

**FOREIGN INVESTMENT REGULATION IN THE FIELD OF TOURISM
ACCOMMODATION SERVICES IN BADUNG REGENCY**

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Abstract

The development of the tourism industry in Badung Regency is interesting to foreign investors to invest in Badung regency, especially in the area of tourism accommodation services. This study aims to develop the science of law related to the paradigm 'Science as a process'. What are the local government authorities of Badung Regency in granting approval and permission of foreign investment in tourism accommodation? How is the regulation of foreign investment in tourism accommodation services in Badung Regency? The type of research used in this study was normative legal research. The results showed (1) the authority of the local government of Badung Regency related to the granting of foreign investment permit in the tourism accommodation can be seen from the provision of Article 19 of Badung Regulation No. 2 of 2012 which generally states that the local government of Badung Regency is entitled to regulate tourism activities in the region; (2) The arrangement of foreign investment in tourism accommodation services in Badung Regency has not been accommodated in a more specific way through the regulation of Badung Regency. The absence of the specification of this rule would also affect the legal security and legal protection for foreign investors for their investment in tourism accommodation in the area.

Keywords: *accommodation, tourism, foreign investor, Badung*

I. INTRODUCTION

Capital investment has a very important role and meaning in the midst of the government's limitation in financing all kinds of development needs. Thus, the government stimulates private sector participation to succeed the national development program. Investment becomes one of the alternatives that are considered to be helpful aspect for the government to solve capital difficulties in launching national development. Foreign investment is needed by the Indonesian nation for the progress of the Indonesian state.

The highly perceived impact of globalization is the rapid flow of information that reaches the public. So it is not surprising that various parties, especially among business people compete to hunt for information because who is able to master information quickly, he is the front. Similarly, the flow of transportation from one country to another is rapid and easily accessible to the public. All of this, of course, happens as a blessed result of technological support that continues to be used and developed by experts working in their fields. With the closer boundaries between one country and another, the opportunity to invest, moreover almost every country today has opened itself to foreign investors, is widely available¹.

To prevent negative impacts as well as to regulate the benefits of investment remains optimal, the government established Law No. 25 of 2007 on Capital Investment (hereinafter referred to as *UUPM* 'Law of Capital Investment') consisting of 40 Articles set on April 26, 2007. With this law, it is expected that investors comprehend their responsibility in making

1. Yanto Bashri, 2003, *Mau Kemana Pembangunan Ekonomi Indonesia, Prisma Pemikiran Prof. Dr. Dorodjatun Kuntjoro-Jakti*, Prenada Media, Jakarta, p. 12-13

investment.

Tourism is an activity that covers various forms of providing services (services supplying). This provision is made by the service supplier to the service user (consumers and visitors) through the service transaction process. This provision includes:

- 1) accommodation services;
- 2) tourist transportation;
- 3) catering services;
- 4) tourist attractions; and
- 5) other forms of services.

The legal basis for tourism in Indonesia is regulated in Law Number 10 of 2009 on Tourism (hereinafter referred to as Tourism Law). According to the provisions set forth in Article 1 number 3 of Tourism Law, tourism is a wide range of tourism activities and supported by various facilities and services provided by the community, businessmen, government and local government. Regarding the regional government the law is regulated in Law No. 23 Taofhun 2014 on Local Government.

“Regions have the authority to manage their own households. This is based on the principle of decentralization which is a way or system to realize the principle of democracy that provides an opportunity to the people who participate in the government of the State².”

Investment activities of tourism in Indonesia are governed in some general rules concerning investment in tourism in Tourism Law. Investment activity in Tourism Law is called "tourism business". Article 1 Number 7 of the Tourism Law states "Business tourism is a business that provides goods and/or services for the fulfillment of tourist needs and tourism implementation”.

The existence of foreign investment is expected not only to advance the industry towards modernization but also to increase foreign exchange, local government revenue, and economic growth; developmental increase in the field of employment, knowledge and technology³. A foreign investment activity is carried out by a foreign investor using fully foreign capital or foreign capital in association with domestic investors⁴.

Tourism business are favored by foreign investors in investing in Bali is a hospitality business. Hospitality is an activity of providing services in the form of accommodation (lodging). The hotel is a company that provides services in the form of accommodation (lodging) and serves dishes and other facilities within the hotel to the public, which meet the requirements of comfort and commercial purpose. When viewing Bali Provincial Regulation No. 2 of 2012 on Balinese Cultural Tourism, Article 8 paragraph (1) letter f only explains one tourism business as tourism accommodation, the rest of this Regulation does not have provisions that specifically regulate foreign investment in the field tourism accommodation services. Regional Regulation of Badung Regency Number 2 of 2012 concerning Tourism in Article 13 paragraph (1) letter f states that one of tourism business covers the provision of accommodation, while Regulation of Badung Regent Number 55 of 2016 on Technical License and Requirement of Administration of Tourism Business in Badung Regency also not specifically regulating foreign investment in tourist accommodation.

Based on the above explanation, it can be understood that there has been obscurity in the norm, both horizontally and vertically because of Tourism Law, Presidential Decree Number 39 of 2014, Bali Province Regional Regulation No. 2 of 2012 on Bali Cultural Tourism, Badung District Regulation No. 2 of 2012 on Tourism and the Regent of Badung

2) Tjahja Supriatna, 1993, Sistem Administrasi Pemerintahan di Daerah, Bumi Aksara, Jakarta, p. 27

3) Rosyidah Rakhmawati, 2005, Hukum Penanaman Modal Di Indonesia, Banyumedia Publishing, Malang, p. 8

4) H. Salim H.S., dan Budi Sutrisno, 2012, Hukum Investasi di Indonesia, RajaGrafindo Persada, Jakarta, p. 148-149

Regulation No. 55 of 2016 on Technical Licenses and Business Administration Requirements for Tourism in Badung Regency that more specifically regulate the technical licensing of tourism businesses, including tourism accommodation services is not clear about the arrangement of foreign investment in the area of tourism accommodation in the region especially in the regency of Badung as raised in this study. The absence of regulation as a legal umbrella that can provide legal security for foreign investors who want to invest their capital in Bali, especially in Badung regency resulting in the filing of permits and foreign investment process can take place slowly because the process is long and cost is not small. The above conditions are very interesting to be studied further in this study with the title "Foreign Investment Regulation in the Field of Tourism Accommodation Services in Badung Regency".

The formulation of problems that are discuss in this research are: (1) what is the authority of the local government of Badung Regency in granting approval and licensing of foreign investment in tourism accommodation and (2) how is foreign investment in tourism accommodation services in Badung Regency regulated.

In general, this study aims to develop the science of law related to the paradigm 'Science as a process'. With this paradigm, the science of law will not stagnate in the excavation of the truth, especially in the Investment, especially related to the material of Foreign Investment Management of Accommodation Services in Badung Regency, while the special purposes are: (1) to understand more about the authority of local government of Badung Regency in granting approval and permission of foreign investment in tourism accommodation area and (2) to describe and conduct an in-depth analysis of foreign investment arrangements in tourism accommodation services in Badung regency.

II. METHOD

Type of research used was normative legal research that is by reviewing materials from various laws and other materials from various literatures related to the problem⁵.

In this study, the analysis was conducted on a situation that illustrates the occurrence of obscurity on the norm horizontally and vertically due to Tourism Law, Presidential Decree Number 39 of 2014, Bali Province Regional Regulation No. 2 of 2012 on Cultural Tourism of Bali, Regional Regulation of Badung Regency No. 2 of 2012 on Tourism and the Regent of Badung Regulation No. 55 of 2016 on Technical Licensing and Business Administration Requirements for Tourism in Badung Regency does not state the explicit and clear regulation related to foreign investment in the area of tourism accommodation in the region, especially in the regency of Badung.

To obtain scientific and scientifically sustainable results, the problems in this study will be discussed using a statutory approach, conducted by reviewing all laws and regulations relating to the legal issues being addressed⁶ and the opinions of jurists; analytical Approach, this approach is done by seeking meaning in the legal terms contained in the legislation to gain a new meaning or meaning from legal terms and to test its practical application by analyzing the judgments of the law; and conceptual approach, namely the concepts in law science can be used as a starting point or approach for the analysis of legal research, because there will be many concepts for a legal fact⁷.

The sources of legal materials used in this study are primary legal materials derived from legislation, secondary legal materials consisting of literature, books, papers, documents relating to the issues discussed, and tertiary legal materials which consists of

5. Soerjono Soekanto dan Sri Mamudji, 2007, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, p. 13.

6. Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Cetakan I, Kencana Prenada Media Group, Jakarta, p. 95.

7. Mukti Fajar, dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, p. 185-190

dictionaries and encyclopedias.

Technique of data collection used was document study technique through bibliography which is used by analyzing material of law which comes from primary law material and secondary law material in the form of books, writings and opinion of jurist, and tertiary law material in the form of dictionary and encyclopaedia.

Processing of legal materials is an activity done by tidying and analyzing the legal materials that have been collected, by using descriptive analysis method. This method is a representation of a series of words or phrases separated by category to come to a conclusion. In descriptive analysis method, after the legal material is analyzed, it is systematically reconstituted in order to facilitate the understanding and interpretation of legal materials, thus obtaining conclusions about the legal issues in this study.

III. DISCUSSION

A. Local Government Authorities of Badung Regency in Providing Approval and Licensing of Foreign Investment in Tourism Services Area

The contribution of the aviation sector contributes to national economic wheel⁸. The tourism sector has the potential of economically saving with high competitiveness, such as raw materials will not be exhausted, while the raw materials of other businesses⁹. The tourism sector has a high advantage which is the main attraction for investors to invest in Bali Province, especially in Badung regency.

The development of investment is an indicator of economic growth of a region and nationally. Proper investment will support the improvement of economic development, create jobs, and encourage people's economic development. The challenge of implementing investment in regions is driven through the policy of regional autonomy. The policy of regional autonomy is regulated in Law Number 23 of 2014 on Regional Government and the central government authorizes local governments to manage their own government affairs. One implication is that each region is required to be able to manage its own finances independently.

In the regional economy, investment can be a driver of production development so that the resulting output is better. This statement implies that investment has an important role for economic development even though investment is not the only component in economic development. Capital investment has two important roles in determining economic growth, its effects on short-term aggregate demand, in this case will be regarded as a driver of increased output and provide employment and its effects on capital formation. The existence of investment will add various tools, machineries, buildings and so on. This will increase the potential for output and promote sustainable economic growth over the long term.

The local government of Badung Regency has the authority to regulate the tourism sector in the region. This is in line with the authority theory which states that every act of the government is hinted that it should rest on a legitimate authority because without any legitimate authority, an official or a State Administration Agency cannot perform a government act. Therefore, legitimate authority is an attribute for every official or for everybody. The authority of the local government of Badung Regency is the delegation of authority from the central government to the local government, one of which is the authority of the local government of Badung Regency to self-regulate related tourism in the region. Delegation is the authority granted by a governmental organ to another governmental organ and all responsibilities which follow such authority shall be subject to the laws and

8. IGN parikesit Widiatedja, 2011, Kebijakan Liberalisasi Pariwisata, kontruksi konsep ragam masalah dan alternative solusi, Udayana University Press, Bali, (selanjutnya disebut IGN Parikesit Widiatedja I) p. 38

9. IGN Parikesit Widiatedja, 2010, Liberalisasi Jasa Dan Masa Depan Pariwisata Kita, Udayana University Press, Bali, (selanjutnya disebut IGN Parikesit Widiatedja II) p. 69

regulations.

The authority of the local government of Badung Regency in granting permits related to foreign investment in tourism sector has not been regulated specifically, either in local regulations or in regulation of regent of Badung Regency. The provisions on licensing in respect of investment are only regulated in a general form. According to the provisions set forth in Article 13 paragraph (1) of the Regulation of Badung Regency Number 2 of 2012 on Tourism (hereinafter referred to as Badung Regulation No. 2 of 2012), tourism business covers:

- 1) tourist attraction;
- 2) tourism areas;
- 3) travel transportation services;
- 4) travel services;
- 5) food and beverage services;
- 6) accommodation provision;
- 7) organizing entertainment and recreation activities;
- 8) organizing meetings, incentive trips, conferences and exhibitions;
- 9) tourism information services;
- 10) tourism consultant services;
- 11) guides services;
- 12) tourist tirta; and
- 13) spa

Based on the provisions of Article 13 paragraph (1) letter f as mentioned above, it can be seen that the provision of accommodation is one of the tourism business activities are regulated by the local government of Badung Regency. Regarding the authority of the regional government related to tourism affairs can be seen from the provisions of Article 19 of Badung Regulation No. 2 of 2012 that governs about:

- a) The Regional Government shall have the right to regulate and manage the affairs of tourism.
- b) The Regional Government is entitled to obtain data and information on tourism business activities are conducted by business entities and individuals

Based on the above provisions, it can be seen that the district government of Badung has the right to organize and manage tourism affairs, including arranging for the provision of tourism accommodation. In carrying out its authority to regulate tourism in Badung Regency, local government of Badung Regency, pursuant to the provision of Article 24 of Badung Regulation No. 2 of 2012, obliged to:

- a) provide services and facilities or facilities to the tourism entrepreneurs optimally;
- b) provide tourism information, legal protection, security, and safety to travelers;
- c) to create a climate conducive to the development of tourism enterprises;
- d) maintain, develop and preserve the assets of the Region which is a tourist attraction, and potentially untapped potential assets;
- e) supervise and control tourism activities in order to prevent and overcome various negative impacts for the wider community;
- f) reward citizens and businesses who excel in accordance with their fields;
- g) provide protection and facilitate the development of cultural artworks that are a tourist

attraction;

- h) organize the promotion of tourism development investment; and
- i) organize dissemination of information in order to increase tourism awareness

One of the obligations of the local government of Badung Regency as mentioned in the provision of Article 24 paragraph (1) letter d above is to provide services and facilities or facilities to the tourism entrepreneurs optimally.

Ease of services and facilities in question in this case of course associated with legal certainty in business licensing is conducted by the investors of tourism. Unfortunately, the local government of Badung Regency has not made a regulation specifically regulating foreign investment in tourism accommodation area in Badung Regency. With the increasing number of foreign investors wishing to invest their capital through the provision of tourism accommodation services in Badung Regency, these investors are eager for a regulation that provides legal certainty as well as legal protection for the businesses they develop in Badung Regency.

According to the theory of legal security as proposed by Gustav Radbruch, with the existence of a legal certainty, the goal of law that is justice will be achieved. Legal security contains two meanings, namely rules that are common to make the individual know what actions that may or may not be done and legal certainty related to legal security for the individual from the abuse of the government because with the existence of general law rules that the individual can know what can be charged or carried out by the State against individuals. This is what causes every investor, especially foreign investors are very concerned about the legal security for the investment process that they do. The legal security of *the* government's jurisdiction at the time of the investor is the legal certainty that he obtained from the time of making his business licensing process in the field of tourism accommodation. The need for a regulation that specifically concerns the existence of foreign investors in Badung Regency is certainly expected by the foreign investors. Regulations that guarantee their specific existence can certainly provide legal security as well as security guarantee for their investment in Badung Regency.

B. Foreign Investment Regulation in the Field of Tourism Accommodation Services in Badung Regency

Competition happens among investors to establish hotel and condotel buildings in several locations of tourism in Badung Regency from year to year continue to increase significantly. The establishment of the hotel building does not necessarily just stand in the area of tourism, but licensing procedures for a hotel and condotel can be built is needed. In the Spatial Plans of Badung Regency regarding the General Provisions of Licensing is stipulated in Article 94 stating that General Provisions of licensing is an administrative and technical process that must be fulfilled before Spatial Use activities are carried out to ensure the suitability of Spatial Use with Spatial Plan, including:

- 1) principle permission;
- 2) location permission;
- 3) building permission; and
- 4) Other permissions.

Any person who undertakes any form of activity utilizing space, infrastructure development and who need land in the framework of capital investment must have Space Use Permit referring to City Spatial Plan. Related to procedural technical provisions in the application of Space Use Permit shall be executed by the authorized agency by considering the recommendation of the Coordinating Agency for Regional Spatial Planning of the Regency. Any Regional Government official authorized to issue Space Use Permit is

prohibited from issuing permits that are inconsistent with the City Spatial Plan. Permission as a provision is essentially a unilateral legal act under the jurisdiction of a public that permits or permits by law for a person/legal entity to perform an activity¹⁰.

The arrangement of foreign investment in tourism accommodation services in Badung Regency has not been regulated specifically in the Regional Regulation of Badung Regency. Provisions concerning the employers of tourism accommodation services are still regulated generally in accordance with the provisions stipulated in Article 14 of Badung Regulation No. 2 of 2012 can be known that:

- 1) The tourism entrepreneur conducting the Tourism Business shall have a Business Register of Tourism issued by the Regent.
- 2) In registering as referred to in paragraph (1) must be equipped with technical permit and administrative requirements.
- 3) Entrepreneurs shall ensure that technical licenses and administrative requirements as referred to in paragraph (2) are valid, true and factual.
- 4) Further provisions on the procedures for registration of tourism businesses as referred to in paragraph (2) shall be regulated by a Regent Regulation.
- 5) Further provisions concerning technical licensing and administrative requirements as referred to in paragraph (2) shall be regulated by a Regent Regulation.

The provisions of the Regent's Regulations as meant in this Regional Regulation can be seen in the Regulation of Badung Regent No. 55 of 2012 on Technical Licensing and Employment of Tourism. According to the provisions stipulated in Article 1 point 12, the regulation of Badung Regent No. 55 of 2012, the business of providing food is the business of providing lodging services for tourists who can be equipped with other tourism services. More on the provisions of Article 2 of Regent's Regulation No. 55 of 2012 states that the field of tourism businesses that must be owned Tourism Business Signs are as follows:

- 1) Business of tourist attraction
- 2) Business tourism area
- 3) Business of tourism transportation services
- 4) Business travel services
- 5) Food and beverage services business
- 6) Accommodation supplying business
- 7) Business of entertainment and recreation activities
- 8) Business services meeting, incentive trips, conferences and exhibitions
- 9) Tourism information services business
- 10) Business services consultant tourism
- 11) Guiding services business
- 12) *Tirta* tourism business
- 13) Spa business

The tourism business sector of the accommodation provider as referred to in Article 2 letter f has the type, including:

10. I Made Arya Utama, 2007, Lingkungan, Sistem Hukum Perizinan Berwawasan Lingkungan Untuk Pembangunan Berkelanjutan, Pustaka Sutra, Bandung, p. 45

- 1) Hotel
- 2) Villa
- 3) Cottage
- 4) Campground
- 5) Stopover caravan, and
- 6) Other accommodation.

The type of business of the hotel referred to in letter (a) above includes sub-business type:

- 1) Star hotel; and
- 2) Non star hotel

The other type of accommodation business referred to above (f) includes the business subcategory:

- 1) Condotel
- 2) House for rent

Regarding the technical permit and administrative requirements that must be met by tourism entrepreneurs in Badung regency as regulated in Article 10 to Article 12 of Regulation of Badung Regent No. 55 of 2012 is as follows:

Article 10

- 1) The application for registration of a tourism business shall be submitted in writing by the Entrepreneur by filling in the blank of the petition filed with the Regent.
- 2) Submission of application as referred to in paragraph (1) shall be documented as follows: a. copy of technical license; and b. administrative requirements.
- 3) Submission of documents as referred to in paragraph (2) shall be submitted with the original documents attached.
- 4) Entrepreneurs shall ensure by written statement that the data/documents submitted as referred to in paragraph (1), paragraph (2) and paragraph (3) are valid, true and factual.

Article 11

- 1) The application for registration of tourism business shall be accompanied/attached a copy of the technical license as referred to in Article 10 paragraph (2) letter a, as follows:
 - a) A copy of principle approval/recommendation of principle;
 - b) copy of environmental document recommendation;
 - c) copy of building permit; and
 - d) a copy of a business place permit and a lawful of interference law;
- 2) The type of condotel (condominium hotel) business other than the technical license as meant in paragraph (1) shall also attach a photocopy of Building Use Permit.

Article 12

Application for registration of tourism business must be accompanied/attached a photocopy of administrative requirements as referred to in Article 10 paragraph (2) letter b, as follows:

- 1) the identity of the applicant in the form of identity card or certificate of domicile;
- 2) deed of establishment of business entity together with amendment if any, for a legal entity; and
- 3) proof of ownership/control over land rights.

Regent of Badung then delegate authority on licensing service and non-licensing to Head of Badung Licensing Service Office of Badung Regency as regulated in Regulation of Badung Regent Number 32 of 2013 on Delegation of Licensing and Non-Licensing Service Authority to Head of Integrated Licensing Service Office of Badung Regency. The delegation of authority from the Regent to the Head of the Agency is also related to the provision of tourism accommodation in Badung Regency. The delegation of the licensing and non-licensing service authority covers:

- 1) stipulating a licensing mechanism from the application to the submission of a permit/non-license to the applicant in accordance with the applicable provisions;
- 2) stipulating the completeness of requirements relating to the licensing and non-licensing administration activities;
- 3) signing licensing and non-licensing on behalf of the Regent;
- 4) providing smooth service of licensing and non licensing in the framework of service to the community; and
- 5) collecting levies related to licensing and non-licensing services granted in accordance with the Laws and Regulations.

Based on this regent's regulation, it can be seen that the regent has delegated its authority related to licensing, including licensing concerning the provision of tourism accommodation in Badung Regency to the Head of the Integrated Licensing Service Agency of Badung Regency.

The various regulations as mentioned above from the Capital Investment Law, Tourism Law, Bali Provincial Regulation, Badung Regency Regulation related to Tourism and also Regulation of Badung Regent related to tourism sector, there is no regulation specifying specifically about Foreign Capital Investor investment in accommodation services tourism in Badung Regency. The absence of specification of this rule of course also affects the legal certainty of the investment that it does.

Procedures for obtaining permits that seem a lot of requirements, long-time maintenance, as well as illegal levies actually made by unscrupulous government make foreign investors become less secure assurance and security also includes the ease of handling business licenses related to tourism accommodation in Badung Regency. This is of course need to be the attention of the local government of Badung Regency to provide legal certainty related to the existence of the foreign businessmen who want to invest in Badung Regency.

IV. Conclusion and Suggestion

A. Conclusion

- 1) The authority of the local government of Badung Regency in granting approval and licensing of foreign investment in tourism accommodation is a delegation of authority from the central government to the regional government, while the authority of the local

government of Badung Regency related to the permission of foreign investment in tourism accommodation can be seen from the provision of Article 19 of the Badung Regulation No. 2 of 2012 which generally states that the local government of Badung Regency is entitled to regulate tourism activities in the region. One Stop Door Integrated Implementation is one of the local government programs implemented by Badung Regency related to the granting of foreign investment permit in Badung Regency.

- 2) Various regulations from the Capital Investment Law, Tourism Law, Bali Provincial Regulation, and Badung Regency Regulation related to Tourism and also Regulation of Badung Regent related with tourism sector, there is no specific regulation about Foreign Capital Investor who does investment in field accommodation services tourism in Badung Regency. The absence of specification of this rule of course also affects the legal certainty of the investment that it does. The absence of the specification of this rule would also affect the legal certainty and legal protection for foreign investors for their investment in tourism accommodation in Badung Regency.

B. Suggestions

- 1) For the government, especially the local government of Badung Regency, it is expected to immediately establish local regulation related to foreign investment especially related to tourism accommodation in Badung Regency. This is certainly necessary because of the increasing number of foreign investors who want to invest in Badung Regency.
- 2) For investors, both foreign investors and domestic investors should pay more attention to the clauses in the agreed contract of cooperation, because the provisions stipulated in this investment contract agreement clause apply as preventive law protection for the parties.

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