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Land Control as an Investment Object By Foreigners Through Mixed Marriage in Bali

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Abstract. This article analyzes on "Land Control as an Investment Object by Foreigners Through Mixed Marriages in Bali". The legal aspects of foreigners controlling land in Bali for the benefit of tourism firms under the cover of mixed marriages are the main topic of this study. With a statutory, conceptual, sociological, and case perspective, the author uses empirical legal research methodologies to analyze the legal concerns. Based on the ideas of authority, expediency, and legal protection as analytical tools, it can be concluded that foreigners' involvement in Bali's tourism industry cannot be separated. Likewise, the control of land in Bali is not free from the control of foreigners, either through legal investment or illegal ones by taking advantage of mixed marriage loophole. The "Tri Hita Karana philosophy," which manifests in Balinese people's behavior in maintaining harmony between "Humans and God," "Humans and Nature," and "Humans and Other Humans," underlies their unique culture with Hindu religious nuances in both daily life and running a business in the tourism sector. The principle of good faith in investment is reflected in this philosophy, so land control for foreign investment shall be obligated to respect this very noble principle. However, empirical facts show that the Balinese land control by foreigners through mixed marriages is only a disguise; in reality, there is bad faith to control Balinese land just for personal gain by sacrificing Bali's natural beauty.

Keywords: Land Ownership · Investment · Foreigners · Mixed marriages

1 Introduction

1.1 Background of Problems

Earth, water, and the natural resources contained therein should be controlled by the state and exploited by the state for the benefit of the people, according to the 1945 Constitution of the Republic of Indonesia. "Earth, water, and the natural resources contained therein are the principles of the people's prosperity, therefore they must be controlled by the state and used for the greatest prosperity of the people, as determined in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is clarified in Article 33 Paragraph 4," is the fundamental tenet of the right to control land in Indonesia. According to the Republic of Indonesia's 1945 Constitution, the relationship between the state and its natural resources—including the land, water, and wildlife—is one of

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1 Introduction

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control, as ¹⁴ evidenced by the provisions of Article 33 Paragraph 3 and its justification. It suggests that the State has control over the land, the water, and the available natural resources and that it uses them for the benefit of the population's overall well-being.

An accurate definition of what is meant by "earth, water, and natural resources contained there" ¹⁶—otherwise known as "natural resources controlled by the state"—can be found in Law Number 5 of 1960 concerning Basic Provisions for Agrarian Principles, also known as the UUPA, which has been in force ¹⁰ since September 24, 1960. According to Article 2 of the UUPA, which implements Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the State has the following authority to govern Natural Resources:

1. The state, acting as an institution of power for the entire populace and ⁶ in accordance with the provisions of Article 33 Paragraph (3) of the Constitution, has the highest level of control over the land, water, and space, as well as the natural resources found there.
2. Paragraph (1) of this Article's ²⁸ right to control grants the state the power to:
 - a. ²⁴ control and manage the naming, supplying, using, and maintaining of the land, water, and space.
 - b. Establish and govern the legal interactions between humans and the land, the sea, and the universe.
 - c. establish and control laws governing people's relationships to the land, water, and space.
3. In a free, sovereign, just ³³ and prosperous Indonesian society and legal state ¹³ the authority derived from the state's right to govern (explained in paragraph 2) is used to accomplish the greatest prosperity of the people in terms of nationality, welfare, and independence.
4. The state's right of jurisdiction over the aforementioned topics may be entrusted to autonomous territories and communities ruled by custom as long as it is necessary and does not contradict with national interests.

Boedi Harjo ⁵ asserts that in order for the Indonesian people or the state to achieve the objectives stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, acting as a landlord is neither necessary nor appropriate. Given that the state is a framework of authority for all the people, it is more acceptable for it to act as the ruling body. In the Indonesian country, the word "control" does not mean "own," but rather it denotes acceptance of the state as the top organ of authority:

1. To control and plan the ⁹ allocation, utilization, supply, and maintenance.
2. To establish and control the ownership rights that may be held over the land, water, and space.
3. To establish and control laws governing people's interactions with the land, water, and space.

Individual rights to land will be created as a result of the state's power to control the legal relationships between people and their property, including:

- a. Land rights (Article 4 of UUPA);
 - Primary: Freehold; Cultivation Rights; Building Use Title granted by the state; (Article 16);
 - Secondary: Building use Title and Title of Use granted by the land owner, **liens, profit-sharing business rights, boarding rights, lease rights** (Article 37, Article 41 and Article 53);
- b. Waqf (Article 49):
- c. Security Rights over land;

Bali is known by many endearing names, including the Island of Gods, Paradise Island, and an Island of Thousand Temples. As a result, the very endearing land of Bali has invited many foreigners to own land in Bali, either as a place to live, a place of business, or for speculation. Land control in Bali has tended to be dominated by foreign investors in the tourism sector in this globalization era. The region is referred to as Motherland by the residents of Bali Island. The "Tri Hita Karana" ideology reflects the religious ideals of the region for the Balinese people along with the subtleties of Hinduism. Literally, Tri Hita Karana is made up of the letters Tri, Hita, and Karana. Tri denotes three, Hita denotes prosperity, good fortune, joy, and sustainability, and Karana denotes reason. Tri Hita Karana, then, refers to three factors that promote virtue and wealth. Tri Hita Karana, then, is a way of thinking about the wellbeing of the Parahyangan, Pelemahan, and Pawongan people who live on the Island of God. In addition to being original, this vision has values that apply to everyone on the planet, not only the Balinese. Balinese people who are mostly involved in the world of tourism have placed the land (Palemahan) as something having religious values in addition to economic value.

The existence of land of Bali, which is so enchanting, supported by the friendliness of its inhabitants, has invited foreigners not only to enjoy the natural beauty of Bali, but also intend to invest. Land in Bali is controlled by foreigners who come to the island as **investors**, among other ways being through mixed marriages. According to Article 57 of Law **Number 1 of 1974** and its Amendment to Law Number 16 of 2019, both spouses are **subject to different laws** in Indonesia **because of their different nationalities** in a mixed marriage, even when one of the partners is an Indonesian citizen. Foreigners seeking to seize control of Bali's property often engage in deception or legal smuggling by marrying indigenous Balinese individuals, either men or women, in order to conceal their intentions and seize control of Bali's land under the guise of being husband and wife. Foreigners with their domicile in Indonesia are permitted to own one house for residential purposes, either in the form of a stand-alone house or an apartment unit (sarusun), in principle, in accordance with Government Regulation (PP) Number 40 of 1996 regarding **Business Use Title (HGU), Building Use Title (HGB), and Title of Use (HP) on Land and Government Regulation Number 41 of 1996 regarding Ownership of Residential or Occupant Houses by Foreigners Domiciling in Indonesia**. However, a lot of foreigners hope to conduct business and speculatively profit from Bali's natural beauty

through mixed marriages. Marriage institutions actually having very sacred values have been used only as a disguise for doing business such as building villas to be resold with rental rights to foreigners, so, it seems that the Land of Bali have been controlled by foreigners, and what makes this heart sadder is that, it turns out that many Balinese who are passionate about TSNPS are aware that in fact the brand has taken advantage of the naivety of Balinese women or Balinese men having less education, the important thing is to get income and enough money to change destiny. They are proud to lend their name to their partner (wife or husband) who are foreigners (the Balinese call Caucasian). The marriage institution is only used as a cover, in fact their marriage has not been legally ²⁰stered. The marriage they had was only permitted under religious law, as specified in Law No. 1 of 1974's Article 2 paragraph (1). It turns out that the land is still held by hiding behind a husband and wife bond if a foreigner no longer meets the conditions to be domiciled as the owner of certain land rights. This permits the foreigner to manage land that is illegal under agrarian law (UUPA).

1.2 The Problems

The legal issues of this study, which are based on the backdrop, are the legal features of foreigners controlling land in Bali for the benefit of tourism firms under the cover of mixed marriages.

2 Discussion

³⁰ Article 4 of Law Number 12 of 2006 ²¹ of the Republic of Indonesia about Citizenship of the Republic of Indonesia states the following:

- a. Anyone who obtained Indonesian citizenship before the ²³w's implementation date in line with Indonesian law, or in accordance with an agreement between the government of the Republic of Indonesia and another country;
- b. A child conceived as a result of a valid Indonesian mother-father marriage;
- c. ⁴ child born of a legally recognized union between a foreign mother and father;
- ³ d. A child born of an Indonesian mother and a foreign father who were legally married;
- e. A child born of a valid marriage to an Indonesian mother whose father is either a non-citizen or whose citizenship is not recognized by the laws of the father's country of birth;
- f. A child whose ²⁹ father ³ is an Indonesian citizen and was born from a legal marriage within the grace period of 300 (three hundred) days following the father's passing;
- g. A child born to an Indonesian woman who was not legally married;
- h. A child born to a foreign mother outside of a lawful marriage ³ who is acknowledged as being his child by the father of an Indonesian citizen before the child turns 18 (eighteen) or gets married;
- i. A child whose parents' citizenship statuses were ambiguous at the time of birth and was born on Republic of Indonesian soil;

If these requirements are not satisfied, the individual is classified as a foreigner, which has distinct rights and obligations from those of Indonesian citizens in terms of acquiring land rights. In addition to meeting these requirements, foreigners who want to buy a home must also be residents of or have a domicile in Indonesia and benefit from their presence there (Article 1 Paragraph 2 of Government Regulation No. 41 of 1996). A foreign national's ownership of a home or residences should be evaluated not only from the perspective of the foreign national in question, but also from the perspective of how their presence in Indonesia benefits or contributes to national development, according to the clarification of the provision. To put it another way, it refers to foreigners whose presence in Indonesia is more indicative of a business idea.

Due to the rapid advancement of technology and information, human interactions with one another are no longer restricted to national borders but have also spread internationally, especially through romantic relationships and business dealings. The opportunity to invest in Indonesia, especially in Bali, which relies on international tourist destinations, brings positive impacts seen from various perspectives. However, in relation to issues of granting land rights to foreigners as stated by Maria SW Sumardjono, an accommodative attitude is required, but based on the consistency of the applicable concepts in our national land law. If the solution can be legally accounted for in accordance with the existing concept, then of course its operation requires the provision to support legal instruments so that legal certainty is guaranteed for all interested parties. There are still ambiguities and contradictions in the Government Regulation (PP) Number 41 of 1996 Governing Ownership of Residential Houses or Occupancy by Foreigners Residing in Indonesia, which gives foreigners the option to buy and own a home with a specific land rights status. Foreigners are permitted to own a standalone home on a plot of land with a title of use to state property (HPTN) or on a plot of land controlled by a contract with the holder of the land title, according to Article 2 Number 1 Point B. The agreement must be in writing and registered under the Land Deed Conveyancer's deed (Article 3 and Article 4).

Government Regulation No. 41 of 1996 addresses foreign nationals' ownership of residential homes and residential buildings (buildings) through control (rights to) over the land, either on public land or through an agreement with the holder of land title; if through an agreement, the agreement must be in the form of a deed of Land Deed Conveyancer and must be registered (because the agreement's purpose is the granting of new land title). According to Ter Haar, who claimed that land is a place to live, to provide life and livelihood, the land is where humans are buried, and its relationship is a magical-religious relationship, the importance of land for humans has caused the land to have a high economic value, even more so for the sake of investment in the tourism sector. According to Patrick Mc Auslan, who agrees with Ter Haar's assessment, "land" might refer to an investment or a source of financial gain that can be compared to the sweat that comes from a person's body and all the effects of a view of life that results from it.

Many people in Bali undertake mixed marriages under the guise of obtaining land tenure so that foreign investors can invest there. People who marry people of different nationalities may receive citizenship from their spouses or partners and may also lose their citizenship in accordance with the predetermined procedures under Law Number 12

of 2006 concerning Citizenship of the Republic of Indonesia, as stated in Article 58 of the Marriage Law Number 1 of 1974, which addresses the issue of mixed marriages involving people of different nationalities (hereinafter referred to as Law on Citizenship 2006). Due to mixed marriages, both women and men may lose their citizenship, according to Indonesia, which supports the equality principle. Article 26 Paragraphs (1) and (2)'s provisions, which establish the following.

- (1) Under the laws of her husband's place of origin, an Indonesian woman who marries a foreigner loses her Indonesian citizenship; as a result of a mixed marriage, the wife's citizenship follows the husband's citizenship.
- (2) If, in accordance with the laws of his wife's nation, the citizenship of the husband follows that of the wife as a result of the marriage, a male Indonesian citizen who marries a female foreign citizen forfeits his citizenship of the Republic of Indonesia.

According to Law Number 1 of 1974, which governs marriage, and its amendments to Law Number 16 of 2019, a wife's citizenship status is not immediately subject to the citizenship status of her husband or to the laws that apply to him. The roles of husband and wife may both lose citizenship, making it evident from these clauses that both men and women who solemnize mixed marriages will have the status of either husband or wife if the state so chooses. If not, either the wife or the husband may keep their citizenship. The citizenship legislation gives Indonesian citizens who marry foreigners the option of choosing their nationality. This means that a husband can choose to become the wife's citizen, and vice versa if the wife choose to adopt her husband's citizenship. If, and only if, an Indonesian spouse makes a declaration to renounce their Indonesian citizenship within a year of their marriage to a foreigner, they forfeit their Indonesian citizenship.

The legal issue as the focus of the study in this article is regarding the control of land as an object of investment by foreigners as a result of mixed marriages, it is clear that it has the potential to give rise to marital property, unless they make a marriage agreement. Articles 35 to 37 of the Marriage Law regulate the examination of marital property; however, Articles 119 to 198 of the Civil Code provide a more detailed look at the topic. According to the stipulations of Article 35 of the Marriage Law:

- (1) The assets accumulated during the marriage become joint assets;
- (2) If the parties do not agree differently, each husband and wife will have control over their dowries as well as any property they receive as gifts or heirlooms.

The Civil Code only recognizes one class or group of assets in marriage, namely the property of the union of husband and wife, but the Marriage Law acknowledges the division of assets, including inherited and joint assets between husband and wife.

"Marriage between a man and a woman, which in Indonesia is subject to different provisions due to differences in nationality and one of the parties is an Indonesian citizen," as defined in Article 57 of the Marriage Law, is referred to as a mixed marriage. The Basic Regulations of Agrarian Principles Law No. 5 of 1960, also known as the UUPA 1960, states in Article 21 Paragraph (3) that foreign nationals are not allowed to own land even though the acquisition is the result of joint property, i.e. the mixing of assets in marriage, even though the acquisition is the result of joint property. The foreigner

must give up the land within a year after the acquisition; after that, the state will take ownership of the land.

This mixed marriage, empirically in tourist areas such as in Bali Island, is widely used by those conducting mixed marriages to control land for residential houses or dwellings which are used as objects of continuous investment like freehold without any supervising agencies. Based on empirical observations in several areas in Bali, such as in Seminyak, Canggu in Badung Regency, Ubud in Gianyar Regency, and Lembongan in Klungkung Regency, there are many couples under the guise of mixed marriages who actually operate Villa business by controlling land for investment. The provisions governing whether or not foreigners may own residential properties are specified in Article 2 of Government Regulation Number 41 of 1996, and are as follows:

1. Stand-alone house built on plot of land:
 - a. Title of use of the state land;
 - b. Controlled under an agreement with the holder of land rights.
2. Flats units built on land plots with title of use on the state land.

However, the conditions of residential dwelling or residence ownership for foreigners are clarified by the terms of Article 2 Paragraph (2) of the State Minister of Agrarian Affairs/Head of National Land Agency Regulation No. 7 of 1996. (PMNA No. 7 of 1996). According to Article 2 Paragraph (2) of PMNA Number 7 of 1996, both newly constructed or purchased homes as well as flats that are not classified as simple residences or very simple houses are open for purchase by foreigners.

There are currently no laws governing foreigners' ownership of residential properties using the idea. This is often compared to the situation overseas, allowing foreigners to be granted home ownership rights for a period of 90 years, such as in Malaysia, while in Indonesia it is only for 20 years with the Title of Use over state land. Under the terms of Article 42, point b, of the UUPA in conjunction with Article 49, paragraph (2), point e, of Government Regulation Number 8 of 2021, it is permissible to grant foreigners temporary access to state property. According to the provisions of Article 52 of Law No. 1 of 2011 about Housing and Settlement Areas, it is also permitted to own houses built on property that is managed in accordance with a written contract with the owner of land rights. Foreigners frequently use the land tenure under a "Written Agreement" with land rights holders to be able to control land constantly and invest like the holders of land rights. The foundation is created by creating a "nuptial agreement." A husband and wife solemnizing a mixed marriage who draw up an agreement on the separation of assets, clearly can still control the land with freehold right even though the control is for business, and not for residence as referred to in Article 52 of Law No. 1 of 2011, but they control the land to invest in the field of providing residential houses or residence in the form of villas for foreigners.

In response to these legal facts, the author concurs with Mosh Isnaeni's opinion that mixed marriages are considered international marriages because they contain foreign elements, such as one party who is subject to a different legal system, and because there is a strong force from the current globalization. This international marriage should be

handled carefully and sensibly so that Indonesians can truly be considered members of a dignified global community.. In relation to the legal issue as the focus of the study, the agency having the authority to exercise control should carry out control clearly, so in the event of a violation of land tenure by foreigners to invest can be detected by the authorized agency to take measures to determine the rights and obligations to the part controlling the land for investment. Violations against the law, such as, legal smuggling of residential permits in Indonesia, evasion of business taxes, and also the handing over of cash from an unknown source to an Indonesian partner to purchase land to be controlled continuously without any authorized agency to do supervision/controlling) and prosecution. As a result, there may be losses in the form of a decline in state or local government revenue as a result of the application of tax duties. It is crucial to establish which agency has the jurisdiction to control/supervise legal actions of property tenure for investment by foreigners due to the written agreement gap specified in the Constitutional Court's ruling number 29/PUU-XIII/2015.

3 Conclusion

Because those officiating mixed marriages on the one hand have made a marriage agreement for the separation ⁴ assets, resulting in the separation of property belonging to the husband and/or wife of different nationalities and one of them is an Indonesian citizen, it is very difficult for the government to monitor the control of land by foreigners to invest in Bali. By taking advantage of the written agreement gap provided by Article 52 of Law No. 1 of 2011 concerning Housing and Settlement Areas, in fact, those conducting mixed marriages have used it to make marriage agreements with the goal of being able to control land in various places with Freehold for business, so legally it does not violate the statutory regulations that only allow foreigners to control land with Title of Use for a specific period of time.

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