



THE RIGHT ON LAND FOR FOREIGNER AND FOREIGN LEGAL ENTITY TOURISM INVESTASION PERSPECTIVE, PARTICIPATION AND NOMINEE PRACTICE PREVENTION

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Abstract- Bali is one of the national cultural heritages, which is endlessly praised in various essays and research results, then becomes a reference and promotion as an exotic island that inspires the rise of world tourism. Tourism encourages investment in hospitality, restaurants, transportation, trade, property, the creative economy sector and others. Investment, changing the function of agriculture into hospitality and transforming the work of farmers into services. Major changes in the mind-set of rural farmers to urban services. The purpose of this study is to find out the concept of norms and substance of the basic Agrarian Law and the laws and regulations in land ownership/ Provision of Residential for foreigners/Foreign Legal Entity. This research applies a socio-legal approach. This change is not accompanied by a significant expansion of public participation, because tourism is concentrated in capital due to legal limitations that favoring on investors. The results of the study are expected to encourage the weight of the substance of the Foreigners Residential Provision legislation, containing the substance of the Foreigners Residential Provision regulatory norms carrying the message of community participation as social engineer and community expectations (das sollen), global.

Keywords: Investment, Land Right, Participation, Regulation, Tourism and Global

I. INTRODUCTION

1.1. Background

The number of foreigners visiting and settling in Indonesia, especially in Bali, is continuously increased, the foreign visitors over the last five years (2015 - 2019) shows an increase every year, from 4,001,835 visitors in 2015 to 6,275,210 visitors in 2019 (BPS Provinsi Bali, 2020). Due to the rapid growth of the tourism sector, conducive investment climate supported by scientific and technological advancements, and the formation of a joint market in the region or the opening of the economy and bilateral investment between the country, as with the ratification of Indonesia-Australia cooperation known as the Indonesia and Australia Comprehensive Economic Cooperation Agreement (IA-CEPA) which regulates trade in services, development of Human Resources and investment.

The IA-CEPA is expected to push Australian investment both directly and indirectly, so it must be balanced with the availability of legal economic, land, spatial, investment and supporting regulations, which are sufficient to provide guarantees of justice, certainty and benefit to the public and investors. Although Foreign Legal Entity can only run business in open business fields, including oil and gas mining, sea transportation and air transportation, especially for foreign transportation. Whereas in the banking sector, foreign banks can only establish branch offices in Indonesia and limited to certain cities (Supramono, 2010).

The presence of foreign investment, in business it will encourages the presence of foreign workers and while living in Indonesia certainly requires a place to live for himself and his family, to protect, provide a sense of security and comfort, from the dangers and means of socialization in social life. Provision of such a residence requires the availability of land, which is subject to the provisions of the Basic Agrarian Law, the allotment of space regulated in the Spatial and Regional Law prevailed, and the rules of its implementation and are required to obtain Building Establishment Permits from the local Regional Government. Houses/dwellings can only be built on land according to their designation, with certain conditions that must be accomplished.

The reality shows that the problem of licensing for business, ownership of land or housing in Indonesia, has been known to be complicated and ultimately involving money. In this case the government must deregulate legislation in the field of licensing, ownership of land rights for foreigners so that the mandate of Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia that the earth, water and natural resources contained therein be used to realize the prosperity of all the people of Indonesia. Based on this background, the regulation of ownership of houses/dwellings and land rights for foreigners in Indonesia must not be in conflict with *Pancasila* and the 1945 Constitution of the Republic of Indonesia, and in accordance with the Basic Agrarian Law, the values of wisdom that live and grow in the society.

Based on the explanation above, according to (Allott, 1980) it can be concluded that the central issue in this research is a study of the limitations of the law (*the limit of law*) in mobilizing community participation in the implementation of Foreigner Residential Provision, regarding the issuance of Ministry Decree of Agrarian and Spatial/The head of National Land Agency 13/2015, which was then continued with Agrarian and Spatial/The head of National Land Agency 29/2016 the law as driving community participation in the provision of housing (land) for Foreign Legal Entity and Foreigner, this research is intended to find out the legislation in the field of land, and specifically regulating Foreigner Residential Provision as an instrument of policy to preserve land rights and community participation in This context is the desire and agreement of the community (landowners) to participate or jointly involve themselves in Foreigner Residential Provision, through the provision of land to be used as housings/dwellings for Foreign Legal Entity and Foreigner without the release of ownership rights, so as to avoid the practice of nominee practice.

Research can be seen from the overall objectives, namely (1) As main purpose, (a) to find out the concept of norms and substance of the basic Agrarian Law and the laws and regulations in land ownership/ Provision of Residential for foreigners/Foreign Legal Entity, (b) to realize strategic alternatives, Foreigners Residential Provision as an instrument of community participation, avoid and prevent the elimination of traditional rights to strengthen land relations with society in order to strengthen the culture, civilization and dignity of society. able to realize an economy based on the principle of kinship, based on economic democracy with the principle of togetherness, fair efficiency, sustainable environmental insight, independence, and maintaining a balance of progress and national economic unity that is full of alignments with the interests of the community (c) Realizing legal certainty of Land Rights for Foreign Legal Entity/Foreigners, encourage increased investment and tourism so that economic growth can be realized that the welfare of the community. (2) As a strategic alternative (a) so that the substance of the contents of legislation in the fields of land, spatial planning and licensing is in accordance with the format of justice, certainty and global needs. (b) is an accommodative-participatory policy in encouraging investment, and (c) prevents nominee practices. Listening to the purpose of this research is very important to do, and the results of the study are expected to encourage the weight of the substance of the Foreigners Residential Provision legislation, containing the substance of the Foreigners Residential Provision regulatory norms carrying the message of community participation as social engeneer and community expectations (das sollen), global.

1.2. Problems Statement

Based on the background explanation above, three research problems can be formulated, namely: (1) how is the arrangement of land rights for Foreign Legal Entity in Basic Agrarian Law and regulations concerning Provision of Foreigner Residential? (2) are the conceptions, norms and substance of regulations in the land sector adequate as participatory land instruments? (3) does the regulation regarding Foreigners Residential Provision contain a prohibition on land tenure based on a nominee agreement?

II. RESEARCH METHODS

This research applies a socio-legal approach, as an effort to further explore as well as explore a problem which is not only sufficiently in the study of norms or related legal doctrines but also to see in full context of norms and their application.

III. Theoretical Framework and Conception

The terminology of the purpose of the law is to achieve the goals of society, the state and global. These objectives are formulated as basic principles in the 1945 Constitution of the Republic of Indonesia, the norms governed by law, which must be obeyed and heeded by both Indonesian citizens and foreigners who are within the territory of the Republic of Indonesia. The constitutionality of the national economy was formulated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates that "the economy is structured as a joint effort based on the principle of kinship", and is organized based on economic democracy with the principle of togetherness Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia or the implementation of the economy with the principle of mutual benefit through the Employee Stock Ownership Plan (ESOP) model, in the form of cooperatives, which emphasizes the element of participation rather than the concentration of capital. Article 2 of the Basic Agrarian Law constitutes the implementing regulation for Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution in the field of agrarian affairs, carrying the mandate of the right to control natural resources by the State. The relationship between state law and land bear to the right to control land by the State. Rights, defined by Salmond "as interests recognized and protected by law. Fulfilling that interest is an obligation, while neglecting it is a mistake. A right requires the affected person to commit an act or not commit an act. This right relates to an object in which the action is related. Furthermore, Jering expressed (Rasjidi & Rajidi, 2002), a view that was no different from his peers above that the right was an interest protected by law. Whereas (Hoefnagels, 1976) saw that right as a person's ability to influence one's actions or actions without using the authority he had, but was based on the coercion of an organized society.

IV. DISCUSSION

4.1. Agrarian Reforms

Building and developing laws that can inspire the community, as an integral part of national development, is a major work that must be compiled and formulated in a basic framework of national development in a consistent and sustainable manner. Development of the legislation mandated by TAP MPR (The Decree of People Consultative Assembly) No, IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management, in consideration of letter (a) there is a desire to manage agrarian resources and natural resources must be managed and utilized optimally for the welfare of society. Point (b) which should be the cause of point (c) that the overlap and contradiction between the agrarian law and natural resource management laws, resulting in a decrease in environmental quality point (d) whereas, the imbalance of the ownership structure of the use and utilization of its users and cause various conflicts. Then point (e) management of agrarian resources and natural resources is an instrument of community participation based on the principle of togetherness and family, so far it has not been going well or fully effective. Whereas the current arrangements and changes are only procedural with pragmatic-conditional tendencies.

Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, stipulates that "The economy shall be arranged as a joint effort based on the principle of kinship". The constitution requires that company ownership be collectively, mutually beneficial and with an employee stock ownership plan (ESOP) model. "National economy" is organized as a joint effort based on the "family principle", in the form of cooperatives, which emphasizes the element of participation rather than the concentration of capital. Article 2 of the Basic Agrarian Law constitutes the implementing regulation of Article 33 paragraph (3) of the 1945 Constitution, explaining the definition of the right to control natural resources by the state, namely "the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The relationship between state law and land bear to the right to control land by the state. Furthermore Article 33 paragraph (4) of the national economy shall be implemented based on a democratic economy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining the balance of the will and unity of the national economy". The juridical meaning of the constitution, requires a participatory agraria legal structure, and gives birth to a sense of togetherness (unity) - an integrated, strong unity in the national and state unity, namely a procedural model that views the need for the state to impose regulations that are the unity of agrarian legal politics that unite, the realization joint power in the land sector, not concentration of ownership in the hands of individuals or groups of people. The Agrarian Law regulation has a role in combining as much as possible the legal political unity in the field of agrarian, by involving elements of diversity of customary law that are still alive and grow in the society. In this case, the research is trying as much as possible to explore the fundamental joints, the factors of the strength of the presence of regulations that encourage the presence of participatory agrarian law. This means that the law on land is able to encourage community participation in the provision of land for Foreigner Residential Provision with conditions in accordance with applicable laws to achieve an equitable and prosperous society. Agrarian law is customary law but the substance of customary law arrangements in it is very minimal (Noor, 2006)

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia constitutes the constitutionality of the Customary Law Community units which are still alive and in accordance with the development of the community and the principles of the Republic of Indonesia which are regulated in the Act. Juridically Customary Law Community is regulated in Act No. 6 of 2014 concerning Villages (Village Act), which provides a model of villages and traditional villages. Long before the birth of the Village Act, the Basic Agrarian Law had given recognition to the Customary Law Community and the relationship between the Customary Law Community and its traditional land bear to customary rights stipulated in Article 5 of th Basic Agriarian Law, unfortunately, the joint conception of national property rights based on customary law was not optimally digested, customary law was only placed honored as a display, but crushed money that make the complexity face of the national land.

The right on land which bear to legal relations between individuals and their land, bear to individual rights to land, the legal relationship of Customary Law Community to their land gives birth to customary rights, and the legal relationship between the State and land generate the right to control land by the State. However, the laws and regulations provide great and unclear powers to the state to control land in Indonesia The presence of community participation in Foreigner Residential Provision, which cause legal relations in the civil field in three models, namely: (a) based on leases, on land rights (b) based on the inclusion of community landowners as shareholders of a Limited Liability Company, and (c) community landowners joining cooperative membership are not immediately accommodated in various technical regulations.

4.2. Investation, Tourism, and Permission

4.2.1. Investation

The government is targeting Indonesia to be in the top 30 in the Ease of Doing Business (EoDB) ranking or ease of doing business at least in 2019 or 2020. To realize this, the government is making improvements on each priority indicator. In addition, each ministry/institution must immediately resolve problems and regulations related to EoDB. In 2012, Indonesia was in 129 rank. In its release, the World Bank announced that in 2018 Indonesia had succeeded in rising 19 places, namely to rank 72 in the world in EoDB, this did not make the Indonesian government feel quite satisfied, because of Indonesia's enormous potential as a The number 2 country best for investment destinations in the world can still be improved. Seeing this condition, the government is optimistic that it can be ranked up in the top 30 in 2019 or 2020.

Government's efforts to increase the flow of investment in Indonesia is to provide the flexibility for investors to determine investment business fields of interest. This triggers the process of simplifying the regulation of the Priority Scale List to the Negative Investment List which is valid for 3 (three) years and is subject to an annual review which is adjusted to the needs and developments. Article 10 paragraph 1 of Regulation of the Head of Investment Coordinating Agency No.12 of 2009 ("The regulation of the Head of Investment Coordination Board No. 12/2009") states that all fields or types of businesses are open to investment activities, except fields or types of businesses that are declared closed and open with certain requirements. For this reason, investors are required to comply with statutory regulations, such as Negative Investment List before investing.

Government efforts in increasing investment flows in Indonesia are: (a) through Bilateral Cooperation with friendly countries, such as the Indonesia-Australia Cooperation (IA-CEPA) is expected to encourage Australian investment both directly and indirectly and Australian tourist visits will increase. (b) provides flexibility for investors to determine the areas of investment business of interest. This triggers the process of simplifying the regulation of the Priority Scale List to the Negative Investment List (DNI) which is valid for 3 (three) years and is subject to an annual review which is adjusted to the needs and developments. Article 10 paragraph 1 of Regulation of the Head of of Investment Coordination Board No.12 of 2009 states that all fields or types of businesses are open to investment activities, except fields or types of businesses that are declared closed and open with certain requirements. For this reason, investors are required to comply with statutory regulations, such as Negative Investment list before investing.

4.2.2. Tourism

The tourism sector has an important role as a source of foreign exchange earnings, and can encourage national economic growth, especially in reducing the number of unemployed and increasing the productivity of a country. The tourism sector is one of the strategic sectors that must be utilized for tourism development as part of national development. Tourism development has the ultimate goal of increasing people's income, which in turn can improve people's welfare and economic growth. The development of tourism also encourages and accelerates economic growth. Tourism activities create demand, both consumption and investment, which in turn will lead to the production of goods and services. This study examines the effect of tourism on economic growth in Indonesia based on time series data during the years 1975 - 2017. This study uses a simultaneous equation model estimated

with Two stage least square. The results show that tourism has a positive effect on economic growth and vice versa economic growth has a positive effect on tourism. Other factors that influence tourism in Indonesia are the exchange rate and inflation. Tourism can increase foreign exchange income, create employment, stimulate the growth of the tourism industry, and therefore can trigger economic growth, especially can encourage in various countries to develop the tourism sector. Tourism contributes to economic growth through various channels including foreign currency income, attracting international investment. (Sewell, 1997) argued that the concept of culture is specifically defined as a set of control mechanisms, namely plans, recipes, rules, instructions (what is called to manage human behavior). The most important element in the concept of culture according to (Sewell, 1997) is referring to the culture can be organized and perceived by humans through their mindset.

Bali, as a world tourist destination, has certain advantages which not possessed by other regions, such as: infrastructure (accessibility) of international airports connected to major cities in the world, conducive security, cultural and natural attractions supported by open-minded people. These advantages are an attractive magnet for foreigners, to have a representative housing/dwelling that meets the qualifications of safe, comfortable, efficient and affordable. However, on the other hand Bali also has limitations, if not managed properly, it can disrupt or reduce the interest of foreigners to live permanently in Bali. The limited availability of space (land) in Bali, has become a major problem in the development, tourism development, and Foreigner Residential Provision. Even though Bali tourism continues to grow rapidly, tourists continue to come to Bali as curiosity increases, and tourist income or welfare improves. The growth of tourism brings benefits and also problems. Economic benefits and opening of employment opportunities can improve the welfare of the community. However, the growing development of tourism in Bali also presents an increase of newcomer from outside Bali, so the need for space/land for the construction of various facilities, such as infrastructure, facilities for developing tourism destinations and housing for Indonesian and foreigners, causes the conversion of agricultural lands, so that it will be able to damage the ecosystem, and weaken the cultural cohesion of the people with their land. Narrowing agricultural land, resulting in a shift in livelihoods from an agrarian to a service society and breaking the chain of *subak* institutions as an organization organizing eco-systems in agriculture.

The condition of the island of Bali is indeed unique from various perspectives, its nature, its climate, its people, its culture and its beliefs. The uniqueness of *Taksu* as the bearer of the presence of a religiously magical culture, in the balance of life and happiness, for the people of Bali, Indonesia and tourists who are united in the *Tri Hita Karana* philosophy, which is revealed in the attitude and way of life *tepa-salira*, they feel (keep) to always uphold harmony and appreciation of taste is part of the context of *tat-twam-asi*, never bored to come to perform and feel peace and not infrequently they make Bali as an inspiring force in advancing their lives. To answer the wishes of tourists, there is no other choice, the government through various policies can do discretion to overcome the limitations of land availability through regulations that encourage community participation, to participate in the development of sustainable tourism based on local traditions, customs and culture.

4.2.3. Licensing Deregulation

The complicated business licensing and long process, can be an obstacle to investment growth. The government is expected to immediately take the strategic step of cutting licensing types, shortening the length of the licensing process, issuing regulations that facilitate business and labor licensing, cutting and removing obstacles in the investment sector, which are expected to encourage investment inflows into Indonesia. Therefore, the government issued Presidential Regulation No. 91 of 2017 concerning the Acceleration of Business Implementation. Consideration of the issuance of this regulation because the development of the number, distribution, scale, and efficiency of business activities is a major determinant in economic growth, job creation, poverty reduction and inequality between regions and between income groups.

Presidential Regulation concerning the Acceleration of Business Implementation is generally carried out through the establishment of a task force in the Ministries or Institutions of Provincial and Regency/City Regional Governments whose task is to oversee the implementation of investments or business activities and assist in the completion of licenses required by business actors. Allowing investors or business actors who will carry out activities in Special Economic Zones, Tourism Strategic Areas, Industrial Zones and Free Trade Zones and Free Ports or delay certain licenses. Using shared data or documents in business licensing, simplifying regulations and facilitating business licensing bureaucracy by integrating licensing applications, business processes and licensing expenditures through an integrated licensing management system electronically or called Online Single Submission (OSS).

The Acceleration of Business Implementation is carried out in two stages, namely first, escorting and resolving obstacles through the establishment of a Task Force. Implementation of Business Permit in the form of fulfilling the requirements (checklist) that is carried out at each door;

second, Acceleration of Business Implementation by using data sharing and non-repetitive delivery and acceleration in implementing the reform of the Business Licensing Regulation and the Implementation of the Integrated Business Licensing System through OSS. The implementation of these two stages can be done simultaneously. With the issuance of this Presidential regulation, it will simplify business licenses such as Business License, Company Registration Certificate, etc. are no longer needed. All are integrated in one permit, the Main Business Number, which will be completed in 30 minutes. Business Registration Number also functions as Company Registration Certificate, Importer Identification Number, and customs access. The issuance of the Presidential Regulation on Acceleration of Business Implementation will Provide fresh air for investors in doing business and encourage greater investor interest and could push Indonesia's EoDB ranking from position 72 to position 40 in the world. Rapid economic development and more and more new businesses are emerging, this progress must be supported by a climate of good governance so that business people and investors from the business side feel that the invested capital provides satisfactory benefits.

4.3. Community Participation (Public)

Public participation has become the main mainsream in the process of democratization throughout the world. Public participation in a democratic country like Indonesia is a must. In the perspective of citizenship, public participation is the right of citizens, namely the right of people to participate (right to public participation). IAP2 translates the phrase public participation as:

“Public participation’ means to involve those who are affected by a decision in the decision-making process. It promotes sustainable decisions by provision participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision.”

The definition above still puts the community as a party that needs to be involved in the decision making process that has an impact on people's lives, with the reasons (1) the approach emphasizes public participation as voluntary, while the approach; (2) as a mandatory, the quality of implementation is determined by: (1) the level of democratization of a country, and (2) the level of understanding of citizenship (status and inherent rights) of citizens. On the other hand, public participation needs to be institutionalized as part of deliberative democracy, more than procedural democracy which has a meaning as consultation, deliberation, or consideration. Deliberation is a process to strengthen the legitimacy of a public policy issued by the government, as well as business sector policies that affect the community and certain parties.

Indonesia as a democratic country as far as that laws and regulations in the field of land encourage the involvement or participation of the community in the policy of land ownership (control) of land by foreign people/legal entities. in a policy intended to know the laws and regulations in the field of land, and specifically those that regulate Foreigners Residential Provision as a participatory policy instrument and the preservation of land rights. Terminology, community participation in this context is the desire and agreement of the community (landowners) to participate or jointly involve themselves in Provision of Foreigner Residential, through the provision of land to be used as housing/dwellings for foreigners without relinquishing ownership rights. The form of participation can be with a lease right within a certain period of time, the inclusion of which is adjusted to the applicable laws and regulations, depending on the investment model that will be applied in the Provision of Foreigner Residential, such as surrendering with the Right to Lease, on the land of individual ownership or on the land of customary rights through the binding of the lease - rent within a certain time, or in the form of profit sharing by not relinquishing ownership rights. Community participation will be able to provide added value economically as a form of recognition and respect for indigenous and tribal peoples. In this position, legally legally the holder of a permanent land right as a rights holder, the participation can be done with the following options: (a) the community forms a Legal Entity of Provision of Foreigner Residential, with an investment value equal to the value of the land invested in Legal Entity of Provision of Foreigner Residential, (b) the land owner is the party renting the land and submits the investment in the amount of the lease, and (c) the owner binds the results as an investment for a certain period of time. This model, does not lead to sale and purchase transactions (conversion of land ownership). So conceptually it can be formulated that community participation in Foreigners Residential Provision is a form of empowerment, recognition of community rights in efforts to improve community welfare as an implementation of economic democracy and implementation of Article 33 paragraph (1) and paragraph (4) of the 1945 Constitution of the Republic of Indonesia, and implementation of Article 42 and 45 Republic of Indonesian Act Number 5 of 1960 concerning Agrarian Principles, in the Foreigners Residential Provision with the Right to Use, the Right to Participation on the basis of yields and or the Right to Rent is a protection of national land.

4.4. Nominee, a mine full of disguises

According to Act Number 12 of 2006 concerning The Citizenship of the Republic of Indonesia, it only recognizes residents of Indonesian Citizens and Foreign Citizens

(Foreigners). The difference of people results in the legal position of any legal relationship relating to land, marriage, and other agreements. However, in practice there are foreigners who carry out legal actions specifically to control land rights without regard to the provisions of the basic Agrarian Law. These legal acts are usually found in the form of agreements which are then known as nominee agreements. Nominee Agreement is one of the types of innominaic agreements, namely agreements that are not known in the Civil Code but appear, grow and develop in the community. In a nominee agreement, the existence of a certain person or party (nominee) who is used as a shareholder or more precisely the registered owner of a certain number of shares, while the beneficiary benefits from the shares (Wicaksono, 2016). Nominees can almost be equated with representative institutions without accountability or borrowing names, based on statements or power of attorney made by the parties, foreigners borrow the name of Indonesian citizen, to include his name as the owner of the land on his certificate, then Indonesian citizens based on the deed he made deny that the real owner is a foreign citizen as the party who owned the money to purchase the land and his control is exercised or represented by the foreigners. Although there are many denial of the the existence of nominee practices in the decision of the Court of Appeal number 12/pdt/2014/pt.dps that the practice of nominees exists and is real in the community.

The regulation on land rights for foreigners in Indonesia is regulated in PP 41 of 1996 concerning Housing or Residential Ownership by Foreigners domiciled in Indonesia. Government Regulation No. 41 of 1996 regulates that use rights for foreigners can occur on State Land, Land Ownership and management rights. For example in the provisions of Article 2 No.1 and No. 2 Government Regulation No. 41/1996 regulates that, residential houses or dwellings that can be owned by foreigners are stand-alone houses built on plots of land for use rights over state land that can be controlled based on the agreement with holders of land rights and units of flats built on plot of land use rights on State land. Government Regulation No. 41 of 1996 intends to provide legal certainty for foreigners for the possibility of ownership of residential houses or dwellings residing in Indonesia, but in its implementation it has not been able to provide clear laws for foreign nationals related to property investment in Indonesia, as well as the emergence of smuggling land law by foreigners that cannot be overcome due to lack of supervision and follow-up on sanctions

The Basic Agrarian Law adopts the principle of prohibition of land alienation (*gronds verponding verbod*), there is no land ownership other than use rights to be owned by foreigners. In general, the acquisition of land by foreign citizens (foreigners) and foreign legal entities who have representatives in Indonesia is regulated in Articles 41 and 42 of the Basic Agrarian Law which are regulated further in Government Regulation Number 40 of 1996 concerning Right to Cultivate, Building Use Rights and Land Use Rights. The legal basis for the provisions in Article 42 of the Basic Agrarian Law is Article 2 of the Basic Agrarian Law which is the implementation of the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One embodiment of the State's authority is to determine and regulate the legal relationship between people and the earth (including land), water, space and natural wealth contained therein.

Then the Government Regulation No. 41 of 1996, later amended by Government Regulation No. 103 of 2015 concerning Procedures for Owning Foreign Residential Houses (Government regulation 103/2015 on Provision of Foreigner Residential) domiciled or living in Indonesia. For those who want to have a house/residence, it can only be on the right to use. Government Regulation No. 103/2015 on Provision of Foreigner Residential, is a legal basis for foreigners who want to own land/houses can only be on the usage rights.

Government Regulation No 103/2015 concerning Provision for Foreigner residential, formulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 13 of 2015 concerning Procedures for Granting, Relinquishing or Transferring Land Rights (Ministrial regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 13/2015) which contained several deficiencies and then amended with Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 29/2016. The basic problems of Ministrial regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency NO. 29/2016, (1) do not include legal obligations or prohibition of nomineal practices and imposition of sanctions for foreigners/Foreign Legal Entity who commit violations. (2) the substance of government Regulation No. 103/2015, does not contain the content of public participation. In a Provision of Foreigner Residential, the granting, relinquishment and transfer of rights to a Foreigners Residential Provision is based on the principle that "the type of land rights that a person can own follows the subject status of his land rights". Community participation and legal relations of the parties in Foreigners Residential Provision are solely based on volunteerism, which is subject to the civil law regime in other words the implementation of Foreigners Residential Provision is the will that was promised. The agreement to implement the policy, this is called the policy-agreement (*beleidsvereenkomst*). Promising administrative policies can allow public authority to become the subject of disputes (Marzuki, 1991).The

development of law, the presence of policy agreements was seen as important given the dual benefits it provided, in addition to being an embodiment of the legal instrument, it also provided legal protection (rechtsbescherming) for citizens or legal entities that bind themselves to the said agreement (Marzuki, 1991). Nominee practices, can be carried out and continue due to the non-functioning of the legal system optimally.

V. CONCLUSION AND SUGGESTION

5.1. Conclusion

1. Government Regulation No. 103/2015 on Provision of Foreigner Residential, further formulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning /Head of the National Land Agency No. 13 of 2015 concerning Procedures for Granting, Releasing, or Transferring Land Rights (Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 13/2015) there are some deficiencies in its regulation, later amended by Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 29/2016. The basic problem of Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 29/2016, does not contain legal obligations or mandatory community participation in Provision of Foreigner Residential. The granting, relinquishment and transfer of rights in a Provision of Foreigner Residential. is based on the principle that "the type of land rights that can be owned by a person follows the subject status of his right to land". Community participation in the Provision of Foreigner Residential is solely based on the volunteerism of the parties who are subject to the civil law / engagement regime in other words the implementation of the Provision of Foreigner Residential. is the will of the agreement or volunteerism. The agreement to carry out this policy is called as a policy-agreement (bleidsovereenkomst) that in the development of the law the presence of a policy agreement is considered important, given the multiple benefits it provides. That is, in addition to being a manifestation of bleid instrument, it also provides legal protection (rechtsbescherming) for citizens or legal entities or investors who bind themselves to the agreement referred to "Thus there is no statutory regulation governing legal obligations for legal entities or investors, so as to provide space for the presence of community participation holders of land rights, in industrial development or specifically in the Foreigners Residential Provision for the holders of ownership rights in legal entities and the obligation to lease land from the community. Provision of space for community participation in Provision of Foreigner Residential. cannot be separated from efforts to develop human resources and alleviate poverty, so this research is important to be undertaken.
2. The basic problem of Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 29/2016, from the prevailed laws and regulations, the arrangement regarding land ownership for foreigners/ Foreign Legal Entity are not formulated in completely. The formulation of the model and design of community participation in Foreigners Residential Provision is not reflected in its regulatory norms. Even though the existing regulation has a purpose as a form of empowerment, the recognition of community rights in efforts to improve the welfare of the community as part of the implementation of economic democracy and the implementation of Article 33 paragraph (1) and paragraph (4) of the 1945 Constitution of the Republic of Indonesia is not visible.
3. Political law of agrarian law Articles 41 and 42 of Basic Agrarian Law adheres to the principle of prohibiting land alienation that foreigners cannot be given ownership rights to land. Land rights by foreign citizens/Foreign Legal Entity who have representation and settled in Indonesia formulated in Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 13/2015 and then amended by Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 29/2016 does not contain specific arrangements regarding nominee or borrowing practices the name, or in the sense of the ministerial regulation does not regulate the formulation of norms of prohibitions and sanctions if violated, so that the regulation on usage rights for foreigners/Foreign legal Entity calls for multiple interpretations, and disputes can end in court.

5.2. Suggestion

1. To support the policy of strengthening investment, tourism and Foreigners Residential Provision arrangements regarding ownership of land or buildings for foreigners or Foreign Legal Entity should involve community participation, legal relations between the parties, regulated based on ass balance, justice, certainty and benefit through the formulation of the classification of rights and obligations, regulating legal actions that are mutually beneficial and keep away from prohibited acts by containing legal sanctions if breached. By paying attention to legal awareness and the legal culture of the community.

2. Government Regulation No. 41 of 1996, later amended by Government Regulation No. 103 of 2015 concerning Procedures for Owning Foreign Residential Houses domiciled or living in Indonesia. For those who want to have a house/residence, it can only be above the right to use. As an investment destination country, it is fitting to provide investment convenience and eliminate investment barriers, which are continually being carried out, so as to create a favorable investment climate.
3. In order to reduce or prevent the practice of nominees, so that the substance of the arrangement is arranged comprehensively, clearly between the prohibition and permissibility and the content material is not multi-interpreted/vague and conflicting. The regulation of land rights is not thorough and complete so as to close the gap of administrative problems, abuse of conditions that can be detrimental, the community and the State.

REFERENCES

- Allott, A. N. (1980). *The limits of law*. London: Butterworth.
- BPS Provinsi Bali. (2020). Hasil Sensus Penduduk 2020 Kota Denpasar. Retrieved from Badan Pusat Statistik website: <https://denpasarkota.bps.go.id/>
- Hoefnagels, P. (1976). *The Other Side of Criminology*. Holland: Kluwer-Deventer Holland.
- Marzuki. (1991). *Metodologi Riset*. Yogyakarta: UII.
- Marzuki, H. M. L. (1991). Kebijakan yang Diperjanjikan (Beleidosovereenkomst). *Jurnal HUKUM & Pembangunan*, 21(3). doi:10.21143/jhp.vol21.no3.342
- Noor, A. (2006). *Konsep Hak Milik Atas Tanah Bagi Bangsa Indonesia*. Bandung: Mandar Maju.
- Rasjidi, L., & Rasjidi, I. T. (2002). *Pengantar Filsafat Hukum*. Bandung: Mandar Maju.
- Sewell, W. H. (1997). Geertz, Cultural Systems, and History: From Synchrony to Transformation. *Representations*, 59.
- Supramono. (2010). *Perpajakan Indonesia*. Jogjakarta: CV Andi Offset.
- Wicaksono, L. S. (2016). Kepastian Hukum Nominee Agreement Kepemilikan Saham Perseroan Terbatas. *Jurnal IUS*, 23(1).
- Act No. 5 of 1960 concerning Basic Rules on Agrarian Principles Law
- Act No. 24 of 2013 concerning amendments to Law Number 23 of 2006 concerning Population Administration
- Act No. 6 of 2011 tentang Immigration
- Emergency Act. No. 9 of 1955 concerning Foreign Population
- Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles Law-
- Government Regulation No. 40 of 1996 concerning Utilization Rights, Building Use Rights and Land Use Rights
- Government Regulation No. 103 of 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners Domiciled in Indonesia
- Government Regulation No 31 of 2013 concerning the implementation of Act No. 6 of 2011 on immigration
- Ministrial Regulation of Agrarian Affairs and Spatial Planning/Head of National Land Agency Number 13 of 2016 concerning Procedures for the Granting, Relinquishment, or Transfer of Rights
- Ministrial Regulation of Manpower No. 35 of 2015 concerning Amendment to Ministrial Regulation of Manpower No 16 of 2015 concerning Procedures of Using foreign workers