

Lawmaking Regarding Regulation of Eco-Tourism in Regard To Indigenous People

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Abstract

The development of eco-tourism basically contributes to the growth of the economy of indigenous people. Tourism sector is directly perceived beneficial by the people. Rising numbers of local, regional, and national tourists, even tourists from abroad have given a light to improve the state economy. This research employs normative method aimed to study laws, books, and other references related with tourism and the economy of indigenous people. The research result reveals that the growing tourism industries are not always relevant to the improvement of economic condition of indigenous people since most workers and investors in tourism are outsiders who are more experienced in this field and have enough money to invest in tourism sector. It seems that indigenous people are not capable of competing with the outsiders because of their low education level, lack of experience and capital. This situation only allows them watch the tourism development taking place, and it even urges them further to leave their village and leaves them marginalised. Central and local governments need to take action by providing training program to help the people cope with their knowledge especially about tourism development. The governments are also responsible for the betterment of the welfare of the indigenous people through eco-tourism development.

Keywords: development, indigenous people, eco-tourism

1. Introduction

The development taking place in Indonesia often refers to the preamble of the 1945 Constitution of the Republic of Indonesia specifically to the fourth paragraph concerning the improvement of public welfare for the people of Indonesia through the development that takes place in all fields in the state.

Law-making is highly important and it is regarded as another form of fight after the one against colonials, and law-making is aimed to show the existence of the state of law that reflects justice for the whole people of Indonesia based on their habits.

The development of tourism plays an essential role in national development especially in economy, socio-cultural aspect, and environment. This development is expected to improve the welfare of the societies where the increasing number of visits of local, regional, and national tourists even tourists from abroad is quite determining. This growth will certainly give positive impacts to the people living in the area of tourist destinations. Moreover, in terms of socio-cultural aspect, this development should be able to give an opportunity to the people where the local living in the area of tourist attractions can be involved in tourism jobs. Cultural and art performances can also be held for the visitors. This is another way to maintain arts and cultures passed by the ancestors to their following generations.

Indonesia is quite potential with respect to its natural beauty especially in eco-tourism along with its indigenous people. Local cultures need to be more respected as a uniqueness of tourist attractions.

Indigenous people are described as those who have lived in an area for so long with their characteristics and behaviours that reflect the values of the individuals. They surely live in organisational structure which is agreed in a discussion. They support each other in the organisation, highly respect kinship because they are descended from the same generation, and they are still involved in mutual works.

The people have always desired a better life and have always struggled to escape from poverty by making use the available natural resources. The existence of flora and fauna are regarded as God's gift the people could have. Ancient relics related to arts, customs, and culture are the resources people could use to support the welfare for the society.

State revenue earned from tourism sector ranks second after the revenue from oil and gas, and this is seen as big achievement in Indonesian tourism. The government is in progress developing the tourism sector.

Oka A. Yoeti¹ informs that foreign exchange income of tourism is in the second position and the income keeps increasing throughout the years. It indicates that the quality of welfare relies on the tourism development, as it serves as the main state revenue and regional revenue, even as the revenue of indigenous people. It suggests that tourism sector requires better management to bring justice and prosperity to the societies.

The available natural resources, including tourist destinations, should be able to help the people with their economic condition in which they can be involved in preserving the environment of the tourist destinations. The central and regional governments should empower their people in providing services to tourists visiting Indonesia.

The growing numbers of visitors coming to the tourist destinations in Indonesia surely contributes to the increase of regional revenue especially the people's income where infrastructure requires development to give proper services to tourists. However, in reality, the tourism development leaves almost nothing to indigenous people. The people are forcibly required to preserve tourist destinations where they are also required to maintain religious values and preserve environment. Indigenous people are not capable of competing with the outsiders coming from other parts of Indonesia. Even worse, indigenous people are potentially marginalised from where they originally belong to. This situation can get even worse especially when regional governments fail to provide legal instruments to regulate and manage existing tourist attractions appropriately.

All the issues mentioned earlier lay the groundwork for the following research problem: does the growth of eco-tourism development correlatively improve the welfare of the society?

2. Research Methods

This research employs normative legal research aimed to identify legal facts and sort out the irrelevant elements to determine a legal issue, collect legal materials and non-legal ones regarded as relevant, and study a legal issue according to the materials obtained.²

This research studies Act Number 10 of 2009 concerning Tourism and Act Number 12 of 2011 concerning Procedures of Regulation and Law Making. Conceptual approach was also used in this research which was based on doctrines and perspectives that develop in legal studies, which leads to the understanding of law and legal concept.

The understanding of perspectives and doctrines as mentioned above serve as the fundamentals to build a legal argument used to settle an issue faced. Moreover, philosophical, environmental, and conservational approaches are used to study the process of the making of Act Number 10 of 2009 concerning Tourism. The environmental approach for tourism development should seriously consider the natural balance and should leave the nature intact; any steps taken must not impinge on any existing habitats in the environment and they must also be well maintained. The nature and its contents are gift from the Almighty God and it deserves to be maintained with care through sustainable land and forest conservation.

The legal materials involve laws and regulations and official notes including decisions. Secondary materials obtained consist of published books on legal matters, journals of law, and a collection of comments to the law-related phenomena, and dissertations. Tertiary legal materials are aimed to give clues or elaborate information based on law dictionary, Indonesian dictionary, law and politics dictionary, encyclopaedia, glossary, and so forth. All the legal materials are obtained from ministry office, university library, faculty, and the Internet.

3. Results and Discussion

3.1. Conceptual Framework

A concept is the primary element to form scientific knowledge and philosophy in the mind of the human being, meaning that the concept is general and it explains and arrange an event, object, situation, idea, or form a mind to allow communication to take place among others.

a. Legal Concept of Tourism

Kusdianto³ believes that tourism can be categorised into six: 1) natural resources, 2) cultural resources, and local community, 3) recreational facilities, 4) events such as art performances and night markets, 5) specific activities such as shopping-based tourism and 6) psychological attractions such as adventure, romantic tour, and remoteness.

b. Legal Concept of Indigenous People

¹ Oka A. Yoeti, *Perencanaan Strategis Pemasaran Daerah Tujuan Wisata*, Jakarta: PT. Paradnya Paramita, 2001, p 18.

² "Peter Mahmud Marzuki. *Penelitian Hukum* (edisi revisi) Jakarta: PT.Pernada Media Group, 2005, p 213"

³ Kusdianto, Hardinoto, *Perencanaan Pengembangan Industri Pariwisata*, Jakarta: UI-Press, 1996, p 49.

This concept is made by the people within a particular area where it rules the people. The regulation is accepted as standard regulation, and all the people in the area must abide by the regulation because it is agreed upon and could impose a social sanction when not obeyed.

c. Concept of Eco-Tourism

Eco-tourism is simply defined as the development that takes place in tourist destinations in order to improve the economic quality of the people. The improved condition of the economy of the indigenous people surely boosts the economy of tourist destinations or even that of the state. In short, this directly affects the improvement of the state economy.

3.2. Theoretical Framework

This theory serves as the basis of argumentation on a particular matter. The theory used is relevant to the issues discussed. This framework involves the following theories:

a. Legal Protection Theory

This theory is principally aimed to give services to society. Roscou Pound states that law is a tool of social engineering. Human interest must be protected and fulfilled, especially for those who often feel bad luck in their life. This theory plays an important role in analysing the issue regarding protection given to the people not often benefitting from economic and juridical aspect. In other words, this theory tries to align indigenous people with people in general.

Roscou Pound categorises legal protection into three:

1. Public interest can also be defined as the state interest as a legal entity that regulates all state administration to maintain its characteristics and principles, and to maintain social interest. Therefore, state is sometimes regarded as a night guard (*naachwakerstaat*), where the state is responsible to protect its people from any disturbance.
2. Firstly, social interest deals with public safety such as safety from fear, health, welfare, and peace. Secondly, this also deals with social organisations such as in politics (freedom to speak without fear) and economics (developing businesses to bring life quality to the next level) and social aspect (preserving cultural values in society). Thirdly, it deals with moral issues such as gambling, transaction activities that are against moral values in society. Fourthly, this interest is related with right violation regarding the use of an item that could harm others. Fifthly, it deals with social development where people have their freedom to own, to trade, to be protected from monopoly, and to be given access to politics, to speak honest comments, and to gain education and training to improve people's skills. Sixthly, individual interest is a form of self-statement, opportunity, and life condition. It is expected that every individual is capable of living his or her life according the applying law in society.
3. Private interest consists of individual interest including good reputation, freedom to express an opinion and freedom to hold household activities, and substantial interest such as freedom to do a business and freedom to interact with others aimed to get connected with others in harmony.⁴

The classification of law given is aimed to give picture that law as a social instrument can serve as to help with interpretation to turn unclear information into more understandable one and to give clues to legislators (lawmakers) about the principles and related values that may not be broken.

Law is far different from the protection of other forms of human interest because the law consists of commands, prohibitions, and sanctions. Therefore, people have their rights and obligations to obey the existing law due to the sanctions that may be imposed once they fail to abide by it.

Philipus M. Hadjon believes that legal protection can be preventive, meaning that it is aimed to avoid any disputes and it brings government to discretion so that no one is harmed by the result of a decision. Legal protection can also be repressive in the way that it exists to wisely settle a dispute, including the dispute settled at court.⁵

The author agrees that a legal protection is a law that regulates or protects its people from fear and worries. Moreover, it also protects people's activities since it is clearly stated in the law either in Act or in regional regulation regulating that protection needs to be given. It is essential that people of the state feel protected.

b. Welfare State Theory

Welfare state is an absolute right of every citizen, meaning that the state is responsible for the welfare of its people. This is in line with what is stipulated in the Constitution Article 33 Paragraph (3) concerning Economy.

⁴ Lili Rasyidi, *Filsafat Hukum*, (Bandung: Remaja Karya, 1988), p.228-231.

⁵ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*: Surabaya: PT. Bina Ilmu, 1978, p 29.

Welfare state is a development model where a state has an active role in protecting its people from poverty, backwardness, stupidity, and famine. Universally, social protection and service is under the state responsibility.

Husodo⁶ defines welfare state as a state where the government of the state is regarded responsible for guaranteeing the standard of welfare for the people of the state. Similar notion also comes from Esping-Anderson⁷ believing that welfare state can be broken down into four main pillars: social citizenship, full democracy, modern industrial relation systems, and right to education and the expansion of modern mass education systems. All those four pillars exist in a welfare state since they take care of social rights of the citizens.⁸

Adam Smith opines that the tasks of the state⁹ are: to be responsible for making its citizens feel more secured from all threats of all forms, to create economic welfare for all citizens.

Looking at the welfare worldwide will help Indonesia to improve the welfare of the citizens of this country. There are several countries that can be seen as models that Indonesia can refer to such as Sweden, Denmark, Norway, and Finland. The governments of those countries provide social security evenly for all the citizens. They even allocate a special budget as much as 60% of the total state expenditure only for the welfare of their people. Similarly, in institutional models as applied in Germany and Austria, the security is given in institutional form and the contribution obtained from the security is given through the governments, business aspect, and workers or labours. In residual model, the governments distribute the social security to poor, disabled, and unemployed people. The governments have shared their role through non-governmental organisations in which subsidy is delivered for social services and rehabilitation, while in minimalist model as applied in Greece, France, Italy, Chilli, Brazil and in Asian countries like South Korea, Philippines, and Sri Lanka, ten per cent (10%) of state revenue is spent on social security for their citizens.

The author believes that it is not easy for Indonesia to be in one of the models mentioned since social security is still broken down into several criteria and not all people have rights to receive the security. In terms of providing welfare for society, the state serves as a provider, regulator, entrepreneur, and umpire.

Welfare state principally integrates the network and resource systems of social service for the citizens, allowing easier way of accessing the needs of the people. Therefore, it is the responsibility of the government to facilitate the needs of the people as part of improving the welfare. Welfare is an ideal model to give role to the state to help its citizens.

1) The Importance of Tourism Development

Eco-tourism serving as sustainable tourism is responsible for the natural and cultural conservation, participation in planning, execution, supervision and evaluation. Therefore, eco-tourism is also defined as a tour emphasised on the economy of the society.¹⁰

The main principle of eco-tourism is related with the policy regarding levy imposed on part of the percentage of revenue earned from tourist visits. The money earned from levy is supposed to be spent on environmental conservation (including protection, development, and utilisation) for the sake of social welfare, the economy, and the culture of the indigenous people living in the tourism area. There are several references regarding the management of tourism:

a) Management of Tourist Attractions in Kitamani

The local government of Bangli has issued the Regional Regulation of the Regency of Bali Number 7 of 2010 concerning levy imposed on recreational and sports facilities through the Decision issued by the Regent of Bangli Number 556/134/2010 concerning appointment of an official in charge of collecting levy imposed on recreational and sports facilities in the Regency of Bangli. The Decision also contains the distribution of the percentage between the Regional Government of Bangli and the Pakraman village people, accounting for 60% of levy given to the local government of Bangli, while the 40% is given to Pakraman village. This percentage division highlights the existence of Pakraman village as inseparable part of the Regency of Bangli. With this division, it is expected that the percentage of the profit handed to Pakraman village will be able to encourage the village to be more responsible for the preservation of the tourist destination.

⁶ Suharto Edi, Analisis Kebijakan Publik: Panduan Praktis Mengkaji Masalah dan Kebijakan Sosial. Bandung: Alfabeta, 2005, p 50.

⁷ W.Friedman, Teori dan Filsafat Hukum, idealisme, filosofis dan problema keadilan (susunan II), Jakarta: Manajemen Raja Grafindo Persada, 1994, p. 57.

⁸ Triwibowo, D & Bahagijo, S. Mimpi Negara Kesejahteraan, Jakarta: Pustaka LP3ES, 2006. p. 9.

⁹ Luthfi J. Kurniawan, Oman Sukmana, Abdussalam, Masduki, Negara Kesejahteraan dan Pelayanan Sosial, Malang, Intra Publishing, 2015: p. 12

¹⁰ Iwan Nugroho, Ekowisata dan Pembangunan berkelanjutan, Yogyakarta: Pustaka Pelajar, 2015. p 15-

b) Labuan Bajo Destination

It holds true that the local government of the Regency of West Manggarai feels responsible for the welfare of its people as the positive impact of tourism development. To bring the welfare to the people, it takes empowerment of people, education, training and workshop for more skilful human resources coming from the local people. The increase of the regional budget in the Regency of West Manggarai is the task of the local government for its people, which is in line with the stipulation in Regional Regulation of the Regency of West Manggarai Number 4 Article 4 of 2014 concerning Implementation and Management of Tourism:

“People empowerment involves workshop, education, training, facilities, coordination, and development of facilities in tourism, partnership establishment between managers of tourist attractions and other related parties in accordance with laws and regulations that apply.”¹¹

The development of Labuan Bajo as a tourist destination has given a hope to the local people since the development is aimed to: a) Improve the local economy of the locals, b) improve the welfare of the locals living in the area of tourism, c) eradicate poverty; d) reduce unemployment; e) conserve nature, environment, and natural resources; f) improving the quality of the culture; g) improve the image of the local area; h) foster a sense of love to homeland, and i) strengthen self identity and the unity of the citizens of the state. With its status as tourist destination given in 2016¹², Labuan Bajo needs to expand the development in its tourism sector through promotion and other related-activities at both national and international levels. The activities are expected to help the tourist industry reach its target as set by the government. In 2019, tourism industry should be able to bring at least 500,000 tourists with earned state income predicted to reach 20 trillions. The target set is five times as high as the figure in 2016 which was about 107,711 visits in 2016. This target comes along with national revenue in 2019 where 20 million tourists make a visit, which accounts for about US\$ 20 billion or equal to 260 trillion rupiahs. In 2015, there were 10 million visits accounting for about US\$ 10 billions, twice as high as that in 2015.¹³

It seems that the locals living in the area of Labuan Bajo fail to have their rights accommodated and some feel that they may be marginalised. However, it is true that they do not have enough capacity to compete with business actors from other parts of Indonesia or different countries such as Italy, the US, and Australia. The lands are sold to outsiders but under the name of Indonesian. The beach called Pede, which was used to be an icon of the local attraction, is now left in dispute over privatisation with capital holders. This issue leads to a rejection over the development of hotel in the area of the beach by the local government of West Manggarai and its people, while this project was formerly recommended by the Provincial Government of East Nusa Tenggara.

Sustainable tourism development that takes place in Labuan Bajo is seen beneficial to the capital owners, while the locals do not benefit much from the development due to lack of education and skills. Moreover, they do not seem ready to face the development of tourism while in contrast this sector has experienced a vast growth throughout the years.

Labuan Bajo has achieved higher position. It was previously categorised into one of the ten tourist destinations but now it is one of world class destinations along with other destinations such as Lake Toba, Borobudur Temple, and Mandalika as big four destinations. This surely gives a huge impact to the people especially regarding the access of services although the locals do not benefit much from this development. What becomes a concern is the contrast between this vast development of tourism sector and lack of benefits coming to the indigenous people. Marginalisation that may impact the people is also another concern.

c) Raja Ampat Destination in Papua

The development of this tourist destination, Raja Ampat, is not on the side of indigenous people, as the locals can only watch the development to take place. Despite the negotiation initiated by several people of several areas over the involvement of the locals in the management of Raja Ampat, they are still left with not enough facilities by the government. It is essential for the government to involve the locals in an attempt to preserve the natural resources where they must be protected from any potential of extreme exploitation by investors. This issue brings contradiction in the development of Raja Ampat. On one hand, the locals are required to keep the nature intact and pristine, while they are not involved in the management of the tourist destination.

¹¹ Regional Regulation of The Regency of West Manggarai Number 4 of 2014

¹² 1) North Sumatera in Danau Toba, 2) Bangka Belitung in Tanjung Kelayang, 3) Capital City in Kepulauan Seribu, 4) Banten in Tanjung Lesung, 5) East Java in Borobudur, 6) East Java in Bromo Tengger, 7) West Nusa Tenggara in Mandalika, 8) East Nusa Tenggara in Labuan Bajo, 9) Southeast Sulawesi in Waka Tobi, 10) North Maluku in Morotai Island.

¹³ *Sunspirit for Justice and Peace, Labuan Bajo*

In contrast, the author believes that the existence of the local people in the development of tourism industry is essential in terms of environmental conservation and their rights are protected by the applying regulations, but their monthly income should also be considered.

When the indigenous people are given an opportunity to be involved in the management of the tourism in the form of percentage division as implemented in the Pakraman village, the chance to achieve social welfare for the indigenous people will be more apparent.

2) The State's Role in Tourism Development

State plays an important role in managing tourism based on the regulation made by the state aimed to protect and bring welfare to its people as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia: "The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people."¹⁴

National economic development is expected to stay stable and continual to provide job opportunity evenly available in all sectors to achieve the welfare for the society. The development must be performed systematically, which involves educated and competent human resource that can also work with other countries. The development process also takes proper planning, execution, supervision and evaluation.

The author believes that this can be broken down into 3 (three) main principles:

- a. The statement 'Land, waters and natural resources within' implies that what is within the Republic of Indonesia is a unity which is inseparable from one another so that Indonesia can utilise the natural resources. The existence of the resources on the earth is owned by Indonesia. With it, Indonesia is expected to be able to manage the natural resources wisely without overlooking the preservation of the nature for the next generations. What belongs to the state gives access to the state to the management without limit. The state must maintain the sustainability of the natural resources supported by the locals who are supposed to be responsible for the supervision and management.
- b. The statement 'under the powers of the State' means that natural resources must be under control of the state to give limit in terms of its utilisation by the indigenous people. The control by the state is aimed to protect the natural resources from any damage that could harm the following generations. Environmental and tourist destination preservation from any damage caused by the development of infrastructure is required to conduct by all parties to improve the tourism management. This is to maintain the existing natural resources as the uniqueness of tourist destinations. As a consequence, the state exists to control the utilisation of the nature according to the regulation. The control by the state is surely based on the regulation made by the government, which is aimed to encourage wise utilisation of the natural resources. Controlling does not always mean owning. The state recognises and respects the rights that indigenous people have had for a long time ago through generations. These rights are to be passed to the following generations as absolute rights. The state does not own the Mother Nature, but it only controls or manages the nature.
- c. The statement 'shall be used to the greatest benefit of the people' is aimed to achieve welfare for the people. The people are empowered through education, training, and they need to be enlightened so that they understand more about the state's role to achieve the welfare. The development in all aspects and of tourist destinations is aimed for nothing but to achieve the welfare especially for indigenous people. Therefore, the state carefully plans the tourism management. The essence of tourism management is related with the increase of state revenue, regional revenue, and the improvement of the welfare of indigenous people to meet the ideology of the state.

Act Number 10 of 2009 concerning Tourism is a commitment of the state to regulate good tourism management useful for the society especially for the indigenous people. The regulation that takes side and gives opportunity of indigenous people regarding tourism could help improve the economy of the society.

3) Benefits to Indigenous People

Reinforcement of indigenous people in Indonesia is regulated in Article 18 letter B Paragraph (2) which states that "State recognises and respects the unity of indigenous people along with their traditional rights as long as they live and in accordance with the growth of the society and the principle of the unitary state of the Republic of Indonesia, as stipulated in the Act."¹⁵

This Article is elaborated more into 4 main points: the state recognises and respects indigenous people in Indonesia, protects its people, and strives to bring its people to the welfare. The recognition of the rights of indigenous people, either the individual rights or communal rights is guaranteed by the constitution.

¹⁴ The 1945 Constitution of the Republic of Indonesia the Fourth Amendment.

¹⁵ The 1945 Constitution of the Republic of Indonesia, the second amendment.

Secondly, indigenous people have their traditional rights namely *adat* law in Indonesia. The state guarantees the rights of the people, and the people's task as the citizens of the state is to protect the Republic of Indonesia. Thirdly, "as long as they live and in line with the development of the society" is related with *adat* law that still exists until now in Indonesia. However, indigenous people strive to maintain the living values that has been recognised for so long in a society and the following generations still maintain the existing values that are in line with the principles of the state. Fourthly, 'the principle of the unitary state of the Republic of Indonesia as regulated by Act' is defined as unity in diversity. Diversity does not always mean different literally from one another, but the difference is to encourage them to be united, as relevant to the substance of Youth Pledge on October 28, 1928, belonging to only one state called Indonesia, belonging to only one homeland called Indonesia, and speaking only one language called Indonesian.

The ideology of Indonesia is to achieve welfare for its people through the development in all aspects and to bring the economy of the society to a better one. Natural wealth of Indonesia especially from tourism sector is an asset the state has been proud of in addition to the number of visitors coming to Indonesia. The visiting tourists give clue that the tourist attractions they visit do not exist in the countries they come from.

United Nations World Tourism Organization (UNWTO) argues that tourism sector plays an essential role in social welfare improvement.¹⁶ This sector contributes as much as US\$ 20 billions to Gross Domestic Product (GDP) at national level. The number of visitors from abroad rose by about 21.88% (to 8.00%) in 2017 or to about 14.04 million from only 11.52 million visits back in 2016.¹⁷ Foreign exchange has shown increases from year to year and it has contributed to the local economy.

Indonesia is a proud country with its abundant natural resources either the renewable or non-renewable ones. The country has carefully and wisely used the natural resources for the sake of the social welfare for generations. Therefore, it is essential that the use of the natural resources be appropriately regulated for the social welfare of the people. The existence of tourism should bring benefits for the indigenous people in the way that they should be involved in the planning, execution, supervision and the evaluation in tourism.

4. Conclusion

The growth of the development of tourism in Indonesia does not always show a positive correlation to the economy of the indigenous people because they are still incapable of competing with outsiders to manage tourism sector. Moreover, indigenous people are mostly lack of education, lack of experience, and have not enough money, in which all those incapability are regarded as one of impeding factors to the growth of the economy in tourism sector.

The rights of indigenous with respect to this tourism industry have not been clearly regulated, which may lead to multi-interpretation of the existing law. As a result, the government has not given any priority to the indigenous people in the development of eco-tourism in Indonesia.

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