



LEGAL PROTECTION FROM AN INTERGENERATIONAL JUSTICE PERSPECTIVE: A CONCEPT FOR LEASING FREEHOLD LAND IN THE TOURISM AREA IN BALI

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ABSTRACT

In accordance with developments over time and the development of tourism as a business field in Bali, the need for land as a supporting factor for tourist destinations is increasing. For instance, in Bali, several destinations never stop being developed, either in coastal areas, in cities or in the mountains, which have become tourism objects and are balanced with local wisdom as instruments of cultural tourism destinations hence sometimes the need for land to support the tourism activities is obtained by lease often does not take into account for next generations who will obtain the same rights due to a very long lease period. This research mainly discussed the process of leasing freehold land in several areas in Bali and how the rental period for freehold land in Bali shall be regulated to reflect fairness between generations in the future. This is empirical research that focuses on the empirical symptoms that can be observed in real life. The analysis was carried out qualitatively and presented as an analytical description. The research indicated that the process of the right to lease a freehold land in Bali still happens, especially for the tourism business, agreements are made before a Notary as authentic deed, and there shall be a concept in terms of lease period that mentions specific time if the freehold land is being developed for tourism destinations, hence it can be perceived by next generations.

INTRODUCTION

Indonesia is known as an archipelagic country because of its thousands of islands. One of the islands is Bali Island. It cannot be denied that Bali is well-known for its traditions, culture and natural beauty. Not only domestic tourists, but foreign tourists also come to Bali for vacation or business.¹ Tourism is not only related to the phenomenon of people travelling, but also has an impact on issues such as achieving social and cultural goals, foreign policy, economic development, environmental protection and sustainable development planning.²

Land cannot be separated from human life and society. The dependence of humans and society on land is like a baby on its mother. Laws that live and develop in Indonesian society need to reinterpret their function and meaning in the development of national law, because, in fact, they still have wisdom in enforcing the applicable rules in organizing their lives fairly and conscientiously.³

Imam Sudiyat mentioned that "In a country whose people desire to implement democracy with social justice, utilizing the land for the greatest prosperity of the people is a matter of *coditio sine qua non*".⁴ In customary law, it can be seen that the main concept is that land is under the control of a legal association based on the principle of togetherness, known as customary rights or *hak ulayat*. This right by Van Vollenhoven,⁵ known as "*beschikingsrecht*", while the land that constitutes the territory is called "*beschikingskring*". This term is translated into Indonesian as customary rights or lordship rights, while the term *beschikingskring* is translated as customary environment.

The existence of land in Bali, especially the assessment of the strategic meaning of land and its economic importance in supporting people's lives, has a significant influence on the land, including customary land, which is not impossible to change its function, which is the basis for excessive use of land. One source of this problem is the construction of tourism facilities, resulting in the economic value of land being very high. The emergence of tourism-supporting facilities and buildings on proprietary land or customary land indicates that there has been a change in the function of land, from a social-religious function which was initially dominant to a more dominant economic function and in the context of obtaining it through leasing of land owned by stated in an agreement.

Prof. Subekti stated the meaning of the agreement, namely: "An agreement is an act pursuant to which one or more individuals commit themselves to one another".⁶ The definition of agreement is contained in Article 1313 of the Indonesian Civil Code (*hereinafter* Civil Code) which has the essence that an agreement is an act or action carried out by one or more people to bind themselves to one or more other people. Lease in the Civil Code are regulated in Articles 1547 to 1600. An agreement must have an intertemporal aspect: the parties agree today to do something the next day. In the third book of the Civil Code, Agreements regulate obligations that arise from agreements, as well as regulate obligations that arise from law.⁷

Lease agreements are currently one of the solutions for owning land, hence they can be used as a tourism development function in Bali. Not only land owned by individuals but even customary land controlled by traditional villages can also be rented out to investors to develop several villages/regions in Bali in particular; however, land ownership solutions through leases can sometimes be irregular in determining the stated period. In each agreement made, there is a need for regularity in making agreements with investors regarding the agreed period; hence, land use for tourism devel-

1 Sihombing, A. J., & Murni, R. R. (2021). Konsep dan Pengaturan Sewa Menyewa Bangunan dalam Undang-Undang Peraturan Dasar Pokok-Pokok Agraria. *Kertha Negara*, 9(12), pp. 1079-1088.

2 Antariksa, B. (2015). *Kebijakan pembangunan kepariwisataan: pengembangan kepariwisataan yang berkelanjutan dan perlindungan kekayaan intelektual*. Malang: Intrans Publishing.

3 Sutarja, D. M., Suwitra, I. M., & Bagiaarta, I. P. (2019). Alih Fungsi Hak Atas Tanah Adat Di Kecamatan Ubud, Kabupaten Gianyar. *WICAKSANA: Jurnal Lingkungan dan Pembangunan*, 3(1), pp.10-15.

4 Dharmayuda, I. (1987). Status dan fungsi tanah adat Bali setelah berlakunya UUPA. Denpasar: CV. Kayu Mas.

5 Djaren, S. (1984). Pengantar hukum adat indonesia-Edisi II, Bandung: Tarsito.

6 Hartana, H. (2016). Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara). *Jurnal Komunikasi Hukum (JKH)*, 2(2). pp. 147-182.

7 Schwartz, A., & Scott, R. E. (2003). Contract theory and the limits of contract law. *Yale LJ*, 113, 541.

opment can always be monitored and controlled by the land owner so that the current and subsequent generations can feel the benefits.

The main aspect of tourism is tourist attractions. According to Mill (1992), The definition of attraction is an activity or place that has uniqueness or advantages that attract people to visit that place. The existence of these attractions is very important because, as previously mentioned, this attraction is a stimulant for the development of tourism in an area.⁸

Compared to journal articles that have been published that discuss land rentals, compared to this article, it can be seen that this research specifically discusses a form of regulation in the period of lease of land for tourism from the perspective of intergenerational justice. Therefore, two legal issues can be raised in this paper, namely the process of the right to lease freehold land in several areas in Bali and how the lease period for freehold land in Bali shall be regulated to reflect fairness between generations in the future.

The purposes of this research are to find out how the right to lease freehold land in Bali for tourism purposes occurs and to formulate the lease period for freehold land in Bali that shall be regulated to reflect fairness between generations in the future.

METHODOLOGY

The research method used is an empirical research method. The data sources used are primary data and secondary data; primary data is data sourced from field research, namely data obtained directly from the first source, either from informants or respondents; secondary data is data obtained not directly from the first source but from data – documented data in the form of legal materials. Next, the data obtained has been collected and analyzed qualitatively and presented as an analytical description.

8 Harsawan, I. G. A. G. A., & Rahmi, D. H. (2019). Peran Desa Adat Dalam Kegiatan Pariwisata Jimbaran. In *Seminar Nasional Komunitas dan Kota Berkelanjutan* 1(1), pp. 323-328.

RESULT AND DISCUSSION

The Process of the Right to Lease a Freehold Land in Bali for Tourism Purposes

Tourism development in Bali has triggered the need for land to greatly increase in several villages in Bali. Using land to support tourism is a good choice to improve the community's economy. The legality of the solution to be able to own land through leasing is stated in an authentic deed made before an authorized public official, namely a Notary.

Salim provides a legal definition of contract or agreement, namely: *"The entirety of legal norms that regulate the legal relationship between the parties or is based on an agreement to give rise to legal consequences"*, which means that any kind of legal norms that manage legal relations between parties or are based on agreements that can result from legal consequences. Following the provisions in Article 1320 of the Civil Code, every agreement always has four conditions that have been determined by law,⁹ namely:

There must be consent of the individuals who are bound thereby; The word "agrees" in Kamus Besar Bahasa Indonesia known as: *setuju; semufakat; sependapat; seia sekata*. The existence of an agreement is significant in an agreement that contains an element of free will from the parties. An agreement means that the parties express their respective wishes to create an agreement that must be compatible or in accordance with one another.¹⁰

There must be the capacity to conclude an agreement. Legal subjects in the Civil Code are limited, namely, who can act as a party in a contract or agreement. It is necessary to know that people are legally unable or do not have the legal position to enter into an agreement. Persons who are not legally competent to enter into contracts, namely: "Minors are those who have not reached the full

9 Joni, M. I. S. (2016). The Law Review of The Possibility of Civil Law Application in The Area Lease Agreement Against Land Occupation in Grand Forest Park of Bukit Soeharto at East Kalimantan Indonesia. *International Journal of Multi-disciplinary Research in Social Science* 2(1). pp. 1-22.

10 Martiawan, F. (2015). Paksaan ekonomi dan penyalahgunaan keadaan sebagai bentuk cacat kehendak dalam perkembangan hukum kontrak. *Yuridika* 30(2). pp. 232-253.

age of 21 years and who have not previously entered into matrimony”; “individuals who, due to mental incapacity, insanity or madness have been put under guardianship”; and “married women, in the events stipulated by law, and in general, individuals who are prohibited by law from concluding specific agreements, If a married woman wants to enter into an agreement for certain transactions, she must obtain approval from her husband”¹¹

There must be a specific subject. The existence of a problem or certain thing is the object of the agreement, namely the achievements that the debtor must carry out.¹²

There must be an admissible cause. The word *causa* (Latin) translated as the word cause, which is meant in the agreement, refers to the content and purpose of the agreement, not something that causes someone to enter into an agreement. According to Article 1335 of Civil Code, “Any agreement without a cause, or concluded pursuant to a fraudulent or implausible cause, shall not be enforceable”. This means that an agreement must be carried out in good faith.¹³

Lease rights are a person’s right to use, cultivate and enjoy the results of another person’s ownership by paying rent. Property that can be rented includes land (rice fields, gardens, fields, ponds) from which tenants can make a profit. The right to lease land can be valid with rent payments paid in advance or even back rent payments with land proceeds gradually obtained. Concerning the right to lease land in Indonesia is regulated under Article 44 of Law No. 5 of 1960 concerning Basic Regulation on Agrarian Principles (*hereinafter* Agrarian Law), namely: “A person or a corporation has the right to lease land if he is entitled to utilize land owned by another for the purpose of building, by paying to its owner an amount of money as rent”¹⁴

Lease rights are a person’s right to use, cultivate and enjoy the results of another person’s ownership by paying rent. Property that can be rented includes land (rice fields, gardens, fields, ponds) from which tenants can make a profit. The right to lease land can be valid with rent payments paid in advance or even back rent payments with land proceeds gradually obtained. The right to lease land in Indonesia is regulated under Article 44 of Law No. 5 of 1960 concerning Basic Regulation on Agrarian Principles (*hereinafter* Agrarian Law), namely: “A person or a corporation has the right to lease land if he is entitled to utilize land owned by another for building, by paying to its owner an amount of money as rent”.

The agreement of the right to lease land in the community is in accordance with the implementation of *the Legal System Theory* by Lawrence M. Friedman.¹⁵ Based on the theory, it is loosely translated as a structural component of a system is a part of the framework that persists in the work of the system’s institutions which provides a kind of form and limit to criminal acts, serious mistakes that go beyond the limits.

With regard to the regulation of land in Bali, especially in terms of the right to lease land, this indicates that land is still very much needed to open new tourism destinations or support tourism in Bali. Every process of conducting the right to lease a freehold land must pay attention to the process and consider the period, which is an essential condition in the agreement. Hence, the agreement made now will not harm future generations and can be perceived to be fair to the next generation.

Legal Arrangement of Lease Period for Freehold Land in Bali to Reflect Intergenerational Justice

According to UN Tourism, tourism is a social, cultural, and economic phenomenon which entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes.¹⁶ In Indone-

11 Sari, N. R. (2017). Komparasi Syarat Sah Nya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam. *Jurnal Repertorium*, 4(2), pp. 79-86.

12 Priyono, E. A. (2019). Berlingungan Hukum Terhadap Konsumen dalam Perjanjian E-Commerce. *Diponegoro Private Law Review*, 4(1). pp. 428-438.

13 Lestari, T. W. S., & Santoso, L. (2018). Komparasi Syarat Keabsahan “Sebab Yang Halal” Dalam Perjanjian Konvensional Dan Perjanjian Syariah. *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 8(2), pp. 281-298.

14 Mahendra, I. P. E., Suwitra, I. M., & Sukadana, I. K. (2020). Perjanjian Sewa Menyewa Tanah Adat di Desa Serangan Denpasar Selatan. *Jurnal Preferensi Hukum*, 1(1), pp. 145-150.

15 Irianto, S. (2000). Pluralisme Hukum dan Masyarakat Saat Krisis, dalam Hukum dan Kemajemukan Budaya. *Jakarta: Yayasan Obor Indonesia*.

16 UN Tourism, “Glossary of Tourism Terms”, n.d., <https://www.unwto.org/glossary-tourism-terms#:~:text=Tourism>

sia, the word “tourism” is known as “*pariwisata*”. The word “*pariwisata*” comes from two syllables, namely “*pari*” and “*wisata*”. “*Pari*” means many, repeatedly or frequently, while “*wisata*” means journey.¹⁷ According to Suwanto (1997), the term tourism is closely related to tourist travel, namely as a temporary change of residence for someone outside their place for some reason and not to carry out activities that generate wages. Thus, it can be said that a tourist trip is a journey undertaken by one or more people with the aim of, among other things, getting enjoyment and fulfilling the desire to know.

Tourism plays an important role in economic development in various countries. The tourism sector has the potential to be developed as a source of regional income. It is hoped that the development program and utilization of regional tourism resources and potential can contribute to economic development to obtain original regional income. Tourism has various economic impacts. According to Wahab (2007),¹⁸ the impact of tourism activities from an economic perspective is not only more influential than the environmental, social and cultural impacts, but the economic impact is the impact that is most eagerly awaited. This is because almost all countries or regions tend to measure the position and benefits of tourism in economic terms.

Tourism development in Bali is a top priority alongside agriculture and small industry and is a mainstay for regional economic development.¹⁹ As a region that does not have natural resources that can generate foreign exchange, such as forests and mines, tourism development that capitalizes on regional culture is increasingly being improved, therefore it is hoped that it will be able to contribute to foreign exchange earnings, increase regional income and community welfare, create jobs, encourage people’s economic activities, preservation

of culture and natural beauty. Bali, as an icon of the national tourist destination, has a vital role in achieving the goals set by the government. Regional autonomy policies were given to each district to focus more on exploring their tourism potential.²⁰

The development of the tourism business in Bali has resulted in the demand for land, which is an important factor in tourism development. This condition has caused the transfer of several customary lands, with ownership rights being carried out frequently. For instance, in Jimbaran Village, customary land, which is controlled as the customary right of the customary law community which has inherent rights and obligations, is starting to continue to shift towards being productive from an economic perspective, and this has an impact on the economic income of the community itself, as well as privately owned land owned by individuals which is often rented out for long periods.

From the perspective of law, it can be seen that the law was made or formulated to provide a legal guarantee, justice and certainty, and it is expected to play a role in ensuring the peace of citizens in realizing their life goals or achieving their dreams. Because the law is an effort to maintain human existence in society.²¹ There will always be related legal developments aimed at justice in tourism business activities. Business law is a set of legal rules established to regulate and resolve problems that arise in activities between people, especially in trade.²²

Tourism has attracted attention in the literature on economic development. The main thrust in many studies, namely on the economic impact of tourism, is to measure direct and indirect impacts on the economy. Tourism development has been the focus of much recent research in the literature, as this industry not only increases foreign exchange earnings but also creates employment opportunities for tourism destination countries, thereby spurring economic growth.²³ Hence, the

[is a social%2C cultural, personal or business%2Fprofessional purposes](#)

- 17 Angelin Nadya Alouw, Anderson Guntur Kumenaung, and Debby Ch Rotinsulu, (2021). “Pengaruh Sektor Pariwisata Terhadap PDRB Provinsi Sulawesi Utara”, *Jurnal Pembangunan Ekonomi Dan Keuangan Daerah* 22(2), pp. 1–13.
- 18 Wahab, S. (2007). *Manajemen Kepariwisataaan*, Jakarta: Pradnya Paramita.
- 19 Budiarti, (2005). *Pengelolaan Pengembangan Ekowisata di Kawasan Hutan Mangrove Benoa Bali* (Doctoral dissertation, Tesis. Udayana University).

- 20 Ningsih, N. W. A. S., & Suryasih, I. A. (2018). Dampak Sosial Ekonomi Pariwisata Terhadap Pedagang Souvenir Di Daya Tarik Wisata Pura Gunung Kawi Tampaksiring Gianyar. *Jurnal Destinasi Pariwisata*, 6(1), pp. 19-25.
- 21 Rasyidi, M. A. (2018). Fungsi Hukum di Dalam Masyarakat dan Peranan Hukum Bisnis di Indonesia. *Jurnal Ilmiah Hukum Dirgantara*, 9(1). pp. 106-116.
- 22 Ibrahim, J., & Sewu, L. (2007). Hukum Bisnis Dalam Persepsi Manusia Modern, ctk. *Kedua, Bandung: Refika Aditama*.
- 23 Yakup, A. P., & Haryanto, T. (2019). Pengaruh pariwisata

interconnectedness of the influence of tourism in Bali has a huge impact on the proprietary lands and customary lands of each traditional village in Bali. Because it can be seen that the village autonomy rights granted by the government to regulate and develop tourism make the villages in Bali increasingly show and create a new icon of tourism, which makes the village known to the world from the tourism development. It cannot be separated from the fact that customary land owned by communal rights is starting to be used for this purpose, with applicable regulatory procedures and cooperation with third parties or private parties to develop its potential through agreements and land rental agreements, which are used as a binding legal basis between third parties and traditional villages in Bali.

land and customary land, which are important factors in tourism development. Conditions like this cause land transfers to occur frequently. Jimbaran Village, for example, has customary land controlled as customary rights of the customary law community whose inherent rights and obligations are starting to shift towards being productive from an economic perspective, and this will impact the economic income of the community itself. In its legality, the transfer of customary land is based on a lease agreement for several tourist attractions. It should also pay attention to the agreed period; therefore, it reflects a form of intergenerational justice. A lease is a right of use where the time provisions contained in it are essential principles that must be fulfilled. Hence, the term used as a reference should be the period specified in the regulations regarding the right to use land.

CONCLUSION

The development of the tourism business in Bali has resulted in the need for individually owned

ta terhadap pertumbuhan ekonomi di Indonesia. *Bina Ekonomi*, 23(2), pp. 39-47.

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