but a strategy to increase the number of registered IGs.

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Halal Tourism Policy in West Nusa Tenggara Province During the Covid-19 Pandemic

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ABSTRACT
West Nusa Tenggara is a tourism hotspot with the potential to expand halal tourism. Lombok, in particular, is one of the greatest halal destinations, boasting the best halal tourist and halal honeymoon locations in the world. During the Covid-19 outbreak, the study's goal was to look into halal tourism policy in West Nusa Tenggara Province. The research technique, as well as the sort of normative legal study (statutory and conceptual). Primary and secondary legal documents were used in the research. The collection of legal materials was carried out through literature studies and documentation studies and analyzed descriptively analytically. Finally, from the 1945 Constitution of the Republic of Indonesia, Laws, Regional Regulations for the Province of West Nusa Tenggara, and the Regulation of the Governor of West Nusa Tenggara, halal tourism policy in NTB Province was governed in several regulations throughout the Covid-19 period. The tourism policy is implemented by implementing discipline and health protocols for the community, business actors, and tourists by paying attention to cleanliness, health, safety, and environment (CHSE). It is hoped that in the future, after Covid-19 passes, tourists visiting NTB will increase.

Keywords: *Covid-19 Pandemic, Halal Tourism, Policy.*

1. INTRODUCTION

Indonesia is in a cross position between the continents of Asia and Australia. This cross location helps Indonesia since it has an impact on numerous world cultures and civilizations, as well as the riches of flora and fauna, all of which are resources and capital for increasing the prosperity and welfare of the Indonesian nation, as described in Pancasila. Moreover, the Preamble to the Republic of Indonesia's Constitution of 1945 aspires to it. Indonesian capital must be best utilized through tourism initiatives aimed at increasing national income, expanding and equalizing business and employment opportunities, encouraging regional development, introducing and utilizing tourist attractions and destinations in Indonesia, as well as fostering a sense of patriotism and strengthening international friendships.

The development of world tourism shows a rapid development due to changes in the socio-economic structure of countries in the world and more and more people who have higher incomes. Tourism has also grown into a global phenomenon, transforming into a basic need and a component of human rights that must be safeguarded. [1]

West Nusa Tenggara Province (hereinafter abbreviated as NTB) is an area that has potential in the tourism sector and develops halal tourism. Lombok, in particular, is one of the top halal destinations in the world, with the best halal tourist and halal honeymoon options. [2]

Halal tourism refers to tourist visits to places and the tourism industry's preparation of sharia-compliant product service facilities and tourism management. [3] The birth of the NTB Provincial Regulation No. 2016 concerning Halal Tourism related to population aspects, namely a relatively homogeneous community both in terms of ethnicity and religion, from the geographical aspect of NTB Province, it is located in the golden triangle of the leading tourism destinations in Indonesia. [4]

The existence of the Covid-19 pandemic in early March 2020 had an effect on tourism life in NTB. The result felt was a decrease in tourists, which can then be seen in table 1 below:

Table 1. Number of Tourist Visits to NTB Province 2017-2020 Period

Year	Type of Visitors		Total
	Domestic Tourists	International Tourists	
2017	2.078.654	1.430.249	3.508.903
2018	1.800.000	1.000.000	2.800.000
2019	1.550.791	1.550.791	3.706.352
2020	360.613	39.982	405.595

Source: BPS: NTB In Figures 2020

If observed in table 1, it is known that the number of tourists visiting NTB before the Covid-19 Pandemic decreased in 2018. This was due to an earthquake that hit NTB. In 2020 tourist arrivals fell drastically due to the Covid-19 Pandemic. This study highlights the halal tourism policy in NTB during the Covid-19 pandemic.

2. METHODS

The research technique is normative legal research, which includes both a statutory and a conceptual approach. Primary and secondary legal documents were employed in this case. Literature and documentation studies are used to collect legal materials, which are then studied descriptively and analytically.

3. RESULT AND DISCUSSION

Halal tourism is not an exclusive tour but is the development of new universal values such as local wisdom that provides benefits to the community, non-Muslim tourists can also enjoy services based on halal values. [5]. Halal tourism encompasses not only the presence of pilgrimage and religious locations, but also the presence of supporting amenities such as halal restaurants and hotels, as well as places of worship. [6]

The general public still does not understand the primary meaning and purpose of halal tourism, both business actors and tourists. This is the main task of relevant stakeholders to more aggressively explain the primary meaning of halal tourism. Tourism development during the Covid-19 pandemic is carried out through the support of government agencies that issue certificates in the form of clean, health, safety, environment (CHSE) certificates for business and tourism activists. [7]

The regulation of halal tourism policies in the NTB Province during the Covid-19 period can then be seen in table 2, as follows:

Table 2. Regulation of Halal Tourism Policy in NTB Province during the Covid-19 Period

Regulation	Substance
The Constitution of 1945 of the Republic of Indonesia	To perform its autonomy and assistance functions, the Regional Government has the authority to impose regional and other rules (Paragraph 18 of Article 18) (6).
The law Number 10 of 2009 relating to Tourism	The tourist development master plan, which includes the national tourism development master plan, the province tourism development master plan, and the regency/municipal tourism development master plan, is used to guide development (Paragraph 8 of Article 8) (1).
Law No.23 of 2014 regarding Regional Government	Regulate some aspects of government connected to tourism (Article 12 paragraph (3) letter b). The regions create a regional regulation that governs the implementation of regional autonomy and co-administration tasks. The DPRD creates regional rules with the permission of the regional heads (Article 236).
Minister of Tourism and Creative Economy Regulation No. 2 of 2014, relating to Sharia Hotel Business Implementation Guidelines	Increase the competitiveness of tourism locations by incorporating sharia ideals into tourism activities and offering sharia-compliant facilities and services.
West Nusa Tenggara Province Regional Regulation No. 7 of 2013 on the Master Plan for Regional Tourism Development 2013-2028	A Master Plan for Regional Tourism Development for 2013-2028 is required to implement the provisions of Article 9 paragraph (2) of Law No. 10 of 2009 concerning Tourism.
West Nusa Tenggara Province Regional Regulation No. 2 of 2016 concerning Halal Tourism	Halal tourism is a concept that incorporates sharia ideals into tourism activities by offering sharia-compliant facilities and services.

NTB Provincial Regulation No. 7 of 2020 relating to Control of Infectious Diseases	In order to preserve, protect, and promote public health in the face of the transmission of infectious illnesses that are on the rise, such as the Covid-2019.
Governor of West Nusa Tenggara Regulation No. 51 of 2015 regarding Halal Tourism	To give visitors with security and comfort of service so that they may enjoy halal tourist visits and travel with ease in line with the idea of halal tourism, which is a concept that integrates tourism by providing facilities and services in accordance with sharia laws.
Governor Regulation No. 50 of 2020 on the Implementation of Health Protocols in Efforts to Prevent and Control Covid-19 in West Nusa Tenggara	In the context of implementing health protocols in a disciplined manner in every sector of life as an effort to tackle the spread of Covid-19, this was followed by an appeal by the Head of the NTB Tourism Office dated June 23, 2021, in Efforts to Implement Health Discipline and Protocols in the NTB Gemilang Tourism Village Area by calling on tourist villages to be verified and certified for cleanliness, healthy, safety, environment (CHSE).

Source: Processed Primary Legal Materials

In table 2, it is known that the regulation of halal tourism policies in the Province of NTB during the Covid-19 period was regulated in various regulations starting from the 1945 Constitution of the Republic of Indonesia, Laws, Regional Regulations of the Province of NTB, regulation of the Governor of NTB. Handling Covid-19 in order to restore conditions, especially at tourist sites, by implementing discipline and health protocols that must be verified and certified for cleanliness, health, safety, environment (CHSE).

Halal tourism policies during the Covid-19 period lead to the use of technology systems and changes in people's behavior. Utilization of technology using online and virtual systems and people's behavior must change towards social safety, awareness of managers and visitors in interacting, sanitation, health and hygiene, comfort, and security are priorities and welcome the new normal to be implemented. [8]

Thus, the halal tourism policy in NTB Province during the Covid-19 period was implemented by implementing discipline and health protocols for the community, business actors, tourists by paying attention to cleanliness, health, safety, environment (CHSE), and is expected in the future. after Covid-19 passes, tourists visiting NTB will increase.

4. CONCLUSION

Halal tourist policy in NTB Province during the Covid-19 period was governed by a number of rules, beginning with the Republic of Indonesia's Constitution of 1945, laws, regional regulations for the Province of West Nusa Tenggara, and the Governor of West Nusa Tenggara's Regulation. The tourism policy is implemented by implementing discipline and health protocols, both for the community, business actors, tourists by paying attention to cleanliness, health, safety, environment (CHSE)., and it is hoped that in the future, after Covid-19 passes, tourists visiting NTB will increase.

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Legal Protection for Terminated Foreign Workers Due to the Impacts of Covid-19 Pandemic in Bali

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ABSTRACT
Covid-19 pandemic has emerged as a miracle that has had an incredibly enormous impact. It has made economies all through the planet cripple and unfavorably influenced business. As a champion among other traveler areas globally, Bali has become a social event place for explorers from around the globe. Hence, Bali has become a district having the movement business, the most significant wellspring of state pay in Indonesia. All countries have confined neighborhoods and made travel blacklists to prevent the spread of Covid-19. This raises certifiable consequences that ought to be looked at by various associations in Bali, especially in the movement business supporting business region; associations massed reductions considering the way that their compensation had dropped profoundly and shockingly a considerable part of them shut due inoperability. This assessment was aimed at the Advanced Relations of Denpasar Court chipping away at this issue with No. 3/Pdt.Sus-PHI/2021/Pn.Dps, dated January 4, 2021, was introduced by three new experts regarding the non-permitting of workers' advantages. This assessment hopes to reveal the absolute protection for new workers who are reliant upon the end of work due to the impact of the Covid-19 pandemic, seen from the perspective of the Indonesian Work Act. It was driven using genuine trial assessment, specifically by looking at the object of study and zeroing in on the usage of discretionary data. The results show that absolute protection for new workers whose business was finished has been recognized according to the courses of action of the law, and the advantages of workers have been yielded according to material game plans.

Keywords: *Covid-19 pandemic, Foreign Worker, Termination of Employment Contract.*

1. INTRODUCTION

Every country in the worldwide, including Indonesia, is lamenting the impact of the 2019 coronavirus epidemic, commonly known as covid-19, which has destroyed economies throughout the world. Covid-19 has been labelled a worldwide pandemic by the World Health Organization (WHO). Temporary data from the WHO's official website on July 16, 2021, showed that 491,468 people had the latest disease cases, 188,655,968 confirmed cases, and 4,067,517 death [1]. automatically, the covid-19 reforms the order of human life, especially in the social, political, health, and economic aspects, and it poses a serious threat to countries in the world due to the fast nature of its spread.

The global spread of covid-19 has had a negative impact on the Indonesian economy. Almost all sectors of the national economy have experienced a slowdown, and even fears have emerged that the pandemic will cause an economic crisis that could result in mass layoffs.

The Indonesian government has established Government Regulation No. 21 of 2020 regulating large-scale social limitations as a preventative step against the spread of covid-19 (PSBB), and as a result, business sector processes such as those of tourism, hotels, airlines, and other sectors have resulted in very significant losses [2]. Termination of employment is the primary step for employers to reduce the company's operational costs and avoid continuous losses in the hope that the company can return to stable operations. The government's policy effort in establishing a "new normal" program has been made so that people can work as before by implementing health protocols [3]. However, the "new normal" policy has not been able to prevent mass layoffs in Indonesia. As a result of the impact of the covid-19 epidemic, an increasing number of workers are being fired without cause, there is a need for legal protection, justice, and legal certainty for workers.

It is undeniable that Bali is a dream destination for many people from around the globe, whether as a tourist destination, business, retirement, or others. Some of these facts cause many foreign nationals to live in Bali

compared to other areas in Indonesia so that the tourism business is dominated by Bali tourism. Industrial relations disputes that occur in Indonesia generally involve termination of employment for local workers. as a legal phenomenon, the impact of the covid-19 pandemic has resulted in the implementation of termination of employment for foreign workers, and that is in accordance with the issue being bought up in this study, that is, an employment contract dispute which is then resolved through the industrial relations court. This case stems from the dismissal of three foreign workers – citizens of the United States, Australia, and Spain – from a restaurant and bar company in Bali which experienced a drastic decline in income and caused losses due to the covid-19 pandemic. The company requested the foreign worker to resign by providing compensation as agreed by the parties, because the company's cash flow was unable to pay the compensation, the foreign workers felt they were being mistreated. Then they demanded their rights by reporting to the manpower office of Badung Regency, then forwarded to the industrial relations court at the Denpasar district court. It is a fascinating phenomenon to be studied further, so this paper is made by raising a legal issue with the title "legal protection for terminated foreign workers due to the impacts of the Covid-19 pandemic in Bali."

This current study examines the legal protection for foreign workers who are subject to termination of employment due to the impact of the covid-19 pandemic in Bali.

2. METHOD

This research was conducted by using an empirical legal research method. With this method, this study was conducted to examine the rules of law in terms of their application as an empirical social force. This empirical legal research was carried out to observe comprehensively how foreign workers who were subject to termination of employment due to the Covid-19 pandemic in Bali are legally protected, whether the foreign workers receive the same legal protection as local workers in Indonesia or not. The research data are secondary data collected through documentation studies of various regulations, industrial relations court decisions, academic journal articles, and official websites.

Furthermore, the legal materials collected for this research are described and linked in such a way and presented in a more systematic order to provide answers to the issues that have been formulated in the research problem [4].

Prescriptive-analytical analysis of legal materials is carried out, that is, using deductive-inductive reasoning to generate legal figures as responses to issues or other research results to provide prescriptions of what should be the substance of legal research [5]. The outcomes of the analysis, which are based on legal logic, legal arguments, and legal principles, are then utilized to develop conclusions as solutions to issues that must be solved and as medium for legal reasoning.

3. RESULT AND DISCUSSION

3.1 Legal Protection for Foreign Workers Subject to Termination Due to the Impact of the Covid-19 Pandemic in Bali

In the current era of globalization, labour movement from one country to another is indirectly used and encouraged. It is impossible to avoid the presence of foreign employees in Indonesia. In fact, the usage of foreign employees in Indonesia is driven by a demand for two things: those (foreign workers) who contribute cash (as investors) and those (foreign workers) who offer distinctive talents in terms of knowledge [6]. Apart from these two things, in essence, the use of foreign workers is not allowed. Every company must prioritize the use of local workers from Indonesia (Indonesian workers) [6].

Indonesia has collaborated with all commercial partners globally, both established and emerging, based on a free and active foreign policy. Foreign workers' presence in Indonesia is a means of influencing the investment climate. Their existence is a result of the demand for skilled specialists and technology that can support a work process, causing private enterprises, both international and domestic, to hire foreign people as employees. The goal of hiring foreign employees is to fill skilled and professional positions that are currently unfilled by Indonesian workers. By increasing the transfer of research and technology, the national development process is naturally accelerated. The government must maintain a balance between native and foreign employees to avoid legal issues and excessive usage of foreign labour.

Joko Widodo, Indonesia's president, issued Presidential Regulation No. 20 of 2018 Concerning the Use of Foreign Workers on March 26, 2018, which is anticipated to boost the country's economy and create job prospects through higher investment. According to the Presidential Regulation, any employer who employs foreign workers must have a Plan of Foreign Workers Employment (RPTKA), which must be legalized by a minister or other authorized authority.

The legal protection of employees is becoming increasingly important as the number of foreign workers in Indonesia grows. Workers' legal protection transforms a fundamental right that is totally inherent and must be safeguarded in the constitution, as stated in Article 27 paragraph (2) of the Republic of Indonesia's 1945 Constitution, which states: "Every citizen must be entitled to labour and worthy of humanity" [7]. It is said that each individual in concern, whether Indonesian or foreign national, must acquire legal certainty that will create a sense of fairness.

Legal protection for foreign workers has been outlined in the following laws and regulations:

a. Presidential Decree Number 20 of 2018
b. Law Number 13 of 2003 concerning Manpower
c. Decree No. 40 of 2012 of the Ministry of Manpower and Transmigration Concerning Certain Positions Restricted to Foreign Workers
d. Ministry of Manpower Regulation No. 10 of 2018 on Procedures for the Employment of Foreign Workers
e. Ministry of Law and Human Rights Regulation No. 16 of 2018 on Procedures for the Granting of Visas and Stay Permits for Foreign Workers

The latest regulatory adjustments regarding the employment of foreign workers, since the issuance of Law Number 11 of 2020 concerning Omnibus Law, amendment and abolition of several articles in Law Number 13 of 200, have made it easier for foreign workers to enter Indonesia, including [8]:

a. Changes in Article 42 to Foreign Workers only need to have a Plan for Employment of Foreign Workers approved by the Central Government and no longer require written permission from the ministry or an appointed official.
b. The abolition of Article 43 regarding the Plan for Employment of Foreign Workers at least contains a description of the reasons for the employment of foreign workers, the position of foreign workers in the company, the period of the employment of foreign workers, and the appointment of Indonesian citizens as companions.
c. The abolition of Article 44, which requires companies to employ foreign workers, complies with positions and applicable competency standards regulated in a Ministerial Decree.

In principle, labor law aims to achieve social justice for all people, and this is based on two aspects:

The law is ideally realized through statutory regulations (heteronomous) and is autonomous. This legal realm must represent legal products that are in accordance with das sollen, that is to say, by justice and truth, of certainty, and have benefits for the parties. These rules and regulations will subsequently be aligned with the notion of justice as defined in Article 27 paragraph (2) of the Republic of Indonesia's Constitution of 1945;

Implementation of normative law contributes in the form of supervision through structural instruments (law enforcement) and taking action on parties who do not comply with legal provisions.

Juridically, the worker's position is equal to that of the entrepreneur. However, socially the position of the two cannot be equalized because the position of the entrepreneur is higher than that of the worker. The position between high and low in the employment relationship gives rise to a dienstverhoeding (overextending) relationship, thus causing employers to act arbitrarily toward workers. The purpose of providing legal protection to workers is to ensure the continuity of a consistent and harmonious working relationship system without any pressure from the stronger party to the weaker party. In addition, the purpose of legal protection for workers covers the ongoing employment contract and at the end of the employment contract. Termination of an employment relationship may happen due to the expiration of the employment contract or due to the entrepreneur's action terminating the contract. This is where the purpose of legal protection lies, namely to fulfill workers' rights after the end of the employment contract. From legal protection in termination of employment, the most important issue concerns the correctness of the status of workers in the employment contract and the truth of the reasons for termination of employment. The legal rules governing termination of employment lead to the existence of labour rights related to the termination of employment.

Because the validity of the law cannot be measured juridically, but must also be measured sociologically and philosophically, legal protection from the power of entrepreneurs is implemented if the laws and regulations in the field of labor that require or compel entrepreneurs to act in accordance with the legislation are actually implemented by all parties, because the validity of the law cannot be measured juridically, but must be measured sociologically and philosophically [9].

Workers' protection is separated into three categories, according to Soepomo: Economic protection, i.e., the provision of sufficient money to workers, even if they are unable to work against their will. Workers' protection in occupational health insurance, as well as freedom of association and protection of the right to organize, are examples of social protection. Technical protection, i.e. worker security and safety in the workplace [10]. Protection of workers is considered in labor law. Article 4 letter (c) of Law Number 13 of 2003 concerning Manpower states, "One of the objectives of manpower development is to protect workers in realizing welfare" [11].

One example raised in this study is the case decided based on the Industrial Relations Court Decision at the Denpasar District Court No. 3/Pdt.Sus-PHI/2021/Pn.Dps, dated May 5, 2021, between Plaintiffs, namely Kirk Ian Bouffard (PLAINTIFF I), Marcus David Boyle (PLAINTIFF II), Tobias Blazquez Garcia (PLAINTIFF III), and PT. CDM Bali Berjaya - Café del Mar. (the ACCUSED). As for the case, it can be described as follows:

PLAINTIFFS are employees of the ACCUSED based on employment contracts dated November 20, 2018, and May 31, 2019. In this case, each has an employment contract with a term of 2 years and can be extended for a certain period by the provisions as stipulated in the Manpower Act, and then the work contract is referred to as a Fixed-term Employment Agreement (PKWT);

The impact of the pandemic, which caused the company's revenue to decrease drastically in February 2020, caused the ACCUSED to summon the PLAINTIFFS. The aim is to dismiss and ask the PLAINTIFFS to resign from the company, and the ACCUSED has promised to provide compensation to the PLAINTIFFS, and the total amount will be paid to the PLAINTIFFS in March 2020. However, it has not been realized, so the PLAINTIFFS filed a lawsuit through the Industrial Relations Court.

The judge ADJUDICATES in light of Law Number 13 of 2003 respecting Manpower, as revised by Law Number 11 of 2020 about Omnibus Law and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, as well as other relevant laws and regulations:

The Judge grants the PLAINTIFFS' claims in part; The Judge declares that the employment contract between the PLAINTIFFS and the ACCUSED ends due to termination of employment based on the provisions of Article 61 paragraph (1) letter d of Law Number 13 of 2003 concerning Manpower as amended into Law Number 11 of 2020 concerning the Omnibus Law, as of the date this decision is read out; The Judge sentences the ACCUSED to pay the PLAINTIFFS' rights by the details below:

To PLAINTIFF I i.c Kirk Ian Bouffard: Salary until July 1st: USD11,500 x 4 months = USD 57,500

Equivalent to = IDR.630,200,000

Addition: 10% x IDR. 630,200,000
= IDR.63,020,000

Total = IDR. 693,220,000 (Six hundred ninety-three million two hundred and twenty thousand rupiahs)

To PLAINTIFF II i.c Marcus David Boyle:

Total deal = IDR.282.062.759

Addition: 10% x IDR.282.062.759

= IDR.28.206.275

Total = IDR.310.269.034 (Three hundred and ten million two hundred and sixty-nine thousand and thirty-four rupiah)

To PLAINTIFF III i.c Tobias Blazques Garcia:

Total = IDR.216.951.500

Addition: 10% x IDR. 216.951.500

= IDR. 21.695.150

Total = IDR.238.646.650

Total = IDR. 1.242.135.684

The judge sentences the ACCUSED to pay the court fee, which until now has been set at IDR. 420,000.00 (four hundred and twenty thousand rupiahs); and

The judge rejected the Plaintiffs' claims for other than and the rest.

If one of the parties to a Fixed-term Employment Agreement terminates the employment relationship before the expiration of the period specified in the Fixed-term Employment Agreement, or if the termination of the employment contract is not due to the provisions referred to in Article 61 paragraph (1) of the Law Number 13 of 2003 concerning Manpower, the party terminating the employment relationship must pay compensation to the other party. When a worker/labourer has a Fixed-term Employment Agreement, he or she is entitled to compensation if the contract is unilaterally terminated in the midst of the term.

According to the Ministry of Manpower's Circular Letter No. SE-907/MEN/PHI-PPHI/X/2004 about Prevention, if a firm has challenges that may jeopardize employment, termination of employment contracts must be a last choice, after a variety of attempts have been made, including:

a. Reducing wages and perks of top-level workers;
b. Reducing shift;
c. Reducing working hours;
d. Reduce working days
e. Lay off or lay off workers/laborers in rotation for a while.

Therefore, if there are workers/laborers who are laid off due to a public health emergency due to the Covid-19 pandemic, the workers are still entitled to total wages or wage deductions if it has been agreed by the company and the workers [12].

With the publication of the Ministry of Manpower's Circular Letter M/3/HK.04/III/2020 of 2020, Concerning Worker/Labourer Protection and Business Continuity in the Context of Covid-19 Prevention and Control (SE Menaker 3/2020). The Ministry of Manpower's Circular 3/2020 is in response to the rapid spread of Covid-19 in numerous Indonesian provinces, as well as the World Health Organization's (WHO) official declaration of Covid-19 as a global pandemic. One of the topics specified in the Ministry of Manpower's Circular 3/2020 is the execution of:

Workers/laborers who are classified as People under Monitoring for Covid-19 due to a doctor's statement that they would be unable to return to work for a maximum of 14 days or according to Ministry of Health regulations will have their salaries paid in full.

Workers/laborers who are suspected of having Covid-19 cases and are quarantined/isolated based on a doctor's statement will be paid in full during the quarantine/isolation period.

Workers/laborers who are unable to work owing to sickness caused by Covid-19, as evidenced by a doctor's declaration, will be reimbursed in accordance with the rules and regulations.

Changes in the amount and method of payment of workers' wages are made by agreement between the employer and the worker/laborer for companies that limit their business activities due to government policies in their respective regions for the prevention and control of Covid-19, causing some or all of their workers/laborers not to come to work, taking into account business continuity. As a result, changes in the quantity and mode of payment of workers' salaries are carried out by agreement between the employer and the worker, taking into account the business continuity.

Based on the results of the author's examination of the Industrial Relations Court Decision at the Denpasar District Court Number 3/Pdt.Sus-PHI/2021/Pn.Dps, dated May 5, 2021, to the plaintiffs, namely Kirk Ian Bouffard (PLAINTIFF I), Marcus David Boyle (PLAINTIFF II), and Tobias Blazquez Garcia (PLAINTIFF III) and ACCUSED PT. CDM Bali Berjaya – Café del Mar, legal protection has been given to foreign workers who have been terminated due to the impact of the Covid-19 pandemic in Bali. This is because the ACCUSED and the PLAINTIFFS have agreed upon the termination of employment. The judge's decision has granted part of the PLAINTIFFS' demands, namely several compensations by the parties' mutual agreement. Before the PLAINTIFFS files a lawsuit, the provisions of the decision are by the provisions of the legislation in Indonesia.

Based on the description above, the legal analysis uses the theory of legal certainty according to Gustave Radbruch in a combined theory of ethics and utility whose legal concept is that the law aims at justice, usefulness, and certainty [13]. The notion of legal certainty has two meanings: first, there are general norms that inform individuals about what acts they may or may not do, and second, the existence of broad legal principles provides individuals with legal protection against government arbitrariness. Individuals can learn what the government may charge or do to them. Legal certainty comes not only in the form of articles in the law, but also in the consistency of judicial judgments between one judge's decision and the decisions of other judges in comparable circumstances. [14].

With the existence of legal certainty, the purpose of the law is justice to be achieved. The main thing about the value of legal certainty is the existence of the regulation itself. "Regarding whether the regulation must be fair and have benefits for the community, it is beyond prioritizing the value of legal certainty." [15]

4. CONCLUSION

The impact of the Covid-19 pandemic in Indonesia has caused the economy to become unstable and grow negatively, especially in Bali because the tourism sector is the leading supporter of the economy. The pandemic has caused many companies to lay off their workers.

Legal protection for foreign workers who are subject to termination of employment due to the impact of Covid-19 in Bali, according to the results of this study, is that foreign workers who are subject to termination of employment have received legal protection because the considerations of the Panel of Judges are under Indonesian legislation. As a result, the judgement upholds the notion of justice for both employers and employees. Foreign employees in Indonesia are entitled to legal protection and social security in order to acquire legal certainty, and a comfortable and conducive working environment is provided for them.

The employer's strategy of terminating employment during the Covid-19 epidemic is not a win-win option at this moment, according to the findings of this study. As a result, the government must adopt a government policy on worker protection in the event of a Covid-19 pandemic. This regulation is more binding on entrepreneurs who are still employing their workforce during the Covid-19 pandemic to protect workers' work status and avoid termination of employment contracts.

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Extraordinary Crimes Prevention: A Positive Legal Study and Social-Humanistic Approach

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ABSTRACT
Terrorism is one of the extraordinary crimes. The government, assisted by various elements of society, has taken the crime of terrorism seriously. On the other hand, apart from the status of terrorism as an extraordinary crime, the approach to terrorism should focus on preventive measures. Preventing the emergence of new terrorists is an action that is much more effective and efficient than carrying out law enforcement which tends to sacrifice many things. This study looks at the roots and factors that can trigger and foster the emergence of terrorists by conducting a literature review of various reliable study results related to attitudes towards terrorism. This study examines 15 scientific articles and other secondary references that focus on the study of terrorism. In general, from the study results, terrorism cases have a close relationship with society's social and law enforcement conditions. Aspects of law enforcement, justice, and economic welfare contribute to the antipasti attitude towards the government, which then gives birth to acts of terrorism. This research is expected to provide a perspective related to the right actions of terrorism prevention by prioritizing a more humanist approach.

Keywords: *Extraordinary crimes, Social-Humanistic, Terrorism.*

1. INTRODUCTION

From the understanding of Corruption and Terrorism itself, we understand that Corruption and Terrorism are actions that humans wrongly carry out because they violate ethics or the rules that apply in life. Acts of Corruption and Terrorism themselves can harm others and benefit themselves or groups.

Similar to corruption, the crime of terrorism is an extraordinary crime [1]. There is the reason why both corruption and terrorism are categorized as a great crime because they are transboundary crimes that do involve not only networks within the State of Indonesia but also involves international networks [2] that are carried out in an organized manner, whether carried out individually or as a group and have a tremendous impact on the State and the Nation. Moreover, terror acts are used in Structural conflicts rooted in an ideology, either social ideology, political ideology, or religious ideology that gives rise to an understanding of radicalism. These make terrorism and radicalism go hand in hand and cannot be separated [3].

In Indonesia, the terrorist incident began with the Bali bombing case on October 12, 2002, which was located in front of the Paddy's Pub and Sari Club on Jalan Legian Kuta [4], which resulted in the loss of many lives regardless of the victim, caused widespread public fear, and have a broad impact on social, economic, political, and international relations [5].

Terror has been presented and incarnated in our lives as a scourge, as a vicious virus and a frightening monster that at any time cannot be expected to manifest the occurrence of "national and global tempests," including manifesting human tragedies, castration of national dignity and the history of tragedies on human rights. Terrorism can also be categorized as an international crime as terrorists know no territorial borders in doing their act [6]. Human rights have lost their existence and have been deprived of their sanctity or character in the hands of terror makers who have created savagery in the form of social, political, cultural, and economic animalization. Terrorism has taken part in the life of this nation to show another portrait of and among various types and varieties of crimes, especially violent crimes, organized crimes, and crimes that are classified as extraordinary crimes [7].

On the other hand, crimes and perpetrators must be viewed from various perspectives. Approach legally and in terms of socio-cultural aspects. Therefore, at what level and condition, extraordinary crimes must be placed on and seen.

This research is a literature review that aims to provide several different perspectives on extraordinary crimes. The approach presented in the paper is based on a favorable legal and social-humanitarian approach.

2. METHODS

This study uses a normative approach, namely research that aims to apply and examine the rule of law or legislation governing the prevention of criminal acts of terrorism [8]. Several approaches used in this thesis research are the statutory approach and the conceptual approach related to Law Number 15 of 2003 in conjunction with Law Number 5 of 2018 concerning Amendments to Law Number 15 2003 concerning the Stipulation of Government Regulation in Law Number 1 the Year 2002 concerning the Eradication of Criminal Acts of Terrorism

3. RESULT AND DISCUSSION

3.1 Corruption and Terrorism Measures from the Structure of Human Actions

According to Thomas Aquinas, Aristotle's opinion is voluntary (desired actions) and involuntary (desired actions). Thomas Aquinas classifies it into two types: directly voluntary (whatever results from a decision or what is directly desired from the decision of the act) and indirect voluntary (what results from not willing or what is a consequence of the action but is not desired).

Corruption and terrorism are human actions that the perpetrators desire. Thus acts of corruption and terrorism are sparks from humans as the main subject of their behavior in acts of corruption, including direct voluntary human actions. In this case, the perpetrators of corruption and terrorism want to do evil actions without considering moral or ethical ethics.

Acts of Corruption and terrorism are virtues that are entirely within the power of the perpetrators, whether consciously or unconsciously, remain the responsibility of the perpetrators of crimes in this particular category because he is an actor and enjoys the results of the crime. Because man is the master of his actions.

People who steal out of necessity (hunger) are different from people who steal out of greed, such as corruption. Corruption is carried out willingly, freely, and the decline in moral-ethical values in oneself, so conscience does not function. Likewise, people who do not defend themselves to cause death or disability to their opponents are undoubtedly different from those who commit acts of violence to instill fear (terror), such as terrorists.

According to Socrates, when the brain and logic are no longer functioning, the last thing is the conscience to answer what is being thought and narrated by the brain and logic. Knowledge about conscience is the knowledge that is poured out, embedded, embedded in our hearts. Conscience is also referred to as the voice of Allah SWT.

Because it is said that conscience is the capacity for a corruptor or terrorist, it can be said that their conscience is no longer functioning or is lost. Therefore, there is only a will and a sense of human dissatisfaction so that humans carry out an action that destroys the order in society, in this case, corruption and terrorism.

3.2 Corruption and Terrorism in an Objective Moral Order

The objective moral order explores the moral order of life with the elements of its discussion. Therefore, it is directly related to the collective paradigm. It starts from life with a family to the life of the nation and state. Some rules apply in the life of the nation and state, both those regulated in customary law and those regulated in the constitution. There must be sanctions for violations from every rule of law, ranging from light punishments to the death penalty. Law in Latin is lex from Ligare, which means binding, and legere, which means collect, which is more appropriate.

Law binds, but at the same time, it is what we read as various rules put together. For example, corruption is an act that violates the law and is regulated by Law No. 31 of 1999. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (UU Tipikor) was adopted in the RKUH.

As a law, this order of reason must be promulgated whenever the law applies as a punishment and responds to a command. According to Hibes, the law is the will of the ruler. From Hibes' thought, if it is associated with corruption, then corruption occurs because of power. Moreover, it is no wonder that many corruption cases in Indonesia are carried out by businessmen, both in the government and on the private side. More or less, the above is also the cause of acts of terrorism.

Why did someone commit acts of corruption or terrorism? Because they experience shallowness in living life. This value crisis is not considered a crisis of concepts or ideas, but it is a matter of the value of goodness. If humans have awareness, then humans will not commit violations contrary to the moral-ethical order of human life, which is regulated in the rules of customs and laws.

3.3 Terrorism Prevention in Positive Legal Context

1. Counter-Terrorism Policy

There are two views on terrorism activities that are currently developing. Namely, terrorism is a political activity, whether it has a political background, political purpose, or activity sponsored by political interests. Another view is that terrorist activities are criminal activities that are very detrimental and endanger the life and peace of the nation. The two fundamentally different views, of course, also bring differences in the ways of eradicating them.

The first view is often conveyed with the justification that to prevent and eradicate terrorism activities, and it is necessary to reveal the roots of the problem of terrorism". The second view is often conveyed with the justification of "global protection for humankind" (global protection for humankind). Both ideas will affect any laws that will be used to prevent and eradicate criminal acts of terrorism.

The first view, of course, does not agree with repressive laws because the problem of injustice at the

root of the problem of terrorism cannot be solved simply by arresting, prosecuting, and imprisoning the perpetrators, but what must be prioritized are preventive measures.

a) National Policy

Terror incidents in Indonesia are a signal that Indonesia has become one of the targets of terrorist organizations' operations both internationally and domestically. However, increasing physical vigilance alone is not enough to deal with international terrorism organizations because, organizationally, these groups already have very calculated planning and preparation in terms of operations, personnel, and infrastructure, and funding support.

The forecasting terrors act should also be prioritized. All elements should be encouraged. Experts found that studies and research for terrorism commonly have present orientation and less in forecasting the future of terrorist acts [9]. The approaches to terrorism should be efficient and effective.

For Indonesia, the prevention and eradication of terrorism require careful observation of the culture, condition of society, and government's political stability. These three factors significantly affect the effectiveness of the law. The concept of western and Islamic countries regarding terrorism is complicated for Indonesia because the political conditions in Islamic-based countries are fundamentally different in terms of background and development from those in Indonesia. Likewise, the culture of the people from these countries and western countries is different from the culture of the Indonesian people. Nevertheless, Indonesian people recognize the existence of multi-religious, multi-ethnic, and peaceful coexistence. The counter-terrorism strategy carried out by the government is implemented through preventive and repressive measures.

1. Preventive Efforts.

Given the limitations of the penal effort, it is necessary to prevent penal crime and use non-penal means or policies. This non-penal effort is crime prevention, which is carried out before the crime occurs, better known as preventive or preventive efforts. This should take precedence over repressive measures. There is an opinion that prevention is better than cure.

Judging from the efficiency and effectiveness of prevention efforts are better than repressive efforts. In the world of criminal medicine, there has been a consensus on the idea that preventing crime is better than trying to educate criminals to be good again; better here also means easier, cheaper, and more successful in achieving its goals [10].

The purpose of non-penal efforts is to improve certain social conditions and indirectly affect crime. In general, crime prevention can be done by combining several methods. The first method is a moralistic (oblique) method which is carried out by disseminating religious and moral teachings, good laws, and other means that can curb the desire to commit evil. In contrast, the second method is the abiliosinistic method which seeks to eradicate the causes. For example, we know that economic pressure (destitution) is one of the contributing factors, so the effort to achieve prosperity to reduce crime caused by economic factors is an abiliosinistic method. Finally, the prevention of crime through a community approach, commonly called Community Based Crime Prevention, involves all activities to improve the capacity of the community in reducing crime by increasing informal social control [11]. Thus, by using a preventive approach, the efficiency of counter-terrorism will grow and be long-term.

Expert propose regarding the preventive efforts for terrorism are; implementing a wholistic counter-terrorism strategy and promoting values of diversity and unity to the public [12].

2. Repressive Efforts

Crime prevention efforts are essentially an effort to secure the community (social defense) to avoid crime or at least control the crime that occurs so that it is within the limits of community tolerance. In this case, the repressive approach cannot be connoted as a brutal and indiscriminate act. Still, in essence, it prevents the widespread impact of the damage of a crime with the applicable protocols and rules.

Of course, overcoming crime using criminal law is the oldest method, as old as human civilization.14 The repressive steps taken by the government in the context of dealing with criminal acts of terrorism are as follows:

1) Establishment of the Agency for Combating Criminal Acts of Terrorism and the establishment of a particular unit as a measure to eradicate criminal acts of terrorism.
2) Attacks on hiding places for terrorists.
3) The imposition of strict criminal sanctions against perpetrators of criminal acts of terrorism who have been proven guilty based on the available evidence.

Recognizing the importance of the role of personnel in balancing technological advances and the modus operandi of various types of crimes, including terrorism, the National Police seeks to improve the quality of human resources, both through continuous system improvements and collaboration with domestic and foreign parties. In addition, education and the exchange of information aim to prevent acts of terrorism before they arise [13].

3.4 Terrorism Prevention with Humanitarian Social Approach

a) Law Enforcement that Upholds Human Rights

The most basic definition of *law enforcement* is the giving or imposition of a crime by law enforcement officers to perpetrators of criminal acts. More broadly, it means the implementation/supervision of unlawful acts that occur (onrecht in adu) well as unlawful acts that might happen (onrecht in potentie) [14].

One of the government's tasks is to enforce the law, especially criminal law. The enforcement of criminal law on the technical side is related to the implementation of criminal procedural law, which regulates how material

criminal law is carried out, including the rights of suspects and victims [15].

The Police are the front line in criminal law enforcement, so it is not an exaggeration to say that the Police are living criminal law [16]. In Article 4 of the POLRI Law, it is emphasized that the Indonesian National Police aims to realize internal security, which includes the maintenance of public security and order, order, and law enforcement, the implementation of protection, protection, and service to the community, as well as the establishment of public peace by upholding human rights.

The use of violence by the Police is a tool or part of the equipment to carry out their work, namely fostering and maintaining order in society [17]. It is not the leading media in responding to a crime.

The existence of certain conditions or emergencies above seems to be very well recognized by the international community through MU-UN Resolution 34/169 dated December 17, 1979, concerning the "Code of Conduct for Law Enforcement Officials," which allows law enforcement officials to use force/force.) as an extraordinary act in carrying out their duties and the 8th United Nations Congress/1990 on "the Prevention of Crime and the Treatment of Offenders" which has received "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" [15].

Furthermore, the Basic Principles also provide guidelines on requirements or qualifications, training, and guidance for officers who will use force and firearms, as well as guidelines or principles on reporting and assessment procedures [15]. This relates to law enforcement to combat terrorism, which can cause human rights violations if the rules and standards are not prepared beforehand.

Above all things, law enforcement works to ensure fairness and justice are felt by people. The criminal justice system follows the "due process of law" model emphasizing people's rights to have a fair trial [18]. This ideal is the basic concept of law enforcement.

3.5 Eradication of Human Rights-Oriented Terrorism

In the previous discussion, it was mentioned that the Police and all related institutions are obliged to continue to uphold human rights. In Article 2 of Law Number 5 of 2018, it is emphasized that the eradication of criminal acts of terrorism is a policy and strategic step to strengthen public order and public safety while upholding the law and human rights, not discriminatory, whether based on ethnicity, religion, race, and intergroup. This law has been made with more reliable and effective ways to respond to terrorism [19].

To realize this and refer to the Basic Principles, it is necessary to have a guideline for carrying out the duties of the POLRI that is human rights-oriented, including in combating terrorism, references, and signs to every member of the National Police, including Densus 88 in carrying out their duties in the field.

Article 2 paragraph (2) of this Regulation of the National Police Chief states the objectives, namely:

a. to ensure the understanding of basic human rights principles by all ranks of the Indonesian National Police so that in carrying out their duties, they always pay attention to human rights principles;
b. to ensure that there is a change in the pattern of thinking, behaving, and acting following the basic principles of human rights;
c. to ensure the application of human rights principles and standards in all the implementation of Polri's duties so that every Polri member does not hesitate to take action; and
d. to be used as guidelines in formulating Polri policies to underlie human rights principles and standards.

The most important part of this Regulation of the National Police Chief is the technical Code of Conduct, namely the Standards of Conduct for Police Officers or Members of the Indonesian National Police in Law Enforcement. Although not much different from the Basic Principles, the standards of behavior here also consist of general standards of behavior and behavior in police actions.

Suspects as parties who are vulnerable to having their rights violated receive special attention in the Regulation of the National Police Chief in Chapter IV, namely:

1) The principle of the presumption of innocence.
2) The rights of the suspect.
3) The right to a fair trial.
4) Respect for one's dignity and privacy.

In order to improve the effectiveness of monitoring the implementation of human rights within the Police, cooperation and coordination are held with relevant agencies, academics, and non-governmental organizations. Furthermore, in criminal acts of human rights violations committed by members of the National Police, investigators are carried out following statutory regulations.

The existence of socialization and implementation of the above code of conduct by Densus 88, accompanied by a monitoring system and performance audit of Detachment 88 on an ongoing basis, is expected to realize efforts to eradicate terrorism oriented towards the protection of human rights.

4. CONCLUSION

Corruptors and terrorists kill people directly in the sense of impoverishing, weakening the people's economy, and spreading fear. They should be heavy. We agree that the death penalty is for the corrupt, but for acts of terrorism, a humanitarian approach is needed because the perpetrators of terror may be victims of injustice.

The government's countermeasures against terrorism activities are carried out with a preemptive, preventive and repressive approach to achieve integrated law enforcement and political enforcement efforts. However, in certain circumstances, acts of terror require a conceptually persuasive countermeasure as an effort to resolve outside the law and politics stemming from the

power of social action. Therefore, in the fight against terrorism, it is necessary to coordinate efforts across agencies, national borders and simultaneously take repressive, preventive, pre-emptive, and rehabilitative steps.

Law enforcement aims to protect human rights, as well as the enforcement of human rights themselves. However, in certain/emergency conditions, law enforcement is often considered to violate human rights. Therefore, a police code of conduct must regulate behavior and limit actions that remain within the corridor of law and human rights.

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Gene Pollution Due to Transgenic Organisms – Regulatory Measures

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ABSTRACT
Cross-Pollination from Hereditarily Changed (GM) crops causes contamination, featuring the gigantic test of controlling GM crop innovations. While hereditary fertilization is unavoidable, lacking enactment now and again will not consider seed makers responsible for usual mischief instead of accusing ranchers who have become casualties of contamination. Organizations will make a typical move against ranchers who develop transgenic crops without corporate authorization. A rancher who survives hereditary control might be held obligated to the organization that created the GM crops, paying little mind to who submits the disregarding activities. Subsequently, the inadvertent presentation of GM crops on the property of non-GM ranchers, just as patent law infringement, raises a vast number of lawful concerns because even a blameless neighbor could be expected to take responsibility for patent encroachment. At the point when GM crops cross-fertilize with practical or customary yields in neighboring fields, the absence of a general set of laws might compel ranchers to battle in court. Ranchers who face send out market dismissal due to GM harvests might experience serious monetary misfortunes accordingly. Natural ranchers who have GM defilement might lose their natural certificate and harvest premium. At the point when shopper interest for non-GM crops rises, ranchers search for new business sectors for non-GM crops that address more significant expenses. In any case, the disappointment of businesses to satisfactorily isolate GM crops from conventional assortments represents a test to these makers. Administrative measures should be embraced and executed to shield ranchers from GM crop responsibility issues, principally to shield ranchers who develop customary yields from GM crop pollution. Subsequently, severe contamination guideline is essential to shield non-GM ranchers from biotechnology enterprises that build up and keep up with protected innovation rights in contamination causing GM seeds.

Keywords: *Gene Pollution, Farmers' Rights, GM Crops, Legal Protection, Regulatory Measures.*

1. INTRODUCTION

The International Journal of Food Contamination reports that somewhere in the range of 1997 and 2014, around 400 GM seed pollution cases happened in 63 nations, with the majority happening in China.1 This marvel of "genetic drift" (the development of hereditarily changed seeds or dust through natural or conventional harvest fields) features the colossal test of controlling the spread of hereditarily adjusted yields. Tragically, notwithstanding how hereditary float is unavoidable, inadequate enactment often neglects to consider seed organizations responsible for any possible misfortunes and instead faults ranchers who have become survivors of pollution.

It is widely believed that these GMOs can spread across nature and interbreed with natural creatures, damaging the ecosystem and future generations. Some conservation biologists and conservationists believe that this technique is undesirable because it may result in hybridization with native species and genetic pollution.3 They also stated that the introduction of GMOs into complex ecosystems might result in uncontrollable adverse effects. The term "gene pollution" is a new and contentious one. It is associated with gene flow from GMOs to native or non- GMO organisms. Transgenic organisms, or GMOs, can interact with other life forms and transfer or mutate their characteristics through reproduction, causing severe ecological harm.

2. METHOD

This research employs a doctrinal legal research approach to examine the existing legal frameworks relevant to the subject matter. Content analysis is carried out to answer the main question because, in a broader methodological technique, doctrinal research is preferred to explore two main issues: the effects of cross-pollination of gm crops on farmers' rights and the comprehensiveness of existing biosafety legal frameworks in malaysia, particularly the law of tort in

dealing with the cross-pollination of gm crops. a thorough examination of these legal issues can assist in clarifying the current and evolving regulatory structures, laws, and social significance of the matters under consideration. It also provides an opportunity to assess the effectiveness of the law as a tool for identifying gaps.

3. RESUTLT AND DISCUSSION

The tort claims of trespass to land, nuisance, negligence, and strict liability may be asserted against farmers and seed companies responsible for genetically contaminating neighboring fields with their seeds. 18 There must always be a remedy in law, according to the Latin legal maxim "Ubi jus ibi remedium" (in the presence of a right, there must be a remedy). It follows that wherever a right exists, there is also a remedy available to protect that right. Typically, the case of Ashby v. White is cited as an example of the maxim, in which the court observed, "When the law clothes a man with a right, he must have means to vindicate and maintain it, as well as a remedy if he is injured in the exercise and enjoyment of that right, and it is a vain thing to imagine a right without a remedy because lack of remedy is reciprocal."19 Farmers may be able to receive financial compensation for losses or damages incurred due to GM contamination of their crops through the use of these remedies.

Drifting genetic traits from one crop to another can cause damage to the neighbor's crop, resulting in trespass claims. 21 To commit an intentional trespass, the defendant need not intend to harm the plaintiff's property interest to have the required intent. Unintentional trespass causes no harm to the plaintiff, so nominal damages are awarded. Is pollen drift from GM crops an intentional tort?23 Owners of adjacent non-GM fields seem to be the answer. 24 To be clear, a court may require that the defendant's act directly impacts the plaintiff's property without the involvement of other factors, such as natural and inevitable forces like wind. Seed companies and growers alike recognize the pollen-drift potential of GM crops. However, the legal system has yet to address whether mere knowledge is sufficient to establish intentional trespass. Pollen spread by wind drift or insect pollination, on the other hand, would be unlikely to constitute trespass because it would not include a direct interference with the plant's growth. Because of this, patent holders for genetically modified crops and those involved in GM crop agriculture will only be held liable for trespass if the trespass is done with the intent, recklessness, or negligence of the parties involved.

A GM farmer who fails to act reasonably in the circumstances may be liable to a non-GM farmer for negligence. 27 For a neighbor to prove GM crop contamination was due to negligence, the neighbor should show a sensibly predictable probability of injury because of the GM crop rancher's absence of care in keeping away from injury or mischief to the neighbor's harvests. Expanded weeds, cross-fertilization, or the presence of volunteer plants could be proof.28 Unintentional contamination of neighboring fields may result in liability for the GM crop farmer. 29 A failure to properly select seeds, adhere to buffer zones, or follow growing and harvesting procedures may be a duty breach.

In this regard, it would be significant if biosafety regulatory measures established an acceptable standard of behavior for farmers growing genetically modified crops and identified the duty owed to neighbors growing non-GMO crops as part of their implementation. This should increase the certainty in determining whether crop contamination occurred due to negligence in a specific case. In addition, establish a compensation fund to compensate farmers for losses resulting from genetic contamination of non-GMO and organic crops by genetically modified (GM) crops.

A nuisance claim could also be made against GM crops. This type of claim is frequently brought of some "activity on the defendant's land that unreasonably interferes" with the plaintiff's use of his neighboring land, as defined by the court. 32 The activities of genetically modified (GM) farmers must be controlled within the boundaries of their land. They must ensure that such actions do not adversely affect the owners or occupiers of another land.33 If a genetically modified farmer interferes with a neighbor's quiet enjoyment of their property, for instance, by radiating dust onto the non-GM rancher's territories and obliterating crops; or by making smells, sounds, contamination, or whatever another risk that reaches out past the limits of the property, the influenced party might have the option to bring an irritation guarantee against the hereditarily changed rancher. The far and wide planting of GM crops is a considerable factor restricting the viability of an irritation claim.34 Deciding if the planting and collecting of GM seeds and harvests comprise an irrational horticultural practice might be troublesome without embracing a zero-resistance standard for cross-fertilization from a court of law.

The strict liability rule established in the English case of Rylands v. Fletcher may provide a solution to GM crop contamination.36 A person is held strictly liable under this rule if they bring or accumulate something dangerous on their land that is likely to cause harm if it escapes, and damage occurs as a natural result of the escape. A court must first determine whether making, selling, or handling genetically modified crops constitutes an abnormally dangerous activity before it can apply the theory of strict liability in the case of GM crops contamination.37 On the one hand, farmers who plant the GM seed with the knowledge that the resulting crop is likely to cross-pollinate a neighbor's conventional crop, could be held strictly liable for damages on the other.38 Therefore, an equitable outcome would appear to require that responsibility for the unintended spread of the technology is placed on the company responsible for introducing the technology and that the company bear the burden of controlling the spread of the technology in question. Parties bringing a strict liability claim may have

difficulty establishing the existence and likelihood of each of the first two factors listed above.

Despite what might be expected, customary law cures are inadequate to manage the potential mischief brought about by GM yields, and ranchers are encountering expanding challenges in acquiring pay for their misfortunes. As a matter of first importance, it is easily proven wrong how much misdeed law cures might be pertinent on GM food tainting. The misdeed law cures were created during the nineteenth century, before the improvement of GMOs.39 It is easily proven wrong whether misdeed law cures are fitting considering the uniqueness of twenty-first-century hereditary designing innovation. Second, to be viewed as careless, the recognized direct probably brought about a sensibly predictable danger of injury to be considered improper. It is hazy what chances GM crops present for sure sort of harm they may cause. It is additionally challenging to decide if the danger presented by hereditarily changed life forms is sensibly foreseeable

4. CONCLUSION

Because of the absence of hereditary contamination shields, nations are helpless against administrative escape clauses. Current biosafety enactment should incorporate administrative measures to manage hereditary defilement hazards. It is reasonable to have biosafety administrative principles that permit common cases for hurt, ecological or human, coming about because of hereditary tainting. As indicated by Article 4 of the Nagoya-Kuala Lumpur Advantageous Biosafety Convention on Risk and Change, a causal connection between the harm and the LMOs being referred to should be set up. Along these lines, the individual Contracting Gatherings should build an association between the injury and the LMO. Concerning responsibility for harm brought about by the transboundary development of GMOs, Article 4 of the Nagoya-Kuala Lumpur Beneficial Biosafety Convention on Risk and Change gives Contracting Gatherings complete circumspection. If risk and change strategy/enactment has not been finished, existing common law will settle any issues. Then again, if the LMOs break and cause harm to the encompassing region where the GMOs are kept, the individual would need to turn to misdeed law to recuperate damages

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Urgency of Harmonization and Synchronization of Regional Regulations and/or Regulation of Regional Heads After the Enactment of Law No. 11 of 2020 on Work Copyright

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ABSTRACT
The urgency of harmonization and synchronization is carried out due to the dynamics of the law on the establishment or enactment of new legislation that causes some of the legislation to be in harmony or out of sync with the newly enacted legislation. With the enactment of Law No. 11 of 2020 on Copyright Work, the provisions of Article 181 paragraph (2) that the harmonization and synchronization related to local regulations and/or regulation of the Head of Regions. It is implemented by the ministry or institutions that conduct government affairs in the field of the formation of legislation together with the ministry that organizes domestic government affairs. Based on the Regional Regulation of provisions and /or Regulation of the Regional Head that has been in force and contrary to Law No. 11 of 2020 concerning Copyright Work or contrary to higher legislation, or contrary to the court's decision, must be harmonized and synchronized by the Ministry of Law and Human Rights and the Ministry of Home Affairs. This research uses normative legal research methods. The results of this study are expected that the Regional Regulation and/or Regulation of the Head of Region that is contrary to the provisions of Law No. 11 of 2020 on Copyright Work or contrary to higher legislation, or contrary to the court's decision is immediately changed or replaced.

Keywords: *Harmonization, Regional Regulations, Synchronization, Work Copyright.*

1. INTRODUCTION

The problem that still exists in our country is that many Indonesian citizens still do not have a job, implicating Indonesian citizens do not have a decent livelihood. The data of Indonesian citizens at the beginning of 2020 is still 5.3% unemployment of entire workforce or as many as 7,045,761 people.

Economic growth has a causal relationship in which the population that produces goods and services will result in economic growth. In contrast, unemployment does not contribute in producing goods and services, so it will not add to economic growth. Economic growth and unemployment also have a negative relationship, which means that the unemployment rate is getting higher, then the economic growth rate becomes lower. Investment becomes a crucial factor in the long-term economic growth process. With the investment, both the investment is made by the government and the investment made by the private sector, and it will provide a catalyst for production activities. The impact is by providing jobs that then income for the community will be created. The role of investment that can increase aggregate demand

Moreover, the aggregate of marketing is increased through its influence on production capacity. So that as a result, will be able to increase Gross Domestic Product and hopefully will have an impact on increasing employment opportunities become an essential factor in economic development regardless of the investment is made by the government and by the private sector.

In line with the efforts to create jobs, the government has initiated the unification of omnibus law regulations. This term became familiar after the President of the Republic of Indonesia, Mr. Joko Widodo, mentioned in his speech at the inauguration of the President and Vice President of the Republic of Indonesia for the term of office in 2019-2024. It was later explained that omnibus law is an Act drafted with the aim is a big issue. The act allows for repealing or amending some laws so that a

more straightforward Law can be produced. This Draft Law on Copyright work is a Government Initiative Bill included in the Priority National Legislation Programyear 2020. [1]

The omnibus law, namely Law No. 11 of 2020 on Copyright Work, regulates covering those related to: a. improvement of investment ecosystem and business activities; b. improved protection and welfare of workers; c. ease, empowerment, and protection of Cooperatives and Micro, Small, and Medium Enterprises; and d. increased government investment and acceleration of national strategic projects. The arrangement is a mandate from the Preamble to the Constitution of the Republic of Indonesia year 1945, mandating that the purpose of establishing the State of the Republic of Indonesia is to realize a prosperous, fair, prosperous society, which is evenly distributed, both materiel and spiritual. In line with this purpose, Article 27 paragraph (2) of the Constitution of the Republic of Indonesia 1945 specifies that "Every citizen is entitled to a job and a decent livelihood for humanity, therefore the state needs to make various efforts or actions to fulfill the rights of citizens to obtain a decent job and livelihood. In principle, the fulfillment of the right to work and a decent livelihood is one of the essential aspects in national development implemented in the framework of the development of a complete Indonesian human being.

Legal reform of the laws and regulations in the framework of legal development is urgently needed. Without legal reform and legal development that suits the community's needs, imbalances and even obstacles to national development will arise. [2] If the primary purpose of the omnibus law was to strengthen and improve the investment ecosystem, all that was needed was the improvement of investment law, trade law, and the renewal of economic law. Thus, the right step may be improving and strengthening the real economy, healthily regulating market competition regulation without monopolies, and simplifying the tax system. Recession and economic uncertainty occur because the financial system is difficult to predict because of the global economic slowdown. This is coupled with the industrial revolution 4.0 with technology development that provides convenience in various transactions. [3]

The Central Government has made various efforts to create and expand employment to reduce the number of unemployed and accommodate new workers and encourage the development of Cooperatives and Micro, Small, and Medium Enterprises to improve the national economy that will be able to improve the welfare of the community.

Job creation is done through arrangements related to improving the investment ecosystem. Business activities at least contain arrangements on simplification of Business Licensing, investment requirements, ease of business, research and innovation, land acquisition, and economic areas.

Simplification of Business Licensing through the application of risk-based Business Licensing is a standard method based on the level of risk of business activity in determining the type of Business Licensing and the quality/frequency of supervision. Business licensing and supervision is an instrument of the Central Government and Local Government in controlling business activity. The application of the risk-based approach requires a change of mindset *(change management)* and adjustment of the working system of the implementation of the Business Licensing Service *(business process re-engineering* and requires the regulation *(re-design)* of business processes Licensing Business in the system of Electronic Licensing. By applying this concept, the implementation of the issuance of Business Licensing can be more effective and uncomplicated because not all business activities must have a license. In addition, by applying this concept of surveillance, activities become more structured both from the period and substance that must be supervised.

Job creation conducted through arrangements related to improving the protection and welfare of workers contains at least arrangements concerning: protection of workers with certain employment agreements, protection of employment relationships based on outsourcing, protection of the needs of the decent work through the minimum wage, protection of workers who experience termination of employment, and ease of licensing for foreign workers who have a skill that is still required for the production of goods or services. Job creation conducted through arrangements related to the ease, empowerment, and protection of Micro, Small, and Medium Enterprises contains at least arrangements on ease of establishment, member meetings, and cooperative business activities, and criteria of Micro, Small, and Medium Enterprises, a single database of Micro, Small, and Medium Enterprises, integrated management of Micro, Small, and Medium Enterprises, ease of Licensing of Micro Enterprises, Small, and Medium Enterprises, partnerships, incentives, and financing of Micro, Small, and Medium Enterprises.

Job creation conducted through arrangements related to the increase of investment of the Central government and local government and the acceleration of national strategic projects at least contains arrangements concerning: the implementation of central government investment through the establishment of investment management agencies and the provision of land and licensing for the acceleration of national strategic projects. Inline to support the policy in Law No. 11 of 2020 on Copyright Work regulates the provisions of Article 181 paragraph (2) that harmonization and synchronization related to local regulations and/or regulation of the Head of Regions, implemented.

The ministry or institutions that organize government affairs in the field of the formation of legislation and the ministry that organizes domestic government affairs. Based on the provisions of the Regional Regulation and /or Regulation of the Regional Head that has been in force and contrary to Law No. 11 of 2020 concerning Copyright Work or contrary to higher legislation, or contrary to the court's decision, must be harmonized and synchronized by the Ministry of Law and Human Rights and the Ministry of Home Affairs. Against the provisions of the regulation so that it is necessary to conduct research urgency harmonization and synchronization of regional regulations and/or regulation of regional heads after the enactment of Law No. 11 of 2020 on Copyright Work.

2. RESEARCH METHODS

The method used in the form of normative juridical research using *the statute approach* is used in researching, reviewing, studying, understanding the laws and regulations governing the Urgency of Harmonization and Synchronization of Regional Regulations and/or Regional Head Regulations After the Enactment of Law No. 11 of 2020 on Work Copyright.

3. RESULT AND DISCUSSION

The urgency of Harmonization and Synchronization of Regional Regulations and/or Regulation of Regional Heads After the Enactment of Law No. 11 of 2020 on Work Copyright.

National law is a system. The system consists of elements or components or functions/variables that are always influence-influencing, related by one or more principles, and interacting. All elements/components/functions/variables are linked and organized according to a specific structure or pattern, constantly influencing each other and interacting. The main principle that relates all elements or components of national law is Pancasila and the Constitution of the Republic of Indonesia 1945 and some other legal principles such as the principle of aerospace, nationality, and diversity.[4]

Such a situation has required a unified, consistent, integrated system of legislation, imbued Pancasila and sourced in the Constitution of the Republic of Indonesia 1945, to realize order, guarantee certainty and protection of the law. This means harmonization and synchronization among the legislation is indispensable and urgent to do.

In terms of harmonization and synchronization of the law to the system of legislation in an integrated manner, it appears as a necessity and is an inevitability. The harmonization and synchronization of the legislation as a legal subsystem within the framework of the national legal system so that the legal norms in the legislation do not conflict with each other and there is no duplication or overlap. The urgency of this harmonization and synchronization, on the one hand, provides a robust legal basis by the hierarchy of laws and regulations. On the other hand, in terms of the system and legal principles materialize the conformity of the legal system and legal principles. So that, the application of no conflict of norms.

In terms of realizing the national legal system, of course, it must pay attention to harmonization and synchronization of applicable laws and regulations, both in vertical and horizontal lines. In the national legal system, local legislation is part of the national law. In order to create harmonization and synchronization between the central level legislation and local legislation, it is necessary to harmonize and synchronize the Regional Regulations and/or Regional Head Regulations to realize integrated legislation.[5]

In other words, the Regional Regulation and/or Regulation of the Regional Head shall not be contrary to the higher legislation based on the type and hierarchy of laws and regulations based on Article 7 paragraph (1) The type and hierarchy of laws and regulations consist of:

a. Constitution of the Republic of Indonesia year 1945;
b. Provisions of the People's Consultative Assembly
c. Law/Regulation of the Government Substitutes Law;
d. Government Regulation;
e. Presidential regulation;
f. Provincial regulation; and,
g. District/Municipal Regulation.

The legal force of the Laws and Regulations by the hierarchy as stipulated in Article 7 paragraph (2) of Law No. 12 of 2011. The hierarchical structure of legislation has consequences that lower legislation should not be contrary to higher legislation. This aligns with the lex superior *derogat inferiori legal principle* that lower legislation should not be contrary to higher legislation. This is intended to create legal certainty in the legal system. [6]

Harmonization and synchronization of laws and regulations are carried out either before the legislation is enacted or after it is enacted. The urgency of harmonization and synchronization of legislation after enactment is carried out due to the dynamics of the law on the establishment or enactment of new legislation that causes some of the legislation to be disharmonious or out of sync with the newly enacted legislation.

With the enactment of Law No. 11 of 2020 on Copyright Work, the provisions of Article 181 paragraph (2) that harmonization and synchronization related to local regulations and/or regulation of the Head of Regions, implemented by the ministry or institutions that conduct government affairs in the field of the formation of legislation together with the ministry that organizes domestic government affairs. Based on the provisions of the Regional Regulation and /or Regulation of the Regional Head that has been in force and contrary to Law No. 11 of 2020 on Copyright Work or contrary to higher legislation, or contrary to the court's decision, must be harmonized and synchronized by the Ministry of Law and Human Rights and the Ministry of Home Affairs. The results of harmonization and synchronization are submitted to the Local Government to be followed up on the proposed changes, or replacement of the content material of the Regional Regulation and/or Regulation of the Regional Head that has been in force after Law No. 11 of 2020 on Copyright Work is enacted and its implementation regulations.

Harmonization and Synchronization of Regional Regulations and/or Regulation of regional heads after enacting Law No. 11 of 2020 on Copyright Work.

Harmonization and Synchronization of Regional Regulations and/or Regional Head Regulations shall be implemented by the Ministry of Law and Human Rights and the Ministry of Home Affairs by:

a. Harmonization and Synchronization of content materials of Local Regulations and/or Head Regulations with some changes in sectoral laws in Law No. 11 of 2020 concerning Copyright work as follows:

    1) Law No. 11 of 2020 on Copyright work improvement of investment ecosystem includes: - Application of Risk-based Business Licensing - Simplification of Basic Requirements of Business Licensing in regions - Simplification of licensing Attempted sectors - Simplification of Investment requirements.

        a) Adapted to regional legal products (Regional Regulations and/or Regent Regulations) to classify business licenses based on the classification of low-risk, medium-risk, and high-risk businesses.

        b) Adjusted to the legal products of licensing implementation by the changes made to other regional legal products in each related Regional Device.

    2) Law No. 26 of 2007 on Spatial Planning Adjustment of arrangements in the Regional Regulation and/or Regent Regulation, which includes:

a) Spatial Detail Plan is stipulated by Regulation of the Regional Head, and previously conducted public consultations including with the Regional People's Representative Council.

b) Determination of The Regent Regulation on Spatial Detail Plan no later than one month after obtaining substance approval from the Central Government. If it is not determined within any longer than one month, the RTDR is determined by the Central Government.

c) Eliminating the District Strategic Spatial Plan as an indicator of the preparation of the District Spatial Plan.

d) Eliminate location permits and use the Spatial Plan as the basis for the suitability of space utilization and land administration

e) Remove the content material of rural spatial planning.

f) Remove the material content of the utilization of rural areas.

g) Removing the content of control materials Utilization of rural areas.

h) Removing content materials of Regional Planning Cooperation village

i) Adjusting the nomenclature of space utilization permits approval of the custom utilization of space.

j) Removing the permit of the construction site, replaced with approval of the appropriate utilization of space.

k) Adding material on the implementation of spatial arrangements by local governments.

l) Addition of materials on the scope of the community in the implementation of spatial arrangements including individuals and businesses, adjustment of arrangements in the Regional Regulations and/or Regent Regulations, which include:

- Spatial Detail Plan stipulated by the Regulation of the Head of Regions, and previously

conducted public consultations including with the House of Regional Representatives.

- Determination of The Regent Regulation on Spatial Detail Plan no later than one month after obtaining substance approval from the Central Government. If not determined within no longer than one month, the Central Government sets the Spatial Detail Plan.
- Eliminating the District Strategic Spatial Plan as an indicator of the preparation of the District Spatial Plan.
- Eliminate location permits and use the Spatial Plan as the basis for the suitability of space utilization and land administration
- Remove the content material of rural spatial planning.
- Removing content materials for the utilization of rural areas.
- Removing content material control Utilization of rural areas.
- Removing content materials Of Rural Area Planning Cooperation
- Adjusting the nomenclature of space utilization permits the approval of the appropriateness of space utilization.
- Removing the permits of construction sites, replaced with approval of the appropriate utilization of space.
- Adding material on the implementation of spatial arrangements by local governments
- Addition of material on the scope of the community in the implementation of spatial planning includes individuals and businesses.

3) Law No. 28 of 2002 on Buildings

Definition definitions: • Technical Reviewers are individuals or business entities, both incorporated and not incorporated, who have a certificate of work competency qualification of experts or certificate of business entity to carry out a technical assessment of the appropriate function of building buildings. • The Central of Government is the President of the Republic of Indonesia who holds the power of the government of the Republic of Indonesia assisted by the Vice President and ministers as referred to in the Constitution of the Republic of Indonesia of 1945. • Local Government is the regional head as an element of local government organizers who lead the implementation of government affairs that become autonomous regional authorities. Added definition • Construction Service Provider is a Construction Service Provider. • An Expert Profession is a person who has met competency standards and is determined by an institution accredited by the central government. • Building Inspector, referred to as Penilik, is an individual who has competence, which is given the task by the Central Government or local government by its authority to conduct inspections on the implementation of buildings. • The material of the function and classification of buildings by the Government Regulation to be established. • The function of the building is used by allocating the location stipulated in the Spatial Detail Plan. • The function of the building is listed in the Building Approval. • Changes in the function of buildings must obtain approval from the Central Government. • Each building must meet the technical standards of the building by the function and classification of the building. • The use of above space and/or underground space and/or water for buildings must be carried out by the provisions of the laws and regulations. • Content material on technical standards by the Government Regulation to be established. • The application of environmental impact control only applies to buildings that can significantly impact the environment and is carried out by the provisions of the laws and regulations. • Remove building reliability requirements and remove building requirements for building special functions. • The organizer is obliged to meet the technical standards of building buildings in the implementation of buildings. • Addition of expert professions, inspectors, technical reviewers as building organizers. • Building construction planning must be done by a qualified construction planner service provider and

competency standards by the provisions of the legislation. • Construction planner service providers must plan buildings concerning the technical standards of building buildings. If the planned building is not in accordance with technical standards, then the building must be equipped with testing has to obtain the technical plan from the Central Government.

4) Law No. 32 of 2009 on Environmental Protection and Management Adjustment of arrangements in the Regional Regulation and/ or Regent Regulation, which includes: • Elimination of permit requirements for waste disposal to environmental media, and replaced with approval from the Central Government or Local Government • Restrictions on suggestions and inputs that can be provided only by directly affected communities relevant to the business plan and / or activities • Preparation of Environmental Impact Analysis only involves communities directly affected by the business plan • Changing the regulatory materials related to the phrase " requesting assistance " with the phrase " pointing" to other parties in the preparation of the document On Environmental Impact Analysis • Adjusting the arrangements regarding certification and competency criteria for the preparation of Environmental Impact Analysis in accordance with the Government Regulation to be established. • Material on the Assessment Commission on Environmental Impact Analysis is removed, • Replacing the nomenclature of " business and/or activities of weak economic groups" with the phrase " business and/or micro and small business activities" (express support to micro-enterprises, small, medium) • Affirming the regulation that activities that do not have a significant impact on the environment must meet the standards of Environmental Management Efforts and Environmental Monitoring Efforts. • Fulfillment of standards of Environmental Management Efforts and Environmental Monitoring Efforts are sufficiently stated in the statement of the ability of environmental management • Addition of material on the Statement letter of Environmental Management Efforts, and Environmental Monitoring Efforts integrated into the Parent Number of Efforts • Removing environmental permits. • The Authority of the Regent is removed in rejecting the application for environmental permits if it is not equipped with An Analysis of Environmental Impacts and Environmental Management Efforts, and Environmental Monitoring Efforts.• Changes in the cancellation requirements of business licenses that were not initially met " Recommendations for Environmental Management Efforts and Environmental Monitoring Efforts " changed to " statement of ability to manage the environment." • Removal of material regarding the cancellation of environmental permits through the State Administrative Court because there is no longer an environmental permit. • Changes in environmental permits into environmental approvals • The Authority of the Regent is removed in appointing a Government Bank to store guarantee funds, and this flexibility is taken overall by the Central Government. • The Authority of the Regent is removed in establishing a third party to restore environmental functions in the restoration of environmental functions. Furthermore, the authority is taken by the central government. • Waste Management of Hazardous and Toxic Materials must obtain a business license or approval of the central government or local government, which previously managed hazardous and toxic waste materials requirements get permission from the minister, Governor, or Regent / Mayor.• The Regent's authority in granting dumping permits. Furthermore, the dumping can only be done with the approval of the central government, adjustment of arrangements in local regulations and/or regent regulations, which include: • Addition of materials on waste management that must be stated in the Analysis on Environmental Impacts or Environmental Management Efforts and Environmental Monitoring Efforts. • Affirmation of exceptions for communities conducting land clearing activities by burning, by paying attention to the local wisdom (the violation of excluded subjects, i.e., the community) • Changing the nomenclature of ministers, Governors or Regents / Mayors into the Central Government or Local Government • Elimination of the authority of the Regent to force the person in charge of business and/or activities to conduct environmental recovery due to pollution and / know

environmental destruction carried out (authority only owned by the Central Government). • Elimination of the authority of the Regent to dap at appointing a third party to conduct environmental recovery due to pollution and / know environmental destruction carried out (authority only owned by the Central Government) • Adjustment of administrative sanctions. • Removal of the phrase " without the need to prove the element of error" • Delete the material concerning the filing of a lawsuit against the state administrative decision (environmental permit removed) because the environmental permit no longer exists/removed. • Adjusting the material content of criminal provisions due to eliminating environmental permits and adjustments to subjects that are no longer subject to criminal sanctions. Especially regarding the preparation of Environmental Impact Analysis without having a certificate of competence of the author of Environmental Impact Analysis that has been subject to administrative sanctions.

5) Law No. 41 of 1999 on Forestry.

   The Copyright Act raises two significant issues that change the fundamental character of the Forestry Law, namely, abandoning the spirit of conflict resolution and forest resource conservation efforts. First, the emergence of "strategic area" provisions will be prioritized in accelerating the inaugural forest area to open investment space as much as possible. Second, a change removes the 30% forest area limit from the Watershed, island, or provincial administrative area. This is followed by the elimination of the role of the House of Representatives in approving changes in the allocation and function of forest areas and the use of forest areas for development outside forestry activities (highway infrastructure, reservoirs/dams, mining, and others). Both of the above have been instruments that protect forest resources from exploitation. Regional Devices are responsible for the Environment and Forestry Agency.

6) Law No. 10 of 2009 on Tourism, the addition of authority by the Regent in issuing Business Licensing in the field of tourism.

7) Law No. 2008 on Shipping, the addition of the authority granted by the Regent of Business Licensing for sea transportation, and Licensing of Trying for sea freight cruise- people, Business Licensing for river and lake transportation, Licensing Trying to route, Licensing Trying to transport crossings, Licensing Trying to permit the operation of ships.

8) Law No. 39 of 2014 on Plantations, the addition of the authority of Business Licensing of plantations by the Governor for cross-district / city areas and by regents/mayors for the territory in a district/city.

9) Law No. 21 of 2014 on Geothermal, the addition of the authority of the District Government/city in the implementation of Geothermal, namely the granting of Business License related to direct utilization in the territory that is the authority.

10) Law No. 26 of 2007 concerning Spatial Planning of Local Government Authority of districts/cities is implemented by norms, standards, procedures, and criteria set by the Central Government to implement spatial arrangements, namely: Regulation, coaching, and supervision of the implementation of spatial arrangements district/city; b. Implementation of the spatial arrangement of districts/cities; and c. spatial planning cooperation between districts/cities.

11) Law No. 2 of 2017 concerning the Construction Services Authority of the Municipal Government is implemented in accordance with the norms, standards, procedures, and criteria set by the Central Government in the sub-affairs of Construction Services, including a. the implementation of training of skilled construction personnel; b. implementation of construction services information system coverage of district I city; c. issuance of Small, Medium, and Large Qualifications Business Licensing; and d. supervision of business order, orderly implementation, and orderly utilization of Construction Services.

b. Harmonization and Synchronization of content materials of Local Regulations and/or Head Regulations with some changes in sectoral laws in Law No. 11 of 2020 concerning Copyright work as follows: Harmonization and synchronization of content materials of Local Regulations and/or Regional Head Regulations contrary to court rulings In harmonization and

synchronization of Regional Regulations and/or Regulation of the Head of Regions must also pay attention to the test decision of the Law / Government Regulation Replacement Law against the Constitution of the Republic of Indonesia 1945 decided by the Constitutional Court and the decision of testing government regulations, Presidential Regulation, Regulation of the Minister / Institution to the legislation under the Constitution of the Republic of Indonesia 1945 which is decided by the Supreme Court because the decision of the Constitutional Court and the Supreme Court is final. *Binding* is an interpretation that is legally formal guaranteed by the constitution as an official interpretation. Law / Regulation of the Government Substitute Law, Government Regulation, Presidential Regulation, Ministerial Regulation, Regional Regulation with the articles and spirit of the Constitution of the Republic of Indonesia year 1945 as stated in the opening, can be tested its validity by the Constitutional Court and the Supreme Court.

4. CONCLUSION

The Urgency of Harmonization and Synchronization of Regional Regulations and/or Regulation of the Regional Head After the Enactment of Law No. 11 of 2020 on Copyright Work is carried out in order to:

1. Provide a strong legal basis by the hierarchy of laws and regulations. On the other hand, in terms of the system and legal principles, materialize the conformity of the legal system and legal principles so that conflict norms do not apply.
2. The existence of legal dynamics on the establishment or enactment of new legislation causes some of these laws and regulations to be in harmony or out of sync with the newly enacted legislation.

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The Impacts of the 1890 U.S. Antitrust Policy and the Current Indonesia Competition Law

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ABSTRACT
This paper analyzes the impacts of the 1890 U.S. ***antitrust*** policy and the current Indonesian competition law. In conducting the study, this paper uses normative law. In the course of business law in the U.S., precisely after the civil war ended, the U.S. upholds the principle of free competition that provides open space for individual creativity to be recognized. However, free competition brings negative impacts on competition. At the peak of the competition, there will be only a few winners, which economists say will undermine the principle of free competition when the winners agree to set prices. The rise of ***trust*** policies in the U.S. indicates a damaging business culture. Some labor organizations have protested against the trust policy and state that it issue the antitrust policy in its regulations. Senator John Sherman is a figure who championed antitrust rules into federal law. Meanwhile, in Indonesia, the establishment of the antitrust policy started in 1970, which was later passed into law in 1999. The policy aims to protect business competition in Indonesia and create healthy business competition.

Keywords: *Antitrust, American Legal Culture, Business Law, Free Competition, Indonesian Legal Culture.*

1. INTRODUCTION

Humans play a significant role in the continuity of the government of a country. Supported by the science developed by scientists, humans are the driving force for a country to create an advanced and developing government. One of the countries that continue to develop its potential is the United States of America (USA). In its development, U.S. scientists have pioneered many discoveries in many fields, including science and tools that facilitate human life. In addition to these findings, the development of the U.S. is supported by various kinds of driving factors, one of which is abundant natural resources that can be utilized and managed by the U.S. The 19th-century success of the U.S. industry led the country to be dubbed as an industrial country [1].

Various inventions support the development of the U.S. industry, including the discovery of the telegraph and telephone in 1866 by Alexander Graham Bell, which is still being used [1]. In 1844, the U.S. scientist Samuel F.B. Morse invented a telegram. His discovery progressed across the Atlantic Ocean, connecting the U.S. with England in 1861 [2]. Furthermore, discoveries in the fields of industry, technology.

Furthermore, telecommunications facilitate the relationship of one human to another. The advancement of industrial technology and its inventions requires every country to adapt. Capital savings owned by the U.S. before the Civil War era could help the U.S. support its industry at that time. Technological developments also triggered a change in the system of labor in which human power and animal power were slowly being replaced by machines purchased by reserving the capital.

In the industrial sector, capital plays an essential role for a country to be able to develop. In addition, to the financial capital, the U.S. also had the labor-capital to take advantage of the workforce in 1870, precisely after World War. Various industries emerged in the United States and ran according to free competition, known as laissez-faire.

Laissez-faire or free competition provides a free space for business actors and recognizes the creativity of each individual. Admittedly, individual creativity raises concerns that this will lead to several winners creating a cartel when the winners agree to determine the market price. Besides these concerns, the negative impacts emerge when several pioneer figures behind industrial development in the U.S. control many essential fields in developing their country's industry. These figures control

the oil industry, the food packaging industry, and the railroad [1]. This control by a few humans has led to the emergence of dirty business practices and injured the business culture of the U.S. society, which teaches fair competition and does not bring down its business opponents [3].

The practice of trust sparked protests and resistance from various organizations in the U.S. One of the organizations that opposed this trust policy was Labor Organizations, such as the Knights of Labor and The American Federation of Labor (AFL), which expressed their disappointment with the U.S. government because of this trust policy in the U.S. society [4].

In addition to labor organizations, the emergence of trust policies in the U.S. has generated many responses from the states which immediately issued antitrust policies to eliminate unfair business competition. The state that issued the first antitrust policy was Texas in 1889. However, the policy was stalled outside Texas because other states had not yet established the antitrust policies.

The coercion and demands of the public to abolish trust in the U.S. prompted an important U.S. figure, namely Senator John Sherman, who proposed the legalization of the antitrust bill (RUU) at the federal level [5]. In contrast to John Sherman, as the injured party whom the antitrust bill would harm the federal level, Standard Oil sent a defense document to congress in the U.S. asking for the antitrust bill to be suspended [6].

From the preliminary description above, problems that will be the subject of discussion in this study are how did John Sherman struggle in enforcing and passing the Antitrust Act in the U.S.? and what are the impacts of the emergence of antitrust policies on business competition and business law, especially in Indonesia?

2. METHOD

The research method researchers use in this study is normative law. Normative legal research is also called doctrinal legal research, which finds the rule of law, legal doctrines, and law principles to answer issues [7]. Therefore, researchers use normative law to examine John Sherman's struggle in fighting for implementing the Antitrust Law in the U.S. and its effects on Indonesian business competition. Researchers use legal materials and legal literature related to fair competition as references in obtaining the object of research.

3. RESULT AND DISCUSSION

After a long debate, the U.S. Congress finally approved the Sherman Bill in 1890, signed on July 2, 1890, by President Benjamin Harrison. After the U.S. enacted the Antitrust Act, the Department of Justice (DOJ), as the agency authorized to take action under this law, began to summon any company deemed to be conducting unfair business competition. The DOJ's authority in summoning those companies was based on public reports. One of them was the investigative report by the journalist Ida Tarbell which revealed unfair business competition in Standard Oil, as told by informants who felt that business actors in the oil sector had harmed them.

The informants in the journalist's investigation claimed to have been pressured by Standard Oil in 1891 not to do business and sell oil again by offering a certain amount of compensation money every month and threatening that if the informants did not comply with Standard Oil's wishes and continued to do oil business, then Standard Oil would sell oil at low prices so that the informants would lose money. In addition, under Rockfoller's leadership, Standard Oil was reported to often carry out espionage by smuggling workers into competing companies to know the trade secrets of rival companies [11].

Standard oil was tried and sentenced by the Supreme Court in 1911, which succeeded in dissolving the trust earned by Standard Oil over the years before. Standard Oil then changed its name to "Exxon" and started business again in compliance with the appropriate rules applied in the U.S.

Both the U.S. and Indonesia have a similar people's representation system. A bicameral system or two-chamber system (the U.S. has a Senate and the House of Representatives, while Indonesia has two legislative chambers, namely the House of Representatives (DPR) and The People's Consultative Assembly (MPR)). The Antitrust Law in the U.S. and the Law on Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia have many differences. Indonesia only imposes administrative sanctions on any violations included in the law, and the implementation is under an independent institution, namely the Business Competition Supervisory Commission (KPPU).

After independence, precisely in 1970, Indonesia experienced rapid progress in its economy, coinciding with the rapid development of industrialization, which the government supported; however, this support was given to several business actors to carry out a monopoly by providing facilities and support for impartial regulations [13].

Compared to other legal histories, antitrust is relatively new, both in the international realm and in Indonesia. Even in Indonesia, the discussion on antitrust issues is lagging when compared to many other countries. Historically, the practice of monopoly in Indonesia was committed firstly in 1602, when the Dutch government, with the State General's approval, gave the VOC the right to trade on its own in the territory of Indonesia [14].

The idea of the need for anti-monopoly regulations has been conveyed by experts in law and economics, at least since the enactment of Law Number 5 of 1984 concerning Industry [15].

Historically, the Antitrust Law in Indonesia has various foundations in its formation, including:

- The juridical basis contained in the preamble to the constitution that national development goals must be carried out by protecting the nation and the entire homeland of Indonesia, realizing public welfare, and participating in carrying out the world order. Another juridical basis as stipulated in the 1945 Constitution on economic affairs affirms that the state must be able to provide prosperity to its people equitably.
- The political and international foundations of the economic structure in 1970, according to Ade Maman Suherman [13], require a set of rules that could correct the current economic system, which is dominated and monopolized by certain people on power.
- The socio-economic foundation that bits monopolistic practices and business competition in a strong economy from market distortions. The Business Competition Law is a principle required for the modern economy to provide equal opportunities for business actors to compete openly and honestly.

Within 15 (fifteen) years, Indonesia's economic condition had been dominated by a series of monopolistic actions and fraudulent competition, which is also a contributing factor to the fragility of the Indonesian economy [16].

The various existing foundations and the literature are not sufficient to create rules for fair business competition in Indonesia because of the numerous opposing views. Thus, finally, the DPR used the right of initiative to propose a business competition law for the first time. Also, because of the pressure from the International Monetary Fund (IMF), the discussion on the business competition law has been officially reviewed and taken seriously [14].

The economic crisis that has impacted Indonesia's economy urges the country to issue and approve an antitrust policy, one of the conditions for Indonesia to obtain assistance from the IMF [17].

At last, the Indonesian government issued an antitrust policy, as outlined in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition on March 5, 1999, which will be effective one year since the date of its promulgation.

In practice, the law on the prohibition of monopolistic practices is carried out by an independent institution, namely the Business Competition Supervisory Commission (KPPU). KPPU has the right to examine, assess, and take any action against every provision in this law.

Regarding the application of sanctions, Law Number 5 of 1999 only applies administrative sanctions on violations by business actors. The amount of administrative sanctions is calculated based on the ability of business actors with a minimum administrative sanction of 1 (one) billion and a maximum administrative sanction of 25 (twenty-five) billion.

The law on the prohibition of monopolistic practices also regulates agreements and activities that are forbidden for business actors, namely:

a. Prohibited Agreements

- Oligopoly or production and marketing control agreements.
- Price-fixing agreements for goods and services.
- Agreements on the distribution of the marketing areas for goods and services.
- Agreements that prevent other business actors from selling and offering the same goods and services.
- Agreements that affect prices by regulating production and marketing.
- Agreements establish a larger joint venture company intending to control the production and marketing of goods and services.
- Agreements that control the purchase of supplies to control prices.
- Agreements regarding the production chain from upstream to downstream.
- Agreements that prevent the consignees from supplying from another party.

b. Prohibited Activities

- Monopoly.
- Monopsony.
- Market control.
- Conspiracy in determining the tender winner.
- Dominant position.
- The holding of concurrent positions.
- The holding of majority share ownership in similar companies.
- Mergers, consolidations, and takeovers of companies that result in unfair business competition.

4. CONCLUSION

John Sherman's struggle in antitrust enforcement in the U.S. is the first step ever taken, leaving huge impacts on business activities in the U.S. and worldwide, including Indonesia. After the legalization of the Antitrust Act, the U.S.' business activities had returned to the hands of the public community and emphasized the principle of free competition by not bringing down

business opponents. Despite Indonesia's obligation to fulfill the IMF's requirements for obtaining loans during an economic crisis, the law on the prohibition of monopolistic practices and unfair business competition in Indonesia has had a good impact on the business structure of the state. However, the authors believe it is necessary to reform several laws and regulations that prohibit monopolistic practices in Indonesia by imposing sanctions on violators of these laws. Unfair business competition is still often found in Indonesia's business landscape, as evidenced by business actors' unfair competition in the Indonesian market. The current sanction, the imposition of a minimum fine of 1 billion and a maximum fine of 25 billion, is deemed ineffective in creating a deterrent effect for unfair business people.

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A Comparison of Corporate Social Responsibility (CSR) Settings in Indonesia and China

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ABSTRACT
This study aims to compare mandatory-based CSR arrangements that apply in two countries, Indonesia and China. Where mandatory based Corporate Social Responsibility arrangements in Indonesia have been regulated through Law No. 40/2007 juncto Government Regulation No. 42/2012, Law No. 25/2007 and Law No. 19/2003 with sectoral laws and delegation regulations using the terms Partnership and Community Development Program (PCDP), Corporate Social Responsibility (CSR) and Corporate Social and Environmental Responsibility (CSER). Meanwhile, mandatory-based Corporate Social Responsibility arrangements in China have been accommodated in The Peoples Republic of China's Company Law of 2005 along with sectoral laws and other Codes of Ethics using the term CSR, which in China is known as "qiye shehui zeren". This study is qualitative by using a legal research method based on a statutory and comparative approach, which is analyzed prescriptively to find the novelty of this paper in the form of similarities and differences in CSR arrangements that apply in Indonesia and China. This study is also expected to enrich the research results and references on the comparison of CSR regulations in countries.

Keywords: *Comparison, China, CSR, Indonesia, Settings.*

1. INTRODUCTION

Normatively, by using a statutory and comparative approach [1][2] in this article, the author will study the similarities and differences in the regulation of Corporate Social Responsibility (CSR) as mandatory in Indonesia and China as the novelty of this study. There are many publications on CSR in China and CSR in Indonesia, but specifically, there are no articles that discuss the comparison of CSR arrangements in the two countries. Hence, this study is considered attractive to add references for stakeholders, academics, and practitioners, especially business people, to understand CSR regulation as mandatory in both countries.

The regulation of CSR as mandatory in Indonesia has been going on for more than fourteen years, since its enactment in Law No. 25/2007, Law No. 40/2007 juncto Government Regulation No. 47/2012, Law No. 19/2003, and Regulations of Delegation, the Sectoral Law and 117 of Local Regulation in Indonesia. Nowadays, the existence of the regulation of legal obligations is considered ineffective because there are still many weaknesses in the implementation and substance of the regulation. In addition, with the implementation of Corporate Social and Environmental Responsibility (CSER), there are still many obstacles and are prone to misuse. Based on the research results, in 2014, only about 2853 (26.93%) companies had implemented CSR, out of a total of 10,594 companies in the form of corporate in Indonesia. [3]

Conceptually, the existence of CSR as mandatory in Indonesia is inseparable from the concept of CSR as voluntary, which Western countries have echoed. Based on a single bottom line, namely corporate value, which is realized in its financial condition only, and must consider the concept of "3P" (Planet, Profit and People), known as the Triple Bottom Line.[4][5][6][7] In its development, the concept of Corporate Social Responsibility as mandatory is not only applied in Indonesia but also in China and India.[8][9] Based on the author's research, China is the first country to regulate Corporate Social Responsibility in its corporate law. Then followed by the state of Indonesia to implement the same thing in 2007, Corporate Social Responsibility is mandatory through Law No. 40/2007 concerning Limited Liability Company juncto Government Regulation No. 47 of 2012. [10][11][12][13][14] Then followed by the state of India implementing the same thing in 2013, as stated in

Chapter IX, Article 135, Companies Act 18/2013 and amendment juncto Companies Rules India, 2014. Corporate Social Responsibility setting is mandatory for any company incorporated under Indian law, with a classification based on the Company's net worth. [15][16][17][18][19].

China as a country that implements a legal system that refers to Confusism, Taoism, and Buddhism, [8][9] China has made Corporate Social Responsibility mandatory in China's 2006 Company Law, [8][9] which was amended in 2013 (Company Law of the People's Republic of China - Revised in 2013). The regulation of Corporate Social Responsibility in the China Company Law of 2006 is substantially regulated in Article 5. This means that the State of China has imposed Corporate Social Responsibility legal obligations for companies in the form of Limited Liability Companies, including SOEs. Because at the same time, the China Company Law of 2006 has included the substance of SOEs into the amendments to the Company law.[20][21][22][23] Since the Corporate Social Responsibility provisions were implemented in China, there have been 169 Corporate Social Responsibility cases that Chinese courts decided.[9] What are the similarities and differences in the substance of the regulation of corporate social responsibility in Indonesia and China? It is essential to know that business people in Indonesia and China who are collaborating or investing can understand and anticipate applying the law to both countries.

2. METHOD

The study in this research is qualitative [24], using legal research methods [25] or known as doctrinal research [26][27] with statuta and comparative approach.[28][29] As well as using secondary legal materials that are analyzed prescriptively.[27] Prescriptive analysis was conducted to solve the legal issues contained in the rules of corporate social responsibility that apply in Indonesia and China, as a review process in finding similarities and differences in the rules of corporate social responsibility that apply in Indonesia and China.

3. RESULT AND DISCUSSION

3.1 Regulation of Corporate Social Responsibility in Indonesia.

Currently, the regulation on corporate social responsibility, explicitly under positive Indonesian law, is spread across several laws, using different terms. First, with the term "Partnership and Community Development Program" (PCDP) as a form of CSR for SOEs, it is regulated in Law No. 19/2003 concerning State-Owned Enterprises (SOEs), in particular Article 2 paragraph (1) letter e and Article 88 along with the delegation regulations, through the Minister of SOEs Regulation PER-09/MBU/07/2015 and amendments. Second, the regulation of CSR for investment companies, as regulated in Article 15, Law No. 25/2007 concerning Investment, using the term "Corporate Social Responsibility" (CSR). Third, the regulation of corporate social responsibility for limited liability companies, using the term "Corporate Social and Environmental Responsibility" (CSER), as stated in Chapter XV Article 74 No. 40/2007 concerning Limited Liability Companies juncto Government Regulation No. 47/2012 concerning Social and Environmental Responsibility - Limited Liability Company. Furthermore, implicitly, the norms governing CSR are also found in several sectoral laws, such as Law No. 41/1999 concerning Forestry, Law No. 22/2001 concerning Oil and Gas, Law No. 7/2004 concerning Water Resources, Law No. 4/2009 concerning Minerals and Coal, Law No. 11/2009 concerning Social Welfare and Law No. 32/2009 concerning Environmental Protection and Management. Furthermore, there are currently more than 117 regional regulations that have regulated CSR at the regional level. [3].

Based on the discussion, CSR substance in Indonesia has become a mandatory legal obligation nationally and even at the local level. Referring to the Partnership and Community Development Program arrangement as a form of Corporate Social Responsibility for SOEs, the arrangement is more emphasized on the coaching program for SOEs fostered partners towards Micro, Small & Medium Enterprises (MSMEs) and the environmental development program for the surrounding each community of which SOEs have standardized implementation and reporting in the SOE's annual report to the government and the public. Meanwhile, CSER in Article 74 of the Company Law, normatively it contains four important points: (1) Corporate Social and Environmental Responsibility is mandatory for companies whose business activities are in the field of and/or related to natural resources; (2). Corporate Social and Environmental Responsibility funding is budgeted as the Company's expense; (3). The amount of funding is based on propriety and fairness; (4). Limited liability companies that do not implement Corporate Social and Environmental Responsibility are subject to sanctions that refer to the sectoral law that regulates them. This also applies to investment companies that are in the form of a limited liability company. Referring to the article, which has been published in several journals [10][12][30], it can be stated that the scope of Corporate Social and Environmental Responsibility is specifically for limited liability company which is limitedly applicable only for limited liability company that carries out business activities in and or related to natural resources, including investment companies. Meanwhile, the scope

of the Partnership and Community Development Program applies to SOEs Trustees. [10][31]

Regarding the Corporate Social and Environmental Responsibility program that the Company must implement, it is not regulated in the Company Law. In principle, Corporate Social and Environmental Responsibility is carried out primarily according to its business activities for the benefit of the community around the Company. The right ideas as a form of Corporate Social and Environmental Responsibility program that corporations can implement in realizing a welfare society. It can be in the form of programs that are oriented towards meeting the community's basic needs in the form of clothing, food, housing, education, and health. As for SOEs, the Partnership and Community Development Program activity programs that can be implemented in practice can be a Partnership Program only or the Community Development Program only, or the Partnership Program and Community Development Program, which are carried out together. In practice in several SOEs, the form of the Partnership and Community Development Program program is to provide soft loans/loans for assisted MSMEs, besides that it can be in the form of assistance for natural disasters and non-natural disasters, including those caused by epidemics, education, training, infrastructure, and educational facilities, improvement of health, development of infrastructure and/or public facilities, facilities of worship, nature conservation, or social assistance for poverty alleviation, including for electrification, provision of clean water facilities, provision of sanitation facilities, home improvement for the poor, nurseries for agriculture, animal husbandry and fisheries, or business equipment. [32]

Furthermore, for Corporate Social and Environmental Responsibility funding arrangements, in Law No. 40 of 2007 juncto Government Regulation No. 47 of 2012, it is determined that Corporate Social and Environmental Responsibility funding comes from the Company's costs, with the amount of Corporate Social and Environmental Responsibility funds based on "Reasonableness and Fairness," the amount of which is left to the Company's policy and does not have a size/standard as well as the amount of the percentage determined in the Corporate Social and Environmental Responsibility funds/budget (Article 74 paragraph (2) juncto Article 5 paragraph (1) and its explanation of Government Regulation. Likewise, in its implementation, it is felt that it has not provided maximum benefits to the community around the Company. It is proven that only 11.68% of companies currently have implemented Corporate Social and Environmental Responsibility.[3] Regarding funding in the SOEs Law juncto Article 8 paragraphs (1) and (4) of the Minister of SOEs Regulation No. PER-03/MBU/12/2016, the norm for the Partnership Program and Community Development Program funding in SOEs comes from providing a portion of the SOEs net profit and/or the budget, which is calculated as expenses. SOEs, whose Partnership Program and Community Development Program funds are determined at a maximum of 4 (four) % of the projected net profit of the previous year, which is definitively determined at the time of approval of the annual report.[33]

Moreover, the regulation on sanctions if Corporate Social and Environmental Responsibility is not implemented in Article 74 Law No. 40 of 2007 juncto Article 7 of Government Regulation No. 47 of 2012 does not explicitly regulate. According to Article 74 paragraph (3), the sanctions that can be applied refer to the sanctions rules in the related sectoral law. Based on the analysis results, the sanctions, if the Company does not implement Corporate Social and Environmental Responsibility, can be subject to administrative sanctions in the form of revocation of business licenses and compensation. It can also be subject to essential criminal sanctions in the form of imprisonment and fines, as well as additional criminal sanctions in the form of disciplinary actions, including obtained from a criminal act, and/or closure in whole or in part of the Company, and/or repair due to a criminal act, and/or obliged to do what was neglected without rights, and/or eliminate what was neglected without rights, and/or put the Company under curatele a maximum of 3 (three) years.[33]

3.2 Regulation of Corporate Social Responsibility in China

The discussion of CSR arrangements in China will begin with the use of terms in China which use terms as used by western countries, namely Corporate Social Responsibility or "qiye shehui zeren." CSR in China is an enterprise that should be certain responsibilities to its stakeholders in its various business activities to maintain sustainable development in economic, social, and environmental aspects. In other words, apart from earning profit for its owner, a business enterprise shall also integrate concerns of all stakeholders in the business decisions." [34]

The origins of the initial concept of CSR in China occurred during the economic reforms in the late 1980s and early 1990s, which expanded to the influx of foreign investment and "sweatshop" employment practices, which sparked a global consumer movement throughout the mid-1990s.[8] This has impacted global brand holding companies in China who have started implementing labor and environmental audits, even for the first time, using Mandarin to conduct such audits that meet Chinese legal standards. In practice, this certainly exceeds the level of compliance set by law enforcement in China. Over the past decade, CSR in China has emphasized sustainable environmental

sustainability and has included its regulation in the Company Law of China No. 42 of 2005, which was enforced on October 27, 2005. Its revised version is hereby promulgated and shall go into effect as of January 1, 2006. The regulation of CSR is as stated in Article 5, which states: "In its operational activities, a company shall abide by laws and administrative regulations, observe social morals and commercial ethics, persist in honesty and good faith, accept supervision by the government and the public, and assume social responsibility."[37] According to Article 5, corporations in running their business must comply with social morality and business ethics, act in good faith, and carry out social responsibilities. So, the Chinese government's actions to regulate CSR in the company law have increased CSR awareness for companies. This law reconstructs existing norms and changes the social meaning of moral actions into legal actions. The government's efforts to increase global expansion through CSR have increased the interest of leading Chinese and local companies to commit to implementing CSR as an essential part of competitiveness in Western markets.[8]

As a mandatory existence of CSR in China as well as in Indonesia, it is implicitly regulated in other sectoral laws, such as: The PRC'S Circular Economy Promotion Law in 2008; The PRC's Law on Work Safety in 2002; Guidelines for the State-Owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities in 2007; Implementation Outline of the Harmonious Development Strategy for the 12th Five-Year Plan to the State-Owned Enterprises Directly under the Central Government in 2011; The Twelfth Five-Year Plan for National Economic and Social Development of the PRC in 2011–2015 Part VI: Green development - Construct Energy Conservation and an Environmentally Friendly Society; Employment Promotion Law of the PRC in 2007; Labor Contract Laws of the PRC in 2007; Social Insurance Law of the PRC in 2010; The 12th Five-Year Plan for the Environmental Health Work of National Environmental Protection in 2011; Main Points of Pollution Prevention and Control Issued by Ministry of Environment Protection of PRC; Guidance to Business Credit Building on the 12th Five-Year Period in 2011; Shanghai Municipal's Local Standards of CSR in 2009; Miscellaneous - CSR Guide to Chinese Industrial Enterprises and Industry Association - second version in 2011.[8] Furthermore, there are also other regulations promulgated by the local stock market authority, namely: the Environmental Information Disclosure Act Regulation (for trial implementation) in May 2008, the guidelines for the Disclosure of Environmental Information for companies listed on the Shanghai Stock Market in May 2008, and the guidelines for social responsibility for companies listed on the Shenzhen Stock Market, 2006. Similarly, the Shanghai and Shenzhen stock markets have developed guidelines for the annual corporate social responsibility report. Hence, China is committed to implementing CSR by making standards / Codes of Ethics from each major industry such as the China Textile Industry, which has developed CSC9000T, as a sector localization, CSR standards, guidelines, and norms, where the local CSR Standards were developed in Shanghai and Nanjing. The National Standards Committee investigates efforts to enforce the ISO 26000 CSR guide standard nationally, as in Hong Kong. [35]

As the scope of CSR implemented in China, it applies to all companies, including SOEs, in the form of CSR programs that include product safety, environmental protection, labor rights, human rights, community development, corruption, and so on; it also suggests that companies should consider not only the interests of shareholders but also those of other stakeholders (e.g., employees, consumers, suppliers, and local communities). CSR requires companies to provide the number of goods, services, and employment and the quality of life for those whose interests are affected by corporate activities. Simultaneously in China issued regulations on (a) ensuring safety for employees, neighboring communities, consumers, and the environment; (b) promote transparency in management decision processes, in financial and business transactions, and in the allocation of contracts; (c) improve business mechanisms and practices that are conducive to a circular economy; and (d) foster care and consumer awareness, power-sharing and training.[8]

Furthermore, regarding the supervision of CSR implementation in China, it is carried out by the State-Assets Supervision and Administration Commission of State Council, which has issued an Opinion Guide on the Implementation of Social Responsibility by the Central Company, Outlines of the Implementation of the Harmonious Development Strategy by the Central Enterprises for the 12th Five Years Period, and started the study and preparation of the Direction of Management Social Responsibility for Central Enterprises. Hence, the Ministry of Commerce issued a Social Responsibility Directive for the Overseas Contract Engineering Industry to normalize the operations of companies overseas. Similarly, the National Authorization and Oversight Commission released Guidelines for Implementing Social Responsibilities. Furthermore, the Banking Supervision Commission has also issued an Opinion to Strengthen Bank Social Responsibility among Financial Organizations. Even the Ministry of Commerce (MOFCOM), as a CSR policymaker, has prepared further CSR regulations in its conceptual development. Gradually, the government also implemented Corporate Social Responsibility Projects in a global context in stages, such as the Sino–Germany in 2007, the China–Sweden project in 2008. [8]

Regarding the sanctions for companies that do not carry out CSR in China, it has not been explicitly regulated in the 2006 China company law, because on the one hand, there are experts who consider the provisions of CSR as a moral obligation, on the other hand, make CSR a legal obligation, the same as in Indonesia. However, until the end of February 2018, 169 cases related to CSR were decided in the Chinese Court. It was recorded that SOEs were involved in 35 out of 169 cases, representing about 20% of CSR cases in China. In each case, it does not directly refer to CSR violations but is more related to violations of fiduciary duty and piercing the corporate veil, where CSR violations are used as one of the arguments. So that the sanctions applied by judges in cases submitted to Court are in the form of compensation and administrative sanctions, by first being given the opportunity for mediation before further processing in the Court. [9]

4. CONCLUSION

In principle, the regulation of CSR as mandatory in Indonesia and China has similarities with the regulation of CSR provisions in the company laws of each country. Where CSR is compliance that must be an obligation for every Company. However, normatively it tends to be that the CSR arrangements imposed by the two countries have some differences, especially regarding the scope, form of the program being carried out, as well as the form of supervision and sanctions that are applied if there is a violation in the implementation of CSR in practice.

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Implications of Applying Criminal Money Substitutes to Co-ordination in Corruption Crimes as an Effort to Restore State Finances

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ABSTRACT
The application of substitute money crimes against coordination in the case of Corruption Crimes is stipulated in Article 18 paragraph (1) letter b, Law No. 31 of 1999 as amended into Law Number 20 of 2021 on Corrupt Crimes and in Article 6 of Supreme Court Regulation No. 5 of 2014. The implication of applying substitute money to coordination as perpetrators of corruption crimes lies in the issue of criminal liability. That is related to the question of the accuracy of legal liability between the chairman of the coordination or members of the coordination by the provisions of the applicable law, as an effort to recover state finances caused by corruption. On the other hand, this discussion also relates to whether or not criminal money is applied to the coordinator who commits corruption crimes. The research method used is normative juridical, by analyzing and reviewing the legislation governing the Implications of The Application of Substitute Money Criminal Against Coordination in Corruption Crimes As An Effort to Recover State Finances.

Keywords*: Implications of Criminal Application of Surrogate Money, Co-ordination, Corruption Crimes, State Financial Recovery Efforts.*

1. INTRODUCTION

The investigation into corruption by the Corruption Eradication Commission continues until this moment. This has become the main focus of the Indonesian government. Various efforts have been made both in order to prevent and in terms of eradicating corruption. The implementation of such activities is carried out by the authority of the power holder who has authority based on the applicable laws in the Unitary State of the Republic of Indonesia. [1] The holders of such powers are none other than the executive, legislative, and judiciary. Corruption crimes are detrimental to the state's finances and have violated the social and economic rights of the community so that it is categorized as an extraordinary crime. Therefore, the handling of corruption crimes is carried out thoughtfully and fairly.

Corruption crimes are committed not only by individuals but also by certain groups such as government institutions and private institutions that have a relationship with the government itself. Corporation as an entity or subject of law whose existence contributes significantly to improving economic growth and national development, but in reality coordination, there are times when also committing various criminal acts (corporate crime) that bring the impact of losses to the state and society by the Regulation of the Supreme Court No. 13 of 2016 on Procedures for Handling Criminal Cases.

Ideally, coordination is also used to collect and save assets resulting from corruption crimes rather than its administrators or people from among state organizers such as prosecutors, police, and corruption eradication commissions. When viewed from the economic aspect, that personal and coordinated who committed the corruption has first completely avoided "profit loss." It is proven that if the proceeds of corruption are stored and rushed in their assets, then the manager's criminal prosecution alone will not be comparable and adequate to recover the state's financial losses.

As the subject of corruption law, the corporation is stipulated by Article number 3 of Law No. 31 of 1999 (including everyone). Consequently, the corporation can be held accountable and can be criminally prosecuted. Suppose corruption crimes are committed on behalf of coordination. In that case, criminal charges and charges can be made against the corporation and or its administrators by Article 20 paragraph 1 of Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption.

Corruption in Indonesia has become a very severe problem, entrenched and cultured until this moment. Therefore, it takes a particular institution to solve the problem of corruption and restore or recover the financial or economic losses of the country as a result of the depraved acts. [2] It is necessary to provide additional criminal payments in the form of replacement money accompanied by the seizure of assets (assets) of defendants that are proven to be obtained from the proceeds of corruption. According to Eli Laila Kholis, corruption crimes result in the loss of the state and the people directly or indirectly. [2]

Whereas the eradication system of corruption, the expected objective is the ability to meet and anticipate the development of public legal needs in order to prevent corruption crimes both committed by the group and personally, more effectively any form of corruption crimes that are very detrimental to the state's finances or the state economy in particular as well as society in general.

The state's finances are all state assets of any kind, separated or undivided, including all parts of the state's wealth and all rights and obligations arising from:

1. Being in the control, management, and accountability of state agency officials, both at the central and regional levels;
2. Being in the control, management, and liability of State-Owned Enterprises /Regional Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third-party capital under agreements with the state.

Meanwhile, the State Economy is an economic life prepared as a joint venture based on the principle of kinship or community efforts independently based on government policy, both at the central and regional levels. By the provisions of applicable laws and regulations aimed at providing benefits, prosperity, and welfare to all people's lives.

Repressive efforts against corruption crimes today are not only focused on arresting and punishing the perpetrators of corruption crimes with prison and confinement, but also through efforts to recover financial and economic losses of the country by foreclosure and then imposed additional crimes such as the payment of criminal money. The primary criminal explanation that can be imposed against coordination is only criminal plus 1/3 (one-third). First, moving goods that are tangible or intangible or immovable goods used for or obtained from corruption crimes, including companies belonging to convicted companies where no criminal corruption is carried out and from goods that replace the goods scattered. Second; Payment of replacement money as much as possible is the same as property obtained from corruption crimes; third closure of all or part of the company for a maximum of 1 (one) year; the fourth revocation of all or part of certain rights or the removal of all or may be granted by the government to the convicted.

If the convicted (corporation) does not pay the replacement money any later than 1 (one) month after the decision of the court that has obtained a permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money by Article 18 paragraph 2 of Law No. 31 of 1999 Jo. Law No. 20 of 2001 on the Eradication of Corruption. Suppose the imposition of substitute money criminals still does not affect the corporation who commit corruption crimes. In that case, the judge can impose additional criminal closure of coordination business forever or a temporary period.

The implications of the application of substitute money to corporations that commit corruption crimes, until this moment. The judges have different views where on the one hand, considers violations of human rights and violations of the principle of a fair trial, while on the other hand expressly states that his efforts to drop the substitute money criminally is in order to recover the financial losses of the state because if only relying on the criminalization of its administrators whom the proceeds of corruption crimes have become property or corporate assets then it is not fair to who bears the payment of the replacement money.

2. METHODS

The research method used in this study, namely normative juridical, analyzes and reviews the legislation governing the Implications of The Application of Substitute Money Criminal Against Coordination in Corruption Crimes As An Effort to Recover State Finances.

3. RESULT AND DISCUSSION

3.1 Understanding, Imposition of Substitute Money, Coordination and Corruption Crimes.

a. Definition of Corruption

According to the Indonesian Anticorruption Encyclopedia, that "Corruption comes from the Latin: "corruption"= bribery; "corruptore," which, if translated in Bahasa Indonesia, has the sense of "damaging" this is based on the fact of the field[3], that government officials or state agencies that make their positions as economic benefits or abuse their authority with cases of gratification, forgery, and other cases.

Corruption is an act of enriching oneself, or a group is an act that is very detrimental to others/corporations, nations, and countries. [4]*Corruption* is a behavior that deviates from the official duties of a state office due to the gain of status or money concerning the individual (individual, close family, own group) or violates the rules of conduct of some personal conduct. On the other hand, corruption is a disease that has plagued the country of Indonesia. Like a disease, this act of corruption must be cured so as not to spread to other parts of the body. [5]

Based on the above, the state made a special device Law No. 31 of 1999 Jo. Law No. 20 of 2001 on corruption crimes, as a breakthrough of the state government in dealing with corruption. As Article 2 paragraph (1) reads: "Any person who unlawfully enriches himself or others or a corporation that may harm the state's finances or the economy of the state, sentenced to life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp.1000,000,000,000 00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Form of legal sanctions and their application against perpetrators of corruption crimes either committed individually or carried out by corporate or certain groups that have authority based on the applicable law. That is first; Moving goods that are tangible or intangible or immovable goods used for or obtained from corruption crimes, including companies belonging to convicted companies where no criminal corruption is carried out, as well as from goods that replace the goods scattered, second; Payment of replacement money as much as possible is the same as property obtained from corruption crimes; third closure of all or part of the company for a maximum of 1 (one) year; the fourth revocation of all or part of certain rights or the removal of all or may be granted by the government to the convicted.

b. Coordination or "Corporate" and Historical Aspects.

A corporation is a group of trade entities. [6] In this brief explanation, the understanding of the corporation has been limited because the corporation that can be held criminally accountable is a corporation that is already incorporated. The reason is that by being incorporated, it is clear the composition of the board and several rights and obligations in the corporation. However, there is also an opinion that corporations do not need to be incorporated. Because every group of people, whether in a trade relationship or other business, can be held criminally accountable.

A corporation is an entity or legal subject whose existence significantly improves economic growth and national development. However, corporations sometimes also commit various crimes (corporate crime) that impact losses to the state and society. In the aspect of corporate history as the subject of criminal law is not known by the Criminal Code, but we can find in Law No. 31 of 1999 Jo. Law No. 20 of 2001 on corruption crimes. Because the Penal Code is a legacy of the Dutch colonial government that adheres to the Continental European system (civil law). Continental European countries lag slightly behind in regulating corporations as the subject of criminal law compared to Common Law countries, wherein Common Law countries such as The United Kingdom, the United States, and Canada, corporate accountability has begun since the industrial revolution. A court in England began in 1842 where a corporation was sentenced to a fine for its failure to fulfill a legal obligation. [7]

In the Netherlands at the time of formulation, the authors of the Criminal Law Book (1886) accepted the principle of "Societas / delinquent university non-potest," which means that legal entities/associations cannot commit criminal acts. This was in reaction to the absolute practices of power before the French Revolution of 1789, which allowed collective responsibility to one's mistakes. Thus according to the basic concept of the Penal Code, that a criminal act can only be committed by natural humans (natuurlijke persoon).

c. Imposition of "Criminal Money" on Corporations

As the subject of corruption law, corporation is stipulated by Article 1 Number 3 of Law No. 31 of 1999 ("including everyone"). Consequently, the corporation can be held accountable and can be criminally prosecuted. If a corruption crime is committed on behalf of a corporation, criminal charges can be made against the fund corporation or its administrators. The principal criminal that can be imposed against the corporation is only a criminal fine, with the provisions of the criminal maximum fine, with the criminal maximum plus 1/3 (one-third). In addition to corporations may also be subject to additional criminal charges, namely:

a) Tangible or intangible moving goods or immovable goods used for or obtained from corruption crimes, including companies belonging to convicted companies where no criminal corruption is carried out and from goods that replace the goods,
b) payment of replacement money as much as possible is the same as property obtained from corruption crimes;
c) Closing of all or part of the company for a maximum of 1 (one) year;
d) Revocation of all or part of certain rights or the removal of all or may be granted by the government to the convicted.

Suppose the corporation / convicted corporation does not pay the replacement money any later than 1 (one) month after the court ruling that has obtained a permanent legal force. In that case, his property can be confiscated by the prosecutor and auctioned to cover the

replacement money. The auction is conducted no later than 3 (three) months after the foreclosure. In addition, it can also be considered a judgment by the judge that if it is not sufficient to be affected by the imposition of criminal payments, it can also be imposed additional criminal replacement money more realistically than the assets seized and auctioned or even led to the necessary consequences of the unfulfillment of legal responsibilities.

3.2 System of Application of Substitute Money Criminal Against Coordination In Corruption Crimes;

One of the issues that get "more" attention in eradicating corruption is how to recover lost state losses resulting from corruption, whether done by individuals or corporations. The rescue of the country's money is essential, given that the eradication of corruption committed by apparat law enforcement can only save 10-15 percent of the total money corrupted. [7]One of the instruments of criminal law that allows the rescue of state money from corruption is to maximize the instrument of the criminal law of substitute money. As a sanction, this legal instrument is considered more rational to eradicate corruption, preventing state losses.

Criminal sanctions are essentially additional penalties of a special nature. Criminal sanctions for substitute money are stipulated in article 34 letter C of Law No.3 of 1971, which reads: "In addition to the provisions of the Criminal Code referred to in the Penal Code, then as an additional penalty is the payment of replacement money as much as the amount of property obtained from corruption. This is similar to the concept covered by Law No. 31 of 1999, which was later revised into Law No. 20 of 2001. *Criminal Money Substitute* is a punishment that requires a person who has acted to harm others (state) to pay some money or goods to the person who was harmed so that the losses that have occurred and be considered never occur.

Article 18 paragraph 1b of Law No. 31 of 1999 stated, the payment of criminal substitute money as much as possible is the same as property obtained from corruption crimes. The explanation of Article 18 paragraph 1b in Article 18 paragraph 2 also states that: "If the convicted does not pay the replacement money as referred to in paragraph (1) letter b no later than (1) letter b no later than 1 (one) month after the court ruling that has obtained a permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.

The adoption of criminal money substitutes into the criminal justice system that was initially only known in the civil law instrument is backed up by the thought that corruptors should be threatened with criminal sanctions as severely as possible in order for them to be deterred. Romli Atmasasmita, one of the expert team of the formulation of Law No. 31 of 1999, stated that the criminalization system embraced by corruption laws, both old and new, everyone is already afraid to commit corruption. Moreover, coupled with the obligation to pay the replacement money by the amount corrupted. For every person/perpetrator of criminal acts of corruption who is included in the corruption indictment, he must inevitably face multiple criminal sanctions.

Indemnification is an obligation imposed on a person who has acted unlawfully by committing acts of corruption, thereby causing harm to others (the state) because of his fault. Suppose the convict does not have sufficient property to pay the replacement money as mentioned in paragraph (1) letter b. In that case, the penalty of imprisonment shall not exceed the threat of maximum from the criminal by the provisions in this law. The duration of the criminal has been determined in the court's decision.

The fundamental purpose of the policy of establishing criminal money substitutes in corruption cases cannot be separated from the goal to save state losses, which in the long run relates to the political objectives of criminals in the overall sense of community protection to achieve prosperity. Unfortunately, as a strategy, the determination of criminal money replacement is not designed and taken seriously, resulting in various problems. One of them is determining the amount of criminal money that the perpetrators of corruption must pay to the state to cover losses due to corruption.

Seen as a process of criminal law enforcement mechanisms, this can be an oversight of criminal law enforcement mechanisms. That is, the criminal determination of replacement money is nothing but an unplanned policy process. [6]Whereas, if look at the requirements of giving in order to run with various planning and through several stages, among others as follows:

a. The stage of criminal determination by lawmakers;
b. The stage of criminal granting by the authorized body, and;
c. The stage of criminal implementation by the authorized implementing agency;

Indicators of unplanned criminal determination of surrogate money as a form of criminalization mechanism can be seen from the regulation of criminal problems of surrogate money in existing anti-corruption laws. In practice, with this concept, the judge will have difficulty determining the amount of replacement money. These problems are:

a. Judges will find it difficult to sort out which assets come from tipikor and which are not. In this sophisticated era, it is straightforward for corruptors to metamorphose assets resulting from corruption (asset tracing) through financial transactions and banking services. In addition to doing this, it requires special skills as well as complete data and information. Not to mention if we talk about the time, that is certainly not a moment, especially if the treasures that will be counted are outside the diplomatic bureaucracy that

must be very complicated and time-suppressing.

b. The amount of replacement money will be difficult if the defendant's assets to be assessed turned out to have been converted in the form of assets by their nature have volatile value, such as property assets, jewelry, stocks, and so on.

c. There has been no creation of integrated precept and coordination between law enforcement officials to prevent and deal with corruption. As a result, in some cases, there is a deadlock of efficacy and perception among existing law enforcement, so there are phenomenal precedents that can adversely affect the climate of eradication of corruption. One of them is the birth of the Decision of the Constitutional Court that removes the provisions on material legal acts in corruption crimes, even though the provisions of acts against material law have become jurisprudence in Indonesian law.

3.3 Implications of the Application of Substitute Money Criminal against Coordination in Corruption Crimes as an Effort to Recover State Finances.

The term corporation /corporate has a relationship or is closely related to the field of civil law. Because the definition of a corporation is a terminology closely related to the term legal entity (Recht persoon), and the legal entity itself is closely related to civil law.

The corporation has been recognized as a subject born by persons and can act in legal traffic and be held criminally liable, [6] including in corruption cases, coordination obtains regulatory affirmation as the legal subject of "person" and accountability. The criminal system is regulated in detail if corruption crimes are committed by or on behalf of a corporation. Then criminal charges can be made against the corporation funds or its manager. This means that cumulatively-alternatively can be prosecuted and defunded when done by or on behalf of a corporation to be done to corporations and managers, or it could be to the manager and to the corporation itself.

In practice, on this issue, whether the corporation as a legal entity can be sanctioned in the form of payment of substitute money without being filed as a defendant. Two traditions discuss this issue as follows:

a. The first flow, the imposition of criminal sanctions against a corporation, can be done, although not filed as a defendant in a case, as for the argument is moreover the crime of corruption committed by the manager in his position as President Director (Directing Mind)of a corporation namely:
    1) If the crime of corruption is beneficial to the corporation;
    2) Both crimes of corruption are extraordinary, so the handlers must be extrapolated;
    3) Considering one of the purposes of the Corruption Crime Law is to recover state assets /assets recovery to achieve that goal, the handling of perpetrators of corruption should be done cheaply and quickly.

b. The second flow, criminal prosecution of a person, must be based on the indictment submitted by the public prosecutor to the court. For the judge, the indictment is the basis for conducting an examination and dropping the verdict to the accused by the provisions of the indictment.

The conditions for an indictment have been determined imitatively in Article 143 of the Kuhap with the threat of null and void or canceled if those conditions are not met. Article 143 kuhap is a closed criminal procedural law, so it cannot be interpreted because it will damage the due process of law and violate one's rights.

For positivists, not being made a corporation as a defendant but also prosecuted and criminal then can be categorized as a violation of the law of the event as well as violating the human rights of the subject of corporate law that has the right to be examined as the legal subject of the person. [6]The judges who refused to grant the prosecutor's request were based on Supreme Court Regulation No. 5 of 2014, which explained that the court should reject the claim and suggested that the Public Prosecutor indict a third party first in the case. This contest is in conjunction with Article 6 of the Supreme Court Regulation Nomor 5 the Year 2014, which states that replacement money can only be dropped. This means that the prerequisite that additional criminal payments in the form of substitute money can only be imposed on the party of either a person or a corporation that is a Defendant.

In other words, those who are not defendants, although also prosecuted in the prosecutor's demands, it is prohibited to be criminally penalized with substitute money. Meanwhile, in the progressive legal perspective, the verdict of the corporate criminalization is actually in order to protect the human rights of the accused Caretaker who is unlikely to have the ability to recover the financial losses of the state that has been included in the corporate profits. On the other hand, from the perspective of the state and society has the right to recover the state's financial losses from the proven corruption.

In this context, such a criminal verdict is categorized as an attempt at legal discovery. The verdict of corporate criminalization in such corruption crimes is the reality of the functionalization of judges' interpretation. Because in reviewing the philosophy of criminalization that aims to improve the damaged circumstances of the criminal corruption, namely the return of financial losses of the state, the breakthrough interpretation of the judge can be said to find its relevance. As stated by Satjipto Raharjo that "by the Indonesian nation, widespread corruption is called extraordinary crime and we do not stop at giving the creepy name, but also contains the meaning of

eradicating in a way that corresponds to the severity of corruption."

According to the term surrogate money, that contains an understanding that does not lead to the actions of individuals but the suppression of the public or state. In that case, it can be said: "criminal and punitive in their nature." This is different, for example, by claiming damages for arrest, arrest, prosecution, trial, or imposed other actions without reason based on the law applied in Article 95 of the Penal Code. The problem is also different from the claim for damages resulting from the act that becomes the basis of the indictment that can be combined into a criminal case. The relevant interests are the interests of the individual, not the interests of the state. [6] While the main interest of the criminal application of surrogate money is the recovery of state financial losses. As a theory of social defense, funding through surrogate money is not only worth the retaliation limits of means to protect the community's interests. [6]

In its current development, W.J.P Pompe asserts that the legal under the point of criminal law is in the public interest or the public interest. The legal relationship arising from a person's actions arising from a person who gives rise to criminal charges is not a collaborative relationship between the guilty and the harmed but rather a subordinate relationship of the guilty against the government assigned to the benefit of the people. [6]

Therefore it is relevant that the application of criminal money substitutes against corporations that control the assets resulting from corruption crimes from its administrators. It is appropriate to be prosecuted and criminal to restore the state's financial losses because if only relying on criminal money substitutes against its administrators will not be realized optimal efforts to restore the financial losses of the State aqua national economic recovery.

According to the teachings of vicarious liability, a person can be responsible for the deeds of others. Suppose this type is applied to the corporation. In that case, it may have to be responsible for the actions carried out by its employees, its power or horizontal, which is responsible to the corporation. It also obtains legitimacy from Article 20, paragraph 1 of the Tipikor Law, which states that "if a corruption crime is committed by or on behalf of a corporation, then criminal charges and charges can be made against the corporation and or its administrators'. Phrases and/or in the sentence of criminal prosecution and prosecution can be made against the corporation individually or in familiar with its manager, even if the alleged perpetrator of corruption is the perpetrator. So when the board is filed as a defendant and in the judicial process proven legitimately, and convincingly there is a criminal act of corruption on behalf of the corporation. Against the corporation can be prosecuted and criminalized, including, in this case, criminal money substitute. In this context, judges who view that corporations can be penalized with surrogate money even if not made defendants are valid according to the doctrine of vicarious liability accommodated by Article 20 paragraph (1) of the Tipikor Law. Vicarious liability can be charged with criminal liability for the actions of others if there is a delegation principle. An employer or employer can be held accountable for the actions physically performed by his/her work. Nevertheless, if according to the law, the act is seen as the work of the employer. [6]

The application of the doctrine of vicarious liability is expected to be a factor that can prevent and minimize the occurrence of criminal acts, both crimes committed by individuals and crimes committed by corporations. The principle of vicarious liability is easier to apply because there is no need to look for who did it (directing mind), whether the culprit is a serious actor or criminal acts, whether there is a mistake (men's rea), so liability can be charged to the corporation. [6]

It must be admitted that the establishment of the board alone as a criminal cannot be enough. In economic matters (including corruption), fines can be imposed as punishment to the board compared to the profits that the corporation has received by doing so, or the losses incurred in society, or the losses incurred in society, or suffered by its rivals, those profits and or losses are more significant than the fines imposed as criminal. The criminalization of the board does not provide sufficient assurance that the corporation does not once again commit acts that the law has prohibited. Therefore, additional criminal in the form of an obligation to the convicted to pay replacement money with a maximum amount of property obtained from the act he committed, and prosecuted and imposed on each criminal case of corruption as one of the efforts of law enforcement officials to restore the state's finances or the economy of the state, then against the corporation in question relevant to be subject to additional criminal payment of replacement money.

4. CONCLUSION

Criminal sanctions are essentially additional penalties of a special nature. Criminal sanctions for substitute money are stipulated in article 34 letter C of Law No.3 of 1971, which reads: "In addition to the provisions of the Criminal Code referred to in the Penal Code, then as an additional penalty is the payment of replacement money as much as the amount of property obtained from corruption. This is similar to the concept covered by Law No. 31 of 1999, later revised into Law No. 20 the Year 2001. The application of substitute money criminal against coordination in the case of Corruption Crimes is stipulated in Article 18 paragraph (1) letter b, Law No. 31 of 1999 as amended into Law Number 20 of 2021 on Corrupt Crimes and in Article 6 of the Supreme Court Regulation No. 5 of 2014.

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Responsibility of the Board of Directors (Management) of State- Owned Enterprises Using the Principles of Business Judgement Rule in Criminal Liability

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ABSTRACT
Enterprises, among others, because BUMN is one of the economic players in the national economy based on economic democracy, and it plays a critical role in the national economy's implementation in order to achieve community welfare. Implementing BUMN's function in the national economy to achieve community welfare, on the other hand, is not ideal. For this reason, the management and supervision must be carried out professionally. In SOE management and supervision, not a few Directors (management) are exposed to exceptional criminal cases due to errors or negligence in implementing the Business Judgment Rule. Moreover, currently, few references or jurisprudence can save BUMN Directors if they are exposed to allegations of corruption, including the condition of laws and regulations from the government that has not explicitly regulated the implementation of the Business Judgment Rule.

Keywords: *Enterprises, Criminal Liability, Principles, Responsibility.*

1. INTRODUCTION

BUMN plays a key role in the development of the country and holds a critical position in the Indonesian economy. BUMN serves as an extension of the government's arm in carrying out different commercial operations and as a participant in the national economy's economic activities.

Another purpose of establishing SOEs is to prevent a powerful private company from gaining a market monopoly on goods or services that affect people's livelihoods. If a powerful private company gains a market monopoly on goods or services that affect people's livelihoods, the community will invariably suffer as a result of rising prices of goods or services due to supply and demand economic principles.

SOE management and supervision must be professional and adhere to the principles of Good Corporate Governance, or GCG as it is more often known. Most SOEs in Indonesia still seem inflexible, too procedural, bureaucratic, especially about financial accountability and business operations.

Currently, SOEs are regulated explicitly by Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) and are regulated by other laws and articles of association. [1]

BUMN is classified into two types, according to the BUMN Law:

1. Persero, or Limited Liability Business, is a BUMN in the form of a limited liability company whose capital is divided into shares, with the Republic of Indonesia owning all or at least 51 percent (fifty-one percent) of its shares. Its primary goal is to make a profit (Article 1 point 2 of the Law Number 19 of 2003 concerning State-Owned Enterprises)
2. A Perum, or Public Company, is a BUMN whose whole capital is held by the government and is not divided into shares, and which aspires to benefit the public by delivering high-quality goods and/or services while also seeking profits based on corporate management standards (Article 1 point 4 of the Law Number 19 of 2003 concerning State-Owned Enterprises).

The aims and objectives of creating BUMN are governed individually in Article 2 paragraphs (1) and (2) of the BUMN Law, which reads as follows:

(1) The purposes and objectives of the establishment of BUMN are:

a) Contribute to the growth of the national economy and, in particular, state income;

b) Profit maximization;

c) Organizing public benefits in the form of high-quality, sufficient commodities and/or services to meet the requirements of a large number of people;

d) Be a pioneer in business activities that the private sector and cooperatives cannot yet carry out;

e) Actively give advice and support to entrepreneurs from economically disadvantaged groups, cooperatives, and the general public.

Based on the explanations of these articles, we can see that the purpose of SOEs is not only to seek profit but also to promote the national economy and people's welfare. There are 2 (two) functions that are sometimes contradictory, like two sides of a coin, so that it becomes a dilemma for SOEs' operations, including those that distinguish them from each other. SOEs with private companies who fully pursue profit.

According to the author, the BUMN Business (Persero) is a fake legal corporation controlled in Article 1 point 2 of the BUMN Law, which is not a legal entity but is merely restricted to the conditions for the degree of state share ownership in a limited liability company. The legal entity of a Limited Liability Company is governed by the Limited Liability Company Law No. 40 of 2007. (UU PT). [2]

According to the Limited Liability Company Law, a limited liability company is a legal entity that is a capital partnership formed pursuant to an agreement, conducting business activities with authorized capital that is entirely divided into shares, and meets the requirements set forth in this Law and its implementing regulations.

The company legislation solely controls the management of BUMN from a procedural standpoint for a limited liability corporation. However, for the implementation of its business, it is bound more by the BUMN Law. There will be a dilemma regarding the orientation of the BUMN itself, which should prioritize pursuing profit or prioritizing social interests.

The laws and regulations relating to assets and the management of BUMN themselves have received quite a several requests for material review, and there have also been several decisions of the Constitutional Court related to this matter, for example, the Decision of the Constitutional Court Number 48/PUU-IX/2013 which is a decision of the Constitutional Court. The findings of the investigation of Law No. 17 of 2003 on State Finance (Law No. 17 of 2003), in which the issue is the applicability of Article 2 letters g and I of Law No. 17 of 2003, which reads: "State finances as referred to in Article 1 number 1, include: (g). state assets/regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including state finances separated from state/regional companies; (i). other party's assets obtained by using the facilities provided by the government". According to the Petitioner for judicial review, the application of this article is contrary to Article 23 paragraph (1), Article 28 paragraph (1), and Article 28C paragraph (2), but the Constitutional Court has concluded that the petition for judicial review from the Petitioner is wholly rejected. [3].

There is also a request for judicial review of Article 6 paragraph (1), Article 9 paragraph (1), Article 10 paragraph (1) and (3), and Article 11 letter an of Law Number 15 of 2006 creating the Supreme Audit Agency. [4]

Of these articles, the most related to the phrase BUMN/BUMD are:

Article 10 paragraph (1) reads:

"BPK assesses and/or determines the number of state losses caused by unlawful acts, whether intentionally or negligently committed by treasurers, BUMN/BUMD managers, and other institutions or bodies that manage state finances." [4]

Article 10 paragraph (3) reads:

"To guarantee the implementation of compensation payments, BPK has the authority to monitor:… b. Implementation of state/regional compensation to treasurers, managers of BUMN/BUMD, and other institutions or bodies that manage state finances determined by BPK."

According to the petitioner for judicial review of these provisions, they are in violation of the 1945 Constitution's Article 23 paragraph (1), Article 23E paragraph (1), and Article 28D paragraph (1). Concerning this petition, the Constitutional Court's Decision brings reasonable expectations for the implementation of business judgment rules, because in the closing section of their considerations, apart from constitutional difficulties, the justices of the Constitutional Court emphasized that state assets have been changed into BUMN or BUMD business capital, and its administration is governed by business judgment norms. However, the separation of state assets has no effect on BUMN or BUMD's wealth, which is independent of state assets, because, from a transaction standpoint, there is just separation and not a transfer of ownership, thus it stays as state finance. In other words, the supervisory authority remains with the state. The state's form of supervision must change from being based on the paradigm of state wealth management in the administration of government (government judgment rules) to being based on a business paradigm (business judgment rules). [5]

In addition to the problems previously mentioned, it is undeniable that the directors of SOEs also have a high potential for abuse if intensive supervision is not carried out because these directors play a significant role in controlling the company.

Applying BJR to the legal system in nations that follow the civil law legal system appears to be difficult since the Unitary State of the Republic of Indonesia, for example, based its law on laws and regulations as the highest source of law. This factor also causes judges' decisions in Indonesia to be based more on judges' interpretations, which are limited to the theories contained in the Law, so that judges' decisions are not well developed.

In Indonesia, Law Number 40 of 2007 regulating Limited Liability Companies is frequently used as a source of interpretation for BJR. There are 3 (three) essential points that must be met to be categorized as a business decision: business decisions must be taken in good faith, decisions must be taken with responsibility, and the last is decisions taken must be based on the interests of the company. Let us look at the role of SOEs themselves, apart from seeking profit from the business side. They also function as an extension of the state to prosper the community and support government programs in other sectors related to the SOE's main business. To facilitate the discussion regarding this BJR, the researcher's example is PT Pelabuhan Indonesia I, II, III, and IV (Persero), which has its principal business as a port service provider, which is an essential factor in the logistics chain in Indonesia. This BUMN is also related to the lives of many people and dramatically affects logistics costs in Indonesia, which will also significantly affect the selling price of many goods that the community will use.

If viewed from a pure business entity in the form of a Persero whose primary purpose is to seek profit, of course, it will be very contrary to the purpose of forming a company in the form of a Persero, so that it is inevitable that private companies will not want to try or manage similar companies in the sector and region, unless they can apply tariffs that can offset and return their investment. If this happens, the tariffs charged by the private sector will inevitably be high, and they will monopolize as much as possible.

If this happens, the price of goods consumed by many people will soar, and the state's goal to prosper its citizens will undoubtedly be challenging to achieve. This kind of business management problem is experienced by Pelindo 2 but also experienced by state-owned airport providers in the area, including the risk of business losses. This is only a small example of the seriousness of the function and role of BUMN in the form of a Persero. The author believes that there are still many SOEs in Persero in other regions in Indonesia that have the same fate. Only examples related to business, not to mention the investment process, the process of procuring goods and services for business operations, which must have legal risks because there are so many laws and regulations. - Invitations that must be used as guidelines. If it is associated with corporate responsibility, this risk will inevitably be the SOE Directors' risk. From the description above, the main points of study or discussion in this study are:

1. How did the Business Judgment Rule become a must in the business and management of BUMN in the form of a Persero?
2. What is the form of the model so that it can be used to create a specific, focused, and detailed Business Judgment Rule to eliminate the confusion of SOEs in implementing the Business Judgment Rule?
3. What are the SOE Directors' (Managers) responsibilities in terms of criminal liability for implementing the Business Judgment Rule?

2. METHOD

The authors employ normative-empirical legal research approaches to gather data for this study. These research methods combine normative elements supported by the addition of facts that exist in Indonesian SOEs. With the approach method to an existing legal event, the process is still ongoing or not over. Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials are the legal materials used by the author in this study.

3. RESULT AND DISCUSSION

In running a business or managing SOEs, Good Corporate Governance (GCG) principles are known. This can convey based on the explanation of Article 4 of the Company Law, which states that:

"The enactment of this Law, the articles of association of the company, and the provisions of other laws and regulations, do not reduce the obligation of each company to comply with the principles of good faith, the principle of propriety, the principle of propriety, and the principles of good corporate governance in running the company." [2]

Furthermore, those relating to GCG are described in Part VI of the BUMN Law's general explanation section, which the writers might summarize as follows:

The Law aims to realize BUMN's long-term development objective and to establish the foundations or principles of excellent corporate governance (GCG). When it comes to managing and overseeing SOEs, these concepts are critical. Experience has shown that the economic downturn in various countries, including Indonesia, is partly because these state-owned companies do not consistently apply the principles of good corporate governance (GCG). [2]

The BUMN Law is designed to create a management and supervision system based on the principles of

efficiency and productivity to improve the performance and value of BUMN and prevent BUMN from exploiting actions outside the principles of good corporate governance (GCG). (1)

In addition to the PT Law and the BUMN Law, the Minister of SOE Regulation number: PER-01/MBU/2011 about the Implementation of Good Corporate Governance (GCG), subsequently abbreviated as Ministerial Regulation BUMN, regulates the necessity to execute GCG. The following is mentioned in Article 2 paragraph (1) of the Minister of SOEs Regulation: [5]

"SOEs are required to implement GCG consistently and sustainably by referring to this Ministerial Regulation while taking into account the applicable provisions and norms as well as the articles of association of SOEs."

Because all acts done as administrators of SOEs are certain to have legal implications, the Board of Directors is required to adopt GCG in the administration of their firm, which is applied in BJR. If we talk about legal consequences, it can be in the form of sanctions in the form of fines of several rupiahs, revocation of permits, and even imprisonment. In addition, legal consequences can also be in the form of civil lawsuits, criminal charges, up to bankruptcy.

According to the terms of Article 97 paragraphs (1), (2), and (3) of Law Number 40 of 2007 respecting Limited Liability Companies, the board of directors (management) has responsibility for this legal risk, up to and including criminal liability. For this reason, the board of directors must understand risk management, including legal risk, because it is an essential part of running a BUMN. As the researcher said at the beginning. Currently, the rules regarding risk management or legal risk are still few and incomplete. The liability for this legal risk in Law Number 40 of 2007 concerning Limited Liability Companies is only to a certain extent. In this journal, the researcher will only discuss the accountability of SOE directors (management). If we categorize this BUMN only as a company (private company) which is associated with the theory of piercing the corporate veil, then the responsibility of the directors is due only to the following matters: [2]

1. Directors do not perform the fiduciary duty to the company;
2. The annual calculation document is incorrect;
3. The Board of Directors is guilty of causing the company to go bankrupt;
4. Inappropriate capital, and
5. The Company operates improperly.

For SOE directors (management) in running the business they lead, there are so many problems that must be resolved other than just the problem of earning profits, especially for SOEs that have Persero status. Even though its success in managing the business entity has not been matched by written policies from the government in the form of material and non-material, while if the company he leads is losing money or the finances are wrong, he will not only receive insults and social sanctions but starting from civil liability even which is more extreme, namely criminal liability for the policies that have been taken or more appropriate if the researcher uses the term these risks are included in legal risks.

BUMN Directors still have other legal risks that they can experience because if it is related to the status of BUMN that manages state-owned money or, say, separated state assets, it will not be easy to free the directors from state losses if it turns out that the BUMN is managed to suffer losses due to the business risks they run, this means that criminal liability is ready to await the directors, which means that the threat of a criminal act of corruption can easily ensnare BUMN directors.

From the author's explanation above, it is clear why BJR is a must in the business and management of BUMN in the form of a Persero because there are quite several rules that require it, and that is what makes BUMN directors in the form of a Persero it will not be easy to get out of the legal trap if they do not implement BJR.

This BJR must also be implemented to maintain the sustainability of the state-owned company itself, which was created to fulfill and influence many people's lives. If the writer connects it with progressive legal theory, BJR aims to make the Law feel helpful, so creative legal actors are needed to translate the Law in the forum of social interests they must serve. [6]

The second point I'll make is about the model's format, which will be utilized to produce a particular, focused, and thorough Business Judgment Rule that will reduce SOEs' misunderstanding while adopting the Business Judgment Rule.

The author will try to draw the essence of all the BJR rules to be easy to understand and apply. The biggest fear of BUMN directors is the threat of being prosecuted for corruption, which at any time can ensnare him. If we consider the aspects of corruption in general, they are simply connected to BUMN's business and management, not because of bribes or gratuities. The most common ensnare BUMN directors related to the exploitation and management of BUMN are Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (UU TPK), which has been updated with Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (UU TPK): [7]

> (1) Any individual who unlawfully enriches himself, another person, or a company in a way that harms the state's finances or economy will be sentenced to life in prison or to a minimum of 4 (four) years and a maximum of 20 (twenty) years in jail. twenty) years in prison and a fine of at least Rp. 200,000,000.00

(two hundred million rupiahs) and up to Rp. 1.000.000.000,00 (one billion rupiahs) (one billion rupiah).

Article 3 reads:

"Every person who is intending to benefit himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of a position or position that can harm the state's finances or the state's economy, is sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)." [7]

From the two articles, the author tries to explain based on this research that the directors of BUMN Persero can be threatened with criminal acts of corruption if there are at least 2 (two) elements that must be met, namely:

First: The existence of unlawful acts, whether based on authority or not;

Second: the loss of the state or the state economy.

Based on the 2 (two) elements mentioned above, the author believes that the implementation of BJR itself will fulfill the first element if the directors of BUMN Persero do not implement it. For this reason, the author will also provide a brief and detailed explanation that makes it easier to fulfill BJR and is considered to have at least implemented BJR. The elements in the implementation of BJR are broadly divided into 2 (two) elements: the first element, namely: Not contradicting the laws and regulations governing BUMN-Persero; the second element, proper business studies or considerations have been carried out.

From the explanation above, several things can be directly applied by the directors of BUMN Persero so that BJR is considered fulfilled. The first step that can be taken is to conduct a legal review of the investment or business that will be carried out before the investment or business is carried out. This can be done by the legal department of the SOE itself, using a legal consultant or asking a Government Law Office to conduct a legal review of the investment or business plan, which can later become the basis or legal consideration whether the investment or business has met or by statutory regulations that apply and regulates state-owned enterprises or not, so that it can be decided whether the investment or exploitation will be continued or not. This request for review by state-owned enterprises to the Government Law Office (JPN) is itself a benefit facility provided by the state to state-owned enterprises to prevent and minimize legal risks faced by state-owned enterprises.

If, from the legal study alone, violations or inconsistencies with existing laws and regulations have been found, but the investment or business is still being carried out, there will inevitably be legal risks in the future.

The Attorney General's job is defined in Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia, which states: [8]

Paragraph 2 of Article 30: The Prosecutor's Office, which has particular powers in the realm of civil and state administration, can act for and on behalf of the state or government both within and outside of the courtroom;

Article 34 (2): The Prosecutor's Office may provide legal considerations to other governments.

Furthermore, it is governed by Presidential Regulation No. 38 of 2010 of the Republic of Indonesia on the Organization and Work Procedure of the Prosecutor's Office of the Republic of Indonesia on [9]

Article 24 (1): In the city and state administrative domains, the Deputy Attorney General for Civil and State Administration has the obligation and power to carry out the responsibilities and authorities of the Prosecutor's Office.

Article 24 (2): The scope of the civil and state administration fields referred to in paragraph 1 includes law enforcement, legal assistance, legal considerations, and other legal actions to the state or government, including state institutions/agencies, central and regional government institutions/agencies, business entities state/regional property in the field of civil and state administration to save, restore wealth/state finances, and uphold the government's authority.

The second step that the directors of state-owned enterprises must take is to conduct a business study or a commercial study. This request for a business study or commercial study can be carried out by a business consultant or commercial consultant who understands and understands the business to be carried out and based on the results of the business study, and a review can be requested the first BPKP.

Articles 2 and 3 of the Presidential Regulation No. 192 of 2014 establishing the Financial and Development Supervisory Agency of the Republic of Indonesia (BPKP). BPKP is responsible for managing government matters, including state/regional finance and national development.

Article 3 letter d of Presidential Regulation of the Republic of Indonesia Number 192 of 2014 concerning the Financial and Development Supervisory Agency (BPKP) carries out the functions: "providing consultancy related to risk management, internal control, and governance of agencies/business entities/other entities and programs/policies strategic government." This is one of the regulations related to BUMN Persero, which functions to protect the BUMN Persero before conducting business or management so that later it can avoid state losses or prevent its business from businesses that can harm the state. The review results can be taken

into consideration to ensure that the investment or ownership can be carried out or not. Suppose there are already problems in business studies or commercial studies, but investment or exploitation is still being forced. In that case, there will inevitably be significant legal risks to be faced in the future. [10]

The author tries to find a simple form of BJR to find the legal regulations. If the legal regulations have been found, the legal regulations are then applied to the legal event. There will undoubtedly be various forms of construction that must be considered. For example, a legal study is appropriate. However, a business study is not feasible, or on the contrary, there is a legal study that is not appropriate, but this business is profitable. If the board of directors considers whether or not all of the components of a criminal act of corruption have been fulfilled, it will be easier for them to make judgments. Including excuses from the business side of the rules are correct. For example, even though this business is detrimental, it is an assignment or a function or role for other social SOEs that the state has assigned.

The next thing that the author will discuss is the responsibilities of the SOE Directors (Managers) in terms of criminal liability for implementing BJR. From the research results and the author's explanation above, we know that the impact of the implementation of BJR is very dominant in criminal liability. Because if BJR is not properly implemented or if BJR principles are broken, it would surely result in legal consequences, including the danger of prosecution under Article 2 or Article 3 of the TPK Law for corruption.

4. CONCLUSION

BJR can also be the basis of the Law that provides the value of justice in policymaking by BUMN Persero. The SOE directors must understand BJR because this will be the basis for the defense of the directors if they encounter legal problems, especially allegations of corruption. BJR is also the foundation for the board of directors' defense, because it underlines that members of the board of directors cannot be held liable for the consequences of a business consideration (BJR) taken by the directors in question [12].

This defense can at least be carried out with the reasons or grounds that have been carried out in the previous discussion, namely that an accountable legal study has been carried out to avoid legal risks that will arise, including a study from the business or commercial side related to the investment or exploitation that will be carried out. From a progressive legal perspective, it can also be considered in court if it turns out that the board of directors is still subject to criminal sanctions because the policy or decision making by him is considered detrimental to the company, provided that the board of directors is legally compliant.

As a result, a progressive legal defense can be used in this instance, because progressive law does not recognize law as an absolute and ultimate institution, but rather as a tool for serving mankind. Justice, welfare, and care for the people are more significant factors to consider. "Law that is constantly in the process of becoming" is the essence of "law that is always in the process of becoming" (Law as a process, Law in the making). The Law does not exist for the Law's sake, but for the sake of humanity [6].

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Strengthening Positive Legal Insight for Salafi Students to Improve Competence Related to the Principle of Legal Fiction

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ABSTRACT
The Law on Islamic Boarding Schools was not born to standardize pesantren or regulate pesantren to follow the government's will but exists to maintain the uniqueness and distinctiveness of Islamic boarding schools. One type of education organized by pesantren is salafiyah boarding school. Salafi students who have graduated will become religious experts (dai, ustad to Kyai), teachers, artists, entrepreneurs, workers, politicians, etcetera. Students as citizens must be subject to the law. For this reason, it is necessary to be equipped with religious knowledge and life skills by providing empowerment programs during Islamic boarding school studies through increasing positive legal insight in the face of the era of globalization. This study aims to describe the objective conditions of the skills that have been given to Salafi students and the formulation of strengthening positive legal insights for Salafi students in facing the era of globalization. Furthermore, the research was conducted using a normative juridical method with descriptive-analytical research specifications. The results of this study indicate that most Islamic boarding schools have empowered Salafi students to improve their skills and expertise. To enhance students' competence, it is necessary to provide legal insight to Islamic boarding schools regarding the laws and regulations required by each Islamic boarding school, informing competent students ready to face the era of globalization.

Keywords: *Empowerment, Positive Law, Salafi Student.*

1. INTRODUCTION

Indonesia is a state of law. This statement indicates that all actions must be based on law [1]. Affirmation of the adoption of the rule of law principle as stated in Article 1 paragraph (3) of the 1945 Constitution One of the fundamental changes after the amendments to the 1945 Constitution in a series consisting of four stages from 1999 to 2002 was the affirmation of the adoption of the rule of law principle as stated in Article 1 paragraph (3) of the 1945 Constitution.

This statement implies that the law has the highest and most honorable place in implementing social, national, and state life. In the sense that law is the normative basis for life's affairs and activities, both in social affairs, nationality, and state affairs, which are recognized formally and materially, thus anyone in the territory of the Unitary State of the Republic of Indonesia must comply with the law.

Efforts to educate the life of the nation, which is a national responsibility as stated in the 1945 Constitution, is one of the ideals of independence to improve human resources so that they can achieve prosperity for all Indonesian people [2].

The pattern of pesantren education has a tradition and academic culture that simultaneously emphasizes strengthening the professional field and enhancing Islamic areas and moral education [3].

Based on the description above, the authors will research including a) What is the objective condition of the skills that have been given to Salafi students? b) How is the formulation of strengthening positive legal insight for Salafi students to increase competence related to the principle of legal fiction?

2. METHOD

The research method used is a normative juridical method with descriptive-analytical research

specifications. The main types and data sources used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials accompanied by interviews. Furthermore, both preliminary and secondary data were analyzed using qualitative methods from the data collected in this study.

3. RESULT AND DISCUSSION

Scalar *variables* and *physical constants* should be italicized, and a bold (non-italics) font should be used for **vectors** and **matrices**. Do not italicize subscripts unless they are variables. Equations should be either display (with a number in parentheses) or inline. Use the built-in Equation Editor or MathType to insert complex equations.

Various Skills Given to Salafi Students The term Islamic boarding school is two terms that show one meaning. According to its basic understanding, Pesantren is a place of learning for the students, while the cottage means a house or a simple residence made of bamboo. In addition, the word Pondok may come from the Arabic Funduq, which means hostel or hotel. In Java, including Sunda and Madura, the term Pondok and Pesantren is generally used. At the same time, in Aceh, it is known as data or framework or menuasa, while in Minangkabau, it is called surau [4]. Islamic boarding schools in Indonesia have a huge role in advancing Islamic education itself and the Indonesian nation [5]. The typology of pesantren can be divided into at least three types, although it is rather difficult to distinguish extreme between these types, namely salafiyah (traditional), khalafiyah (modern), and integrated [6].

Islamic boarding schools generally own several characteristics as educational institutions and social institutions that are informally seen in the development of society in general. The main features or elements in question are Kiai, mosques, santri, huts, and classical Islamic books [7]. The government provides various services to the potential development of Islamic boarding schools considering the uniqueness of each, both in terms of programs, regions. So on. the government continues to develop entrepreneurial-based pesantren, animal husbandry, agriculture, to Islamic boarding schools located in border areas. This is actualized by sending and lecturing the students and returning them to their original place. Islamic boarding schools have a social responsibility in community empowerment. Max Weber's theory states that social change as an impact of modernization must pay attention to humans shaped by the cultural values around them, especially religious values that cannot be separated from human life [8]. Therefore, the educational model at the Salafi Islamic Boarding School is equipped with empowerment. To achieve the quality of human resources [9]. Islamic boarding schools are synonymous with a solid religious education. However, facing the industrial revolution 4.0, students who graduate from Islamic boarding schools need to be equipped with skills to further strengthen their role and competitiveness to compete in society. Deputy for Education and Religion Coordination Agus Sartono added that Islamic boarding schools could improve human resources. In addition to strengthening the religious foundation, skills must also be balanced.

So far, most of the pesantren in West Java have not been economically independent of financing the operations and development of pesantren facilities and infrastructure. The problem was overcome by the Office of Cooperatives and Small Businesses of West Java Province to initiate the One Pesantren One Product (OPOP) innovation. All Islamic boarding schools selected through the selection will be given an integrated coaching program. Their economic competitiveness will also be improved and assisted in the business development process, synergizing in potential business networks until they become an independent Islamic boarding school. The following is an example of the life skills possessed by students after participating in entrepreneurship-based learning at the Pandeglang Islamic boarding school, including a) academic skills, b) social skills, c) personal skills, and d) vocational skills. The academic skills obtained by students in Islamic boarding schools are the ability of students to understand the yellow book, the power of students to speak Arabic & English as a means of communication. While the social skills possessed by students in Pandeglang Regency include the ability to communicate verbally, communicate in writing [10]. In facing the challenges of modernization, the Roudlatul Marifat Islamic boarding school carries out the following: 1) Acceleration and synergy with formal educational institutions; 2) Maintaining Traditional Values; 3) Charismatic Leadership Style; 4) Schedule of Activities Not Too Busy [11].

Formulation of Strengthening Positive Legal Insights for Salafi Santri to Improve CompetenceIndonesia as a democratic country provides guarantees for every citizen to freely embrace religion and worship according to their religion, as well as choose education and teaching in a national education system that increases faith and piety and noble character in the intellectual life of the nation as mandated in the Constitution of the Republic of Indonesia in 1945.

The participation of the students who have colored the legal world in Indonesia is evident, as evidenced by many legal practitioners from Islamic boarding schools, which used to be students. The students who are studying at Islamic boarding schools at this time should be given more motivation, that students must have aspirations of implementing law enforcement in Indonesia in the future because this is the essential capital, studying religious knowledge seriously, on the one hand, students must also be educated and educated to understand the law that develops in society [12]. Even though as a tafaqqah fi al-

din institution, pesantren are required to make methodological breakthroughs. The impression of being left behind and all limitations can be overcome by Pesantren [12]. The implementation of Islamic boarding schools is based on: a. Belief in the one and only God; b. nationality; c. independence; d. empowerment e. benefit; f. multicultural; g. professionality; h. accountability; i. continuity; and J. legal certainty.

The principle is something that is the foundation of thinking or opinion. Principles can also mean basic laws. The principle is a general proposition stated in general terms without requiring special conditions regarding its implementation. These are applied to a series of actions as the fitting instructions for that action. Public law principles are basic norms derived from positive direction and which legal science does not ascribe to more general rules. The principle of law is the deposition of positive law in society. Legal principles should not be considered concrete legal norms but should be viewed as general principles or guidelines for applicable law [13].

Informing laws and regulations in Indonesia, it is still encountered applying the theory of legal fiction. Everyone is considered to know the law if it has been promulgated in an official sheet, and someone's ignorance of the law or legislation in force does not exempt a person from lawsuits (igronantia iuris neminem excusat) [14].

The application of legal fiction theory in Indonesia can be seen in all levels of legislation. This is regulated in Article 81 of Law Number 12 of 2011 concerning the Establishment of Legislation which states: For everyone to know about it, laws and regulations must be promulgated by placing them in 1) State Gazette of the Republic of Indonesia; 2) Supplement to the State Gazette of the Republic of Indonesia; 3) State Gazette of the Republic of Indonesia; 4) Supplement to the State Gazette of the Republic of Indonesia; 5) Regional Gazette; 6) Additional Regional Gazette, or 7) Regional News. This means that with the promulgation of laws and regulations in the official sheet as referred to in this provision, everyone is deemed to have known it.

The formulation of positive legal insight legal strengthening for Salafi students can be done by

1. Identifying the form of skill empowerment given to students,
2. Identify the ideals or desires of the profession chosen by the santri,
3. Cooperation between universities and pesantren in legal counseling activities,
4. Students must take formal legal education if they aspire to become legal practitioners.

The juridical provisions regarding legal counseling are regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M01.PR.08.10 of 2006 about Patterns of Legal Counseling. The background of the issuance of the ministerial regulation is to develop a legal culture in all levels of society to create awareness and legal compliance for the sake of upholding the rule of law in the Unitary State of the Republic of Indonesia; it is necessary to conduct legal counseling nationally and so that the implementation of legal counseling nationally can run in an orderly manner. Directed and integrated need to be based on the pattern of legal counseling [15]. The natural step to develop the potential of individual students and Islamic boarding schools for law enforcement efforts in Indonesia is to understand and convince students by strengthening positive legal materials in Islamic boarding schools, one of which is to include a curriculum on the basics of positive law in Indonesia, as well as provide legal counseling to students, as well as build a network between pesantren in strengthening legal materials. In addition, efforts are made to increase legal awareness of the community and government so that the enforcement of the principles of the rule of law can run well [1].

4. CONCLUSION

Islamic boarding schools have empowered Salafi students to improve skills and expertise to improve students' competence in the economic, social, and cultural fields. Still, they need to be accompanied by providing legal insight to students regarding laws and regulations. Raising awareness should be done through regular legal counseling based on careful planning. Legal counseling by academics and practitioners must be adjusted to the legal problems that exist in society and the needs of Islamic boarding school legal insight in producing students who are ready to face the era of globalization.

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The Legal Responsibility of the Management Company on the Economic Rights of Local Residents in Special Economic Zones (SEZ) for Tourism in Indonesia

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ABSTRACT
The Special Economic Zone (SEZ) of the Tourism Zone, which embodies the growth and implementation of national economic development, has determined its area. This process will not be created if the development and management companies and residents do not cooperate. Fulfilling the economic rights of residents is a legal way of accountability for companies with rights and authorities. A firm form of responsibility is needed in obtaining legal certainty by residents. This research was conducted using a legal research method *juridical-normative* with a literature study. The study results show that the management company's legal responsibility for the economic rights of residents in the Special Economic Zones (SEZ) for tourism in Indonesia has been regulated in the tourism legislation and not yet in the regulations SEZs. Criminal and civil sanctions are needed to provide firm legal obligations to building and managing companies for the welfare of citizens.

Keywords: *Development and Management Companies, Economic Rights, Local Residents, Special Economic Zones, Tourism.*

1. INTRODUCTION

Economic development that is advancing day by day is a reality of the impact of industrial globalization that cannot be ignored. The Republic of Indonesia, which is part of this, has long carried out the growth and implementation of national economic development to prosper justice and prosperity for the nation and its people. The goal of welfare is stated in the Constitution of the Republic of Indonesia, namely the preamble to the 1945 Constitution stating the purpose of the state of the Republic of Indonesia is to *"...protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare, educate the nation's life, and participate in carrying out the order. world…".*

In fulfilling this welfare, the state represented by the government has carried out programs and activities to accelerate national economic development based on economic democracy. One form of this commitment is the presence of Special Economic Zones (SEZs). Based on Article 1 number 1 of Law Number 39 of 2009 concerning Special Economic Zones, that "Special Economic Zones, hereinafter referred to as SEZs, are areas with certain boundaries within the legal territory of the Unitary State of the Republic of Indonesia which are determined to carry out economic functions and obtain certain facilities. ". According to https://kek.go.id/, in its development, this SEZ is divided into two (2), namely the Tourism zone SEZ and the Industrial zone SEZ.

The Tourism Zone SEZ is an area designated for tourism business activities to support the implementation of entertainment and recreation, meetings, incentive trips, exhibitions, and related activities. The importance of the role of tourism in economic development in various countries is no longer harmed. Since the last few years, many countries have taken tourism seriously and have made tourism a sector for job acquisition and poverty alleviation. The purpose of tourism activities or tourism itself is in line with the constitutional mandate of the 1945 Constitution of the Republic of Indonesia. In Article 4 of the Law of the Republic of Indonesia, Number 10 of 2009 concerning Tourism, Tourism aims to: a. increase economic growth; b. improve people's welfare; c. eradicating poverty; d. overcoming unemployment; e. conserving nature, environment, and resources; f. promote culture; g. raise the image of the nation; h. foster a sense of love for the homeland; i. strengthen national identity and unity, and J. strengthen international friendship.

Meanwhile, tourism is a variety of activities supported by various facilities and services provided by the community, businessmen, government, and local governments. The tourism development principles do not escape from upholding religious norms, cultural values, human rights, cultural diversity, the environment, natural preservation, and local wisdom. The entrepreneur, as one of the business actors in tourism economic development, will be involved. It is hoped that it will give its role in realizing economic independence that impacts the community's welfare. Based on Article 33 of the 1945 Constitution of the Republic of Indonesia refers to the principles of the national economy based on kinship, namely togetherness, efficiency, justice, sustainability, environmental insight, independence by maintaining a balance of progress and national economic unity and tourism principles.

The process of developing the Exclusive Economic Zone (SEZ) of the Tourism Zone, hereinafter referred to as the Tourism SEZ, will not escape the development process until its management is handed over to the entrepreneurs. This is based on the provisions of the regulations on Special Economic Zones, which in the initial process of formation, development, and management include the nomenclature of "Business Entities," which can be said to be actors directly involved in building Tourism SEZs. Although the appointment of a business entity to build and manage a Tourism SEZ is based on the provisions of the applicable legislation. Regulations that can be used as references include 1. Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, 2. Law Number 39 of 2009 concerning Special Economic Zones, 3. Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning the Implementation of Economic Zones Special.

It is well known that in a state administration, accountability will indeed be attached to every person, whether the head of government, officials, companies, and other legal subjects who have the authority to carry out activities of a public nature. The theory of legal responsibility reads *geenbevegdedheid Zonder verantwoordelijkheid; there is no authority without responsibility; la sulthota if mas-uliyat*" (no authority without accountability). The management company in the Tourism SEZ is, of course, a legal entity and has legal protection by the state and the rights that cover it. The development and management process will get their authority if the obligations written in the applicable regulations are carried out correctly.

Because this will later be related to the welfare of the local community in the Tourism SEZ that is built and managed, until the middle of 2021, it is known that as many as seven (7) Tourism SEZs have been established by the government, complete with regulations and managing companies. These seven SEZs are spread over different areas, including Tanjung Lesung SEZ (Banten), Mandalika SEZ (NTB), Tanjung Kelayang SEZ (Bangka Belitung), Morotai SEZ (North Maluku), Singhasari SEZ (East Java), Likupang SEZ. (North Sulawesi) and the Nongsa SEZ (Riau Islands).

The distribution in developing areas will raise the question of how to improve the welfare of the local community there? Moreover, what guarantees or even legal sanctions can be imposed if the objectives of the development of the Tourism SEZ do not fulfill the economic rights of the people there?. Of course, these questions will be pinned to business entities that are one of the proposers for determining a Tourism SEZ area and are given authority in the development and management process by the state (government).

The economic rights of local communities are closely related to existing legal principles, human rights, and tourism development norms. As regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that: "Every citizen has the right to work and a decent living for humanity" and Article 28D paragraph (2) which stipulates that: "Everyone has the right to work and get fair and proper remuneration and treatment in an employment relationship." Furthermore, Article 19 of the Tourism Law states that the community has priority rights: a. Become a worker; b. Consignment; and/or; c. Management. It can be said that the economic rights of the local people of the Tourism SEZ are not impossible to be vulnerable to violations of norms and laws if the stages of benefit and legal justice that have been promulgated are not fulfilled later. For this reason, this study will analyze what legal certainty should be obtained by the local community of the Tourism SEZ in legal liability by the management company.

The research method used in this research is law research *juridical-normative,* with library materials that include primary legal materials, namely the 1945 Constitution, the Republic of Indonesia Law Number 19 of 2003 concerning State-Owned Enterprises, the Republic of Indonesia Law Indonesia Number 11 of 2005 concerning Ratification of the *International Covenant On Economic, Social and Cultural Rights International Covenant on Economic, Social and Cultural Rights* (), Law Number 40 of 2007 concerning Limited Liability Companies, Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, Law Number 39 of 2009 concerning Special Economic Zones, Law Number 11 of 2020 concerning Job Creation, Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning Implementation of Special Economic Zones, Government Regulation Number 26 of 2012 concerning Special Economic Zones of Tanjung Lesung , Government Regulation of the Republic of Indonesia Number 50 of 2014 ng Morotai Special Economic Zone, Government Regulation of the Republic of Indonesia Number 52 of 2014 concerning Mandalika Special Economic Zone, Government Regulation of the Republic of Indonesia Number 6 of 2016 concerning Tanjung Kelayang Special Economic Zone, Government Regulation of the Republic of Indonesia Number 68 of 2019 concerning Singhasari Special Economic Zone, Regulation Government of the Republic of Indonesia

Number 84 of 2019 concerning the Likupang Special Economic Zone, Government Regulation of the Republic of Indonesia Number 68 of 2021 concerning the Nongsa Special Economic Zone. Then secondary legal materials, including previous legal studies, legal books, scientific journals, and other legal materials, then tertiary legal materials, including Indonesian language dictionaries and encyclopedias.

The problem formulation that can be discussed in this research is What is the Legal Responsibility of the Management Company on the Economic Rights of Local Residents in Special Economic Zones (SEZ) for Tourism in Indonesia?

2. RESULT AND DISCUSSION

2.1. The Legal Responsibility of the Management Company on the Economic Rights of Local Residents in Special Economic Zones (SEZ) for Tourism in Indonesia

Responsibilities of managing companies' regulations related to tourism SEZ management companies can be seen in several related regulations. ***First,*** before knowing about the legal responsibility for its management. In advance, it is necessary to know the relationship between the responsibilities of the SEZ management company, which will not be separated from the rights and obligations that already exist on the development side. The name "Business Development and Management Agency" became an inseparable unity in building the Tourism SEZ itself. This can be seen from the seven (7) Tourism Economic Zones (KEK) regulated by: a. PP. No. 26 of 2012, b. PP. No. 50 of 2014, c. PP No. 52 of 2014, d. PP No. 6 of 2016, e. PP. No. 68 of 2019, f. PP. No. 84 of 2019, and g. PP. No. 68 of 2021. They all use the nomenclature of "Business Development and Management Entities" in developing the Special Economic Zones (SEZ) for Tourism in each region. The birth of the term came from a higher regulation, namely Law Number 39 of 2009 concerning Special Economic Zones, which was last amended by Law Number 11 of 2020 concerning Job Creation in Article 10 CHAPTER IX concerning Economic Zones, the second part concerning Special Economic Zones which contains, that after the SEZ is established:

a. Business Entities that propose SEZs are designated as builders and managers;
b. As the proposer, the Central Government or Regional Government shall determine the Business Entity to build and manage the SEZ.

Article 26 number (1) further informs about the duties of the business entity, namely:

a. Build and develop facilities and infrastructure within the SEZ;
b. Administering the management of facilities and infrastructure services to Business Actors; and
c. Conducting promotions.

Business Entities are companies with legal entities in the form of State-Owned Enterprises, Regional-Owned Enterprises, cooperatives, private companies in the form of limited liability companies, and joint ventures or consortia to carry out SEZ business activities. Considering legal entities as legal subjects. So, rights and obligations are attached to them. Regarding rights, there is Article 22 of the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism which stipulates that every tourism entrepreneur has the right to:

a. Get equal opportunities in doing business in the tourism sector;
b. Form and become a member of a tourism association;
c. Get legal protection in doing business**;** and
d. Obtain facilities by the provisions of the legislation.

Then, Article 26 regulates the obligations of tourism entrepreneurs in:

a. Maintain and respect religious norms, customs, culture, and values that live in the local community;
b. Provide accurate and responsible information;
c. Provide non-discriminatory services;
d. Provide comfort, friendliness, security protection, and safety of tourists;
e. Provide insurance protection for tourism businesses with high-risk activities;
f. Develop partnerships with local micro, small and cooperative enterprises that need, strengthen and benefit each other;
g. Prioritizing the use of local community products, domestic products, and providing opportunities for local workers;
h. Improve the competence of the workforce through training and education;
i. Take an active role in efforts to develop infrastructure and community empowerment programs;
j. Participate in preventing all forms of actions that violate decency and activities that violate the law in the environment where the business is located;
k. Maintain a healthy, clean and beautiful environment;
l. Maintain the preservation of the natural and cultural environment;
m. Maintain the image of the Indonesian state and nation through responsible tourism business activities; and
n. Apply business standards and competency standards by the provisions of laws and regulations.

Although the Tourism Law does not regulate the responsibility of managing companies and a different

term, namely tourism entrepreneur, it can be interpreted the same function and behavior because both must carry out business activities or activities in the tourism zone. A tourism area business is a business whose activities are to build and/or manage an area with a specific area to meet tourism needs. In practice, the tourism entrepreneur is the tourism management company itself, widely known as a business entity. Referring to the term corporation related to the company by A. Abdurahman, a corporation is a legal entity or a moral entity created according to the laws of a country to carry out a business or activity or other legitimate activities.

Furthermore**,** two on the letters f, g, h, and i above can be regarded as a form of responsibility of the management company Tourism in fulfilling the right to local community economy in KEK Tourism constructed and managed, given no rights priorities for residents around the place of business or activity tourism is done. Residents or local communities live in tourism destination areas and are prioritized to benefit from implementing tourism activities in those places. It was looking at the perception of the broader legislation regarding corporate responsibility. The term is known, *Corporate Social Responsibility (CSR),* a form of contribution from the business world in helping the state fulfill the community's economic rights. CSR itself is regulated in several laws and regulations in Indonesia. As in Law no. 25 of 2007 concerning Investment, Law no. 40 of 2007 concerning Limited Liability Companies, and Law no. 4 of 2009 concerning Mineral and Coal Mining. Although these rules still do not concretely "oblige" all business entities or classifications that are legal or non-legal entities and separate what business activities are required to carry out CSR and not.

Back to the right to the economy, which is a state's responsibility in fulfilling its citizens. Indonesia has carried out the ratification of the rules regarding the right to the economy through Law no. 11 of 2005 concerning the Ratification of the ICESCR. It can be seen in Part II of Articles 6 and 7, which regulates the role of the state in charge of fulfilling the economic rights of its citizens, such as the right to work, the right to earn a living, and rights that are and favorable in working conditions to ensure a decent living. The fulfillment of the economic rights of residents in the tourism SEZ by the Management Company is a "form of responsibility that must be fulfilled" by them from the author's point of view. Look at the table below:

From the table above, several things can be drawn that support the strengthening of the argument about the responsibility of the management company for the economic rights of residents in the Tourism SEZ that is being/has been built as follows:

1) All the development and management process is carried out by business entities with legal entities, both private and state and regional, which have been stipulated by the government using a government regulation.
2) Article 5 of the Employment Creation Law concerning Exclusive Economic Zones stipulates that the elements of SEZ formation are proposed to the National Council by Business Entities or Regional Governments. Look at each Government Regulation table above. Business entities in the Tourism SEZs 1 to 3 are the proponents of the SEZ determination there. While the National Council proposed the Tourism SEZ numbers 4 to 6 and the last number 7 because the area is located in the Free Trade Area and Free Port (KPBPB).
3) The operating status has been fully operational except for the Nongsa SEZ, which has just been promulgated. Revocation and cancellation of Zones can be carried out in tourism SEZs by the National Council for Special Economic Zones, which are not ready to operate until the time specified in the relevant regulations. Moreover, it can even replace the business entity if it is still not operating.

Finally, the realization of legal certainty can be guaranteed for the economic rights of residents of the Tourism SEZ if there are binding sanctions regulations in the relevant laws and regulations. Legal certainty can be achieved if:

1. There are clear, consistent, and accessible legal rules;
2. Ruling agencies (government) apply these legal rules consistently and are also subject to and obey them;
3. Citizens, in principle, adjust their behavior to the rules.
4. Independent and impartial judges (judicial) apply these legal rules consistently whenever they resolve disputes;
5. Judicial decisions are concretely implemented;

Regarding the sanctions in Article 63 of the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, it is regulated:

(1) Every tourism entrepreneur who does not meet the provisions as referred to in Article 15 and/or Article 26 is subject to administrative sanctions.
(2) The administrative sanctions as referred to in paragraph (1) are in the form of:
    a. written warning;
    b. limitation of business activities; and
    c. temporary suspension of business activities
(3) The written warning as referred to in paragraph (2) letter a shall be imposed on the entrepreneur at most (three) times.

(4) Sanctions for limiting business activities are imposed on entrepreneurs who do not comply with the warning, as referred to in paragraph (3).
(5) The sanction of temporary suspension of business activities is imposed on entrepreneurs who do not meet the provisions as referred to in paragraphs (3) and (4). This regulation on Tourism only regulates administrative sanctions. As Article 34 paragraph (1) of Law no. 25 of 2007 concerning Investment also regulates administrative sanctions on business entities in the form of:
    a. written warning;
    b. limitation of business activities;
    c. freezing of business activities and/or investment facilities; or d. revocation of business activities and/or investment facilities.

Civil and criminal sanctions need to be regulated to provide a sense of legal protection both preventively and repressively to the injured party. Because the tourism management companies in this SEZ are all legal entities, it can be ascertained that even though no related regulations govern the matter of civil sanctions due to his responsibility as a legal subject. Suppose there is a violation of the law. In that case, an unlawful act can be imposed by referring to the provisions of Article 1365 of the Civil Code, "Every act that violates the law and brings harm to others, requires the person who caused the loss because of his mistake to replace the loss." While in Article 74 number (3) The Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies only regulate the existence of sanctions imposed on companies that do not carry out obligations related to CSR without providing clarity on what sanctions and in what form. Criminal sanctions themselves as a *last resort* should be regulated in a particular law or in a law/PERPU/perda to make or change the existing one. As for the provisions for criminal acts against the law of a general nature/public nature, there is a violation of the public interest (the possibility remains of a violation of individual interests) as long as it is regulated in the regulations governing criminal law.

Article 66 points 1 and 2 of the Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning the Implementation of Special Economic Zones regulates the following: (1) The managing Business Entity as referred to in Article 65 shall carry out SEZ management based on the SEZ management agreement between the Business Entity and the Regency/Municipal Government. Provincial Government, or National Council/ministry/non-ministerial government agencies. (2) The agreement referred to in paragraph (1) shall at least contain a. scope of work; b. period; c. service performance standards; d. sanctions**;** e. implementation of SEZ services in the event of a dispute; f. termination of the agreement by the Regency/City Regional Government, provincial. Regional Government, or the National Council/Ministry/Non-Ministerial Government Agencies in some instances; g. SEZ operational management; h. termination of the agreement; i. accountability for state/regional property; and J. handover of assets or infrastructure by the managing Business Entity to the ministry/non-ministerial government agency, provincial, regional government, or regency/municipal, regional government after the management cooperation ends.

An *agreement* is a legal activity that is civil because it will also have a legal impact on the parties. Then, the conditions for the agreement's validity must be by Article 1320 of the Civil Code. According to the author, as long as the terms of "sanctions" are included in the management company agreement, the provisions can be justified as long as the sanctions that regulate must be by existing laws and regulations and do not include criminal sanctions into them (made by themselves by violating the principle of criminal legality) so that the realization Because by the provisions of the formation of legislation that has the right to include criminal sanctions only local laws and regulations.

3. CONCLUSION

Based on the analysis above, the conclusions of this research can be described as follows:

(1) The legal responsibility of the management company for the economic rights of residents in the Special Economic Zones (SEZ) for tourism in Indonesia. It has been constitutionally regulated in the 1945 Constitution of the Republic of Indonesia in the Preamble, Articles 27 and 33. Although it does not regulate management companies, in a broader sense, everyone (all legal subjects) realizes "general welfare" with a sustainable national economy. It is based on family and economic democracy.
(2) Special Economic Zones (SEZ), a national priority agenda to accelerate national economic development, is not alone in carrying it out by focusing on Tourism zones. The determination of the Business Entity as the developer and management company by the government in building the 7 Tourism SEZs, including the Tanjung Lesung SEZ (Banten), Mandalika SEZ (NTB), Tanjung Kelayang SEZ (Bangka Belitung), Morotai SEZ (North Maluku), Singhasari SEZ (East Java), SEZ Likupang (North Sulawesi) and SEZ Nongsa (Riau Islands) which are based on Law Number 39 of 2009 concerning Special Economic Zones which was last amended by Law Number 11 of 2020 concerning Job Creation CHAPTER IX

concerning Areas The second part of Economics is about Special Economic Zones, and Government Regulation of the Republic of Indonesia Number 40 of 2021 concerning the Implementation of Special Economic Zones and also Government Regulations in each region.

(3) With the authority given, the rights and obligations of the business entity and the responsibilities attached to it are born. In terms of the economic rights of residents in the Tourism SEZ, this is due to the priority rights of residents. It starts from the responsibility for developing MSMEs, the absorption of local workers, community empowerment, and Corporate Social Responsibility (CSR). However, the existing obligations are not complete with criminal and civil sanctions, which are the legal binding function to achieve legal certainty in fulfilling the economic rights of the residents. Only administrative sanctions have been promulgated, and even then, it is still in the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism. By taking into account the rights and material benefits obtained by the management company of the 7 Tourism SEZs. There is a need for a policy requirement by the government either by regulating, making, or amending the Law on KEK/Perda in which the provisions of "Sanctions" are enacted, both criminal (preferred), civil, as well as reviewing administrative sanctions concretely and straightforwardly. In order to create a just and prosperous Indonesian society.

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Omnibus Law Legal Certainty in the Perspective of Legislation

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ABSTRACT
In the midst of the Covid-19 pandemic, the government passed Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law Number 11-2020) which is expected to improve the Indonesian economy during a pandemic. Pandemic. This law itself is intended to create the broadest possible job opportunities for the people of Indonesia equally. This type of research in legal research is normative or doctrinal legal research. There is legal uncertainty when the Government of the Republic of Indonesia. This is due to non-compliance with the drafting of laws and regulations so that what is stated in the working copyright law should be null and void. In the law, there is no regulation regarding creating an omnibus law for the formation of laws and regulations.

Keywords: *Omnibus law, Legal certainty.*

1. INTRODUCTION

During the Covid-19 pandemic, the government then passed Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law No. 11-2020) which is expected to improve the Indonesian economy during a pandemic by facilitating the requirements for investors to invest. This law itself is intended to create the broadest possible employment opportunities for the people of Indonesia equally. This is done in order to fulfill a decent living. With the law related to job creation, there is a mandate in the form of simplification and harmonization of regulations and permits and the achievement of quality investments. Besides these benefits, the omnibus law itself also removes several provisions, such as the provisions for contract workers, which in the previous law were The Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Law No. 13-2003) states that the contract period for an in-person work is a maximum of 2 (two) years and can be extended by 1 (one) year. 11-2020, this provision is amended, and there is no longer any limit on when the worker can be appointed as a permanent worker. Of course, if viewed from the point of view of the benefits, the omnibus law has not been able to provide direct benefits to the community because this pandemic has caused many companies to lay off workers unilaterally. Subsequently, various government regulations were issued to implement Law no. 11-2020 where the most impacting on workers or laborers is Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment (PP No. 35-2021) and the Government of the Republic of Indonesia Indonesia Number 36 of 2021 concerning Wages (PP No. 36-2021). Law no. 12-2011 only regulates government regulations in lieu of laws. Law no. 11-2020 tends to eliminate such an academic text, to how it is disseminated by accepting public participation. The impact is a lot of overlapping rules, either at the same hierarchical level or with regulations below it. So it requires the concept of omnibus law in the legislation. Harmonization of statutory law from common law: omnibus law is essential in the development of law in Indonesia. Omnibus law can lead to an umbrella law because it regulates thoroughly and has power over other rules.[1]

The background to the emergence of the idea of omnibus law is the complexity of investing in Indonesia. These complications arise in several ways, namely licensing, taxation, land acquisition, and other aspects related to investment. The presence of the omnibus law is expected to make it easier for investors to invest. The benefits of investment for the state are (1) obtaining new capital to help the government build infrastructure, (2) creating job opportunities, (3) progressing in specific fields, (4) increasing state income, and (5) protecting the state.[2]

On this basis, the research question arises, how is the correlation between omnibus law and the formation of laws and regulations in Indonesia?

2. METHOD

This research was conducted through a normative juridical method with an analytical approach and a statutory approach. In the method of approaching legislation, researchers need to understand the hierarchy and principles in the legislation.[3] The hierarchy of laws and regulations is needed as a perspective in viewing a legal product, so it is hoped that there will be no overlap between a legal product and other legal products in the hierarchical system of laws and regulations in Indonesia. It is undeniable that the issuance of the omnibus law has implications for several regulatory areas, which incidentally change the previous arrangement in a separate statutory regulation.

3. RESEARCH AND DISCUSSION

There is a principle in Article 5 (Law No. 12-2011):

a. A clear goal (clarity of purpose).
b. Created by a state agency or authorized official. Can be canceled if not authorized (appropriate forming institution or official).
c. Pay attention to the right content material by the type and hierarchy of the Laws and Regulations (compatibility between the type, hierarchy, and content material).
d. currents consider the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically (can be implemented).
e. Made because it is needed and helpful in regulating the life of society, nation, and state (utility and usability).
f. Meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various kinds of interpretation in its implementation (clarity of formulation).
g. Planning, preparation, discussion, ratification or determination, and promulgation are transparent and open. So that the whole community has the opportunity to provide input (openness).

And Article 6 of Law no. 12 of 2011 regarding mandatory cargo materials:

a. Protect to create community peace (protection).
b. Reflecting the protection and respect for human rights and the dignity and worth of every citizen and resident of Indonesia proportionally (humanity).
c. Reflecting the nature and character of the pluralistic Indonesian nation while maintaining the Unitary State of the Republic of Indonesia (nationality).
d. Reflecting consensus (family) deliberation.
e. Taking into account the interests of the entire territory of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (archipelago).
f. Paying attention to the diversity of SARA (Bhinneka Tunggal Ika).
g. Reflecting proportional justice (fairness).
h. Does not contain different things based on background, among others, religion, ethnicity, race, class, gender, or social status (equality in law and government).
i. Order and legal certainty.
j. Balance, harmony, and harmony.[4]

Concerning the material principle of the content of the legislation, it can be compared with IC Van der Vlies's thinking that setting clear goals, imperatives, proper organs, can be implemented, consensus, explicit and systematic terminology, recognizable, legal equality, governance, often Sometimes it is necessary to exercise discretionary power for individual law enforcement and readiness to respect expectations.

The government is active in community activities, especially in carrying out public service functions (bestuurszorg). Just as the court may not refuse a case submitted because of no regulations, the government should not refuse to provide public services because no regulations govern it. The government is obliged to play an active role in assessing a problem that exists in society. Not only that but the government is also required to solve it quickly or in a short period. The scope of discretionary authority is, first, decision-making or discretionary action based on an existing choice. Second, the making of every decision or action of a government official is based on a legal vacuum, or there are no rules. Third, every decision or action taken by government officials must be based on a legal norm that is unclear, incomplete, and contradictory.

Moreover, fourth, making every decision or action of a government official is based on a government stagnation that interferes with government administration. Based on the above, the scope of discretion is only limited to the existence of choice. There are no rules, it is not clear, and there is stagnation of government. If these four elements are not present, it cannot be said to be discretionary authority or invalid based on discretion. Progressive law wants to free itself from all types of liberal law. Progressive law does not act a priori to liberal law because things can be taken from liberal law, but many things must be rejected.

Progressive law contains a very strong moral content, does not want to make the law a technology with no conscience but a moral institution. At each stage in the legal journey, works and decisions are made to achieve the legal ideals made by the legislature, judiciary, and executive. Every decision leads to final justice.

One example of a figure who can be said to apply progressive law is former Supreme Court Justice Bismar Siregar, who always in his decisions thinks about justice above the law. This caused Bismar Siregar to be known as a controversial judge because his decisions were more listened to and followed his conscience than the result of reading the law. MR Sidabutar was brought before the trial because he did not want to be responsible for his actions against the victim-witness K Boru Siahaan. The defendant was tried in court on cumulative charges of committing obscene acts with minors (Article 293 of the Criminal Code), the second was fraud (Article 378 of the Criminal Code), and the third was causing feelings of displeasure (Article 335 of the Criminal Code). Bismar Siregar, through his decision, expanded the word "goods," not only an object that is a tangible object but also a service. In this case, Bismar expands that the word "goods" includes the female genitalia, namely the victim. This refers to the Tapanuli language that goods are equated with "bonda" (in the Tapanuli language). In the Tapanuli area, the word "Bonda" is often used to refer to the genitals. The logic of the interpretation of Article 378 is that the element of "handing over the goods due to persuasion" is considered fulfilled in case the victim surrenders the honor/shame due to the persuasion of the defendant so that the defendant is considered to have violated the provisions as stated in Article 378 of the Criminal Code. This decision is debatable and provides a new thought in the world of law (progressive law), although it was eventually overturned at a higher level. However, this thought has become an idea for the direction of the development of legal science in Indonesia.

The law that is very concerned about by progressive law is to stick to the words or sentences in the legal text. This method is widely legalized in the legal community (maintaining legal certainty).

Laws are texts and remain as they are before being acted upon by the legislature. It should also be noted that progressive law emphasizes the willingness to free oneself and understand the status quo. The idea of self-liberation is related to a person's psychological factor, namely courage. The inclusion of the courage factor will widen the way to act in the law, namely prioritizing rules and behavior.

In the end, implementing progressive law requires empathy and concern for the suffering experienced by a country. The interests and welfare of the people must be the point of orientation and the ultimate goal of administering the law. Moreover, the change process is no longer centered on regulations but on the creativity of legal actors to actualize the law in a suitable space and time.[5]

Discretionary authority can only be exercised in certain circumstances, for government officials can determine and interpret circumstances requiring discretionary authority. One of the functions of discretionary authority is to complement the principle of legality, namely the legal principle that determines that every government action must be based on law. Legislation is very unlikely to be able to regulate the overall actions that exist in society. This is especially true in solving a fundamental and sudden problem. For that, the government must act quickly and solve it. Therefore, the government is given discretionary authority as a complement to the formal legality principle. [6]

However, in discretionary authority, government officials are often misinterpreted as having abused their authority. Government officials are easily subject to criminal provisions, threatening to punish officeholders who abuse their authority. Whereas in the theory of administrative law, officials only act to represent the authority of the office. Government officials who use discretionary authority, as long as this is carried out within their formal authority or in the context of carrying out office authority, will all consequences be the position's responsibility. For this reason, it is not appropriate for government officials to be threatened with crime easily in carrying out their authority.

A government that acts beyond its formal authority, it can be said that the government's actions contain elements of maladministration, and the responsibility imposed is a personal responsibility. A policy carried out by the government is considered deviant if there is an element of abuse of authority and arbitrariness. In the Dutch wet AROB, the policy will be considered arbitrary if the policy is "kennelijk onredelijk" (obviously unreasonable). So what are the limits of government action that are still in its formal environment? Of course, this becomes a confusion. If this is left unchecked, government officials will not have the courage to take policies so that public services will be hampered.[7] As part of the world community, Indonesia is bound by the agreements contained in the legal instruments of international treaties. In such circumstances, norms that have become habits will become enforceable in a country. In this context, Indonesia, when there was an omnibus law, had fulfilled the state entity in fulfilling the rights and obligations of its citizens. What is meant by this is how its citizens are guaranteed a work-life to their social life.[8]

4. CONCLUSION

The existence of an omnibus law makes a fundamental change in the formation of legislation in Indonesia. The omnibus law should not be carried out when no regulations are governing it. Then the way to overcome this is to focus on changes to Law no. 12-2011, or the president can form a government regulation in lieu of a law. This is important because the essence of omnibus law is legal justice.

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Digital Nomads Visa for Remote Workers: Next to Come Solution for Tourism Business Disruption in Indonesia

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ABSTRACT
In his best-selling book, The 4-Hour Workweek: Escape 9-5, Live Anywhere and Join the New Rich, Timothy Ferris offered the geo arbitrage, which offers a new way of living at low-cost countries. This way of life has been supported by the Covid-19 Pandemic, which forces many people to work from home—not working from home, but working from anywhere. These people are called digital nomads, workers who travel worldwide, but have their permanent job, performed remotely from any part of the world. Currently, Indonesia has a second home visa, thanks to the Law of Job Creation No. 11 the Year 2020. There are some basic similarities between a digital nomad visa and a second home visa, although the latest regulation will surely need alteration to offer the digital nomad visa. In Kompas on 5 June 2021, Bali was the next to regulate these digital nomads, as many remote workers have stayed in Bali. In the light of economic efficiency, in author's opinion, Bali might not be the sole destination for digital nomads in Indonesia, as living cost in Bali is relatively high. This visa would potentially help more parts of Indonesia, which suffer from this tourism business disruption. However, none of this would be applicable if the internet infrastructure in Indonesia is not improved. A fast and reliable internet connection is something indispensable to support remote workers. This article would use comparative methods to analyze data and regulations gained in the research. To conclude, a proposal on digital nomad visas will also be offered as a solution.

Keywords: *Digital nomads visa, second home visa, remote workers.*

1. INTRODUCTION

For sure, Indonesia is blessed with the extraordinary beauty of its nature and the richness of various cultures. Unique cultures and marvelous sceneries are definite assets and resources for the tourism industry. Bali and Jakarta are the most popular destinations in Indonesia, followed by Lombok, Komodo Island, Raja Ampat, and Yogyakarta. However, the tourism industry in Indonesia is underrated due to some factors: Less decent infrastructure, English illiteracy, and less attention on sustainability development, including hygiene, are the main reasons behind the underdevelopment of Indonesia's tourism industry1.

Malaysia once has the tourism tagline "Truly Asia," which shares the same root as Indonesia, proven by its Malay language and numerous cultural similarities. Nevertheless, Malaysia was one of the British colonies, inherited its bureaucracy and education system, which has changed the story. As a former Dutch colony, Indonesia inherited different infrastructures from the Dutch. Different history has generated many differences, including their perception of tourism industries. Nevertheless, Indonesia's nature Indonesia was made of more than 17,000 islands, including Comodo Island. Indonesia is also home to over 100 endangered species, including the orangutan. In short, Indonesia has more assets to be offered, but why Indonesia's tourism is far from smooth sailing?

Comparing these two neighboring countries, a foreign tourist coming to Malaysia reached 26,10 million2, while only 16,10 million3 came to Indonesia. In ASEAN, Indonesia's competitor in tourism is not only Malaysia, Singapore, and Thailand are also on the list. Even in the growing halal tourism market, Indonesia has its advantages being the largest Muslim population globally; Indonesia was a bit late behind Malaysia. Malaysia was the first in the region when it established Islamic Tourism Centre in March 2009 to assist its Ministry of Tourism concerning Islamic tourism. After developing halal tourism for five years, Indonesia reached the first global Muslim Travel Index 20194. With no intention to undermine the achievement of the Indonesian Ministry of Tourism, what a significant amount of opportunity loss

was bear because of the delay in noticing the opportunity. A mistake that Indonesian should learn from.

Malaysia has launched Malaysia My Second Home Visa as early as 20025. At the same time, Indonesia introduced its second home visa in 2020, with the new Omnibus Law No. 11 the Year 2020 as its legal basis. Malaysia My Second Home Visa (MM2H) divides its applicant into two categories, the first category for under 50 years of age and the second for below 50 years of age. At first, the program was intended for non-Malaysian retired people who wanted to make Malaysia a second home during their retirement. However, the concept is evolving from time to time. For example, until February 2009, a foreign spouse of a Malaysian resident was excluded from applying for MM2H Visa, but then this exclusion was removed6. MM2H Visa is also available for people under 50 who are in their productive years and have sufficient financial resources to live in Malaysia without seeking employment or the government's assistant. This category includes digital nomads. MM2H is never called a digital nomad visa, but in practice, it applies to digital nomad.

This Covid-19 pandemic situation triggers the digital nomad lifestyle. People are getting used to being remote workers, a condition predicted before by Tsugio Makimoto7 in 1997 and Timothy Ferris8 in 2007 but was never expected to be this fast. Ferris conveyed that the money would flow to lower living cost countries. Although considered a high-income country in ASEAN, Malaysia has low living cost countries in some areas. Indonesia relatively shows the same benefit with popular destinations such as Bali and Jakarta, although some other areas can be deemed tourist traps. In addition, Indonesia has many low-living cost regions, as Yogyakarta and Solo, for instance. These facts will support Indonesia more to have regulations on digital nomad visas.

2. METHODS

The normative legal approach and comparative legal approach are two main approaches used in this article. Descriptive content analysis will examine the trends of digital nomad visas and their differences with second home visas, which will lead to analysing proper solutions for regulation on digital nomad visas in Indonesia. Legal materials and journals will be observed to analyse these research objectives.

3. RESULT AND DISCUSSION

3.1 Trends of Digital Nomad Visa

According to Reichenberger9, digital nomads are defined as location-independent, predominantly young professionals, entrepreneurs, freelancers, and remote employees who can unite travel and virtual knowledge work.

Formica10 defines knowledge nomads as young talents and pioneers in the digital age who freely travel across the Pacific Ocean to create global businesses driven by discoveries and applications. Usually, digital nomads are in their 20s and early 30s, as this age depends on the absence of family commitments, and the generation has developed an affinity to ICT11.

In her research, Julia Haking mentioned that there are three most desirable incentives as the freedom factor in several contexts : (1) Professional freedom – the motivation to work autonomously, select and structure work that is related to one's passion, and increase feelings of purpose, (2) spatial freedom or location independence – the motivation to perform virtual work while learning about other lifestyles, cultures, norms, and opinions, (3) personal freedom – the motivation to become more productive, creative and most importantly self-development and increased happiness. Digital nomads usually join a hub in a remote area, resulting in a positive outcome, namely cultural intelligence (CQ). CQ will consist of a skillset of the intercultural set of skills of (1) relational skills, (2) tolerance of uncertainty, (3) adaptability, (4) empathy, (5) perceptual acuity12.

Digital Nomad Visa is an exciting trend globally, but not necessarily named literally as digital nomad visa. Some elements of visa to be deemed as digital nomad visa are : (1) allows remote workers to work within the country for at least one year (2) there might be cost of the program and/or tax waiver (3) Minimum income to be proven. In nomad girl.co, Tracey Johnson compiled all countries and their programs which currently has digital nomad visa (and similar), namely (1) Georgia – Remotely from Georgia, (2) Barbados – Barbados Welcome Stamp, (3) Antigua and Barbuda – Antigua Nomad Digital Residence, (4) Bermuda – Work from Bermuda, (5) Cayman Islands – Global Citizen Concierge Program, (6) Anguilla, (7)Montserrat – Montserrat Remote Work Stamp, (8) Dominica – Work in Nature, (9) The Bahamas – Bahamas Extended Access Travels Stay, (10) Curacao -Home in Curacao, (11) Costa Rica - Rentista, (12) Croatia – Crotia Digital Nomad Visa, (13) Czech Republic - Zivno, (14) Estonia – Digital Nomad and Freelancer Visa, (15) Iceland – Long term Visa for Remote Workers, (16) Germany - Aufenthaltserlaubnis für selbständige Tätigkeit, (17) Norway – Independent Contractor Visa, (18) Portugal – Independent workers and entrepreneurs Visa, (19) Spain – Non Lucrative Visa (not allowed to work), (20) Malta – Nomad Residency Permit, (21) Dubai (UAE) – One year virtual Working Program, (22) Mauritius – Premium Visa, (23) Mexico – Temporary Residence Visa, (24) Cabo Verde – Remote Working Cabo Verde, (25) Seychelles- Seychelles Workcation Program, (26) Taiwan – Gold Card 13. She also mentioned that some countries are in the pipeline to allow these digital nomad visas, like North Macedonia, Thailand, Belize, Greece, Romania. Matthew Karsten completes this list on his web that Bali will release a digital nomad visa this year, which will apply up to 5-

years, and holders of the visa would not have to pay taxes on any income earned outside Bali14. This is a confirmation for an article by Luki Aulia in Kompas15, on 5 June 2021. The insight here is that Bali's digital nomad visa is being highly anticipated. This is even supported by the fact that 5G internet has already been in Indonesia, as Telkomes first introduced it on 27 May 2021.

However, the next question to this plan is whether the digital nomad visa will only be applicable in Bali? In general, the visa is applicable within the territory of the Republic of Indonesia. According to Law No. 6 the Year 2011 concerning Immigration, the visa is a written statement given by an authorized official at the Representative of the Republic of Indonesia or in another place determined by the Government of the Republic of Indonesia, which contains approval for foreigners to travel to Indonesian territory and becomes the basis for granting a Stay Permit. There are several types of visa according to the Ministry of Foreign Affairs, comprising (1) Diplomatic Visa, (2) Official Public Service Visa, (3) Visiting visa), (4) Limited Stay Visa, (5) Transit Visa, (6) Single Entry Visa, (7) Multiple Entry Visa (8) Calling visa. As mentioned beforehand, the category was added recently with second home visa, in Law No. 11 the Year 2020 concerning Job Creation (Omnibus Law). Therefore, digital nomad visa and second home visa will be applicable in all Indonesian territory, which creates another opportunity for other tourist destinations, such as Jakarta, Lombok, Raja Ampat, Yogyakarta, Solo in Indonesia, to apply for the same program. This must be a relief to some persons, as this digital nomad has been practiced in Bali, although there are no underlying regulations. By the time the nomad visa is regulated, they will be legally working remotely from Indonesia. Digital Nomad Visa and Second Home Visa will open an opportunity for Indonesia's Ministry of Tourism and Creative Economy to remedy the tourism sector hit by the Covid 19 pandemic. The following section will elaborate on this Second Home Visa more.

3.2 Second Home Visa of Malaysia and Indonesia

As mentioned above, the second Home Visa in Malaysia was launched in 2002 for Non-Malaysian elderly who wants to enjoy their old age in Malaysia as his/her second home. According to Kompas, this program was even started in 1996, labeled the "grey hair" program16. From 2002, the program objective was enlarged to be applied for executives. The businessman wants to visit Malaysia as long as possible. This visa is a multiple entry visa for ten years and maybe prolonged as long as the requirements are fulfilled. Non-Malaysians qualified to join these programs are Indonesia, Bangladesh, China, Inggris, India, Iran, Japan, Pakistan, Taiwan, and Singapore. So this regulation does not apply to most digital nomads, which mostly come from Europe and American. This is why this MM2H was never introduced as a digital nomad visa, although its essence applies to limited digital nomads.

There are several requirements for this MM2H visa. The applicants are required to have a letter of good conduct issued by their country of origin. However, currently on this Covid 19 pandemic, the Government of Malaysia has suspended all MM2H applications, although they promised to open it again somewhere in 202117. Applicants are required to show they have sufficient financial resources to live in Malaysia without seeking employment or other assistance from the government. Applicants under 50 must show liquid assets above RM500,000 and a monthly income of over RM10,000 (equivalent). Applicants over 50 have to show liquid assets over RM350,000 and a monthly income over RM10,00018.

Later, upon approval of MM2H Visa, the applicants have to fulfill fixed deposit requirements based on their age. M2H Applicants below 50 years old must place a Fixed Deposit in a bank account in Malaysia of RM300,000. However, RM150,000 of those can be withdrawn to purchase a house, medical insurance, or children's education expenses after the deposit has been placed for one year. Their car purchase grant may be used to withdraw part of their Fixed Deposit after two years. A minimum balance of RM150,000 must be maintained from the second year onwards and stay in Malaysia under this MM2H program19.

For applicant aged 50 years and above, they must fulfill requirements of a Fixed Deposit in a bank account in Malaysia of RM150,000, of which RM50,000 can be withdrawn after one year to purchase the house, medical insurance, or children's education expenses. Their car purchase grant may be used to withdraw part of their Fixed Deposit after two years. However, a minimum balance of RM100,000 must be maintained throughout their stay in Malaysia. MM2H visa holders aged 50 years old and above can work for up to 20 hours a week. This applies to visa holders who have specialized skills in specifically approved sectors. However, they are not allowed to involve in day to day running of the business20.

All applicants require a Malaysian sponsor to support their application. Moreover, they will be required to place a Personal Bond of up to RM2000 before issuing the visa. If the applicant uses an agent, then the agent will become the sponsor, and the agent is also required to place the Personal Bond for the applicant21.

By Looking through all the regulations, these MM2H regulations are more complicated than usual digital nomad visas. No relaxation on taxation also, which makes no incentives for digital nomads to use this MM2H visa. However, from Malaysia's interest, this regulation is in favor of Malaysia's economy and security. These points are to be considered while formulating an

Indonesian digital nomad visa and a second-home visa.In Indonesia, the second home visa is introduced in Law No. 11, the Year 2020, concerning Job Creation. Not much information can be gained in this Law, as it is a.

Compilation of most economic laws of Indonesia. Government Regulation No. 48 the Year 2021 concerning Immigration was promulgated as implementation regulation of Law No. 11 the Year 2020. In the Elucidation of Government Regulation, Article 102, paragraph 3 (f), second home (visa) is immigration facilities in the form of a residence visa limited granted to the foreigner and/or their families who live permanently in Indonesia for 5 (five) years or 10 (ten) years after fulfilling specific requirements. Furthermore, in Article 102 paragraph 3 (f), it is so clear that this second home visa facility is given in condition of not working. This definitely will make a second home visa in Indonesia is not applicable for remote workers. The non-working visa condition is reiterated in Article 253C, stating that When this Government Regulation comes into force, Issued non-working limited stay visas for foreign elderly tourists are declared to remain valid as a non-working limited stay visa in the framework of a second home (visa). Alternatively, in other words, this second home visa is merely perceived as a replacement of a non-working limited stay visa for foreign elderly tourists, which applied longer and more conditions attached.

Nevertheless, there is one thing that remained unclear in this Government Regulation. Except for the rules that there shall be sponsorship for the applicant of this second home visa (Article 142 para 2 (j)), there are no other specific requirements on this second home visa, which would make this visa application would still not be applicable shortly, even though the general regulation has been regulated in the Law No. 11 the Year 2020. This awaited implementation regulation will be another homework for the Directorate General of Immigration Ministry of Law and Human Rights.

Before researching, the researchers hypothesized that Digital Nomad Visa regulation might be linked and merged with this Second Home Visa Regulation of Indonesia. However, in light of the previous points in this section, such a merger would be improper and incorrect due to the non-working visa characteristic of Indonesia's second home visa. Indeed, this is far from what the current Minister of Tourism and Creative Economy, Sandiaga Uno, has expected on the Working from Bali program.

3.3 Proposal for Future Digital Nomad Visa

In Croatia, digital nomads are required to prove that they work remotely, already have a place to live in Croatia, health insurance, and a minimum salary of 2700 US dollars per month22. According to Steve King from Emergence Research, nothing to be worried about these tech pants (remote technology workers) or previously called digital nomads, as they already have high-paid jobs.

In the Indonesian context, Croatian provisions on digital nomads requiring proof of their high-income remote jobs and their monthly income, health insurance, and accommodation are minimum requirements to comply. As these are minimum standards to makes sure that the techpats will not become homeless vagrants in Indonesia.

In its Digital Nomad program, Anguilla includes PCR testing and surveillance while the applicant is on the island. In the Indonesian context, PCR testing in this Covid 19 Pandemic is irrefutable, seeing how the outbreak is increasing these days.

Duration of visa is also diverse, as there are countries who applied for six months stay, one year stay, two years stay, three years, and even five years consecutive stay. For Indonesian national security, it is advised that the duration is not given too long in the first application to be evaluated from time to time. Two years would be enough for the first instance.

Provision of the requirement of good conduct letter issued by applicant's country of origin, which is applied in MM2H application, will also be helpful for Indonesian Second Home Visa and Digital Nomad Visa, as applicants are proven not to be criminals, the fact that no country in this world would like to face with, national security.

There must be further study concerning the hearsay that Bali will apply no tax for digital nomad visas. If there is no tax applied to the digital nomad, what would be the point of letting them enjoy Indonesia? There must undoubtedly be income on Indonesia's side by tax, visa application, or local government income. There is a potential conflict of interest when we speak about numbers, so these things are left to be settled by central and local government authorities.

Furthermore, a provision in the MM2H Visa Application shall also be noted for long-term stay as it is regulated in Second home Visa. Malaysia prohibits successful applicants from participating in activities that can be considered sensitive to the local people. In the Indonesian context, this shall also apply to activities of disseminating any ideology against Pancasila and UUD 1945, as one factor to tourism degradation in Indonesia was the Bali and Jakarta bombing. Therefore, there is no room for an impostor to the unity of the Republic of Indonesia.

In addition, this Digital Nomad Visa, like Second Home Visa, will potentially change the habitual residence of a person or a family, leading to different jurisdictions or different applicable laws in private international law cases in the future. Currently, Indonesia still based its private international law in lex patriae (Article 16 Algemene Bepalingen), lex rei sitae and

mobilia sequuntur personam (Article 17 Algemene Bepalingen) and lex loci actus (Article 18 Algemene Bepalingen). However, the new Private International Law of Indonesia is already in the pipeline. Therefore, the future provisions of Indonesia Private International Law are something to be anticipated by the applicants of Digital Nomad Visa and Second Home Visa.

4. CONCLUSION

Digital Nomad Visa, as the current hype is already regulated in more than 25 countries of this world, which means Indonesia has to take advantage of this situation as soon as possible. Digital Nomad Visa for Working in Bali Program of the current Minister of Tourism and Creative Economy is highly anticipated by many people. However, considering this Covid -19 pandemic, the Directorate General of Immigration has to tighten the antigen test in any arrival airport, as this would be the only filter for Indonesia to stop the rising outbreak.

Indonesian second home visa requirement still shows no specific requirements on the application of this visa, which would make the provision inapplicable in practice. Malaysia's Second Home Visa Provision may be a good inspiration for Indonesia, as we can learn from their MM2H gradual development since 1996. However, never forget to put all the provisions in the context of the Indonesian legal system and Indonesian legal culture, as discussed in the conclusion part.

Concerning Digital Nomad Visa, there are some points to be considered, such as duration of stay, requirements and terms and conditions, support to the national economy, and support for national security. These points are essential points to let a foreigner stay in Indonesia. Central and local governments shall collaborate to make decisions on this regulation as soon as possible.

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Prohibited Fish as a Form of Local Wisdom of West Sumatra Traditional Law Communities

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ABSTRACT
This paper dissects the standards of business contracts in the time of globalization in Indonesia. Regularizing law is utilized in planning the investigation in this paper. The outcomes show that the standards of agreement law are the establishment of business exercises in Indonesia. The rule of agreement law is directed in the Indonesian Common Code and persistently existed and was created in the realm of exchanges in the globalization of the unrestricted economy. Fundamental and by and large material traditional standards for each business contract in this time of globalization are the opportunity of agreement, understanding of the gatherings, arrangements that tight spot the gatherings with great morals. Agreement law assumes an indispensable and critical part in business exercises, both in beginning a business relationship, keeping up with the execution of deals, and settling business questions. Subsequently, contracts/arrangements are the primary systems utilized to decide connections for financial entertainers.

Keywords: *Custom, Law Local Wisdom, Society.*

1. INTRODUCTION

Standard law is the entire custom (the unwritten) and lives in the general public as conventionality, propensities, and customs that have lawful consequences.,[1] This common law usually is not recorded in authoritative guidelines, including living guidelines that, albeit not specified by the specialists, are clung to and upheld by individuals dependent on the conviction that these guidelines have legitimate power. In Indonesia, common law is one of the wellsprings of law that lives and creates in the public eye. This standard law has contrasts in every area, with its qualities in its framework and rules. Standard law controls different parts of Indonesian individuals' lives, and individuals who utilize this standard law are called standard law networks.

Standard law networks are a gathering of individuals who keep on living deliberately and inside which there is an arrangement of influence and autonomously, who have unmistakable or immaterial riches, where the individuals from the unit live in the regular general public, the individuals from which do not think to disintegrate the securities. or then again split away from that bond. The standard law local area is additionally a human unit that is interconnected with a fixed repeating design, in particular, a general public with a similar standard of conduct, where the conduct develops and is showed by the local area, from this example, the principles to direct public activity are figured it out. A daily existence social action with a similar social example will possibly happen in case there is a local area of associations with a fixed rehashing design [2]

This standard law local area, by and large, has three types of construction, specifically first, genealogically, it is an efficient local area unit where its individuals are bound to a typical genealogy from a progenitor either straightforwardly as a result of blood relations (relatives) or by implication because of conjugal ties or ancestral ties.

Second, the region is a perpetual and precise society whose individuals from the local area are identified with a specific legitimate home space, both in standard terms as a position of life and in otherworldly terms as a position of love. Third, the genealogical region is a local area unit that stays ordinary. Its individuals are bound to their home place in a specific region and limited by direct relations of connection [3].

As per standard law specialists during the Dutch East Indies time, these genealogical social orders can be recognized. In particular, patrilineal social orders are those whose arrangements are attracted by the dad's genealogy (male line), while the maternal line is prohibited. Second, a matrilineal society is one whose social design is defined as dependent on the maternal boundary (female line), while the fatherly genealogy is avoided. Third, a two-sided or parental society is one whose local area structure is attracted by the heredity of guardians, specifically the dad and mother together [4].

Minangkabau is probably the most significant type of matrilineal standard law network in Indonesia. As a general rule, Minangkabau words have two implications. First, Minangkabau is where the Pagaruyung realm was established. Second, Minangkabau is one of the ethnic gatherings that possess the region. Minangkabau common law is one of all common laws in Indonesia that live and should develop[5].

Nearby insight is the personality or social character of a country that makes the country have the option to ingest, even deal with culture starting from outside/different countries into its person and capacities score. [6] Nearby shrewdness is a method for developing society and protecting oneself from unfamiliar societies that are bad. Nearby astuteness is a perspective on life and information just as different life techniques as neighborhoods' exercises in noting different issues in addressing their requirements.

The local neighborhood area does different procedures to keep up with their way of life. Precisely the same thing was additionally communicated by Alfian [7]. Neighborhood astuteness is characterized as a perspective on life and information just as a day-to-day existence procedure as exercises did by nearby networks in addressing their requirements. In light of Alfian's assessment, it very well may be deciphered that neighborhood astuteness is a practice and custom that has been done by a gathering of individuals from one age to another, which is as yet kept up with by certain standard law networks in specific regions. Because of the above comprehension, it very well may be deciphered that nearby intelligence (neighborhood astuteness) can be perceived as nearby thoughts that are shrewd, brimming with shrewdness, of sound worth, which is inserted and followed by individuals from the local area.

Nearby intelligence or neighborhood insight can be perceived as nearby thoughts that are astute, loaded with shrewdness, and great worth, which is inserted and followed by local area individuals.

Nearby shrewdness, as indicated by (Ratna, Nyoman Kutha. 2011) is the concrete that ties as the culture that now exists, so it depends on presence. Nearby astuteness can be characterized as a culture made by neighborhood entertainers through an iterative process,9 through the disguise and translation of strict and social lessons associated as standards and utilized as rules in regular day-to-day existence for the community [8].

In the interim, as per Law no. 32/2009 Concerning Ecological Insurance and The executives, respectable qualities apply locally's life, including ensuring and dealing with the climate in a manageable way.

In light of the specialists' assessments above, analysts can draw a repeating theme that nearby intelligence is a thought that emerges and constantly grows in the general public as customs, rules/standards, culture, language, convictions, and day by day propensities.

From the foundation of the presentation, the author is keen on looking at the issue how is the viability of the execution of the nearby insight of the Denied Fish in West Sumatra.

2. METHODS

The exploration technique utilized in this examination is juridical-standardizing, where the information considered is as library materials or optional information which incorporate essential lawful materials, legitimate auxiliary materials, and lawful tertiary materials, where the essential lawful material utilized is 1945 Constitution. The Constitution of the Unitary State Republic of Indonesia. Law Number 32 of 2009 concerning Natural Insurance and The board, optional legitimate materials, to be specific course books, lawful diaries, logical examination, and sources from the web, just as lawful tertiary materials, in particular Indonesian language word references, legal word references, reference books, and other lawful materials.

3. RESULT AND DISCUSSION

Indonesia as a Province of Law (Rechtsstaat) should make every one of the exercises of its residents dependent on the law, other than that. It withdraws from a typical arrangement that endeavors to understand the implementation of everyday freedoms (HAM) for standard law networks did by the State are to give legitimate insurance rights to native people groups as ordered in Article 18 B section (2) of the 1945 Constitution which peruses: "The State perceives and regards the solidarity of the common law local area and their conventional rights as long as they are alive and prosperous, with the advancement of society and the standards of the Unitary Condition of the Republic of Indonesia which are managed by law. ", one illustration of the legal privileges of native people groups is the nearby insight of illegal fish.

The illegal fish region is one of the neighborhood shrewdness destinations in West Sumatra. The nearby local area specifies some water regions as streams as denied regions for fish and different biotas to be taken by the cutoff points and time set. A few regions allude to the term lubuak restriction. In the language of lubuak, disallowance comprises two words, specifically lubuak, which implies waterway, and denial, which means precluded activities as indicated by the principles set. Notwithstanding, the term has a similar significance, specifically the waterway as a territory for fish and another biota into a denied region inside a specific timeframe as per the guidelines that have been set. Not just that, this region has restricting standards, both standard principles and neighborhood unofficial laws.

There are three types of restricted fish regions in West Sumatra: conventional, semi-customary, and present day. The gathering of the space depends on the presence of the controller, specifically savvy individuals who are considered to have supernatural capacities.

Before, the native individuals of West Sumatra (Minangkabau) utilized the overseer framework a great deal to oversee disallowed fish regions. Toward the finish of the 1990s, there was a change of the board through a

preservation framework from the public authority for this situation, the Nagari or Kampung:

A few investigations that have been directed have uncovered the nearby intelligence of precluded fish situated in Dharmasraya Rule, Limapuluh Kota Rule, and Pesisir Selatan Regency.[9]examined the prohibited fish area located in Dharmasraya Regency. The local community makes the 1 km long Batang Pangian river a prohibited fish area. The local community is familiar with the term "lubuak prohibition" Ngalau Agung.

Yuliaty & priyatna (2014) examine the prohibited fish area in Kapur District IX, Limapuluh District. City. The community formed a 700 m long prohibited fish area on the Kapur river [10].

Ilhami & Riandi's research (2018) about the prohibited fish area in Pandan Gadang, Gunung Omeh sub-district. The local community divides three forms of prohibited areas still preserved by the community[11].\In the Barung Barung Balantai area, Pesisir Selatan Regency, communities have also established a prohibited fish area in the Batang Tarusan river (Firdaus & Huda, 2015) [13]. Several studies that have been conducted related to prohibited fish areas in West Sumatra show the value of environmental conservation (Firdaus & Huda, 2015; Ilhami & Riandi, 2018; Pawarti et al.,2012; Susilowati, 2000).

The existence of prohibited fish areas is almost owned in every district/city in West Sumatra, as presented into Data I.

Data I.

No Kabupaten/Kota Kecamatan

1. Kab. Limapuluh Kota Gunuang Omeh, Payakumbuh, Guguak, Suliki, Akabiluru
2. Kab. Pesisir selatan Basa Ampek Balai Tapan, Tarusan, Lengayang
3. Kab. Sinjunjung IV Nagari, Lubuak Tarok
4. Kab. Agam Baso
5. Kota Padang Padang Utara, Koto Tangah, Pauh, Lubuk Begalung
6. Kab. Pasaman barat Pasaman, Kinali, Lembah Malintang Distribution of Prohibited Fish Areas in West Sumatra Province
7. Kab. Tanah datar Salimpauang, Sungai Tarab, Tanjung baru
8. Kab. Pasaman Lubuk Sikaping,
9. Kota Pariaman Pariaman tengah
10. Kab.Padang Pariaman 2 X 11 anam lingkuang, Lubuk aluang, IV Koto Aur Melintang
11. Kab. Solok Kubung
12. Kota Padang panjang Padang Panjang timur
13. Kota Solok Lubuak Sikarah,Junjung sirih
14. Kota Payakumbuh Lampasi Tigo Nagari, Payakumbuh Barat

So it can nearly be said that the neighborhood insight of the restriction fish, also called the forbiddance lubuak, is spread in practically all regimes. Urban communities in West Sumatra Territory and light of the consequences of a few examinations show the worth of ecological preservation, particularly for biodiversity in stream regions where the prohibition on fish or lubuak is denied.

The progression of investigation to create delegate logical reasoning, the creator utilizes an examination that begins from the General set of laws hypothesis started by Lawrence Meyer Friedman to see if the Nearby Shrewdness of Precluded Fish in the Standard Law Society in West Sumatra can be viewed as an Overall set of laws, A typical theory from Lawrence M. Friedman is identified with his hypothesis that the hypothesis in each comprehensive set of laws consistently contains three parts, in particular: lawful design, lawful substance, and legitimate culture.

Friedman's comprehension of lawful design is as follows: First numerous highlights of working general set of laws can be called underlying The moving parts, so to discuss the machine courts a straightforward and precise model, their construction can portray a board of such and such a size, sitting and such and such a period, which either constraint on purview. The shape, size, and powers of the council are different components of the design. A composed constitution is as yet another significant element in the underlying scene of law. It is or endeavors to be the articulation or diagram of fundamentals. The highlight of the country's legitimate cycle is the association and system of government [12]

As per Friedman, the ID of the components of a comprehensive set of laws are: First, the framework should have a design (the first content peruses "regardless the general set of laws has structure." The general set of laws in the restriction fish law in West Sumatra follows the comprehensive set of laws customary in Sumatra In the West, to be specific the Matrilineal Standard Law framework (drawing ancestry from the female side), in Minangkabau common law, which assumes a part in common law, the Nagari chiefs are typically called ninik mamak, which are agents of the clans in the Nagari. Sialang has 8 ninik mamak addressing the Eight clans that possess Nagari Sialang. This ninik mamak sits in the Nagari Adat Thickness organization. The executives of Fish/Lubuk Larangan are passed on to POKMASWAS (people group administrative gathering) somewhere else is controlled by Dubalang. At the same time, the standard government (KAN) and neighborhood governments do the administrative capacity.

The second component of the comprehensive set of laws, as indicated by Friedman, is substance. The second kind of part can be designated "considerable." There is the natural result of the general set of laws that the appointed authorities, for instance, really say and do. Substance incorporates rules, typically enough, those suggestions alluded to as legal guidelines rea~listically it likewise incorporates rules which are not recorded for example those guidelines of conduct that could be diminished to general proclamation each choice to is a meaningful result of the comprehensive set of laws similar to each teaching reported in Court or ordered by

lawmaking bodies or embraced by an office of government.[13].

This substance part is the consequence of the design, including legitimate standards, regardless of whether as enactment, choices, or doctrinal regulations As expressed by Friedman in What is a general set of laws? The law is not just in composed structure (laws or legal guidelines) as an authority result of requests but also as decisions or laws that come from outside the law. Accordingly, further Friedman, there are two different ways to see law, to be specific authority law beginning from the public authority and the other should be seen extensively (the first content peruses are made up solely of the authority administrative demonstration, while others adopt a more comprehensive strategy).

Concerning the denial fish law in the customary law local area, there are Nagari guidelines, for instance, in Nagari Sialang, Limapuluh Kota Regime. There are also village guidelines, for instance, in the Senamat Town region, Bungo Rule, and some areas an unwritten understanding which is an arrangement. For example, from Ninik Mamak, strict pioneers, and local area pioneers in Batu decay Town, Pauh Region, Padang City.

Likewise, as indicated by Friedman, the framework does not yet contain incorporates methodology, cutoff points of power, judges, and appropriate approvals. For instance, it directs grievances/reports, summons, the spot of preliminary, evidence or settlement, and existing approvals and practically all regions assigned as ensured regions for the Precluded Fish or Lubuk Larangan in West Sumatra contain systems for the limits of power, in particular the domain which is assigned as the Denied Fish region, for judges commonly held by Wali Nagari or Ninik Mamak who are designated by typical arrangement, and the authorizations forced are of two sorts, specifically fines and social assents.

Friedman said that the components of the general set of laws are not simply design and substance. Other than that, there is a third component, precisely lawful culture. As indicated by Friedman, legitimate culture can be characterized as those perspectives and qualities influencing conduct identified with the law and its organization either decidedly or adversely. Love of suit or scorn of it is essential for the Legitimate Culture as mentalities influence conduct which is essentially ostensibly represented by law. At that point, the lawful culture is an overall articulation for how the overall set of laws finds a way into the way of life in general society.

Lawful culture incorporates individuals' perspectives or qualities that they hold fast to that decide the exercises or exercises of the comprehensive set of laws concerned. These mentalities and qualities will affect conduct identified with the law, so legitimate culture signifies individuals' reasoning and qualities. Social powers decide how the law is utilized, kept away from, or maltreated [14].

As indicated by Friedman, lawful culture is the mentalities or upsides of society towards law. This lawful culture assumes a significant part in having the option to coordinate the improvement of the overall set of laws since it identifies with insights, qualities, thoughts, and individuals' assumptions for the law. Friedman then, at that point, contends that "lawful culture is put as a factor that decides how the framework gets a spot with regards to local area culture, while in neighborhood intelligence as the disallowance fish law, other than containing rules identified with authorizations and rules in regards to episode reports, a pledge or reviles is typically made by the pioneers. customs or strict pioneers to reinforce consistency and give strict qualities as per the convictions held by the local area with the goal that they are more loyal to the guidelines made and are hesitant to submit infringement because, as well as containing fines, they additionally contain social assents which are generally felt to be heavier than fines.

4. CONCLUSION

The existence of customary law community legal products that regulate prohibited fish is seen to have been effective in several Nagari or villages in West Sumatra and appropriate and according to its function will facilitate and facilitate the implementation of village government which aims to accelerate the process of community welfare in the West Sumatra region. The existence of customary law products in the form of local wisdom of prohibited fish concerning the regulation of prohibited fish also functions in regulating and increasing people's income and increasing various development programs in carrying out various functions correctly and adequately, such as the function of public services, development, and the function of protecting the community (society protection). In addition, local wisdom of prohibited fish aims to preserve the environment, especially concerning preserving the existence of prohibited fish.

From the results of the study, several suggestions can be given. Namely, it needs commitment from the government, especially the province of West Sumatra, in maintaining and protecting aquatic resources to maintain the authenticity of local fish species and the environment for the future, for example, in the form of legal products of regional regulations. It can be Make the prohibited fish area in West Sumatra as a tourist spot so that it adds value to the community's economy around the local wisdom of prohibited fish set.

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Increasing Indonesian Economic Welfare Through the Promotion of Pancasila Tourism in the Covid-19 Pandemic

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ABSTRACT
Symbolically, the founding fathers have designed the concept of promoting Indonesian tourism by capitalizing on pluralism. The concept of promoting the diversity of the Indonesian nation puts forward the Five Principles, namely divinity, humanity unity, democracy, and justice. In 2009, Indonesian tourism ranked third in foreign exchange earnings after oil and gas commodities and palm oil. Based on 2014 data, the number of foreign tourists who came to Indonesia was 9.4 million more or grew by 7.05% compared to the previous year. Now that the Covid-19 pandemic has hit Indonesia, the tourism sector is experiencing a decline. The question is, what and how to improve Indonesia's economic welfare by promoting cultural tourism during the Covid-19 pandemic. To answer, the researcher proposes the concept of Tourism Together with Pancasila. Divinity in tourism can be done by providing worship facilities in tourist destinations such as religious tourism, humanity, management, and development in a civilized and environmentally friendly manner. Unity, Indonesian tourism is managed and developed by prioritizing a common understanding that cultural diversity is the nation's greatness: democracy, management, and community tourism development from Sabang to Meraoke. Justice, management, and development of Indonesian tourism must be felt by all levels of Indonesian society for prosperity. This research uses the normative method while focusing on how the tourism ministry should promote Indonesia and attract tourists with the Pancasila-based principle. This research uses the normative method while focusing on how the tourism ministry should promote Indonesia and attract tourists with the Pancasila-based principle. The author is reading some authorized books and published scientific research to analyze the subject matters of this research by using primary sources, secondary sources, and tertiary sources. This research uses some secondary sources. Some focus on how tourism must be done by discussing the basics, such as the principle of tourism, the sociology of tourism, and tourism philosophy. In conclusion, it is imperative to emulate and continue the spirit of Garuda Pancasila to develop the Indonesian nation's tourism while still basing it on divinity, humanity, unity, democracy, and justice. Tourism in implementing its policies cannot be separated from the government's goodwill, which will encourage the creation of effective policies. The concept of Tourism with Pancasila will revive Indonesia from the decline in welfare due to the Covid-19 pandemic.

Keywords: *Tourism, Pancasila, Welfare.*

1. INTRODUCTION

The tourism industry in Indonesia is a significant monetary area in Indonesia. In 2009, the travel industry positioned third as far as unfamiliar trade profit after oil and gas items and palm oil. In light of 2014 information, the number of unfamiliar sightseers who came to Indonesia was 9.4 million more or developed by 7.05% contrasted with the earlier year. Regular and social abundance is a significant part of the travel industry in Indonesia. Nature Indonesia has a blend of heat and humidity, 17,508 islands, of which 6,000 are uninhabited, and the third-longest coastline on the planet after Canada and the European Association. Indonesia is likewise the biggest and most crowded archipelagic country on the planet. The seashores in Bali, jump locales in Bunaken, Mount Rinjani in Lombok, and different public parks in Sumatra are regular vacationer locations in Indonesia. The primary fascination in Indonesia that draws in the unfamiliar traveler is fundamentally the way of life.

According to in section considering a to d in 10th statute of 2009 about tourism, concerning about:

a That the state of nature, flora, and fauna as a gift from God Almighty, as well as ancient relics, historical relics, arts, and culture owned by the Indonesian citizen, are the resources and capital

for tourism development to increase the prosperity and welfare of the people as contained in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia;

b That the freedom to travel and to take advantage of free time in the form of traveling is part of human rights;

c That tourism is an integral part of national development, which is carried out in a systematic, planned and integrated, sustainable and responsible manner while still protecting religious values, cultures that live in society, environmental sustainability and quality, as well as national interests;

d That tourism development is needed to encourage the equal distribution of business opportunities and gain benefits and be able to face the challenges of changing local, national, and global life.

Considering the provisions of considering section and implementing the provisions of article 55 of the tourism law in Chapter XII, concerning Human Resource training, standardization, certification, and workforce, wherein article 53 it is regulated that workers in the tourism sector must have competency standards which are carried out through competency certification carried out by a certification agency that has received a license by the provisions of the legislation, 52nd Government Regulation of 2012 was established regarding Competency and Certification and business certification in the tourism sector. Because of the provisions regulated by the tourism competency regulations, which remembers that workers who work in the tourism sector must have competency standards in accordance with the tourism competence government regulations, 11th Ministry of Tourism Regulation of 2015 concerning the enforcement of Indonesian National Work Competency Standards which aims to be a reference in the implementation of competency-based education and training, competency testing and professional certification in the tourism sector.

These vacation spots are upheld by a rich social legacy that mirrors Indonesia's powerful history and ethnic variety, with 719 territorial dialects spoken throughout the archipelago. Prambanan and Borobudur sanctuaries, Toraja, Yogyakarta, Minangkabau, and Bali are instances of social the travel industry objections in Indonesia. Until 2010, seven areas in Indonesia had been assigned by UNESCO, which were remembered for the rundown of World Legacy Destinations. In the meantime, four different delegates were additionally assigned by UNESCO in the Agent Rundown of the Elusive Social Legacy of Humankind, specifically wayang, keris, batik, and angklung. Nonetheless, the circumstance has changed radically since the Coronavirus pandemic hit the world, including Indonesia. The public authority's endeavors in dealing with the Coronavirus pandemic affect the travel industry area. Enormous Scope Social Limitations Guidelines appear to secure the space for the Indonesian travel industry to move. Covid-19 made a significant impact on Indonesia. This virus was first found in China and spread quickly worldwide because of high tourism activities between all nations. Almost every country in the world held an internal lockdown for their excellence. Because of the people's ignorance, most of the people were infected, most of them were dead, and the mortal rate of the world was rising significantly. Because of that, WHO ordered the world to make mass lockdown and forbid every abroad traveling except it is extremely necessary. Because of that, countries using tourism as their primary revenue suffer a significant loss, especially Indonesia, mainly Bali, because approximately 80% of Balinese revenue is from tourism, mainly international tourism. Nevertheless, the people of Indonesia must survive in order to survive this pandemic. Most Indonesian people are casually called *Covid Denial*. They believe the existence of Covid-19 is mainly business matters and is not dangerous at all. Ironically, some doctors do not believe in the existence of Covid-19. They even made a campaign about resisting the vaccination program held by the government, claiming the vaccine is not effective against the mutating virus.

History has proven that the Indonesian nation is a nation that has a high fighting spirit. The Covid-19 pandemic challenges us to rekindle our fighting spirit in order to be able to get out of the economic crisis caused by the Covid-19 pandemic. By continuing to capitalize on pluralism, Indonesian tourism must be able to support efforts to improve the economic welfare of the Indonesian people. Through this paper, the researcher tries to express the concept of how to improve Indonesia's economic welfare through the promotion of cultural tourism during the Covid-19 Pandemic.

2. METHODS

There are two research methods available, normative method and Empirical method, normative method are used in library and biblical research, focusing on the problem that causes by three subjects:

1) the problem caused by the two or more laws that have contradictive measures on each other;
2) the problem caused by there is not any law(s) available being based in one or more incident(s);
3) the problem caused by a law(s) that have blurry definitions and cannot be applied in a specific incident.

Secondly, the Empirical method focuses on field research. The researcher focused on seeking the problem by asking in person who has direct involvement in the subject matters or someone with specific knowledge and capabilities related to the matter of subject. Those people with certain classifications are called Respondents and Informants. Specific analyzing methods will process the data that the author has gathered.

This research uses the normative method while focusing on how the ministry of tourism should encourage tourism to promote Indonesia and attract tourists with the Pancasila-based principle. The author is reading some authorized books and published scientific

research to analyze the subject matters of this research by using primary sources, secondary sources, and tertiary sources. This research uses some secondary sources; some focus on how tourism must be done by discussing the basics, such as the principle of tourism, the sociology of tourism, and the philosophy of tourism. Primary sources used in this research are: 10th Statute of 2009 about Tourism.

3. RESULT AND DISCUSSION

As the executor of national tourism programs, the Ministry of Tourism is expected to be more creative and innovative in making breakthroughs in efforts to manage and develop tourism in Indonesia. According to article 4 10th Statute of 2009 about tourism, tourism is held in order to:

a. intensify the economic growth;
b. intensify the citizen's wealth;
c. abolishing poverty;
d. abolishing unemployment;
e. conserving nature, environment, and resources;
f. intensifying culture;
g. intensifying order of the nation;
h. cultivating the love for the nation;
i. strengthen the identity and unity of the nation; and
j. strengthen the unity between nations.

According to article 28 10th statute of 2009 about tourism, the government is privileged to:

a. Formulate and stipulate a master plan for national tourism development;
b. Coordinating cross-sectoral and gross-provincial tourism development;
c. Organize International cooperation in the field of tourism by the provisions of the legislation;
d. Determining national tourist attraction;
e. Determining national tourism destinations;
f. Establishing norms, standards, guidelines, procedures, criteria, and control systems in the administration of tourism;
g. Developing policies on human resource development in the tourism sector;
h. Maintaining, developing, and preserving national assets that are tourist attractions and potential assets that have not been explored;
i. Conduct and facilitate the promotion of national tourism;
j. Providing facilities that support tourist visits;
k. Providing information and/or early warning related to the security and safety of tourists;
l. Improving community empowerment and tourism potential owned by the community;
m. Supervise, monitor, and evaluate the implementation of tourism; and
n. Allocate tourism budget.

According to article 29 10th statute of 2009 about tourism, the provincial government is privileged to:

a. Formulating and Stipulating a provincial tourism development master plan;
b. Coordinating the implementation of tourism in its territory;
c. Carry out the registration, recording, and data collection of tourism business and registrations;
d. Determining provincial tourism and destinations;
e. Determining provincial tourist attractions;
f. Facilitate the promotion of tourism destinations and tourism products in its territory;
g. Maintain provincial assets that become local tourist attractions; and
h. Allocating tourism budget.

According to article 30 10th statute of 2009 about tourism, the district/city government are privileged to:

a. Formulating and Stipulating a district/city tourism development master plan;
b. Coordinating the implementation of tourism in its territory;
c. Carry out the registration, recording, and data collection of tourism business and registrations;
d. Determining district/city tourism and destinations;
e. Determining district/city tourist attractions;
f. Facilitate the promotion of tourism destinations and tourism products in its territory;
g. Maintain provincial assets that become local tourist attractions; and
h. Allocating tourism budget.

As a push to expand the number of travelers to Indonesia, the Indonesian Service of Culture and The travel industry proceeded the "Time of Visiting Indonesia" program in 2009 with an objective of 6.4 million vacationers and foreign trade income of 6.4 billion US dollars, while the development of homegrown sightseers is designated at 229, 95 million excursions with an all-out use of more than 128.77 trillion rupiahs. The program is centered around “gatherings, impetuses, shows, and exhibitions just as marine the travel industry.”

In 2010, the Indonesian government re-dispatched the “Time of Visiting Indonesia and Year of Visiting Exhibition halls 2010”. This program is completed to support public attention to galleries and increment the quantity of exhibition hall guests. In 2011, the Indonesian government set up Superb Indonesia as the new brand on the Indonesian travel industry board. While the travel industry topic was picked “Eco, Culture, and MICE. “The travel industry logo keeps on utilizing the Time of Visiting Indonesia” logo, which has been utilized since 2008. The above picture is a concrete manifestation of the government's efforts in managing and developing Indonesian tourism. There are basic things that the government must pay attention to in the management and development of tourism in Indonesia, namely that the management and development of all aspects of life must be based on the Pancasila state basis—included in the

collective welfare, which of course can be achieved through the tourism sector.

The key lies in managing this progress and possible as tourism capital by sticking to and commitment to the principles of the Five Basics as implicitly emblazoned in the national symbol of Garuda Pancasila. The principle of God in tourism can be done with one of them is the provision of worship facilities in tourist destinations. It is also necessary to develop religious tourism, such as visiting destinations with religious nuances such as places of worship and the tombs of guardians/religious leaders in the past. Religious tourism during the Covid-19 pandemic has become an effortless tour to combine amid anxiety and fear of the dangers of Covid-19. In religious tourism, spiritual meanings are implied so that it is not merely physical euphoria. Developing religious tourism must be done without dropping the local wisdom. While the local wisdom cannot be dropped while developing religious tourism. Because Indonesian believes in *Pamali*, it is a traditional faith that cannot do.

Concerning the principle of humanity, the management and development of tourism should also pay attention to etiquette. The management and development of Indonesian tourism must be friendly to the environment and not impact the destruction of the environment. It is also necessary to explore the portraits of the lives of marginalized groups as tourist destinations to foster gratitude and social sensitivity so that caring for others is embedded. Where so far, tourist destinations are monopolized on exotic objects. By the Principle of Unity, Indonesian tourism must be managed and developed by prioritizing the understanding that the cultural diversity of the Indonesian nation can be an inspiration for the greatness of this nation by remaining attached to unity and integrity. Naming tourism objects by combining two destination names, particularly regional tourism objects, is a symbol of unity. For example, naming beaches in the province of Banten with the name "KUTE NYA BANTEN."

In the People's Principle, the management and development of tourism in a specific area should also be able to voice to the broader community or the world about the wealth and exoticism of tourist destinations in other regions with the concept of understanding that there is continuity between one regional tourist destination and another. The principle of the people, by the people, and for the people must come to the fore in tourism management.

The principle of justice in tourism requires that all levels of Indonesian society feel the benefits of the management and development of Indonesian tourism to improve welfare. The existence of tourist destinations in certain areas must support the improvement of the economic welfare of the people in the area as a whole and evenly. File principle as below, Humanity, management, and tourism development in a civilized and environmentally friendly manner. Unity, Indonesian tourism is managed and developed by prioritizing a common understanding that cultural diversity is the nation's greatness.

Democracy, management, and development of community tourism from Sabang to Meraoke. Justice, management, and development of Indonesian tourism must be felt by all levels of Indonesian society for prosperity.

4. CONCLUSION

Based on the discussion above, it can be drawn a conclusion that It is imperative to emulate and continue Garuda Pancasila's spirit to develop the Indonesian nation's tourism while still basing it on divinity, humanity, unity, democracy, and justice. Tourism in implementing its policies cannot be separated from the government's goodwill, which will encourage the creation of effective policies. The concept of Tourism with Pancasila will revive Indonesia from the decline in welfare due to the Covid-19 pandemic.

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State Responsibility in Protecting the Intellectual Property Rights of Micro and Small Enterprise Products in the Culture-Based Tourism Industry

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ABSTRACT
This study aims to analyze state responsibility in protecting the intellectual property rights of micro and small enterprise products in the culture-based tourism industry. This study employed a normative legal research method, which was descriptive and analytical, with a statute approach. This study concludes that in the culture-based tourism industry, micro and small enterprise products have intellectual property rights that need to be protected. The state provides convenience to micro and small enterprises in terms of reduced fees for registering and recording intellectual property rights. To safeguard intellectual property rights, the state provides legal aid and assistance for micro and small enterprises that face legal problems in intellectual property rights disputes. It is hoped that the intellectual property rights of micro and small enterprise products in the culture-based tourism industry can be protected through that facilitation.

Keywords: *Culture-based tourism, Intellectual property rights, Micro and small enterprises, State responsibility.*

1. INTRODUCTION

God Almighty has bestowed on the Indonesian nation priceless wealth, including historical, artistic, and cultural heritage. This wealth needs to be utilized optimally by implementing tourism by introducing and utilizing tourist attractions and destinations in Indonesia. It is suggested to promote the Indonesian nation's prosperity and wellbeing, as envisioned in the Preamble to the Republic of Indonesia's Constitution of 1945.

Tourism can be defined as an activity in which people are traveling away from home or between regions or countries, especially for business or pleasure, in which they do not stay or look for work in that place. Tourism capital or resources can be grouped into three, namely (1) natural potential, (2) cultural potential, and (3) human potential [1].

One of Indonesia's tourist aims is to promote a culture based on the principles of human rights, cultural diversity, and indigenous knowledge. Tourism development is realized through the implementation of tourism development plans by taking into account the diversity, uniqueness, and characteristics of culture and nature and human needs for tourism, including the tourism industry, tourism destinations, marketing, and tourism institutions.

In the tourism system, there are elements of the tourism industry that provide services, attractions, and tourist facilities. The industry is a business unit in tourism. Tourism is a phenomenon of temporary and spontaneous human movement in order to meet particular needs and desires. This phenomenon encourages and stimulates activities in consumption, production of goods, and services needed by the tourists [2].

The tourist sector is made up of a variety of tourism firms that include micro, small, and medium-sized businesses, as well as cooperatives. The central and regional governments are required to develop and protect micro, small, medium enterprises and cooperatives in the tourism business sector by (1) making a policy on tourism business reserves for micro, small, medium enterprises and cooperatives, and (2) facilitating partnerships of micro, small, medium, enterprises and cooperatives with large-scale businesses.

Micro, small, medium, and cooperative businesses are the backbones of the people's economic power that can expand employment opportunities, play a role in inequity, increase people's income, and encourage

economic growth. Therefore, they must obtain facilities, support, protection, and empowerment from the state.

To micro and small enterprises, the state provides convenience by giving guidance and facilitating business permit registration through the central and regional governments. In the meanwhile, the state is obligated to give legal help and assistance to micro and small business players through central and provincial governments. In terms of empowerment, the state aids micro and small businesses in terms of intellectual property rights through the central government, namely the ministry that oversees government operations in law and human rights.

Intellectual property rights are divided into two categories: (1) copyrights and (2) industrial property rights, which include patents, brands, geographical indications, industrial designs, integrated circuit layout designs, trade secrets, and plant varieties.

Intellectual property is described as the state's legal protection of a person, a group of persons, or an entity whose ideas and thoughts have been incorporated in the form of a copyrighted work. Therefore, intellectual property protects the use of ideas, notions, and information with commercial or economic value. Problems resulting in intellectual property disputes are due to legal violations committed by other parties on someone's rights to something included in the field of intellectual property that has been legally owned beforehand [3].

Micro and small businesses might take advantage of the fact that the government facilitates the registration of intellectual property rights for their products. This is to preserve micro and small business players' intellectual property rights.

Unfortunately, micro, small, and medium enterprises' awareness of intellectual property remains low. Micro, small, and medium enterprises do not pay attention to legal and regulatory aspects. From 2019 to 2021, only 76,294 applications for intellectual property registration were submitted. Indonesia's number of micro, small, and medium enterprises was around 65.4 million [4].

Enforcement of the law of intellectual property rights affects the development of science, technology, and the economy in Indonesia. Protection of intellectual property rights, one of which concerns economic rights, characterizes that intellectual property rights cannot be separated from the economy. Intellectual property rights stem from the creative activities of human thinking abilities, which are expressed to the general public in a variety of ways, and provide advantages and support for human life. Intellectual property rights are closely related to the protection of the implementation of ideas and information of commercial value [5].

The research questions that become the subject of discussion in this research are as follows from the description above.

- How does the state facilitate intellectual property rights for micro and small enterprise products in the culture-based tourism industry?
- How does the state carry out its responsibility in protecting the intellectual property rights of micro and small enterprise products in the culture-based tourism industry?

2. METHOD

This study used a statutory approach and a normative legal research technique. The research specification is in the form of an analytical description to provide a detailed, systematic, and comprehensive description of the state responsibility in protecting the intellectual property rights of micro and small enterprise products in the culture-based tourism industry. This study used secondary data in primary and secondary legal materials obtained from documents or through library research. The data that had been collected was then analyzed and arranged systematically using deduction logic as the central guidance and induction logic as the supporting work procedure.

3. RESULT AND DISCUSSION

Cultural tourism, according to the United Nations World Tourism Organization (UNWTO), is the largest and fastest-growing type of tourism worldwide. Four out of ten international visitors are said to pick a location based on the culture of cultural places, customs, and history. Cultural tourism, according to the UNWTO, is a type of tourism activity in which the main motivation of visitors is to learn, discover, experience, and consume tangible and intangible cultural products that exist in a tourist destination. The "UNWTO General Assembly," which was held on September 11-16, 2017, in Chengdu, China, defined it as "a type of tourism activity in which the main motivation of visitors is to learn, discover, experience, and consume tangible and intangible cultural products that exist in a tourist destination [6].

The development of tourism as an industry has created business opportunities in several tourist destinations. Hotels, homestays, restaurants, transportations, travel agencies, gift shops, and impresarios thrive. All of these things have created job opportunities and, at the same time, increased income per capita of the population in the area. (1) Languages, (2) customs, (3) handicrafts, (4) cuisine and eating habits, (5) music and art, (6) regional history, (7) work and technology, and (8) religion (9) architectural characteristic in the area, (10) dress and clothes, (11) educational systems, and (12) leisure activities are all parts of culture that might attract tourists [7].

According to the constitutional mandate, the state must maintain, care for, preserve, and promote culture. Indonesia, which consists of 13,000 islands and is inhabited by about 734 tribes, has many forms of culture passed down from generation to generation. The dynamics of society and globalization cause changes so that it is feared that they will erase the cultural heritage, which may further lead to a crisis of national identity [8].

In this case, the state's role is needed to protect the cultural heritage so that it is maintained and sustainable to be passed on to future generations by protecting intellectual property rights that grow and develop in the culture-based tourism industry.

Two functions must be carried out by the state, namely security, and welfare. In terms of security, the presence of the state is not only to protect the strong but also the weak in the society in ensuring security and order. In terms of welfare, the state can distribute national resources to create equality in society as a form of social justice. The state can carry out its functions by enforcing various regulations and laws, which are meant to protect the vulnerable and marginalized groups in society [9].

The implementation of intellectual property rights is a form of government responsibility based on the authority and functions as instruments of the state. According to the intellectual property rights regulations made by the state, the role of the government is significant to protect intellectual property rights. *Intellectual property rights* is an economic field that needs the attention of the government as state administrators. State officials carry out this state administration. The government must be responsible for carrying out the mandate of the provisions of the applicable law. Therefore, it is the responsibility of the government to protect the community [10].

At present, micro, small, and medium enterprises are the driving forces behind the country's economy that are not quickly impacted by the world recession. The promotion of a creative economy can revive the economic downturn. Indonesia has a huge number of micro, small, and medium businesses. Almost 90% of business actors in Indonesia belong to micro, small, and medium enterprises. By promoting local pearls of wisdom, natural resources, and human resources that are readily available, micro and small business products in clothing, food, and traditional medicines have a considerable potential to dominate the market. The potential to have geographical indications, patents, trade secrets, trademarks, and designs as intellectual properties is enormous if the government and relevant institutions [11].

Micro firms have a maximum yearly sale of two billion rupiahs and a maximum business capital of one billion rupiahs (excluding land and buildings for company premises). Meanwhile, small enterprises are businesses with a business capital of more than one billion rupiahs, up to five billion rupiahs (excluding land and buildings for business premises), and with more than two billion rupiahs annual sale results up to fifteen billion rupiahs.

In the culture-based tourism industry, micro and small enterprises provide products in the form of handicrafts, traditional food, and traditional art. The products of micro and small enterprises in the tourism industry need to be protected by facilitating intellectual property rights, such as copyrights, brands, industrial designs, and trade secrets.

In terms of possible violations that might occur, the state has the authority to intervene by providing a series of regulatory instruments to regulate and provide threats in the form of sanctions in the event of violations against economic actors [12]. The state makes it easy for micro and small businesses to secure intellectual property rights swiftly, accurately, affordably, and without discrimination through the ministry that oversees government affairs in law and human rights.

It is in the form of reduced fees of at least 50% (fifty percent) for registering and recording intellectual property rights for micro and small enterprises.

The following are the current fees for registering and documenting intellectual property rights for micro, small, and medium businesses.

1. Application for the registration of related copyrighted works and/or products
    a. Electronically: Rp 200,000
    b. Non-electronically: Rp 250,000
2. Application for industrial design registration
    a. Electronically: Rp 250,000
    b. Non-electronically: Rp 300,000
3. Application for trademark registration
    a. Electronically: Rp 500.000
    b. Non-electronically: Rp 600,000
4. Application for patents
    a. Electronically: Rp 350.000
    b. Non-electronically: Rp 450,000
5. Application for trade secrets
    a. Recording of a transfer of trade secret rights: Rp 200,000
    b. recording of a trade secret license agreement: Rp. 150,000

By their authority, ministries/institutions assist micro and small enterprises to obtain intellectual property rights by conducting (a) consultation and assistance in the registration and recording of intellectual property, (b) literacy, education, and promotion of intellectual property, and (c) advocacy for intellectual property dispute resolution.

To defend the intellectual property rights of micro and small company goods exposed to intellectual property disputes, advocacy services for resolving

intellectual property disputes are provided to them. Settlement of intellectual property disputes is carried out through litigation and nonlitigation. Litigation is resolved through legal channels to the commercial court for industrial design disputes, integrated circuit layout designs, patents, trademarks, geographical indications, and copyrights. Meanwhile, disputes regarding the protection of plant varieties and trade secrets are submitted to the district court. On the other hand, nonlitigation is resolved through arbitration, consultation, negotiation, mediation, conciliation, and expert judgment.

Therefore, the tourism industry players, including the culture-based tourism industry run by micro and small enterprises, have the right to obtain legal protection in doing business, including protection of intellectual property rights of their business products.

Through the central and regional governments, the state is obligated to give legal aid and support to micro and small business players. Legal aid and assistance for micro and small enterprise actors are free of charge. Legal counseling, legal consultation, mediation, legal document management, and/or out-of-court help are all examples of legal aid and assistance. Not all micro and small enterprises can obtain legal aid and assistance from the state. Micro and small businesses must satisfy the following conditions to get these services: (a) make a written application to the central or local government, (b) have a company registration number, and (c) present case-related documentation.

In addition, through the central and regional governments, the state can provide financial assistance to micro and small enterprises that request legal aid and assistance provided by other parties, consisting of (a) individuals who have licenses to practice as advocates, (b) legal aid institutes, or (c) universities.

Legal aid and assistance provided by other parties include (a) legal consultation, (b) mediation, (c) preparation of legal documents, (d) out-of-court assistance, and/or (e) in-court assistance.

In providing legal aid and assistance to micro and small enterprises, the central and regional governments must at least:

- identify legal problems faced by micro and small enterprise actors;
- provide information to micro and small enterprise actors regarding the forms and methods of accessing legal aid and assistance;
- improve legal literacy;
- allocate budget for the implementation of legal aid and assistance activity program; and
- cooperate with related institutions, universities, and/or legal professional organizations.

State facilitation is carried out through the central and regional governments in reduced fees for registering and recording intellectual property rights. Legal aid and assistance are expected to protect the intellectual property rights of micro and small enterprise products in the culture-based tourism industry.

4. CONCLUSION

In the culture-based tourism industry, there are micro and small enterprise products. The state provides convenience to micro and small enterprises in the form of reduced fees of at least 50% (fifty percent) for the registration and recording of intellectual property rights, as well as assisting micro and small enterprises to obtain intellectual property rights by conducting

a. consultation and assistance in the registration and recording of intellectual property;
b. literacy, education, and socialization of intellectual property; and
c. advocacy for the resolution of intellectual property disputes.

The state provides free legal support and counseling to micro and small businesses, including (a) legal counseling, (b) legal consultation, (c) mediation, (d) legal document preparation, and/or (e) out-of-court assistance. It is hoped that the intellectual property rights of micro and small enterprise products in the culture-based tourism industry can be protected through that facilitation.

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Reconstruction of the Element of 'Person' Understanding in Tax Criminal Liability According to General Provisions and Tax Procedure Act 2020

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ABSTRACT
The Indonesian Criminal Code, as the main book of criminal law, still adheres to the principle of *societas delinquere non potest* or *delinquere non potest university*, where legal entities cannot commit criminal acts, so that criminal responsibility is imposed on humans. Act Number 6 of 1983 concerning General Provisions and Tax Procedures as Amended Several Times, the latest by the Act of the Republic of Indonesia Number 11 of 2020 (Act of General Provisions and Tax Procedures 2020), uses the term 'person' in the formulation of the criminal subject, does not mention the taxpayer who is a criminal tax address. As a result, when a tax crime occurs by a corporate taxpayer, it is difficult to determine the criminal liability of the person, the management, or the corporation. The term 'person' seems to limit only natural humans who can be held accountable for the crime. It is necessary to strengthen the formulation of the criminal subject in the Act of General Provisions and Tax Procedures (GPTP) 2020 by reconstructing the understanding of the articles that use the term 'person'.

Keywords: *Criminal liability, Person, Taxpayers.*

1. INTRODUCTION

Discussions on criminal law among academics and practitioners always experience very dynamic changes, in line with changes in social, economic, political life. Even now, the most attention-drawing is rapid technological changes. However, this is natural because humans always try to improve their quality of life by learning from past experiences.

Observing the current development of criminal law, especially in special laws outside the Criminal Code, which include criminal acts, there is a tendency to alternate the definition of criminal subjects. As the main book of criminal law, the Criminal Code still adheres to the principles that developed in the 19th century, namely the *societas delinquere non potest or delinquere non potest university*, where legal entities cannot commit criminal acts. Therefore, the fault cannot be blamed on legal entities or corporations but humans. Article 59 of the Criminal Code recognizes that the perpetrators of criminal acts are only humans (*natuurlijk persoon*) and contains the reasons for eliminating criminal acts for administrators, members of the board of directors, or commissioners who did not participate in committing the crime.

Tax law is an administrative law with criminal provisions as reinforcement so that it is more obeyed by all levels of society, especially taxpayers. The purpose of criminal provisions in administrative law is "so that all provisions of state administration can apply effectively, and a law enforcement policy is developed by functionalizing aspects of criminal law in state administration laws and regulations, which gives rise to administrative penal law). [1]

"Tax law regulates the relationship between the state as the holder of taxation jurisdiction and citizens as taxpayers in the implementation of taxation rights and obligations. Tax Law is included in Public Law and is included in State Administrative Law".[2] According to Anshari Ritonga, tax law is a special law because it has provisions that are not the same or provisions that deviate from general provisions. As a particular law, "criminal tax law meets the criteria as a systematic *lex specialis* because its address is extraordinary, namely taxpayers and tax officers. In addition, both material provisions and formal provisions in criminal tax law deviate from the Criminal Code and Criminal Procedure Code so that during the court process, the provisions used are criminal tax provisions." [3]

Formal tax laws are regulations regarding ways to transform the material law mentioned above into a reality. This section of the law contains procedures for the implementation of the determination of tax debt, government control on its implementation, the obligations of taxpayers (before and after receiving a tax assessment letter), obligations of third parties, as well as procedures for collection. [4] The formal tax law in Indonesia that is currently prevailed is the Act of the Republic of Indonesia Number 6 of 1983 concerning General Provisions and Tax Procedures (GPTP 2020) as has been amended several times, most recently by the Act of the Republic of Indonesia Number 11 of 2020 (hereinafter referred to as GPTP 2020), contains criminal provisions, which regulate the elements of criminal acts including criminal subjects, acts due to negligence, intentional acts, trials, and others.

GPTP 2020 applies the term 'person' as a criminal subject and does not use the term taxpayer, which consists of individual and corporate taxpayers. The Act of GPTP 2020 also does not regulate criminal liability for corporate taxpayers, so the question arises whether to follow the principle of societas delinquere non potest or delinquere non potest university, where legal entities cannot commit criminal acts and mistakes cannot be charged to legal entities. Alternatively, corporation but is imposed on humans.

With such a line of thought, the administrator is responsible for the crime when a corporate taxpayer associated with a corporation commits a criminal act. If this is the case, then the Act of GPTP 2020 is not in line with the changes that have begun to occur in the special law, where corporations are already considered criminal subjects. There are several doctrines regarding corporate responsibility so that corporations can become criminal subjects. Theoretically, there are at least 3 (three) general concepts in corporate criminal liability, namely direct corporate criminal liability, strict liability, and vicarious liability.

Based on the background of the research, the formulation of the research are a) What is the meaning of the 'person' element in the tax criminal law in the 2020 GPTP Act? b) What are the implications of the term 'person' as an element of tax crime for corporate taxpayers' crimes? c) How to attribute individual faults to entities/corporations according to the 2020 GPTP Act?

2. RESULT AND DISCUSSION

2.1 The Element of 'Person' in Tax Criminal Law on General Provision and Tax Procedure 2020

2.1.1 The Definition of 'Person' in Criminal Code

Unlike civil law, the subject of criminal law is not related to rights and obligations but criminal acts (criminal act) or criminal behavior (criminal conduct). Fault cannot be blamed on legal entities or corporations but humans. If a crime is committed within a corporate environment, it is the management who commits the crime. The system adopted by the Criminal Code, which is stated in Article 59 stated: "In cases where because of a violation it is determined that a crime is determined against the management, members of the management body or commissioners, then the management, members of the management body or commissioners who do not appear to have interfered shall do so. Violations are not punished". Article 59 of the Criminal Code recognizes that the perpetrators of criminal acts are only human (*natuurlijk persoon*) and contains the reasons for eliminating the crime for administrators, members of the management body, or commissioners who did not participate in committing the crime.

2.1.2 The Term 'Person' as Tax Criminal Element

In Chapter VIII of the criminal provisions, articles 38, 39, 39A, 41A, 41B, and 41C of the 2020 GPTP Act (criminal articles), the term 'person' is used as a subject element in criminal tax law that can be held criminally responsible and does not mention 'taxpayers' as the address of the criminal element The term taxpayer is only implicitly contained in Article 43 of the 2020 GPTP Act (criminal inclusion). The explanation of Article 38, which mentions the word taxpayer, has also been removed in the latest amendment to the 2020 GPTP Act.

The tax payable by the taxpayer is an administrative tax, following all the procedures set out in the formal provisions and calculated by the material provisions, namely the self-assessment system. "Since 1984, Indonesia has implemented a modern self-assessment tax administration system based on voluntary compliance. This tax system entrusts the initiation of taxation to the taxpayer, starting from the activities of calculating, paying or paying off taxes owed, to reporting in Tax Notification Letter "[5]

A tax crime arises if there is a loss in state income, a material offense that is a prohibition to cause a consequence, or a formal offense that is a prohibition to do something. Article 38 and Article 39 of the 2020 GPTP Act are material offenses, while Article 39A of the 2020 GPTP Act, which does not require any loss to state revenue, is a formal offense. Article 1 paragraph (2) of the 2020 GPTP Act states that "Taxpayers are individuals or entities..." However, the tax criminal articles in the 2020 GPTP Act state that the elements of the perpetrators of tax crimes are not direct individual taxpayers or corporate taxpayers but uses the terms' each person' or 'person'.

Several articles in the 2020 GPTP Act proves that the term 'private person' has the meaning of *natuurlijk persoon*, the most obvious of which is Article 7 paragraph (2) a: "The imposition of administrative sanctions in the form of fines as referred to in paragraph (1) is not carried out against: a . Individual taxpayers who have passed away." Only a *natuurlijk persoon* can die, so the term 'private person' denotes the meaning of a *natuurlijk persoon* (natural person). The address of Article 38 of the 2020 GPTP Act is 'person'. Article 38 regulates offenses committed due to negligence and is

limited to Tax Notification Letter that is not submitted or imperfectly or incorrectly submitted. *Negligence* in the explanation of this article is defined as being unintentional, negligent, not careful, or not paying attention to his obligations so that such actions can cause losses to state revenues.

Furthermore, Article 39 paragraph (1) letter a of the 2020 GPTP Act is formulated as an offense committed by a 'person' intentionally or dolus as a reason for punishment related to violations of acts in the field of taxation that must be carried out or omission offenses. So the 'person in question is a person who has met the subjective and objective requirements (article 2 paragraphs (1) and (2) of the 2020 GPTP Act) but deliberately does not register to get a Tax ID number or Taxable Entrepreneur and can cause loss of state revenue.

Article 39 paragraph (1) letter b is a commission offense committed by a 'person' by abusing or using without right the Taxpayer Registration Number or the Confirmation of a Taxable Entrepreneur to cause losses to state revenues. This abuse can be carried out by 'people' as individuals or entities, both those who already have a Taxpayer Registration Number or those who do not have a Taxpayer Registration Number.

Furthermore, Article 39 paragraph (1) letters c, d, e, f, g, h, and i are commissions and omissions offenses committed by 'people' intentionally causing losses to state revenues. The actions regulated in this article can only be carried out by taxpayers who already have a Taxpayer Registration Number, both individual taxpayers, and corporate taxpayers.

There is an exciting term in article 39 (2) that uses the term ‘someone’, which suggests that criminal tax liability can only be carried out by *natuurlijk persoon.* However, when the explanation is examined, it is clear that Article 39 paragraph (2) emphasizes the regulation to prevent repeated or recidive criminal acts. The term person can be interpreted as one' person'.

Then article 39, paragraph (3) is intended to regulate the trial offense (poging), which is limited to an act of abusing or using without rights the Taxpayer Registration Number and/or Taxable Entrepreneur Identification Number as referred to in article 39 paragraph (1) letters b and d. So the 'person' referred to in Article 39 paragraph (3) is the same as Article 39 paragraph (1) letters b and d, namely offenses committed by individuals or entities that do not yet have a Taxpayer Registration Number or who already have a Taxpayer Registration Number.

Article 39A is very strict because, according to the Elucidation of Article 39A, "Tax invoices as evidence of tax collection are an essential administrative means in implementing the provisions of Value Added Tax. So the element of 'people' in article 39A is inclusive, including individuals and entities, both those who already have a Taxpayer Registration Number and those who do not have an NPWP. In short, anyone who commits a criminal offense under Article 39A will be subject to criminal sanctions.

In comparison, in international tax regulations, the term 'person' is clearly defined. In article 3 paragraph (1) letter a and letter b Model Tax Convention on Income and Capital: Condensed Version 2017 (OECD Model) and Article 3 paragraph (1) letter a and letter b United Nations Model Double Taxation Convention between Developed and Developing Counties 2017 (UN Model 2017), 'person' has the exact definition, which stated as follows:

"*a) the term "person" includes an individual, a company and any other body of persons; b) the term "company" means any body corporate or any entity that is treated as a body corporate for the tax purpose;*."

Thus, based on the above discussion, the use of the term 'person' to refer to the criminal element of a tax subject turns out to have broad implications because criminal tax liability can be carried out by anyone, not limited to persons or entities that are already registered and have a Tax Registration Number but also include person or entity that has not registered and does not have a Tax Registration Number. If the term 'person' is replaced with the term taxpayer, it will distort the scope of the tax criminal subject itself.

2.2 The implications of the term 'person' as an element of tax crime against corporate taxpayers' crimes

When a corporation is declared criminally responsible for a criminal act committed, there are generally three systems of corporate criminal liability, namely:[6]

1) The management of the corporation as the maker and the manager is responsible (development of corporate responsibility in the first stage),
2) The corporation is the maker, but the management is responsible (development of corporate responsibility in the second stage)
3) The corporation as the maker must also be responsible (development of corporate responsibility in the third stage).

The complexity of tax crimes can involve both internal parties such as directors, commissioners, employees, affiliated companies, even owners, and external parties such as accountants, consultants, suppliers, and other parties. The formulation of article 43 of the 2020 GPTP Act is a legal basis that can be applied to demand criminal responsibility for those who ordered to do it, who participated in doing it, who recommended, or who helped commit a criminal act involved in the crime.

According to R. Soesilo, [7] "participate" in the sense of the word "to do together." There must be at least two people, namely the person who commits (pleger) and who participates in committing (medepleger) criminal events. In the explanation of Article 56 of the Criminal Code, it is said that the element of "deliberate" must exist so that people who, by chance without knowing, have

provided opportunities, efforts, or information to commit the crime are not punished. The "intention" to commit the crime must arise from the person given the assistance, opportunity, effort, or information. If the intention arises from the person assisting himself, then that person is guilty of "persuading to do" (uitlokking).

There is a fundamental difference between "committing" a crime to "helping to commit" a crime. In "committing," there is conscious cooperation between the perpetrators, and they jointly carry out the will. The perpetrators have a goal in committing the crime. Whereas in "helping to do," the will of the person helping to do is only to help the leading actor achieve his goal without having a goal of his own.

For corporate taxpayers, what is meant by representatives are administrators (article 32 paragraph (1) letter a of the 2020 GPTP Act). Furthermore, there is an expansion of the meaning of management in Article 32 paragraph (4), "Included in the definition of management as referred to in paragraph (1) letter a is a person who has the authority to participate in determining policies and/or making decisions in running the company." So there is no need for formal requirements for the status of people who have authority, but only the facts. “Representatives, as referred to in paragraph (1), are personally and/or jointly responsible for the payment of the tax payable, unless they can prove and convince the Director-General of Taxes that in their position it is impossible to be responsible for the tax payable”.

2.3 Attribution of Individual Fault to Corporations according to the 2020 General Provision and Tax Procedure Act

2.3.1 Doctrines of Corporate Criminal Liability

The 2020 GPTP Act does not provide a clear basis for attributing individual men's rea to corporations, so the doctrines of corporate responsibility will be described to understand the problem. The respondeat superior doctrine is a well-known doctrine in corporate responsibility and has three models, namely direct corporate criminal liability, strict liability, and vicarious liability, as explained below, where all three are related to one another so that they cannot be separated. . In addition, the doctrine of aggregation and the doctrine of corporate culture or culture will also be discussed.

2.3.1.1 Strict liability Doctrine

Strict liability or absolute liability or also called liability without fault or called no-fault liability or liability without fault. In this principle, accountability can be requested without proving the guilt of the perpetrator of the crime. The reason or rationale for this is that in the case of strict liability, a person who has committed a prohibited act (actus reus) as formulated in the law can be convicted without questioning whether the perpetrator had an error (men's rea) or not. So someone who has committed a crime that meets the formulation of the law must or absolutely can be punished. [8]

2.3.1.2 Vicarious Liability Doctrine

The vicarious liability doctrine is based on the "employment principle," meaning that the employer is the main person in charge of the actions of his workers or employees. So, in this case, the principle of "the servant's act is the master act in law" or the agency principle, which reads "the company is liable for the wrongful acts of all its employees." According to Clarkson, the rationale for applying this theory is because the employer (corporation) has control and power over them and the profits they earn are directly owned by the employer (corporate). [9]. According to Clarkson, the rationale for applying this theory is because the employer (corporation) has control and power over them and the profits they earn are directly owned by the employer (corporation). [10]

2.3.1.3 Identification Theory

In the Identification Theory or Direct Liability Doctrine, a corporation can be criminally responsible, either as the maker or participant for each offense. It is required to have men's rea using the identification principle. According to this doctrine, corporations can commit criminal acts directly through a "senior officer," who is the "directing mind" of the corporation and is identified as an act of the company or the corporation itself. The actions or wills of the directors are the actions and wills of the corporation.

2.3.1.4 Aggregation Doctrine

The Doctrine of Aggregation is a doctrine that pays attention to the mistakes of several people collectively, namely people who act for and on behalf of a corporation or people who act in the interests of that corporation. [11]. According to this doctrine, all actions and mental elements or mental attitudes or mistakes and groups of people are considered as and committed by a corporation, so that the corporation deserves to be criminally responsible. [12]. According to Clarkson AND Keating, *dalam doktrin pengatributan kesalahan kepada korporasi hanya didasarkan kepada kesalahan satu orang saja, sedangkan doktrin aggregation untuk dapat mengatributkan kesalahan kepada korporasi harus dapat ditentukan terlebih dahulu suatu kesalahan yang merupakan kombinasi dan kesalahan kesalahan beberapa orang.* According to Clarkson and Keating, in the doctrine of attributing errors to corporations, it is only based on the faults of one person, while the doctrine of aggregation to be able to attribute faults to corporations must first determine an error which is a combination of the mistakes of several people.[13]

2.3.1.5 The Corporate Culture Model

Sutan Remy Sjahdeni stated that criminal responsibility is charged to the corporation if it is found that someone who has committed an unlawful act has a rational basis for believing that a member of the corporation who has the authority has given authority or allowed the criminal act to be committed. [14] As a whole, the corporation is the party that must be responsible for the unlawful act and it is not the person

who has committed the responsible act, but the corporation in which that person works. [15]

2.3.1.6 Attribution of Individual Fault to Corporations

The formulation of Article 43, which is the basis for the expansion of criminal subjects for offenses in Articles 39 and 39A, is starting to show a relationship with the existence of equal treatment of representatives, proxies, employees of the taxpayer, or other parties who order to do, who participate in doing, who recommend, or who assist in committing criminal acts in the field of taxation. The expansion can identify criminal subjects with their respective qualifications so that the relationship between the corporation and the criminal subject of the expansion can be seen. Actus reus carried out by corporations can be approached and understood through the criminal subject of the expansion. Then with the approach of the doctrines described above, the process of attribution of errors from individuals to corporations can be explained.

The doctrine of strict liability crimes does not require the existence of men's rea in corporations, but criminal liability is directly imposed on corporations. This doctrine cannot be used as the basis for attribution of fault because the tax criminal articles require negligence or intentional elements. The doctrine of vicarious liability, in essence, is that the employer is the primary person responsible for the actions of his workers or employees so that the employee's men's rea is transferred to the corporation to be held criminally accountable.

The Doctrine of Aggregation considers the fault of several people collectively acting for and on behalf of a corporation or people acting for the corporation's benefit in question. So when a tax crime is committed by a representative, proxy, employee of the taxpayer, or another party, with qualifications who order to do it, who participate in committing, who recommends, or who helps commit criminal acts in the field of taxation.

In the corporate culture model theory, criminal liability is imposed on the corporation if someone who has committed an unlawful act has a rational basis for believing that a member of the corporation who has the authority has given authority or permitted the commission of the crime. In practice, corporate tax criminal liability has been applied to tax evasion crimes committed by Asian Agri Group (AAG) corporations in Supreme Court Decision No: 2239K/PID.SUS/2012 by implementing Vicarious Liability Accountability. In the verdict, only Suwir Laut, a tax manager from AAG, was charged with representing the interests of 14 companies in AAG. At the same time, none of the corporations were prosecuted and made defendants. However, by implementing vicarious liability combined with identification theory and functional accountability, the fault, and criminal sanctions are transferred to the corporation, considering that the corporation wanted Suwir Laut to commit the tax crime.

On the other hand, corporations also receive benefits from these tax crimes, with reduced taxes paid. Therefore, the judge imposed sanctions on the 14 AAG group companies to pay a fine of Rp. 2,519,955,391,304, - (two trillion five hundred nineteen billion nine hundred fifty-five million three hundred ninety-one thousand three hundred four rupiahs) in cash.

3. CONCLUSION

Based on the result of the research and discussion above, the conclusion of this study are:

a. Tax criminal law applies the term 'person' to refer to elements of criminal subjects with the understanding of individuals and entities, including individuals and entities registered with the Directorate General of Taxes and have a Taxpayer Identification Number or who do not have a Taxpayer Identification Number.
b. The implication of using the term 'person' as an element of a criminal subject against corporate taxpayers is that an entity or corporation can be criminally responsible and made a suspect and subject to criminal tax sanctions if proven guilty.
c. No specific article regulates the attribution of personal guilt feelings (men's rea) to corporations. However, article 43 of the 2020 GPTP Act can be used as the basis for bridging the attribution. However, it is carried out based on the vicarious liability doctrine, identification doctrine, aggregation doctrine, and corporate culture doctrine, both jointly or individually.

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