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Legal Protection of The Use of Customary Land As Tourism Investment (Tourist Destination Of Tanah Ampo Cruise Port Manggis Sub-District, Karangasem Regency)

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ABSTRACT
There are several problems on cruise tourism investment development at Tanah Ampo Port as a development of marine tourism, namely how are the legal arrangements for the protection of customary land used as investment locations for cruise tourism at Tanah Ampo Port in Manggis, Karangasem Regency? And how to fulfill the need in regulating legal protection of customary land as a tourism investment location for Tanah Ampo Pier, Manggis Karangasem? The research method applied is empirical research methods byconducting field research through interviews. Legal arrangements for the protection of customary land used as investment locations for Cruise Tourism Tanah Ampo Port in Manggis Karangasem Regency which are used as investment locations are still general in nature and have not been specifically regulated, in awig awig (customary law) on legal protection arrangements for the use of customary land as tourism investment locations based on the agreement, because the awig awig has not regulated the use of customary land as a tourism investment location, or it can be rented out. Fulfillment of the need for regulation of legal protection of customary land as a tourism investment location Tanah Ampo Cruise Port, Manggis Karangasem, Customary Land as an existing investment location has fulfilled the need for protection of the customary land investment location, in the form of a lease agreement carried out by Bendesa Adat (as acting for and on behalf of indigenous peoples to represent based on the results of a meeting or community meeting building or banjar, the formulation in the customary law use of customary land is only given to indigenous peoples, as long as they still exist, and bearers of customary interests.

KEYWORDS
protection; customary land; tourism investment

Introduction

Economically, tourism has become a source of local revenue and investment is a production factor that is potentially vital in the service production business. Tourism activities in the Manggis Karangasem area are growing, many foreign tourists visit, stay overnight and carry out activities in the area of interest. tourism in Manggis Regency. In order to support these activities of the location of tourism investment activities, especially the use of customary land as tourism accommodation.

Bali is a small island with an area of 5,632.86 km2 or 0.29% of the total area of the Indonesian archipelago. Even though it is a small island, Bali's waters have the potential to be developed into a marine tourism object and attraction. The sea area of Bali, especially in the Karangasem Manggis Tourism Area, is very potential as a location for Tanah Ampo Pier Tourism activities in Karangasem Bali Manggis is one of the tourist attractions located in Manggis District, Karangasem Regency, Bali, Indonesia. Tanah Ampo Pier Tourism in Manggis Karangasem Bali is a tourist spot that is busy with tourists on weekdays and holidays. This place is very beautiful and can provide a different sensation from our daily activities. The Tanah Ampo Pier Tour in Manggis Karangasem Bali has a very interesting beauty to visit. It's a pity if you are in the city of Karangasem not visiting the Tanah Ampo Pier Tour in Manggis Karangasem Bali which has such a beauty that is second to none..

Tanah Ampo Port Tour in Manggis Karangasem Bali is very suitable to meet your holiday activities, especially during long holidays such as national holidays or other holidays. The beauty of Tanah Ampo Pier Tourism in Manggis Karangasem Bali is very good and quite rich with the natural beauty of the sea, beaches, rivers and lakes which are very prospective to be developed into marine tourism.

The location of the feasibility study for the construction of the Tanah Ampo tourism port is in Tanah Ampo Hamlet, Ulakan Village, Manggis Sub-District, Karangasem Regency. Tanah Ampo Cruise Ship Port has always played a strategic role in the growth of domestic trade and international trade within a country.

Customary land as one of the opportunities in developing tourism, the importance of land for human life results in the land actually functioning for human life both individually and collectively. The amount of land that can be controlled by humans is very limited, while the number of people those who need land are always increasing. Therefore, over time it is felt as if the land is becoming narrower and lesser, while demand is always increasing, so it is not surprising that the value of land is increasing. The imbalance between

the supply of land and the need for that land has created various problems.[1]

In customary law, it can be seen that the basic conception of land is under the control of a legal alliance based on the principle of togetherness known as customary rights. This right by Van Vollenhoven, is called "beschikingsrecht", while the land which is his territory is called "beschikingkring". This term is translated into Indonesian as ulayat rights or lordship rights, while the term beschikingkring is translated into *ulayat* environment.[2]

According to Boedi Harsono, the provisions of Article 3 of Basic Agrarian Law, contained two conditions for the recognition of customary rights, namely:

1. Regarding its existence; Customary rights are recognized as long as in reality they still exist. In areas where this right no longer exists, it will not be revived. In areas where there have never been customary rights, new customary rights will not be born:
2. Regarding its implementation; the implementation of customary rights must be in such a way that it is in accordance with national and state interests, which are based on national unity and may not conflict with laws and other higher regulations.[3]

Legal protection in the use of customary land that is used as a provider of tourism investment in the field of tourist accommodation services is not in accordance with the role and function of customary land. *Ulayat* rights show the legal relationship between the legal community (subject rights) and certain land/territories (legal objects). The customary right contains the authority to:

1. Regulate and organize land use, inventory (building new settlements/fields, etc.), and land maintenance.
2. Regulate and determine the legal relationship between people and land.
3. Regulate and determine the legal relationship between people and legal actions relating to land/buying and selling, inheritance, and others[4].

Research Problems

1. How are the legal arrangements for the protection of customary land used as an investment location for the Tanah Ampo Cruise Pier Tourism in Manggis, Karangasem Regency?

[1] Wantjik Saleh, K, 2001, *"Hak Anda Atas Tanah, Ghalia Indonesia"* Second Edition Jakarta, p 7.
[2] Djaren Saragih, 1999, *"Pengantar Hukum Adat"*, Tarsito, Edisi II, Bandung, p. 74.
[3] Sri Soetami, 2009, *"Pengantar Ilmu Hukum"*, Karunika Kakarta, Universitas Terbuka, Jakarta, p. 102.
[4] Koenadi Hardjasoemantri, 2009, *"Hukum Tata Lingkungan"*, Gajah Mada Universitas Press, Edisi Ketujuh Belas, h. 150.

2. How to meet the need to regulate the legal protection of customary land as a tourism investment location Tanah Ampo Cruise Port, Manggis Karangasem?

Research Methods

The research applies empirical research, namely conducting field research at the tourism investment location of Tanah Ampo Cruise Port, Manggis Karangasem besides referring to reading materials such as books, law journals, magazines, encyclopedias, and other books as support, in order to obtain primary data and secondary data, collected and processed in a qualitative discriminatory manner so that scientific work becomes accurate and can be accounted for.

Result and Discussion

1. Legal arrangements for the protection of customary land used as an investment location for Cruise Tourism Tanah Ampo Port in Manggis, Karangasem Regency

The management of customary land as an investment location is carried out by the Traditional Village of Manggis District which has received approval from all the indigenous people of Manggis Sub-District, regarding the Approval for the Implementation and Management of the Tourism Location Area in the Traditional Village of Manggis District with this decision giving management to the customary village, of course, what is the hope that the local government has empowered the surrounding community in the utilization of natural resources in their area and aims to improve the welfare and life of the surrounding community.

The coastal area is an area that has unique and complex characteristics. Complexity is shown by the existence of various users and various regional management entities that have different interests and perspectives regarding the use and management of resources in coastal areas. By considering these characteristics, the concept of integrated coastal resource management (Integrated Coastal Zone Management) emerged. This approach is one of the mainstay approaches in managing various potential and resource conflicts that exist in traditional village areas.

Integrated customary land management is the management of the utilization of natural resources and environmental services found on customary lands, by conducting a thorough assessment of coastal areas and the natural resources and environmental services contained therein, determining the objectives and targets for utilization in order to achieve

optimal development and sustainability.

Among the Indonesian people and society, it has long been known that property rights over land have been recognized. So the right to own land for the people of Indonesia is not something new and strange. However, providing understanding and regulation is not easy, therefore it must be traced from the Basic Agrarian Law as the basis for regulating land ownership rights.[5]

Based on the aspect of land tenure, the coastal land of Manggis District, especially in the research location, can be seen that there are special areas for certain interests, for example for the benefit of religious ceremonies, tourism business interests, and public interests. Existing customary lands based on their function exist Some of the functions include:[6]

1.1 Religious Function (Religious)

Customary lands have religious functions. We can observe this from the burden of the obligation *ngayahang* (serving the Village) that accompanies anyone who cultivates customary lands. The obligation to serve can be in the form of::

a. Devotion, namely preparing themselves to worship in the village and worship in the village temple/Kahyangan. For example mutual cooperation in cleaning the temple, repairing the temple, holding religious ceremonies, and so on.
b. Material, namely providing money or other material. For example, paying descent (*luran*), *Pepeson* (rice, coconut leaves, fruits, and so on) which is used for all village or temple activities or events.

All of these burdens are in return for the land given to *Krama Desa* (villagers) by the Indigenous Village Fellowship. This kind of life is a reflection of the full implementation of Tri Hita Karana which is the philosophical foundation of the Traditional Village in Bali. God - Man - Nature which is an element or elements of Tri Hita Karana must establish a harmonious relationship.

1.2 Social Function of Customary land

The social function here is no different as referred to in Article 6 of the Basic Agrarian Law. This means that whatever land rights exist with a person or legal entity, it cannot be justified that the land will be used (not used) solely for personal gain (private

[5] Abdurrahman; 2001,, *Tentang dan Sekitar UUPA,* Alumni, Bandung, p. 56.

[6] Wirta Griadhi I Ketut, et.al.,2001,,_*Pergeseran Status dan Fungsi Tanah Adat Dalam Kehidupan Masyarakat Bali Dan Pengaruhnya Terhadap Pembangunan Desa*, Research, Fculty of Law Universitas Udayana.

according to customary village law), especially if it causes harm to the community.

We can see this social function in the provision of Village-owned land for use by the government for schools, fields, and so on. With regard to its social function, it is only natural that the land must be properly maintained and prevented from damage. The use of land must be adapted to the conditions and nature of its rights so that it benefits both the welfare and happiness of those who own it and also benefits society and the state.

Therefore the utilization of the land by Krama Desa is part of the social functions mentioned above. The social function of this land existed long before the release of the Basic Agrarian Law (Article 6). This can be seen from the nature of customary rights itself, where the emphasis is on the public interest (alliance), but still protects and pays attention to the private interests of its citizens.

1.3 Economic Function of Customary Land

Customary lands, especially those that are agricultural lands (*sawati,* moor) have long been used as basic and supporting facilities in household life. As far as possible, the results obtained from these customary lands are used to meet the needs of daily life. And also can improve the standard of living of indigenous peoples.

Coastal land which is state land with an area of approximately 1,258 m2 in the Traditional Village, Manggis Sub-District, where the customary village is given the right to manage and organize the coastal lands so that there will be rights and obligations related to the management of coastal land in the Traditional Village, Manggis Sub-District. One of the functions of customary land is to have economic value so that customary land in the Traditional Village of Manggis Sub-District which has economic value is used as a tourism investment, even though it is not strictly regulated in the *awig-awig* of the Traditional Village of Manggis District, but according to customary law it has received approval from based on the results of the *banjar* meeting, all residents of the Traditional Village of Manggis District, then forwarded it through a traditional *prajuru* (leaders) meeting.

The customary data used as a tourism investment location includes the construction of hotels, villas, and cafes along the coast, specifically for cafes on the coast given to residents of the Traditional Village of Manggis District as managers with a land lease system.

Tourism development in the Manggis Sub-District area does not necessarily refer to the development of tourism development which is carried out by building large-scale facilities such as the construction of star hotels that require large areas of land, tourism development must be adapted to the situation and conditions in the Manggis Sub-District

area. Referring to the concept of sustainable tourism (sustainable development), three aspects need attention in tourism development policies in the Manggis Sub-District area, namely economic, socio-cultural, and environmental (ecological) aspects. The change in the development of the tourism industry that has been running in the Manggis Sub-District area is very visible from these three aspects.

Conclusively finding that tourism has a positive role in creating jobs, as a source of foreign exchange, encouraging exports, especially goods produced by the handicraft industry, and changing the structure of the Balinese economy in a more balanced direction. Tourism, together with other development activities, has brought about a transformation in Balinese society. In this transformation, the tourism sector is related to other sectors, where these linkages can be antagonistic meaning that tourism can hinder the development of other sectors, but can also be complementary and mutualistic (mutually supporting).[7]

2. Fulfilling the need for regulation of legal protection of customary land as a tourism investment location Tanah Ampo Cruise Port, Manggis Karangasem

In general, some areas in Bali, especially within the customary community (traditional village), including in the Traditional Village, Manggis Sub-District, still have customary lands managed by the local indigenous community, both with social, religious, and economic functions to support community life and for the continuity of their traditional village.

Bearing in mind the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities insofar as they actually exist, must be in such a way as to comply with national and state interests which are based on national unity and may not contradict the Law. -Laws and other higher regulations.[8]

According to Boedi Harsono, the provisions of Article 3 of the BAL include two conditions regarding the recognition of *ulayat* (customary) rights, namely:

1. Regarding its existence

Ulayat rights are recognized as long as in reality they still exist in areas where these rights no longer exist, they will not be revived. In areas where there have never been customary rights, new customary rights will not be born.

2. Regarding its implementation

[7] Pitana, 1999, *Pelangi Pariwisata Bali,* Bali Post Publisher

[8] Urip Santoso, 2005, *Hukum Agraria dan Hak-hak Atas Tanah,* Edisi First Edition, 2nd Printing , Kencana, Jakarta,p.45

The implementation of customary rights must be such that they are in accordance with national and state interests which are based on national unity and may not conflict with laws and other higher regulations.[9]

Coastal land in the customary village area of Manggis Sub-District is a public area where the government has the obligation and authority to regulate and supervise. In 2010 the Karangasem Regency Government issued a Regent Decree Number: 1238/011HK/2010 concerning the Approval of the Implementation of Arrangement and Management of the Beach Area of Manggis Sub-District, Karangasem Regency by the Traditional Village of Manggis Sub-District. Karangasem Regent Decree No. 1238/01/HK/2010 decided that the first was to approve the Traditional Village of Manggis Sub-District as the executor of structuring and management of the Manggis Sub-District Beach area while taking into account the provisions for managing public areas that are not village assets or traditional villages. Based on this decision, the coastal lands in the area of the traditional village of Manggis Sub-District are not land owned by the traditional village of Manggis Sub-District, but these lands are public areas or open spaces. For PKD and AYDS land, it is often referred to as *Ayahan* (customary) land. Based on the types of Balinese customary land, it appears that three subject rights can apply for conversion to become private land, namely Traditional Villages, Temples, and Traditional Villagers (Customary Villagers).

When analyzing in accordance with Ter Haar's Balloon Theorie, which states that the stronger the customary rights, the weaker the individual rights and vice versa. It can be seen that this theory applies to village land tenure in Bali.[10]

The control of the land is according to Article 1 number (2) of the Government Regulation. Number 16 of 2004 concerning Land Use Management is a legal relationship between individuals, groups of people, or legal entities and land as referred to in Law Number 5 of 1960 concerning Regional Regulations on Agrarian Principles. Arrangements like this in the life of indigenous peoples are included in customary law regarding land, which stipulates certain rights and obligations on land..[11]

If the legal relationship is formalized or legalized by the State, so that the State gives and determines the authority, obligations, and/or prohibitions for the holder of the right to do something with the land that is claimed, then the control of the land can become a right

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[9] Boedi Harsono, 1970, *Undang-Undang Pokok Agraria, Sejarah Penyusunan, Isi dan Pelaksanaannya Hukum Agraria Indonesia,* Djambatan, Jakarta, p. 167

[10] *Ibid*, .p. 118

[11] Ketut Wirtha Griadi, 1985, *Pergeseran Status dan Fungsi Tanah Adat dalam kehidupan Masyarakat di Bali,* .

of ownership over the land.[12] in the customary village of Manggis sub-district, while this is still controlled by the local indigenous people, it is necessary to organize, maintain and preserve it so that its integrity is maintained and can be put to good use.

The legal formulation in fulfilling the Need for Protection of customary land as an Investment location, in accordance with the 1945 Constitution in Article 33 paragraph (3) has emphasized the State's position on natural resources, including coastal areas, as the highest authority in the sense of regulating control, ownership, monitoring, and use of coastal areas to maximize the prosperity of the people. The provisions in Article 33 paragraph (3) of the 1945 Constitution are then further emphasized in Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Law (hereinafter abbreviated as UUPA), namely: "On the basis of the provisions in Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, the earth, water, and space, including the natural wealth contained therein, is controlled at the highest level by the State as an organization of power for all the people.

Awig-awig does not strictly regulate the arrangement for the protection of customary land as an Investment Location in the Traditional Village of Manggis Sub-District, but the use of customary land as an Investment location is based on the results of a meeting or deliberation on the customary Village of Manggis Sub-District by giving authority to the customary Bedesa and each Kelian Adat acts for and on behalf of in making agreements.

The regulation on the control and utilization of coastal areas for tourism purposes must of course refer to the provisions in the Coastal Law and various statutory provisions related to it, such as the UUPA, Law no. 26 of 2007 concerning Spatial Planning, Law Number 10 of 2009 concerning Tourism.

The provisions for the use of space are also related to dozens of laws and dozens of their derivative regulations which often clash and overlap. These laws include:

1. Law Number 5 of 1960 concerning Basic Agrarian Provisions;
2. Law Number 26 of 2007 concerning Spatial Planning;
3. Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands;
4. Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government;

Fulfillment of needs in regulating legal protection of customary land as a tourism investment location Tanah Ampo Crues Pier, Manggis Karangasem, Customary Land as an

[12] Boedi Harsono,1994, *Hukum Agraria Indonesia,* Djambatan,Jakarta, p. 203

existing investment location has fulfilled the need for protection of customary land investment locations, in the form of a lease agreement carried out by Bendesa adat as acting for and on behalf of indigenous peoples to represent based on the results of a meeting or community meeting or banjar, the formulation in the *awig-awig* use of customary land is only given to indigenous peoples, as long as they still exist, and bearers of customary interests.

Conclusion

1. The legal regulation on the protection of customary land used as an investment location of Cruise tourism at Tanah Ampo Port in Manggis, Karangasem Regency, which is used as an investment location, is still of a general nature and has not been specifically regulated, in *awig-awig* (customary law) of regulating legal protection for the use of customary land as a tourism investment location is based on an agreement, because *awig-awig* has not regulated the use customary land as a tourism investment location, or can be leased
2. Fulfillment of the need for regulation of legal protection of customary land as a tourism investment location. *Bendesa adat(traditional Village Leader)* acting for and on behalf of indigenous peoples to represent based on the results of a meeting or community meeting or banjar. The formulation in the *awig-awig* use of customary land is only given to indigenous peoples, as long as they still exist, and bearers of customary interests.

Suggestions

In order to avoid a difference in land area, it is hoped that landowners pay attention to the boundaries of the land they own because the slightest change in boundaries will harm the landowners themselves and it is also hoped that the Karangasem Regency Land Agency in measuring land parcels will be carried out carefully and correctly so that no to the detriment of the landowners.

It is also suggested to the Karangasem Regency Land Agency take an active role in resolving issues related to land in its territory even though no written application has been submitted by the land owner and that efforts are made to resolve land disputes that do arise so as not to go to court or be resolved amicably

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