



Environmental Law-Based Rural Tourism Regulations in Bali

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ABSTRACT - An environmental management made for the purpose of obtaining clean and healthy atmosphere is a human right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. Poor environmental management contributes to the deterioration of the quality of the environment. Therefore, it is necessary to increase its protection and management. The aims of this study are to describe the regulations of environmental law-based rural tourism to improve the welfare of the people in Bali and legal consequences for the government, business actors and the community in the environmental management that are not in accordance with existing rules and regulations in Bali. This study is qualified as empirical legal research, with the application of several types of approaches, such as a field-based approach, a statutory approach, a conceptual approach, a comparative approach, a case approach, and a cultural approach based on local community wisdom. The results of the study show that environmental management is an effort to carry out responsibilities that are massively difficult, resulting in a decrease in the quality of the environment that is becoming increasingly real. Therefore, in the event that pollution and environmental destruction occur, the perpetrators can be held accountable both in civil law and criminal law. However, in a context like Bali, regulations integrating the values that develop in society in protecting and preserving the environment are an ideal form to protect and manage the environment in a rational way to realize sustainable tourism development.

Keywords: Environment, Regulation, Rural, Tourism

I. INTRODUCTION

Many studies on environmental management have been conducted so far, but the one that concerns regulation relating to rural tourism development as a measure of the government's alignment with the rural environment in relation to tourism management, has not been widely launched to become a tourism development model that is in synergy with nature. In essence, a good and healthy environment is a human right of every citizen in Indonesia, as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia (Fahmi, 2013). Environmental management realized in an unwise manner precisely contributes to the deterioration of the quality of the environment; therefore, efforts to improve environmental protection and management need to be made (Najwan, 2012). Environmental protection and management aims at realizing sustainable tourism development.

In realizing the protection and management of a good and healthy environment, every business actor and/or person in charge of the business is required to obtain an environmental permit in accordance with the applicable legal provisions. It is stated in the Law on Environmental Management and Protection (*UUPLH*) No. 32 of 2009, Government Regulation No. 27 of 2012 concerning Environmental Permits, and Ministry of Environment Regulation No. 08 of 2013 concerning Procedures for Assessment and Examination of Environmental Documents and Issuance of Environmental Permits. An environmental permit is something that must be owned by the person in charge of a business and/or activity as an effort to supervise the government in protecting and managing the environment (Kartono, 2009). Law was created to be a means or instrument to regulate the rights and obligations of legal subjects. In addition, the one that regulates the legal relationship between the government and citizens is State Administrative Law or civil law, depending on the nature and position of the government in carrying out the legal action (Sutrisno, 2013), when the government takes legal action in its capacity as a representative from a legal entity, then the action is regulated and subject to the provisions of civil law (Fahmi, 2013); whereas, when the government acts as an official, then that action is regulated and subject to State Administrative Law. Every violator shall be subject to sanctions according to the level of error (Ramdhan et al., 2003).

In the event that the certainty of the application of environmental law is difficult to resolve, then in an effort to maximize law enforcement it needs to be supported by good rules with implementers from the government which are carried out in earnest (Soemarwoto, 1999). The problem is the tendency of local governments to build economic facilities by exploiting natural and environmental resources to pursue Regional Original Income (*PAD*), lack of attention to the carrying capacity of regional environmental sustainability (Pitana, 2004), and a lack of obedience to rules and regulations.

Based on the description in the background above, this study discusses two main issues, such as 1) Regulations of environmental law-based rural tourism to improve the welfare of the people in Bali and 2) Legal consequences for the government, business actors and the community in the environmental management that are not in accordance with existing rules and regulations in Bali. The objective of the study is to develop legal knowledge, to explore further the role of government in preserving the environment and the form of government responsibility in environmental management, which is related to tourism development in Bali, and to examine, disclose and find a way out of the legal consequences on the government for its decisions in environmental management that is not in line with community participation.

II. LITERATURE REVIEW

2.1. Concept of Rule of Law

Indonesia is a State of Law; this is emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that, in carrying out its state activities, the State of Indonesia shall be based on applicable laws (Rahardjo, 1982), or in other words, all actions taken by the authorities and the community shall be based on applicable laws or what is called the principle of legality, not based on power. According to Diana Halim Koentjoro, in a state of law, there is a need for the principle of protection, meaning that in the Constitution, there are provisions that guarantee human rights. The same view was also expressed by K. C. Wheare, who stated that the minimum content of a constitution is about the *rule of law*. In this context, K. C. Wheare formulated his views in an interrogative form: "What should a constitution contain?" and answered it himself with: "The very minimum, and that minimum is to be 'Rule of Law'" (Wheare, 1975).

2.2. Rural Area

Rural areas include areas that involve agriculture as the main activity, including natural resource management with a functional arrangement of the area as a place for rural settlements, government services, social services, and economic activities. Development in villages will have a significant impact on development in a wider territorial scope, so village

development must be encouraged from a regional perspective so that accelerated development can take place more quickly, considering that village potentials and problems can be mapped and resolved in a more comprehensive perspective.

2.3. Concept of Environment

The concept of the environment is specified in Article 1 point 1 of Law Number 32 of 2009; therein, the living environment is defined as the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living things. It includes conditions, circumstances and influences contained in the space we occupy and affect living things, including human life (Usman, 2003), such as economic factors, social factors and others (Emil Salim in (Soemartono, 1997)). (Dirdjosisworo, 1979), defines the 'living environment' as the living environment as 'space', in which, both living and non-living things are in one unit and interact with each other both physically and non-physically, which includes and comprises all elements and physical factors contained in nature.

2.4. Theory of Participation

According to (Cohen & Uphoff, 1980), community participation transforms the main kinds of participation that warrant major concerns, which include: (1) Participation in decision making; (2) Participation in implementation; (3) Participation in benefits; and (4) Participation in evaluation. By observing the types of community participation, it can be stated that: first, participation in decision making is a form of community participation in giving criticism and suggestions about the decision-making process or government policy; second, participation in implementation represents that the community is involved in implementing government decisions or policies; third, participation in benefits is based on the concept that the community also takes advantages of the results or benefits of implementing government decisions or policies; and fourth, participation in evaluation, is the contribution of the community in government decisions or policies. Observing the thoughts of (Cohen & Uphoff, 1980), community participation in environmental protection and management in principle includes these four parts.

2.5. Tourism

As an activity of recreational travel, tourism will certainly cross several locations, both rural and urban. Therefore, the structure of cities and villages becoming tourism objects plays a crucial role - especially in the concept of sustainable tourism. Technically speaking, the focus of environmental protection is rural nature, which is still very open to be managed in a good way and is related to tourism sustainability. Tourism villages, as a form of rural tourism, can contribute a lot to efforts to develop various resources owned by rural areas (Sugiarto, 2015). These various potentials can serve tourist attractions that provide authentic experiences to tourists, as well as open opportunities for local communities to earn additional income through tourism activities. The development of tourist villages, thus, can be one of the efforts to grow local entrepreneurial potential, diversify tourism products, support the local community's economy, and revitalize local culture. The thing it has to do with regional economic development is that the development of tourist villages is allegedly able to overcome urbanization and encourage the progress of the rural economy.

III. METHODS

3.1. Research Type

Legal research methods can be divided into two, namely: Normative Legal Research and Empirical Legal Research (Waluyo, 1991). The present study combines the two research approaches. Thus, the research is a combined research between normative legal research and empirical legal research (mixed-method). A case approach has a relationship with normative research. The aim is to study the application of legal norms or rules applied in legal practice, especially regarding cases that have been decided, as can be seen from the jurisprudence of cases that are the focus of research (Efendi & Ibrahim, 2016).

3.2. Problem Approach

This study employs several approaches to the problem, such as the statute approach, conceptual approach, case approach, historical approach, and comparative approach.

3.3. Source of Legal Material

In legal studies, the sources of legal materials are generally divided into legal materials obtained from statutory regulations and legal materials obtained from theories and opinions of scholars and/or legal experts. The normative legal research method only makes use of secondary data (Amiruddin & Zainal, 2012). The secondary data consist of primary legal materials, secondary legal materials, and tertiary legal materials.

3.4. Legal Material Collection Techniques

Collection of legal materials was done using the card system. Using cards, the materials were collected by reading critically and analytically and taking necessary notes.

3.5. Legal Material Analysis Techniques

After the primary legal materials and secondary legal materials had been collected, data analysis was conducted. The analysis of the results of the study was conducted by making use of the logic flow in normative legal research, which was carried out with the following steps: the first is the description. At this stage, the contents and structure of the positive law were described. The second is systematization. This stage involves explaining the content and structure or hierarchical relationship between legal rules that are interrelated and interconnected with each other so that they can be conceived properly. The third is explanation. At this stage, the analysis was conducted on the meaning contained in the legal rules in relation to the legal issues in this study, so that all of them form a single unit that is logically interrelated to each other.

IV. RESULTS AND DISCUSSION

4.1. Rural Tourism Regulations in Bali

Regulation as a legal action implies the use of authority, which implies an obligation of responsibility. The responsibility of the state towards citizens or third parties is shared by almost all countries. In the perspective of public law, the government's legal actions are then outlined in several legal and policy instruments, such as legislation, policy regulations, and decisions (Dewi, 2012). In addition, the government also often makes use of civil law instruments, such as agreements, in carrying out government duties. Every use of authority and application of legal instruments by government officials certainly have legal consequences, since it is intended to create legal relationships and legal consequences.

An official refers to a person who, because of their duties and authority, acts as a representative of the position, performs actions for and on behalf of the position. Therefore, someone can be called or categorized as an official when they exercise authority for or on behalf of the position. Grounded by the statement, it appears that legal actions undertaken by officials in the context of exercising the authority of the position or taking legal actions for and on behalf of the position, can be categorized as legal actions of office. Referring to Logeman's opinion, rights and obligations continue, regardless of the replacement of officials. Established on the idea, it is clear that the bearer of responsibility is the position. Therefore, compensation shall also be charged to the agency/position, not to the official as an individual.

Regulations that make up laws or the so-called 'legislators' function to reinforce the philosophical values contained in a preamble (Wignjosoebroto, 2002). The philosophical values in the consideration of a law are concretized in the body in the form of the articles of the law in question (Machmud, 2011). Orientation of the legislators is expected to be able to provide support for rural tourism development. A tourist village establishment is part of the development of sustainable tourism and is one of the programs of the Government of the Republic of Indonesia, which is expected to accelerate the revival of tourism and trigger economic growth. However, not every village can be turned into a tourist village, because at

least 3 components are required in the establishment. The first component is the available tourism potential. Here, village officials must have an accurate database of land, location, area and how the ecosystem can help develop tourist destinations later. The next component is the interest and readiness of the inhabitants towards the development of local tourist destinations. A tourism village will be very capable of developing if it is controlled and managed by the village itself; the need for an organization that specifically takes care of tourist villages is crucial in order that its existence can be sustainable and involve parties, who determine the direction of the tourist villages. On a specific level, the discussion on tourist villages began when the government issued the provisions contained in the Regulation of the Ministry of Culture and Tourism Number: PM.26/UM.001/MKP/2010 concerning the National Program for Independent Community Empowerment (*PNPM Mandiri*) for Tourism through Tourism Villages, which later amended to become the Regulation of the Ministry of Culture and Tourism Number: KM.18/HM.001/MKP/2011 concerning *PNPM Mandiri* for Tourism. The amendment process aims to facilitate the implementation of the program technically, by developing a wider program scope. The development of tourist villages became clearer when the central government issued Law No. 6 of 2014 concerning Villages. The impact is the emergence of a significant increase in the number of tourist villages of a national scale since 2014. The growth of tourist villages in 2014 reached 26.03%; it increased rapidly compared to the previous year, which on the contrary showed a decrease of 1.5%. The management of tourist villages is also mostly managed by Village-owned Enterprises (*BUMDes*). *BUMDes* is a business entity whose capital is wholly or mostly owned by the village government, which is developed to manage assets, services, and other businesses in rural areas, especially in the tourism sector. In line with this, Regulation of the Minister of Tourism No. 29 of 2015 stipulates that the implementation of tourism development is expected to be based on rural areas. In order to become a tourist village, the development of a village must require a set of regulations or norms as a formal legal and juridical aspect. By having a clear and strong legal basis, tourism villages are expected to be able to perform their activities without any disturbances, such as objections from other parties. In addition, regulations regarding tourist villages will also be able to improve the ability to manage tourist villages in a professional manner. Management of tourist villages run professionally will be able to contribute to poverty alleviation efforts, conservation of resources and local wisdom, and will be able to increase Regional Original Income.

4.2. Legal Consequences on the Government, Business Actors and Community in the Tourism Management that are not in Line with the Laws and Regulations

In Indonesia, legal protection for the society from the consequences of actions that violate the government's law has several possibilities, depending on the legal instruments used by the government concerned. Government's legal instruments commonly used are statutory regulations and decision-making. Legal protection due to the issuance of statutory regulations is realized through the Supreme Court, by means of a judicial review, in accordance with Article 5 paragraph (2) of Decree of the People's Consultative Assembly (*TAP MPR*) No.: III/MPR/2000 concerning Sources of Law and Order of Legislation, which affirms that "the Supreme Court shall have the authority to examine statutory regulations under the law".

Especially regarding regional-level laws and regulations, cancellation is often interpreted as spontaneous cancellation, namely cancellation on the basis of the initiative of an authorized organ to declare cancellation, without going through a judicial process, as stipulated in the provisions of Article 145 of Law No. 32 of 2004 concerning Regional Government. Building upon these provisions, it appears that the regional-level laws and regulations have a distinguished mechanism for judicial review rights from that of the central-level laws and regulations, that is to say, conducted through government channels in the form of postponement or cancellation, before being conducted through the Supreme Court.

Legal protection due to the issuance of a decision is realized through two possibilities, such as an administrative law court and an administrative legal remedy. There is a

distinction between administrative law courts and administrative efforts, in that, the word 'court' shows that it concerns the judicial process in government through independent agencies.

In conjunction with Law No. 5 of 1986 concerning the State Administrative Court, legal protection due to the issuance of a decision can be realized through two channels, namely through administrative efforts and through the State Administrative Court (*PTUN*). In Article 48 it is emphasized that:

- 1) In the event that a State Administrative Agency or Official is authorized by or based on statutory regulations to administratively settle a particular state administrative dispute, the said state administrative dispute shall be resolved through available administrative measures.
- 2) The court shall only be authorized to examine, decide and settle disputes on state administration as referred to in paragraph (1) if all related administrative efforts have been undertaken.

There are four elements of sanctions in state administrative law, such as: it is an instrument of power, of a public law nature, used by the government, and as a reaction to disobedience. In terms of targets, in state administrative law, it is known that there are two types of sanctions, namely reparatory sanctions and punitive sanctions. Reparatory sanctions refer to sanctions that are given as a reaction to the violation of norms, which are aimed at returning the situation to its original condition as before the violation occurred. Meanwhile, punitive sanctions refer to sanctions that are solely intended to punish someone. In addition, there are also so-called regressive sanctions, which are sanctions that are applied as a reaction to non-compliance. Basically, in relation to regulation, the government's responsibility in making a decision is not in accordance with the provisions of the law, because if it causes serious loss or injury and/or death, the government concerned can be prosecuted under criminal law. The provision is set in Article 111 and Article 112 of Law No. 32 of 2009 concerning Environmental Protection and Management (*PPLH*). Article 111 of the law stipulates:

- (1) Any environmental licensing official, who issues an environmental permit without being equipped with an Environmental Impact Analysis (*AMDAL*) or Environmental Management Efforts - Environmental Monitoring Efforts (*UKL-UPL*), as referred to in Article 37 paragraph (1) shall be sentenced with a maximum imprisonment of 3 (three) years and a maximum fine of IDR. 3,000,000,000.00 (three billion rupiah).
- (2) Any business/activity licensing official, who issues a business and/or activity permit without being equipped with an environmental permit as referred to in Article 40 paragraph (1) shall be sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of IDR. 3,000,000,000.00 (three billion rupiah).

Article 112 stipulates:

Any authorized official, who intentionally does not supervise the compliance of the person in charge of the business and/or activity to the laws and regulations and environmental permits, as referred to in Article 71 and Article 72, which results in pollution and/or environmental damage, and which results in loss of human life, shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of IDR. 500,000,000.00 (five hundred million rupiah).

Regulations in the provision have preventive purposes through supervision and guidance as well as repressive through the application of environmental law sanctions ([Nuryanto, 2011](#)). Criminal acts regulated in Law No. 32 of 2009 is not a complaint offense, but an ordinary offense.

Primum remedium (criminal law as the first legal remedy) is a development to the *ultimum remedium*. The existence of the element or principle of *primum remedium* is

expected to be able to overcome the problems encountered in the application of criminal law. In certain situations, criminal law can be used as the first weapon when other legal instruments, such as civil law and/or administrative law, are deemed unable to overcome the environmental crimes committed by perpetrators; thus, here is where criminal law acts as a *primum remedium*.

V. CONCLUSIONS

Government regulations on environmental management for the benefit of tourism development in Bali refer to the provisions of the Law on Environmental Protection and Management No. 32 of 2009 concerning Environmental Protection and Management (*UUPPLH*), Government Regulation (*PP*) No. 27 of 2012 concerning Environmental Permits, Regulation of the Ministry of Environment No. 17 of 2012 concerning Guidelines for Community Involvement in the Environmental Impact Analysis (*AMDAL*) Process and Environmental Permits and other applicable regulations. In the provisions of the rules that have been established, any perpetrator - who is negligent and/or does not implement the provisions of the applicable laws and regulations - may be subject to sanctions in accordance with applicable regulations, both administrative, civil and criminal sanctions. If an action taken in tourism management causes a loss, it will refer to the theory put forward by Kraenburg and Vegting, which is divided into two parts: first, *fautes personnelles*, a theory which views that losses to third parties are borne by officials whose actions have caused losses; second, *fautes de services*, a theory which deems that losses to third parties are borne by the agency of the official concerned.

Regarding the legal consequences for the government on the decisions they taken in environmental management that are not in accordance with community participation in Bali, the settlement refers to *UUPPLH* No. 32 of 2009, which provides administrative law, civil law and criminal law. The settlement of the dispute can also be carried out outside the court session, as regulated in Article 85, Article 86 and in court related to compensation, environmental restoration and other actions. Legal disputes in Bali may also be resolved based on the Bali Provincial Regulation, which deals with the legal consequences for the government on the decisions they make that are not in accordance with the aspirations of the community within environmental law. The right to sue is regulated in Article 91 and Article 92 of the *UUPPLH* No. 32 of 2009, concerning the Right to Sue for people who are members of environmental organizations and in Article 93 of the *UUPPLH*, which gives the right to everyone in the community to be able to file an administrative lawsuit against a government's made decision.

VI. RECOMMENDATIONS

Public services provided by the government to the community need to be improved. The more modern a society is, the more complex the demands in various aspects of life will be. If the government wants to avoid the society to hold them liable administratively, civilly or criminally, they shall be required to work attentively, thoroughly, and based on the law, as well as policies that are in accordance with the principles of justice based on the General Principles of Good Governance must be continuously intensified.

For every action of business actors, the community and the government that is not in line with the applicable legal rules and is not in accordance with the appropriateness of implementing policies that cause environmental damage, liability should be held both administratively, civilly and criminally. Therefore, the government must act attentively in implementing the applicable legal rules and obey them as well as their principles.

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