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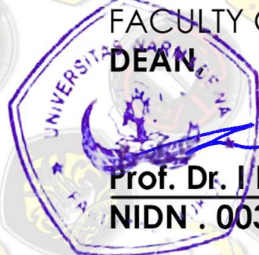
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PROCEEDINGS OF THE 2ND INTERNATIONAL CONFERENCE ON BUSINESS LAW AND LOCAL WISDOM IN TOURISM (ICBLT 2021)



The Legal Study of the Coastal Border Control by Tourism Entrepreneurs in Bali as a Privacy Area

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Keywords

Bali Provincial Government; Legal Studies; Privatization of Border Coast

Abstract

Indonesia is an archipelagic country with almost 17,000 islands stretching from Sabang to Merauke. One of the islands that is the Indonesian mainstay

is Bali island. Bali is one of the provinces in Indonesia that generates the largest foreign exchange in the tourism sector. Bali tourism has penetrated the coast, where entrepreneurs claim coastal areas by making private tourist accommodation areas. This problem has generated interest between local communities and tourism entrepreneurs. However, due to the absence of an actual legal product to solve the problem, it is necessary to study coastal control by tourism entrepreneurs in Bali as a privacy area. For this reason, the author uses a normative juridical research method; therefore, the conclusions are obtained regarding the privatization of the coastal border carried out by tourism entrepreneurs by making a legal study which is then stated in a legal product under the authority of the Bali provincial government. The resulting legal product is in the form of a legal policy from the government that restores the function of the coastal border as open to the general public, intending to conserve the coastal border area.

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The Legal Study of the Coastal Border Control by Tourism Entrepreneurs in Bali as a Privacy Area

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ABSTRACT

Indonesia is an archipelagic country with almost 17,000 islands stretching from Sabang to Merauke. One of the islands that is the Indonesian mainstay is Bali island. Bali is one of the provinces in Indonesia that generates the largest foreign exchange in the tourism sector. Bali tourism has penetrated the coast, where entrepreneurs claim coastal areas by making private tourist accommodation areas. This problem has generated interest between local communities and tourism entrepreneurs. However, due to the absence of an actual legal product to solve the problem, it is necessary to study coastal control by tourism entrepreneurs in Bali as a privacy area. For this reason, the author uses a normative juridical research method; therefore, the conclusions are obtained regarding the privatization of the coastal border carried out by tourism entrepreneurs by making a legal study which is then stated in a legal product under the authority of the Bali provincial government. The resulting legal product is in the form of a legal policy from the government that restores the function of the coastal border as open to the general public, intending to conserve the coastal border area.

Keywords: *Bali Provincial Government, Legal Studies, Privatization of Border Coast.*

1. INTRODUCTION

Indonesia is an archipelagic country consisting of more than 17,000 islands with a coastline of 81,000 km² and an ocean area of about 3.1 million km² consisting of 0.3 million km² of territorial waters and 2.8 million km² of archipelagic waters. [1] Bali is a small island among thousands of islands within the territory of the Unitary State of the Republic of Indonesia. Bali is one of the provinces in Indonesia as the most significant foreign exchange contributor from the tourism sector. Tourism on the island of Bali is the prima donna of international tourist destinations. The natural beauty of Bali, from the top of the hills, valleys to the beach, is the main attraction for tourists, so it is not surprising that Bali is the target of investment for tourism development and industry. The dominance of the economic cycle in Bali is through the tourism sector. In order to maintain the stability of the economic cycle in Bali, development is carried out in various fields, especially in the construction of tourism facilities and other supporting facilities. By bearing the title as one of the best tourist locations globally, Bali strives to make its guests comfortable. The rapid tourism development has a geographical impact on the island of Bali in the land sector. This development is not able to balance the availability of land for tourism management. These conditions have resulted in a shift in the movement

of tourism development to penetrate the coastal areas and expose the beauty of the coast of Bali as a marine tourism attraction. [2]

The coastal is a meeting between the outermost boundary of the sea and the outermost boundary of land, which can be measured at the highest tide of seawater and the lowest low tide. The beach, in general, has a distance between the sea and the building called the beach border. The increasing rate of population growth, the increasingly rapid progress of tourism, and the increase in the rate of development in all aspects have resulted in various problems, especially in the land sector, which has the impact of increasingly limited availability of land to build buildings that will be made to support tourism. [3] Coastal areas or coastal borders are very vulnerable to changes, both caused by natural factors and human activities. The changes in ecosystems and overexploitation are very worrying phenomena. Viewed from the positive side, tourism development on the coast can be a way of conserving coastal areas because tourism entrepreneurs will strive so that the area can attract as many tourists as possible and generate substantial economic benefits. [4] The negative impact that has become a problem from the development of the tourism sector to the coastal area which has recently occurred is quite a highlight in which the use of coastal area space is exploited in a limited way by tourism entrepreneurs.

There is the privatization of coastal borders by beachside tourism entrepreneurs who directly contact the local community area.

The development of tourism areas such as tourist lodges and hotels along the coastal border area causes the reduced function of the coastal border area to prevent abrasion and public areas open to the public. In essence, beaches throughout Indonesia should be open to the public interest. However, when hotels, resorts, cottages, and luxury settlements (villas) are increasingly being built along the coast, the beach is no longer a public space. It is limited to the monopoly of parties with significant capital. Beaches are supposed to be public spaces that are open to the public. However, when the development along with the coastal area increases, resulting in the beach is no longer an area open to the public and free from the control of the actors who want to invest big (investors) who carry out business activities. [5]. The phenomenon of the number of buildings along the coast and the damage to the coastal environment and the interests of marginalized fishers must immediately receive strict attention and handling. The area referred to as the coastal border must be made as a conservation area. The Presidential Decree No. 32 of 1990 is regulated to protect the coastline as far as 100 meters. According to statutory regulations, coastal boundaries are:

1. Land along the coast whose width is proportional to the shape and physical condition of the beach, at least 100 (one hundred) meters from the highest tide point towards the land.
2. Land along the edge of the sea where the shape and physical condition of the coast is steep or steep with a distance proportional to the shape and physical condition of the beach.

Several central points of tourism development are carried out by investors targeting coastal areas, which result in the privatization of coastal areas such as businesses providing accommodation such as owners of villas, star hotels, and inns. In addition, they are also business of providing food and beverage services such as restaurants and beach clubs.

The privatization is in private ownership of unspoiled (virgin) beach borders and beach boundaries that become public facilities. This situation is used as an argument by business actors and investors to make the coast a location for carrying out their business activities, considering that the beach can be used optimally because its location is very strategic to become a tourism area. The privatization carried out by tourism entrepreneurs on average uses reasons for the convenience of tourists. In general, the actions of tourism entrepreneurs in making the area commensurate with the beach as a private area for their business are actions that can be detrimental to the general public. Beaches in Bali are not just places for recreation or residential areas for fishing communities. Beaches in Bali have very close links with the culture, traditions, and religion of Hinduism in most Balinese people. Many

series of religious ceremonies are carried out on the beach; therefore, it will be very impactful if tourism entrepreneurs compete to control the coastal area of Bali as a private area in their business. The control of coastal areas by tourism entrepreneurs is even often a public conversation in which the general public is prohibited from being in certain beach areas around which hotels or tourism suggestions are located because they are considered to interfere with the privacy of the tourism place, especially the beach area around hotels, bars and restaurants. In the Regional Regulation of the Province of Bali No. 6 of 2009 concerning the Spatial Plan for the Province of Bali, it is stated that the coastal boundaries in the use of coastal land, including nature and beaches, are part of public rights. The problem that arises is how then the beach as a public space area becomes part of the private space of tourism entrepreneurs. This problem is fascinating to be studied in which the author wants to examine the Legal Study of Coastal Border Control by Tourism Entrepreneurs in Bali as a Privacy Area.

To examine these problems of the study, the author uses a normative juridical research method, using an approach to laws and other government regulations that correlate with the problems studied. This study uses legal materials, namely primary and secondary legal materials. The primary legal materials used are all regulations according to the hierarchy of legislation starting from the Constitution of the Unitary State of the Republic of Indonesia, Laws, Government Regulations, and so on related to this research. Secondary legal materials are the views of scholars regarding the privatization of coastal borders by tourism entrepreneurs. The data sources are obtained from books in Indonesian or foreign languages related to the writing of this journal and recent studies from national and international journals. Legal materials and other supporting information obtained by the author will be processed and analyzed through descriptive, evaluative, argumentative, and systematic steps.

2. FORMS OF PRIVATIZATION OF THE BEACH BORDER BY TOURISM ENTREPRENEURS IN BALI

Coastal areas are areas that have a high level of mobility and exploitation, so there must be preparedness and prevention in dealing with the various consequences that arise from each activity carried out. [6]. The coastal area must be used wisely and efficiently so that the utilization of the natural resources contained therein can be used and utilized as much as possible for the prosperity of the people. [7] The beach is the meeting area between the highest tide and the mainland. At the same time, the coastline is another water boundary line that connects the meeting points of the water between the highest tide and the mainland. The coastline will be formed following the configuration of the coastal/land. [8]. According to the Decree of the Minister of Marine Affairs and Fisheries No. 10 of 2002 concerning General Guidelines for Integrated Coastal

Management Planning, a coastal border is an area along the coast that is designated for coastal protection and preservation. The coastal border area serves to prevent coastal abrasion and protect the coast from activities that can disrupt/damage the function and sustainability of the coastal area. Areas commensurate with the beach are only allowed for plants that function as beach protectors and safeguards. The use of public facilities does not change the function of the land as coastal protection and preservation. Based on Presidential Decree No. 32 of 1990, concerning Management of Protected Areas, it has determined that:

- 1) Protection of coastal borders is carried out to protect coastal areas from activities that interfere with preserving coastal functions (article 13).
- 2) The criteria for coastal borders are land along the edges whose width is proportional to the shape and physical condition of the beach at least 100 meters from the highest tide point towards the land (article 14).

There are two types of coastal boundaries for residential areas, namely the form of a sloping beach with waves <2m, a border width of 30-75, and a sloping beach shape with waves >2m, a border width of 50-100 m. [9]

Privatization is a process in which there is a transfer of ownership from what was initially joint property in the sense of being under the power and management of the state, which is intended as public facilities and infrastructure, turning into individual or individual ownership. [10] Privatization of the coastal border is the takeover of the coastal border area which is a public area into private ownership both by individuals and business entities which entrepreneurs in the tourism sector generally carry out. The form of coastal border privatization by tourism entrepreneurs can be from land parcels for coastal borders. Specifically for the island of Bali, the practice of privatizing coastal borders mostly occurs in the southern Bali region. Some concrete forms in the takeover of coastal areas into private areas are:

- a. Tourism entrepreneurs build their private tourist facilities along the coast. For instance, Puri Santrian Beach Resort and Spa made permanent wooden floors with almost half of the area of the beach border, which is used as a base for placing restaurant facilities such as tables and chairs. In addition, there is the laying of beach chairs in front of the restaurant facilities, which further narrows the existing beach boundaries. Also, the installation of buoyancy ropes is on the beach to mark the beach area that is the facility of Griya Santria Beach Resort.
- b. There is the installation of a barrier in the form of a buoy or flag that stretches on the side of the boundary of the tourism business area that occurs in the Sanur beach area and places facilities on the water for tourists. Therefore, the

area cannot be used, passed, or utilized by the community.

- c. There is the installation of concrete in the beach area located in front of the sea view of tourism businesses to prevent fishers from sticking boats or transacting buying and selling fisherman catches, as happened in the Candi Dasa area Karangasem Regency.
- d. There is the closing of the access to the stairs to the beach, which is located under the cliff and making the route private access for tourism businesses, occurred in the Bukit Jimbaran area.

The privatization of coastal borders by tourism entrepreneurs directly impacts the people who are within the scope of the area. Privatization of coastal borders takes away the rights and freedoms of the community to benefit from natural resources around the area that have become a private area, especially for the surrounding fishing communities.

People who have lived for a long time in the coastal areas and coastal border areas already consider the area to be theirs and are accustomed to utilizing all the natural products in the area, which are then controlled by tourism entrepreneurs, of course, it changes the order of their lives significantly. [11]

Local communities do not fully benefit from tourism because the local community's space for movement is increasingly limited. Gradually local communities in coastal areas that depend on tourists visiting the beach will lose access to their jobs to fulfill their daily needs and accidentally break the trade chain at the local community life cycle level. This impacts small traders who make their living by trading around the coast, such as snack vendors, roasted corn, accessories, etcetera.

The privatization of the coastal area causes limited space for the use of the beach as a place to carry out religious ceremonies, especially for Hinduism. Like doing the *melasti* (purification) ceremony and other ceremonies whose process is carried out along the coastal border. Hindus believe that specific beaches in certain areas have religious, spiritual values to carry religious ceremonial rituals.

3. BALI PROVINCE GOVERNMENT'S LEGAL POLICY IN OVERCOMING THE PROBLEM OF BEACH BEACH PRIVATIZATION BY TOURISM ENTREPRENEURS IN BALI

The policy is a choice made by a person or group to guide, justify and explain a set of actions consisting of a collection of more minor decisions. According to Dye, as quoted by Winarno, the policy is the government's choice to do or not do something (whatever governments choose to do or not to do). [12] Policy aims to solve a problem. Government policy is a process carried out by the

government to solve existing problems and relate to its power environment related to the public interest. [13]. The government is a device that exists and is held to serve the interests and fulfill the needs of the community, especially the basic needs of the community, namely, a sense of security, order and peace in society. [14] The government is an organ of a body called the state, in the form of an organization. It has attribution authority (authority that has been regulated or stipulated in-laws and regulations). All activities of state administration must use authority. So authority is the key to the implementation of the tasks of state administration. Without authority, there will be no state administration activities. One of the authorities of the government is to make a policy. [15]

The legal policy is the policy producing products of laws and regulations and the application of laws from laws and regulations. The government has absolute authority to regulate areas under the territory of the Unitary State of the Republic of Indonesia. One form of its realization is to issue policies for specific areas legally. The implementation of the legal policies made by the local government is expected, especially in Bali. The government can make and issue a Bali provincial government policy that can protect the coastal border from the onslaught of tourism development, which makes the coastal border a privatized area of tourism entrepreneurs and how to prevent the impact of the privatization of the beach.

The principle of decentralization and the application of regional autonomy adopted by the government system in Indonesia require the government to divide its affairs into three authorities so that in carrying out its authority, the government has an extension in carrying out its authority in the form of delegation of tasks to the Provincial Government and continued to the Regency/City Government.

The Provincial Government of Bali has full authority in managing the coastal border along the coastal border in the province of Bali. As a delegation from the provincial government, the provincial government gives authority to Bali's district/city government to regulate the coastal boundaries of its area of authority. The importance of policies on securing coastal borders with proper management and use of functions is because the coastal borders are the first fortress to prevent abrasion, and mangrove conservation can protect land areas. The importance of coastal borders as environmental protection must be appropriately defined for their use and function. The coastal boundaries in Bali are up-and-coming tourist attractions. Therefore, the government needs to consider how environmental conservation and coastal border marine conservation areas can work in synergy with tourism development. With the balance of these two things, both tourism and conservation can run and be sustainable, whose impact is the benefit of the government itself. By extension to the district/city government, the provincial government of Bali has made efforts to overcome the problem of privatization of the

coastal border. The subsequent efforts have been made to the coastal border, which is part of its territory:

1. Establishing a coastal border management agency whose task is to restore the function of the coastal border as a public space that is open to the general public, as a conservation area and protection of mangroves and marine biota, and restore the function of the coastal border for the benefit of local community ceremonial activities that are religious and magical especially for Hindu religion;
2. Issuing legal products in the form of regulations from the government, both provincial and district/city governments that can serve as a legal umbrella for protection for coastal border management bodies in order to carry out their duties and functions, based on the authority of the provincial government, district/city governments given to them;
3. Issuing legal policies from the provincial government of Bali, from regional regulations, decisions of the Governor of Bali Province, or decisions issued by Regents and Mayors in the Province of Bali. The policy gives rights and authority to the coastal border management agency, which includes residents of the coastal border area, to supervise, suppress and take action on the privatization of beaches by tourism entrepreneurs. Pecalang generally represents the involvement of local community members as a protector of the customary village area or the coastal border area of the traditional village or *Pakraman* village.
4. The provincial government of Bali must be able to instill an understanding in the community and tourism entrepreneurs that the greater public interest must be prioritized but not necessarily override the interests of tourism entrepreneurs. With the formation of a balance between local wisdom and tourist attraction, both the community and tourism entrepreneurs will benefit.
5. The coastal border management agency will mediate between tourism entrepreneurs and local communities. This agency will also synergize tourism needs with the needs of the general public/local community.

The involvement of the local community, especially the traditional village and *Pakraman* village, as the closest customary government institution to the environment is intended because the local indigenous village community is the closest and in direct contact. Therefore, they become the first layer of understanding well the conditions and situations of their environment. Thus, the objectives of conservation, saving the environment, protection of conservation areas, and the use of coastal borders as public spaces can be utilized optimally, including the management of tourism businesses that can run well without harming other parties.

With the formation of a coastal border management agency, the regional government and the district/city government act in supervising the implementation of the duties of the coastal border management agency. Concerning disputes arising from the privatization of coastal borders between tourism entrepreneurs and local communities, the agency can mediate this conflict of interest. It will find a balanced solution to the problem so that the two conflicting parties can synergize with each other, in which tourism entrepreneurs can sell the attractiveness of the beach by utilizing the coastal border without having to harm the interests of the local coastal border community, to get benefits economically, and also social, cultural, religious and environmental conservation. The importance of a balance between public and private interests, tourism entrepreneurs must shift from the doctrine that tourism is an expensive (luxury) industry so that middle and upper-class groups of people can only reach it. As the world tourist destination, Bali does not only sell and pamper tourists with its natural beauty, but an essential thing about Bali is the culture of the people and the local religious wisdom of the Balinese people. If it only looks at the attractiveness of natural beauty, Papua, Labuan Bajo, Sumba, and even Lombok, which are closest to Bali, also have natural beauty.

Tourism entrepreneurs cannot discriminate between the general public and tourists who use their tourism facilities. For this reason, back to the substantial control of the Bali provincial government, with the district/city government in supervising tourism actors and entrepreneurs so that they do not do everything in their power and effort to control an area which is a public area into a private area for their interests and benefits.

Setting the Coastal Border in the Province of Bali, Indonesia, is an archipelagic country and one of the countries with the longest coastline of several other countries in the world. Recently, the concentration of Non-Governmental Organizations and environmentalists has begun to criticize the use of coastal borders as tourism utilization by tourism entrepreneurs. The coastal border is protected by the central government and designated as part of a national protected area. The government has full authority over coastal border areas along the coastline in Indonesia. The coastline is included in the local protected area. The government views the coastal border as an area that is vulnerable to damage by irresponsible hands because it is a part of nature that is easily accessible by humans. The principle of the struggle to save the coastline is justice. Equal opportunities interpret the justice here in accessing and utilizing the coastline between the community and tourism entrepreneurs. Justice will be felt when the general public can together with tourists on the same beach border, enjoy the beauty of the beach, feel the same comfort, where fishers have the same opportunity to build other facilities and infrastructure along the coastal border for the development, protection, and management of natural resources.

The government issues policies, in-laws, and regulations for the protection of coastal borders, which are contained in the following regulations:

1. Law no. 1 of 2014 concerning Amendments to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands
2. Government Regulation no. 26 of 2008 concerning National Spatial Planning
3. Presidential Regulation No. 51 of 2016 concerning Coastal Boundaries
4. Regulation of the Minister of Public Works No. 9/ PRT/M/2010 on Guidelines for Coastal Protection
5. Regional Regulation of Bali Province No. 16 of 2009 concerning the Bali Province Spatial Plan for 2009-2029

Correct and just law enforcement is determined by the will and participation of all members of society,^[16] including to urge the government to make and stipulate a rule regarding the privatization of coastal borders because, in the formation of the law, it must prioritize the interests of the state and also the public interest of the people contained therein.^[17] The absence of specific arrangements in following up on the practice of privatizing coastal borders that can provide a deterrent effect for tourism entrepreneurs is a scourge that must be resolved immediately. The norms governing the coastline in the legislation only state that the beach is a public space that cannot be controlled privately. The absence of norms that expressly state legal action against privatization is apparent. There is a tourism area in Bali Province, and there is a blurring of norms in law enforcement. The obscurity of norms causes laws and regulations to become gray in giving strict sanctions to tourism entrepreneurs. Until now, privatizing coastal borders is still happening, and no action has been taken from the central and local governments.

In setting a rule, the Bali provincial government must be balanced with the enforcement of the rule. Law enforcement elements carry out law enforcement of a rule. In general, the rules made are firm and coercive, but in practice, there are many deviations between what is stipulated and what is happening in society. Such conditions can be influenced by several factors, the nature and mentality of law enforcement will significantly affect the success and final results of the implementation of law enforcement that has been made.^[18] There are four factors in law enforcement that must be considered, including:^[19]

- a. The substance factor of the rule of law;
- b. The structural factors, namely law enforcement officers;
- c. The cultural factors (community legal awareness); and

- d. The organizational factors (management organization).

The existence of the coastal border area needs to be determined related to its function as a safety and protection for coastal sustainability. The coastline location is technically calculated based on the characteristics of the coast, the function of the area, and is measured from the highest tide line on the beach. To monitor and manage the coastline boundaries in Bali, of course, a comprehensive rule cannot be applied. Basic rules can be applied in the Bali local government regulations, which are the reference. They are applied by the district/city local government according to the needs and conditions of each region. Each district/city area is given the authority to determine the area and width of the coastal border area based on the needs, situation, and conditions at the location of the coastal border. Each coastal area has different water currents, the magnitude of the waves, and the direction of the wind, which will significantly affect the shoreline boundary with the mainland.

District/city governments will know more about the characteristics of their coastal boundaries because some coastal regions can become marine biota conservation areas such as turtle nesting locations, mangrove plant conservation, and so on. Beach conditions are also different based on the high and low from the mainland. Beaches located on the side of a cliff, the determination of a coastal boundary 100m from the shoreline is sufficient because the cliff's height can be a barrier to the flow of water rising to land. In contrast, coastal areas directly connected to the mainland require a beach border more exhaustive than the water line to prevent possible abrasion and water-rising tides that can enter the mainland.

Thus, it is very appropriate if the regulations and policies regarding coastal border areas are left to the district/city-regional governments. The utilization, management, and protection of coastal border areas should be a top priority. Apart from looking at the interests of conservation, tourism, and public space, beaches that are directly related to land and sea become a liaison for water traffic and the entry and exit of ships requiring certain areas, as well as the impact of the natural factor with the possibility of natural disasters as a form of preventing the impact of these disasters causing more significant losses. Many benefits are obtained by providing protection and regulation of coastal border areas, one of which is preventing abrasion and the sustainable impact of abrasion. In a rule, there are norms contained in the rule, one rule with another rule must have the integrity of norms that do not conflict or overlap, there must be synchronization and conformity between the norms in the rules that refer to the same concept, such as the rules whose central concept is the protection of the coastal border. The norms in the coastal border regulations in the Bali provincial regulations may not conflict or overlap with the lower rules made by the regency/city government in Bali. In principle, these rules

have the same goal, namely to provide strict law enforcement to prevent damage to the coastal environment and restore the function of the coastal border as a public open area that is free to the public and is not an area of privatization for the personal interests of tourism entrepreneurs. With the implementation of these rules, the roles and functions of the parties or agencies authorized to manage coastal areas are significant. It is expected that agencies from top to bottom can carry out their functions and authorities by their responsibilities.

In other words, with a rule that has been made, the rule must be implemented not only by law enforcement officials but also by the community in a broader sense, with the function of law enforcement to provide strict sanctions indiscriminately against perpetrators of violations of these rules. The application of sanctions can be given by what has been stipulated in the regulation. For example, a tourism entrepreneur who makes a building cross the line or is within the boundary of the coastal border is dismantled and returned to its proper function. It is evident in legal products regarding coastal areas that the coast must be preserved. [\[20\]](#)

4. CONCLUSION

There are no strict and specific rules regarding the actions of tourism entrepreneurs who make the coastal border a private area for tourism accommodation. Due to the absence of strict and coercive rules, there is no strict legal action from law enforcers for the actions of these tourism entrepreneurs, and it does not result in the perpetrators becoming a deterrent. Although the provincial government of Bali in the Bali Provincial Regulation No. 16 of 2009 concerning the Bali Province Spatial Plan for 2009-2029 regulates the spatial planning of the coastal border, no norm regulates the privatization of the coastal border by tourism entrepreneurs. There is a blurring of norms in law enforcement, and the existing norms are gray; therefore, to make these norms clear, the Bali provincial government, together with the district/city governments in Bali, hold full authority for the management of the coastal border as a public open space, as well as to restore privatization of the coastal border for the magical religious interests of the local community in carrying out religious ceremonies by issuing a regulation as a legal umbrella to ensure the proper management and utilization of the coastal border with their respective duties and authorities.

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