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CONTENTS

COPYRIGHT PROTECTION OF WAYANG KULIT AS A TRADITIONAL INDONESIAN CULTURE

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Abstract

This study aims to understand how the Indonesian government and people work to preserve art that has become an integral part of the Indonesian state and nation, especially wayang kulit and the history of wayang itself. This study was done by library research as a research method. In this regard, the study utilizes a variety of connected or relevant sources, including books, journals, magazines, documents, and others, as well as common law jurisdictions such as Law No. 28 of 2014 pertaining to Copyright. The findings reveal that wayang kulit as a traditional Indonesian culture has been legally protected by the state in accordance with Copyright Law no. 28 of 2014 (UUHC), which is irreversible and has been registered by the government at the Convention for the Safeguarding of the Intangible Cultural Heritage on November 7, 2003, so that it can be preserved and protected from claims by other countries as their own culture. It is hoped that in the future, by being protected by law, the Indonesian people will be able to maintain and preserve wayang kulit so that they do not become extinct and are not claimed by other nations.

Keywords: *Copyrights, Indonesian Traditional Culture, Intellectual Property Rights, Wayang Kulit*

1. INTRODUCTION

As time passes and the world has grown closer, cultural practices have become a battlefield for political objectives, such as claims and petitions for recognition from UNESCO. In a nutshell, the purpose of all this activity is to improve the country's international standing. The domino effect of technological, economic, social, and political progress within the framework of a state—here, a contest for the greatness of each country—has an impact on culture. Cultural transmission, ancestral roots, and even a dash of politics are all integral to any and all histories (Sujatmiko, 2014; Tim, 2006).

Malaysia is one of the countries that always has conflict concerns with Indonesia, particularly connected to culture as a result of the rapid development of Malaysia, which demands the original character of the country to be maintained (Henry, 2011). Physical and non-physical aspects of Indonesian culture have always been claimed and recognised by Malaysia. One of these, Malaysia's latest claim to reog ponorogo, is generating controversy and is currently making headlines. Malaysia will propose the Barongan dance, known as Reog, to UNESCO as their intangible cultural heritage. There has been a lot of anger and criticism expressed by Indonesian public, artists, and government officials over Malaysia's assertions in this case. In Malaysia, reog is better known as “Barongan Dance” and may be found in a number of locations in Johor and Selangor. Barongan was brought to Malaysia circa 1722 by roaming Javanese, particularly from Ponorogo, prior to the establishment of the Indonesian state (Sagio & Sunarto, 2004; Sudjarwo et al., 2010).

In this case, not only is reog claimed by Malaysia, but the other cultural heritage belonging to Indonesia that has been claimed for a long time, *wayang* (puppet), has gone viral and provoked anger from the community. This incident arose when one of the shoe models produced by Malaysian graphic designer Jaemy Choong stated that *Wayang Kulit* or shadow puppet was a part of the identity and cultural heritage of Malaysia. Later, Indonesian citizens flocked to Adidas' Instagram account, which was eventually widely discussed and corrected by declaring wayang an indigenous Indonesian tradition. *Wayang Kulit* or shadow puppet has existed since ancient times during the ancient kingdom, and the wayang itself has been preserved for generations. Art performers and scholars such as Wali Songo continue to use wayang performances to promote Islamic sharia on the island of Java.

The fact that this international conflict has dragged on for so long with no end in sight is not news to us. Continually creating conflicts and grudges between communities and fostering negative opinions of unresolved issues (Nugroho, 2006; Simorangkir, 1979). We also wonder how the government protects traditional culture, specifically *Wayang Kulit*, on a national and international level given that we, the younger generation, do not fully comprehend the legal ramifications of *Wayang Kulit*'s copyright, which is owned and held by whom the royalties are also the basis for *Wayang Kulit*'s ownership as a culture that belongs to Indonesia (Djumhana & Djubaedillah, 1993; Subroto, 2005). Concern and reflection on the part of the author about the copyright for *Wayang Kulit* as a cultural heritage have arisen in this scenario.

Wayang Kulit, as a traditional culture, should be maintained as an intellectual work that can be exploited commercially for the community's prosperity and welfare. Efforts to conserve Indonesian traditional cultural expressions gained prominence following the emergence of a disagreement between Indonesia and Malaysia over Malaysia's usage of various traditional cultures. From this perspective, the author is interested in discussing and documenting the topic in this paper. Considering the foregoing, this research seeks to understand how the government and society of Indonesia are working to preserve the arts that have come to represent and constitute an integral part of the Indonesian state and nation, specifically *Wayang Kulit* and the history of wayang itself.

2. LITERATURE REVIEW

2.1. Copyright

In Indonesia, copyright refers to "*Hak Cipta*" which consists of two words, namely "*hak*" and "*cipta*" (Rahayu, 2010). Thus, it can be interpreted that copyright is the right that a creator has over his creation. A creation is the result of each creator's work in a unique form and shows its authenticity in the fields of science, art and literature. At first, the term for known copyright was the right that an author had over his creation (Dalimunthe et al., 2022). Creation is the result of each creator's work in a distinctive form and shows its authenticity in the fields of science, art and literature (Sartono, 1992; Sterling, 2003).

Intellectual Property Rights, or in Indonesian refers to HKI (IPR), are legal rights that are exclusive (in particular) owned by the creator or inventor as a result of intellectual and creative activities that are unique and new. This intellectual work can be in the form of copyrighted works in the fields of science, art, and literature, as well as inventions in the field of technology (Holt & Mas, 2000; Isma'un, 1989). Understanding Intellectual Property

Rights in the legal concept is a set of legal rules that guarantee exclusive rights to exploit Intellectual Property Rights within a certain period of time based on the types of Intellectual Property Rights (Fishman, 1996). Meanwhile, according to the Director General of Intellectual Property Rights, Intellectual Property Rights or IPR is a process that is useful for humans (Amir, 1991).

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations (Ayu et al., 2014; Nur, 2020; Prabowo, 2015). In Bahasa Indonesia, the word "*Hak* " which is often associated with obligations is an authority given to certain parties which are free to use or not. While the word "*Cipta*" or creation refers to the work of humans by using the mind, feelings, knowledge, imagination and experience, so that it can be interpreted that copyright is closely related to human intellectuals.

2.1. *Wayang Kulit* as a Part of Copyright Protected in Indonesia

Wayang or Puppets have been claimed several times, while according to the Minister of Culture of Malaysia 2004-2008, namely Dr. Rais Yatim said that "*Wayang Kulit*, which is often performed in Malaysia, has nothing to do with Indonesia because the art comes from the Hindu tradition." It is true that in the current era of globalization, *Wayang Kulit* has been assimilated with other cultures such as Balinese, Malay and others. However, it is not appropriate to claim that the *Wayang Kulit purwa* which is usually played by Malaysians is considered to be theirs.

Copyright Law No. 28 of 2014 contains provisions pertaining to cultural matters. When there is no derivative law that explains and outlines aspects of traditional culture, especially *Wayang Kulit*, it poses an issue for society. Article 38, paragraph 2, of Law No. 28 of 2014 declares that the state is required to register, preserve, and protect traditional cultural forms (Pandam, 1996).

The controversy over the existence of wayang that has been hot lately has given rise to pro-contra debates (Arifin, 2013). In the end, many displayed expressions of anger and led to prolonged debates. Starting from Malaysia's claim to a statement from a famous cleric, Ustad Khalid Basalamah, who said that shadow puppets were forbidden and should not be played. In Islam, it is not allowed to resemble humans while *Wayang Kulit* itself is iconographically described above that it is much different, only the anatomy of the body but face to face is very different until finally Gus Miftah as a cleric and artist acted by playing a wayang play entitled Dalang Ngjuang .

In this case, we know that Article 60 Paragraph (1) of Law No. 28 of 2014 concerning Copyright states that the Indonesian state holds the copyright to traditional culture, specifically wayang, but the government has not drafted and enacted a comprehensive and complex law on this subject. As a result, it is expected that the responsibility of the state in conserving and caring for cultural variety will be more real if an acceptable and relevant law exists. In addition, citizens feel secure in their ability to observe local traditions (Kusmawan, 2014). Correspondingly, art actors are more at ease with their job when they are not interrupted by provocations on behalf of opposing ideas and different beliefs.

3. RESEARCH METHOD

This research method involves library research. Research that makes use of multiple sources of material, such as books, journals, magazines, documents, and others that are related or relevant to the problem in the object of the research study, as well as related laws, such as Law No. 28 of 2014 Concerning Copyrights, is considered to be multi-source research.

4. RESULT AND DISCUSSION

4.1. Legal Protection for *Wayang Kulit*

According to Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The State shall advance Indonesian national culture in the middle of international civilization by safeguarding the freedom of the people to preserve and develop their cultural values." Therefore, these two cultural identities must interact in a dynamic manner. The tension between the two parties must constantly be controlled effectively.

The responsibility of the state in fulfilling this matter is carried out based on state legal politics to achieve the goals of the nation and state in the dimension of achieving broad welfare. Based on article 18B paragraph (2), 28C paragraph (2), 28I (3) of the 1945 Constitution, the government is obliged to fulfill the Cultural Rights owned by the local community for their intellectual assets, with regulations that support the implementation of these rights. In relation to Article 33 paragraphs (3) and (4) of the 1945 Constitution, the state is responsible for managing biological resources for the welfare of its people without exception, including managing folklore.

In Article 39, paragraph 1, of Law No. 28 of 2014 on Copyright, *Wayang Kulit* is implicitly listed as one of the works protected by copyright law, indicating that leather enjoys complete legal protection. The first reason is because *Wayang Kulit* is a sort of copyrighted work that falls under the categories of art, literature, and science, which is also the scope of copyright's operation. Second, Article 38 of the UUHC also addresses the position of traditional cultural expressions such as *Wayang Kulit*, stating that the state holds the Copyrights for such expressions. As stated in the UUHC, the state is the sole holder of people's copyrights that are explicitly mentioned, namely the "takeover" of these copyrights. However, this regulation is ambiguous on the subject so long as it is known that the takeover in this case is carried out directly by the state without consultation with indigenous peoples/stakeholders in certain indigenous communities. It was explained upon observation that the state has the authority to do so. In this provision, the state's ownership of the copyright to folklore can also be viewed as an advanced step of the folklore protection scheme, whose basic stage is to identify the production as a tool. The state maintains the copyright on folklore and folk culture items, including *Wayang Kulit*. Under addition, in Article 60 paragraph (1) of Law No.28 of 2014 about Copyright, which limits the duration of legal protection for shadow puppets, it states: "Copyright on traditional cultural expressions held by the state pursuant to Article 38 paragraph (1) applies in perpetuity."

4.2. Indonesian Government Policy on *Wayang Kulit* as Indonesian Traditional Culture

The government through the Ministry of Education and Culture (*Kemendikbud*) takes steps to protect Indonesian culture. One of them is by registering intangible cultural heritage with the United Nations of Educational, Scientific, and Cultural Organization (Unesco). The preservation of cultural heritage, both material and immaterial (intangible) is based on international legal instruments issued by UNESCO. The convention that regulates and "protects" the cultural heritage is the UNESCO convention on the preservation of intangible cultural heritage 2003 (Convention For The Safeguarding of Intangible Cultural Heritage / ICH) (Adawiyah & Rumawi, 2021).

On November 7, 2003 UNESCO has included *Wayang Kulit* in the Master Piece of Oral and Intangible Heritage of Humanity as a world cultural heritage originating from Indonesia, and after the ICH came into force/entered in 2006 the culture or folklore previously included in, including *Wayang Kulit* The Master Piece of Oral and Intangible Heritage of Humanity was incorporated into the International Convention for The Safeguarding of Intangible Cultural Heritage.

Through Presidential Decree of the Republic of Indonesia Number 30 of 2018, dated December 17, 2018, the Government has set November 7 as National Puppet Day (HWN). The government's desire to immediately set the momentum so that the wayang community can commemorate the puppet day has long been a discourse. The establishment of the National Puppet Day is the peak momentum of awareness, unity, and love of the Indonesian people for wayang in preserving, developing, and studying wayang in its contribution to realizing a dynamic and modern national culture. The determination of the National Puppet Day is expected to be a trigger for the wayang community to increase appreciation as well as a means of forming national identity and character.

4.3. Public Policy Theory Analysis of Government Policy to Maintain National Culture

Wayang Kulit or Shadow puppet was registered as a representative list in the ICH. This convention has been ratified by Indonesia not in the form of a law, but in the form of Presidential Regulation Number 78 of 2007. Following the culture that has been registered with UNESCO there are 12 intangible cultural heritages that have been officially recognized by the world as originating from Indonesia, namely: Wayang, Keris, Batik, Batik Education and Training, Angklung, Saman Dance, Noken Bag, Three Genres of Balinese Traditional Dance, Pinisi Ship, Pencak Silat, Pantun and Gamelan.

Public policy regarding government policies to maintain national culture where Indonesian intangible culture has been recognized by the world and cannot be recognized by other countries. We can also see how policy analysis in theory and the explanation of its sequence according to William N. Dunn in making and shaping a policy so that policies that are arranged from upstream to downstream can be carried out easily and completed well. This is the government's effort to protect Indonesian culture and sovereignty from other parties or countries who want to take over and unilaterally claim the property rights of that culture.

Wayang as a cultural heritage can be destroyed if there is no good enough appreciation from the community and the government for the puppet art actors. The puppeteer (*dalang*) as the main player in wayang as the owner of related rights in wayang performances needs to get guaranteed protection of economic rights when the show is broadcast on electronic

media so that they can still earn sufficient income even though the schedule of events is reduced as a result of the development of electronic media and telecommunications.

The existence of wayang cannot be separated from the central character of a puppet show, namely the Dalang. A dalang is someone who plays wayangkulit and acts as the leader of the show. Famous puppeteers including the late Ki Nartosabdo, the late Ki Anom Surata, the late Ki Manteb Sudarsono, the late Ki Entus Susmana, the late Ki Purba Asmara, the late Ki Hadi Sugita, the late Ki Timbul, the late Ki Seno Nugroho S.Sn., Hadiprayitna, the late Ki Gina Purwacarita and others. Each of these puppeteers has a characteristic in playing wayang that makes people love every puppet show he does (Intarti, 2013). Each puppeteer has his own character, such as a serious nature, comedy and even performing puppet shows such as boxing and fighting like a hollywood movie.

5. CONCLUSION

Law No. 28 of 2014 concerning Copyright has regulated the protection of folklore or traditional culture in Indonesia and is a form of the state's seriousness in maintaining its culture even though it is still classified as not regulating the shadow puppets themselves. In Article 60 UUHC No. 28 of 2014 Copyright on traditional cultural expressions held by the state as referred to in Article 38 paragraph (1) is valid indefinitely and Copyright on Works whose Author is unknown which is held by the state as referred to Article 39 paragraph (1) and paragraph (3) shall be valid for 50 (fifty) years since the first Publication of the Work is made.

Based on history, *Wayang Kulit* or shadow puppets has existed since 1500 BC, starting from ancient Javanese ancestral scholars and derived from grass that is formed and tied. In this case, there are Hindu cultural influences, but Javanese shadow puppets themselves have significant differences in characteristics such as story plays, characters and even how to play them. As in the case of Javanese puppets in Malaysia, because in the 1700s when colonialism under the VOC at that time sent Javanese workers to all regions including Malaysia, the overseas Javanese brought their ancestral culture and were preserved from generation to generation to this day. It can be said that there are only carrying out and maintaining ancestral customs.

As a large country and rich in culture, the country has also registered *Wayang Kulit* in ICH with Unesco. This convention for the protection of intangible cultural heritage has also been ratified by Indonesia in the form of a Presidential Regulation No. 78 of 2007 and Law No. 5 of 2017 concerning the Advancement of Culture was ratified on April 27, 2017 in this Law there will be strategies to maintain and promote culture.

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APPLICATION OF THE LIABILITY PRINCIPLE IN THE LAND SALE AS JOINT PROPERTY BEFORE A NOTARY

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Abstract

This study aims to comprehend the legal basis for selling land as joint property before a notary as well as to know and comprehend the application on principle liability as joint property before a notary. An empiric legal research approach was applied for this study. This study uses statutory approach and fact approach. In this study, primary data was sourced from interviews and secondary data came from the civil code, marriage law, literature, journals and the internet. Data processing is done by qualitative descriptive. The findings of this research indicate that a clause that prohibits the sale of land from joint property without the approval of the wife is incorporated in the agreement that governs the sale of land as joint property. In this case, the liability principle is applied in accordance with the agreement made by the husband as the seller of the land with the buyer. The husband was to blame for the agreement since he neglected to involve his wife in the business transaction involving the land seller. Therefore, according to the principle of liability, responsibility must fall on the shoulders of the seller.

Keywords: *Joint Property, Land Sale, Liability, Notary*

1. INTRODUCTION

Starting from the difference between necessity and the reality experienced in society, where there were legal norms that are violated in making a sale and purchase agreement. The violation of the Marriage Law, specifically Article 36 paragraph (1) (hereinafter abbreviated as the Marriage Law) stated that husband and wife were entitled to joint property with the full consent of both parties. Furthermore, paragraph (2) stipulated that the wife and husband had full rights to their assets. This legal norm clearly stated that there were good actions taken by the wife and husband with their consent. Against the clauses of the article, it can be said that all actions are based on the agreement of both parties. Meanwhile, related to objects brought into a legal marriage become joint property.

The intended property can be in the form of ownership rights of an object. Ownership of the property is obtained from marriage or during the marriage. It was clearly seen in the provisions of the article above which explains that only husband and wife have rights to joint property. All legal actions that are carried out, especially those related to joint property, must obtain the approval of both the approval of the wife and the approval of her husband.

In connection with the sale of land originating from joint assets, if someone does not comply with these provisions, then a sale and purchase transaction cannot be carried out (Indrawan & Munandar, 2022). The transaction cannot be carried out because it does not receive approval from each party. In other words, if the transaction is still carried out, then the transaction will be rejected by an official who has the authority to do so, such as a land deed official. If the person selling the land does not have the right to sell it, the land deed

official will reject the transfer of rights. Seeing its status, it is included in the category of joint property so that it requires the agreement of both in the transaction.

In this case, there was a transaction that did not invite and involve his wife. Where the land being sold was a joint property. Property rights were based on the consent of his wife. Meanwhile, the party who selling property rights was her husband as a seller. Thus, it can be said that the seller intends to sell the ownership rights to the land secretly. It was said secretly because the seller did not want his wife to know about the sale of ownership rights to the land. If the wife knows, then she will not be allowed to sell or not be allowed to sell the ownership rights to the land. The seller assumes that there are factors that the seller does not want when asking permission from his wife. Moreover, if his wife asks for a share of the proceeds from the sale of the land. If his wife asks for a share, then the seller will get very little money or not according to what he wants. On that basis, the seller did not ask for his wife's approval in the sale of land ownership rights that he did. Thus, there was a transfer of joint property objects without the consent of the wife.

Based on this fact, the seller must bear the risk as a result of his actions. The legal action of the seller is to make a transfer of ownership rights through a binding sale and purchase in advance of a Notary. In this binding, the buyer pays for the land sold in installments or is paid several times until it is paid off. The buyer must first provide an advance in accordance with the agreement. Subsequent payments were made in installments. The installments were carried out while waiting for the transition process to be paid in full, then proceed with the transfer of names and proceed to make a deed of sale and purchase. This stage has not yet reached the transfer of rights, but has arrived at the making of an agreement.

The sales transaction has been made in advance and an advance payment has also been made by the buyer. With the down payment, it can be said that the sale of ownership rights to the land is taking place. With the land sale transaction, the sale from the seller, including a legal act. Based on the sale of property rights, the seller can be held liable because the seller committed a legal action that violated the PP on Land Registration, by taking the title "The Application of Liability Principle in the Sale of Land as Joint Assets Before a Notary".

As for the state of art, comparing this study to several studies that have been conducted. According to previous studies, with the title "Responsibility of a Notary and land deed official Against the Sale and Purchase and Grants of Land Rights as Joint Assets Due to Divorce" by Brifi Engawita, and Farida Perihatini. The problem is what is the position of the deed of “sale and purchase and the deed of transfer of land rights as joint property due to divorce based on the Supreme Court Decision Number 1808 K/Pdt/2017? and What are the responsibilities of the Notary and land deed official for the authentic deed he made so that legal certainty can be maintained based on the Supreme Court Decision Number 1808 K/Pdt/2017? (Enggawita & Prihatini, 2021).

Research by Ida Ayu Putu Kristanty Mahadewi, and Dewa Nyoman Rai Asmara Putra.” The research entitled "Legal Consequences and Settlement of Joint Assets Based on Marriage Law". The problem is what are the legal consequences of joint assets in the marriage agreement seen from the Civil Code and the Marriage Law and how is the settlement of joint assets in the marriage agreement based on the Civil Code and the Marriage Law? (Mahadewi & Putra, 2020). Another study entitled "State of Bankruptcy Assets in Religiously Divorced Marriages" by I Gede Krisna, and Marwanto (Krisna & Marwanto, 2021). The problem is whether in a divorce which is carried out according to religion which

has not been decided by the court, the husband/wife gets the distribution of joint assets? and what is the accountability for his mistakes when he gets a divorce or goes bankrupt? The three studies are certainly very different. As a result, the focus of this research is what sets it apart from another research. The first research object is about the Notary's responsibility for buying and selling, while the second research is the object of the Supreme Court's Decision and the third research is on the legal consequences and settlement of joint assets, while the object of current research is the application of the principle of liability in the sale of land as joint property before a Notary. Normative law is also the difference, while this study uses empirical legal research. In addition, the location of the research is also different, where the location of this research is carried out at the Notary's office and land deed official. Despite the fact that there are discrepancies, there are also similarities. The similarity lies in legal studies related to joint property. The difference and equation provide this research originality or by dating this research with previous research, this research is still said to be something that has never been studied.

Departing from these discrepant events, this research was conducted with the aim of understanding the legal basis for the sale of land as joint property before a Notary and aims to identify and understand the application of the principle of liability in the sale of land as joint property before a Notary.

2. RESEARCH METHOD

Types of empirical legal research, synonymous with the doctrinal method (Asikin, 2016). By this type of research, it was essential for the doctrines of legal scholars to analyze legal issues related to the legal basis for the sale of land as joint property before a Notary and the application of the principle of liability in the sale of land as joint property before a Notary. The type of statutory approach as well as the conceptual approach was employed to examine the legal issues. Those two types were chosen because the legislation analyzed the Marriage Law, the Civil Code and the Government regulation (PP) on Land Registration. The fact approach was chosen because an analysis of the practice was carried out in the Notary's office. This fact approach was used as a supporting material for this research. While the concept approach was used because it closely related to the concept of liability. The sources used were interviews with Notaries and land deed official, while secondary data was obtained from legislation, namely the Marriage Law and the Civil Code, literature, internet, and scientific journals related to the legal basis for selling land as joint property before a Notary and the application of the principle of liability in land sales as joint property before a Notary.

3. RESULT AND DISCUSSION

3.1. Land Sale as Joint Property before a Notary

The legal basis for selling land before a Notary, whether as joint property or not joint property, is the same as the legal basis for selling land in general. The sale of land made before a Notary was by making an agreement in advance. As stated above, the sale of land by the husband begins with making an agreement in advance. Land ownership rights were made to bind the relationship between the seller and the buyer (Dewi & Dianti, 2021).

Conceptually, the agreement was an act that binds himself to each other. There was the word "binding" in the formulation of the article, which means there was a desire to bind oneself to another party. The self-binding that desired was represented by the will of each individual. The existence of self-binding applies to another party, and the buyer also binds himself to the seller. The self-binding has occurred, even though the object has not been handed over (Utami & Suyatna, 2019).

Through the terms of the agreement, it was also determined the validity of the agreement that gives the validity of an agreement. The validity was contained in the contents of the agreement itself. There were four conditions to determine whether the agreement was valid or not. The provisions of this article also form the basis for the sale of his land. The ownership of the land that was being sold should be based on a valid agreement.

The application of the provisions in the Marriage Law means that land sales agreements were not allowed to be made privately (Satrianingsih, Ni Nyoman Putri, 2019). Hence, it must be authentic. If the transfer of ownership rights to land was made by means of an agreement, it became imperfect (Satrianingsih, Ni Nyoman Putri, 2019). An agreement made privately would remain an agreement that binds both parties or only has binding legal force, while its validity does not get guaranteed legal protection, which led the legal force it carries was limited. Legal protection was needed as proof of certificate ownership. The certificate could be entrusted to the land deed official with the aim of facilitating the parties in storing the certificate and preventing certificate loss (Natalia & Marlyna, 2021).

In connection with the promise made, the ownership rights refer to the validity of the agreement. The condition in determining the validity of an agreement to purchase property rights on land was the validity of the agreement. As determined and explained above, the conditions for the validity of the agreement include these four conditions. These four conditions serve as a standard conditions in an agreement. These conditions were also used in making the sale and purchase of mandatory land based on the legal terms of the agreement made before a notary (Wirayang & Suparjo, 2021).

3.2. Application of the Liability Principle in the Sale of Land as Joint Property before a Notary

The principle of liability, basically stated in the principle of liability, which defined as an responsibility for losses suffered by the buyer (Sukmawati & Purwanto, 2019). The loss was in the goods or services sold by the seller. The goods being sold were property rights to land as joint property, while the services being sold are agreements.

Meanwhile, the development of law in Indonesia has defined liability as a responsibility (Miru, 2011). Several types of responsibility were contained in the principle of liability, namely responsibility based on mistakes (Mahardika, 2022). Errors in the legal sense here include laws, ethics, decency and decency as living rules in society.

Based on the principle of liability, consumers should receive protection from the law (Ariawan & Griadhi, 2013). In relation to the sale of land, the buyer of the land was obliged to get legal protection because the buyer of the land was a consumer. Legal protection was given to the buyer because the buyer feels aggrieved by the seller. In this case, the buyer was afraid because the land being sold was a land from joint property that does not get the approval of the seller's wife. Therefore, the buyer feels aggrieved by the seller. If one day, the seller's wife knew about the sale and purchase of the land, the agreement that was

previously made would be sued. Hence, the transaction resulting in legal defects or legal cancellation. Thus, the application of the principle of liability was very important to protect the consumer (buyer) in order to get clarity from the transactions he made. The seller can be notified of negligence in the sale of the land, where the seller does not include his wife to approve the transaction. Likewise, negligence would have a bad impact on buyers in the future.

Negligence in carrying out such an act, apart from the person being responsible for the loss he incurs, he was also responsible for the person under his care (Asvatham & Purwani, 2020). On this basis, a person has responsibility for the losses he causes and the people in his care. In that responsibility, an action that must be carried out by the seller was charged. The compensation that should be provided is in exchange for the load that must be borne. Compensation from the seller should be carried out to carry out the liability of the seller.

In connection with legal events, in the form of selling property rights by the seller was included in the act against the law. In this case, the existence of an unlawful act was due to an element of resistance to the act. It was clear that the husband and wife have rights that were obtained during the marriage (Indriyani, Ketut, 2021). If the husband wanted to sell the ownership rights to the land, he should obtain the consent of the wife, or the wife should know about the sale of the ownership rights to the land. The existence of an obligation to notify the wife was on the basis that the wife has the right to joint property. Legal resistance from this seller was no longer justified. In addition, there was an element of error committed by the husband in the sale of land ownership rights. The error was made in that he did not inform his wife about the sale. In this case, the sale was made without the consent of his wife.

Based on the principle of liability, upon the fulfillment of the element of error, the seller should be responsible for the mistakes he made. The application of the principle of liability was a personal responsibility to the buyer (Putra, I., Wayan Dedi, 2021). As such, the liability in this case, should be borne by the seller. The loss suffered by the buyer should be borne by the seller. The seller was liable for the mistake he made. In addition, the seller was also responsible for the person who was under his responsibility. The person who was in charge of it is his own wife, where the wife is in a position under the responsibility of her husband and her rights to joint property were not obtained.

In other words, the application of the principle of liability should be carried out on agreements made by the husband as a land seller with the buyer. The agreement was a mistake on the part of the husband who did not include the wife in the land seller transaction. Thus, the seller should be responsible based on the principle of liability.

4. CONCLUSION

The legal basis for the sale of land is the basis for prohibiting the sale of land from joint assets without the consent of the wife. The application of the principle of liability is carried out personally to agreements made by the husband as the land seller with the buyer. The husband made a mistake by signing the agreement without including his wife in the transaction with the land seller. Thus, the seller must be responsible based on the liability principle.

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ANALYSIS OF CREDIT RELAXATION AND LEGAL PROTECTION PROVIDED BY THE GOVERNMENT TO MSMES DURING THE COVID-19 PANDEMIC

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Abstract

This research aims to analyze the government's role in helping micro, small and medium enterprises (MSMEs) and legal protection for MSMEs provided by the government due to the impact of the Covid-19 pandemic. This research uses normative juridical research. The approach used in this research is the statutory approach which examines the regulations or laws related to the legal issues under study. The results of the analysis show that the government's efforts to ease the burden on the victims of Covid-19 are in the form of credit relaxation policy. The targets are those who previously had to apply for relief at the bank. The government solution is in the form of credit relaxation policy by lowering interest rates, increasing loans and converting loans into equity, extending the term of the loan, reducing the principal, increasing the credit limit and reducing interest arrears on loans.

Keywords: Credit Relaxation, Legal Protection, Micro Small and Medium Enterprises

1. INTRODUCTION

Indonesia cannot be separated from the effects of Covid-19. From March 2020 to September 2020 to be precise, Covid-19 entered the Indonesian market. According to records, in 2020, September the tenth to be exact, the number of confirmed Covid-19 cases has doubled to 3,861. The increase in confirmed cases during Covid-19 greatly affected various sectors in Indonesia, including the economic sphere (Soetjipto, 2020). In the economic field, the era of the Covid-19 pandemic has had an impact on the level of public consumption (Pakpahan, 2020). The low level of consumption causes a decrease in real national income which has an impact on slowing down Indonesia's economic growth (Basmar et al., 2021).

In fact, Indonesia's economic growth is currently declining. Media Katadata disclosed on Thursday, 16 July 2020, Asia Insight Conference 2020: Sailing in a Brave New World, Piter Abdullah Redjalam as Research Director CORE or Center for Economic Reform said that on the threshold of economic recession, Indonesia's economy greatly slumped during the Covid-19 pandemic going on. These economic difficulties should inspire new habits.

According to Arianto (2020), one of the main pillars of Indonesia's economic development is MSMEs, this is based on the important role of MSMEs, especially in terms of economic resilience to vacancies for work. According to data from the Agency with Statistical Information Authority (BPS), there were 64 million MSMEs throughout Indonesia, accounting for 99,9% of companies engaged in supporting the Indonesian economy. Due to the decline in economic conditions, this also had an impact on the banking industry/sector. Based on data published by the OJK, the number of bad loans has increased

since March 2020 (Supeno & Hendarsih, 2020). The category of debtors (Col-2 loans) who are in arrears for at least 1-2 months has increased sharply to 27,3% (year on year). The number of non-current and non-performing loans increased to 19,10%.

It can be seen from various research results that there are still limitations for MSEs to enter the bank. The problem is that the identity of the debtor is limited for micro businesses or does not exist at all or does not meet the technical requirements of the bank system. According to Sukino in Putri (2022), in relation to economic growth, actually the sectors or production activities obtained from the state have increased. For example, the production of goods from manufacturing companies, factories and industries has increased, infrastructure equity has increased, state public facilities have increased in the form of an increase in the number of educational foundations, and production has increased capital goods.

In light that Indonesia has a large number of MSMEs, the government is participating in various plans to prepare the National Economic Recovery Plan for the revitalization of MSMEs in Indonesia. As said by Oey-Gardiner & Abdullah (2021) regarding the national economic recovery plan is optimistic and hopes to restore the Indonesian economy. As a result of the Covid-19 pandemic, the Indonesian economy is currently weakening.

Regarding the case of limited funds due to the Covid-19 pandemic, small, medium and micro businesses need the support of financial institutions such as banks. Likewise, according to Sri Susilo's findings, to find out MSMEs in the channel for obtaining bank fees so that they continue to increase, including other non-bank financing sources, such as venture capital and credit guarantee institutions (Herdinata & Pranatasari, 2019).

After the entry into force of the POJK Law No 11/2020, Article 2 (1) and (2) explains that the stimulus is given to debtors who feel empowered by the effects of Covid-19. Regulations regarding these policies and asset quality regulation and credit restructuring. Then, paragraph one of Article five stipulates that credit quality or restructuring financing was determined to be current due to credit restructuring.

POJK No. 11/POJK.03/2020 explains the government's efforts to ease the burden on people affected by Covid-19 in the form of credit relief. This credit relief is for people who previously had to submit a request for relief in advance from the bank. Relief in the form of lowering interest rates, adding credit facilities and converting credit into equity participation, extending credit terms, reducing credit principal, adding credit facilities and reducing loan interest arrears (Satradinata & Muljono, 2020)

From the research results Pratiwi (2020) stated that the Government had issued several policies related to the economic slowdown due to the Covid-19 outbreak, namely by providing incentives in the tourism sector, increasing joint leave days, and reducing debt payments for MSMEs. In addition, the Government opened a call center to receive reports and complaints from cooperatives and MSMEs affected by the Covid-19 outbreak. The House of Representative or also known as DPR, with its supervisory function needs to encourage the government to take advantage of this geographical advantage as an opportunity if the government builds MSME points in Covid-19 free areas, especially if the aim is for exports. In addition, the government also needs to provide a stimulus to maintain people's purchasing power in the midst of this crisis so that the benefits provided to the economy can be felt.

Besides, Pasaribu (2022) stated that the government provides legal protection in the form of assistance such as Productive Presidential Assistance for Micro Enterprises

(BPUM), Proposals for Government Assistance for Beginner Entrepreneurs in 2021, Revolving Loans, and Places and Promotion of Micro Enterprises to awaken and assist Micro Enterprises in dealing with the impact of the Covid-19 pandemic.

Starting from this statement, the purpose of the author's research article was to analyze the government's role in helping micro, small and medium enterprises (MSMEs) and legal protection for MSMEs provided by the government due to the impact of the Covid-19 pandemic.

2. RESEARCH METHOD

This research makes use of normative research in the legal system. This research employs a methodology known as normative juridical research. Normative research is a sort of legal research. The problem-solving strategy that was utilized in this research was the statutory approach (Statute Approach), which investigates the regulations or regulations that are associated with the legal concerns that are being researched. The kind of data collecting that was utilized was called a literature research, and its primary focus was on the substance or legal regulations that control the law of underhanded credit arrangements in banking.

3. RESULT AND DISCUSSION

3.1. Credit relaxation provided by the Government to MSMEs during the Covid-19 pandemic

Based on an analysis of a country's economic growth rate, the analysis can provide an analysis of the country's taxation and development plans. This analysis was carried out specifically for local governments. Conversely, if conditions of weak economic growth can be used as a basis for receiving external or international assistance from the World Bank or countries that seeks to cooperate and provide assistance. For business actors, economic growth can be used as a reference to determine product quality and quantity, resources used, and future product marketing plans.

The Corona virus or Covid-19 has affected numerous sectors, including the economic world. The impact on the economy is felt by the public, who are required to pay in installments to the bank. Based on the law, the contract between the debtor and the bank stipulates the relationship between the debt and the claim, and the debtor is obliged to return the loan obligation from the bank with the terms and date of payment: loan for a material contract or individual guarantee agreement (Article 1154, Article 1178 (1) of the Civil Code, law number 4 in section twelve of 1996, law number forty-two section article 33 of 1999. The current President of Indonesia, Joko Widodo, took the initiative to offer preferential treatment to informal workers, in the form of one year credit payments and reduced interest. The convenience provided by the OJK facilitates loans given to commercial participants with loans of less than ten billion rupiah. These policies include:

1) Interest rate reduction
2) Increase the loan limit
3) Changing the form of credit into equity participation
4) Extend the credit maturity period

5) Reducing the nominal loan / credit
6) Increase the credit term limit and reduce interest in arrears.

However, this does not mean that all people will receive credit relief, instead they must go through the procedures prescribed by Financial Services Authority or refers to OJK. In this case, credit relaxation application and attachment of required documents should be approved. As stated in Financial Services Authority regulation or POJK number 3 in Article 2 and Article 11 in 2020 that the use of national economic stimulus measures as a clinical policy as a form of overcoming the impact of the corona virus 19.

Regulations made by the OJK in Article 2 paragraph number 11 published in 2020 view the national economic stimulus as a countercyclical policy against the impact of the spread of the Corona Virus Disease in 2019, which stipulates that banks can apply regulations to support the economic growth of affected debtors, including spreads for debtors. Besides, there was an explanation in terms such as in paragraph one of Article two, namely this article was not mandatory, rather based on the Financial Services Authority Regulation to choose whether to grant concessions to debtors.

3.2. Legal Protection Provided by the Government to MSMEs during the Covid-19 Pandemic

Public protection has many aspects, the 1945 Constitution of the Republic of Indonesia states that it protects its citizens from a legal standpoint. This can be seen in the provisions of equal legal status. Therefore, legal protection refers to everything that allows people to exercise and defend their rights determined by law. There were two types of public legal protection that focus on government action, namely: Preventive legal protection (prevention)

1) Preventive legal protection, provides an opportunity for the public to submit clear objections. Hence, preventive protection.
2) Repressive legal protection (coercion), means that in the sense of repressive protection in essence was to resolve problems or disputes, the public has the opportunity to raise objections after a certain government decision has had an effect.

Article 1132 of the Civil Code provides for the possibility of excluding other creditors from priority. According to the Civil Code in section 1133, priority creditors are people who enjoy privileged rights to receivables, pawns and mortgages. The type of collateral held by the creditor will affect the position of the creditor.

However, the parties to the contract should also pay attention to the rules of the contract, so that it is actually carried out by the parties, the aim of the contract is to achieve and materialize, so that neither party loses out. After the outbreak of Covid-19, if a debtor is considered capable and has no difficulty fulfilling his obligations to the bank, he should be wary of repaying the installments that have been owed. Hence, reaching an agreement will not be hindered as a result of its implementation. An agreement was a legal relationship with legal consequences, namely that both parties who conclude the agreement have obligations and rights. If one party fails to carry out its obligations, the other party can file a lawsuit.

The provisions regarding special guarantees in Chapter 2 of the Civil Code determine the amount of the loan that will be provided for interest payments and guarantees that the

borrower's property with an estimated value can be used as collateral. In accordance with the loan agreement, and supported by special agreement supporting documents. If the debtor cannot pay off the debt, the things mentioned above can be sold and returned to the lender in an alternative way.

The World Bank does not impose a credit limit on implementing restructuring regulations. In the word "may", means the clause is not mandatory, but provides information as to whether credit relaxation can be granted to debtors under the Financial Services Authority Regulations as the option. Due to the fact that Covid-19 affects directly or indirectly on the economy as a whole, not only debtors but also creditors (banks).

After the execution of OJK regulation number 11 which was issued in 2020, Article 2 paragraph (1) and paragraph (2) explains that banks can implement policies to support the economic growth of debtors who have been harmed by Covid-19 by relaxing credit/credit restructuring. Then, Article 5 paragraph (1) stipulates that due to a reorganization, the quality of credit or financing after the reorganization is determined to be up-to-date. This was one of credit relaxation case in the midst of the corona pandemic.

In this regard, it is hoped that the government can provide regulatory clarity and banking capacity in formulating new policies to respond to the Covid-19 outbreak. It is also hoped that this condition will not be used by debtors if they do not pay their installment obligations to the bank. The debtor must also realize that if he has the capacity and does not experience obstacles in fulfilling his obligations to the bank, he can pay off the installments that are due. This is because the adverse impact of Covid-19 has affected the economic sector. In this arrangement, state-owned banks are specifically provided, not non-government banks, because only the government can issue funding for state-owned/state-owned banks to apply for loan facilities.

4. CONCLUSION

MSMEs are one of the economic pillars of developing countries in Indonesia. Therefore, the importance of MSMEs to the economy cannot be overstated. As part of its response to the struggles faced by those impacted by Covid-19, the government has released OJK Regulation Number 11, which details the reduction of credit relaxation. However, credit relaxation policy are only applicable to individuals who have previously submitted an application. Some examples of steps taken to mitigate the impact of the risk are lowering interest rates, boosting credit lines, turning credit into included capital, adjusting credit maturities, decreasing loan amounts, increasing credit time limitations, and decreasing interest arrears.

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LEGAL PROTECTION IMPLEMENTATION FOR DISABILITIES PERSONS IN OBTAINING EQUAL EMPLOYMENT OPPORTUNITIES IN DENPASAR CITY

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Abstract

This research aims to identify and comprehend the regulatory arrangements for employees with physical disabilities to get opportunity equality, as well as the implementation of legal protection for workers with physical disabilities to obtain equal job opportunities in the city of Denpasar. The study approach utilized is an empirical legal research method based on a comparison between das sollen and das sein. Legal and fact-based approaches are applied. Primary data sources include interviews with disabled workers in the city of Denpasar, whereas secondary data sources include statutes and regulations, books, and scientific journals. According to the findings, the regulation regarding persons with disabilities is clearly stated in the national regulations, namely the Human Rights Law, the Law on Persons with Disabilities, and the Manpower Act, whereas the special regulations for Denpasar City are contained in the Bali Provincial Regulation on Persons with Disabilities. However, despite the fact that there are policies in place to govern persons with disabilities in Denpasar City, it is still difficult to find a job, especially in companies, due to the stigma that people with disabilities are incapable of doing anything. Even though the state has enacted legislation governing the employment of people with disabilities, the reality of the situation makes these regulations difficult to implement, especially in relation to issues of employment.

Keywords: Disability, Job Opportunities, Labor, Legal Protection

1. INTRODUCTION

Although having a happy, healthy, financially secure, physically and intellectually successful existence is the goal of every human being, there are times when bad luck strikes. Not everyone who is born into this world is created perfectly, even for people who look perfect physically, not necessarily mentally perfect or have imperfections. This imperfection is commonly referred to as a disability. Community understanding of disability and persons with disabilities was closely related to the discriminatory behavior experienced by them in everyday life (Widinarsih, 2019). Disability itself is a self-limitation caused by deficiencies in the body which can be physical, mental, emotional and others (Marzuki, 2015). This limitation can be obtained through birth or accident, for example, someone who is born with a lack of sight or is blind, and someone who becomes blind because he has had an accident.

However, every person who is born into the world even though he has limitations, his rights must still be recognized as stated in the highest constitution of the State of Indonesia, namely the 1945 Constitution or what is hereinafter referred to as the 1945 Constitution, in Chapter X concerning Human Rights it states that humans have rights, which has whatever meaning is regulated in that chapter, including people who have both mental and physical

limitations. The Indonesian state adheres to the principle of "*equality before the law*" so that any existing regulations are regulations that apply to everyone and regardless of their position, occupation and others (Ridwan, 2014).

In Indonesia, with regard to the presence of persons with disabilities, national regulations have been made which are regulated in Law no. 8 of 2016 concerning Persons with Disabilities, according to this law it is very clear that everything is stated, especially those related to the survival of a person with a physical disability (Amaliah, 2016). According to Article 1 paragraph (1) it states "Persons with disabilities are any person who experiences physical, intellectual, mental and/or sensory limitations for a long period of time who, in interacting with the environment, may experience obstacles and difficulties to participate fully and effectively with others citizens based on equal rights" (Amaliah, 2016).

Denpasar city is the center of the province of Bali, whose mobility has begun to become denser with the arrival of various workers from outside the region who make a living in Bali, thus making competition in Bali in terms of finding work increasingly stringent. Bali is famous for its tourism which attracts the world's attention, most of the livelihoods of people in Bali are in the field of tourism. The population density is starting to be high, as well as employment opportunities that increasingly prioritize the intellectuality of a person, making many people with disabilities in Bali unable to compete with other normal people in terms of finding work.

It should not come as a surprise that job seeking requires extra effort. Even though they have the status of a person with a disability, like it or not, that person still has to be able to survive amidst the limitations they have. Many social services have been opened that are intended for persons with disabilities so that in the future they have their own income. In Bali, there are rules governing persons with disabilities, which are contained in "Bali Provincial Regulation Number 9 of 2015 concerning the Protection and Fulfillment of the Rights of Persons with Disabilities, hereinafter referred to as the Bali Regional Regulation concerning Persons with Disabilities."

The existence of special regulations governing the fulfillment of the rights of persons with disabilities has not been able to overcome problems regarding employment opportunities for persons with disabilities in Denpasar City. Hence, to be able to find answers to these problems, in this case the research entitled Legal Protection for Workers with Disabilities in Obtaining Equal Employment Opportunities in the City of Denpasar.

State of the art of current research is by comparing research that has been carried out before. Research by Ketut Yulia Wirasningrum, entitled "Legal Construction Concerning Bali Regional Company Obligations to Employ Persons with Disabilities", this study raises the issue of how the concept of Balinese regional companies in regulating the obligations of Balinese regional companies to employ persons with disabilities, and how the legal construction of obligations of Balinese regional companies to employ persons with disabilities (Wirasningrum, 2019). Subsequent research, by Tjokorda Gde Agung Smara Raditia, and Dewa Gede Pradnya Yustiawan, with the title "Fulfillment of the Rights of Workers with Disabilities Who Work at Foundations in Bali", with the problem of how to regulate the rights of workers with disabilities based on laws and regulations invitations that apply in Indonesia, and how the treatment given by the foundation to workers with disabilities in Bali (Raditia & Yustiawan, 2020).

Further, research by Ayuning Sasmitha Margana, I Made Udiana, and AA Ketut Sukranata, with the title "Legal Protection of the Use of Air Transportation Services for Persons with Disabilities", the problem is how is legal protection for persons with disabilities as service users in using air transportation services, and legal remedies what can be done by persons with disabilities in the event of a dispute with the airline (Margana et al., 2019). These three studies are very different from this study. In this study, we focus on Legal Protection for Workers with Disabilities in Obtaining Equal Employment Opportunities in the City of Denpasar, when viewed from the title of this study, certainly has differences from previous research. Another difference lies in the location of the research, where this research took place in Denpasar, while the research above is located in foundations, regional companies and air transportation. In addition, the legal issues raised are also different from this research. Although there are differences, this research also has similarities, namely the object of research. The object of current research is related to persons with disabilities and employment.

Based on the legal events mentioned above, the purpose of this research is to find out the existing regulations in giving equal rights to workers with physical disabilities in obtaining equal employment opportunities in Denpasar City as well as the implementation of legal protection for workers who have physical disabilities in obtaining equal behavior in getting a job in Denpasar City.

2. RESEARCH METHOD

Empirical legal research is the research method used in this study. Using empirical legal research methods because there are gaps in rules and their implementation in society (Soekanto, 2015). The approach used is the statute approach and the fact approach. The legislation used is Law no. 8 of 2016 concerning Persons with Disabilities and Bali Province Regional Regulation Number 9 of 2015 concerning the Protection and Fulfillment of the Rights of Persons with Disabilities, while the fact approach is carried out by looking at the reality that occurred in Denpasar City as a research location. The data sources of this research consist of primary and secondary data sources. Primary data sources, obtained directly at the research location through interviews with respondents and informants (Tampubolon, 2019). Meanwhile, secondary data sources consist of legislation, namely the Law on Persons with Disabilities and the Regional Regulation on the Protection and Fulfillment of the Rights of Persons with Disabilities, books, scientific journals, and the internet. This research is descriptive in nature. Processing techniques and data analysis using descriptive qualitative, namely by providing a clear picture related to existing regulations in providing equal rights to workers who experience physical disabilities in obtaining equal employment opportunities in the City of Denpasar and the implementation of legal protection for workers who have physical disabilities in obtaining equal behavior in getting a job in the city of Denpasar. Afterward, a qualitative analysis was carried out with reference to the legislation.

3. RESULT AND DISCUSSION

3.1. Regulatory Arrangements for Workers with Disabilities in Obtaining Equal Employment Opportunities

Every person in Indonesia is guaranteed all of their rights by the state, the rights referred to are usually the right to continue their life, the right to embrace a religion, the right to make choices and the right to get a job is no exception (Apsari & Mulyana, 2018). This was stated in Article 28 which specifies that "everyone has the right to equal employment opportunities." The existence of this provision should make persons with disabilities not have to worry about problems meeting their daily needs. Problems regarding employment can be found in the Labor Law where Article 1 point 3 states "Employee is any person who works and receives wages or other forms of compensation." So based on this understanding it can be concluded that the meaning of all people who work for entrepreneurs, individuals, legal entities or other bodies in any case (Husni, 2006).

In addition to the 1945 Constitution regarding special rights, the rights of people with physical disabilities are also contained in the Disabilities Act, the Act clearly provides freedom and opportunities for workers with disabilities to find work. Regarding equality of opportunity, it is stated in Article 1 paragraph 2, namely "opportunity is a condition that provides opportunities and/or provides access for persons with disabilities to channel their potential in all aspects of administering the state and society."

We have found that many Indonesians still fail to properly recognize the existence of people with disabilities, and it is not unusual for us to encounter individuals who think that people with disabilities are helpless and unable to perform any task. Some people even insult and do not consider the existence of these people with disabilities, so that the rights of people with disabilities are sometimes not considered. This stigma is very difficult to get rid of in society, especially in the case of persons with disabilities who are looking for work. In fact, in part 7 regarding cooperatives, entrepreneurship and work, where in Article 11 it is clearly stated that "persons with disabilities are allowed to get jobs organized by the government, local government, or the private sector without any discrimination."

The rights of people with physical disabilities are also contained in Article 42 of the Human Rights Law which states that "Every citizen who is elderly, physically disabled and/or mentally disabled has the right to receive treatment, education, training, special assistance at the expense of the state, to guarantee a decent life in accordance with human dignity, increasing self-confidence and the ability to participate in the life of society, nation and state."

The existence of national regulations that prioritize equality of opportunity and fulfillment of the rights of people with physical disabilities has prompted the government in Bali to make a special regulation related to persons with disabilities. This regulation was contained in the Bali Regional Regulation on Persons with Disabilities. Where in the regional regulation it is very clear in Article 5 where "every person with disabilities has equal opportunities in the fields of education, employment, health and others."

3.2. Implementation of Legal Protection for Persons with Disabilities in Obtaining Equal Employment Opportunities in Denpasar City

Even though there have been many regulations governing employment opportunities for persons with disabilities, in reality they have not brought much change in society. Discrimination in terms of getting a job still occurs among persons with disabilities. There was a stigma in society that people with disabilities were seen as someone who cannot do a job, they were seen as unable to do anything. For job providers, employing people with disabilities will only reduce the effectiveness of the company (Aulia & Apsari, 2020). Hence, social workers can only intervene with persons with disabilities (Riyana & Kisworo, 2019).

As happened to Mr. Wayan Widyasa who is a parking attendant at Jalan Diponegoro Denpasar, who has worked there for 7 years, he has a physical disability where his body cannot grow like other people, or what most people say is a stunted body. Mr. Wayan Widyasa admitted that it was very difficult to get a decent job with his physical limitations, because he was always considered useless and unable to do anything, so he finally tried to apply to become a parking attendant and was then accepted (Interview on 8 May 2022). Since then, he has become a parking attendant in the area despite his limitations.

Another example is what happened to Mr. Buana who is also a parking attendant on Jalan Diponegoro who has been deaf since birth. Even though he cannot communicate well, he can still be a parking attendant by relying on his whistle, it is very difficult to communicate with him in this study, but it can be concluded that he is very grateful for this job, even though it is only as a parking attendant but he can still fulfill his life needs and meet the economy his family (Interview on May 8, 2022).

These two examples are concrete forms that people with disabilities are not people who can't do anything, they are also able to do work like other normal people even with the limitations they have (Dewi, 2015). Another thing was revealed by one of the informants who is Human Resources Development in a company, he said that accepting workers with disabilities is still very difficult, because companies have certain conditions and qualifications that require prospective workers to be physically perfect (Rokhim, 2015). This proves that hiring persons with disabilities in private companies cannot be accepted because private companies usually prioritize workers who can work optimally so as not to lose out.

This is what the government should do to protect its citizens to be able to eliminate the stigma in society that gives a stamp or label for persons with disabilities can't do anything (Sudharma, 2017). Even though times have changed, there are already many people with disabilities who have higher education and study at universities like other normal people. So that in the future if Indonesia will be more open in accepting this difference.

The regulations that have been made have really prioritized the aspects needed by people with physical disabilities, but people with disabilities not only need regulations but also need real action so that what has been contained in regulations in Indonesia can be easily enforced. Discrimination against people with disabilities has indeed occurred since they were born or got the disability, but that does not mean they will receive this discrimination for the rest of their lives. There should have been concrete steps so that everything could run in balance and in accordance with the third precept of *Pancasila*.

The role of the Denpasar City Government which is aggressively protecting persons with disabilities, but it is time for the wider community to start opening their eyes that this is indeed happening. Sometimes even unconsciously we often become discriminatory

behavior itself, so that it can make the life of persons with disabilities even more difficult. For companies, they must start to open their eyes that people with disabilities can also do work optimally for the company regardless of any deficiencies in their bodies, the principle of fair and civilized humanity in the 5th precept of *Pancasila* must be prioritized. Apart from that, both the Denpasar City Government, the private sector, and the community must be able to open their minds and hearts to view people with disabilities as equals to people in general.

4. CONCLUSION

Indonesia as a constitutional state has clearly prioritized the rights of people with physical disabilities where this is stated in the 1945 Constitution, the Labor Law, the Law on Persons with Disabilities, the Human Rights Law in national regulations, whereas in particular the City of Denpasar uses the Bali Governor's Regional Regulation on Disabilities. It is hoped that this regulation will open everyone's eyes that persons with disabilities are not someone who cannot do anything, but have equal rights with normal people in general, especially in terms of getting a job. Meanwhile, a view or stigma in Indonesian society are still very rigid and difficult to change, as can be seen from how often we see people with disabilities who only do jobs such as parking attendants or hawkers, even though in the city of Denpasar there are many hotels and companies that can employ people with disabilities, the stigma about people with disabilities being unable to do anything is the main trigger for companies to often reject them, this is because companies are only looking for someone who can provide maximum capabilities for the company. Once again, discrimination against workers with disabilities is a problem that seems to have no end.

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THE IMPLEMENTATION OF THE LEGAL CERTAINTY PRINCIPLE IN DETERMINING THE ABILITY TO MAKE NOTARIAL DEEDS BEFORE A NOTARY

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Abstract

This study aims to find out the legal basis for the ability to make an agreement before a notary and to examine the application of the principle of legal certainty in determining the ability to make a notarial deed. This study uses a normative legal research method with a statutory approach and a conceptual approach. The findings indicate that the legal basis for making an agreement before a notary is stated in Article 39 paragraph (1) of the Notary Position Law (UUJN) and the application of the principle of legal certainty to the ability to make a deed, namely the legal basis refers to the UUJN not the Civil Code. The resolution of the conflict of norms is by using the principle of preference, namely the rules that apply are the rules of the UUJN, while the rules of the Civil Code do not apply.

Keywords: Agreement, Legal Certainty, Notary, Notarial Deeds, Law of Notary's Position

1. INTRODUCTION

In daily life, legal acts, such as buying and selling, leasing, and other contractual legal relations, are done to satisfy a person's requirements. In general, legal rules related to contracts and agreements are used as the basis for making agreements. With regards to base on: There is an agreement; Proficiency; A certain thing; and A lawful cause.

Juridically, the article determines whether there is an agreement. That is, the agreement is deemed to exist, if it meets the requirements mentioned above. Conversely, if the agreement does not meet these requirements, then the agreement is deemed not to exist. Whether or not an agreement exists is judged by the validity of the agreement itself. These requirements have a legal nature that must be considered. The nature of the law in question is a subjective nature and an objective nature. Its subjective nature can be seen in terms of agreement and terms of proficiency. Both of these conditions concern the subjectivity of the party making the engagement, the next condition is that there is a permissible cause and something that is permissible is objective. The subjective and objective properties are obliged to be due to the two properties into a dead price in making an agreement in the notary of the notary.

Beginning with an agreement, then capability, where the capability referred to in Article 1320 of the Civil Code, namely "has reached the age of twenty-one; those who have reached this age may legally enter into contracts (legal actions); those who have not yet reached this age may do so if they are married" (Pathi, 2010). Marriage status is another indicator of adulthood. Thus, in the Civil Code, the adult age for a person making an agreement is 21 years.

Personally different, in terms of special regulations, namely the Notary Position Law or known as UUJN where a person as "the party making the agreement must be eighteen years of age or already married". This article determines the minimum age limit of parties who are allowed to make an agreement before a Notary. If the party making the agreement is not yet 18 years old, then it is not permissible to make an agreement at a Notary.

Theoretically, between skills (*rechtsbekwamheid*) and authority (*rechtsbevoegheid*) have a very close relationship. This close relationship can be seen from the existence of skills, legal actions and authority (Rinaldi, Lasyta Herdiana, 2021). The ability to make agreements before a Notary is the ability to act according to norms. According to the law, adulthood is synonymous with prowess. As a theoretical basis, the competency must be possessed in advance by the party making the deed. After fulfilling the qualifications, the party has the authority to take legal action. The intended legal action is the act of making a notarial deed (Rinaldi, Lasyta Herdiana, 2021). Through this sequence, it is very clear that there is a relationship between skills and authority. If that person is in a competent condition, then it can be said that he has authority. Conversely, if the person is not competent or incompetent, then he does not have authority or has not been given authority by UUJN as a special rule.

Article 1433 of the Civil Code contains about being under guardianship, implying "every individual is placed in custody, that is, when a person is in a dumb condition, his brain hurts, his eyes are dark, or extravagant". Siratan provides a benchmark for people who can be said to be under ability. If a person who is facing a situation in custody, it can be considered that he is unable to take legal action or is unable to carry out his rights and obligations as a legal subject. The person who is under guardianship is declared incapable of acting as a party to the agreement. However, in this case, UUJN in Articles 39 and 40 paragraph (2) provides a standard age of eighteen to be able to act on a legal basis to become a notary appearer. Even though the UUJN does not regulate the age limit of adulthood, but with the age of 18 years of article on 39 then the 18-year-old one was considered to be aware of the agreement in the notary of the adult age 21 years old.

One of them is regulated as the authority of the Notary to the person who appears before him to make a deed. In drawing up a deed before a notary, the parties must be at least 18 years old and married. With UUJN coming into effect, there are two age standards in carrying out legal actions in making agreements, namely 21 years based on Article 39 UUJN, and based on Article 1330 jo. Article 330 of the Civil Code determines 18 years. The two different provisions regarding skills within the age limit create legal uncertainty, which means that there is a conflict of norms (*geschijld van normamen*) in the two laws. Horizontally between the two regulations of the same level (same hierarchy), namely, between Article 330 of the Civil Code and Article 39 of UUJN. Norm conflicts in these two provisions create legal uncertainty in determining the age limit for private legal subjects (individuals) to be able to perform contractual legal actions. Therefore, it becomes very important to do legal research.

Previous research was conducted by Bima Bagus Wicaksono with the title "The Influence of Proficiency in Online Buying and Selling Agreements". This research discuss on how to buy and sell online where the parties are not yet twenty-one years old and if the parties are not yet mature, what are the legal consequences (Wijaksono, Bagus, 2018). Furthermore, research conducted by Ni Nyoman Endi Suadnyani entitled "Age Limits for

Proficiency in Making Agreements Before a Notary". As for the formulation of the problem is "what is the age limit for being able to make a deed before a Notary and what are the legal consequences if the parties are immature in making a deed agreement" (Suadnyani, 2017). Both of these studies are related to skills in making agreements before a notary, while the difference lies in the study of legal issues. The norms at stake and ways to resolve them are the focus of the current investigation. Therefore, the findings of this research constitute its advancement.

Based on the background mentioned above, this study aims to find out the legal basis for the ability to make notarial deeds before a notary, and the implementation of the principle of legal certainty in making notarized deeds before a notary.

2. RESEARCH METHOD

In this study, normative law was adopted. This form of research was chosen to investigate legal requirements. The review of legal norms was carried out because of conflicting norms. In this case, contradictions of norms, ambiguity of norms and emptiness of norms are legal requirements for normative law-type research (Mahmud Marzuki, 2005). The conflicting norms were between the norms of the Civil Code and Notary Position Law (UUJN). The type of approach used was the statutory approach and the concept approach. The sources of legal materials in this study use primary legal sources, namely the Civil Code and UUJN, while secondary sources of legal materials include books, scientific journals, and internet media. The technique for collecting legal materials uses a document study technique by collecting data from previous research and taking an inventory of laws and regulations related to the legal issues studied. The processing and analysis technique of legal materials was done by qualitative descriptive technique, namely providing explanations and conducting studies on legal issues in this study.

3. RESULT AND DISCUSSION

3.1. Legal Basis for Proficiency in Making Notarial Deeds Before a Notary

Juridically, making an agreement before a notary must have the skills or capability. As a legal basis in determining a person's competence, it is based on "proficient, in essence being competent plays an important role in a deed because being competent is a supporter of rights and obligations" (Saputra, 2019). The meaning implied in the sentence was to reflect the permissibility and impossibility of doing. Proficient determines a legal action, conversely competent also determines the absence of such legal action. In other words, whether a legal action exists or not is determined by the presence or absence of person capability. Consequently, maturity is associated with capability.

In connection with the above provisions, it can be said that for people who are "adult according to civil law are those who are twenty-one years of age or have been married or have been married before" (Suadnyani, 2017). Ever married means that someone has been married before but are currently separated. The old marriage still applies. This means that even if they have separated when they were before twenty-one years old, it does not mean that they are again declared immature, as they are still declared adults by the Civil Code. Marrying and not marrying also determines whether the person is mature or not because it

is closely related to acting legally. When they have the status of a widow or widower, they are still allowed to make notarial deeds. In other words, adults who are not yet 21 years old but are already married.

Another exception is "an appearer must meet the requirements of at least 18 not 21". This exception was supported by UUJN which allows someone to make a deed. This permissibility as the permissibility granted by law and at the same time becomes a requirement in making the most important notarial deed. This requirement was used as a guide in the maturity of a person facing a Notary, or a definite guideline. If the notary pays attention to these conditions, the deed made by the parties becomes subjectively valid and guarantees legal certainty.

With regard to the legal position of "a person listed in the Civil Code, the position must be even twenty-one years or have been married before the age of twenty-one". This provision becomes the legal basis when someone wants to have a legal position as a legal subject. As a very old rule, the Civil Code must be used as the main foothold in providing a legal basis because the Civil Code is the basis for UUJN. As a result, deviations are very immoral. However, in legal theory, the Civil Code is made as a regulation that is general in nature, not specific, so that when it is used as a legal basis, it is more general in nature.

This provision, even though “a person's ability is determined to be 21 years old, there are still exceptions” (Pradnyamitha & Desak, 2018). The exception lies in the marital status of the person making the agreement. If the person making the agreement is married but has not reached the age of 21, then that person is allowed to make an agreement before a Notary. In connection with this provision, as previously explained, if the person is “already married then the person is allowed to make a deed before a Notary, whereas if the person was married or when the person was separated before he was twenty one years old, then the person's status does not return to immature” (Jayadinata, 2020). Thus, those who have the status of a widow or have been married are allowed to make a deed before a notary.

The legal basis for the validity of the agreement before a notary is Article 1 number 7 UUJN that the meaning of “notary deed is an authentic deed drawn up by or before a notary according to the form and procedure stipulated in the notary's ratification. In making a deed by a general official, the authority to legalize the deed he made”. The notarial deed made according to the stipulated form and procedure means the form of the deed made. The deed made can be in written form and can also be made in private form. The form of the deed made was agreed upon by the said party. Both written deeds legally signed by a Notary as a public official and also deeds made privately can also be legalized by a Notary as a legal deed or declared valid. The private deed becomes valid because it is signed by a notary in his capacity as a state official. The legalized underhand deed can be in the form of *waarmerking*. *Waarmerking* deed is the process of registering or registering private documents in a special book made by a notary where the document has been made and signed by the previous party or parties. As such, the *waarmerking* deed was not drawn up before a notary but is still legally valid and can be legal evidence.

Both types of authentic deed both have legal force or have authenticity. In this regard, the validity of both written and private agreements made by competent parties based on UUJN becomes legal according to law. The validity of the agreement is because it has fulfilled the implied conditions, besides that it has even reached the age of 18 UUJN. If someone wants to take legal action, especially in the field of civil law, he must be at least 18

years old or have been married. Thus, by law it has been deemed competent in carrying out legal actions. Thus, the agreement as well as the agreement can be used as perfect evidence in court.

The validity of the agreement made based on the UUJN becomes legal according to law. The validity of the agreement is because it has complied with the provisions implied in UUJN besides that, it has also reached 18 years of age. If someone wants to take legal action, especially entering the field of civil law, he must be at least 18 years old or have been married before. Thus, by law it has been deemed competent in carrying out legal actions. Thus, the agreement made before a Notary is a valid agreement according to law and at the same time the agreement can be used as perfect evidence in court.

3.2. Implementation of the Principle of Legal Certainty in Making Notarial Deeds Before a Notary

Norm conflict resolution is related to a person's ability to make agreements aimed at realizing definite law. The embodiment of certainty is the main goal of the validity of an agreement. According to Radbruch, there are three ideals (idee) in law, namely "justice, expediency and legal certainty". Justice demands that the law always prioritizes justice, expediency demands that the law always prioritizes benefits, while legal certainty demands especially the existence of legal regulations. Legal certainty in the sense of a law or a regulation after it is promulgated will be implemented with certainty by the Government (Sudiarta, 2021). Any violation of the law will be followed up and subject to legal sanctions. In this case, legal certainty means that everyone can demand that the law be implemented and that demand must be fulfilled.

With regard to agreements made before a Notary, "legal certainty is a top priority in realizing legal objectives" (Mursil, 2014). It is said to be a top priority because the making of the agreement is based on a rule. Therefore, the law must be able to provide certainty in making agreements, including certainty in determining a person's ability to make agreements before a notary. Legal compliance certainly cannot be separated from the purpose of law (Pradnyautari et al., 2020).

The principle of legal certainty must be applied in carrying out the Notary profession because to carry out the functions of a Notary, it is obligatory to provide legal certainty. The legal certainty given by the Notary is reflected in the notarial deed made and ratified by the Notary himself. As a public official, a notary is obliged to uphold laws and regulations and the notary's code of ethics. The code of ethics and UUJN are the main guidelines for public officials. General officials run by Notaries are officials in the field of legal services to the public. In carrying out these general positions, it must be carried out properly and correctly in accordance with these guidelines (Laksana & Griadhi, 2019). Likewise, making a notarial deed is a deed made in writing or known as authentic deed, if the deed made is a private deed then it cannot be used as evidence (Gita & Udiana, 2021).

The legal basis used as a guideline is UUJN, because this law is a special law. In connection with the resolution of the norm conflict above, the resolution is by using the principle of preference.

1) The principle of "*lex specialist derogate legi generalis*", which means laws governing specific matters overrule laws governing substance in general
2) The principle of "*lex posterior derogate legi priori*", means that laws and regulations that apply later override the laws that apply earlier, in terms of related substances.
3) The principle of "*lex superiori dederagat legi inferiori*", means that laws made by higher government officials have a higher position as well (Mertokusumo, 2008).

In connection with the preference principle above, to examine the conflicting norms between the provisions in Article 330 of the Civil Code and Article 39 UUJN, first look at the hierarchy of laws and regulations. Hierarchy of laws and regulations that have been determined. Regarding the provisions for the type of hierarchy, Article 5 of the Legislation Law regulates the principle of forming statutory regulations that there must be conformity between the types and the hierarchy. This statutory hierarchy is also strengthened by the *Stufenbau* Theory which states that "the rule of law is like a ladder that must pay attention to the hierarchy" (Haryanti, 2015).

Based on this *stufenbau* theory, "in principle laws and regulations may not conflict with the regulations above them" (Usfunan, 2020).

The juridical analysis used to resolve the conflict of norms is one of the principles of preference, namely the principle of *Lex Specialis Derogat Legi Generali*, which means that specific regulations can overrule general regulations. Hence, UUJN regulations are specific regulations, while the Civil Code are general regulations. The Civil Code and UUJN have parallel levels or hierarchies, namely laws. Therefore, UUJN can set aside the Civil Code. Based on the principle of *Lex Specialis Derogat Legi Generali* Article 330 of the Civil Code is set aside by Article 39 UUJN. Thus, the ability to make an agreement before a Notary applies Article 39 UUJN. Even though it determines that skill, it can still be ruled out or not applicable. By enforcing Article 39 UUJN it becomes clear that a person's ability to make an agreement before a Notary is 18 years old. These provisions provide legal certainty for the public in making agreements before a Notary. In addition, these provisions also provide certainty before a Notary. Likewise, if one day the parties who make the agreement experience a dispute, then the agreement made before the Notary can be used as perfect evidence in court. The court also looked at the evidence presented at trial. The agreement made has fulfilled the competence of the parties or at the time the agreement was made, the parties were 18 years of age or more. Everything that is made in the agreement becomes valid according to law.

4. CONCLUSION

Leading to the discussion, related to legal issues in this study, it can be concluded that the legal basis for the ability to make agreements before a notary is based on legal actions taken. Proficiency provisions based on the provisions of Article 1330 of the Civil Code. While this legal basis causes a conflict of norms, there is no legal certainty in carrying out legal actions before a Notary. The settlement of norm conflicts related to the ability to make agreements before a Notary is by using one of the principles of preference, namely the principle of *lex specialist derogate legi generali* which has special characteristics that can override general regulations. Hence, the provisions in the Civil Code can be overruled by Notary Position Law (UUJN) because UUJN is a special rule while the Civil Code is a general rule. In other words, the provisions of Article 1330 of the Civil Code may not be enforced. Therefore, what can be applied is the provisions of Article 39 paragraph (1) UUJN. As such, to determine the age limit in carrying out legal actions before a Notary, the minimum age is 18 years or has been married.

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JURIDICAL STATUS OF STOCK EXCHANGE AND INVESTOR LEGAL PROTECTION IN FORCED DELISTING

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Abstract

The Stock Exchange has a role as a regulator of securities trading in the capital market. The Stock Exchange works for profit which is then aimed at developing securities trading activities in the capital market. Meanwhile, there is no form of legal protection for investors in the capital market which is specifically regulated in the law. The purpose of this study is to examine the juridical status of the stock exchange and to determine the legal protection for investors in the implementation of forced delisting. This study uses a normative legal research method, which is sourced from the Legislation by using a library research method. The results reveal that the Juridical status of the Stock Exchange is a company that has its own working rules, so it has differences compared to companies in general, and there is no form of protection for stock investors who experience forced delisting of issuers on the stock exchange. Investors are only given the opportunity to make sales in the negotiated market whose time is determined by the exchange. The findings of this research provide an explanation of the legal protections afforded to investors in the event that forced delisting is implemented.

Keywords: Capital Market, Legal Protection, Stock Exchange

1. INTRODUCTION

The Stock Exchange is a legal entity that has the main task as a means to carry out and regulate securities trading activities in the capital market. The Stock Exchange has played a very important role for a long time, if traced from its history. It has existed since the Dutch colonial era, namely in the context of raising capital from the public or called investors by members of the stock exchange. Viewed from a microeconomic point of view, namely for members of the stock exchange or called issuers, the Stock Exchange is intended to obtain fresh capital that can be used in the context of business expansion and so on (Barus, 2013).

From a macroeconomic point of view, the Stock Exchange plays an important role in efforts to move the wheels of the country's economy, so that securities trading activities in the capital market carried out on the Stock Exchange produce a positive picture of trading conditions. The result can be the achievement of positive performance of the country's economy, and vice versa. The elucidation of Article 9 paragraph (1) of the Capital Market Law states that the stock exchange is an institution authorized to regulate the implementation of its activities through Bapepam (Capital Market Supervisory Agency). Hence, the provisions issued by the Stock Exchange have binding force that must be obeyed by members of the Stock Exchange, issuers whose securities are listed on the Stock Exchange, clearing and guarantee institutions, depository and settlement institutions, custodians or other parties that have a contractual working relationship with the Stock Exchange.

Nevertheless, in terms of making regulations regarding clearing and settlement of stock exchange transactions, these regulations need to be made jointly with the clearing and guarantee institutions. What is meant by "other matters" in this paragraph are the authority of the Stock Exchange to stipulate rules regarding examination of members of the Stock Exchange, rules relating to the mechanism for coordinating the implementation of the functions of the Stock Exchange with clearing and guarantee institutions as well as depository and settlement institutions, and to anticipate developments in future. Equivalent securities are the characteristics of securities that can be exchanged with similar securities that have the same value and are issued by the same issuer (Putri, 2014).

According to Rule Number II: regarding the Delisting and Re-listing of Shares on the Exchange (hereinafter referred to as the Delisting and Listing Rules) Number I.14, delisting is the delisting of securities from the list of securities listed on the exchange, so that These securities cannot be traded on the stock exchange. Delisting is divided into 2 (two) types, namely: voluntary delisting and forced delisting. Voluntary delisting is the removal of securities at the will of the company concerned and has obtained shareholder approval, while forced delisting is the forced removal of securities by the stock exchange because they are unable to comply with existing exchange regulations.

Forced delisting carried out by the stock exchange not only has a significant influence on the company, but also on existing shareholders. The occurrence of forced delisting causes investors to experience a decrease in investment value or lose investment value because the shares owned have been removed from trading or become a closed company. This study aims to find out the juridical status of the stock exchange and the legal protection that shareholders get when forced delisting is enforced.

2. RESEARCH METHODS

The author applies the research method normative law, because the focus of the study departs from the blurring of norms, using approaches: statute approach, conceptual approach, and analytical approach. The data used to examine the issues under study include Law Number 8 of 1995 concerning Capital Markets, Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority, Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, and legal materials primary in the form of scientific works and the results of research by legal experts, especially related to the capital market. Data was collected by means of literature study, then analyzed using qualitative normative methods.

2.1. Legal Certainty Theory

Mahmud (2016) state that legal certainty contains two meanings. First, there are general rules so that individuals know what actions may or may not be performed. Second, in the form of legal security for individuals from the arbitrariness of the government, because general rules make individuals aware of what the state may charge or do to individuals.

Justice and legal certainty, according to Radbruch (1932), are permanent parts of the law and must be considered and maintained for the security and order of a country. The value to be achieved from the theory of legal certainty is the value of justice and happiness (Ali, 2022). The presence of legal certainty will automatically provide legal protection to citizens.

Legal certainty requires the creation of a rule or rule that applies in general, as well as achieving legal certainty (for the sake of order and justice for all Indonesian people).

In connection with this research, if there are vague or unclear regulations, there will be loopholes that the law does not carry out its function to regulate as it should. This study applies the theory of legal certainty to examine the juridical status of stock exchanges in Indonesia, bearing in mind that stock exchanges are corporations, but have their own work rules.

2.2. Legal Protection Theory

The presence of law in social life is useful for integrating and coordinating interests that are usually in conflict between one another each other. The law, therefore, must be able to integrate them, so that conflicts of interest can be kept to a minimum.

Legal protection is a concept where law can provide justice, order, certainty, benefit and peace. Several opinions were cited from a number of experts regarding legal protection, as follows:

1) According to Satjito Rahardjo, legal protection is an effort to protect someone's interests by allocating a Human Right of power to him to act in the framework of his interests.
2) According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.
3) According to Philipus M. Hadjon, it is always related to power. There are two governmental powers and economic powers. In relation to government power, the issue of legal protection for the people (those who are governed) against the government (those who govern). In relation to economic power, the issue of legal protection is protection for the weak (economy) against the strong (economy), for example protection for workers against employers (Wijayanti, 2009).

The theory of legal protection needs to be applied in this study to further examine the types of legal protection investors receive when forced delisting occurs on the stock exchange.

3. RESULT AND DISCUSSION

3.1. Juridical Status of Stock Exchanges in Indonesia

The Stock Exchange has unique characteristics that are not owned by companies in general, namely as a non-profit company by not distributing dividends to its shareholders (Hartarto, 2020). The statement shows that the Stock Exchange is a legal entity in the form of a company that does not work for the purpose of sharing profits, so the Stock Exchange is an example of a form of company that is different from companies in general that work with the aim of seeking and sharing profits in order to realize business expansion. financing operational activities, investment or investment of assets and so on. The Stock Exchange works for profit which is then intended for the development of securities trading activities in the capital market (Hartarto, 2020). This statement indirectly provides implied information, that the juridical position of the Stock Exchange itself seems to be between the

status of a company and a foundation. This is because the status as a company is addressed to the Stock Exchange, but the Stock Exchange is non-profit like a foundation that works not for profit. More specifically, the Stock Exchange is non-profit but works to seek and share profits, but not for commercial purposes, but for the benefit of securities trading activities in the capital market.

The next uniqueness of the Stock Exchange is that it is considered a corporation which contains a collection of brokerage dealers who are members of it (Club of Brokers), so that in the Stock Exchange there is the term "stock exchange member". This proves that the stock exchange has very different characteristics from the characteristics of companies in general, the definition of which is stated in Article 1 Number 1 of Law Number 40 of 2007 concerning Limited Liability Companies, namely legal entities which are capital partnerships, which are established based on agreements, carry out business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations. Article 1 point 2 of Law Number 8 of 1995 concerning the Capital Market states that members of the Stock Exchange are securities brokers who have obtained business licenses from the Financial Services Authority where previously this authority was with the Bapepam (Capital Market Supervisory Agency) and has the right to use the system and/or facilities of the Stock Exchange in accordance with the regulations in the Stock Exchange. Number 1 Regulation III. An Attachment to the Decree of the Directors of the Indonesia Stock Exchange Number Kep00184/BEI/12-2018 concerning Exchange Membership (hereinafter referred to as BEI Regulation III.A) jo. Number 1.1 Rule Number III.I Attachment to the Decree of the Board of Directors of the Indonesia Stock Exchange Number Kep-00022/IDX/02-2017 concerning Membership Margin and Short Selling states the same thing, namely members of the Stock Exchange are securities companies that have obtained business licenses from the Financial Services Authority Finance as a securities dealer intermediary as referred to in Article 1 point 2 of Law Number 8 of 1995 concerning Capital Markets and has obtained exchange membership approval to use the exchange system and/or facilities in order to carry out securities trading activities on the exchange in accordance with exchange regulations.

As can be seen, the Stock Exchange which is a legal entity in the form of a company is an example of a company that does not issue shares because the stock exchange itself has its own working system that is cooperative among exchange members, so that exchange members who are partners for the stock exchange have the right to and the same obligations in terms of ownership of the Stock Exchange itself. Stock exchanges are associations or associations that are mutual in nature, namely the ownership of shares is held by its members (mutual associations owned by their members) (Sitorus, 2019). This is what is referred to as "stock exchange mutualization", namely securities brokers who act as members and also as owners or shareholders in the Stock Exchange. In general, mutual stock exchanges carry out activities that are not solely profit oriented because the profits obtained by the stock exchange will be returned to each member of the stock exchange by means of securities trading transaction costs, as well as access fees provided as cheaply as possible.

The company is a form of business that carries out activities on a regular and ongoing basis with the aim of obtaining profit or profit, whether organized by individuals or business entities in the form of legal entities or those that are not in the form of legal entities. The company can also be interpreted as an entity that runs a business, both business activities carried out by individuals and business activities carried out by business entities. As can be seen, companies that are members of the Stock Exchange carry out their business by selling the company's securities. Regarding the securities company that is no longer a member of the stock exchange because it does not meet the requirements, the Company automatically has no longer owns of the Stock Exchange Shareholders and within 12 (twelve) months shall continue to sell their shares to other effects companies that are still eligible as a member of the exchange.

The Stock Exchange is a financial market for long-term funds and is a concrete market. Long-term funds are funds with maturities of more than one year (Indriani et al., 2020). A concrete market means that the market is carried out in an open and real way, with a transparent mechanism. The Stock Exchange is also an organized system that brings together sellers and buyers of securities, both directly and indirectly. The securities referred to here are all securities issued by the company, for example stocks, bonds, proof of debt, proof of rights (Right Issue), and warrants. It can be stated that the Stock Exchange is a company that is a vehicle for issuers and/or parties involved in securities trading activities in the capital market with investors who wish to buy and sell securities, either through an initial offering or through a secondary market. The Stock Exchange really does not show the characteristics of a general company, it is only set as a company with the basis of arrangements found in the law number 8 of 1995 on the capital market.

The Stock Exchange in this case is the Indonesia Stock Exchange which is headquartered in Jakarta and has several representatives in various regions, one of which is in Surabaya where the Surabaya Stock Exchange was once established which specifically handled bond securities transactions, also has a management structure that can be said the same as the management structure in the company in general. The management structure in the Indonesia Stock Exchange consists of division heads, board of directors, company secretary, inspectorate, and the Main Director as the head of leadership, and the form of accountability for the management structure is supervised by the board of commissioners. This implies, that the Indonesian Stock Exchange is subject to Law Number 8 of 1995 concerning Capital Markets and Law Number 40 of 2007 concerning Limited Liability Companies. Because the Indonesia Stock Exchange is a company formed based on the mandate of Article 6 of Law Number 8 of 1995 concerning the Capital Market, the Indonesia Stock Exchange is a form of company formed by the state.

The Persero (Companies) is a form of state business entity, but is subject to the legal provisions that apply to Limited Liability Companies (Suratman, 2017). During the validity period of the Commercial Code (KUHD) the provisions of Article 36 to Article 56 of the Criminal Code apply. The provisions of Law Number 1 of 1995 concerning Limited Liability Companies also apply, at the time this law comes into effect. The provisions in Law Number 40 of 2007 concerning Limited Liability Companies are also enforced, and for the first time we are familiar with this form since the publication of Presidential Instruction Number 17 of 1967 concerning Foreign Investment and Law Number 9 of 1969 regarding Domestic Investment.

The Indonesian Stock Exchange, however, is not a State-Owned Enterprise because the parties who hold shares in the stock exchange are the members of the exchange themselves. Article 1 of Law no. 19 of 2003 concerning BUMN (State Owned Enterprises) states that BUMN is a business entity whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets. The statement regarding the definition of BUMN above concludes that there are several elements that make a company categorized as a BUMN, namely a business entity, capital that is wholly or mostly owned by the state, the state carries out direct equity participation and sourced from separated state assets.

The legal form of a Limited Liability Company (PT) is considered not the right organizational form for the Indonesia Stock Exchange (IDX). This statement was made by Sarmauli Yuris Christi Simangunsong while taking an open examination for the doctoral program at the Faculty of Law UGM. This partner at Nindyo & Associates explained that PT. IDX is a collection of exchange members, each of which has 1 share of PT. IDX. Ownership of 1 share indicates that the share ownership of PT. IDX is more a form of membership sign than as proper share ownership in a limited liability company in general. There is also a prohibition on the distribution of dividends to its shareholders, so that the notion of a limited liability company as a collection of capital is not properly applied to PT. IDX.

PT. IDX, even in the study of auction law, has its own provisions governing the mechanism of share auctions, so it appears that PT. The IDX needs to clearly define the status of a legal entity. Arrangements for the sale of stock auctions are regulated in PP No. 12 of 2004 concerning the Implementation of Activities in the Capital Market Sector. PT. IDX, is a legal entity in the form of a company that obtains a permit from the Financial Services Authority to carry out stock exchange activities. Seeing the transfer of rights over shares of PT. BEI is mentioned in Government Regulations, then in the provisions of the auction it is included in the type of obligatory non-execution auction. This is because it is required by government regulations but the object being auctioned is not a guarantee that is executed (Tista, 2013). Based on Government regulation (PP) No. 3 of 2018 on the Type and Tariff of the Non-the Needs of State Receivities applicable to the Ministry of Finance, the non-executive auction should be subject to a buyer's duty of 2% of the auction price formed and the required Auction of the MPNs through the KPKNL (Office of the State and Runner Management and the Auction) and was carried out before the Iku's Auction Officer.

3.2. Legal Protection for Investors in the Implementation of Forced Delisting

Legal protection for investors regarding forced delisting is regulated in Law Number 8 of 1995 concerning Capital Markets and Law Number 40 of 2007 concerning Limited Liability Companies concerning the negligence of company management which caused the company to be forced delisted by the Indonesian Stock Exchange (Saputra & Budiharto, 2016). In connection with this legal protection, when viewed from the characteristics of the effects, in general, there are 2 (two) characteristics of the effects. First, equity securities and secondly debt securities. Securities in the capital market, among others:

1) Shares, are securities offered through a public offering on the stock exchange. Stock as an investment instrument and also proof of ownership of a company based on the number of shares it owns.

2) Bonds are debentures issued by a company for a certain period of time and at maturity the debt and interest will be paid which has been agreed at the beginning.
3) Mutual funds are a type of investment that is made by raising public funds which will later be managed by an investment manager through an investment platform and profits will be shared as agreed at the outset (Senna, 2020).

Initial Public Offering (IPO) or more commonly known as going public is an alternative to obtain financing or access to capital for a company (Ibbotson & Ritter, 1995). Companies, through an IPO, obtain fresh funds by offering ownership of their shares or bonds issued to the public. This bidding mechanism is known as a public offer. Parties or companies that make a public offering are called issuers. Stock delisting is one of the phenomena that occur in the capital market, to protect the public interest and in the context of organizing orderly, fair and efficient securities trading (Thompson & Kim, 2020). The legal basis governing delisting is in the Decree of the Board of Directors of the Jakarta Stock Exchange Number Kep-308/BEJ/07-2004 concerning Rule Number II concerning the Delisting and Relisting of Shares on the Exchange. It is clearly regulated about delisting. Based on the type, delisting is divided into 2 (two) types, namely voluntary delisting and forced delisting. Voluntary delisting or delisting of securities is a write-off carried out at the request of the issuer or company (Saputra & Budiharto, 2016). Requests for delisting by the listed company must also meet the requirements listed on the stock exchange. In contrast to voluntary delisting which occurs because of the company's go private action. Forced delisting usually occurs against the will of the shareholders (Bakke et al., 2012).

Number III.3.1 Delisting and Relisting Rules, the exchange deletes the listing of listed company shares in accordance with the provisions of this rule, if the listed company experiences at least 1 (one) of the following conditions:

1) Experiencing conditions, or events, which significantly negatively affect the business continuity of the listed company, either financially or legally, or to the continuity of the listed company's status as a public company, and the listed company cannot show adequate indications of recovery.
2) Shares of listed companies which are suspended on the regular market and cash market, are only traded on the negotiating market for at least the last 24 (twenty four) months.

There is no form of legal protection for investors in the capital market that is specifically regulated in the law. Investors who conduct transactions in the capital market are generally considered to have extensive knowledge (smart investors). This knowledge indicates that there are no losses that will be experienced when there is a transaction. Every investor, however, has weaknesses and needs to be given protection from those who can harm or want to gain by exploiting the weaknesses of investors. The negotiating market is the protection provided by the exchange to investors before an issuer is officially delisted. The negotiating market is the market where trading effects are equity in the exchange are carried out based on individual direct bargain and not in a continuous basis of the sustainable (a non-continuous auction market) and its completion can be done based on the agreement of the Stock Exchange Member (Senna, 2020).

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he negotiating market is almost the same as the regular market; there is bargaining on the stock exchange, but the bargaining that occurs on the market negotiations occur privately between buyers and sellers and remains under the supervision of the stock exchange. The negotiating market also allows the sale and purchase of a number of shares that are less than the general stock exchange stipulation, namely 1 lot (100 shares), but approval must be given from the exchange. Negotiation market remains to be done through securities. The price of shares offered on the negotiated market is not affected by fluctuations in shares on the regular market.

If there is no agreement between the two parties or the investor who owns the shares does not want to sell their shares, then the investor as the shareholder can still become the shareholder of the company, which is regulated in the Company Law. Article 3 paragraph (1) of the UUPT states that the shareholders of a limited liability company are not personally responsible for engagements made on behalf of the company and are not responsible for the company's losses in excess of the shares they own. The provisions in this article emphasize the characteristics of a company, that the shareholder is only responsible for the deposit for the ownership of all shares and does not cover his personal assets. The existence of rights and obligations for shareholders regulated in the Company Law explains that investors have a clear legal protection basis. After the end of the negotiating market set by the Stock Exchange and the official Delisting Issuer, the company still has an obligation attached to the shares of the shares according to the Company Law.

4. CONCLUSION

4.1. Conclusion

The Indonesia Stock Exchange as an institution that was formed and regulated by its mandate in Law Number 8 of 1995 concerning the Capital Market is one of the legal subjects in the form of a company with a legal entity that is authorized by this Law. The Juridical Status of the Stock Exchange is a company that has its own work rules, so it has differences compared to companies in general because the Stock Exchange is a non-profit company in the sense that it does not seek and share profits for commercial purposes, but is aimed more at the interests of securities trading activities carried out on the Exchange. Securities in particular and the capital market in general.

There is no form of protection for stock investors who experience forced delisting of issuers on the stock exchange. Investors are only given the opportunity to make sales on the negotiating market at a time determined by the exchange. Issuers are also not given the obligation to buy investors' shares in the negotiated market. Transactions in the negotiating market are determined based on the agreement of both parties, namely the seller and the buyer. If the investor does not make a sale or does not get a price agreement on the negotiating market, the investor will become a shareholder as regulated in the Company Law after the issuer is effectively delisted.

4.2. Suggestion

Based on the results and conclusion above, some suggestion may bey taken into account namely the Stock Exchange is regulated in a separate law because the Stock Exchange as a company has different rules compared to corporations in general, with legal considerations being regulated in a separate law. It is hoped that this will provide clarity on the legal status and regulatory provisions of the Stock Exchange itself. The Stock Exchange will also be better known for its publicity to the general public.

Preferably, the Indonesia Stock Exchange makes a policy of legal protection for investors against forced delisting before issuers are delisted to minimize losses in investments made. Furthermore, issuers will begin to have an obligation to buy shares in the negotiating market, so that there are no obstacles for investors who want to sell their shares and for stock prices to fall too deeply due to the issuer being delisted. It is also hoped that the opinions of minority investors will be heard more at the general meeting of shareholders (GMS), so that investors are able to find solutions when forced delisting occurs.

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DISTRIBUTION LEGALITY OF ARAK AS A BALI TRADITIONAL DRINK

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Abstract

This study aims to understand and determine the distribution arrangements for arak as a traditional Balinese drink. The research method uses a normative legal research type, the type of approach uses a statutory approach and a case approach. The legal materials used are sourced from primary legal materials in the form of related legislation, while other sources are from literature, journals and internet media. The technique of collecting legal materials uses document study techniques and is processed in a qualitative descriptive way. The findings of the research, specifically the regulation of the distribution of arak as a traditional Balinese drink, are regulated in the Governor of Bali Province Regulation Number 1 of 2020 concerning the Governance of Balinese Fermentation and Distillation Drinks as a form of governance for the distribution of Balinese arak. The legality of distribution of arak as a traditional Balinese drink is carried out by producers through distributors, then carried out by sub-distributors and distributed to direct sellers.

Keywords: Arak, Bali, Drinks, Legality

1. INTRODUCTION

Arak Bali is a type of liquor that originates from Bali. It is recognized for having a high alcohol content and may be consumed by a wide variety of people. Balinese Arak has become a typical Balinese traditional drink, not only in local Bali, but is known at the national level and even at the international level. Arak drink is typical of Bali because arak drink has been consumed for generations or from generation to generation without interruption. Because it has been consumed for generations, Balinese arak has become an icon of liquor originating from Balinese culture. As a cultural icon, the Balinese arak drink is continuously being preserved (Mao, 2022).

This consistent preservation has given rise to the uniqueness of the Balinese arak drink. Even though it can be intoxicating, until now *Arak Bali* is still popular for consumption (Muku & Sukadana, 2009). Consumption of arak, not only among adults and the elderly, but has experienced rapid development. Its development, in which the consumption of *Arak Bali* has penetrated among teenagers and even among children who are still underage. Even though this arak drink contains high alcohol, it is still popular, and has even become the addiction of certain people. In the past, *Arak Bali* was a prohibited drink, because it contained high alcohol, different from today, where *Arak Bali* is given legality in its distribution.

The legality of *Arak Bali* is contained in the Governor of Bali Regulation Number 1 of 2020 concerning the Management of Balinese Fermented and/or Distilled Beverages (hereinafter referred to as the Governor Regulation on the Management of Fermented Beverages). Balinese arak drink, now has a legal basis in its management. The management of Balinese arak drinks includes the processing of raw materials, production and distribution.

As in Article 2 of this Governor Regulation (*Pergub*) it stipulates that such Governor Regulation is intended to carry out, protect, maintain, utilize for cultural interests, customs and religious ceremonies as economic resources. In addition, it is also intended to carry out guidance, control and supervision of the process of procuring raw materials, production, distribution, control and supervision of Balinese typical fermented and/or distilled drinks.

Based on Article 11 paragraph (1) of the Governor Regulation on Fermented Beverage Management, it is stated that the distribution of Balinese fermented and/or distillate drinks is carried out by producers to distributors. Furthermore, in paragraph (2) it states that the distributor as referred to in paragraph (1), distributes Balinese typical fermented and/or distilled drinks to sub-distributors. Then, the sub-distributors distribute Balinese-style fermented and/or distillate drinks to direct sellers in accordance with the provisions of the laws and regulations in paragraph (3). These provisions provide an understanding that the distribution of *Arak Bali* is carried out by the producer to the distributor, then the distributor distributes it to sub-distributors and the sub-distributor distributes it to direct sellers. This distribution flow means that the distribution of *Arak Bali* is carried out in many stages. The stages of distribution regulated in this regulation are considered to be very complicated because it starts with artisans, then producers, distributors, sub distributors and direct sellers. There are five steps for distributing *Arak Bali*. The distribution of *Arak Bali* is very complicated. The raw materials provided by the craftsmen are bought very cheaply by the producers, then, the producers sell at high prices to the sellers and the sellers will also sell at a higher price to the buyers. Hence, the price of *Arak Bali* will be expensive.

Continuing with the provisions above, Article 12 of this Governor Regulation stipulates that:

1) Balinese fermented and/or distilled drinks can only be sold in certain places in Bali, outside Bali and/or for export in accordance with the provisions of laws and regulations.
2) Bali typical fermented and/or distilled drinks as referred to in paragraph (1) are prohibited from being sold to:
   a) youth arena, street vendors, lodging, campgrounds;
   b) places adjacent to places of worship, educational institutions, government institutions and health facilities; and
   c) places as stipulated in the provisions of laws and regulations.
3) Balinese fermented and/or distillate drinks as referred to in paragraph (1) are prohibited from being sold to minors and/or school children.

The provisions above provide permissibility and impossibility in the distribution of *Arak Bali*. Balinese Arak can only be sold in certain places (Ardyanti & Tobing, 2017). In this provision, *Arak Bali* may not be sold in various places in accordance with paragraph (2) and this prohibition also applies to minors and/or school children. This prohibition became a permissibility of the Provincial Government of Bali in relation to the distribution of *Arak Bali*.

As a comparison with previous research, namely research conducted by Putu Hendrwan Pranata and Pande Yogantara S., with the title study of the Law of Liquor Circulation in Bali After the Issuance of Bali Governor Regulation No. 1 of 2020, with the formulation of the problem is how is the legal protection for minors against the distribution of local liquor in Bali? and how is the process of controlling and supervising business actors selling local

liquor in Bali in terms of Bali Governor Regulation No. 1 of 2020? (Putu Hendrawan Prananta, 2021). Then research by RP & Atmaja (2016), entitled "*Pengaturan Minuman Beralkohol Golongan A Bagi Pelaku Usaha Toko Modern Minimarket*". The formulation of the problem is what is the policy of the minister of trade in providing legal certainty for modern store business actors regarding the regulation of class A alcoholic drinks?, and research by Zanivah et al. (2016), with the title "*Pengendalian Peredaran Minuman Beralkohol di Wilayah Hukum Polresta Denpasar*", with the formulation of the problem is how is the circulation of alcoholic beverages in Denpasar? and how to control traditional alcoholic drinks in Denpasar?. The three studies, of course, have differences and similarities with this research. The similarities are that they are both related to alcoholic beverages and also traditional alcoholic drinks. While the difference is in the type of research used is a type of empirical research, while this research takes a normative type. Another difference lies in the research study which is more directed to the policies of the minister of trade and the Governor of Bali Governorate. This research also examines the Governor of Bali, but related to the distribution of *Arak Bali*, while previous research related to the consumption of *Arak Bali* by minors and their supervision. Therefore, this legal research study is very different from previous research studies. The purpose of this research is to know and understand the distribution of the distribution of Bali Arak Drinks as traditional Balinese drinks based on the frequency of governance of fermented drinks and to understand and know the form of the ability of distribution of Arak Bali as traditional Balinese drinks based on Pergo of Governance of fermented drinks.

2. RESEARCH METHOD

This type of normative legal research was the choice in this research. Legal research was a process of finding legal rules, legal doctrines and legal principles that can answer the legal problems that were determined with proper results (Mahmud, 2016). Legal research seeks to found the truth of coherence, namely whether the rule of law was in accordance with legal norms and whether the legal norms containing obligations and sanctions were in accordance with legal principles (Mahmud, 2016). The approach used was a statutory approach and a conceptual approach (Diantha & SH, 2016). The sources of legal materials used were primary sources of legal materials, in the form of the Governor Regulation on the Management of Fermented Beverages, secondary legal materials in the form of literature and journals related to the arrangement of the distribution of *Arak Bali* as a traditional Balinese drink based on the Governor Regulation on the Management of Fermented Drinks and the legality of the distribution. *Arak Bali* as a traditional Balinese drink based on the Governor Regulation on Fermented Beverage Management. The technique for collecting legal materials used a document study technique. Processing of legal materials was processed by qualitative analysis.

3. RESULT AND DISCUSSION

3.1. Arrangements for the Distribution of Bali Arak Drinks Based on the Governor Regulation on Fermented Beverage Management

Arrangements for the distribution of *Arak Bali* are listed in the provisions of Article 7 paragraph (2) of the Governor Regulation on Fermented Beverage Management which states that the production of raw materials is sold to cooperatives formed by artisans. Furthermore, in paragraph (3) it stipulates that cooperatives are required to purchase raw materials from artisans, and cooperatives are required to sell raw materials to producers. The provisions in paragraphs (2) and (3) regulate the distribution of *Arak Bali* starting from artisans, cooperatives and producers. There are three places that must be passed in the distribution of *Arak Bali*.

Arrangement for the distribution of *Arak Bali* also regulated in the provisions of Article 11 of this Governor Regulation as mentioned above (Sugiarta et al., 2022). In the provisions of this article, there are additional places for distribution of *Arak Bali*. The addition is in distribution to distributors, sub distributors and direct sellers. This provision adds to the distribution of *Arak Bali* by producers. Producers distribute Balinese Arak drinks to distributors, then distributors distribute Balinese Arak drinks to sub-distributors and sub-distributors distribute Balinese Arak drinks to direct sellers. Thus, there are three stages that must be passed in distributing *Arak Bali*.

Referring to the previous provisions, namely Article 7 paragraph (2) and paragraph (3) of the Governor Regulation on the Management of Fermented Drinks, there are three stages in the distribution of *Arak Bali*, while Article 11 of the Governor Regulation on the Management of Fermented Drinks also includes three stages. If these stages are combined, then there are six stages that must be passed in distributing Balinese arak drinks. The stages are starting from artisans who provide raw materials for *Arak Bali*, then cooperatives as places to sell these raw materials, thirdly producers as places for selling raw materials received by cooperatives, fourth, distributors as companies that distribute *Arak Bali* drinks by producers, fifth sub distributor as a company appointed by the distributor to distribute Balinese arak drinks, and the sixth is a direct seller as a company that sells Balinese arak drinks to consumers. Consumers are the last place in distributing *Arak Bali*.

Observing the six stages of distribution of the *Arak Bali* drink, gives the impression that it is too complicated, even creates the impression that it is taking too long or takes too much time to reach consumers. In addition, artisans can only distribute *Arak Bali* to cooperatives. If we look at the position of the cooperative, it is only a stopover from artisans to producers. The producer in question is a company that has an industrial business license, distribution permit and identification number of the excisable goods entrepreneur who further processes raw materials from artisans purchased from the cooperative (Yuanda et al., 2018). These raw materials are processed using technology to produce *Arak Bali.*

Arrangements for the distribution of *Arak Bali* are intended as guidelines in carrying out protection, maintenance, utilization for cultural purposes, customs and religious ceremonies as economic resources and carrying out guidance, control and supervision of the process of procuring raw materials for production, distribution, control and supervision of *Arak Bali*. This arrangement of Balinese arak drinks aims to utilize Balinese arak drinks as an economic resource to improve the welfare of Balinese krama. Then strengthening and empowering *Arak Bali* raw material artisans, realizing the management of raw materials, production,

distribution, control and supervision of *Arak Bali* drinks, also aims to build production standardization to ensure the safety and legality of *Arak Bali* drink products, and protect the people from food that does not meet the quality and security.

The goal that the Governor Regulation wants to achieve is a very noble goal to empower wine craftsmen in Bali and improve the welfare of wine craftsmen in Bali (Putra et al., 2022). If arak artisans in Bali can distribute their arak to cooperatives, then it is hoped that the artisans will be paid according to the price agreed upon or specified in this Governor Regulation. However, the price of raw materials is definitely cheaper than the price of arak that has been packaged by the producers. Producers can sell Balinese arak at very high prices and even raise the price of Balinese arak at any time. What's more, if the producers sell the *Arak Bali* to foreigners, the profits will be fantastic. The profits obtained by producers, distributors, sub distributors and direct sellers are higher than the profits obtained by wine craftsmen. Arak craftsmen only get a very minimal profit because what they sell is the raw material, not the arak. Besides that, artisans also do not get permission to produce wine. Craftsmen are only allowed to sell raw materials, and even then they have to sell it to the cooperative, that's all that can be done by wine craftsmen. Arak craftsmen as indigenous people are not allowed to produce arak drinks, nor are they allowed to sell directly to consumers. The policy in this Governor Regulation, especially related to wine craftsmen, provides an understanding that arak craftsmen are regulated to only produce arak as raw material, not to produce arak drinks. Craftsmen are left with craftsmen who are only obliged to supply raw materials to cooperatives, not to producers, distributors, sub-distributors or to direct sellers, let alone consumers.

3.2. Forms of Legality of Bali Arak Distribution Based on the Governor Regulation on Fermented Beverage Management

The legality of the distribution of *Arak Bali* begins to be stated in Article 8 of the Governor Regulation on Fermented Beverage Administration that the artisans or cooperatives carrying out the transportation of raw materials must be accompanied by a travel document from the village head or local *lurah* stating the name of the artisans, type and amount of raw materials being transported (Syartanti & Pidada, 2021). The provisions of this article provide a clear understanding that if artisans or cooperatives wish to transport raw materials, they must first obtain a travel document issued by the local *lurah* or village head. By bringing a travel permit, the artisans or cooperatives can transport raw materials, conversely if the artisans and cooperatives do not get a travel permit, the artisans or cooperatives are not allowed to transport raw materials. Thus, the essence of this provision lies in the travel document that must be owned by artisans or cooperatives.

Travel permits are a form of legality of the transportation of raw materials carried out by artisans or cooperatives. The travel document contains the name of the craftsman, the type of raw material transported and the amount of raw material transported and is affixed with the signature of the village head or *lurah* and at the same time the seal of the village head or *lurah*. This form of legality is a formal form that must be fulfilled by craftsmen or cooperatives. In other words, a travel document issued by the village head or craftsmen is a form of formal legality granted by this Governor Regulation to craftsmen or cooperatives. The form of formal legality given determines the legitimacy of the distribution process for the raw materials for Balinese arak. If the artisans and cooperatives have pocketed a travel

permit from the village head or *lurah*, So the raw materials are transported is legitimate or legal raw material, while if the coordinates and cooperatives do not pursue the road, then the raw materials are transported illegal or unauthorized raw materials.

Another form of legality is given to producers of Balinese arak fermented drinks. As stipulated in Article 1 point 11 of the Governor Regulation on Fermented Beverage Management that Balinese typical fermented and distillate beverage producers are companies that have industrial business permits (IUI), distribution permits and excisable goods entrepreneur identification numbers (NPPBKC) which further process raw materials from artisans purchased from the cooperative. The legality granted by this Governor Regulation to producers is given in the form of industrial business permits, distribution permits and excise taxable entrepreneur identification numbers. A distribution permit is an approval for the results of a processed food assessment issued by the head of the BPOM for the purpose of circulating processed food (Indrayati, 2016). There are three forms of legality given to producers of Balinese arak fermented drinks. This form of legality is also a requirement to become a producer. If anyone seek to produce Balinese arak fermented drinks, he must have two permits and an excise tax identification number. If the company has an industrial business license, a distribution permit and an excise identification number, then the Balinese arak fermented drink becomes legal for circulation or if the Balinese arak drink is produced by a company that has a license and is subject to excise duty, then the Balinese arak drink is a legal drink, whereas if the company that produces the Balinese arak drink does not have a license and an excise identification number, then the Balinese arak drink is an illegal drink or becomes a prohibited drink or may not be distributed (Syartanti & Pidada, 2021).

Other legalities are given to distributors as a company that is required to have a license. Article 1 point 16 states that a distributor is a company that has a business permit for trading alcoholic beverages (SIUP-MB) in accordance with statutory provisions to distribute Balinese fermented and distillate drinks to sub-distributors. A business license for trading alcoholic beverages is a formal requirement for distributor companies. This formal legality must be fulfilled or is an absolute requirement for distributors in distributing Balinese Arak drinks. If the distributor company already has the permit, then the *Arak Bali* being distributed is a legal drink (Ratih & Habibah, 2022), whereas if the distributor company does not have a permit, then the *Arak Bali* being distributed is illegal or becomes a prohibited drink because it is prohibited by this Governor Regulation. Thus, the distributor company is required to have a business license for trading alcoholic beverages before distributing it to sub-distributors and to direct sellers. The granting of this legality is a form of legality granted by the Governor's Regulation to distributors only. Unlike the form of legality given to producers and craftsmen. The distributor company only needs to have a business license for trading alcoholic beverages, so they can distribute Balinese arak drinks.

Based on the form of legality specified in this Governor Regulation, there are five types of legality. The legality granted by the Governor is formal legality in accordance with the provisions of this Governor Regulation. The five formal legalities are:

1) Travel Certificate;
2) Industrial Business License (IUI);
3) Distribution Permit; and
4) Excise Goods Entrepreneur Identification Number (NPPBKC); and

5) Alcoholic Beverage Trading Business License (SIUP-MB).

Travel permits are the legality given to artisans and cooperatives, then the legality for producers is given in the form of Industrial Business Permits, Distribution Permits, and Excisable Goods Entrepreneur Identification Numbers, and the legality given to distributors is legality in the form of Permits for Trading Alcoholic Beverages. The five forms of legality provided greatly determine the legitimacy of the distribution of *Arak Bali*. Whether or not *Arak Bali* is illegal, is determined by the five forms of legality. This form of legality cannot be separated from local wisdom which has become the main basis for legalizing *Arak Bali* (Jessica, 2021). The local wisdom that is used as the main foundation is *Nangun Sat Kerthi Loka Bali* which means maintaining the sanctity and harmony of Bali's nature and its contents to create a prosperous and happy Balinese life.

4. CONCLUSION

Arrangements for the distribution of arak as a traditional Balinese drink are regulated in Article 7 paragraph (2), Article 7 paragraph (3) and Article 11 of the Governor Regulation on the Management of Balinese Fermented Drinks as a form of governance for the distribution of Balinese arak drinks. The arrangements are very clear, however, welfare for artisans and cooperatives needs to be paid more attention to in order to realize the vision of the Balinese Nunun Sat Kerthi Loka. The governor regulation is the legality of the distribution of Balinese arak drinks as a traditional Balinese drink which is carried out by producers through distributors, then carried out by sub-distributors and distributed to direct sellers. As a form of legality, the distribution of *Arak Bali* is carried out in five forms, namely in the form of travel documents as a form of legality given to artisans and cooperatives, then legality for producers is given in the form of Industrial Business Permits, Distribution Permits, and Excisable Goods Entrepreneur Identification Numbers, and legality given to distributors is legality in the form of Alcoholic Beverage Trading Business Permits. For direct sellers and retail sellers, this legality is not required because this Governor Regulation does not oblige direct sellers and retail sellers to have a permit or distribution permit. This form of legality is a form of formal legality that must be owned by artisans, cooperatives, and distributors in distributing *Arak Bali*.

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NOMINEE AGREEMENT: A SOLUTION FOR FOREIGNERS TO CONTROL LAND IN BALI

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Abstract

The purpose of this study is to find out the legal basis of the nominee agreement and to find out the nominee agreement that is used as a solution by foreigners in controlling land in Bali. This research method uses the type of empirical legal research. The legal basis for the nominee agreement is Article 21 and Article 26 of the Basic Agrarian Law (BAL). In addition, there are also other legal bases, namely Articles 1320 and 1313 of the Civil Code. Juridically, the nominee agreement cannot be used as a solution by foreigners to control land in Bali. Land tenure that can be taken by foreigners is with usufructuary rights and rental rights.

Keywords: Agreement, Foreigner, Land, Nominee

1. INTRODUCTION

Nominee agreement is a name loan agreement between a foreigner and an Indonesian. Nominee agreement is used by foreigners with aim of being able to control land in Bali. Agrarian regulations, regarding land tenure, where only Indonesians may own land in Indonesia. This provision very clearly stipulates that only Indonesians can have property rights, the property rights referred to are ownership rights over land. In other words, foreigners are not allowed to have ownership rights over land.

Regarding prohibition for foreigners to own land, so foreigners are looking for legal loopholes in order to own land in Bali. Such loophole is obtained by borrowing names from the Balinese by making agreements that led to the ownership of the land by foreigners. These agreements are make "to transfer ownership rights to land by making Indonesian citizens as shields, therefore the nominee agreement in the case says to be a form of law smuggling" (Saraswati & Westra, 2018). The Supreme Court ruling has prohibited the existence of nominee agreements, even nominee agreements are said to be law smuggling.

Related to that, Government Regulation No. 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia (hereinafter referred to as PP Residential Residents) provides opportunities for occupancy or including domicile in Bali. Based on Article 4 of this Government regulation (PP) on Foreigner Housing, it stipulates that "Residential or residential houses that can be owned by foreigners as referred to in Article 2 paragraph (1)" are:

"a. Single house on land:
1. Right to Use; or
2. Rights to Use over Property Rights which are controlled based on an agreement on the granting of Rights to Use over Property Rights with deed of Land Deed Making Official.

b. *Sarusun* (units of flats) which built on a land plot with Right to Use".

This provision provides an opportunity for foreigners to reside in Indonesia. The residence for the foreigner is given over right to use over right of ownership. Thus, based on this government regulation, foreigners are allowed to have rights to use, not ownership rights. This right to use must be understood "as the right to use or collect produce from land that is directly controlled by the State or land belonging to another person who gives the authority and obligations specified in the decision to grant it by the official authorized to give it or by agreement with the owner of the land" (I. P. I. M. Putra et al., 2013). Thus, if foreigners have right to use, they can enjoy the results.

In practice in Bali, foreigners wish to live for a long time because foreigners have business interests and meet their life's needs. If foreigners have right to use only, then very little time will be given or very little time to reside in Bali. According to Article 6 of the Government Regulation on Foreign Residents, it stipulates that:

"paragraph (1) A single house that is given on land with right to use as referred to in Article 4 letter a number 1, is given for a period of 30 (thirty) years.

paragraph (2) Right to Use as referred to in paragraph (1) can be extended for a period of 20 (twenty) years.

paragraph (3) "In the event that the extension period as referred to in paragraph (2) expires, Right to Use can be renewed for a period of 30 (thirty) years."

The regulation has provided an opportunity for foreigners to have usage rights. Regarding the period of time of use rights that are permitted, first it is given for thirty years, then it can be extended for twenty years and then it can be extended again or a second extension, namely for thirty years. Thus, the total term a foreigner can hold is eighty years. The time given may still feel insufficient for foreigners to carry out their business activities in Bali. "One of the factors that causes foreigners to nominee agreement is the existence of pragmatic economic factors" (I. W. E. A. Putra & Agung, 2016). Therefore, foreigners want to stay in Bali for a long time.

In fulfilling this desire, foreigners are looking for loopholes or ways to be able to own land in Bali. The desire to own land in Bali is surely not allowed. The method taken by foreigners is making a nominee agreement or borrowing a name. Name loan agreement is with Indonesians or Balinese. Nominee agreement can be done by way of marriage or without marriage. This method, as explained above, constitutes legal smuggling. Surely legal smuggling is prohibited by government regulations and laws. In fact, even though nominee agreement was prohibited, it is still carried out because nominee agreement is considered to provide a solution for land ownership by foreigners in Bali. With a nominee, foreigners will be able to own land for an unlimited period of time and can enjoy the land at will. Even though it is impossible for foreigners to get property rights. foreigners are only allowed to have rights to use. Therefore, it is very important to do research by examining the legal issues in the nominee agreement. This research explores the theme "Nominee Agreement: A Solution for Foreigners to Control Land in Bali".

Based on this background, this study aims to understand about nominee agreement based on the Civil Code and understanding that nominee agreement can be used as a solution to land tenure by foreigners in Bali.

2. RESEARCH METHOD

Research was "a scientific activity including analysis and construction that was conducted methodically, systematically, and consistently" (Soekanto, 1984). This type of research was empirical juridical or empirical legal research. Empirical legal research was "a method by observing or researching directly into the field in order to obtain accurate truth in the process of perfecting this research" (Soekanto, 1984).

3. RESULT AND DISCUSSION

3.1. Nominee Agreement Based on the Civil Code

The nominee agreement is also called the name lending agreement, so to examine the nominee agreement begins with basing thoughts on the arrangement of the agreement. The arrangement of the agreement is stated in Civil Code. Based on Article 1313 of Civil Code that "An agreement is an act by which one or more people bind themselves to one or more other people". Regarding nominee agreement, foreigners will bind themselves to Balinese. The binding aims to make a nominee agreement.

Based on Article 1320 of the Civil Code, it determines that the legal requirements for an agreement are;

"1) The agreement of those who bind themselves;
2) Capable of making an agreement;
3) Regarding a certain matter; and
4) Something lawful cause " (Utama & Purwanto, 2019).

The terms of the validity of this agreement determine validity of an agreement including nominee agreement. The first requirement is there is an agreement between foreigners and Balinese. Second, the ability to make an agreement. Third, a certain thing and fourth, namely the existence of a lawful cause. In this regard, the first and second conditions have been fulfilled by the "foreigner with the Balinese", while the third and fourth conditions are not fulfilled or do not meet the legal requirements of agreement. The existence of something meant that there is an agreement on land ownership by foreigners and an agreement by borrowing names (Jayanti & Wita, 2016). This condition is not met because the agreement could not be made by borrowing a name. While the fourth requirement that there is a cause that is not allowed. In the nominee agreement, the cause is having ownership rights over land. Ownership of land rights by foreigners is surely not allowed. Regarding the nominee agreement based on the Civil Code, the validity is:

“Their agreement that binds him. Regarding the main points in the agreement regulated by the parties. The parties to the agreement have agreed. Agreements occur because of the same desire or occur reciprocally. Competence to make an agreement The parties who make the agreement are legally competent. In principle, every person who is an adult or *akil baliq* and healthy mind is competent according to law. A certain thing as third condition, it is stated that an agreement must be about a certain matter, meaning what is agreed upon, the rights and obligations of both parties if a dispute arises. The type of goods intended in the agreement must be determined at least. A lawful cause the fourth condition for a valid agreement is the existence of a lawful cause. What is meant by the causa of an agreement is the content of the agreement itself, it may not be about something that is prohibited. Related

to this, the nominee agreement does not fulfill the elements of a lawful cause because it involves the transfer of land rights from Indonesian citizens to foreign citizens indirectly which is prohibited in Article 26 paragraph (2) of the BAL. Thus causing the nominee agreement to become invalid/valid and has no legal force that binds the parties" (Jastrawan & Suyatna, 2019).

The validity of the name loan agreement (Nominee) when viewed from the article mentioned above, this agreement violates Article 1320 paragraph (4) namely regarding a lawful cause, this is because the name loan agreement (Nominee) violates Article 21 paragraph (1) of the Law Number 5 of 1960 concerning Basic Agrarian Regulations, the legal consequence is that the agreement is null and void. Null for the sake of law according to Article 1265 states that "A null condition is a condition which if fulfilled will abolish the agreement and bring everything back to its original state, as if there had never been an agreement. This condition does not delay the fulfillment of the engagement; he only obliges the creditor to return what he has received, if the intended event occurs (Larasati & Sudantra, 2013).

Based on the provisions of the Civil Code above, agreements with nominee agreement are not known or regulated. In the practice of land ownership, the only way to “give foreigners the possibility to own land that is prohibited by the BAL is by borrowing the name (Nominee) of a Balinese in buying and selling, so that formally it does not violate regulations. However, if examined further, regarding Article 1320 of the Civil Code regarding the validity of an agreement in the fourth condition which states that the cause is lawful (Jastrawan & Suyatna, 2019). Therefore, in view of Article 26 paragraph (2) of the BAL which states that "Any sale and purchase, exchange, gift, gift by will and other acts intended to directly or indirectly transfer property rights to foreigners, to a citizen who, in addition to Indonesian citizenship, has foreign citizenship or to a legal entity, except for those stipulated by the Government referred to in Article 21 paragraph (2), is null and void because the law and the land fall to the State, provided that the rights of other parties burdening them remain in progress and all payments that have been received by the owner cannot be claimed again. Thus, the agreement made has legal consequences, namely null and void. If one looks at the "object of agreement, namely land, the land which became object of this agreement will become a prohibited object when its ownership is transferred from Balinese to foreigners through this nominee agreement" (Hetharie, 2015). The problem arises when the foreigner borrows Balinese names, but the land is controlled and even owned by foreigners.

The foreigner is said to own land, because behavior shown to the land as if owner of the land and is in full possession of land rights. Meanwhile, the Balinese who lent their names are not allowed to control let alone own the land. The Balinese are only allowed to enjoy their rights as stated in the agreement. "According to Indonesian contract law, a person is free to enter into an agreement with any party he wants, in accordance with the principle of freedom of contract. The law only regulates certain people who are incompetent to make agreements, arrangements regarding this matter can be seen in Article 1320 of the Civil Code. From this provision it can be concluded that everyone is free to choose the party he wants to make an agreement, as long as that party is not an incompetent party. The provisions in the civil law give freedom to foreigners and Balinese to enter into loan agreements. In this case, permissibility surely has been agreed upon by both parties.

3.2. Nominee Agreement as a Solution for Land Control by Foreigners

Bali as one of the developing areas which is a land area and islands and has natural wealth and culture or traditions has attracted many foreign nationals to invest in Indonesia. Besides that, the development of investment in Indonesia is inseparable from the existence of mixed marriages between Indonesian citizens and foreign citizens as one of the solutions for foreigners to have ownership rights to land in Bali. Several areas in Bali, especially in this case the regency and city areas, as well-known tourist areas to foreign countries have become one of the destinations for various parties to invest, both domestic and foreign investors (Sari & Darmawan, 2015).

The areas that became targets of these foreigners are in fact areas that provide very large profits or maximum benefits so that the areas chosen by foreigners are strategic areas, therefore foreigners are obliged to own land, "The investor is not a party entitled to own land with ownership rights in the territory of Indonesia. For example, foreign citizens who intend to build a residence or company in Indonesia (Dharma et al., 2016). For that, foreigners definitely need land as a place of business or residence and a nominee agreement is the solution.

The Agrarian Law regulates land allotment for Indonesians based on the state constitution. Its partiality can be seen in “only Indonesian citizens have the right to own land in Indonesia.” These conditions make investors concerned to find other ways to deal with this matter (Putrayasa & Sukranatha, 2019). This method was circumvented by foreigners who surely have an interest in the land. The interest is "by making a nominee agreement between Indonesian citizens and foreign citizens, namely by using the name of another party who is an Indonesian citizen who is appointed as a nominee to be registered as the owner of the land" (Putrayasa & Sukranatha, 2019).

In connection with that, "a nominee agreement is an agreement entered into by foreign citizens with Indonesian citizens in carrying out legal actions, namely carrying out buying and selling activities on land objects in Indonesian territory by borrowing the names of Indonesian citizens" (Savitri & Purwani, 2013). Furthermore, the Indonesian citizen takes legal action in the process of buying and selling transactions based on statutory provisions and then registers at the land office in accordance with the ownership rights to the land listed in the name of an Indonesian citizen.

According to I Nyoman Employees as an intermediary for buying and selling land, that "This nominee agreement, between foreigners and Balinese people since the beginning of the agreement there is bad faith from foreigners to violate the provisions of agrarian regulations with the intention of being able to own and control land in Indonesia with ownership rights. This bad intention arises when a foreigner clearly knows that in the provisions of the Basic Agrarian Law (BAL), he cannot own and control land in Indonesia with ownership rights, but in a way that is not justified by law, namely under the guise of a nominee agreement, the foreigner can own and control the land in Indonesia. Bad intentions of this foreigner are also supported by the Balinese whose name was lent for reasons of co-workers, friends, acquaintances, as well as material rewards from foreigners. Apart from the Balinese, the notary/Land Deed Official also legalized the nominee agreement with the words issued in the agreement, even though a notary/Land Deed Official certainly knows the law clearly (interview on 20 June 2021)”.

According to Ni Putu Numawati, an employee of the licensing service bureau office, "the occurrence of a nominee agreement is due to a lack of knowledge, lack of experience and lack of understanding of a notary who always thinks that the deed he makes is valid if the parties have agreed, and each party is able to take legal action. In addition, there are economic-pragmatic factors that are considered by each party, both foreign citizens, Indonesian citizens and notaries to make a nominee agreement as a result of violation of laws and regulations, in this case are Articles 21 and Article 26 of the BAL. (interview on 20 June 2021)". Violation of these articles is a solution to the control of land rights by foreigners in Bali. Whether or not the nominee agreement is valid is determined by the court, not by the parties, not even the notary. If one day there is a dispute between Balinese people and foreigners related to the nominee agreement, it will end in court. Only then will it be known whether the nominee agreement is valid or not.

According to Subekti, "the agreement made between the foreign citizen and the Indonesian citizen is based on a false cause, namely an agreement made on the pretext of hiding a cause which is actually not permissible" (Subekti, 1992). Agreements made by borrowing the name are agreements that are prohibited or not allowed. In principle, the agreement must fulfill a validity. Likewise in nominee agreement, "but often not paying attention to the objects and causes that are allowed" (Winanto, 2003). The provisions of Article 26 paragraph (2) of BAL, then "a nominee agreement is an agreement that was canceled from the start, because the nominee agreement was made illegally, it does not have binding legal force. Because the nominee agreement is an invalid agreement because it has violated the provisions of laws and regulations invitation, especially in this case the provisions of Article 21 paragraph (1) Basic Agrarian Law (BAL)". The Basic Agrarian Principles are very basic provisions in the ownership of land rights in Indonesia.

Basically, Nominee agreement is intended to give all the authority that may arise in a legal relationship between "the person giving the power of attorney over a plot of land which according to Indonesian land law cannot be owned by the Balinese as the recipient of the power of attorney. However, in practice it is possible for a default to occur by the party receiving the power of attorney (Wiratama & Djaja, 2013). The default can also be used as a reason for canceling the agreement. However, in practice nominee agreement is often done because the parties, both foreigners and Balinese, both feel lucky. Foreigners can control land in Bali, so they are free to treat the land. Meanwhile, Balinese people also feel lucky because land certificate is still in his name. With the hope that one day the land will become his property. In this case, "the lack of knowledge of a Notary official who considers that the deed he made is valid if the deed has been approved by the parties without regard to the object of the agreement and the causes allowed by law. The legal consequence of a nominee agreement if a dispute occurs between the parties is an invalid agreement because it has violated the provisions of laws and regulations, then the nominee agreement is an agreement that is canceled from the start. The nominee agreement is null and void because it does not meet the objective requirements. Article 1320 of the Civil Code. As a result of this being null and void, foreign investors are not allowed to invest in Bali for long. However, with the Government regulation (PP) for Residents of Foreigners, it has provided an opportunity for foreigners to invest in Bali for a long time.

4. CONCLUSION

Based on the description of the discussion above, it can be concluded as follows:

1) The legal basis for the nominee agreement is the Civil Code, where in this case nominee agreement does not fulfill the objective of agreement for a cause that is permissible/*halal*. Therefore, nominee agreement does not meet the objective requirements of agreement. As a result of not fulfilling objective conditions.
2) Nominees can be used as a solution in land control by foreigners. Even though the Civil Code and Basic Agrarian Law strictly prohibit ownership, in practice the name borrowing agreement is still carried out by foreigners. In practice, nominee agreements are still made by the parties with the aim of anticipating disputes and legal protection for foreigners. Regarding whether or not, nominee agreement is valid is determined by the court, not by the parties, not even the notary. If one day there is a dispute between Balinese people and foreigners related to the nominee agreement, it will end in court. Only then will it be known whether the nominee agreement is valid or not. In other words, the court has the authority to determine whether a nominee agreement is valid or not.

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LEGITIMACY OF A FIXED-TERM EMPLOYMENT CONTRACT BASED ON REMOTE WORK CONCEPT FROM THE PERSPECTIVE OF THE JOB CREATION ACT

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Abstract

Labor issues are a social, political and economic phenomenon in modern countries, including Indonesia, and require a way that is no longer conventional in improving the system in employment. As such, remote working can be the solution. The implementation of Remote Working in Indonesia depends on three legal aspects, namely the Criminal Code, the Job Creation Act along with the Labor Law, and the ITE Law. This study aims to analyze the Fixed-Term Employment Contract (PKWT) work relationship based on remote work concept from the perspective of the job creation act and find out the implementation and problems of Fixed-Term Employment Contract. This study employs a normative legal research technique derived from laws and regulations employing a library research technique. According to the findings of this study, Fixed-Term Employment Contract with the Remote Working concept must also adhere to the Labor Law and the Job Creation Act. Besides, the parties who engages on the Fixed-Term Employment Contract must also consider a number of additional legal factors in order to ensure the agreement's legitimacy and the protection of each party's rights and obligations. Despite the passage of the Job Creation Act, it turns out that there are still several issues that require attention.

Keywords: Employment, Fixed-Term Employment Contract, Job Creation Act, Labor Issues, Remote Working

1. INTRODUCTION

Labor issues are significant social, political, and economic phenomena, especially in contemporary nations. The responsibility of growth in the employment sector lies in the enhancement of a country's overall productivity as well as the improvement of the residents' quality of life. According to figures from the Central Bureau of Statistics from February 2019, Indonesia has a workforce of 136.18 million people, or roughly half of the entire population (Badan Pusat Statistik, 2019). According to the World Bank (2013), Indonesia has one of the strongest employment performances in East Asia and the Pacific (Wijayanto & Ode, 2019). Labor issues in Indonesia have been regulated in Law no. 13 of 2003 concerning Manpower which is the answer to the government's political will in the field of labor law which has a lofty goal of protecting workers using the existence of laws and regulations governing employment in Indonesia, employment problems are basically a correlation between individuals and between individuals using regulatory bodies, is no longer purely a private sphere, but also involves elements of the state in it.

The industrial revolution 4.0 has made every sector use news and communication technology (Kementerian Perindustrian Indonesia, 2018). This tendency has an effect on the rapid growth of international marketplaces. This phenomena is also the origin of the idea of

the industrial internet of things (Prasetyo & Sutopo, 2018). This notion refers to a gadget on the internet network that can be used to communicate with other individuals regardless of the distance between them (Matt Burgess, 2018). In the end, this concept will give birth to an internet-based production application that makes it easy for everyone. According to the Indonesian Minister of Industry, the Industrial Revolution 4.0 is one of the endeavors to revolutionize the industrial world by leveraging the growth of the Internet (Kementerian Perindustrian Indonesia, 2017). The existence of this Revolution era is an early sign of the development of the concept of remote work or what is often referred to as Remote Working (Eddleston & Mulki, 2017).

Remote Working is working with remote work control where the implementation of work can be done anywhere and anytime (Hardill & Green, 2003). The concept of remote working exists not only owing to the advancement of information technology, but also due to the nature of leadership, opinions, and diverse perspectives on the workplace. This work's personality, opinions, and viewpoints are heavily influenced by the era of birth, which is thus categorized as a multigenerational workplace.

The concept of remote working is gaining popularity in Indonesia, to the point where the Ministry of National Development Planning would implement it for its civil servants (CNBC Indonesia, 2019). There is a notion that remote working provides numerous benefits for both employers and employees. According to research conducted by Nicholas Bloom, remote working has a favorable effect on employees, and as a result, it is associated with high job satisfaction. Workers can also put more emphasis on their jobs, have a better family life, and save on transportation costs for travel to work (Greenbaum, 2019). From the perspective of the business owner, this has several beneficial impacts, including allowing for the recruitment of workers from a wider geographic area, eliminating the need to set up a dedicated office space, and reducing the need for transportation expenses. As such, remote work also establishes a legal relationship between employers and employees as a result of an agreement in the form of a work contract or agreement. Using an agreement, a correlation of rules is created that gives rise to each party's rights and responsibilities. In this instance, the legal correlation established by Indonesian Labor Law Article 1 Number 15 is referred to as labor correlation and consists mostly of work, wages, and orders. A work agreement must be established between employers and employees, either a Fixed-Term Employment Contract or an Unspecified Time Work Agreement (hereinafter referred to as PKWTT) (Yuli & Aryanti, 2018).

PKWT often causes problems in practice. PKWT, or commonly known as Fixed-Term Employment Contract or an Unspecified Time Work Agreement often dominates the several employment cases handled by the Office of Manpower and Transmigration (Kabar Banten, 2020). With the passage of the Job Creation Act in 2020, labor provisions will no longer have a legal basis based solely on the Labor Law. In relation to the concept of this study, it is known that previous research has addressed the following topics: the implementation of work agreements in a limited liability company, PKWT analysis, an analysis of the legal relationship between employers and freelancers who are not bound by an employment relationship, but bounded by a legal relationship based on a service agreement, and an evaluation of the rise of remote work and its implications for welfare and work-life balance (Felstead & Henseke, 2017) as well as protection of workers in the 4.0 era and the enforceability of employment contracts via electronic transactions. PKWT with the notion

of remote working is also inextricable from other legal issues, such as the Civil Code and the Electronic Information and Transaction Law, due to the electronic nature of agreement making. This normative analysis of PKWT seeks to determine the optimal structure of PKWT between companies and workers based on the concept of remote work and the Job Creation Act.

2. RESEARCH METHOD

This study was a normative legal research method. Normative legal research was the subject of study, namely law that was conceptualized as norms or rules that apply to people's lives and used as a reference in behaving for society so that research that used this type of method focuses on inventorying positive law, legal doctrinal principles, legal discoveries in *in concreto* cases, legal systematics, level of legal synchronization, comparative law and legal history (Abdulkadir, 2004). This study used primary legal materials, namely applicable legal norms and secondary legal materials, namely books/literature and scientific journals (Fajar & Achmad, 2010). The approaches to this research were the case approach, the statutory approach and the facts approach.

3. RESULT AND DISCUSSION

3.1. Work Relations of PKWT based on Remote Work Concept from the perspective of the Job Creation Act

1) Fixed-Term Employment Contract for a Specific Time After the Issuance of the Job Creation Act

Regulations regarding work relations are in Article 50 of Law Number 13 of 2003 concerning Manpower, which states, "Work relations occur because of an employment agreement between employers and workers/laborers". In Article 51 Paragraph (1) explains "A work agreement is made in writing or orally". The working relationship, namely as a (legal) relationship between employers and workers/laborers (employees) based on work agreements, so that it is something abstract. There are elements of a working relationship, namely a job, wages, and orders. Regarding work agreements, on the other hand, is something concrete or real. The existence of a work agreement will later create a bond between employers and workers. An employment relationship can be defined as this connection that is established as a result of the presence of an employment agreement (Sutedi, 2006).

Article 1 number 14 regulates work agreements, namely “Work agreements are agreements between workers/laborers and employers or employers which contain work conditions, rights and obligations of the parties”. There are conditions for the validity of work agreements referring to the legal requirements of civil agreements in general, namely:

a. There is an agreement between the parties (no elements of coercion, misdirection/oversight, or fraud)
b. The parties concerned have the ability or ability to (act) carry out legal actions (capable of age and not under guardianship / guardianship).
c. There is an agreed job (object).

d. (*Causa*) the agreed work does not conflict with public order, decency, and applicable laws and regulations.

Work agreements under the Labor Law are classified as Work Agreements for Specified Time (PKWT) and Work Agreements for Unspecified Time (PKWTT). The primary distinction between a Work Agreements for Specified Time (PKWT) and Work Agreements for Unspecified Time (PKWTT) is the duration of the employment. A PKWT is a contract between employees and employers to hold a period of time. PKWT is an agreement between workers and employers to begin a temporary working relationship, whereas PKWTT is an agreement to begin a permanent working relationship (Santosa & Gede, 2021). The provisions that have undergone many changes in Law Number 11 of 2020 concerning Job Creation are those that regulate PKWT, namely:

a. Changes in the time period for work agreements for a certain time
   Article 81 point 12 of the Job Creation Act, which replaces Article 56 point 3 of the Labor Law, stipulates that the duration of a work contract must be included in the work contract. In addition, the Job Creation Act stipulates that the Government Regulations would govern further PKWT measures based on the duration or completion of a certain job. Government Regulation No. 35 of 2021 provides more guidance on Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. This law distinguishes between work agreements for a specific time based on a period of time, work agreements for a specific time based on the completion of a specific job, and work agreements for a specific time for other specific occupations whose kind and nature of activities are not defined. Work agreements for a specific period of time consisting of work that is expected to be completed within a reasonable amount of time, seasonal work, or work related to new products, new activities, or additional products that are still undergoing testing or exploration may be implemented for up to five years. Work agreements based on the completion of a given task consist of work that is completed once and work that is temporary in nature and can be conducted for a length of time determined by the parties' agreement. Daily labor agreements may be made for a maximum of 3 (three) consecutive months for other jobs whose kind, character, or activities are not described.
b. Legal consequences of informal Fixed-Term Employment Contract
   In the event of a future dispute, formal labor agreements provide greater confidence regarding the rights and responsibilities of employees and employers, thereby facilitating the process of verification. The result of a verbal work agreement for a specific period of time (PKWT) is that it becomes a work agreement for a specific period of time. Article 57 paragraph 2 of the Labor Law regulates this. Meanwhile, in the Job Creation Act, this legal consequence is no longer recognized. The Job Creation Law still requires that a certain time work agreement be made in written form (formal), but there are no legal consequences for not fulfilling these conditions.
c. Legal consequences if the work agreement for a certain time requires a probationary period
   It is not legal to impose a probationary period, and if one is discovered, it is considered null and void. The Job Creation Act emphasizes that if a work contract

for a specified duration provides a probationary period, not only is the probationary period null and void, but the working duration is counted from the start of the work contract.

d. Additional types of work that can be bound by work agreements for a certain time
According to Article 59 of the Labor Law, work agreements can be made for jobs that will be finished in a specific amount of time, including jobs that are temporary or one-time, whose completion is anticipated to take no more than three years, seasonal work, and jobs related to new products, new activities, or additional products that are still undergoing testing or exploration. Work agreements can also be made for jobs that are seasonal or involve new products that are still in the research and development stage. This employment, to which the Job Creation Act has added one more category, are not permanent in their type, nature, or activity. According to the Job Creation Act's clarification, "permanent work" is defined as "work that is continuous, uninterrupted, not time restricted, and is part of an organization's production process or work that is not seasonal." In other words, as long as the work in issue is not continuous and does not form a part of a production process within a single organization, it can be the topic of a work agreement for a defined length of time by adding one new requirement, namely work whose kind and character of activities are not fixed.

e. Extension and renewal of work agreements for a certain time
The Job Creation Act, which is then further regulated in Government regulation (PP) No. 35 of 2021, has provisions for the extension of work agreements for a limited period that vary based on the type of work agreement for a limited time employed. Extension in a certain time work agreement based on a period can be done several times with an unlimited amount, but the maximum time between the start of a certain time work agreement and the entire extension must not exceed 5 (five) years. An extension of a work agreement for a specific period of time depending on the performance of a specific task may be granted until the work is completed, but the maximum extension period is undetermined. Because it follows the model of daily work agreements, there is no law regarding the extension of work agreements for a set period of time for other specific tasks whose kind, nature, or activities are not established.

f. Compensation money for a certain time work agreement
When a work contract expires after a certain amount of time, there are no compensation regulations in the Labor Law. According to the Job Creation Act, when a fixed-term employment contract expires, the employer is required to offer workers with financial compensation, the amount of which is determined by the employee's duration of service. Workers who have worked for at least one month are entitled to compensation, according to Government Regulation No. 35 of 2021. Work agreements for a certain period of time shall be compensated continuously for 12 (twelve) months in the amount of 1 (one) month's salary; if the work agreement is carried out for fewer than 12 (twelve) months or for longer than 12 (twelve) months, compensation is granted proportionately.

3.2. The Legitimacy of the Remote Working Concept with PKWT in the Perspective of the Job Creation Act.

In practice, work agreements, both PKWT and PKWTT, are made unilaterally by the employer/employer, without negotiation with the prospective worker. Prospective employees have the option of accepting or rejecting the employment agreement. The conditions of a work agreement must not conflict with business policies, collective bargaining agreements, or other laws and regulations, according to paragraph 2 of Article 54 of the Labor Law. The question is whether the substance of the work agreement contains aspects that are prohibited by the Labor Law and the Job Creation Act, are irrational, and improper. The provisions of the work agreement in the Labor Law and the Job Creation Act are coercive, which means that the parties bound by the work agreement cannot form a work agreement that deviates from the provisions of the labor laws and regulations (Anggraeny & Hidayah, 2021). Employers are required to consider PKWT provisions of the Labor Law when drafting the agreement's terms. This is a consequence of the government's participation in the PKWT's system of law enforcement. The Indonesian government is committed about preserving employees' rights by enforcing punishments on firms who try to violate their commitments to workers' rights, including providing social security.

Article 1320 of the Civil Code, which serves as the legal basis for assessing the legitimacy of an agreement, governs the formation of work contracts in general. Linking Article 1320 of the Civil Code with Article 52 (1) of the Labor Law, a valid work agreement before the law is one that satisfies four conditions: the agreement of the parties; the ability of the parties to take legal action; the existence of a specific object, namely the agreed work; and lawful causes/causes, namely that the work does not conflict with public order, decency, and statutory regulations. On the basis of the nature of the requirements in Article 1320 of the Civil Code, the prerequisites in Article 52 (1) of the Labor Law can likewise be classified as subjective or objective. Subjective terms contain conditions connected to the agreement's subject matter, such as the agreement's terms and the parties' abilities. Among the objective conditions are those pertaining to the aim of the agreement, such as the presence of a particular object and a valid reason. A violation of one of these requirements renders the agreement unenforceable or voidable by operation of the law. This is also consistent with the provisions of Article 52 Paragraphs (2) and (3) of the Labor Law, which are subject to cancellation or nullification. The parties must, of course, identify compliance with the legal parameters of the agreement at the outset of the agreement-making process or during the preparatory phase of contract design. Before consenting to a contract (in this case, an employment contract), the parties should have understood who they were contracting with and the reason and purpose of the contract.

Making PKWT with the concept of remote working needs to pay attention to 3 (three) legal aspects, namely, the Civil Code, the Job Creation Act along with the Labor Law, and the ITE Law. There are 4 (four) aspects that must be considered by the parties in making PKWT, namely:

1) PKWT which is written and legally agreed through electronic media;
2) The rights and obligations of each party as regulated in the Labor Law and the Job Creation Act;
3) Clear description of the Remote Working work system in the PKWT; and
4) Things that are prohibited by law related to PKWT.

The ratification of the work agreement, in this case the signing of the parties, requires to pay respect to the ITE Law in order for the legal force of the work agreement formed electronically to become strong and to be able to be used as evidence in a court of law.

3.3. Implementation and Problems of Fixed-Term Employment Contract

Permanent employment is not permissible under fixed-term employment contract, which must be based on a time frame or the completion of a specific project. Employers are not obligated to designate permanent workers for works with a limited completion time, as the Labor Law permits for arrangements for work agreements for a specific time, a type of work agreement that can be utilized to limited duration labor.

The previous Labor Law required that employment agreements for a specific duration be made in writing using both Indonesian and Latin script. The purpose of the PKWT must be made in formally is to provide legal certainty for the parties including certainty regarding the rights and obligations of workers and employers. It is also intended that if a dispute occurs at a later date, the work agreement made in writing can be used to assist in the evidentiary process (Permatasari, 2018). However, in real field practice, it is not unusual to encounter specific time work agreements that are carried out informally and simply on the basis of confidence and without a written agreement.

One of the reasons for this is a lack of available human resources, and another reason is the widespread nature of the problem (Tampongangoy, 2013). Considering that Article 57 paragraph (2) of the Labor Law specifies that a verbal commitment to work for a set period of time is legally understood as a verbal agreement to work for an endless period of time, this is undoubtedly extremely dangerous. This means that the duration of the agreement is unrestricted, and when the employment connection is terminated, the employer is entitled to provide severance pay, long service awards, or other work-related entitlements based on an indefinite time work agreement. Before the passage of the Job Creation Act, a number of additional problems plagued Indonesia's implementation of unspecified time work agreements. These problems included infringements on the nature of the work and the time frame of the work agreement, the covert extension or renewal of work agreements for a specified time, and the absence of payment at the end of the specified time work agreement.

After the promulgation of the Job Creation Act, there are several new problems related to work agreements for a certain time that deserve attention, such as:

a. There is no limit regarding the maximum time period for PKWT based on the completion of a specific job

   The maximum duration of an agreement may be regulated by Government Regulation No. 35 of 2021, although for some types of work agreements dependent on the completion of a project, the maximum duration of an agreement may not be regulated. Only that work agreements for a specified amount of time based on the completion of a task can be carried out within a period of time based on the parties' agreement and adjusted to the length of time the work is completed are mentioned in the government legislation. Projects that take years to finish raise a concern. As a result, a specific time work agreement will also be implemented for a number of years after the project's completion. Likewise, with this kind of work contract, it is also possible to extend it with no time limit based on the completion of the work. In

this scenario, there is legal ambiguity over the maximum duration that can be established for this form of work contract for a defined time.

b. There are no legal consequences if the PKWT is made informally
A verbal labor agreement for a set period of time becomes a verbal work agreement for an unlimited period, according to Article 57, paragraph 2, of the Labor Law. There are no legal repercussions if a verbal agreement for a certain duration is made because this regulation was repealed by the Job Creation Act. The Job Creation Act just requires written labor agreements to be formed for a specific amount of time and there are no legal consequences for noncompliance. As a result, it may become common practice to carry out work agreements for a specific duration without a written contract, which reduces legal certainty and makes it challenging to establish the existence of a working relationship between employees and employers for a specific duration.

c. There are no arrangements regarding notifications from employers regarding the extension and renewal of the PKWT
For a specific period of time, the Labor Law governs the extension and renewal of employment contracts. Renewals are only allowed once for a maximum of two years, whereas extensions are only allowed once for a maximum of one year. After a set amount of time has gone since the end of the labor agreement's grace period of thirty days, the agreement can only be renewed. Since the Position Creation Law does not contain this clause, the only regulation governing the extension of work agreements for a set duration of time and work agreements for a specific job is Government Regulation No. 35 of 2021. This government regulation does not require companies to notify employees before extending an employment agreement for a set period of time. The absence of provisions regarding prior notification of an extension will result in workers not having the opportunity to prepare to seek other job opportunities when it turns out that the agreement has not been extended. Conversely, when the worker feels that his work agreement for a certain time has expired, it turns out that on the last day the worker only finds out that his work agreement for a certain time will be extended. As a result, workers' capacity to obtain information about the continuation of their existing employment is limited. It is appropriate for the government to confront and resolve these challenges. This is intended to assure the continuity of a system of harmonious working relations by providing legal certainty for the protection of workers (Azis et al., 2019).

4. CONCLUSION

In essence, PKWT or Fixed-Term Employment Contract that refers to the labor law and Job Creation Act is the same (office working) PKWT that adheres to the broad concept of PKWT. The Civil Code, the Job Creation and Labor Laws, and the ITE Law must all be taken into account while creating PKWT with the idea of remote working. PKWT that is legally agreed to through electronic means and is written (formal), the rights and obligations of each party as stated in the Labor Law and the Job Creation Act, a detailed explanation of the Remote Working work system in the PKWT, and things related to the PKWT that are banned by law.

The Job Creation Act has solved the problem of compensation after the conclusion of an employment relationship by mandating companies to give workers with monetary compensation commensurate to the length of service. Following the passage of the Job Creation Act, it became clear that there are still a number of issues that need to be addressed, including the fact that there is no maximum period of time for certain types of work agreements based on the completion of a specific job, there are no legal consequences if a work agreement for a specific period of time is made verbally, and there is no regulation regarding employer notifications regarding the extension and renewal of work agreements.

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PIPIL DOCUMENTS LEGALITY AS PROOF OF LAND OWNERSHIP RIGHTS OWNERSHIP IN BALI

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Abstract

Pipil as proof of land ownership is not comparable in strength to a certificate. Pipil is used as proof of ownership of a land based on the Customary Agrarian Law which later became the source of the formation of the National Agrarian Law which was subsequently ratified by the Basic Agrarian Law of 1960 which was reinforced by Law No. 24 of 1997 concerning Land Registration. This study aims to find certainty that there is a legal basis for using pipil as proof of ownership rights, to provide information to the public regarding the importance of registering their land with the BPN and as a material consideration for communities who have not changed their proof of land ownership rights to the National Land Agency (BPN). The method used in this study is a normative method by studying laws and regulations and the results of research and writings from legal circles. The main topic of discussion is the legal basis for using pipil as proof of land ownership and the factors that form the basis for why there are still people who use pipil.

Keywords: Certificate, National Agrarian Law, Pipil, Proof of Land Ownership

1. INTRODUCTION

Land is a promising investment land in the future which at the same time makes it something rare and valuable. A plot of land becomes valuable and rare because land is something that cannot grow or develop, especially since we produce it using sophisticated human-made machines. However, we need to remember that development on a plot of land is not only a matter of buildings and structures but also of living things that live on it and living things that need land to support their lives. Therefore, it can be understood that the source of our main life is soil. The dependence that occurs between humans and land is very close because land existed before humans were born and humans could not be born if there was no land (Suwahyuwono, 2018).

For human life, land also provides value which includes social, economic, cultural and religious values (Suwahyuwono, 2018). Land as an inheritance that has been left by the ancestors is land that is worthless. Land ownership in Bali is carried out in a *niskala* and *sekala* manner. Land registration in Bali is done with *Nyakapin Karang* which aims to purify and unite the land with the owner of the land so that harmony and harmony arise in acting which also serves as *niskala* information that the land has been occupied and owned by someone. (Yogantara & Darna, 2020).

On a scale or in real terms, land is registered by submitting an application to the National Land Agency which is then given proof of granting a certificate to the applicant. However, because land ownership in Bali is generally owned through inheritance, letters or proof of ownership still use previous evidence, namely the *pipil* of land, since it was inherited

considering that there is no clarity to whom the ancestors inherited it because the inheritance system in Bali is in accordance with the family system it adheres to. namely the patrilineal family system. Hence, an inheritance falls automatically into the hands of the sons in the family. But this can no longer be maintained, bearing in mind that the turmoil that will be caused requires valid and authentic evidence so that it can be recognized by the state and legal in the eyes of the law.

Previously the author had explored several scientific papers related to the registration of land certificates, one of which was a scientific paper written by Sinaga (2014) with the title "*Sertifikat Hak Atas Tanah dan Implikasi terhadap Kepastian Kepemilikan Tanah*". The discussion written is about polemics that can arise in the certification process and the implications that occur in society. And scientific writing from Febriawanti & Mansur (2020) entitled "*Dinamika Hukum Waris Adat di Masyarakat Bali pada Masa Sekarang*". This article discusses the inheritance law system in Bali in its current condition which has involved the courts in the distribution of inheritance while still being guided by the customary inheritance system.

Based on tracing a number of scientific writings, according to the author it is important to conduct research and write about the legality of *pipil* documents which are an inheritance to be legally registered and recognized by the community and the state, considering that land in Bali is a legacy that will continue to be passed down to the next generation and where the customs in Bali take place.

This study aims to find certainty that there is a legal basis for using *pipil* as proof of ownership rights, to provide information to the public about the importance of registering their land with the National Land Agency (hereinafter referred to as BPN) and as a consideration for people who have not changed their proof of land ownership rights to the National Land Agency (BPN).

2. RESEARCH METHOD

The research method used the normative legal research method or also called doctrinal legal research which looked at norms in society to found legal principles and legal doctrines. The approach used in this research was the statutory approach (Marzuki, 2021). The making of this journal was based on primary data and secondary data. Primary data comes from Basic Agrarian Law (hereinafter referred to as UUPA) and Law No. 24 of 1997 concerning Land Registration while secondary data taken through scientific writings from scholars who had previously conducted research. In technical analysis, the authors used descriptive analysis techniques that provide reaffirmation of the research that had been done.

3. RESULT AND DISCUSSION

3.1. Legal Basis for the Use of *Pipil* as Proof of Land Ownership Rights

The definition of land ownership rights has been stated in the Basic Agrarian Law, namely Article 2 which states that the state is the owner of the highest right that controls the right to use and also determines the legal relationship between a person and legal consequences regarding earth, water and space. Article 4 of the UUPA also regulates land ownership rights that can be owned by a person, either individually or with a legal entity.

As part of human daily life which is a foothold, a source of daily livelihood and also as a symbol of wealth in certain areas which is handed down directly by ancestors to their grandchildren, such as in Bali. The land in question does not only regulate all of its parts, but also land which also regulates juridically or can be referred to as rights. Land ownership rights inherited in Bali are determined by customary provisions which also include *ulayat* rights and individual land rights (Nugroho et al., 2017).

Proof of this right is shown by the ownership of a land certificate that has been registered with the National Land Agency. The agency is an agency under the Ministry of Agrarian Affairs which is given the authority to carry out state tasks, especially in the land sector. This is based on the regulations that have been stated in the provisions of the law (Taqiyyah & Winanti, 2020). However, not infrequently the community still uses other evidence as ownership of their land, such as private ownership in Bali or a Certificate of Customary Land (hereinafter referred to as SKTA) in Central Kalimantan given by a Damang (Kayun, 2017). *Pipil* is a Tax Payment Receipt issued before 1960, the Balinese know *pipil* as proof of ownership of land rights (Pradipta et al., 2020). The use of *pipil* for evidence of land ownership is inseparable from the Customary Agrarian Law that was in force before the 1960 UUPA was codified, where ownership of land rights is based on *eigendom-recht*, namely ownership of individual property that is full and absolute, rather than land ownership by the state (Pradipta et al., 2020).

Prior to the promulgation of the agrarian law as a law containing rules regarding land, dualism and legal pluralism in Indonesia it was still valid. This was part of the consequences of the legal politics of the Dutch East Indies government. In land law, legal dualism shows that apart from being based on customary law, land law is also based on western pedate law. Based on the source, customary land law is abstract in nature to help and kinship in accordance with the nature of customary law. Meanwhile, the pluralism of customary land law shows differences based on the region or community where it applies or can be simplified to show the diversity of customs and cultures that exist in Indonesia (Utama, Arya Made I, 2017).

Surojo Wignjodipuro who has separated two types of land rights based on customary law, including:

1) Commonwealth rights to land.
   Van Vollenhoven gave a new term to the union, namely *Beschikkingrecht* which in the Indonesian sense means customary rights which are also called lordship rights. The term of this right is only found in legal partnerships based on territorial equality and legal alliances based on territorial equality and blood ties (Atu Dewi, Anak Agung Istri, 2016).
2) Individual rights to land.
   In this right, the partnership has the right to exercise legal ties. The legal affinity in question is the relationship between the land and its owner along with those in the land. The land ownership rights can be in the form of:
   a) Property rights over land
   b) The right to enjoy or control no more than one harvest (Arisaputra, 2011).

Regulations regarding customary agrarian law then became the beginning of the formation of the Basic Agrarian Basic Regulations Law which stipulates that in Article 19 it regulates land registration which also carries out land surveying activities, draws land maps and keeps land books, as well as registration of land rights and the transfer of these rights, and finally voting as a sign of ownership of the rights.

Meanwhile, based on national agrarian law, the acquisition of land rights is seen based on the status of available land, whether it is state land or private land. If it is state land, an application for rights must be registered with the National Land Agency (BPN). If Land Rights, then the process of obtaining the land rights by way of transfer of rights (buying and selling, exchange grants, exchange) (Anatami, 2017)

3.2. What are the factors on which *pipil* is still used as evidence of ownership of a land?

The creation of various provisions by the government is aimed at a systematic data collection process and concrete evidence in order to maintain the convenience and security of assets owned by all Indonesian people, without exception. Various provisions that have been created and codified are sourced from customary laws in Indonesia to ensure that rights that have existed for a long time can be properly maintained.

Proof of ownership rights to land from the past until now has undergone such changes in order to ensure ownership rights are confirmed. However, it is not uncommon for this goal to encounter opposition from the public both because of different views and lack of education from the government to the ancient community regarding land registration. The purpose of land registration itself has been stated in the 1960 Agrarian Law and Government Regulation Number 24 of 1997 concerning Land Registration which aims to provide legal certainty and legal protection to right holders with evidence in the form of land books and land certificates consisting of copies of land books and measurement letter (Korompis, 2018). The UUPA also regulates the legal consequences that can arise from land registration to the owner, which is regulated in Article 19 paragraphs (1) and (2) (Kumara et al., 2021).

Types of land certificates are divided into three (3), including:

1) Freehold Title.
   Property rights are rights that can be used to benefit from these rights. Benefits that can be used can be in the form of objects as long as they are not against the law and violate the rights of others. Certificates with proprietary status can only apply to Indonesian citizens or citizens and can have economic value.
2) Usage Rights Certificate.
   Certificates of usage rights or building use certificates are generally used in building ownership. This is because it provides usufructuary rights to use the building with non-private ownership status because the building stands on state-owned land. Building use rights certificates can be guaranteed as debt with a maximum validity period of fifty years.
3) Business Procurement Right Certificate.
   Business procurement rights certificates can generally be used for land accounting responsibilities, fishponds or livestock activity. Business procurement rights are only valid for 25 – 35 years and can be extended by mutual agreement for up to twenty five years (Mahawira & Landra, 2019).

One of the factors that has become a factor for people in Bali is not to register their land with the National Land Agency (hereinafter referred to as BPN) because the land where they live is inherited land or *girik*. The inheritance system in Bali uses a mayoral inheritance system where the inheritance will go to the eldest son, especially in Bali it goes to the oldest son (Febriawanti & Mansur, 2020). This is in accordance with the kinship system in Bali which still adheres to the patrilineal kinship system or *lempeng ka purusa* (Arta et al., 2018), which gives more inheritance rights to sons - considering that the burden that will be borne by a son is wider than that of a daughter who will enter (*nyeburin*) into the husband's family after marriage later (Wayan & Sudantra, 2016). In this inherited land or girik, there are more than one family who inhabit the inherited land, because sons will not leave their families. Unless the boy does a *nyentana* marriage into the girl's family. *Nyentana* or *nyeburin* marriages are marriages in which everything starts from the woman's side, starting from the application procession to the wedding carried out by the woman (Astiti, Putra Astiti Tjok, 2017).

Because in this inherited land there is more than one family head who lives, this is the main factor that people in Bali have not registered their ownership rights to their land with a certificate as valid proof in the eyes of the law.

Even so, the existence of the land must still be converted to BPN in order to subsequently obtain a certificate for proof of ownership in order to avoid the emergence of juridical problems (Sinaga, 2014). On the basis of Government Regulation No. 10 of 1961 or Government Regulation No. 24 of 1997, the real owner can take the procedure for changing ownership and then obtain proof of ownership on behalf of the real owner as the applicant. The conditions that must be met to make the change are as follows:

1) Management in the Village
    a) Certificate of no dispute.
       It is necessary to ensure that the land being managed is not problematic land. This can be proven by the applicant having valid evidence. As supporting evidence, the applicant also provides signatures from the Head of the Environment and the authorized traditional leaders.
    b) Certificate of Land History.
       The second requirement is to provide a land history letter to explain in writing the owner's history of acquiring land, starting from the registration at the ward to the current owner's ownership. For example, inherited land that has been sold and the portion of land that has been transferred is also recorded and explained.
    c) Certificate of Sporadic Land Ownership.
       This land certificate provides information regarding the acquisition date of a land.
2) Management at the Land Office.
    a) Apply for a certificate.
       This submission requires several documents to support the issuance of a land certificate. The documents needed include: attaching documents that have been previously issued by the village, identity card and family card of the applicant, ongoing annual land and building tax, and other required documents.

b) Measurement.
The measurement of the land area will be carried out by the land officer after the documents are declared appropriate and the documents are obtained from the land office.
c) Approval letter
Land measurements that have been completed by officers will then be printed and mapped by BPN signed by the authorized official as a form of validation.
d) Committee Officer A.
Committee A members are a combination of BPN officers and the local village chief tasked with conducting research on the land for which the certificate is being applied for.
e) Announcement of data at the Village chief Office and the State Land Agency Office.
Announcement of data made at the village chief office and the BPN office is in the form of information regarding the applicant's legal status for sixty days. This refers to Article 26 Government Regulation Number 24 of 1997 concerning Land Registration with the aim of providing certainty that after the legal status of the land is ascertained there are no parties who object.
f) Issuance of Certificate of Land Rights.
A Certificate of Land Rights can be issued if after sixty days no party has objections to the legal status of the land. Ownership proven by *pipil* can be replaced by the issuance of a Certificate of Ownership.
g) Acquisition Duty of Right on Land and Building (BPHTB)
BPHTB payments are adjusted to the land area and the Sales Value of Tax Objects (NJOP).
h) Registration of Certificate of Right to issue a certificate.
The next stage is the registration of a Certificate of Rights which is marked by the issuance of a certificate for Registration of Rights and Information (PHI).
i) Certificate Retrieval.
For the last stage, namely taking the certificate of ownership, the owner can take the certificate at the counter that has been provided at the BPN office (Indonesia.Go.ID, 2021).

In order to provide smoothness in the land registration process, the Government implements a program based on Ministerial Regulation (hereinafter referred to as PERMEN) No. 2 of 2015 which created the Community Service for Land Certification (LARASITA) program as an e-government based service to assist communities in certifying land to facilitate certainty, open and systematic flow to improve service delivery to the public to support the implementation of one-stop integrated services according to what has been stipulated in Presidential Decree No. 97 of 2014 (Rampi, 2018).

4. CONCLUSION

Proof of ownership of a land in the form of *pipil* is based on customary agrarian law which was subsequently ratified through the 1960 Basic Agrarian Law which was further regulated through Government Regulation Number 24 of 1997 concerning Land

Registration. *Pipil* as proof of land ownership must be certified immediately. The factor that underlies the community's not yet registering their land with the BPN and obtaining a certificate is that the land is inherited land or *girik* land that is occupied by more than one family head. Nonetheless, land ownership as evidenced by a certificate is an important matter and has legal force and cannot be contested unless there are other documents as opponents. The process of registering inherited land or **girik** land at the BPN is required to go through two stages, namely registering at the subdistrict office and then registering at the land office.

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Acknowledgments (if any)

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