

LEGAL POLICY OF SUSTAINABLE TOURISM DEVELOPMENT: TOWARD COMMUNITY-BASED TOURISM IN INDONESIA

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Abstract:

Tourism development is one leading and potential element of the national establishment that can be generated to realize the ideology of controlling and utilizing natural resources and cultural diversity of the State to increase the national economic growth. In facing the changes in global economic, social structure, and living environment, the national and international tourism development trend to become a global phenomenon and economic practices for obtaining income and revenue of the respective country. In this respect, the rights to tourism particularly the rights of the local community within the area of tourism destinations, have not attracted much attention in the academic world. Little attention, regulation and policy that enacted for such a legal issue in the country of Indonesia. It may be because this tourism right is intentionally not considered a fundamental right as well as other human beings and ecological rights. However, these rights are essential in establishing sustainable tourism in the country as a part of human rights in tourism development. The article attempts to outline the conceptual dimension of sustainable tourism development. It provides an overview international policy framework, as well as the existence of national legal instruments for which the tourism industry in the country can be employed to enhance the State's income and revenue for the most significant welfare and prosperity of the people as mandated by the 1945 Constitution.

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INTRODUCTION

Indonesia has been recognized as a rich country regarding the natural environment and resources worldwide (Nirvandar, 2015). The region of Indonesia that stretches from Sabang to Merauke reaches natural resources that overflow as emeralds string in the span of the equator. Besides, Indonesia has also been a multicultural country with various cultural resources, including more than a hundred ethnicities, religions, languages and races. Hence, Indonesia's official motto, "Unity in Diversity," reflects the cultural plurality within a unitary State of the Republic of Indonesia.

The preamble of the 1945 Constitution, in particular, mandated that the State should protect the entire people and control the territory and natural resources contained therein mainly to enhance prosperity and the people's welfare, educate and produce intelligent people, and participate in the establishment of world order based on freedom, perpetual peace, and social justice. The said preamble naturally reflects the main objective of the development of the State of the Republic of Indonesia, as well as a sort of ideology that should be employed as the State's foundation to unite the nation and character-building establishment.

Accordingly, such ideology is reaffirmed particularly in Article 33 Paragraph (3) of the 1945 Constitution that stipulated "The land and water and natural resources contained therein should be controlled by the State and shall be utilized for the prosperity of the greatest people". That is why Indonesian wealth in terms of strategic geographical position and the mentioned natural environment and resources, as well as cultural diversity, including ancient and historical heritage, has been a cultural configuration that indicates cultural identity, cultural capital, and cultural power that was driving the active life of the nation, and empirically the primary resources capital that should be utilized to enhance people's welfare and prosperity as mandated by the 1945 Constitution.

The tourism industry is one leading and potential element of national development that can be employed in order to realize the ideology of controlling and utilizing the State's natural resources and cultural diversity for the sole purpose of increasing the national income and revenue, expanding the business opportunities and job vacancy, encourage the regional development, as well as empowering the tourism destinations and attractiveness, fostering the love of mother lands and strengthening the inter-nation friendship. In facing the changes in global economic, social structure, and living environment, the national and international tourism development trend to become a global phenomenon and economic practices for obtaining income and revenue of the respective country.

In order to encourage the equal distribution of business opportunities, obtain the benefit, and face the challenges in the local, national, and global changes. Stakeholders in tourism establishment, mainly the Government and tourism business sector, should be able to secure the prosperity of the people and preserve natural and cultural resources in the host destination, as well as enhance inter-nation friendship and realize world peace. It is, therefore, to ensure that tourism development is naturally incorporated with the economic, natural environment. Socio-cultural sustainability, and therefore tourism development, should be supported by laws and regulations as the basis of legal instruments and ethical tourism components to strengthen the effort of the respective country in establishing sustainable tourism.

Sustainability has emerged as a paradigm in tourism planning and development since the growth of global tourism in the 1960s and 1970s, followed by significant impacts on the tourism system on global and local scales throughout the world, particularly the negative impacts of perceived outcomes of tourism growth in destination regions. In addition, the societal context in the late 1960s encouraged the focus on environmental concern and global inequalities, and the emergence of the environmental movement strongly influenced the significant attention on the nature of tourism development (Turcoy & Apetri, 2015).

The political conceptualization of sustainable development was introduced in the Brundtland Commission's Report "Our Common Future" in 1987 and was further officially defined in the 1992 Rio de Janeiro Declaration. It is confirmed that in the early 1990s the idea of sustainability was established in tourism planning and development, in which some new forms and terms, such as ecotourism and responsible tourism, resulted. Recently, tourism sustainability has been linked to ethical consumption, including high-level policies aiming to reduce global poverty (Cernat & Gourdon, 2017). In general, sustainable tourism refers to tourism development principles and practices to make places better for people to live and visit, aims to minimize the negative impacts and maximize the positive impacts of the social and cultural, economic, and natural environment and resources of tourism development in the respective country by promoting responsible and ethical consumption and production among the whole stakeholders (Saarinen, 2014).

rights point of view for sustainable tourism development refer to promoting and respecting the fundamental right of a human being to obtain peace and harmony in life with nature (Birnie et al., 2009).

Naturally, the core of tourism is movement of people from one place to another and from one country to another. Hence, this sort of activity has been covered by Article 13 of the 1948 UDHR, which states that "everyone has the right to freedom of movement and residence within the border of the state". Similarly, in line with tourism activity, Article 24 of the 1948 UDHR declares that "everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay". It is the soft law instrument to define "the tourism right," particularly in developing sustainable tourism.

In order to understand holistically about human rights perspective toward promoting the establishment of sustainable tourism, the 1972 Stockholm Declaration defines that "man has the fundamental right to freedom, equality and adequate condition of life, in an environment of a quality that permits a life dignity and well-being, and responsibility to protect and improve the environment for present and future generations". It is moreover, within the document of the 1992 Rio de Janeiro Declaration reaffirmed that "man entitled to a healthy and productive life in harmony with nature".

Concerning sustainable tourism practices and activities, in particular, the 1999 Global Codes of Ethics for Tourism (1999) clearly defines that "all stakeholders in tourism development should safeguard the natural environment to achieve sound, continuous and sustainable economic growth geared to satisfying the needs and aspiration of present and future generations equitably". In addition, the mentioned Codes of Ethics for Tourism promote combating the exploitation of human beings in any form, in sexual and labor exploitation of children, occupation of indigenous rights, natural environment and cultural exploitation, which conflicts with the fundamental goals of tourism practices and establishment.

In order to create harmony with an attitude of tolerance and to balance the needs and aspirations of present and future generations, required to the promotion of sustainable tourism development from human rights and ecological rights perspectives becomes a solution option to minimize and avoid rights abuses in tourism development. It is, therefore, especially within Article 3 of the 1999 Global Codes of Ethics for Tourism reaffirmed the ethical obligations to those involved in tourism activities and practices, namely;

- (1) Stakeholders in tourism development should safeguard the natural environment to achieve sound, continuous and sustainable economic growth geared to equitably meet the needs and aspirations of present and future generations;
- (2) Forms of tourism development that are conducive to saving rare and precious resources, in particular water and energy, as well as avoiding so far as possible waste production, should be given priority and encouraged by national, regional, and local public authorities;
- (3) The staggering in time and space of tourism and visitor flows, particularly those resulting from paid leave and school holidays should be sought to reduce the pressure of tourism activity on the environment and enhance its beneficial impact on the tourism industry and the local economy;
- (4) Tourism infrastructure should be designed and tourism activities programmed in such a way as to protect the natural heritage. Composed the stakeholders in tourism development, and especially professionals, should agree to the imposition of limitations or constraints on their activities when these are exercised in particular areas sensitive: desert, polar or high mountain regions, coastal areas, tropical forests or wetlands, propitious to the creation of nature reserve or protected areas.

been defined within Law Number 10 Year 2009 on Tourism, the law of which covered a high level of awareness of the concept of sustainability and multidimensional aspects of environmental friendliness, economic viability, and socio-cultural acceptability with the capacity of community building as the fundamental elements of sustainable tourism development (Atsmara & Kusuma, 2014).

In addition, it should be noticed as a considerable development that the change of focus from the only management of tourism industries and business into a more comprehensive law which includes articles related to sustainable development, ethical aspects, the need for different levels of tourism plans, as well as scoping tourism establishment, destinations, market and institutional capacity building. Hence, the current Tourism Law Number 10 Year 2009 could be regarded as significant progress in supporting the implementation of national policy and program of sustainable tourism development (Ministry of Tourism and Creative Economy, 2015).

It is confirmed that sustainability in tourism development has been regulated mainly to increase the national economic growth, improve the people's welfare and prosperity, conserve the natural environment and resources, promote the local culture, foster a sense of patriotism, strengthen the national identity and unity, raise the nation's image, eradicate poverty, overcome unemployment, and strengthening inter-nation friendship. Therefore, Article 5 of the 2009 Tourism Law stipulated the basic principles that should be implemented in national tourism establishments.

- (1) Highly upholding the religious norms and cultural values as the manifestation of the concept of life in the harmony of the human being and God Almighty relationship, inter-human being a relationship, and human being and the environment relationship.
- (2) Highly uphold human rights, cultural diversity, and the local wisdom
- (3) Provide benefits for the people's welfare, justice, equality, and proportionality
- (4) Preserve living environment and resources
- (5) Empowering the local people in tourism destination
- (6) Secure the integration of inter-sector, inter-region, inter-central and regional government, constituting a systemic unity for autonomy, as well as the inter-stakeholder's integrity
- (7) Comply with the Global Codes of Ethics on Tourism and international agreements in the tourism sectors
- (8) Strengthening the integrity of the State of the Republic of Indonesia.

Regarding the right to tourism, Article 19 regulates that "every person shall be entitled to; 1) Obtain the opportunity to fulfill the need for travel, carry out business in tourism, be a tourism worker/laborer, or participate in the tourism development process; and; 2) Every person and the people in host tourism destination shall have the priority right to become worker, consignment, and management".

On the other hand, it is stipulated in Article 20 that "every tourist shall be entitled to obtain accurate information on attractiveness, tourism service according to the given standard, legal protection and security, health service, personal right protection, and insurance coverage for high-risk tourism activity". In addition, one significant progress of the current national tourism law that reflect the human right-sound for the tourist mainly regulated in Article 21 that defined "every tourist that having physical limitation, children, and elderly shall be entitled to obtain especially facilities according to their needs".

It is honestly recognized that the Articles mentioned above have been adopted from the fundamental principles defined within the 1999 Global Codes of Ethics for Tourism. Those are

- (1) The increasingly extensive participation in national and international tourism should be regarded as one of the best possible expressions of the sustained growth of free time, and obstacles should not be placed in its way;
- (2) The universal rights to tourism must be regarded as the corollary of the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, that is guaranteed by Article 24 of the UN Declaration of Human Rights and Article 7d of the International Covenant on Economic, Social, and Cultural Rights;
- (3) Social tourism, and in particular associative tourism, which facilitates widespread access to leisure, travel and holiday, should be developed with the support of the public authorities; and
- (4) Family, youth, student and senior tourism and tourist for people with disabilities should be encouraged and facilitated.

In respect to a legal obligation of the stakeholders in tourism development, it is significantly regulated in Article 23 of the 2009 Tourism Law that "Government and the Regional Government, in particular, shall have obligations to provide information on tourism, legal protection, as well as security and safety to the tourist; create a conducive climate to the tourism business establishment covering the opening of equal opportunity in running a business, facilitating and providing legal certainty; maintain and preserve national assets being the tourist attractiveness and untapped potential assets, and supervise and control the tourism activities to prevent and overcome several negative impacts for the local community".

The mentioned 2009 Tourism Law has officially been enacted to build a conducive atmosphere of tourism establishment in the country to acknowledge really condition of the globalization era that brings about the consequence of strategic economic, environmental, and social changes at national and international levels. That is why substances of the current tourism law cover, among others. These fundamental regulations include basic principles of sustainable tourism development, the rights and obligations of the stakeholders in tourism development, the authority of the Government and the Regional Government, cross-sector coordination, the stipulation of strategic tourism areas, empowerment of micro-medium and small businesses in tourism destination, tourism association, tourism business standardization, as well as tourism education and training, and tourism human resource competence.

In summary, legal obligations for the stakeholders in tourism development stipulated in Article 24 that defines "every person shall have an obligation to maintain and preserve the tourism destination and conserve attractiveness, as well as assist in creating the safe, orderly, clean, courteous behavior atmosphere, and in maintaining the environmental sustainability of tourism destination". Furthermore, it is regulated in Article 25 that "every tourist shall have an obligation to "maintain and respect the religion, custom, culture, and values norms of the local community; to maintain and conserve nature and the environment; take part in maintaining the environmental order and security of the destination, and to participate in preventing all forms of behavior that violating legal norms and unlawful activities".

Toward Community-Based Tourism Management: Special Reference to Bali Practices. It is recognized that Bali reflected longstanding success in managing tourism as an international tourism destination and continues to become central to Indonesia's tourist growth and foreign exchange. In contrast, the growing tourism sector beyond Bali remains significantly underdeveloped (Judisseno, 2015). Regarding the legal obligations of the stakeholders in tourism practices and particularly to maintain respect for religion and cultural values that reflect the wisdom of the local community, as well as to protect the natural environment and resources, order and security of the tourism destination, it might be interesting to present lesson can be learned

from Bali Province as a model on how the community-based tourism development and management practiced in the region.

From the perspective of policy and regulation that are employed to encourage tourism growth, the Regional Regulation Bali Province Number 10 Year 2015 regarding Core Planning of Bali Province Tourism Development the Year 2015 to 2019 has been enacted in order to implement the 2009 Tourism Law and the Government Regulation Number 50 of 2011 concerning Core Planning on National Tourism Development. The regional regulation clearly defines the vision and direction of the existence and potential tourism destinations establishment, as well as official guidance for stakeholders actively participating in the region's sustainable tourism development.

It is confirmed that mainly core of Balinese tourism development has been cultural tourism, which encourages to generate dynamic of national cultural tourism, including conserving cultural values, customs and traditions as an essential part of the local wisdom and genius, as well as providing economic prosperity improvement for the greatest Balinese (Picard, 1996). Hence, following Regional Regulation Bali Province Number 2 Year 2012 concerning Cultural Tourism, Balinese culture and tradition are inspired by Hindu religious tenets, namely Tri Hita Karana, which is the Hindu philosophy for life of human beings that encourage the dynamic practices of tourism in harmony in term of relationship between human being and the God almighty (parhyangan), interrelation in harmony between human itself (pawongan), and the relationship of the human and natural environment (palemahan) in the daily life and activities (UNESCO, 2012).

Tourism development of Bali has been directed to conserve the unique and diverse culture and tradition that reflect the originally local wisdom and spirit of Balinese in preserving the holy tourism atmosphere and conserving the natural environment and resources indicated by the existence of Hindu temples (Pura) in every tourism destination in the region. It is because the Balinese worldview in tourism practices has not only been the economic practice (Skala) for survival in daily life but a combination integrally between economic activity and the need to fulfill religious life and spiritual atmosphere (Niskala) in harmony with the universe and human nature (jagadhita). Hence, the respective tourism destination in Bali could be found in Hindu temples governed and maintained by the traditional adat community in the host village. For this purpose, the Governor Regulation Number 58 Year 2012 concerning Cultural Preserving and Conserving Living Environment for Balinese Cultural Tourism has been constituted for the main objective of securing the holy spirit of tourism destination, conserving cultural values and tradition that reflected local wisdom and genius of the Balinese community in facing the era of globally tourism development.

The existence of traditional Balinese villages, the so-called Desa Adat (Adat Village), has been playing a critical role in the development of cultural tourism and particularly in preserving the local genius and wisdom of the host community, conserving the natural environment, as well as keeping the holy spirit and atmosphere in such tourism destination. As such, in order to protect the future life of Desa Adat, the Government of Bali Province enacted Regional Regulation Number 4 of 2019 regarding Adat Village of Bali. The said regional regulation has officially recognized Desa Adat as a legal entity of the Balinese community system that possesses its traditional region (Wewidangan Desa), autonomous adat village governance (Prejuru Desa), as well as material and immaterial village properties (Padruwen Desa), written customary law (Awig-awig and Perarem), that indicated and incorporated with the actual existence of the three Hindu temples (Kahyangan Tiga/Kahyangan Desa) include Pura Desa Bale Agung, Pura Puseh, and Pura Dalem.

Concerning the dynamics of ecological and cultural tourism practices, it could be observed that the Government of Bali provides legal policy to realize informed-consent and public participation principles, the involvement of the host community in tourism governance by developing collaborative management in terms of proportional sharing of tourism income and revenue that can be utilized for maintaining tourism infrastructure, as to conserve the natural environment and to secure the holy spirit tourism atmosphere by conducting periodically Hindu rituals within the respective tourism destination (Wirata, 2015). Moreover, several tourism destinations, such as the Monkey Forest of Ubud, Monkey Forest of Sangeh, Monkey Forest of Alas Kedaton, and the Pendawa Beach of West Kuta, have been governed and managed by respective communities of the host adat village in the region under the supervision of the regional government.

CONCLUSIONS

Sustainable tourism development refers to utilizing natural environment and cultural resources, protecting natural resources and conserving the culture of the local communities. It is a holistic concept and strategy for any tourism practices and activities in urban and rural remote areas, large- and small-scale tourism businesses organized by private and public sectors, and for the benefit of stakeholders, including government, tourism entrepreneurs, local communities, and non-government organizations. The idea of sustainability in tourism development is naturally essential for the present and future generations.

Indonesia's tourism development is incorporated within the national sustainable development as stipulated within the legal policy of Long-term National Development Planning. In this sense, national sustainable development refers to a planned effort of the government to increase the people's welfare by integrating the three fundamental elements of development in balance and harmony, namely ecology, economic, and socio-cultural in the implementation of tourism development the only for protecting primary interests of present and the future generations. It means that sustainability principles refer to the environmental, economic, and socio-cultural components of tourism development. Therefore, an appropriate balance should be established in harmony between the three elements and dimensions to guarantee its long-term sustainability in tourism as a combination of harmony and synergy between the government's legal policy and the local community's legal culture in the respective destination.

It should also be recognized that tourism in sustainable development requires the informed consent and participation of the host community in particular, as well as a legal policy instrument and strong political leadership to ensure the genuine commitment of stakeholders. Tourism sustainability principles refer to the integrated balance of economic, environmental, and socio-cultural interests within the national development strategy to enhance people's welfare and prosperity as mandated by the 1945 Constitution. Therefore, a suitable balance between the said three significant interests should be considered for guaranteeing and strengthening the long-term legal policy of sustainability and the legal culture of the host community in tourism development.

In this sense, on the one hand, creating an optimal utilization in the harmony of the natural environment and cultural resources that reflect the local wisdom of the host community in the respective tourism destination constitutes a vital element of maintaining ecological changes and conserving the natural environment and resources; and on the other hand, strengthening respect to the social and cultural authenticity of the local communities, conserve their cultural heritage, religion and tradition and custom, contribute inter-cultural understanding and tolerance. Moreover, the long-term policy of sustainable tourism establishment and practices provides socio-

economic benefits to all stakeholders, including business opportunities, stable employment and income, social services to the host communities, and contributing to poverty alleviation.

In line with the sustainability of tourism development in the country, it is essential to promote the right to life, right to work, and right to tourism as fundamental principles as determined in the 1999 Global Codes of Ethics for Tourism. That is why the 2009 Tourism Law has adopted these fundamental principles in implementing sustainable tourism development. To make it more accurate in understanding sustainability in tourism practices, the case of Bali can be learned as an important lesson on how community-based tourism is governed and practiced in the region in order to conserve local wisdom and genius, protect the natural environment and resources, as well as to preserve the holy atmosphere and spirit of tourism destinations.

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