



Control of Coastal Land by Foreigners Through the Land Mafia and Its Implications for Tourism Business in Bali

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Abstract. This essay undertakes an analysis of the phenomenon of "Control of Coastal Land by Foreigners Through the Land Mafia" and its potential implications for the tourism industry in Bali. This essay centres on the examination of the legal dimensions pertaining to the control of coastal land by foreign individuals via the Land Mafia, and the subsequent ramifications this phenomenon has on tourism enterprises in Bali. The author employs various empirical legal research methodologies, including a statutory and regulatory approach, a conceptual approach, a sociological approach, and a case approach, to analyse the legal issue at hand. Drawing upon the theoretical frameworks of authority, utility, and legal protection, it becomes apparent that the ownership of coastal land in Bali is intricately intertwined with the presence of land mafia, thus exerting a significant influence on the local tourism industry. Similarly, the management of coastal land in Bali is not exempt from foreign control, which involves the presence of land mafia. This control is established through both legal and illegal investments, exploiting mutually advantageous collaborations with local residents and Ada Village officials, with the aim of profit sharing. The Balinese people possess a distinctive culture imbued with Hindu religious elements, which permeate their daily lives and influence their engagement in the tourism industry. Central to their approach is the adherence to the "Tri Hita Karana Philosophy," which guides their conduct in fostering harmonious relationships between "Man and God," "Man and Nature," and "Humans with other Humans." This philosophy encompasses the principle of good faith in investment, which necessitates that the control of coastal land by foreign entities for tourism-related business activities adheres to this esteemed principle. However, empirical evidence reveals that the control exerted by foreigners over coastal lands in Bali often exploits the land mafia, masquerading as mutually advantageous collaborations. Regrettably, this practise tends to undermine the utilisation of traditional villages in uphol In this particular scenario, the notion of mutually beneficial cooperation encompasses the ulterior motives of foreign entities who engage the land mafia in order to exert control over Bali's land for personal finan-

cial gain, disregarding the intrinsic value and sanctity of Bali's natural environment that is inherent in the concept of mutually beneficial cooperation.

Keywords: Control of Coastal Land, Land Mafia, Foreigners, Tourism Business

1 INTRODUCTION

1.1 Background of the Problem

The fundamental principle governing land ownership in Indonesia is outlined in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereafter referred to as UUD-NRI 1945. This provision states that the state has control over land, water, and the natural resources found within, with the objective of utilising them for the utmost benefit of the populace. Before the amendment to the 1945 Constitution of the Republic of Indonesia, Article 33 Paragraph (3) was elucidated in the exposition of Article 33 paragraph 4, which prescribed that land, water, and the natural resources encompassed therein constitute the fundamental tenets of the populace's well-being, thus necessitating state control and utilisation for the utmost welfare of the people. The relationship between the state and the earth, water, and natural resources, as outlined in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, can be understood as a relationship of control [1]. This implies that the governance of the Earth, its water bodies, and the accompanying natural resources is within the jurisdiction of the State, with the objective of utilising them in a manner that maximises the overall well-being and prosperity of the populace.

The Law Number 5 of 1960, commonly known as UUPA, provides a comprehensive definition and understanding of the significance of earth, water, and the natural resources they encompass. These resources, also referred to as natural wealth or SDA, are under the control and regulation of the state. The UUPA has been in effect since 24 September 1960. Article 2 of the UUPA, which serves as the regulatory framework for Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, elucidates the interpretation of the State's entitlement to exercise authority over Natural Resources.

1. According to the stipulations outlined in Article 33, Paragraph (3) of the Constitution, as well as the subjects mentioned in Article 1, the state exercises the highest level of control over land, sea, and outer space, along with the natural resources present within them. This control is vested in the state as a governing body representing the collective power of the entire population.
2. The authority to control, as stipulated in paragraph (1) of this article, is vested in the state.
 - a. The authority is responsible for overseeing and implementing the management, utilisation, provision, and upkeep of the earth, water, and space.

- b. The authority is tasked with establishing and regulating the legal connections between individuals and the earth, water, and space.
 - c. The authority is responsible for determining and regulating the legal connections between individuals and legal activities pertaining to the earth, water, and space.
3. The authority derived from the state's prerogative to govern, as mentioned in paragraph 2) of this article, is employed with the aim of attaining optimal well-being for the populace in terms of national identity, economic prosperity, and self-governance within an autonomous, equitable, and prosperous Indonesian society and legal framework.
 4. The delegation of responsibility over state's rights can be assigned to self-governing regions and customary law communities, as required and in alignment with national interests, as outlined in Government Regulations [1].

In relation to the interpretation of state control as outlined in Article 33 paragraph (3) of the 1945 Constitution, Boedi Harsono argues that it is neither essential nor appropriate for the Indonesian populace or the state to assume the role of landowners. It is deemed more suitable for the state, functioning as a governing entity representing the collective interests of its populace, to assume the role of the ruling authority [2]. The term "controlled" does not connote ownership, but rather refers to the connotation that grants authority to the state as the governing entity of the Indonesian country at its highest echelon.

1. Establish a systematic framework for the organisation, allocation, utilisation, provisioning, and upkeep of resources.
2. The objective is to ascertain and govern the entitlements that may be exercised with respect to (a portion of) the terrestrial surface, bodies of water, and celestial expanse.
3. The objective is to ascertain and govern the legal associations between individuals and legal proceedings pertaining to land, water, and outer space.

The state's authority to regulate legal relations between individuals and land will give rise to individual rights to land, namely:

- a. Land rights (Article 4) UUPA:
 - Primary: Property Rights; Business Use Rights; Building Use Rights granted by the state; (article 16);
 - Secondary: Building Use Rights and use rights granted by the land owner, lien rights, profit sharing business rights, boarding rights, rental rights (Article 37, Article 41 and Article 53);
- b. Waqf (article 49):
- c. Security Rights over land [2]

In the contemporary era of globalisation, the control over land in Bali, particularly coastal land, is often dominated by land mafias who are manipulated by foreign inves-

tors in the tourism industry. This phenomenon can be attributed to Bali's reputation as the "Island of the Gods," "Paradise Island," and "Seribu Pura Island," which heavily relies on tourism as its primary source of revenue. Consequently, the allure of Bali's captivating landscape has enticed numerous foreigners to seek land acquisition in Bali for residential, commercial, or speculative purposes. The inhabitants of Bali Island commonly refer to the land as "Mother Earth." The sacred significance of land for the Balinese community, which encompasses elements of Hinduism, is exemplified through the philosophical framework known as "Tri Hita Karana." The term "Tri Hita Karana" is derived from the combination of three Sanskrit words: "Tri," "Hita," and "Karana." The term "tri" denotes the numerical value of three, while "hita" signifies attributes of prosperity, goodness, happiness, sustainability. Lastly, "karana" refers to the concept of causality. Tri Hita Karana refers to a concept encompassing three fundamental factors that serve as the underlying causes for the advancement of virtue and wealth. The concept of Tri Hita Karana pertains to the notion of prosperity among the inhabitants of the Island of the Gods, encompassing the realms of Parahyangan, Pecapatan, and Pawongan. The aforementioned idea possesses not just a distinctive nature but also encompasses principles that are applicable to life not only within the Balinese population but also within the broader global society [3]. The Balinese population, a significant portion of whom are engaged in the tourism industry, attribute religious significance to land in addition to its economic importance.

The allure of Bali's captivating landscape, bolstered by the amicability of its inhabitants, has enticed international visitors not only to partake in the splendour of Bali's natural surroundings, but also to engage in economic ventures. One potential avenue for attracting foreign investors to acquire land ownership in Bali is by means of mixed marriages. According to Article 57 of Law Number 1 of 1974 and its Amendment to Law Number 16 of 2019 about Marriage, a mixed marriage refers to a union between two individuals in Indonesia who are subject to distinct legal systems as a result of their differing citizenships, with one of the parties being an Indonesian citizen. Foreign individuals seeking to gain control over land in Bali employ covert strategies or engage in legal subterfuge, such as going into marriages with native Balinese inhabitants (either women or men), in order to assert authority over Balinese land while concealing their true intentions behind the pretence of a marital relationship. According to the provisions outlined in Presidential Regulation Number 40 of 1996 regarding the granting of Right to Cultivate (HGU), Right to Build (HGB), and Right to Use (HP) on Land, as well as Presidential Regulation Number 41 of 1996 concerning the ownership of residential or residential houses by foreigners residing in Indonesia, it is permissible for foreigners residing in Indonesia to possess a residential property, be it a detached house or an apartment (sarusun), provided that the pro Nevertheless, there is a significant interest among foreign individuals to engage in commercial activities and exploit the aesthetic appeal of Bali's natural landscape by means of mixed marriages. The institution of marriage, known for its sacred qualities, has unfortunately been exploited for commercial purposes, such as the construction of villas intended for resale with rental rights to foreign individuals. Consequently, Bali's property has inadvertently come under the hands of foreigners, exacerbating the situation. It is

disheartening to observe that a significant number of individuals from the Balinese community are inadvertently exploiting the vulnerability of less educated Balinese women and men, solely driven by the pursuit of financial stability and the desire to alter their circumstances. The Balinese people, commonly referred to as Bule, express a sense of pride in associating their name with their foreign spouse, thereby establishing a partnership. The utilisation of the institution of marriage serves as a facade, notwithstanding the absence of official registration validating their marital union. The conducted marriages are exclusively restricted to religious legislation, as stipulated in Article 2, Paragraph 1 of legislation No. 1 of 1974. In the event that a non-native individual no longer satisfies the stipulated criteria for maintaining ownership rights over specific land, it is observed that the land remains under their hands. Through the utilisation of a marital relationship as a protective measure, individuals from other nations are able to exert influence over land that is explicitly restricted by the UUPA (Undocumented and Unauthorised Property Acquisition).

1.2 Problems

Based on the description of the background to the problem, the legal issue in this article concerns the legal aspects of land control by foreigners in Bali for tourism business purposes under the guise of mixed marriages.

2 RESULT AND DISCUSSION

According to Article 4 of Law Number 12 of 2006 on Citizenship of the Republic of Indonesia, individuals who are considered Indonesian citizens are:

- a. Every individual who, in accordance with existing statutory provisions and/or bilateral agreements between the Government of the Republic of Indonesia and other nations prior to the enactment of this legislation, already possesses Indonesian citizenship;
- b. Offspring resulting from the lawful union of an Indonesian national father and mother;
- c. Children who are born to parents who are foreign citizens and are legally married;
- d. Children who are born to a father who is a foreign citizen and a mother who is an Indonesian citizen within the confines of a legally recognised marriage;
- e. A kid who is born to an Indonesian citizen mother through a legally recognised marriage, but whose father does not possess citizenship or whose father's place of origin does not confer citizenship to the child according to its laws;
- f. Children who are born during a period of 300 (three hundred) days after the death of their father, stemming from a legally recognised marriage, and whose father is a citizen of Indonesia;

- g. Children who are born to an Indonesian citizen mother without the context of a legally recognised marriage;
- h. A child who is born to a foreign citizen mother outside of a legal marriage, but is acknowledged by an Indonesian citizen father as their child before the child reaches the age of 18 or gets married;
- i. Individuals who are born inside the geographical boundaries of the Republic of Indonesia, and whose parents' citizenship status was uncertain at the time of their birth

If the aforementioned criteria are not satisfied, individuals are classified as foreigners, leading to distinct disparities in terms of rights and responsibilities with the acquisition of land rights compared to Indonesian nationals. In addition to the aforementioned criteria, individuals of foreign nationality seeking to possess a residential property must also satisfy the requirement of being domiciled or residing inside the borders of Indonesia. Furthermore, their presence within the country should contribute to the advancement of national development, as stipulated in Article 1, Paragraph (2) of Presidential Regulation Number 41 of 1996. The elucidation of this provision elucidates that individuals from foreign countries whose presence in Indonesia contributes to national development implies that the ownership of a house or residence by foreigners should not be solely viewed in terms of the personal interests of the foreign individual. Instead, their presence in Indonesia should bring about benefits or contribute to the overall progress of the nation. In essence, the reference to foreigners in Indonesia pertains primarily to their economic significance [4].

In light of the swift advancement of technology and the dissemination of information, human contacts have transcended national boundaries and extended into the international realm. This phenomenon encompasses various aspects, such as marital relationships and investment exchanges. The prospect of investment in Indonesia, particularly in Bali, a renowned international tourist destination, yields favourable outcomes across multiple dimensions. However, with regards to the matter of providing land rights to foreign individuals, as discussed by Maria S.W. Sumardjono, it is necessary to adopt an accommodating approach that aligns with the principles outlined in our national land legislation. If this proposed solution may be justified within the framework of existing legal principles, it is imperative to establish the necessary legislative mechanisms to ensure legal clarity for all relevant stakeholders [5]. Despite the provision of Government Regulation (PP) Number 41 of 1996, which grants foreigners the opportunity to purchase and possess residential properties in Indonesia with specified land rights status, there remains a lack of clarity and inconsistencies in the interpretation of the regulation. According to Article 2, Section 1, Subsection b, it is stipulated that individuals of foreign nationality have the legal capacity to possess an independent residential property situated on a parcel of land, either through the entitlement to utilise state-owned land (HPTN), or through an arrangement with the land rights holder for control over a specific parcel of land. In accordance with Article 3 and Article 4, it is imperative that the agreement be documented in written format, accompanied by a PPAT deed, and then registered.

PP Number 41 of 1996 pertains to the ownership of residential buildings by foreign individuals through land control, either on state-owned land or via an agreement with the land rights holder. In the case of an agreement, it is required to be in the form of a PPAT deed, as the purpose of the agreement is to grant new land rights. Additionally, the agreement must be registered. The significance of land for human beings has resulted in its substantial economic worth, particularly in relation to investments in the tourism industry. Ter Haar asserts that land serves as a habitat, sustains life and livelihoods, and holds a sacred and mystical connection to human burial practises. The user has provided a numerical reference. In alignment with Ter Haar's perspective, Patrick Mc Auslan argues in his opinion that property possesses the potential to serve as an investment and a means of generating economic benefit. This notion can also be interpreted metaphorically, representing the physical exertion and associated outcomes that accompany a progressive mindset towards life. According to the source cited [7], subsequent events occurred.

The phenomenon of foreign investment in land control is frequently observed in Bali, generally facilitated by the mechanism of mixed marriages. Regarding the matter of mixed marriages between individuals of different nationalities, it is pertinent to consider the provisions outlined in Article 58 of the Marriage Law Number 1 of 1974. According to this article, individuals who enter into mixed marriages have the opportunity to acquire the citizenship of their spouse. Conversely, they may also face the possibility of losing their own citizenship, subject to the procedures stipulated in Law Number 12 of 2006 pertaining to the Citizenship of the Republic of Indonesia, hereafter referred to as the 2006 Citizenship Law. In the context of mixed marriages, Indonesia upholds the idea of equal status, whereby both women and men have the potential to forfeit their citizenship. The aforementioned can be observed in the stipulations outlined in Article 26, namely in Paragraphs (1) and (2), which delineate:

- (1) According to the legal provisions, in the event of a mixed marriage where an Indonesian woman marries a foreign man, the Indonesian woman will forfeit her citizenship of the Republic of Indonesia if the law of her husband's place of origin mandates that the wife's citizenship automatically follows that of the husband.
- (2) According to the stipulations outlined in the legislation of the wife's country, in the event that a male Indonesian national enters into matrimony with a female foreign national, the male individual in question shall forfeit his citizenship of the Republic of Indonesia if the laws of the wife's country dictate that the husband's citizenship is automatically transferred to align with the wife's citizenship subsequent to the marriage.

According to Law Number 1 of 1974 on marriage and its subsequent Amendment to Law Number 16 of 2019, it is explicitly stated that the citizenship status of the woman is not subject to automatic alteration based on the citizenship status of her husband. Furthermore, the wife's legal rights and obligations are not automatically governed by the laws applicable to her husband. By considering these regulations, one

might infer that the citizenship of both the husband and wife can be revoked. Specifically, those who join into mixed marriages will adopt the citizenship status of either the husband or woman, as determined by the state. However, in the absence of such conditions, each spouse has the ability to maintain their respective citizenship.

The citizenship law in Indonesia offers Indonesian citizens who enter into mixed marriages the option to select their citizenship. This implies that the husband has the ability to acquire the wife's citizenship, and conversely, the wife has the ability to acquire the husband's citizenship if she willingly chooses to adopt his citizenship. If an Indonesian citizen, regardless of gender, enters into marriage with a foreign national and subsequently proclaims their intention to relinquish their Indonesian citizenship within one year of the marriage, they will cease to hold Indonesian citizenship.

This article centres around a legal matter concerning the control of land as an investment asset by foreign individuals resulting from mixed marriages. This situation has the potential to create marital property unless a marriage agreement is established. The analysis of marital assets in the context of the Marriage Law is governed by Articles 35 to 37, although the Civil Code provides a more comprehensive examination of this matter through the requirements outlined in Articles 119 to 198. According to the stipulations outlined in Article 35 of the Marriage Law, it is explicitly mentioned that:

1. Property obtained during the course of a marriage is considered communal property.
2. The assets inherited by each spouse, as well as those acquired through gifts or inheritance, are subject to their individual management unless otherwise agreed upon by the parties involved.

There exists a notable disparity in the regulation of marital property between the Civil Code and the Marriage Law. The Civil Code solely acknowledges a singular category of assets within a marriage, namely the assets resulting from the union of the husband and wife. Conversely, the Marriage Law recognises the concept of asset separation, encompassing inheritance and joint property between the spouses.

The term "mixed marriage," as stipulated in Article 57 of the Marriage Law, refers to a marital union between a man and a woman. In the context of Indonesia, such marriages are subject to distinct legal regulations due to the divergent nationalities of the spouses, with one party being an Indonesian citizen. The legal ramifications of a mixed marriage, particularly with regard to property, encompass the ownership of immovable assets such as land and its attached components. As per Law Number 5 of 1960, which pertains to the Regulations on Basic Agrarian Principles (abbreviated as UUPA), Article 21, Paragraph (3) explicitly stipulates that foreign nationals are prohibited from owning land, even in cases where the acquisition arises from the pooling of assets during marriage. In the context of this acquisition, non-domestic individuals are required to relinquish their property holdings within a designated timeframe of one year. Failure to comply within this timeframe will result in the transfer of land ownership to the state.

From an empirical standpoint, it is observed that mixed marriages occurring in tourist destinations like Bali are frequently subject to exploitation by individuals who engage in such unions with the intention of gaining ownership over land for residential purposes or as investment assets, effectively circumventing any regulatory oversight. Drawing from empirical observations conducted in various regions of Bali, including Seminyak, Canggu in Badung Regency, Ubud in Gianyar Regency, and Lembongan in Klungkung Regency, it has been observed that a significant number of couples engaged in mixed marriages are clandestinely involved in the operation of villa businesses, wherein they exercise control over land for investment purposes. The regulations pertaining to the eligibility of foreigners to possess a dwelling or domicile are stipulated in Article 2 of Government Regulation Number 41 of 1996, specifically:

1. A freestanding house built on a plot of land :
 - a. Use rights to state land;
 - b. Which is controlled based on an agreement with the land rights holder.
2. Units of flats built on land with Right to Use land on state land.

The categorization of residential properties for foreign individuals is not elucidated in PP Number 41 of 1996. However, it is addressed in Article 2 Paragraph (2) of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 7 of 1996, which pertains to the prerequisites for the ownership of residential properties or residences by foreigners (PMNA No.7 of 1996). According to Article 2, Paragraph (2) of PMNA Number 7 of 1996, the definition of residential or residential houses for foreigners encompasses houses that are either constructed or acquired, as well as apartment units that are available for purchase by foreigners. These apartments are distinct from the classification of simple houses or those that are considered to be very basic in nature.

Currently, there is a lack of regulations pertaining to the ownership of residential houses by foreign individuals. The comparison is frequently made between the conditions in question with those found in foreign countries, where immigrants are eligible to get house ownership rights for a duration of 90 years, as observed in Malaysia. In contrast, in Indonesia, the corresponding time is limited to 20 years, accompanied by usage rights on state-owned land [8]. The entitlement to utilise land owned by the state is predicated upon the stipulations outlined in Article 42, specifically letter b, of the UUPA Jo. Foreigners may be granted Article 49, Paragraph (2), Letter e of PP Number 18 of 2021 for a specified duration. The possibility of owning a house constructed on property that is controlled by a written agreement with the land rights holder is also stipulated in accordance with the provisions outlined in Article 52 of Law No. 1 of 2011, which pertains to Housing and Residential Areas. Foreign individuals frequently employ land control strategies through the establishment of a "Written Agreement" with the land rights holder. This approach enables them to maintain continuous control over the land, akin to a property rights holder, so facilitating their investment endeavours. The underlying foundation employed is the creation of a "marriage agreement." In the context of mixed marriages, when spouses

agree to separate their assets, it is evident that they retain ownership rights over land, despite the fact that such control is primarily for business purposes rather than residential use, as outlined in Article 52 of Law no. 1 of 2011. Specifically, these individuals exercise control over land with the intention of investing in the construction of villas to cater to the housing needs of foreign nationals.

In light of the aforementioned legal realities, the author concurs with Mosh.Isnaeni's viewpoint that mixed marriages can be classified as international marriages due to the presence of foreign elements within them. This is primarily attributed to the fact that one party involved is subjected to a distinct legal framework, particularly when it comes to The imperative of globalisation necessitates a prudent and discerning approach towards international marriages, in order to ensure that the Indonesian country is genuinely integrated into a respectable global community [9]. In relation to the legal matter under examination, it is advisable to establish clear delineations of authority for the agencies responsible for enforcement. This would enable the authorised agency to promptly identify instances of foreign investment-related violations of land control and subsequently undertake suitable measures. The present discourse concerns the rights and obligations of landowners in their capacity as individuals or entities responsible for the management and utilisation of land for investment purposes. This statement highlights several instances of legal violations in Indonesia, including the illicit smuggling of residence permits, evasion of business taxes, and the transfer of funds from unidentified sources to an Indonesian citizen partner for the purpose of acquiring land without proper oversight and regulation. These activities occur without the involvement of any authorised agency responsible for supervision and enforcement. The legal ramifications that ensue involve financial losses, specifically in the form of diminished income for the state or regional government due to the imposition of tax duties. There is a necessity to ascertain the agency that possesses the jurisdiction to oversee and regulate the lawful practises of land control for foreign investments, particularly in cases where individuals exploit flaws in written agreements, as stipulated in the Constitutional Court decision Number 29/PUU-XIII/2015.

3 CONCLUSION

The government faces significant challenges in effectively monitoring foreign land ownership for investment purposes in Bali. This difficulty arises from the complexities associated with mixed marriages, wherein spouses from different nationalities enter into agreements to separate their respective properties. Consequently, the separation of assets belonging to Indonesian citizens and their foreign spouses further complicates the government's oversight efforts. In accordance with statutory provisions, non-citizens are restricted to temporary land ownership rights, allowing them to utilise the land for a specified duration. However, it has come to light that the exploitation of a legal loophole, specifically the written agreement provision outlined in Article 52 of Law No. 1 of 2011 pertaining to Housing and Residential Areas, has enabled individuals to circumvent these restrictions. Individuals who engage in mixed

marriages often enter into marriage agreements with the intention of gaining control over land in different locations, thereby obtaining ownership rights for commercial purposes. This approach allows them to operate within the confines of the law, avoiding any legal violations. However, it is important to note that this practice has resulted in empirical evidence of illegal smuggling, which poses significant disadvantages to the state. In reality, these individual

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