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# THE DILEMMATIC OF LEGAL PROTECTION OF BARONG DANCERS: WORKERS IN TOURISM ATTRACTIONS AND PRESERVATION OF CULTURE IN BALI DURING THE COVID-19 PANDEMIC

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## ABSTRACT

Barong Dance as one of the traditional religious arts dedicated to religious rituals has undergone a shift in function, namely to become one of the tourist attractions in the tourism industry in Bali. This causes the dualism of the position and responsibility of the Barong dancers themselves. This dualism includes the position of dancers as actors in cultural arts and also as workers in the tourism sector. The two positions have different rights and obligations. So, the focuses of the author's problem are 1) how are the rights and obligations of Barong Dance dancers as tourist attractions and Balinese cultural arts performers? and 2) how is the implementation of legal protection as tourist attraction workers against the dualism of the position of barong dancers? This research is a normative legal and law empirical study that examines the void of norms regarding the legal protection of barong dancers and the implementation of legal protection towards barong dancers. The legal material in this study consists of primary and secondary legal materials. The legal materials are collected through a literature study. Moreover, the implementation of the legal materials is examined through field study. The problem analysis was done qualitatively. The dilemma of the Barong Dancers as part of the traditional Villagers who must preserve traditional arts to support religious rituals is one of the reasons for the lack of protection for the rights of barong dancers as workers in tourist attractions who are not operating due to the Covid 19 Pandemic.

*Keywords:* Cultural Arts, Barong Dance, Workers, and Tourist Attractions

## I. INTRODUCTION

Cultural diversity is the wealth and identity of Indonesia. It is an investment to develop the nation and its civilization for achieving the national goal as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter stated as 1945 Constitution), i.e., protecting all of the Indonesian people and the nation, improving commonwealth, educating the people, contributing to world peace based on the independence, eternal peace, and social justice. To achieve this goal, there should be a strategic move in form of cultural advancement through protection, development, utilization, and construction

to realize the Indonesian society which is politically sovereign, economically independent and has a personality in culture.<sup>1</sup>

Ethnic, religious, and racial diversity with abundant natural resources is a potency for Indonesia that can be optimized to achieve global competitiveness by developing art and cultural diversity-based tourism. It could be used to gain foreign exchange which indirectly influences the existence of the art and culture of the people in Indonesia. This situation causes the Indonesians in two contradictive positions in which there is a social change that can be used for improvement, and the other side is

<sup>1</sup> Marina, Liza, Sunarsi. Dessy, Kepastian Perlindungan Hukum Kesenian Tradisional Sebagai Ekspresi Budaya Tradisional Dalam

Menunjang Kepariwisata Indonesia, Jurnal Industri Pariwisata, Vol 2, No. 1, Salatiga: Sekolah Tinggi Ilmu Ekonomi AMA, 2019, page. 28

causing backwardness and remoteness for other society members which is caused by the factor of attachment of culture/ customs, religion, and location.<sup>2</sup>

The contradiction of these sides makes the existence of customary community as the main support for the development of customs and culture in Indonesia to be very important. Constitutionally, the recognition of the state on the existence of customary community after the amendment of 1945 Constitution, is stated on Article 18B paragraph (2) which stated: "The state recognizes and respect the unity of customary community as well as their traditional rights as long as living and in accordance with the development of society and principle of The Unitary State of the Republic of Indonesia, which is regulated in a Law". In the international legal order, Indonesia has ratified Law No 11 of 2005 concerning Covenant Ratification on the Rights of Economy and Culture. Therefore, the state has an obligation to respect, protect, and fulfill the rights of the customary community.<sup>3</sup>

The existence of a customary community that is organized in Customary Village is highly effective in protecting the Balinese culture and art so it could be the main support for Balinese tourism which popularizes Bali as the global popular tourist destination with the concept of culture-based tourism or known as Cultural Tourism. The development of the Cultural Tourism concept aimed at creating a mutual relationship between tourism and Balinese customs, art, and culture as the foundation. Therefore, it cannot be denied that culture is a fundamental value for tourism in Bali,<sup>4</sup> which makes Bali a reputable tourist destination.

The Government of Bali Province has established the basis of implementing Cultural Tourism in Bali under the Regulation of Bali Province No 3 of 1991 concerning Cultural Tourism (hereinafter stated as *Perda* No 1/1991) which has been updated with Regulation of Bali Province No 2 of 2012 concerning Balinese Cultural Tourism (hereinafter stated as *Perda* No 2/2012), as a statement that development based on Balinese culture as a part on Indonesian culture. The development of Balinese culture aims at triggering the equality of business opportunity and gaining maximum benefit for the welfare of the community so the goal of tourism for Bali, not Bali for tourism could be realized.

The complexity of the challenges in developing Cultural Tourism to achieve sustainability and competitiveness as well as minimizing the negative effect has triggered the issue of Regulation of Bali Province No 5 of 2020 concerning Standard of the Implementation of Balinese Cultural Tourism (hereinafter stated as *Perda* No 5/2020), which deregulated many related regulations of Travel Business, Standard of Management of Tourist Attractions, and other regulations, which are further regulated by the Standard of the Implementation of Balinese Cultural Tourism based on *Tri Hita Karana* which is originated from cultural values and local wisdom of *Sad Kerthi*.

The existence of Balinese dance as one of the existing Balinese cultures has become one of the tourism attractions, which attract both domestic and international tourists to visit Bali and enjoy the mystical and religious traditional dance of Bali. One of the most attractive dances is the Barong dance. This is originally a sacred dance that is only performed in the temple as one of the religious ceremonies. Along with the development, considering the aspect of the creative

<sup>2</sup> Anggoro, Teddy, *Kajian Hukum Masyarakat Hukum Adat Dan Ham Dalam Lingkup Negara Kesatuan Republik Indonesia*, Jurnal Hukum dan Pembangunan Vol. 36, No. 4, Jakarta: Law Faculty of University of Indonesia, 2006, page. 487

<sup>3</sup> Mandasar, Zayanti, *Politik Hukum Pengaturan Masyarakat Hukum Adat (Studi Putusan Mahkamah Konstitusi)*, Jurnal Ius Quia Iustum,

Vol. 28, No. 2, Yogyakarta: Law Faculty of Islamic University of Indonesia, 2014, page. 228

<sup>4</sup> Wyasa, Putra. Ida Bagus, Bali dalam Gempuran Ideologi Asing, Bali Post, 10<sup>th</sup> January 2011, <https://issuu.com/epaper-kmb/docs/bpo10012011>, accessed on 15<sup>th</sup> August 2021

economy to improve the welfare of the Barong dancers and the community, so this dance is commodified to be a commercial dance which is very attractive for the tourists.<sup>5</sup> The development of Barong dance performance in Bali makes this dance to be a highly potential income which triggered many openings of new Barong dance stages. Batubulan village has several performance stages which make Barong dance the icon of Batubulan Village. Further, there are more performance stages such as in Kesiman Village, Cultural Park of Garuda Wisnu Kencana, Ubud Village, Cultural Village of Kertalangu, and others.

Barong dance as one of the tourist attractions which has become one of the tour packages triggers more professional management of Barong dance which involving the Barong dancers as the artist who conducts their rights and obligation based on the contract with the business owner of Barong Dance Performance Attractions for economic purposes. The good relationship of the interest of the business owner with the interest of Barong dancer as a professional artist as well as the interest of the dancer as the member of Balinese Customary Community who must preserve the art and culture of Bali has simultaneously caused the existence of Barong dancers in Bali.

The worldwide Covid-19 pandemic has smashed the Barong Dance Attraction as a part of the tourism industry. This pandemic has closed access for the domestic tourists and the policy of lockdown as well as travel band from some countries has blocked the international tourists. The head of Statistics Indonesia (hereinafter is stated as *BPS*), Suharyanto, has officially announced that cumulatively, from January to December 2020, the number of international tourists who

visited Indonesia reached 4.02 million people. Comparing to the same period in 2019, this number is deeply decreasing, i.e., 75.03%.<sup>6</sup> Meanwhile, the number of international tourists who visited Bali in January 2021 decreased 93.33% compared to December 2020. Comparing to January 2020, the number of international tourists who visited Bali decreased almost 100% (-99.998%).<sup>7</sup>

Consequently, Barong dance is not operating, so economically the dancers did not have income because this attraction has become the source of their income. Besides that, Barong dance did not have legal protection upon their rights as workers, because the Barong dancer as the main artist, performed not based on working relationship, since there is no aspect of working. Therefore, it can be said that the legal connection was based on Partnership which focusing on mutualism among the parties. This relationship was based on the consideration that the Barong dancers in conducting their obligation to perform was not merely as a job but also conducting their obligation to preserve Balinese art and culture as a member of customary Balinese society.

From the above description, it can be seen from two different sides, i.e., until now, factually the closing of Barong dance performance due to Covid-19 pandemic indirectly causes a problem by unfulfilled rights of the Barong dancer as partnership relation because this is considered as a logic consequence of their position which is not only a profession but also an obligation for a customary community member to preserve their culture and art. On the other side, within the framework of labor relations, this issue juridically has a potency of a legal dispute in terms of fulfilling the rights and obligation as

<sup>5</sup> Dewi, Purnama Anggraeni, Komodifikasi Tari Barong di Pulau Bali Seni Berdasarkan Karakter Pariwisata, *Panggung Jurnal Seni Budaya*, Vol. 26, No. 3, Bandung: ISBI, 2016, page. 224

<sup>6</sup> Badan Pusat Statistik (BPS), *Dihantui Covid, Kunjungan Wisman Tahun Lalu Merosot Hingga 75 Persen*, [https://www.indopremier.com/ipotnews/newsDetail.php?jdl=Dihantui Covid Kunjungan Wisman Tahun Lalu Merosot Hingga 75 Persen BPS&news\\_id=129595&group\\_news=IPOTNE](https://www.indopremier.com/ipotnews/newsDetail.php?jdl=Dihantui%20Covid%20Kunjungan%20Wisman%20Tahun%20Lalu%20Merosot%20Hingga%2075%20Persen&news_id=129595&group_news=IPOTNE)

[WS&news\\_date=&taging\\_subtype=PG002&name=&search=y\\_general&q=&halaman=1](https://www.bps.go.id/WS&news_date=&taging_subtype=PG002&name=&search=y_general&q=&halaman=1), accessed on 29th July 2021

<sup>7</sup> Badan Pusat Statistik (BPS), *Perkembangan Pariwisata Provinsi Bali Januari 2021*, <https://bali.bps.go.id/pressrelease/2021/03/01/717547/perkembangan-pariwisata-provinsi-bali-januari-2021.html>, accessed on 29th July 2021

well as legal protection upon the Barong dancer.

## II. Research Method

This study used the normative legal study method because there was an absence of a norm that regulated the protection of Barong dancers who worked in tourism attractions that are not based on work relationships. This study used the statute approach, conceptual approach, and analytical approach. The tracing of legal materials used documentation study technique upon primary legal materials, i.e., regulations that are indirectly and directly related to the topic of this study. Legal books, journals, encyclopedias, and other sources were used as secondary and tertiary legal materials. Furthermore, this study conducted study analysis by using qualitative analysis. The technique of legal material display in this study used the qualitative descriptive method, i.e., the presented data or legal materials were in form of verbal words, not in form of numbers<sup>8</sup> so the answer of the research problem could be described systematically and comprehensively based on the collected theory and legal materials.

## III. FINDING AND DISCUSSION

### A. The Rights and Obligation of Barong Dancer as Tourism Attraction and Artist of Balinese Culture and Arts<sup>15</sup>

Bali is a region with abundant cultural heritage both tangible cultural heritage and intangible cultural heritage which are originated from values, traditions, customs, and local wisdom living in the society. The popularity of Bali as a region with abundant culture and arts has gained positive images from foreign people who have visited Bali since the colonial era.

They called Bali the Island of God, Island of Paradise and Island of Thousand Temples which develop Bali to be a worldwide popular tourism destination.

The holistic relation among arts, customs, religion and ceremonies made culture and arts the identity of Bali. Therefore, government and Balinese people have the same interest to protect and preserve the Balinese culture and arts because this identity will refer to the images of a Nation.<sup>9</sup> Bali tourism which cannot be separated from the established Bali identity with its culture and arts could be considered that this development of Bali tourism would cause Bali to be a place of the struggle many kinds of types and forms of cultures.<sup>10</sup>

Indonesia's Government officially has established Bali to be a tourism destination through Presidential Instruction No 9 of 1969.<sup>11</sup> With this establishment, there is a consciousness of threat upon the Bali culture and arts from the negative influence of global culture, so the government and Balinese people conducted many efforts to protect Bali culture and arts, including strengthening the institution of Customary Village as the spearhead.

The development of Bali culture and arts could not be separated from the existence of Customary Village which is based on Hinduism principles and normatively protected by Law No 6 of 2014 concerning Village (hereinafter stated as UU No 6/2014) which is specifically regulated in Chapter XIII Article 103 until Article 110, which mainly regulates the authority of customary village based on the origin rights of the customary village.

<sup>8</sup> Muhadjir, Noeng, Metodologi Penelitian Kualitatif. Yogyakarta: Rakesarisin. 1996, hlm. 2

<sup>9</sup> Tilaar, H.A.R, Mengindonesia Etnisitas dan Identitas Bangsa Indonesia, Tinjauan dan Perspektif Ilmu Pendidikan. Jakarta: Rineka Cipta, 2007, hlm. 35

<sup>10</sup> Seramasara, I Gusti Ngurah, Seni Budaya Bali Dan Pergulatan Identitas Di Era Pariwisata Bali, 2019,

<http://repo.isi-dps.ac.id/3503/1/akan%20dikirim%20Lpm%20SENTI%20PERG%20IDENTITAS.pdf>, accessed 25<sup>th</sup> July 2021, page. 4

<sup>11</sup> Yoeti, Oka A, Pengantar Ilmu Pariwisata. Bandung: Angkasa, 1985, page. 56



Customary village in Bali is an independent institution with its rights to establish regulation for their domestic affairs called as *awig-awig*, self-governing, as well as resolve legal issues within their area, both in form of customary dispute and violation.<sup>12</sup> The customary village which must preserve culture and arts always facilitates a community called *sekehe* which conducts art activities such as dance, traditional instrument orchestra, painting, sculpturing, architectural art, and so on. These activities are conducted to facilitate the creativity of the people of the customary village. The culture and arts are used as support in conducting religious ceremonies.

The substance of implementing *awig-awig* aimed at maintaining the dignity of customary village based on the principle of Hinduism philosophy, i.e., Tri Hita Karana which is defined as three causes of well-being. These causes are the harmony of human-God relation, human-human relation, and human-environment relation. These three relations are formed in various social and religious activities holistically so there will be integration among arts, customs, religion, and religious ceremonies. It maintains the life and creativity of the culture and arts will always develop, grow and flourish within the customary village.

*Awig-awig* as the foundation in regulating people of the customary village becomes guidance or boundaries of the rights and obligation of the people. As the form of customary law, *awig-awig* has an important role in regulating people life as well as a filter for negative influence upon the people in the aspect of

religion, culture, and social economy<sup>13</sup> Regulation concerning rights and obligations of the people within *awig-awig* is stated in a special chapter concerning People's Points (*Sukerta Tata Pakraman*) of which regulates about the right and obligation of the original customary villagers, Hindus immigrants from Bali, and non-Hindus immigrants who are called as *Swadarma Lan Swadikara Krama Wed, Krama Tamiu Lan Tamiu*.

Principally, the regulation of the rights and obligations of the customary villagers guarantees the sustainability of the existing cultural order. The obligation was established to conduct the existing order of the customs values with all of its supports such as culture and arts of the customary village. This obligation makes all of the villagers conduct their actions sincerely, which is called "*Ngayah*". Etymology, the word *ngayah* is derived from *ayah* which means doing a job for God, for the government, for a respected or noble person,<sup>14</sup> or as mentioned in many sources, *ngayah* means doing a job without reward or compensation.

The order of Balinese life could not be separated from Balinese dance which is divided into three groups namely (1) *wali* dance, i.e., a sacred dance which is only performed in *panca yajna* ceremony; (2) *babali* dance, i.e., dances which can be performed in *panca yajna* ceremony or performed for entertaining purposes; and (3) *balih-balihan* dance, i.e., Balinese dances which is mainly for entertaining people.<sup>15</sup> One of the *wali* dances as a religious ritual is the Barong dance. Barong is a symbol of God which is believed for its power in protecting the

<sup>12</sup>12 Griadhi, I Ketut, 1994, Karakteristik dari Otonomi Desa Adat (Suatu Kajian Teoritis), a paper in Seminar "Desa Adat dalam Pembangunan Daerah Bali", on Iustrium VI and XXX Anniversary of Law faculty of Udayana University, pages 10-12

<sup>13</sup> Rindawan, I Ketut, Peranan Awig-Awig Dalam Melestarikan Adat Dan Budaya Di Bali, Jurnal Kajian Pendidikan Widya Accarya vol. 7 No. 1,

Denpasar: Faculty of Teachers and Education Science of Dwijendra University, 2017, page 5

<sup>14</sup> Anandakusuma, Sri Reshi, Kamus Bahasa Bali: Bali-Indonesia, Indonesia-Bali, Denpasar: CV Kayumas Agung, 1986, page 13

<sup>15</sup> Titib, I Made, Teologi dan Simbol-Simbol dalam Agama Hindu, Surabaya: Paramita, 2003, page. 158

people, so Barong dance is sacred and only performed in a certain religious ritual by the customary village by involving their villagers who are capable of dancing the Barong sincerely or called as the obligation of *Ngayah*.

*Ngayah* has become an obligation for the villagers of the customary village or by Balinese Hindus within a religious activity. The tradition of *ngayah* is considered as a vertical relationship between humans and God because *ngayah* is originated from one of Hindu's teachings called *Catur Marga Yoga*, i.e., teaching develops behavior and attitude as a part of interacting effectively with God, social environment, and nature. Therefore, *ngayah* is identical with activity conducted within a religious or customary ceremony that is not aimed at gaining material reward.

The regulated *ngayah* has trigger social reaction, which leads *ngayah* to be a self-consciousness in action based on sincerity and genuineness. Therefore, the *ngayah* of Barong dance is considered as an action based on our consciousness as the creation that was given the ability to dance by God. Focusing on sincerity and genuineness, *ngayah* is not only human consciousness to give, but also a consciousness of accepting sincerely.<sup>16</sup>

The development of Barong dance as a tourist attraction which is intended for commercial purposes, makes Barong dance performance be managed professionally for financial benefits. A Barong dance performance which is used as a tourist attraction for financial purposes in the perspective of employment law considers the relation between the dancer and owner of the Barong dance performance as a legal relationship between the employee and the employer which raises rights and obligations for each party. There is an

obligation of dancing which is not only demonstrating movement skills but also must animate. The dancer should have the value, attitude, and skill of a dancer, i.e., responsible for the performed dance with the support of talent so the dance will be clear and be able to attract the attention of the audience.<sup>17</sup>

The relation between the dancer and owner of the Barong dance performance should be constructed as working relation which raises an embedded right on the employee such as the rights of wages, rights of annual leave, rights of equality before the law, rights of worship based on their beliefs, and other rights which are regulated in the regulations concerning employment.

The different legal positions of Barong dancers as a party who is involved in tourist attraction and their position as Balinese artists based on different legal orders should be considered as a separated legal relationship with a different consequence of rights and obligation. The owner of the Barong dance performance should not use the obligation of the Barong dancer as a Balinese artist as well as a part of the customary village to preserve the culture and arts sincerely as a form of *ngayah* to be a reason of not fulfilling the rights of the Barong dancer as a part of the tourist attraction.

#### **B. Legal Protection for the Barong Dancer as an Employee of Tourist Attraction as well as Performer of Cultural Arts during Covid-19 Pandemic**

The existence of tourism as the biggest industry in the world has created many opportunities and challenges for countries that are dependent on this industry. Indonesia as a committed country to develop tourism as a leading sector for

<sup>16</sup> Prabhawita, Kadek Shanti Gitaswari, Aplikasi *Ngayah* Dalam Karya Seni Mari Menari, *Mudra Jurnal Seni Budaya* Vol. 34, No. 2, Denpasar: Institute of Arts Indonesia Denpasar, May 2019, page. 200

<sup>17</sup> Gischa, Serafica, Nilai, Sikap, dan Keterampilan sebagai Penari, <https://www.kompas.com/skola/read/2021/01/14/144556569/nilai-sikap-dan-keterampilan-sebagai-penari>, accessed on 6<sup>th</sup> August 2021.

improving national economy explicitly has stated on Strategic Plan of the Ministry of Tourism and Creative Economy and the Agency for Tourism and Creative Economy 2020-2024, which formulated the direction of policy and strategy of this Ministry that the final purpose is to improve the contribution of the tourism sector and creative economy upon the national economic resilience.<sup>18</sup>

Bali as a leading sector of national tourism development is well-known for its beauty of nature and culture. The religious system as one of the cultural elements is reflected in religious ceremonies which can be seen in daily prayers, regular ceremonies in a temple (*odalan*), wedding ceremonies, tooth filing ceremony (*metatah*), a ceremony of a new building (*pemelaspan*), death ceremony (*ngaben*), traditional orchestra, dance, and sculpture become a magnet for tourists.<sup>19</sup> The art system in Bali which is based on Hindus teachings is reflected in the concept of *Satyam, Shivam, Sundaram* (the truth, holiness, and beauty) because art is the symbol of Vedic teachings and the truth is reflected in art. It means that art has a value of honesty, sincerity, and genuineness. Performing art is a *yajna*, by which only with honesty the offering and *yajna* will be accepted by God.<sup>20</sup>

The existence of Balinese culture which is the main supporting factor of tourism development indirectly becomes one of the implementations of national development policy which mainly focuses on cultural development as national

identity. The development of the tourism industry of Bali which is supported by culture and arts as the main support is highly realized by Balinese people. Tourism which is considered from the production factors such as capital, land, workforce, technology, and management could be highly contributing as a catalyst in improving the development and distribution of people's income.<sup>21</sup> Balinese culture and arts as the main support of tourism become the basis for developing Cultural Tourism. It is expected to contribute positively to the aspects of culture and tourism in Bali which is in line with the concept of tourism for Bali, not Bali for tourism. The goal of this concept is to have intensive and positive interaction between Balinese culture and tourism.

Cultural tourism as an ideology, soul, guidance of Bali tourism development, has been established in the fundamental policy of Bali Province Government through some regulations which are started with the issue of Regulation of Bali Province No 3 of 1974 concerning Cultural Tourism (hereinafter is stated as *Perda* No 3/1974) which is renewed by Regulation of Bali Province No 3 of 1991 concerning Cultural Tourism (hereinafter is stated as *Perda* No 3/1991) and then renewed by Regulation of Bali Province No 2 of 2012 concerning Balinese Cultural Tourism (hereinafter stated as *Perda* No 2/2012). The change of this foundation showed that the preservation, harmonization, and cultural development are the priority in developing

<sup>18</sup> Kemenkraf dan Baparekraf, Rencana Strategis Kementerian Pariwisata dan Ekonomi Kreatif/Badan Pariwisata dan Ekonomi Kreatif Tahun 2020 – 2024, Jakarta: Kemenkraf/Baparekraf, page. 12

<sup>19</sup> Salain, Made Suksma Prijandhini Devi, *Perlindungan Hukum Terhadap Kebudayaan Bali* Sebagai Sumber Daya Ekonomi Pariwisata, vol. 39, No. 1, Jurnal Kerta Patrika, Denpasar: Law Faculty of Udayana University, 2017, page. 2

<sup>20</sup> Suparman, I Nyoman, Transformasi Nilai Religiusitas Dan Estetika Dalam Pementasan Barong Dan Rangda Di Desa Moti, Widya Genitri, Jurnal Ilmiah Pendidikan, Agama, Kebudayaan Hindu, Vol. 6, No. 01, Sulteng: STAH Dharma Sentana Sulawesi Tengah, 2015, page. 67-69

<sup>21</sup> Parikesit Widiatedja, IGN. Kebijakan Loberalisasi Pariwisata, Kontruksi Konsep Ragam masalah Dan Alternatif Solusi, Denpasar: Udayana University Press, 2011, page. 20



tourism which is finally able to raise the pride of the people of the culture even it is proven to be functional in the social-economy aspect.<sup>22</sup>

Barong dance is one of the top tourist attractions which involves customary villagers as the dancer who has two different roles and functions, i.e., as the member of the customary village and as a tourist attraction worker who has rights and obligations as they must have in industrial relation which emphasizes on professionalism. In the industrial relation, it has been realized that creating a good employment relationship is not easy although both parties are aiming at gaining well-being for both parties. Yet, both parties have different interests. The interest of the business owner is gaining profit as much as possible, while the interest of the worker is gaining wages. Therefore, mostly the business owner considers worker wages as a production cost that should be minimized because it will decrease the owner's profit.<sup>23</sup>

This interest conflict becomes a potency of legal embezzlement.<sup>24</sup> This condition is obviously seen in the arrangement of working relation in Barong dance as a tourist attraction, which involving Barong dancer who has two different roles of life in conducting their profession, i.e., as a member of the customary village with an obligation to preserve Balinese culture and arts sincerely (*ngayah*) and as an individual with the rights of having wages. This conflicting role becomes a potency of

being misused by the owner of Barong dance art performance to suppress the rights of barong dancers to gain more profits.

The legal relationship between the owner of Barong dance art performance and the Barong dancer should be based on employment relation which regulates reciprocal rights and obligation. Normatively, it has been regulated that the rights of worker always embedded for anyone who receive wages and other following rights which raises simultaneously when the worker binds him/herself to the employer to conduct a job. However, the relation between the owner of the Barong dance art performance and the Barong dancer is not based on employment relations. It is a partnership relationship that is conducted by the business owner and the worker. This partnership relation is legal embezzlement that occurs in the management of Barong dance tourist attractions.

A covid-19 pandemic causes the downturn of Bali's economy which mostly depends on the tourism sector. The closing of entrance access for the tourists as well as the closing of tourism destinations has stopped many businesses which are affiliated with tourism such as Barong dance tourist attraction. This situation caused the Barong dance could not perform which implied to the unfulfillment of their rights as a worker. The partnership relation between the owner of Barong dance art performance and the Barong dancer which is not regulated in the system

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<sup>22</sup> Harmini, A.A. Ayu Ngr dan Solihin, Peranan Desa Adat Dan Sekaa Taruna Dalam Menunjang Pariwisata Di Bali, Soshum Jurnal Sosial Dan Humaniora, Vol. 3, No. 3, Bali: State Polytechnic of Bali, 2013, page. 12

<sup>23</sup> Zulkarnaen, Ahmad Hunaeni dan Utami, Tanti Kirana, Perlindungan Hukum terhadap Pekerja dalam Pelaksanaan Hubungan Industrial, Jurnal Ilmu Hukum Vol. 3, No. 2, Bandung: Padjajaran University, 2016, page 407-427.

<sup>24</sup> Penyelundupan hukum adalah suatu perbuatan dengan tujuan untuk menghindarkan suatu syarat atau suatu akibat hukum tertentu yang tidak dikehendaki, ataupun untuk mewujudkan atau menciptakan suatu akibat hukum yang dikehendaki, dengan kata lain seseorang melakukan penyelundupan hukum dengan tujuan agar diberlakukan hukum yang lain dari hukum yang seharusnya digunakan. lihat pada. Bayu, Seto, Dasar-Dasar Hukum Perdata Internasional, Bandung: PT. Citra Aditya Bakti, 2001, page 45.

of employment regulation caused the Barong dancer is difficult to get legal protection as the consequences of the closing of Barong dance performance art. Government Regulations to assist the workers to get Wages Subsidy from the government to prevent the business owner to cut off the employee or assisting the laid-off employee, based on the criteria that the employee receive a wage and registered as an active participant of labor social security in *BPJS Ketenagakerjaan*<sup>25</sup> could not be accessed by the Barong dancer as the consequences of not being classified as an employee based on the requirement. Although, they could access other possible aids.

Legal embezzlement in the Partnership Relation which was established by the owner of Barong dance art performance and the Barong dancer caused the absence of a written work contract that regulates the rights and obligations of both parties. It has a legal consequence not only in terms of employment law aspect but also could be on the aspect of intellectual property law. The performance of Barong dance as a creation of the dance arranger and the dancer is protected by Law No 28 of 2014 concerning Copyright (hereinafter is stated as UU No 28/2014). The Article 16 paragraph (2) letter e stated that copyright could be copyright can be transferred by written agreement. Since there is no written Employment Agreement caused the absence of a clause mentioning that every creation produced by the dancer belongs to the company. The absence of regulation that regulates the dancer as the creator and company as the copyright holder made the creation of the Barong dancer is legally not protected. This

situation is the potential to cause legal disputes between the dancer and the company. The dancers could sue the company for the royalty of their creation because basically, the economic rights of creation belong to the dancer as the creator if it is not transferred to the company of Barong dance tourist attraction as regulated in Article 17 paragraph (1) of Law No 28/2014.

#### IV. CONCLUSION

- A. Customary Village in Bali has a crucial role in the development of culture and arts which are further used as a basis in developing Cultural Tourism. This village has a right to regulate their domestic affairs with *awig-awig* which explicitly regulates the rights and obligation of the customary villagers in a special chapter concerning People's Points (*Sukerta Tata Pakraman*). This regulation regulates the rights and obligations of the customary villagers called *Swadarma Lan Swadikara* of the villagers which are intended to sustain the existing cultural order of the Customary Village. Barong dance as one of the cultural manifestations which is the main support of religious activity will be conducted sincerely without asking for reward or compensation called "*Ngayah*". Barong dance is performed as a consciousness of the customary villager who is gifted the ability of dancing by God. On the other side, the development of Barong dance as a tourist attraction which is commercially intended caused the legal relationship between the owner of Barong dance art performance and the Barong dancer should be constructed as a working relationship which is a consequence on the rights of wages, rights of annual leave, rights of equality before the law, rights of

<sup>25</sup> Pemerintah luncurkan bantuan subsidi upah bagi pekerja, ini syarat penerimanya, <https://nasional.kontan.co.id/news/pemerintah-luncurkan-bantuan-subsidi-upah-bagi-pekerja-ini-syarat-penerimanya>, accessed on 10<sup>th</sup> August 2021

worship based on their beliefs, and other rights which are regulated in the regulations concerning employment. The different legal positions of Barong dancers as a party who is involved in tourist attraction and their position as Balinese artists based on different legal orders should be considered as a separated legal relationship with a different consequence of rights and obligation.

B. Barong dance as one of the tourist attractions with commercial purposes which involve dancers from the customary village should be regulated in working relationship. However, the legal relationship between the owner of the Barong dance art performance and the Barong dancer was a partnership relation. It did not require the criteria of working relation which regulates the rights and obligation of both parties. It could be considered as legal embezzlement because there is no rule which regulates this relation. Therefore, there is no certainty of the rights and obligations of both parties. The Covid-19 pandemic causes the downturn of Bali's economy which mostly depends on the tourism sector. The closing of the Barong dance tourist attraction as one of the businesses affiliating to the tourism industry caused difficulty in constructing the legal protection for the Barong dancer as the consequence of partnership relation established by both parties. Barong dancers also could not be a subject of government policy for wages subsidy because they are not classified as an employee who receives a wage and registered as an active participant of labor social security in *BPJS Ketenagakerjaan*. This partnership relation has a legal consequence not only in terms of employment law aspect but also could be on the aspect of intellectual property law. Barong dance art performance as one of the dancer creations is copyright that can be transferred with a written agreement, so the absence of written agreement in which

the substance regulates every copyright produced by the dancer belongs to the company with all of its rights and obligation incurred. It means that there is no legal protection on the copyright of the Barong dancer in the Barong dance tourist attraction.

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