



The Right on Land for Foreigner and Foreign Legal Entity Tourism Investasion Perspective, Participation and Nominee Practice Prevention

IGN. Supartha Djelantik

supartheadjelantik404@gmail.com

I Nyoman Putu Budiarta

budiarthaputu59@gmail.com

Faculty of Law Warmadewa University

Hartini Saripan

hartinisaripan@uitm.edu.my

UITM Malaysia

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ABSTRACT - 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. 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. This research is motivated by these three problems of research (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? This research applies a socio-legal approach. The legal sources used are primary and secondary legal source. 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 formulation of the model and design of community participation in Foreigners Residential Provision is not reflected in its regulatory norms. 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.

Keywords: Land, Participation, Investment, Tourism and Global

I. INTRODUCTION

The island of Bali is an island with a length of 153 km and a width of 112 km about 3.2 km from Java Island. Geographically, Bali is located at 8 °25'23 "South Latitude and 115 ° 14'55" East Longitude which makes it tropical like other parts of Indonesia. The island's topology

stretches from the west of the island to the east. with amazing panoramic rice terraces. Tourism is developing rapidly over time and conducive community responses to benefits that are felt directly or indirectly, that the presence of tourism can grow the economy.

The number of foreigners visiting and settling in Indonesia, especially in Bali, is continuously increased, 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. Trade openness, is a real attitude and a form in the effort of cost efficiency, and strengthening competitiveness based on the principle of excellence that is highly dependent on the relative resources owned/competitive advantage, namely cost leadership, product differentiation and focus, so that better results are realized faster and more meaningful.

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, 2012).

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, it can be concluded that the central issue in this research is a study of the limitations of the law (the limit of law) (Allott, 1980), 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.

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. 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. Research can be seen from the overall objectives, namely (1) 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. The study 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.

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 Allen, formulating that right as a power based on the law in which a person can carry out his interests. Jering, expressed a view that was no different from his peers above that the right was an interest protected by law, whereas Holland 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 (Rasjidi & Rasjidi, 2002).

The basic concept of the right to control land by the state is confirmed in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people" then spelled out in Article 2 paragraph (2) of the Basic Agrarian Law. On the basis of the provisions of article 33 paragraph 3 of the Constitution and the matters as referred to in article 1, earth, water and space including the natural resources contained therein are at the highest level controlled by the State, as an organization of power with the authority to: a) regulate and organizing the designation, use, supply and maintenance of earth, water and space. (b) determine and regulate legal relations between people and the earth, water and space. (c) determine and regulate legal relations between people and legal actions concerning earth, water and space.

The word "controlled" is limited to mastery not "possessed" but an understanding that authorizes the State as an organization of people's power to control which is intended for the prosperity of the people in the sense of happiness and prosperity for all Indonesian people. On the basis of the right of control of that State, the State can grant a person or legal entity a right to land according to its designation and needs. For example, the right of ownership, the right of building utilization, the right of business, the right to use and others. In practice, the right of control of the State can be authorized to the power under it, as long as it does not conflict with national interests and in accordance with applicable provisions.

The juridical meaning of the constitution, requires a participatory agrarian legal structure, and to a sense of togetherness (unity) that is integrated, strong in the unity of the nation and state, namely the procedural model that views the need for the state to impose regulations that enact a unified regulation of the politics of agrarian law, participatory, and the realization of joint strength in the land sector, not the concentration of ownership in the hands of individuals or certain groups of people.

Land rights, which bear to the legal relationship between the State and land, appear the bear of the right to control land by the State. The legal relationship between the individual and his land gave birth to individual rights over the land, the legal relationship of the Customary Law Community to the land bear to customary rights. According to M. Bakri "ideally the relationship between the three rights (the right to control land by the state of customary rights and individual rights to the land is harmonious and balanced, meaning that the three rights are equal in position and strength and not mutually detrimental" (Bakri, 2007). But unfortunately the laws and regulations invitation, giving large and unclear powers to the state to control land in Indonesia Unfortunately, the joint conception of national property rights based on customary law is not optimally explored, customary law is only placed respectfully as a display, but tampered by industry the law that makes the complexity face of national land.

The presence of community participation in Foreigner Residential Provision, raises civil relations in three models, namely: (a) based on leases, over land rights (b) the inclusion of community landowners as shareholders of Limited Liability Companies, and (c) community landowners join cooperative membership.

IV. RESULT AND 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 (d) 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 a equitable and prosperous society.

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. According to M. Bakri "ideally the relationship between the three rights (the right to control land by the state of customary rights and individual rights to land is harmonious and balanced, means that the three rights are equal in position and strength and not mutually detrimental" (Bakri, 2007). 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.

The classic agrarian problem is the occurrence of land tenure and ownership in a handful of people, with the *Gini* ratio of Indonesian land at a position near to 0.58, meaning that one percent of the total population of Indonesia controls 58 percent of the total land area in Indonesia. This situation means that land tenure and ownership are still imbalance. The government responds through corrective efforts to restructure an unequal agrarian structure through agrarian reform, which allows human exploitation on human, towards a new order with structures that are grounded in agrarian justice. Agrarian justice itself is a condition where there is no excessive concentration in control and utilization of agrarian resources in a handful of people. Unfortunately, agrarian reform is considered to be the legalization of assets through land certificates. While land redistribution is not the main goal. This can be seen from the comparison of the realization of National Agrarian Operations Project and Complete Systematic Land Registration which is greater than the redistribution of land through exhausted of Cultivation Right, abandoned land and the release of forest areas, indirectly considered to perpetuate inequality.

But despite the existing contradictions, it should be recognized that agrarian reform has gained several "victories". First, agrarian reform is increasingly being positioned as the country's agenda. Second, there are legal instruments for implementing agrarian reform and agrarian conflict resolution in forest areas, through Presidential Regulation No. 88 of 2017 concerning Settlement of Land Tenure in Forest Areas (and Presidential Regulation No. 86 of 2018 concerning Agrarian Reform. Third, issued Presidential Instruction (Inpres) No. 8 of 2018 concerning a moratorium on licensing of oil palm plantations, which minimizes agrarian conflicts due to the expansion of oil palm corporate corporations. Fourth, the opening of the national consultation on the implementation of agrarian reform and social forestry for social justice. Fifth, there has been granting certainty of land rights for farmers.

Agrarian reforms that that proceeded slowly in the first period underlie various parties leading the Omnibus Law Discourse or the strategy of structuring laws in the field of Agrarian and Natural Resources later as a solution. This issue seems to have been made to welcome the National Medium-term Development Plan 2020-2024. Actually, a new solution for Omnibus Law is not yet urgent in the agrarian field. At least until the government is serious about implementing the law that orders agrarian reform to farmers and landless people. As mandated by Act No. 5 of 1960 concerning Agrarian Reform and Act No. 19 of 2013 concerning Farmer Protection and Empowerment. Agrarian reform will work well depending, firstly, the political will of the government, Secondly, a strong farmer organization, as the subject of agrarian reform; Third, the availability of valid data. Fourth, academics and the military support. Fifth, clean bureaucrats, and sixth, the political elite must be separated from the business elite. In this second period in the 2020-2024 National Medium-term Development Plan, we await the promise of the two agrarian reforms that are implementative, fast, and led directly by the President. Agrarian reform in the future is certainly expected to be able to meet the conditions as explained earlier.

The basic problem in agrarian law is that the Deregulation of the Agrarian Law 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 society. In this case, the research is trying as much as possible to explore the fundamental joints, the factors of power and the presence of regulations that encourage the realization of participatory agrarian law. This means agrarian law that encourages community participation in Foreigner Residential Provision or joint economic activities, with conditions in accordance with applicable laws to achieve a just and prosperous society in accordance with the basic framework of consistent and sustainable national development as mandated by the TAP MPR (The Decree of People Consultative Assembly) No. IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources.

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 (Romadhaniah, 2018). As known, the World Bank measures the ease of doing business based on 10 indicators with the same weight, namely: starting a business, dealing with construction permits, registering property, paying taxes, getting credit, enforcing contracts, having electricity, trading across borders, resolving insolvency and protecting minority investors. Among the 10 indicators, those that received poor ratings were indicators of starting a business, dealing with construction permits, registering property, paying taxes, enforcing contracts and trading across borders. Simplifying the licensing system is one strategy to attract more investors to Indonesia. There are still many facts in the field regarding the permit system which takes a long time. As a result, Indonesia is unable to compete in the field of investment compared to neighboring countries such as Singapore, Malaysia, Thailand, and even Vietnam.

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.

Negative Investment List includes a list of business fields that are closed in whole or in part for foreign and domestic private investment. The most recent Negative Investment List regulation changes are in the Republic of Indonesia Regulation No.36 of 2010 ("**Presidential decree 36/2010**").

Business Fields Closed for Investment

Based on Article 1 (1) of Presidential Regulation 36/2010, closed business fields are certain business fields that are prohibited from being undertaken as investment activities. This

determination is based on the criteria of health, morals, culture, environment, national defense and security, and other national interests.

Business fields that are closed to investment as stipulated in Attachment I to Presidential Regulation 36/2010 include, among others, cannabis, gambling/casino, and alcoholic beverages industries. Furthermore, Article 12 paragraph 2 of Act No.25 of 2007 ("Act 25/2007") stipulates several business sectors that are prohibited for foreign investment because they are considered to play an important role in national defense, such as: (i) production of weapons, gunpowder explosives and war equipment; and (ii) business sectors that are explicitly declared closed based on the Law.

Based on Article 2 (1) of Perpres 36/2010, conditional open business are certain business fields that can be undertaken as investment activities with certain conditions, namely business fields that are reserved for micro, small, medium and cooperative businesses, business fields that are required by partnership, business sectors required for capital ownership, business sectors required by a certain location, and business sectors required by special licensing.

Regulations regarding conditional open business sectors for investment are based on criteria of national interest, namely protection of natural resources, protection, development of micro, small, medium and cooperative businesses, supervision of production and distribution, enhancement of technological capacity, participation of domestic capital, and cooperation with business entities appointed by the Government.

Business fields that are open to the requirements as stipulated in Appendix II of Perpres 36/2010 include, among others, business in the cultivation of staple food plants, exploitation of swallow's nest in nature, sea fish hatchery, small scale power generation and recycling of goods not metal.

In the matter of investment in an conditional open business sector, in accordance with Article 3 paragraph 1 of Presidential Regulation 36/2010, investors must comply with the location requirements as regulated in the applicable laws and regulations in the spatial and environmental sectors.

Then the presence of investors must be balanced with the availability of economic law, land, spatial planning, investment and supporting regulations, which are sufficient to provide guarantees of justice, certainty, and benefits to the public and investors. Although Foreign Legal Entity can only try in open business fields, including oil and gas mining, sea transportation and air transportation, especially for foreign transportation. Whereas in the field of banking, while for foreign banks can only establish branch offices in Indonesia ([Supramono, 2012](#)) operations are limited to certain cities.

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.

(Geertz, 1992) 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 Geertz 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/dwellings 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 ecosystems 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* (Wartam & Murti, 2015), 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.

Foreigners Residential Provision which has a high (economic) investment value are houses/dwellings that have good, safe and comfortable public transportation accessibility, environmentally friendly with adequate green open areas, long useful life, have legal certainty and are marketable. These prerequisites become a reference for expatriates and their families in making choices about the house/dwelling of their choice.

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.

The OSS System Version 1.1 was created to facilitate the licensing process in Indonesia better than before. As many things in the previous system were considered not to represent the needs of business actors even though the government's good intentions to improve the ease of doing business really needed to be appreciated.

Juridically, the OSS system version 1.0 was launched on June 21, 2018 by the government by issuing Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services. Since then the concept of licensing submission has changed quite significantly where the submission process can be done online through the Online Single Submission System (OSS). After more than a year of OSS implementation, there are still many parties who think that this system still has shortcomings in practice. Therefore, the government continues to improve the OSS system for the sake of creating a better investment climate. One of them is with a plan to implement OSS Version 1.1, which will start actively replacing OSS Version 1.0 on November 4, 2019 at 00.00 West Indonesia Time.

Before the implementation of OSS Version 1.1 was realized, Investment Coordination Agency announced that there would be a migration of company data from OSS Version 1.0 to OSS Version 1.1 on Friday 1 November 2019 starting at 19.00 West Indonesia Time until Sunday 3 November 2019. You need to pay attention during migration, company data goes on so the OSS service is temporarily suspended. Access to the OSS system is limited to business actors who already have an OSS account and even then only for the purposes of checking company data. It must be emphasized that the OSS System Version 1.1 is not a development of the OSS System Version 1.0 but this is an attempt by the government to build a new system based on the evaluation of all the problems and weaknesses that exist in the OSS System Version 1.0. This is done by making improvements to the database structure and completing various validations.

Another difference worth to be noted is the feature for Investment Office and One Stop Integrated Services. OSS Version 1.0 does not yet provide a feature (in webform) that can be used by Investment Office and One Stop Integrated Services to provide notification of approval for fulfillment of infrastructure commitments (eg location permits) per location point of business/project activities, but only per Regency/City. In this latest system, it will be quite different because it provides features (in webform) that can be used by Investment Office and One Stop Integrated Services to provide notification of business /project activity approval per location point. With this feature, all Regency/City Investment Office and One Stop Integrated Services can check to validate and send re-notifications of infrastructure commitments (both location permits/environmental permits/Building Establishment Permit/Certificate of Eligibility) from companies that already have Business Registration Number and Business Licenses through OSS. This is especially true for companies that have more than one location Permit/Environmental Permit/Building Establishment Permit/Certificate of Eligibility in one Regency/City to ensure which ones have fulfilled their commitments and are effective and which ones have not. The OSS system was established to facilitate the licensing process in Indonesia better than before. Because, many things in the previous system were considered not to represent the needs of business actors even though the government's good intentions to improve the ease of doing business really needed to be appreciated. Juridically, OSS was launched on June 21, 2018 by the government by issuing Government Regulation No. 24 of 2018 concerning Electronic Business Licensing Services. Since then the concept of licensing submission has changed quite significantly where the submission process can be done online through the Online Single Submission System (OSS).

After OSS is implemented, there are still many parties who argue that there are still shortcomings in practice. Therefore, the government must always improve the OSS system for the sake of creating a better investment climate. Migrate company data from OSS Version 1.0 to OSS Version 1.1. is not constrained. OSS version 1.1. is part of an effort to improve the system based on evaluating all the problems and weaknesses that have existed so far. With this feature, all Regency / City Investment Office and One Stop Integrated Services can check to validate and send re-notifications of infrastructure commitments (both location permits/environmental permits/Building Erection Permit/Certificate of Eligibility) from companies that already have NIB and Business Licenses through OSS. This is especially true for companies that have more than one location permit/environmental permit / Building Erection Permit/Certificate of Eligibility in one Regency/City to ensure which ones have fulfilled their commitments and are effective and which ones have not. Improving the database structure and completing various validations. is one of the strategies for planning, developing, evaluating and controlling investment and industry through an integrated system for the long term. In the future, OSS is expected to be a reference in the establishment of national and investment industry standards, which are accurate and reliable.

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.

Democracy, when there is no other political system that is more adequate and universally accepted, requires and places society as a citizen with all the rights attached to it. TH Marshall (1893-1981) was the main thinker who laid the basic concept of citizenship as “a status bestowed on those who are full members of a community. All who have the status are equal with respect to the rights and duties with which the status is endowed”. As a citizen, then he inherently balanced rights and responsibilities. Marshall divides the rights owned by every citizen into three categories, namely: (a) Civil right, namely the matter for freedom of speech, thought and have confidence; the right to own property and work; and the same rights before the law. (b) Political right, i.e. the right to participate, vote and be elected in the political process (elections). and (c) Social rights, namely the right to welfare and security; the right to obtain basic education (not only free, but compulsory); and the right to live in a civilized life in accordance with applicable standards in society.

The definition above still places the community as a party that needs to be involved in the decision-making process that has an impact on people's lives, by reason of the approach (1) public participation as voluntary, (2) as a mandatory, the quality of implementation is determined by: (1) the level of democratization state, and (2) 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, beyond procedural democracy which has meaning as consultation, deliberation, or deliberation. 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. The quality factors will be determined: (1) The quality of the implementation of public participation is certainly different from one country to another. The main thing is that public participation will “increase the legitimacy” of a decision or policy that has an impact on society. This legitimacy is important for the government to be able to embrace various interests in society so that social and political stabilization can be created. When legitimacy increases, the implementation of a decision will be easier, because it does not generate resistance in society. In addition, public participation shows that the process of formulating public policies runs democratically and is bottom-up. (2) The private sector that implements a process of public participation in any business-related decisions that have an impact on the surrounding community will provide many benefits, including: Business security. (a) Business security is certainly a very important thing for investors and business people in running their business. Without business security, it is not possible for a business to be able to run well. In a democratic country like Indonesia, business security can no longer be relied upon by the security forces, but rather on the support of the community and stakeholders around the business. For this reason, public participation is needed to build good understanding in every decision taken by a company. (b) Good relations with the community. The practice of public participation carried out by the business sector will have a positive impact in the form of building good relations with the community and stakeholders. This good relationship is one indicator of sustainability of the business in question. (c) Legitimacy of business presence. Legitimacy is the recognition of the public and other parties that the existence of a business has a positive impact on the national and local economy. This legitimacy can only be built through good public participation practices with the community and stakeholders concerned. (d) Meet various international requirements and standards.

The IFC Performance Standards and Equator Principles require its clients to carry out a process of public participation in each stage of investment. So, it is very important for the business sector to carry out public participation well to meet the requirements of lenders; and (c) for the community, public participation shows the relationship between components

of the state (state/government)-private sector (business sector) of civil society running well. The higher the quality of the implementation of public participation by the government and the business sector, the more benefits people and civil society organizations will have, in the form of having heard people's aspirations in formulating a policy, reducing the risk of a policy on the livelihoods of many people, building up harmonious relations between stakeholders, and so on.

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.

The erminology of 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 housing/dwelling 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 Foreigner Residential Provision, 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 Foreigner Residential Provision, with an investment value equal to the value of the land invested in Legal Entity of Foreigner Residential Provision, (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 of Act of Republic Indonesia 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. 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 essence of the agreement made is intended to give all authority as an owner, from a plot of land along with the building of a citizen of the Indonesian Citizens, which according to the law cannot be owned, violates the Basic Agrarian Law. The concept of land tenure is in fact factual which is concerned with reality at one time. Normatively, the concept of tenure is temporary in the sense that it still requires the return of further legal certainty regarding the relationship between the parties and the control of land by foreigners and foreign legal entities that have representation in Indonesia are regulated in Article 41 and Article 42 of the Basic Agrarian Law.

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. Governmenr 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 Governmenr 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. Governmenr 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 (Wardani, 2018).

The Basic Agrarian Law adopts the principle of prohibition of land alienation (gronds verponding verbood), 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. However, not a few foreigners have shelter through "nominee" agreements that are vulnerable to legal conflicts with the risk of economic loss for foreigners. Therefore, the parties must know the substance of Government Regulation No. 103/2015 Provision of Foreigner Residential. Foreigners wishing to have residences/homes forged to live must know well the substance of Government Regulation No 41/1996 or 103/2015, which does not contain restrictions or impose sanctions for nominee acts or practices carried out by foreigners /Foreign Legal Entity, then the use of the name of Indonesian citizens as rights holders, Under a nominee agreement, which is protected through the legal relationship between the binding of debts and the imposition of mortgage rights, this is a form of ownership over mortgage rights that is against the law.

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 (*beleidsovereenkomst*). H.M. Laica Marzuki said that in 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 Ministerial 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 Ministerial 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 Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 13/2015 and then amended by Ministerial 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. So nominees actually cause conflict and legal uncertainty.

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. Then the 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 / dwelling only can be above the right to use.
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

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