

# THE ROLE OF THE KEROBOKAN CUSTOMARY VILLAGE IN UTILIZING LAND FOR INVESTMENT IN TOURISM AREAS BASED ON LOCAL WISDOM

I Gusti Ngurah Anom<sup>1\*</sup>, Lis Julianti<sup>1</sup>, I Gusti Ayu Vina Widiadnya Putri<sup>1</sup>

<sup>1</sup>Universitas Mahasaraswati Denpasar, Indonesia

\*e-mail: [gustingurahanom14@gmail.com](mailto:gustingurahanom14@gmail.com)

## Abstract

This research aims explicitly to explain the authority and role of the traditional village in utilizing customary village land for investment activities for tourism areas based on local wisdom in the Kerobokan Customary Village. This study used an empirical research type, with the research subjects of the *Bendesa Adat* and the village *Prajuru*. The data collection techniques used in this study were observation, a document study, in-depth interviews, purposively selected informants, namely each of the Indigenous *Prajuru* in the Kerobokan Customary Village, and Focus Group Discussion. The finding showed that the Kerobokan Customary Village has a role in the use of land for investment in tourism areas. The use of customary land for tourism investment activities was carried out with a lease agreement under the supervision of the *Bendesa Adat*. The finding showed that the involvement of the Customary Village in maintaining the balance of *Tri Hita Karana* values implementing tourism investment was not optimal, which can be seen from the effect of this activity in the form of environmental pollution within the tourism area, the shifting values of the local wisdom to be more commercialism, liberalism, and individualism.

Keywords: Land for Investment, Traditional Village, Investment, Local Wisdom

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## INTRODUCTION

Tourism still becomes a priority both for the regional and national governments, because it could be a generator for the national economy. The development of this sector brings a positive impact on national and regional income, employment opportunities, and investment in business development across Indonesia, particularly in Bali.

Foreign investment is highly needed since the development of tourism facilities takes enormous investment from the government, private sector, society, and foreign investors. Ideally, this investment is provided by domestic investment or domestic private sectors. However, an emerging country like Indonesia has an issue with funding for many reasons, such as low tax payment, low savings awareness because of low income, inefficient and ineffective capital accumulation, and lack of foreign investor confidence and skills in utilizing technology are not maximized (Asih, 2021).

Law No 23 of 2014 concerning Local Government provides wider authority to Regency and City based on the autonomy

principle to create local people prosperity and justice by improving natural and local potency management. A way to realize this is by developing the local economy. To fasten economic development, especially in the tourism sector, and create political and economic sovereignty in Indonesia or more specifically in Bali, it needs more investment either from domestic or foreign investment. In general, the regulations of investment including foreign investment have been established in the Law of Investment No 25 of 2007, Regulation of President No 27 of 2009 concerning One Gate Integrated Services, Regulation of the Head of Investment Coordination Agency No 14 of 2015 concerning the Investment Procedures and Principles, and the Law of Local Government No 23 of 2014.

Tourism sector development in Bali stimulates land use for investment. Tourism business owners and the Local Government keep facilitating the development of tourism objects in Bali. The government expects tourism development contributes positively to the fulfilment of people's needs in the tourism area. However, on the other side, it causes a clash between the local wisdom

and the new values as the result of globalization. This phenomenon occurred in some tourism in Bali such as Uluwatu and Ubud. However, the clash is in form of a conflict in which the land is utilized for tourism capitalism.

The high price of land in some tourism destination areas in Bali causes investors to find other alternatives to invest (Jayantiari, 2017). Many lands of the people in the area were affected by the economic movement in Bali. Many potential lands used for investment are owned by the customary people, so the use of customary lands for investment always ends up with disputes.

The customary land in Bali is known as *tanah druwe* of the customary village. This term is generally qualified as *ulayat* land; land mutually owned and controlled by the customary village as a community (Jayantiari & Wijaya, 2017). In the era of President Joko Widodo's administration, there has been a fundamental change in the ownership of customary land by customary villages, namely with the issuance of the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 276/KEP-19.2/X/2017 concerning the Appointment of Customary Village in the Province of Bali as the Subject of Joint (Communal) Ownership of Land. With the issuance of this Decree by the Minister of Agrarian Affairs, it has given a clear position on the existence of Customary Villages as legal subjects of land rights, but with the issuance of this decision, also has positive and negative implications for the villages, as a study conducted by Sudantra concluded that the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 276/KEP-19.2/X/2017 has positive and negative implications for the position of land belonging to the Customary Village in Bali. Positive implications occur because the Ministerial Decree can provide legal certainty and certainty of rights to the position of land owned by Customary Village (*Tanah Druwe Desa*).

The Government of Bali Province has issued Provincial Regulation No 4 of 2019 concerning Customary Villages and the Establishment of the Service for the Advancement of Customary People in the Province of Bali. A customary village is a unity of customary law community in Bali which owns territory, position, original

arrangement, traditional rights and wealth, the manner of community social life order from generation to generation in the bonds of sacred places (*Kahyangan Tiga* or *Kahyangan Desa*) with the task, authority, and rights to manage their domestic issue. The development of the Balinese customary economy is conducted optimally based on the local resources principle and contributes maximum for the *krama adat* (member of the customary village).

One of the Customary Villages that have an impact related to tourism investment is the Kerobokan Customary Village, which used to be a traditional village, now many areas in the village have been converted into tourism areas. Meanwhile, the land is state land controlled by indigenous peoples who are subject to the provisions of Law No 5 of 1960 concerning the Basic Agrarian Principles, so the regulation of the designation and use of customary land for investment can be said to have escaped the legislation.

The development of the tourism business in the Kerobokan Customary Village which is increasingly massive has changed the nature and function of the customary land managed by the Customary Village. This can be seen from the existence of *Tanah Pekarangan Desa*/Village Territory Land (VTL) and *Tanah Ayahan Desa*/Village Service Land (VSL) which have been converted into places to meet tourists' needs, such as homestays, rental cars, art shops, restaurants, laundry services, or money changers. The change in the function of the land has triggered a conflict of interest between individual communities (investors) who use village land for tourism facilities and the Customary Village as the manager of the village land.

Based on data, the conversion of agricultural land in Badung is still in the tens of hectares per year. According to statistics, the area of agricultural land in 2018 was recorded at 9,631 hectares. However, in 2019 there was a decrease of 38 hectares so the area was 9,593 hectares. In 2020, there was a land conversion of 26 hectares so now there are 9,593 hectares of agricultural land (Raharyo, 2021).

Condition of the customary land as mentioned above as well as many customary lands used as investment areas to develop the tourism industry is prone to legal problems for the customary village people especially related to the effect of the tourism investment implementation as well

as the role of customary village in preventing the negative effect for the people. The theoretical reference used to anticipate these problems is Friedmen's Legal System Theory, the theory of the welfare state.

The provisions of Article 1 number 10 of the Tourism Law are stipulated regarding the definition of Strategic Tourism Areas, namely "Areas that have the main function of tourism or have the potential for tourism development that have an important influence in one or more aspects, such as economic, social and cultural growth, empowerment of natural resources, environmental carrying capacity, as well as defense and security". In the implementation of tourism, there are several principles as regulated in Article 5 of the Tourism Laws (Santosa, 2021). Utilization of *laba Pura* land as an investment to support tourism certainly has the potential to cause a conflict of values and interests, given that the Tourism Law regulates the principles of tourism implementation that upholds religious norms including cultural values as a manifestation of the concept of a balance between the relationship between humans and God, humans, and humans, including humans and their environment. The Tourism Law also emphasizes the principles of tourism implementation that uphold local wisdom. This clash of values is certainly a threat to the concept and purpose of the *laba Pura* land. Tourism capitalism is a threat to the existence of the *laba Pura* land.

A study of previous research on tourism investment in Bali showed that there are social gaps or injustices, and tourism investment practices that deny the *Tri Hita Karana* cosmology. Dewa Nyoman Gede Suatmaja's research showed that the Customary Village Council (*MDP*) does not have a direct role in the implementation of tourism investment in the Customary village area because the implementation of investment in a Customary Village area is the autonomy of the Customary Village.

Putu Karlina Oktaviani Kusuma Dewi analyzed legal formulation to regulate customary land protection in Jimbaran Village, Badung Regency, Bali. The land used for investment includes *Laba Pura* land and village territory land. The mechanism of decision-making was based on the existing customary law. i.e., based on the result of the *Banjar* meeting, the use of the land was not disputed by the people. Although the *awig-awig* (constitution of the customary village) did not regulate the use of customary

land as an investment location, it did not hamper the arrangement because the result of the *paruman* (member meeting) which was stated on Notary Deed between *Bendesa Adat* (head of the customary village) and the tourism business owner which had become the legal foundation to conduct the investment (P. K. O. K. Dewi, 2016).

Astiti, Atu Dewi, and Faure also analyzed the entrance of tourism to Tenganan Village, a traditional village in Karangasem Regency-Bali which well-known through generations strongly preserves its customs and traditions. This study concluded that although tourism activity has touched the aspect of people's lives, the existing *awig-awig* forbids selling the land to outsiders who are not members of the Tenganan Village community (Astiti et al., 2013).

These researches showed that the use of customary land for investment location was not regulated specifically in the *awig-awig* of the Customary Village. Whether the investment activity is possibly established in their territory or not will be determined by the Customary Village through *awig-awig* and/or *perarem*. However, in the implementation, the Customary Village struggled in supervising the effect of land use particularly related to environmental pollution.

The vast tourism sector development is accompanied by the growth of individualism, commercialism, and capitalism values in the community. It affects the management of *Laba Pura* land which has been shifted from communal management for the temple to individual management for individual interest (Sudantra, n.d.). The land use for tourism investment that conflicts with the local wisdom of the people is surely a threat to the concept and purpose of customary land in Bali. The orientation of Balinese community tends to use the customary land as a funding source for the needs and interests of the members. The use of the customary land is not properly functioning as it should be, i.e., for the needs and welfare of the customary community.

The problem-solving plan in this study consists of the following stages: (1) conducting a study of the laws and regulations relating to investment and tourism, local regulations governing cultural tourism applied in Bali, customary village *awig-awig* (constitution of the customary

village), *pararem* (regulations of the customary village), then carrying out the research stages starting from observation, conducting interviews with competent informants, for example with the *Bendesa Adat* (Head of Customary Village), then seeking information related to the use of customary land that is rented out for tourism investment interests in the Kerobokan Customary Village; (2) the researcher analysed and examined the role of the Kerobokan Customary Village on tourism investment using customary village land, so that it can be seen that there is a role of the Customary Village in the presence of investors in its territory, so as to achieve a harmonious relationship between investors and customary villages in the Kerobokan Customary Village area; (3) reviewing a number of legal documents as well as cooperation between customary villages and investors.

The novelty aspect of this research is that the researchers wanted to find the concept of regulation in *awig-awig* in the Kerobokan Customary Village which is used in managing the land owned by the village as a means of investment by both domestic and foreign investors as well as the model used in the management of customary land used for tourism investment facilities in Kerobokan Village, as well as a model of a cooperation agreement between Customary Villages and Investors who use land owned by the village that accommodates the values of local wisdom.

The formulation of the research problem in this study is that how is the role of customary villages in land use for investment in tourism areas based on local wisdom in Kerobokan Customary Village, Badung Regency?

## METHODS

The research was conducted in the Kerobokan Customary Village, Badung Regency, Bali Province. Using the type of empirical juridical research because it leads to the type of research on the practice of applying the law in the field (field research). The approach used is a factual approach to the object of research. Data sources consisted of primary data and secondary data. Primary data was obtained through the Parties from the Village *Prajuru* (officials of the customary village) in the Kerobokan Customary Village, the Badung Government, the Tourism Office, the Investment Board, and the Village

Government Service. Data were collected through in-depth interviews with purposively selected informants, observations of land use for investment, and documentation studies. The collection of legal sources is carried out through identification techniques, inventory techniques, and systematization techniques. Data analysis techniques in this study use qualitative techniques accompanied by semiotic deconstructive thinking patterns.

## RESULT AND DISCUSSION

Customary Village as one of the Customary Law Community Units (KMHA) as regulated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia regulates the protection and recognition given by the state to KMHA and their traditional rights as long as they are still alive and following their development and do not conflict with The Unitary State of the Republic of Indonesia, in this case, the Customary Village, has the autonomy to regulate its customary village.

The customary village which is one of the *KMHA* domiciled in Bali has autonomy, namely the rights and obligations in regulating and administering the governance of its customary village. The autonomy of the customary village can be divided into 3 (three) scopes, namely first, the scope of authority of the customary village to form its customary law; second, the authority of the customary village in implementing and administering its customary law; third, the authority of the customary village in imposing its law. In this case, the autonomy of the customary village is full, which applies in the region and is applied to the community itself. In the case of settlement of customary cases or customary violations, the customary village is settled based on *awig-awig* and carried out by the *Prajuru* (A. Dewi, 2014).

The autonomy granted to Customary Villages to organize their customary village government aims to realize welfare for the indigenous village community so that there is a need for an ability for the Customary Village to process the potential and assets owned by the Customary Village. The assets of the customary village can be in the form of customary land that has socio-religious relations with the indigenous peoples in the area of the customary village.

Related to land management in customary villages, there is confusion in

managing land owned by customary villages, this is due to two different views, namely that managing customary land must be based on statutory regulations and the other hand the management of customary village lands is enough only based on customary law rules. This view results in the customary village not having the flexibility and confusion in managing customary village land, for example, the case of managing Tirta Empul, Tampaksiring tourist attraction, and the management of Sanur beach area which was once a legal issue that must be resolved based on applicable law.

Concerning the existence of customary lands in Bali, Windia and Sudantra asserted that land belonging to customary villages is in the form of 1) village land which in a narrow sense is called *tanah druwe* land namely lands directly owned by customary villages in the form of a cemetery, markets, fields, evidence land, *Balai Banjar* and so on; 2) *Tanah Pekarangan Desa/ Village Territory Land*, which is village land owned by a customary village but given its control to the customary village krama as a place to live with the size of the area determined by the customary village such as *sikut satak*, *sikut samas*, and so on; 3) *Tanah Ayahan Desa/ Village Service Land* is understood as land owned by a customary village which is given and handed over to the customary village member by taking the results and also attached to the obligation (services) to the customary village (Windia & Sudantra, 2016).

The existence of customary land in Bali, especially the assessment of the strategic meaning of land as well as economically in supporting people's lives, has a major impact on land, including customary land which is not impossible to change its function and may even transfer ownership from communal to individual and various other problems that have the potential to eliminate the identity of the customary land itself. The controversial problem in land issues is the concept of the economic function and social function of land which is the basis for excessive land use. One of the sources of these problems is the construction of tourism facilities, resulting in the high economic value of the land. The emergence of tourism facility buildings on Village Territory Land, Village

Service Land, and *Laba Pura* Land, indicates that there has been a transfer of function of customary land, from a socio-religious function which was initially dominant to a more dominant economic function (Laksana & Parwata, 2017).

The ownership of customary land by the customary village is recognized through Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and further regulated in Article 2 paragraph (4) and Article 3 of Law No 5 of 1960 concerning Basic Agrarian Principles. In 2017 with the issuance of the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 276/KEP-19.2/X/2017 concerning the Appointment of Customary Village in Bali Province as the subject of Joint (Communal) Ownership of Land. The appointment of the Customary Village as the subject of land ownership rights becomes clear for the status of the customary village as a legal subject, including customary land ownership. This decision, explains that customary villages can manage customary land for community welfare and sustainability of customary villages.

Efforts to improve the welfare of the customary village community in managing their customary land are carried out by exploring the potential of the Customary Village and collaborating with investors, especially in the tourism industry, this is because Bali is an area famous for its cultural tourism. This attracts investors to invest in tourism, create job opportunities in the local area, and provide tourism infrastructure, through the use of land owned by customary villages.

Currently, the Province of Bali has recorded the realization of domestic and foreign investment of IDR 13.7 trillion in 2019, and IDR 9.6 trillion in 2020, in which the investment decreased due to the Covid-19 pandemic; however, it bounced back to IDR 12.9 trillion in 2021. It reflects that investment realization in Bali in the past three years is stable. It also shows that Bali is one of the investor destinations, especially in the tourism sector.

The following is the realization of foreign investment and domestic investment realization data for Regencies/Cities in Bali in 2019-2021 as seen in Table 1.

Table 1. The realization of foreign investment and domestic investment realization data for Regencies/Cities in Bali in 2019-2021

Recapitulation of Realization of the Foreign and Domestic Investment in Regencies/City in Bali in 2019																
No	Regency/ City	Domestic Investment					Foreign Investment					TOTAL				Description
		Investment IDR (in million)	Investment (IDR)	PROJECT	Indonesian Labour	Foreign Labour	Investment US\$ (in thousand)	Investment (IDR)	PROJECT	Indonesian Labour	Foreign Labour	Investment (IDR)	PROJECT	Indonesian Labour	Foreign Labour	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1	Gianyar Regency	Rp306.116	Rp306.116.000.000	54	1122	7	Rp39.049	Rp586.739.000.000	289	998	61	Rp891.855.000.000	343	2120	68	Data from
2	Tabanan Regency	Rp25.725	Rp25.725.000.000	16	159	0	Rp13.093	Rp196.395.600.000	49	115	11	Rp222.120.600.000	65	274	11	Investment
3	Buleleng Regency	Rp301.796	Rp301.795.600.000	57	580	1	Rp15.367	Rp230.508.200.000	92	288	5	Rp532.303.800.000	149	868	6	Coordination
4	Klungkung Regency	Rp22.563	Rp22.562.600.000	35	388	5	Rp5.852	Rp87.786.200.000	101	277	20	Rp110.348.800.000	136	665	25	Agency of the
5	Karangasem Regency	Rp11.724	Rp11.723.600.000	6	0	0	Rp10.170	Rp152.557.200.000	119	380	11	Rp164.290.800.000	125	380	11	Republic of
6	Bangli Regency	Rp2.239	Rp2.238.900.000	11	2	0	Rp59	Rp89.200.000	7	6	0	Rp3.119.000.000	18	9	0	Indonesia
7	Jembrana Regency	Rp269.267	Rp269.266.800.000	13	63	0	Rp412	Rp6.176.600.000	14	116	3	Rp275.443.400.000	27	179	3	
8	Badung Regency	Rp5.150.896	Rp5.150.896.300.000	384	3904	19	Rp292.160	Rp4.382.383.800.000	1266	4951	182	Rp9.533.280.100.000	1650	8855	201	
9	Denpasar City	Rp1.302.846	Rp1.302.845.500.000	238	3168	10	Rp49.861	Rp747.917.200.000	506	2491	94	Rp2.050.762.700.000	744	5659	104	
Total:		Rp7.393.170	Rp7.393.170.200.000	814	9386	42	Rp426.024	Rp6.390.344.000.000	2443	9622	387	Rp13.783.514.200.000	3257	19008	429	

Description:  
Exchange rate US\$ 1 = IDR 15,000 (based on National Budget 2019)  
Rp is the symbol Indonesian Rupiah (IDR)

Recapitulation of Realization of the Foreign and Domestic Investment in Regencies/City in Bali in 2020															
No	Regency/ City	Domestic Investment				Foreign Investment				Total				Description	
		Investment IDR (in million)	Investment (IDR)	PROJECT	Indonesian Labour	Investment in US\$ (in thousand)	Investment (IDR)	PROJECT	Indonesian Labour	Investment (IDR)	PROJECT	Indonesian Labour			
1	2	3	4	5	6	7	8	9	10	11	12	13	14		
1	Regency Badung	Rp3.558.447	Rp3.558.447.400.000.000	947	4.081	\$193.262	Rp2.783.261.918.864.33	1.962	6.182	Rp6.341.709.318.864.33	2.929	10.263	Data from		
2	Regency Bangli	Rp23.055	Rp23.055.100.000.000	29	82	\$94	Rp1.352.169.592.30	15	84	Rp24.407.260.592.30	44	166	Investment		
3	Regency Buleleng	Rp361.332	Rp361.331.800.000.000	192	422	\$19.254	Rp277.251.941.270.75	176	207	Rp638.583.741.270.75	368	629	Coordination		
4	Regency Gianyar	Rp145.776	Rp145.775.900.000.000	132	508	\$16.264	Rp234.195.931.819.75	474	2.998	Rp379.971.831.819.75	606	3.506	Agency of the		
5	Regency Jembrana	Rp142.332	Rp142.332.000.000.000	34	46	\$120	Rp1.722.240.688.81	24	41	Rp144.054.240.688.81	58	87	Republic of		
6	Regency Karangasem	Rp78.045	Rp78.044.700.000.000	50	465	\$8.334	Rp120.009.646.594.59	160	294	Rp198.054.346.594.59	210	759	Indonesia		
7	Regency Klungkung	Rp42.420	Rp42.420.000.000.000	79	211	\$19.019	Rp273.870.831.944.21	137	347	Rp316.290.831.944.21	216	558			
8	Regency Tabanan	Rp758.200	Rp758.199.500.000.000	111	440	\$6.561	Rp94.481.308.176.39	90	67	Rp852.680.808.176.39	201	507			
9	Denpasar City	Rp323.068	Rp323.068.100.000.000	939	3.565	\$30.326	Rp436.687.328.729.32	909	1.818	Rp759.755.428.729.32	1.848	5.383			
Total:		Rp5.432.675	Rp5.432.674.500.000.000	2.513	9.820	\$293.252	Rp4.222.833.308.680.45	3.967	12.038	Rp9.655.507.808.680.45	6.480	21.858			

Description:  
Exchange rate US\$ 1 = IDR 14,400 (based on National Budget 2020)  
Rp is the symbol Indonesian Rupiah (IDR)

Recapitulation of Realization of the Foreign and Domestic Investment in Regencies/City in Bali in 2021															
No	Regency/ City	Domestic Investment				Foreign Investment				Total				Description	
		Investment IDR (in million)	Investment (IDR)	PROJECT	Indonesian Labour	Investment in US\$ (in thousand)	Investment (IDR)	PROJECT	Indonesian Labour	Investment (IDR)	PROJECT	Indonesian Labour			
1	2	3	4	5	6	7	8	9	10	11	12	13	14		
1	Regency Badung	Rp2.514.694	Rp2.514.694.100.000.000	824	8086	\$158.564	Rp2.315.028.789.863	1480	3567	Rp4.829.722.889.863	2304	11653	Data from		
2	Regency Bangli	Rp31.854	Rp31.853.500.000.000	35	96	\$302	Rp4.410.662.231	25	8	Rp36.264.162.231	60	104	Investment		
3	Regency Buleleng	Rp552.240	Rp552.240.400.000.000	151	1447	\$75.933	Rp1.108.616.038.665	73	475	Rp1.660.856.438.665	224	1922	Coordination		
4	Regency Gianyar	Rp871.301	Rp871.301.300.000.000	149	615	\$42.384	Rp618.810.911.790	509	802	Rp1.490.112.211.790	659	1617	Agency of the		
5	Regency Jembrana	Rp173.492	Rp173.491.600.000.000	32	327	\$3.812	Rp55.661.046.630	11	36	Rp229.152.646.630	43	363	Republic of		
6	Regency Karangasem	Rp142.373	Rp142.372.500.000.000	80	250	\$3.400	Rp49.638.549.006	81	166	Rp192.011.049.006	161	416	Indonesia		
7	Regency Klungkung	Rp66.996	Rp66.995.700.000.000	82	212	\$8.442	Rp123.248.826.494	64	67	Rp190.244.526.494	146	279			
8	Regency Tabanan	Rp1.035.195	Rp1.035.195.100.000.000	84	430	\$73.071	Rp1.066.835.168.937	68	290	Rp2.102.030.268.937	152	720			
9	Denpasar City	Rp967.105	Rp967.105.000.000.000	893	3569	\$86.059	Rp1.256.461.489.301	487	2064	Rp2.223.566.489.301	1380	5633			
Jumlah :		Rp6.355.249	Rp6.355.249.200.000.000	2330	15232	\$451.967	Rp6.598.711.483.117	2798	7475	Rp12.953.960.683.117	5128	22707			

Description:  
Exchange rate US\$ 1 = IDR 14,600 (based on National Budget 2021)  
Rp is the symbol Indonesian Rupiah (IDR)

Based on the data in the above table, it can be seen that the number of realized investments in Bali in 3 years continues to increase. This shows that Bali is one of the destinations for investors to invest, especially in the tourism sector.

One of the customary villages that are currently developing its tourism industry and becoming a destination for tourists to visit is Kerobokan Customary Village. Kerobokan is a village located in an urban area, and since the 1980s has experienced

a transition from traditional village life to a tourism city. Administratively, the Kerobokan Customary Village consists of six official areas, namely Kerobokan Kaja Village – North Kuta District, consisting of 11 *Banjars*/hamlets, Kerobokan Village – North Kuta District, consisting of 10 *Banjars*/hamlets, Kerobokan Kelod Village–North Kuta District, consisting of 13 *Banjars*/hamlets (section) Seminyak Village–Kuta District, consisting of 1 *Banjars*/hamlets (part of) Padangsambian

Kaja Village—Denpasar City, consisting of 4 *Banjars*/hamlets (part of) Padangsambian Kelod Village—Denpasar City, consisting of 11 *Banjars*/hamlets.

Kerobokan Customary Village owns *Druwe Desa* land which is regulated in the

*Awig-Awig* of Kerobokan Customary Village, namely *Pawos 39*, which states that what is referred to *Tanah Druwe* Land of the Kerobokan Customary Village is as seen in Table 2.

Table 2. The land owned by Kerobokan Customary Village

a.	Pura Desa, and Pura Puseh, which are located on the border of Banjar Petingan.
b.	Pura Dalem Kahyangan : <ol style="list-style-type: none"> <li>1. Dalem Kahyangan Kerobokan is located in the area of Banjar Batubidak.</li> <li>2. Dalem Kahyangan Dukuh located in the area of Banjar Dukusari</li> <li>3. Dalem Kahyangan Banjar Anyar is located in the area of Banjar Anyar Kelod.</li> <li>4. Dalem Kahyangan Batubelig is located in the area of Banjar Batubelig.</li> <li>5. Dalem Kahyangan Umaduwi is located in the area of Banjar Umaduwi.</li> <li>6. Dalem Kahyangan Kayu Aya is located in the area of Banjar Basangkasa.</li> <li>7. Dalem Kahyangan Robokan is located in the area of Banjar Robokan.</li> <li>8. Dalem Kahyangan Teges is located in the area of Banjar Teges.</li> </ol>
c.	Pura Tungkub Kahyangan
d.	Pura Mrajapati.
e.	The cemetery is located in every Banjar as mentioned in section b.
f.	Laba Pura Desa land in a total of 8.5 Ha, located in Subak Sebuah.
g.	Bale Agung, Bale Gong, Wantilan and Bale Kukul.
h.	LPD/ Village Credit Institution.
i.	Palinggih Pan Balang Tamak.
j.	Palinggih Sri Sedana.

In *Pawos 39* paragraph (3) it is also regulated that "*Tan kalugra ngadol utawi ngésahang druwén Désa / Pura yan tan kacumponin antuk Krama Désa sami,*" which means that it is forbidden to sell the land of the *Druwe* land without the approval given by members of the customary village. Although this *awig-awig* is not specifically regulated regarding the use of customary village land for tourism investment activities, all forms of customary village land use refer to the *awig-awig* of the Kerobokan Customary Village, as has been regulated in the *awig-awig*.

Based on the results of an interview with the *Bendesa Adat* (Head of the Customary Village) of Kerobokan

Customary Village, Mr. Agung Sutarja, the information was obtained that the implementation of land management aimed at tourism service industry activities was carried out based on the applicable laws and regulations, both National Laws and Regulations in the Kerobokan Customary Village. The implementation begins with a meeting of the *Prajuru* and investors, after which there was a lease contract activity. Not only that, but the *Prajuru* also carried out supervision and inspection of the development that was being carried out by the investors. The procedure for leasing land for tourism investment in the Kerobokan Customary Village was carried out with the following mechanism.

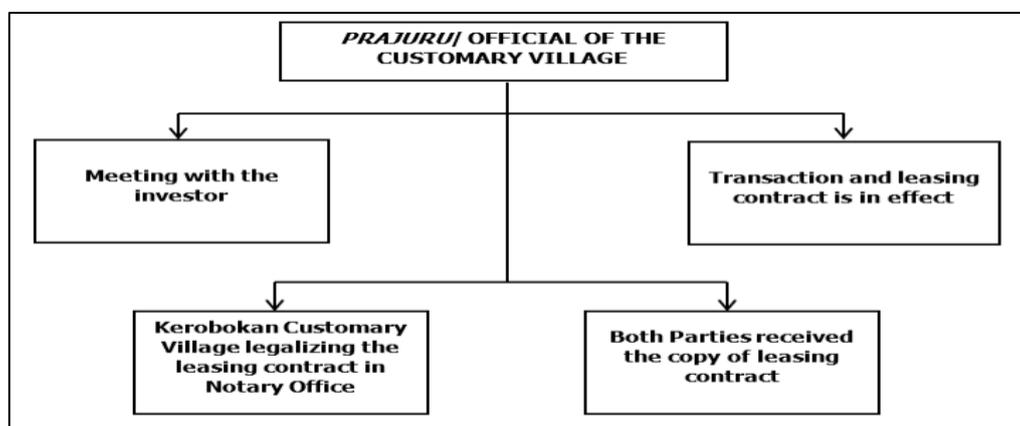


Figure 1. Land Lease Procedure for Tourism Investment in Kerobokan Customary Village

The use of village land used for tourism investment facilities is reflected in the procedures described above and must be followed by village officials. The role of the customary village is to determine whether the *laba pura* land can be contracted out or not. The mechanisms that must be followed are as follows:

- 1) Hold a customary village meeting/ *parum* to determine whether the *laba pura* land can be contracted or not. The decision on the *laba pura* land can be contracted or not determined by the customary village apparatus and the *kelian pura* (manager of the temple). The validity period of the land lease is 20 years and a maximum of 30 years.
- 2) After getting an agreement that the *laba pura* land will be contracted to investors, a lease agreement is made between the Customary Village represented by the *Bendesa Adat*, and the investor at the notary office, so that the form of the agreement is in the form of a notary deed (authentic deed).
- 3) After the lease agreement is made in the form of a notary deed, a copy of the deed is inserted into the Kerobokan Customary Village *Pararem*, then a book is made, which is called the *Ilukite* Book.
- 4) Based on the agreement, a Building Use Rights Certificate (*HGB*) is made for a period of as long as the agreement is valid.

According to the Secretary of the Kerobokan Customary Village, Mr. Anak Agung Sutanaya, the customary land has been recorded in the *Pararem* Book of the Kerobokan Customary Village, then the Village Service Land has been assigned to each resident who occupies the land so that a Certificate of Ownership of Land (*SHM*) is issued. The procedure for leasing village-owned land applies equally to all *Banjars* in the Kerobokan Customary Village. The example in Banjar Uma Alas Kauh also applies the same thing. For village-owned land in the name of a customary village, this is done to avoid disputes such as what happened in Banjar Peti Tenget, the *laba pura* land was under the name of the *Pemangku* (religious leader), eventually, a dispute arose with his heirs. In Banjar Uma Alas Kauh, many agricultural lands have been converted into tourism facilities, such as hotels, villas, and others.

The Kerobokan Customary Village also has a *Pengele Pararem* which regulates administrative provisions that must be met by the *krama tamiu* (in this case including investors) if they want to carry out business activities both in the tourism and non-tourism fields in each *Banjar* in the Kerobokan Customary Village area. Almost all investors who invest in the Kerobokan Customary Village always coordinate with the customary village, whether the investor is on a national or international scale. This is formulated in *Pallet 2 Pawos 13 indik* of *Panglikital* Administration.

Table 3. Provision of Kerobokan Customary Village

NO	ITEMS	PRICES (IDR)
1	Lease and sell land	IDR. 500.000,- /acre
2	Domicile Letter for Land Issue	IDR. 1.000.000,-
3	HO/SITU	IDR. 500.000,-
4	Business Place Letter ( <i>SKTU</i> )	IDR. 100.000,-
5	Principle Permit	IDR. 500.000,-
6	Building Permit comparator	
	a. Hotel, Villa, Bungalow	IDR. 500.000,- /room
	b. Shop-house, House & Office, Shop	IDR. 500.000,-
	c. Living House, Boarding House	IDR. 200.000,-
	d. <i>Rumah Makan</i> , Restaurant, Bar	IDR. 500.000,-
	e. Warehouse 2 acre - 5 acre	IDR. 5.000.000,- /unit
7	Land Position Letter	IDR. 500.000,-
8	Conversion/ Grant/ Division of Heirs	IDR. 500.000,-
9	Acknowledgment Letter/ Affirmation of Excess Land	IDR. 200.000,- /acre

The Existence of this provision is intended for binding the harmony of Tri Hita Karana for the welfare of Kerobokan Customary Village.

The provision in Table 3 explained that the Customary Village also helps facilitate the preparation of correspondence for the need for obtaining a business license, by setting a standard fee following what has been regulated in the *Pangele Perarem*. The authority of the Customary Village regarding this matter is based on the Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages in Article 1 point 8 which provides autonomy for Customary Villages to manage their households. In the context of customary land management, it is regulated in Article 22 which emphasizes that the Customary Village is tasked with developing the economy of the customary village and maintaining the status of the land rights of the *padruwen desa adat* land. This shows that state law recognizes and protects the authority of customary villages in terms of managing customary land in their territory. Customary villages can develop and improve the economy of customary villages through the development and management of customary lands owned by customary villages. There appears to be harmonization between customary law and state law as contained in the customary village regulation.

The Decree of the Supreme Council I of MDP Bali held on March 3, 2006, as outlined in the MDP Bali Decree Number 050/Kep/Psm-1/MDPBali/III/2006 which stated as follows:

- 1) Every investment in the *wewidangan/wawengkon* (area) of Customary Village deserves a recommendation from Customary Village, in addition to approval from other relevant agencies.
- 2) Recommendations are given by the *Bendesa Adat* based on the decision of the *Parum*/ meeting of the Customary Village members (MUDP Bali, 2007).

Based on this provision, means that Customary Villages can influence and have a role in the implementation of tourism investment in its territory. The role of community members is quite important in determining their area to be used as a place for tourism investment through village meetings as regulated in the Supreme Council I of MDP Bali, and to realize harmonization of relations among the residents so that consensus can be reached in contracting out customary land to investors so that the concept of togetherness is to achieve consensus. The consensus within the people known as the

concept of *sagilik, seguluk, selunglung, sebayantaka* which is a concept of thinking that has been passed down from generation to generation can be realized in the customary village of Kerobokan so that a comfortable and peaceful village situation as a form of local wisdom can be used as capital to attract tourist visits to Bali, so that conflicts between *Banjars* in the Kerobokan customary village area related to the investment will never occur.

This goal can be achieved by maintaining the harmony of human relations with God (*parhyangan*), the relationship between humans (*pawongan*), and the relationship between humans and their environment (*palemahan*) which is known as the philosophy of "Tri Hita Karana" which originates from Sad Kerthi's local wisdom. *Parhyangan, pawongan, and palemahan* are the elements that synergize with each other as a source of physical and spiritual well-being for the community. *Sad Kerthi* is an effort to purify the soul (*Atma Kerthi*), purify the sea and its beaches (*Segara Kerthi*), purify water sources (*Danu Kerthi*), purify plants (*Wana Kerthi*), purify humans (*Jana Kerthi*), and purify the universe (*Jagat Kerthi*).

The role of the customary village is so large in handling tourism investment, especially for customary land rights in the Kerobokan Customary Village, it is following the current provisions, especially with the issuance of the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 276 /KEP-19.2/X/2017 concerning Designation of Customary Villages in Bali Province as Subjects of Joint (Communal) Ownership of Land, so that the legal position of customary villages as subjects of land rights in managing customary village land becomes clearer and legal certainty is more guaranteed.

So, the legal substance according to Friedmen's legal system theory has not been fully accomplished because managing the customary land for tourism investment in Kerobokan Customary Village has not been regulated clearly by the *Awig-awig* or *Perarem*. Meanwhile, the role of customary villages in managing customary land for tourism investment facilities is regulated by Minister of Agrarian Regulation No: 276/KEP-19.2/X/2017 concerning the Appointment of Customary Villages in the Province of Bali as the Subject of Joint (Communal) Land Rights, where customary

villages are appointed as legal subjects of land rights.

The legal substance is the entirety of legal principles, legal norms, and legal rules, both written and unwritten, including court decisions. With the position as the subject of rights, the implementation of the agreement is supported by village officials and *Kelias Banjar* who carry out the same rules in each *Banjar* for investors who will invest their capital in their area so that the implementation of customary land lease agreements for investment can run as expected both by investors and by customary villages.

The third element in the legal system is legal culture, namely the customs or culture of the community that accompanies law enforcement. The legal culture resides in the community as well as in law enforcement officers. The member of Kerobokan Customary Village strongly supports the presence of investors investing in tourism facilities in their village, while maintaining the security and harmony of the residents and can raise tourism awareness. An area can develop as a tourism area if the tourism-conscious culture of its citizens grows and is well maintained. The legal culture of the customary people of Kerobokan Village is ready to accept the presence of investors who invest in their traditional village, by highlighting the local wisdom that exists in the Kerobokan Customary Village.

The legal structure, legal substance, and legal culture are important elements in law enforcement, if one of these three components does not work or does not function properly, it can disrupt the legal system, so that legal problems arise in the implementation of investment in Kerobokan Customary Village, so the three elements must work well.

The positive impacts felt by the community with the existence of tourism investment in the Kerobokan Customary Village include:

1) Funds received from the rental of village land can be managed for the benefit of temples, traditional villages, physical development in the traditional village environment, for ceremonial purposes, so that villagers no longer need to pay obligations in the form of mandatory fees to the village, as has happened in other villages in Bali.

2) The use of labor from villagers who are employed in hotels or villas is 40%, and the acceptance of these workers is through a letter of recommendation from the traditional village. The use of workers from the Kerobokan Customary Village, especially the indigenous residents, is a very good step because the cooperation between the customary village and investors has referred to the constitution and the Tourism Law, especially Article 26 letter (g) which implicitly states "every tourism entrepreneur is obliged to obligations of the local community need to be regulated in more detail".

The positive impact of tourism investment carried out in the Kerobokan Customary Village is very relevant to the theory of Welfare State Theory from Kranenburg which states that the state must actively seek prosperity, and act fairly, which can be felt by all people equally and in balance. According to Esping-Anderson, the welfare state refers to the active role of the state in managing and organizing the economy, which includes the responsibility of the state to ensure the availability of basic welfare services at a certain level for its citizens (Triwibowo & Bahagijo, 2006).

Tourism investment in the Kerobokan Customary Village can absorb the workforce of the Kerobokan Customary Village members, this is a very good step because, with the development of tourism facilities in the form of hotels, villas or restaurants that are built, it can absorb labor in customary villages, so that it can improve the welfare of the community. Then the rent of customary land from investors can be used to finance expenses in the village either for ceremonies at temples or village development so that the welfare of citizens increases because there is no need to spend anymore the responsibility of the state to realize the welfare of its people can be realized.

The utilization of customary land for tourism investment activities in the Kerobokan Customary Village has been following the agreement in the *Paruman* and there has always been good coordination between *krama*/ villagers and *prajuru*/ officials regarding how the rights and obligations on the customary land implemented. *Awig-awig* and *pararem* who regulate local manners have been understood together, including on customary lands. Togetherness is still realized, including respect for village lands which are fulfilled with *ayahan land* obligations without

shifting. Indeed, the activities of the tourism sector do not rule out the emergence of anxiety among the public. Some think that the conditions caused by tourism sector activities will be able to weaken the joints of community life and local culture such as affecting the land ecology system, water, plants, and river, which threaten the environment's cosmic order. Besides that, local values will be dragged away by the flow of commercialization, but the pattern of life that combines daily activities with religion, arts, culture, and customs always manages to illustrate that the flow of commercialization is very weak in impact.

The management of customary land in the Kerobokan Customary Village is carried out with the supervision of the head of the customary village. This aims to protect the values of local wisdom and maintain the harmony and balance of *Parhyangan*, *Pawongan*, and *Palemahan* which is contained in the Tri Hita Karana philosophy. In the implementation of tourism investment activities carried out in the Kerobokan Customary Village area, the Customary Village upholds the value of *salunglung sabayantaka, paras paras sarpanaya*; a social value about the need for togetherness and equal cooperation between one another as a social unit that respects each other.

The use of Balinese customary land according to the rules of Balinese customary law is how its allocation for customary peoples is maintained by prioritizing social-religious values and harmonization of living together. In addition to the existing authorities, for example, in formulating their own rules through *awig-awig*, the legal culture of community compliance is the main key to realizing the ideal goals of customary law rules. Values, customs, and customary law as a cultural value system of a legal community association function to organize and control the behavior of community members and social life, to achieve the goal of living together, namely public order and tranquility.

The customary land has the function of customs, religion, tradition, culture, and economy, while the *guna kaya* land has a function for customs, religion, culture, and economy for the owner while concerning the social function of land rights (Sonia & Sarwoprasodjo, 2020). Specifically, the Village Land Territory (*Palemahan*), was legalized by the Regulation of Bali Province No 16 of 2009 concerning the Spatial plan for the Province of Bali for 2009-2029 based

on the *Tri Mandala* concept, namely the division pattern of territory, area, and/or yard into three level *Utama Mandala* (Main Area) used for the holy place, *Madya Mandala* (Middle Area), used for family housing and *Nista Mandala* (Outside Area) which used for a cemetery (Sastrawan et al., 2018).

Utilization of local wisdom values in land management for tourism investment in the Kerobokan Customary Village aims to improve community welfare and support regional development through the potential and characteristics that exist in every region. Local wisdom also plays a role in creating a sustainable tourism ecosystem. It is clear that the influence of the position of local wisdom of customary people and culture in the entire process of drafting laws and regulations which are primarily related to land management for tourism investment in Bali. That all the important elements contained in Balinese Local Wisdom are forms of the unification of culture, customs, and religion. It means that all forms of customary land arrangement plans will not work well if they are not accompanied by local wisdom both as signs that will protect against damage that will arise as a result of wrong spatial planning, as well as a guardian in maintaining the culture and uniqueness of buildings, culture, and habits of the Balinese people.

By regulating the substance of local wisdom in the land management plan for tourism investment activities, harmonious relations between humans and God, among humans, as well as between humans and their natural environment are based on the philosophy of "Tri Hita Karana" which originates from the values of local Balinese wisdom, i.e., the six main sources of well-being and happiness in the life of the Balinese people (*Sad Kerthi*) need to be maintained, developed and preserved sustainably.

## CONCLUSIONS AND RECOMMENDATIONS

The Kerobokan Customary Village has a role in the use of customary land for investment in tourism areas based on local wisdom because, the implementation of leasing customary land, all of them are carried out under the supervision of the customary village through village meetings and in practice represented by the customary village head, which is further regulated in the *Awig-Awig* and *Perarem* in the Kerobokan Customary Village. If the land

lease agreement is under the individual name of the villager, then the signing of the agreement must have the power of attorney from all the *Banjar Prajuru* in the Kerobokan Customary Village area. This authority is reinforced by the Bali Provincial Regulation Number 4 of 2019 concerning Customary Villages which gives autonomy to Customary Villages to manage their household affairs following the values that live and develop in the community, as well as Minister of Agrarian Regulation No: 276/KEP-19.2/X/2017 concerning Designation of Customary Villages in Bali Province as Subjects of Joint (Communal) Ownership of Land, where customary villages are appointed as legal subjects of land rights. It is recommended to change the personal name listed in the Certificate of Ownership of Land to the customary land (*Tanah Pelaba Pura*) changed in the name of the temple that owns the land.

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