



RESEARCH ARTICLE

LEGAL CERTAINTY TOWARDS PROFIT SHARING OF HOTEL AND RESTAURANT TAXES RELATED TO TRI HITA KARANA – A BALINESE HINDUISM CONCEPT IN ACHIEVING EQUITABLE DEVELOPMENT IN BALI PROVINCE

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ABSTRACT

The benefits of hotel and restaurant taxes are still needed and perceived by the Government of Denpasar City and other Regencies in Bali such as Badung, Buleleng, Jembarana, Tabanan, Bangli, Klungkung and Karangasem. However, there is no legal certainty given by the Laws and Regulations on "specific percentage number" of profit sharing related to such taxes. *Tri Hita Karana* is understood as the life philosophy to create a balance consistent life of human being towards God, another human being and environment. This normative legal research analyses the following legal issues: the legal certainty towards hotel and restaurant taxes' profit sharing as well as the hotel and restaurant taxes' profit sharing philosophy related to *Tri Hita Karana* concept. From the results, it is noted that Indonesian Laws on Fiscal Balance, Local Taxes and Levies, as well as Regional Government have not been able to provide legal certainty in implementing hotel and restaurant taxes' profit sharing. However, by looking at the *Freies Ermessen* concept, it is possible to implement such profit sharing without to be fully bound by the Laws with aim (*doelmatigheid*) to achieve welfare distribution throughout the society especially in Bali Province. *Tri Hita Karana* with its balance and harmonious concept is adopted in the profit sharing mechanism of hotel and restaurant taxes in regencies/city of Bali Province. Furthermore, the values of justice and utility are also found in the profit sharing process that closely related to *Tri Hita Karana* concept in Bali.

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INTRODUCTION

The Unitary State of the Republic of Indonesia is divided into Provincial areas consisting of Regencies and Cities. Each region has its own rights and obligations to run its government in order to increase efficiency and effectiveness of government administration and public service. This is in line with the Law No. 9 of 2015 on the Second Amendment of Law No. 23 of 2014 on Regional Government (hereinafter referred to as Indonesian Regional Government Law). In running the above administration, region has its right to impose levy to its society. Based on Article 23A of the 1945 Unitary State of the Republic of Indonesia Constitution (hereinafter referred to as the Indonesia's 1945 Constitution), tax is one of the statehood manifestation by affirming that imposing encumbrance to the society such as compelling tax and other shall be regulated by Laws. That also applies for Local Taxes and Levies. National tax law is divided into the Formal Tax Law and Material Tax Law. Due to tax reform, the provisions on Formal Tax Law are governed in one specific Law namely Law No. 28 of 2007 on

the General Provisions and Tax Procedures (hereinafter referred to as Indonesian GPTP Law). The Formal Tax Law contains provisions which support the Material Tax Law provisions (H. Lutfi Effendi, 2010, p.19). Material Tax Law constitutes as tax law that governs norms on the legal condition, conduct and event imposed by tax as well as taxpayer and the imposed tax amount (Djoko Muljono, 2010, p.8). The running of the regional government as stated in Law No. 28 of 2009 on Local Taxes and Levies (hereinafter referred to as Indonesian LTL Law) is also related to Material Tax Law. One example of tax regulated under Indonesian LTL Law is the hotel and restaurant taxes. Those two are categorized as regency/city tax. Such taxes are used for guests' safety and comfort when they stay at the hotel and in general are used to increase the tourism in surrounding areas as well as to develop related facilities such as routine training for preparations of disaster, fire, riot, flood, and earthquake thus there will be no additional cost to be imposed (Tjip Ismail, 2008, p.16). In 1972, the mapping of hotel and restaurant development in Bali was focused to be done in the areas of Badung Regency and Denpasar City. Along with time, those areas become more developed both for their income and economy sides. This caused the existence of hotel and

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restaurant taxes' profit sharing in Bali. Later on, Badung Regency and Denpasar City were then asked to contribute upon their hotel and restaurant taxes to the other regencies in Bali such as Buleleng, Jembrana, Tabanan, Bangli, Klungkung and Karangasem, which originally were not addressed for hotel and restaurant development. During this time, the hotel and restaurant taxes' profit sharing is regulated under: Letter of Agreement between City and/or Regency; Regional Regulation; Governor Decision; and Regional Representative Council Decision. Basically those instruments regulate the same thing that is the Government of Badung Regency and Denpasar City agree to share their regional revenue specifically on the hotel and restaurant taxes to the other six Regencies. Unfortunately, there is no provision in Laws (empty norm) to be found, regarding the implementation of hotel and restaurant taxes' profit sharing. This is the first raised legal issue in this article namely the legal certainty in the hotel and restaurant taxes' profit sharing.

In relation to the above matter, Balinese people which commonly follow Hinduism with Veda as the source of belief teaches its people to become social beings. Becomes social being means build understanding on their self that everybody continually lives this life due to the contribution of the others. Thus in achieving a happy life, the quality and quantity of the contribution value need to be increased. To achieve a balance, harmonious and happy life between human beings and God, other human beings and environment is what *Tri Hita Karana* is all about. *Tri Hita Karana* was proposed in 1969 by I Gusti Ketut Kaler at a seminar held in Faculty of Law Udayana University. This *Tri Hita Karana* consisted of *Parhyangan*, *awongan* and *Palemahan*. *Parhyangan* means worship as media for Hindu people to connect themselves to God. *Pawongan* means media to create harmonious relationship between human being and other human beings. Meanwhile *Pelemahan* means media to create harmonious relationship between human beings and their environment (I Ketut Wiana, 2015, p.8). *Tri Hita Karana* is understood as the philosophy of life to realize a balanced and consistent way of life to trust and devote to God, to serve others and to maintain the environment welfare. The second raised legal issue on the philosophy of hotel and restaurant taxes' profit sharing in Bali related to *Tri Hita Karana* is departed from the *Tri Hita Karana*'s concept to create harmonious relationship between human being and other human being which is in line with the purpose of hotel and restaurant taxes' profit in Bali by the Regional Government of Badung and Denpasar City to other districts.

The above two legal issues are analysed in this normative legal research by using legislation, conceptual, history and philosophical approaches. Sources of the legal materials are: primary legal sources from Laws and Regulations; secondary legal sources from legal literatures; and tertiary legal sources from legal and Indonesian dictionaries. Snowball techniques is used in collecting the primary and secondary legal materials which means it continues to roll from the highest Laws and Regulations to the lowest one. Furthermore, the collected legal materials are then analysed by descriptive, interpretative, systematization, comparative, evaluative, and argumentative techniques. Based on the above explanation, it is important to perform in-depth research on "Legal Certainty towards Profit Sharing of Hotel and Restaurant Taxes Related to *Tri Hita Karana* – A Balinese Hinduism Concept in Achieving Equitable Development in Bali Province".

## RESULTS

### Legal Certainty towards Hotel and Restaurant Taxes' Profit Sharing

#### Law No. 33 of 2004 on Fiscal Balance Between Central and Regional Governments

Law No. 33 of 2004 on Fiscal Balance between the Central and Regional Governments (hereinafter referred to as the Indonesian Fiscal Balance Law) was enacted in order to create a proportional, democratic, fair and transparent financial balance system based on the division of government authority between the Central Government and Regional Government. This Law affirms the basic principles of financial balance between the Central and Regional Governments. Likewise Article 18A Paragraph (2) of the Indonesia's 1945 Constitution mandates that financial, public service and the utilization of natural resources and other resources between the Central and Regional Governments shall be fairly regulated and implemented and in accordance with the Laws. The Indonesian Fiscal Balance Law provides that the Balancing Fund consists of Revenue Sharing (DBH), General Allocation Fund (DAU), and Special Allocation Fund (DAK). The three components of the Balancing Fund constitute as a fund transfer system from the Government and form as integral part. The Indonesian Fiscal Balance Law states that the balancing funds can be sourced from taxes and natural resources. Article 11 of Indonesian Fiscal Balance Law describes the revenue sharing fund derived from taxes comprising of: Land and Building Tax, Land and Building Ownership Tax, and Income Tax of Article 25 and Article 29, Individual Domestic Tax Payer, and Income Tax of Article 21.

The development of subjects acting in a revenue profit sharing scheme involves not only the central to the Provinces and Regencies/Cities, but also the tax revenue' profit sharing of the Province to the Regencies/Cities within its jurisdiction. Even further, there is the revenue' profit sharing between Regencies/Cities within the Province. As well as the division of hotel and restaurant taxes' profit sharing that occurred in Bali between Regencies/City within the Province. The Indonesian Fiscal Balance Law does not regulate hotel restaurant taxes as a source of profit sharing. So that according to this Law, the sharing of the hotel tax revenue does not include other regional revenue sources from the revenue profit sharing. Article 1 number 20 of the Indonesian Fiscal Balance Law states that revenue profit sharing funds are revenues sourced from the revenues of the State Revenue and Expenditure Budget (APBN) allocated to the Region to fund regional needs in the context of decentralization implementation. Meanwhile hotel and restaurant taxes' profit sharing in Bali constitutes as regional revenues which are not sourced from APBN, but revenues from local taxes, so that, it is excluded from the definition mentioned in such Law. Hence, the Indonesian Law on Fiscal Balance cannot be used as the legal basis for the implementation of the hotel and restaurant taxes' profit sharing. Indonesian Fiscal Balance Law, so called as one of the legal umbrellas in tax profit sharing, has not regulated it yet. Based on the explanation, it is noted that there is no legal certainty for such implementation.

#### Indonesian LTL Law

Indonesian LTL Law is very strategic and fundamental in the area of fiscal decentralization as there are considerable

fundamental changes in the rearrangement of financial relations between the central and regional governments. Some provisions set forth in the Indonesian LTL Law are as follow (Marihhot P. Siahaan, 2005, p. 59-62):

- Addition to the local tax: one (1) type of Provincial tax and three (3) types of Regency/City taxes. In total there are sixteen (16) types of local taxes, namely five (5) types of provincial taxes and eleven (11) types of Regency/City taxes. Cigarette Tax is example of the new provincial tax. Meanwhile Rural and Urban Land and Building Tax, Acquisition Tariff on Land and Building Rights and Swallow's Nest Tax are examples of the new Regency/City tax. For the record, the Underground and Surface Water Tax was previously a Provincial tax which now part of Regency/City Tax.
- The expansion of the local tax includes but is not limited to: 1) Motor Vehicle Taxes, and Motor Vehicle Transfer of Title Tariff, including government's vehicles; 2) Hotel Taxes, covering all rentals at the hotel and 3) Restaurant Taxes, including catering services.

The Indonesian LTL Law clearly regulates the provincial taxes' profit sharing. Such provincial taxes are distributed to Regency/City with the aim of equitable development and enhancement of the Regency/City's financial capability in funding the community service. The Province implements profit sharing towards Motor Vehicle Tax, Motor Vehicle Transfer of Title Tariff, Motor Vehicle Fuel Tax, Surface Water Tax, and Cigarette Tax. Indonesian LTL Law actually describes the definitions of Hotel Tax, Hotel, Restaurant Tax and Restaurant. However, Article 94 of this Law only regulates matter on the provincial tax' profit sharing which is partly allocated to Regency/City in the concerned Province. Thus, it can be seen that it is basically not regarding the taxes originated from Regency/City and consequently this cannot be used as a legal umbrella for the hotel and restaurant taxes' profit sharing that occurs between Regencies and/or City in Bali.

#### Law No. 10 of 2009 on Tourism

Tourism in Indonesia is regulated under Law No. 10 of 2009 Tourism (hereinafter referred to as Indonesian Tourism Law). Tourism contains three basic aspects as follow (Ida Bagus Wyasa Putra, 2001, p.9.):

- Tourism as a form of service trade;
- Relationship of tourism business activities with culture and environment; and
- Laws governing tourism-trade activities and tourism-cultural relations.

Article 57 of the Indonesian Tourism Law states tourism financing shall be a joint responsibility between the Governments, Regional Governments, employers and the public. The aim of hotel and restaurant taxes' profit sharing conducted in Bali Province is in line with such provision. The government has responsibility, in this case the regional government, to finance tourism in Bali Province. As explained earlier, one of of local taxes laid down in the Indonesian LTL Law is hotel and restaurant taxes. Hotel taxes are taxes on services provided by the hotel meanwhile restaurant taxes are taxes on services provided by the restaurant.

Both taxes belong to the Regency/City tax. This hotel and restaurant taxes should be used for guests' safety and comfort when they stay at the hotel and in general are used to increase the tourism in surrounding areas as well as to develop related facilities such as routine training for preparations of disaster, fire, riot, flood, and earthquake thus there will be no additional cost to be imposed. Based on the above explanation, it is noted that the priority aim of implementing hotel and restaurant taxes' profit sharing is the tourism development. As explained in Decision of Governor of Bali No. 286/01-F/HK/2009 concerning Reallocation of Hotel Tax and Restaurant Tax Revenue of Badung Regency and Denpasar City to Bali Province, funds allocation through hotel and restaurant tax revenue reallocation of Badung Regency and Denpasar City that distributed through Bali Provincial Government to among others; Bali Provincial Government, Buleleng Regency Government, Jembrana Regency Government, Tabanan Regency Government, Bangli Regency Government, Klungkung Regency Government and Karangasem Regency Government is need to be done by considering the development of tourism in Bali as a whole and integral part with cultural and environment basis.

#### Indonesian Regional Government Law

Article 279 paragraph (1) of Indonesian Regional Government Law states that the Central Government has financial relation with the region to finance the implementation of Government Affairs submitted and/or assigned to the Region. Furthermore, in the implementation of Government Affairs submitted by the Central Government, a region has financial relation with other region. Pursuant to Article 281 paragraph (2) of Indonesian Regional Government Law, what so called financial relation with other region includes:

- Tax and non-tax' profit sharing among regions;
- Funding of Governmental Affairs under the jurisdiction of the region which is the joint responsibility as a consequence of interregional cooperation.

Such point (a) indicates that it is possible to perform taxes' profit sharing on hotel and restaurant taxes between regions, in this case between Regencies/City in Bali Province. According to Article 283 of Indonesian Regional Government Law, the management of regional finance constitutes as an integral part of the implementation of Government Affairs which is the authority of the Region as a result of the submission of Government Affairs. It should be conducted in an orderly manner, abide by the provisions of legislation, efficient, economical, effective, transparent and accountable with due regard to the sense of justice, decency, and benefits for the community. From the relationship between Article 283 of the Regional Government Law and the hotel and restaurant taxes' profit sharing between regions in Bali Province, it is noted that financial management of the Regional which undertakes the profit sharing shall perform it in an orderly manner, in compliance with the provisions of the Laws and Regulations, efficient, economical, effective, transparent and responsible by paying attention to the sense of justice, appropriateness, and benefit to society. Furthermore, from Article 285 it can be understood that:

- sources of regional revenue shall consist of
- the original regional revenue, which consists of:
- regional taxes,

- regional levies,
- the management result of separated-regional wealth,
- other legitimate original regional revenue
- transfer revenue; and
- other legitimate regional revenue.
- The transfer revenue as referred to in paragraph (1) letter b:
- central government transfers; and
- transfers between regions:
- revenue from profit sharing and
- financial assistance.

Article 294 paragraph (4) of the Indonesian Regional Government Law explains that profit sharing revenue as referred to in Article 285 paragraph (2) letter b number 1 (transfer between regions specifically on the profit sharing revenue) shall be funds originating from certain revenues of regional allocated to other regions based on certain percentage in accordance with the provisions of Laws and Regulations. Thus, Article 294 Paragraph (4) indicates that there is a firm legal basis for profit sharing through the wordings of, “shall be funds originating from certain revenues of regional allocated to other regions...”. It shows that there has been a legal basis for the implementation of hotel and restaurant taxes’ profit sharing between regions in Regencies/City in Bali Province based on this Law. However, unfortunately, there has been no statutory provisions governing percentage amount of such profit sharing through the wording of “...based on certain percentage in accordance with the provisions of Laws and Regulations” contained in such Article. Hence, there is still empty norm to be found under this Law regarding the matter in concerned.

### The Freies Ermessen Concept

The *freies emersen* concept is used to analyse the possibility of hotel and restaurant taxes’ profit sharing implementation raised in this study. *Freies Ermessen* is typically used in government, so that *freies Ermessen* is defined as one of the means by which government officials or state administrative bodies may act without being fully bound by Law. Nana Saputra defines a similar definition that is a freedom granted to the administrative instrument, i.e, freedom which, in principle, allows the instrument of state administration to prioritize the effectiveness of a goal (*doelmatigheid*) rather than cling to legal requirements or the legitimate authority to intervene in social activities to carry out the duties of organizing legal interests. Bachsan Mustafa mentions that *freies Ermessen* is given to the government in view of the functioning of the government or the state administration to provide general welfare which is different from the judicial function that serves to resolve disputes among the population. The government's decision is prioritizing the achievement of its goals or objectives (*doelmatigheid*) rather than in accordance with applicable law (*rechtmaticheid*) (Ridwan HR, 2016, p.169-170). Although the granting of the *freies Ermessen* to government or state administration is a logical consequence of welfare state conception, but within the framework of the rule of law, *freies Ermessen* is not without limits. On such basis, Sjachran Basah presents the *freies Ermessen*’ elements in a rule of law state, namely (Hotma P.Sibuea, 2010, p.170):

- aimed at performing public service duties;
- active attitudes from the state administration;
- attitudes are made possible by law;

- attitudes are taken on their own initiative;
- attitudes are meant to solve important problems that arise suddenly;
- attitudes that can be accounted both morally to God Almighty and legally before the.

According to Ridwan H.R., there are three reasons the government can perform discretionary measures associated to the discretion of hotel and restaurant taxes’ profit sharing in Bali Province as follow:

- There is no legislation that regulates the *in concreto* settlement of a problem whereas the problem requires an immediate resolution (*Ibid.*, p.73). On one side there is the need of profit sharing meanwhile on the other side there is *in concreto* empty legal norm (legislation) in respect of taxes on hotels and restaurants. Under these conditions, the regional governments need to set their own laws applicable to such case because there is no law that can be used as guidance for them. The regional governments can use the legal principles that live in the legal consciousness of the Indonesian nation.
- The Laws and Regulations that form as the basis for governments’ actions have granted complete freedom to them (*Ibid.*). Discretion is an act by the government on its own initiative to enforce a Law because the Law itself does not regulate the procedures to impose the matter specifically. For example, it is noted that hotel and restaurant taxes’ profit sharing is possible to be implemented however Indonesian Regional Government Law does not elaborate percentage amount of such profit sharing. Therefore the government acts on its own initiative, for example by setting its own "certain percentage rate". Where no term is provided by Law, such term will automatically set forth on the basis of assessment from the government or the related state administrative official.
- The existence of legislation delegation that stands for the power grant to the government to self-govern certain matters in which this power is actually owned by higher level officers (*Ibid.*). This condition is in line with the rights, authority and obligations of autonomous regions to regulate and manage their own Government Affairs and public interests, as a consequence of regional autonomy. The example is the hotel and restaurant taxes’ profit sharing of the Regencies/City in Bali.

In the welfare rule of law state's perspective, actions taken by state administrative officials on the basis of freedom of action (discretion or *freies ermessen*) are not bound by Law. However, of course, such state administrative officials shall not take any action without certain considerations or rationale. In the perspective of the rule of law state, all administrative actions must always have limitations and reasons. If government’s act cannot be judged on the basis of legal considerations it does not mean that it is not necessary to be accounted. Such act needs to be morally accounted based on common sense with some measurements such as propriety (moral) and worthiness (common sense). In that connection, Hans J. Wolf, as quoted by Mark Lukman, argues that *freies ermessen* should not be over-interpreted as if the state administrative officials or authorities may act arbitrarily or without unclear basis or with subjective-individual considerations (*Ibid.*).

Giving authority to act on government's own initiative to the government (state administrative officials) must of course be based on several specific reasons. Discretion is bound to conditional requirements. Without the presence of conditional requirements thus such discretionary measures are basically not to be exercised. The hotel and restaurant taxes' profit sharing in Bali commences when the Decision of the Provincial Governor of Bali No. 489/1999 on the Profit Sharing and Use of Hotel and Restaurant Tax Donation of Badung Regency Level II and Municipality of Denpasar Level II was issued. The profit sharing is a follow-up to the coordination meeting between Governors, Regents/Mayor, Heads of Provincial People's Legislative Council of the Regencies and City in Bali. Furthermore there are several Governor Decisions, Joint Agreement between the Governor of Bali with the Regent of Badung and Mayor of Denpasar. Lastly, there is Badung's Regent Regulation No. 3 of 2014 on the Stipulation of Revenue Assistance of Badung Regency's Hotel and Restaurant Taxes to Bali Province, Fiscal Year of 2014. The later sets the Assistance of revenue of hotel and restaurant taxes of Badung Regency in the amount of Rp.187.404.000.000, - (One hundred eighty seven billion four hundred four million rupiah) to the Regencies of Buleleng, Jembrana, Tabanan, Bangli, Klungkung and Karangasem. Such amount was based on the realization of Badung Regency's hotel and restaurant taxes.

The use of funds come from hotel and restaurant taxes' profit sharing is prioritized to developed tourism, to finance the cultural preservation activities, to preserve the environment and to finance the key sectors of each receiving regions. The proportional allocation of such profit sharing towards the other six Regencies is performed by considering the realization of hotel and restaurant taxes revenue, the area itself, Original Regional Revenue, Gross Regional Domestic Product per capita and the percentage of poor people of each regency. The *Freies Ermessen* concept provides space for possibility to perform hotel and restaurant taxes' profit sharing. It provides space for the mobility of Heads of Bali Province, Badung Regency and Denpasar City to take action without having to be fully bound by the Law related to the creation of such profit sharing cooperation. The action is primarily for the achievement of goal (*doelmatigheid*) that is equal distribution of welfare of all people, especially in Bali Province.

### The Urgency of Legal Certainty

Bagir Manan states that Indonesia is a rule of law state that places law as the highest reference in the state and government administration (rule of law) based on *Pancasila* philosophy and Indonesia's 1945 Constitution (Bagir Manan, 1994, p.18). As Plato argues that the government should be bound by the law as this quoted, "Plato insisted that the government should be bound by the law: "Where the law is the subject of the authority, and the collapse of the state, in my view, is not far off; but if the law is the master of the government and the government is its slave, then the situation is full of promise and enjoy all the blessings that the gods shower on a state (Brian Z Tamanaha, 2004, p.8)." In relation to *rechtstaat* based on *Pancasila*, Padmo Wahjono through his book entitled *Indonesia Negara Berdasarkan atas Hukum* states that Indonesian culture to be used as benchmark, tailored to the state of Indonesia, which where we need to use our own life view and state view as measurement as the desire of *Pancasila* rule of law state (Padmo Wahjono, 1982, p.7).

There are four characteristics or elements of a rule of law state according to Sri Soemantri, namely: (1) government shall perform its duties and obligations based on Laws and Regulations; (2) guarantee on human rights (of the citizens); (3) division of power; (4) supervision of judicial bodies (*rechtelijke control*) (Sri Soemantri, 1992, p.29). Provisions and collection of tax in the taxation laws are based on legal certainty, legal protection, justice and benefits that are imposed on the people in fulfilling state obligations.

### Legal certainty includes the definition of juridical law, namely

- The availability of clear, consistent and accessible legal rules of law, issued by or acknowledged by the state (authority);
- The governments apply such rules of the law consistently and also subject to and obey them;
- Principally, most citizens adapt their behaviour to such rules;
- The independent and impartial judges apply such rules consistently as they solving the law; and
- The judicial decision is concretely implemented.

The better a rule of law state performs its function, the higher the degree of real legal certainty will be achieved. Otherwise if a state does not have an autonomous functioning legal system, then the lesser of legal certainty degree will be obtained. Legal certainty in the tax provisions (in its determination and collection) has legal provision to guarantee the rights and obligations of every citizen. Normatively, legal certainty is when legislation is found to be clear, logic and contain no doubts (multi-interpretation). The degree of legal certainty almost always be drawn from these three factors, namely: the rules of the law itself; the institutions that formulate and apply the law that furthermore together with the law create the legal system; and political, economic as well as socio-cultural as the last factors from a wider social environment. Tax collection which must be based on law that commonly called as "juridical based" means that such tax collection has received approval from the people through its representatives in the House of Representatives. Juridical principle means the government has provided a firm legal guarantee of the state's right to collect taxes. Normatively a legal certainty is when a rule is created and enacted in a certain way and the provisions are clear and logical. Similarly, profit sharing towards hotel and restaurant taxes which already collected based on Law and approval from the people through its representatives in the House of Representatives shall be based on Law as well. The legal guarantee of the government is a guarantee of legal certainty that the state has the authority and the right to collect and regulate tax revenue paid by the taxpayer as the obligation of citizens in obtaining enjoyment from the hotel and restaurant. To be able to provide legal certainty, revision of Indonesian Fiscal Balance Law and the Indonesian LTL Law must be done in the future by listing hotel and restaurant taxes' profit sharing as tax profit sharing object. Later on, it is important to clearly determine the exact percentage of tax profit sharing that allowed to be granted in the Law.

### Philosophy of Hotel and Restaurant Taxes' Profit Sharing in Regencies/City of Bali Province Related to the *Tri Hita Karana* Concept

The term *Tri Hita Karana* was first coined by I Wayan Mertha Suteja then popularized by I Gusti Ketut Kaler and I Made

Djapa circa 1968-1970 (Made Adi Wirawan, 2015, p.1). *Tri Hita Karana* comes from Sanskrit. The word “*Tri*” means “Three”, “*Hita*” means “Prosperous” and “*Karana*” means “Cause”. Therefore *Tri Hita Karana* is the three main things that cause prosperity of human life (*Ibid.*, p.2 ). I Made Widnyana mentions, *Tri Hita Karana* or Three Sources of Happiness, man is part of the universe (macrocosmos) and could not be separated from the Creator, the Supreme God, his environment and his fellow. Each relates and influences the other in state of the balance that has to be maintained from time to time. When the balance is disturbed it should be restored immediately (I Made Widnyana, 2013, p.30). The elements of *Tri Hita Karana* include as follow: human relationship with God; human relationship with each other; and human relationship with environment. The harmonious combination of those three elements is the foundation of a comfortable and peaceful life both outwardly and inwardly (Made Adi Wirawan, *Op.Cit.*, p.3).

Hinduism teaching called *Tri Hita Karana* as a Hindu philosophy of life in establishing the correct attitude of life according to the Hinduism teaching. The true attitude of life according to Hinduism is to be balanced between believing and devoting to God by devoting to fellow human beings and loving nature according to *Yajna* (I Ketut Wiana, *Op.Cit.*, p.24). *Tri Hita Karana* according to the Vedic scripture, concerning human relationships, the concept is to build a dynamic, humanist and productive unity. Productive does not only mean to produce things to meet material needs in the economic sense. Productive should be implemented in both material and non-material sense, such as having better morale, increasing tough mental and becoming wiser (*Ibid.*, p.126). The Vedic scripture describes how each element is created and how it all relates to one another. This scripture shows how the senses of hearing, taste, sight, taste and smell each relate to a particular element and how they are all woven together to produce a world of life in which all parts depend on one another. If there is interference on one part then the balance will be disturbed (Ranchore Prime, 2015, p.34). Everyone should regard the whole world as a big house of a human family. When the spirit of Oneness is widespread, there will be no intention to harm others (Made Adi Wirawan, *Op.Cit.*, p.51). The well-being of the individual depends on the welfare of the whole society so we must help and serve the community (*Ibid.*, p.71). Indeed, the implementation of the hotel and restaurant taxes’ profit sharing in Bali has been in line with the *Tri Hita Karana* Concept as described earlier.

That this profit sharing is done with the aim of equity distribution that has been perceived by the entire society in Bali which not only focused on Badung Regency and Denpasar City. Previously during the reign of the Governor of Bali, Soekarmen, mapping for the developments of hotels and restaurants were only focused on Badung and Denpasar (South Bali). Such developments were performed in Kuta and surrounding areas as well as Nusa Dua and its surroundings for Badung plus Sanur area and its surroundings for Denpasar. The philosophy of thinking at that time was that such developments were performed only in certain areas to keep people out from the possibility of negative influences might caused by tourists. Thus, only three locations were allowed for star hotels to be built and along with its development, consequently, only these areas were developed in terms of income or economy. This is the reason for the emergence of hotel and restaurant taxes’ profit sharing in Bali.

Badung Regency and Denpasar City are asked to contribute on their hotel and restaurant taxes to other districts in Bali as a consequence of the past development mapping (Based on the explanation of former Governor of Bali, Dewa Made Brata, who had been in regional government during the Governor Soekarmen’s era). The development of tourist resorts in South Bali has an impact on the gap between regions. Balinese tourism is a cultural tourism that covers all areas of Bali Province, therefore a welfare distribution system that aims to smooth out the welfare (in the concept of *Tri Hita Karana*) is needed. The example is through the hotel and restaurant taxes’ profit sharing. The concept of *Tri Hita Karana* is closely related to the purpose of utility and justice that underlies the need for hotel and restaurant taxes’ profit sharing in Bali. Justice also means happiness for the society or at least for most people (the greatest happiness of the greatest number of people). Jeremy Bentham’s opinion is known as utilitarianism or the utility theory which is the development of the flow of legal positivism. Implementation of the hotel and restaurant taxes’ profit sharing is intended for the welfare and happiness of most people.

Aristotle distinguishes two kinds of justice as followed by L.J. Van Apeldorn, namely: distributive and commutative justice (L.J. Van Apeldorn, 1982, p.13). Justice in the hotel and restaurant taxes’ profit sharing is closer to distributive justice because it is defined as justice that gives every person allotment according to his services. The background of the implementation of this profit sharing in Bali was originally caused by the development of hotels and restaurants focused on Badung Regency and Denpasar City resulting in those areas which were developed mainly from the economic side. As consequence, Badung Regency and Denpasar City were asked to contribute their hotel and restaurant taxes to other Regencies in Bali. The contribution towards hotel and restaurant taxes’ profit sharing by the Badung Regency and Denpasar City to the other six Regencies in Bali (Buleleng, Jembrana, Tabanan, Bangli, Klungkung and Karangasem) is performed proportionally with respect to the level of Original Regional Revenue, area, Gross Regional Domestic Product, and poor population of each Regency.

In essence, the teaching of *Tri Hita Karana* emphasizes the three human relationships between God, other human beings, and environment. Each relationship has a life guidance to respect each other. In principle, the implementation must be balanced and in harmony with each other. When the equilibrium is reached, human being will live happily and peacefully. One of the *Tri Hita Karana* concepts constitutes as a mirror to build harmonious relationships between human beings with fellow human beings. As a consequence of hotel and restaurant centralized development in Badung and Denpasar, these two regions should provide a portion of their revenues from hotel and restaurant revenues, in this case are the taxes, to be distributed to other Regencies in Bali. Similarly according to *Tri Hita Karana* concept, any injustice or imbalance must be corrected so that the harmonization of relationships will be achieved.

## Conclusion

There are two conclusions that can be obtained based on the above explanations. First, there is no legal certainty towards hotel and restaurant taxes’ profit sharing provided by Laws and Regulations especially on the “certain percentage rate” of the allowed profit sharing.

Indonesian Laws on Fiscal Balance, LTL, Tourism and Regional Government are some examples of Laws that have not been able to provide legal certainty in the implementation of hotel and restaurant taxes' profit sharing. However, the *Freies Ermessen* concept seems to provide space for the profit sharing to be implemented as means for the officials, in this case the Heads of Bali Province, Badung Regency and Denpasar City, to take action without having to be fully bound by the Law in creating agreement for profit sharing cooperation to primarily achieve goal (*doelmatigheid*) that is equal distribution of welfare of society in Bali. Second, *Tri Hita Karana* which constitutes as harmonious relationship between human being and his God, with other human beings, as well as with environment is adopted in the system of Hotel and Restaurant Taxes' Profit Sharing of the Regencies/City in Bali that also aims to evenly distribute welfare specifically in Bali. The values of justice and utilization in hotel and restaurant taxes' profit sharing are also found to be closely related to the *Tri Hita Karana* concept.

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