

Tourist Legal Protection Through Manado's Regional Regulation to Increase Tourism Level in Manado

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ABSTRACT

The low level of tourism in Indonesia especially in Manado, North Sulawesi is due to a lot of factors such as lack of tourism regulation. Tourism regulation regulates legal formality and substance. This study focuses on the local tourism regulation and its application to tourism. It is found that the enactment of the regulation is not followed by regular assessment which caused the lack of safety for tourist and unfair treatment towards international tourist. Although Perda No. 2/2015 and Perwali 15/2016 has regulated the conduct of tourism business and protection, it still needs better enforcement regarding tourist protection through clearer implementation instruction, such as an independent body to foresee the legal obedience of the holder of tourism business license.

Keywords: Legal Protection, Tourism Law, Tourism Business License.

1. Introduction

This paper explores how the law or regulation that revolves around tourism applied to the society of Manado. Improper tourism management affects the tourism in Manado and becomes a pressing issue. The related issue is analyzed by the application of the relevant regulations. This study shall be considered as doctrinal research that is conducted with several approaches such as statute approach, case approach, and conceptual approach.

Doctrinal research is a research which describes particular regulation systematically and its relations towards other regulations while analyzing legal issues that results in legal development in the future¹. This study is concentrated on Manado's regional regulation (hereinafter referred as the *Perda*) and Municipality regulation (hereinafter referred as the *Perwali*) specifically regarding tourism due to its framework of implementation of regional autonomy and duty of assistance in special local conditions². The regulations is analyzed for its rationales and its relevance in the legal issue. Therefore, statute approach is applied to elaborate the regulations as the legal foundation in solving the legal issue³. The pressing and factual cases regarding violation of tourism regulation is analyzed through case approach due to its specific technique in identifying and understanding parts of the case separately and finding the relation as a uniformity of issue⁴. Conceptual approach is applied for its study in legal doctrine to solve the legal issue of the research⁴. This study will be basing its source of law into primary source of law and secondary source of law⁵. The primary source of law being acts and regional regulations and secondary source of law being legal doctrines regarding regulations drafting and tourism law.

The study would be presented in sequence of background explanation, rationale of the theoretical framework, analysis of the legal issue consists of the legal philosophy of Indonesian Tourism Regulation, legal formality and legal substance of regulations regarding tourism law, and suggestions for future practice made in the conclusion.

¹ Marzuki, P.M. (2005) "Penelitian Hukum", Kencana Prenada: Jakarta, p. 32

² Article 14 of Act 12 of 2011 Indonesian Regulations Drafting

³ Marzuki, P.M., *Ibid.* p.93

⁴ *Ibid.*, p. 95

⁵ *Ibid.*, p. 141-142

Background

Tourism is considered as an integral part in national development that uses nation's natural resources consists of but not limited to cultural values and environment to promote to general public and generate nations income reserve⁶. Recent study showed that tourism in Indonesia had risen following the years, especially for international tourist, which is accumulated of 10,406,759 person that generated revenue for Indonesia about US\$ 10,761 million⁷. This fact showed how beneficial tourism for Indonesia, especially towards local regions that have uniqueness such as nature tourism or cultural tourism as tourism opportunities. However, such opportunities haven't been well developed and only focused on a few local regions such as Bali, Yogyakarta, and Lombok⁸.

Manado, a region located in the northern part of Sulawesi, has been developing itself to increase the tourism level due to its uniqueness of nature tourism opportunities. It is said that Manado is the most popular tourism destination in eastern part of Indonesia⁹. Several reasons of why Manado has become a popular tourism destination is due to its attraction, accessibility, lodging, dining, environment, shopping, events, and activities¹⁰. Yet its popularity is easily swayed based on tourists' perception.

Tourist perception towards tourism service in Manado varies from time to time. Latest study showed that there was a rise in tourism level in Manado back in 2003 which generated revenue to GDP about 9.7% compared to year 2000 that generated 8.6%¹¹. Yet there were also some declines, such as 10% decrease during 2003 to 2006¹². The study showed that such dynamic tourism level is due to many reasons, one of being tourist perception¹³. Tourist perception is measured by several aspects, such as marketing, destination image, tourist satisfaction, and destination loyalty¹⁴.

An important aspect that should be focused is destination image. Destination image is a belief that portrays the emotion and feeling regarding an object¹⁵. In another word, destination image can be considered as a symbol that is well and widely known to people. Destination image is heavily affected by marketing and tourist satisfaction¹⁶. However, tourist satisfaction can be considered as the second most important aspect because unsatisfied tourist may very well establish a bad destination image.

Recent news showed that international tourist was not satisfied with tourism service and lack of quality control that resulted to damaged coral reefs¹⁷ and lack of legal compliance that resulted to death of a tourist¹⁸. This fact and according to tourists' perception resulted

⁶ Considerant in Act 10 of 2009 of Indonesia Tourism

⁷ Kurniawan, L.L., (2018). "Promoting Indonesia as a Wellness Tourism Destination" in The 2018 International Conference of Organizational Innovation, KnE Social Sciences. P.250.

⁸ Hampton, M.P., (2003). "Entry points for local tourism in developing countries: Evidence from Yogyakarta, Indonesia". *Geografiska Annaler B: Human Geography*. 85 B (2): 85–101

⁹ Whitten, A.J., Mustafa, M. and Henderson, G.S., (1987) "The ecology of Sulawesi". Gadjah Mada University Press, Yogyakarta. P. 208

¹⁰ *Ibid.*

¹¹ Monica, Y. and Pandowo, M.H., (2018). "Analysis of Chinese Tourists' Perception On North Sulawesi". *Jurnal EMBA*. p. 2609

¹² *Ibid.*

¹³ *Ibid*, p. 2610.

¹⁴ *Ibid.*

¹⁵ Chew, T., & Jahari, A. (2014). "Destination image as a mediator between perceived risks and revisit intention: A case of post-disaster Japan." *Tourism Management*, 40, 382–393

¹⁶ *Ibid.*

¹⁷ Manado Tribun News, (2018, October 9th). *Kadis Pariwisata Sulut Sebut MM Travel Siap Ganti Kerugian Terumbu Karang yang Rusak Ditabrak Kapal*. Retrieved from <http://www.manado.tribunnews.com>.

¹⁸ Viva, (2019, June 12th). *Turis Tiongkok Tewas Saat Menyelam di Taman Laut Bunaken..* Retrieved from <http://www.viva.co.id>.

Manado to have less-pleasing destination image that cause the decrease of tourism level¹⁹. Therefore, it is important to maintain proper destination image and tourist satisfaction. Such importance can be fulfilled through proper enactment of regulations.

Research Objective

The background of the research supports this study for the objective to know tourist legal protection through Manado's regional regulation to increase tourism level in Manado.

Theoretical Framework

Destination Image

Destination image is an image that cognitive and affective aspects that affect subjects that comes to contact with it²⁰. Cognitive aspects affect the knowledge or belief of a subject regarding an object and how he/she will approach it. Affective aspects affect the emotion or feeling regarding an object and how he/she will approach it²¹.

Tourist Satisfaction

Tourist satisfaction is an emotion or a feeling that is generated through an activity or action based on expectation, destination image, perceived quality and value²².

Legal Compliance

According to Black's Law Dictionary, legal compliance is an act of submission or obedience toward a legal regulation that it may cause into a legal action that is legally accepted and lawful²³.

Legal Protection

According to Black's Law Dictionary, legal protection is legal right of a subject towards any legal suit that accuses said subject of a legal violation and functions as an exempt of legal abuse²⁴.

2. Legal philosophy of Indonesian Tourism Regulation

Tourism regulation is centralized on the main act, which is Act 10 of 2009 regarding Indonesian Tourism Act. The considerate of the act regulated that Indonesian tourism prioritizes on strategic and sustainable nation development. It means that tourism should be focused on profit while maintaining the continuity of the natural resources. This philosophy is embodied through verses and sections of the act.

Section 5 of the act regulated the principles of tourism conduct. This rule must be considered as a whole, instead of hierarchical nor alternative. The principle of benefits for the welfare of the people as regulated in Section 5 (c) of the Act may be positioned above the principle of continuity of nature and environment as regulated in Section 5 (d) of the Act. However, it does not negate the importance of the principle of continuity of nature and environment as regulated in Section 5 (d) of the Act. Furthermore, Section 5 (c) of the Act completes the principle of benefits for the welfare of the people with the principle of fairness, equality, and proportionality. Therefore, fairness prevails over the benefits in terms of financially compared to fairness that embodies the welfare of the people.

Another important philosophy of tourism law is the prevention philosophy. Barth stated that prevention philosophy is a philosophy that prioritizes in preventing the occurrence of

¹⁹ Sulawesi Bisnis, (2018, November 1st). *Jumlah Wisman ke Sulut pada September Menurun 17,59%*. Retrieved from <https://sulawesi.bisnis.com>.

²⁰ Beerli, A. and Martin, J.D. (2004) "Factors Influencing Destination Image." *Annals of Tourism Research*, 31, 657-681.

²¹ Chew, T., & Jahari, A. (2014). "Destination image as a mediator between perceived risks and revisit intention: A case of post-disaster Japan." *Tourism Management*, 40, 382-393

²² Wang, X. et. al. (2009). "Examining Antecedents and Consequences of Tourist Satisfaction: A Structural Modeling Approach." *Tsinghua Science and Technology*. 14, No. 3. 397-406.

²³ Garner, B. A., & Black, H. C. (2009). *Black's law dictionary*. 9th ed. St. Paul, MN: West.

²⁴ *Ibid*.

negative legal repercussions²⁵. This philosophy shall be considered as a supporting core of tourism law. Prevention philosophy compliments the strategic philosophy of tourism law, while enlightening the application of sustainable nation development. The strategic philosophy won't be fulfilled if the nation suffered many losses caused by the practice of tourism. Therefore, prevention philosophy prioritizes the effort to prevent many losses caused by reckless tourism so that it may be more efficient both financially and environmentally. Prevention philosophy also concentrates on sustainable nation development. Cribb and Ford stated that Indonesia is the world's largest archipelagic state²⁶. Being an archipelagic state, Indonesia has lots of natural resources as a replete developing state²⁷. However, the exhaustion of the natural resources hasn't been properly conducted that the natural resources has started to run out²⁸. Conservation in a scale of nationwide or locally are severely needed to prevent natural resources from being exploited²⁹. Consequently, nature tourism may use natural resources to boost its income. Nature tourism is very beneficial even though it is risky in terms of its sustainable environment. Hence, prevention philosophy manages the tourism practice efficiently and effectively.

Furthermore, Indonesia realized the urgency of prevention philosophy that the nation optimized the prevention philosophy through the decentralization system. According to Nasution, such decentralization system provided the governance of the nation through double-entry accounting system that each region such as cities and regencies may have semi-independent funding to govern³⁰. It allows the local government to focus on performance-based governance and provides easier financial control³¹. Such synergies of legal philosophy allows Indonesia to have firm legal foundation that would be portrayed through the legal formality and legal substance of tourism regulation onward.

3. The legal formality and substance of tourism regulation

The previous section argued the relevancies of legal philosophy that schemed the law-making of Indonesian tourism regulation. Roscoe Pound stated that legal philosophy is supposed to be the legal measure to form regulations or acts so that it can be applied to the society properly³². In this sense, the law in Indonesia has applied such legal philosophy while combining with decentralization system. Decentralization system throughout Act 23 of 2014 regarding Regional Government. The considerant of the Act stated that the purpose of decentralization system through regional government is to fulfill the welfare of the society through efficiency and effectivity principle³³. Article 18 subsection 6 of Indonesian Constitution, formed the authority of regional government to legislate each of their own regulations to create an efficient and effective regulation through regional regulation such as regional regulation itself and (known as *Peraturan Daerah* or *Perda*) and Governor's or Mayor's regulation (known as *Peraturan Walikota* or *Perwali*). This article has become the legal foundation for local government or regional government in forming regional regulation as such.

Northern Sulawesi regional government has implemented a few regulations to implement the legal philosophy that is embodied in Act 10 of 2009 regarding Indonesian Tourism Act.

²⁵ Barth, S. C, & Hayes, D. K. (2009). "Hospitality law : managing legal issues in the hospitality industry". 3rd ed. Hoboken, N.J.: John Wiley & Sons. P. 6.

²⁶ Cribb, R., & Ford, M. (2009). "Indonesia as an Archipelago: Managing Islands, Managing the Seas" on R. Cribb & M. Ford (Eds.), *Indonesia beyond the Water's Edge: Managing an Archipelagic State* (pp. 1-27). ISEAS–Yusof Ishak Institute., p. 1

²⁷ *Ibid*, p. 13.

²⁸ *Ibid*, p. 18.

²⁹ *Ibid*.

³⁰ Nasution, A. (2016). "Government Decentralization Program in Indonesia". ADBI Working Paper 601. P. 1

³¹ *Ibid*.

³² Pound, R. (1930). "An Introduction to the Philosophy of Law" Liberty Fund: Indiana. p. 18

³³ Act 23 of 2014 regarding Local Government.

The act serves as the main regulation and core of tourism legal formality. Legal formality according to Black's Law is elements or conditions that must be fulfilled to cause legal result based on its validity and regularity³⁴. Indonesian tourism law is implemented by Northern Sulawesi regional government through *Perda* 2 of 2015 and *Perwali* 15 of 2016. These two regulations have become the procedural and technical regulations of local tourism within the Northern Sumatra province, specifically Manado.

The *Perda* regarding the conduct of tourism functions as implementing regulation specifically in Northern Sulawesi province. Such implementing act consists of legal formality and legal substance. As the definition of legal formality is clear, legal substance according to Black's Law is the core or essence of a regulation which distinguishes it from other regulation³⁵. The *Perda* has established its legal formality and legal substance around the conduct of tourism. Some example of important legal formalities regarding conduct of tourism within the *Perda* is regulated in Article 34 regarding the registry of tourism venture. According to the article³⁶, tourism ventures has to complete the pre-requisite consisting of the obligation to register the venture according to the type of tourism provided and coordination between the city's mayor and related tourism legal institute regarding the registry of tourism venture. The fulfilment of the pre-requisite will give a Tourism Venture Identification Registry (*Tanda Daftar Usaha Perusahaan* or TDUP). Such fulfilment is in accordance to the legal substance of the Act, which is Article 57 that states tourism venture must own TDUP, provide security and safety for tourist, and prevent unlawful act that may harm others and tourism object as a legal obligation. Otherwise, the tourism venture has violated the regulation and could be temporarily suspended³⁷ or even imprisonment³⁸.

The spirit of the *Perda* is prolonged through the *Perwali*³⁹. The Legal formalities in the *Perda* is presented through Article 6 of the *Perwali* in the form of stages of registry of TDUP. Furthermore, the legal substance of the *Perwali* is limited by the principle of legislative-drafting as set by Article 15 Subsection 11 Act 12 of 2011 that regulations under the *Perda* may not contain criminal condemnation other than administrative condemnation such as fine or suspension of permit. It may be noticed that the *Perwali* regulated more of technical enactment rather than legal substance of legal consequence. Therefore, *Perwali* gives clarity in terms of enactment of *Perda*.

The utmost importance of the *Perda* and the *Perwali* is truly the tourist legal protection. As previously mentioned, the conduct of tourism must focus on security and safety for tourist and preventing unlawful act that may harm others and tourism object. This conduct is represented through the regulation of legal rights of tourism venture⁴⁰ and tourist⁴¹ along with the legal obligations of tourism venture⁴² and tourist⁴³. Such regulation is important because it confirms the legal certainty, legal fairness, and legal expediency. These regulations are there to guarantee the legal certainty, otherwise tourist or other stakeholders such as

³⁴ Garner, B. A., & Black, H. C. (2009), *Ibid*.

³⁵ *Ibid*.

³⁶ Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

³⁷ Article 40 Subsection 1 Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

³⁸ Article 67 Subsection 1 Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

³⁹ Peraturan Walikota Manado Nomor 15 Tahun 2016 tentang Tata Cara Pendaftaran Usaha Pariwisata

⁴⁰ Article 53 Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

⁴¹ Article 51 Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

⁴² Article 57 Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

⁴³ Article 51 Peraturan Daerah Kota Manado Nomor 2 Tahun 2015 tentang Penyelenggaraan Kepariwisataaan

investor may not be attracted or even hesitant in Indonesian tourism⁴⁴, which may result in the decrease or low level of tourism.

Taymans argued that legal certainty through consumer protection, or in this case for tourist, measures the probability the tourism level in a region⁴⁵. Furthermore, he argued that even if the prevention regulations fail, there should be legal remedies set out in the tourism regulations that may cause the confidence of security within the tourist so that it may protect the tourist interest⁴⁶. Simpler things like errors in tourism venture such as technical difficulties in travel process or booking process should not stop tourism venture in prioritizing the protection with a goal of tourist safety and comfort⁴⁷. Therefore, with a proper regulation that regulates legal protection towards tourist and proper enactment of such regulations, the tourism level will increase because of the confidence of tourism.

4. Enforcement of tourism regulation – study case

As it is established above that regional regulation is a source of law that stress on tourism especially tourist legal protection, it is worth noting that the legal aspect in the conduct of tourism has not been properly executed. The improper conduct of tourism may be caused by the tourism venture or even the tourist themselves. Recent case shows that there was a crash between motorboat owned by Celebest Resort against motorboat owned by Luley Resort while carrying tourists which is suspected to be caused by captain of one of the motorboats⁴⁸. Another case is there was a crash caused by a ship operated by PT Manado Maju Wisata while carrying tourists that wrecked coral reefs in Bunaken Island, Manado⁴⁹. Further investigation resulted that there was a lack of technical procedure in sailing the ship that it wrecked the coral reefs because the ship was getting to close to the coral reefs area to make it easier for the tourists aboard to snorkel⁵⁰. The damage caused to coral reefs and tourist's fright decreased the tourism level.

On the other hand, tourist themselves need to realize their right as set by the regulation to maximize their legal protection. Otherwise, they would harm themselves and they will have no legal standing to pursue damages or compensation. For an instance, an international tourist, Xie Wei, that ignored the snorkeling guide's warning to always wear the life jacket and she drowned while snorkeling⁵¹. Such lack of compliance towards tourist's obligation may endanger or harm tourist during the process of tourism. In fact, such experience and case affect international view regarding local tourism such as stated by Monica and Pandowo⁵².

Some may argue that it is as much the tourism venture's fault as it is the tourist. Yet it is important to stress the importance of the principle of equality. The principle argued that there must be a balance between the conduct of legal rights and legal obligations⁵³. Furthermore,

⁴⁴ Muliadi, A. (2017). "Applying principle of legal certainty and equal in the implementation of investment in Indonesia" *European Research Studies Journal*, p. 137.

⁴⁵ Taeymans, M. (2018). "Tourism Law" *Gomple&Svacina: 's-Hertogenbosch*. p. 33

⁴⁶ *Ibid*, p. 39.

⁴⁷ *Ibid*, p. 42

⁴⁸ Manado Tribunnews, (2019, August 12th). *BREAKING NEWS 2 Kapal Tabrakan di Laut, 4 Turis Asing dan 3 Karyawan Resort Luka-luka*. Retrieved from <http://www.manado.tribunnews.com>

⁴⁹ Sindo News. (2018, October 14th). *Kapal Crystal 7 Kandas di Perairan Bunaken, Terumbu Karang Rusak*. Retrieved from <http://www.sindonews.com>.

⁵⁰ CNN Indonesia. (2018, October 17th). *Menjaga Kekayaan di Taman Nasional Bunaken*. Retrieved from <http://www.cnnindonesia.com>

⁵¹ Sindo News. (2019, June 12th). *Wisatawan China Meninggal Saat Snorkeling di Bunaken*. Retrieved from <http://www.sindonews.com>.

⁵² Chinese tourist starts to lose interest in Manado tourism due to lack safety and proper accommodation. See Monica, Y. and Pandowo, M.H., (2018). "Analysis of Chinese Tourists' Perception On North Sulawesi". *Jurnal EMBA.*, p. 2614

⁵³ Salim, H.S., (2011). "Hukum Kontrak Teori dan Teknik Penyusunan Kontrak" Sinar Grafika: Jakarta, p. 14

Hujibers argued that the existence of legal right gives a privilege to the holder of the right, yet there is also a legal obligation that requires the legal right holder to act in accordance to that privilege⁵⁴. According to Article 57 of the *Perda*, tourism venture have legal obligations to register their venture, respect the religious norms, give accurate and responsible information, non-discriminative service, give comfort, pleasant, safety and security of tourist, provide insurance for risky tourism, prevent unlawful act that may harm tourism object, preserve the environment, apply the tourism venture standard according to the regulations. Tourist according to Article 56 of the *Perda* have legal obligations to preserve the environment, maintain comfort, security, and order of the environment, and prevent unlawful act that may harm tourism attraction. With such legal obligations, tourism venture is obliged to remind or even reprimand the conduct of tourism for the safety of tourist and vice versa. The tourist is obliged to keep their own safety by asking all the necessary questions for the safety of the tourism process. The legal obligations between the tourism venture and tourism correspond to one another. Such synergy is needed to make a better conduct of tourism.

Aside of realizing legal rights and legal obligations, following the principles as set by the regulations may prove to be beneficial for tourism. Such as enforcement of the tourism registry and periodical monitoring and evaluation by the tourism officials, passing criminal or civil sentence to violators of the regulations, improvement quality standard for tourism venture⁵⁵ in the spirit of prevention philosophy that may improve tourism venture skill and tourist protection. There can even be public announcement regarding legal rights and legal obligations that may be easy to spot for tourist. Consequently, both tourism venture and tourist must conduct their legal obligation to receive proper legal rights.

5. Conclusion

The unstable tourism level in Manado may be affected by the lack of enactment of regulations especially regarding tourism law. Hence, legal rights and legal obligation of both tourism venture and tourist must be enforced not only by these two subjects, but also the regional government or even the central government.

Suggestion for this legal issue would be the enforcement of the regulations conducted by the central government, regional government, and the tourism venture. Furthermore, the public announcement regarding of legal rights and legal obligations of tourist should be applied around the area of tourism in Manado.

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