

# The Availability of Regional Legal Products on Sharia Tourism in Madura

Agung Ali Fahmi<sup>1\*</sup>, Muwaffiq Jufri<sup>2</sup>, Ansori<sup>3</sup>

<sup>123</sup>Universitas Trunojoyo Indonesia

\*Corresponding author. Email: [agungalifahmi@trunojoyo.ac.id](mailto:agungalifahmi@trunojoyo.ac.id)

## ABSTRACT

Sharia tourism has been widely practiced in this country, including in Madura. As a place for religious community, Madura is considered worthy of being the centre of sharia tourism destinations in Indonesia. However, this idea should be complemented by the availability of regulations that serve as a guideline in organizing and developing halal tourism in Madura. The results of this study suggested that the existence of regional regulations not only serves as a basic guideline in organizing halal tourism but also a means of legal protection for the community against the possibility of legal problems in managing sharia tourism. Meanwhile, of the four regions in Madura, only Pamekasan has regulations related to the development of sharia tourism.

**Keywords:** *Sharia tourism, halal tourism, regional legal product.*

## 1. INTRODUCTION

Based on the provisions of article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI '45) confirms that this country is based on law. These provisions have implications for all actions taken in the context of running the country must be based on applicable law.[1] Regarding the law base country, R. Soepomo, as quoted by A. Mukhtie Fadjar, expressed his view that the law base country is a state that is subject to law, legal regulations apply to all agencies and state apparatus.[2] A Law base country will also guarantee legal order in society, which means providing legal protection, and there will be a reciprocal relationship between law and power.[3]

Furthermore, ideas and discourses related to the need for the implementation and development of sharia-based tourism (sharia tourism) in Madura are increasing and are voiced by various groups. This is due to the position of Madura which is referred to as the "Medina of Indonesia" by B.J. Habibi. It implies that Madura has its attractiveness in developing sharia tourism. The socio-cultural conditions of the Madurese community who are religious and have qualified religious fanaticism are considered capable of making Madura as a sharia tourism destination which will later make a major contribution to the development of Madura.

However, the feasibility study of Madura as a basis for developing sharia tourism is not enough to just rely

on socio-cultural and regional aspects, because in the tradition of the law base country, a state activity should be supported by legal legitimacy. In this context, the pattern of sharia tourism development in Madura should also be supported by the availability of regional legal products that specifically regulate the sharia tourism model.

For this reason, this article intends to examine the availability of local legal products regarding sharia tourism in Madura. This study is intended as a preliminary study before developing sharia tourism models that are following the socio-cultural basis of the Madurese community. With this intention, the formulation of the problems raised in this study are: a) What is the urgency of sharia-based legal products in the development of sharia tourism in Madura? b) How is the availability of regional legal products regarding sharia tourism in Madura?

## 2. RESEARCH METHOD

Based on the problems above, the type of research used was normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data.[4] So this normative legal research uses secondary data such as laws and regulations, court decisions, legal theory, and can be in the form of the scholars' opinions. The approach used in this paper used statute approach,[4] which is approach

that examines all laws and regulations related to legal issues and needs to find the ratio legis of the birth of a law.

### 3. RESULT AND DISCUSSION

#### 1. *The Urgency of Regional Legal Products in the Development of Sharia Tourism in Madura*

Indonesia, as a country established in the modern century through the Proclamation of August 17, 1945, "has declared" itself as a law base country. This is indicated by the existence of several principles underlying the law base country. Those principles are reflected in the Constitution of the Republic of Indonesia of 1945 (before changes were made), namely, in the Preamble to the 1945 Constitution, the Body (non-Articles on Human Rights), and the explanation of the 1945 Constitution, the details are as follows: [5]

1. In the Preamble to the 1945 Constitution of the Republic of Indonesia, the first paragraph contains the word "Justice", the second paragraph states "just", and the fourth paragraph contains "social justice", and "just humanity". All of these terms indicate the meaning of the rule of law,
2. Article 27 of the 1945 Constitution of the Republic of Indonesia stipulates that "all citizens have the same position in law and government with no exceptions". This article not only guarantees the principle of equality before the law but also emphasizes the obligation of citizens to uphold the law as the prerequisite to maintain the principles of a law base country; and
3. The explanation of the 1945 Constitution of the Republic of Indonesia is authentic. According to Indonesian Constitutional Law, the explanation of the 1945 Constitution of the Republic of Indonesia has a juridical value, with capital letters stating: "Indonesia state is based on the law (RightStart) not based on mere power (machtsstaat)". This last provision explains what is implied and stated in the Body of the 1945 Constitution of the Republic of Indonesia.

After the amendment of the 1945 Constitution of the Republic of Indonesia, the formulation of the Indonesian rule of law which was originally only implicitly included in the Preamble and the Body of the 1945 Constitution of the Republic of Indonesia and explicitly contained in the Elucidation of the 1945 Constitution of the Republic of Indonesia, has shifted into the Body of the 1945 Constitution of the Republic of Indonesia which expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "The State of Indonesia is the State of Law".[6] If it is related to the elements of the law base country as having been

described in the discussion above, it can be found the arrangement of the elements of the law base country in the Body of the 1945 Constitution of the Republic of Indonesia. These elements include [5] 1) Protection of human rights (HAM); 2) Separation of power or shared power; 3) Government by law; 3) An independent administrative court.

All the discussions related to the law base country and its correlation with the context of the state in Indonesia as has been mentioned above, it can be understood that Indonesia as a modern state has declared itself as a law base country since its first establishment. This should be followed by all state policies and activities which are also based on applicable laws. This should be applied in either the context of the central government or regional government. Without the rule of law, a state policy has no legitimacy and is even considered illegal.

Concerning the need for legal regulation on sharia tourism in Madura, it is intended to achieve several important points in a legal state, including:

- a) Government by the law, it is intended as the implementation of the system upheld by the law base country adopted by Indonesia. This means that the existence of regional legal products that regulate sharia tourism is the legal basis and guidelines in developing models and/or patterns of tourism based on Islamic values (sharia).[7]

The aforementioned legal basis becomes a guideline in developing sharia tourism, either development carried out by the regional government or the development carried out by the general public. With this legal basis, the existence of sharia tourism developed in Madura has received legal legitimacy from the state.

- b) Protection of community rights in developing sharia tourism. As stated by Sudikno Mertokusumo, that the existence of law, in terms of regulations and/or legal products, is intended to provide limits for human activities in carrying out their daily activities.

Every society in a country certainly has the rights to do something that does not violate the applicable rules that are protected by the law. This right is given by the state to ensure all citizens can enjoy life and fulfil their needs without interference from other parties.

Besides the context of developing sharia tourism initiated by the community, the existence of the rule of law initiated by four local governments in Madura is a form of state legitimacy for the protection of its citizens in developing sharia tourism. With the existence of this regulation, it can certainly stop the intervention of other parties that interfere with community activities in developing

- sharia tourism because it has received legal protection from regional legal products that have been issued by each region in Madura.
- c) The existence of an administrative legal mechanism for sharia tourism activists. The rule of law has provided an element of administrative justice that is free from government elements to protect the rights of citizens who have been harmed by the stipulation of government policies. This element is intended to anticipate government policies that have the potential to harm the legal interests of citizens in carrying out activities in the field of sharia tourism.

## **2. The Availability of Regional Legal Products on Sharia Tourism in Madura**

The results of the preliminary study stated that the four regions in Madura have already had a variety of regional legal products that are formulated based on sharia principles and/or with sharia nuances. Either in the form of Sharia Regional Regulation (Perda) or other legal products that contain sharia values, even though the product does not state its identity as a Sharia Regional Regulation.[8]

The variety of regional legal products with sharia nuances can be found in the four regions in Madura. Some of these regional legal products are shown in the table below.

**Table 1.** Sharia Regional Legal Products in Madura.

<b>Pamekasan Regency</b>		
<b>Type</b>	<b>Number</b>	<b>Concerning</b>
Regional Regulation	18 of 2001	The prohibition of Alcoholic Beverages
Regional Regulation	18 of 2004	The Prohibition of Prostitution
Regional Regulation	7 of 2008	Management of zakat, Infaq and shadaqah.
Regional Regulation	5 of 2010	Grants for the Operational Cost of the Hajj.
Regional Regulation	4 of 2014	Al-Qur'an Reading Skills for Muslim Students.
Regional Regulation	5 of 2014	Controlling Activities in Ramadan Month.
Regional Regulation	14 of 2014	Management of Hotels, Lodging and Boarding Houses
Regional Regulation	1 of 2017	Implementation of Social Order.
Regional Regulation	3 of 2017	Implementation of Madrasah Diniyah.

Regional Regulation	3 of 2015	Organizing Entertainment and Recreation.
Regent's Decree	14 of 2016	Karaoke Entertainment Business Operation.
Regent's Decree	300 of 2009	Determination of Gerbangsalam as a Model and Strategy of Da'wah.
<b>Sampang Regency</b>		
<b>Type</b>	<b>Number</b>	<b>Concerning</b>
Circular Letter	451/024.1/4 34.013/2019	Call for Congregational Prayer for all Regional Apparatus Organizations (OPD) and all Sub-District Heads in Sampang Regency.
	450/545/434 .012/2021	An Appeal for Reciting Salawat Congregationally in Mosques and Musallas to Suppress the Spread of Covid-19.
<b>Sumenep Regency</b>		
<b>Type</b>	<b>Number</b>	<b>Concerning</b>
Regional Regulation	3 of 2002	Public Order.
Regional Regulation	6 of 2003	The Establishment of Sharia Rural Bank Pembiayaan Rakyat Syariah (BPRS) Bhakti Sumekar.
<b>Bangkalan Regency</b>		
<b>Type</b>	<b>Number</b>	<b>Concerning</b>
Regional Regulation	2 of 2019	The Establishment of Bangkalan as The City of Dhikr and Salawat.

However, the aforementioned sharia regional legal products are still general and are implemented in society daily life, such as the appeal for doing dhikr and pray congregationally, public order, and the prohibition of alcoholic beverages. Meanwhile, of the four regions. It is only Pamekasan that implicitly regulates sharia tourism through Regional Regulation Number 3 of 2015 concerning Organizing Entertainment and Recreation. The existence of this regional regulation is indeed in line with the development of an Islamic society promoted by Pamekasan through the "Gerbang Salam" program.[9]

This regional regulation is intended to follow up the development of the entertainment sector that is increasingly appeared in Pamekasan Regency. This regulation becomes a limitation for the entertainment sector that might lead to immoral practices and violates the tradition of obedience within the Madurese

community. Article 6 paragraph (3) letter a state that every entertainment destination and tourism spot must uphold the religious values and norms as well as the principles of obedience in the community traditions. Some of these values, norms, and traditions include:

- a. the availability of adequate facilities for cleansing.
- b. the availability of facilities for worshiping.
- c. the availability of halal food and beverages.
- d. safe, comfortable, and conducive facilities for families and businesses.
- e. performing arts and culture as well as attractions that do not against the religious norms, customs, and cultures, as well as moral values upheld by the society.
- f. clean sanitation and environment.

The existence of the Regional Regulation was then followed up with the existence of Regent Regulation Number 14 of 2016 concerning Karaoke Entertainment Business Operation. This regent regulation aims to provide legal certainty regarding the existence of karaoke businesses to guide them to prioritize the religious aspects. This regent regulation requires the karaoke business in Pamekasan Regency to fulfil several important things, including:

- a. No gambling, immoral acts, drug trafficking and use, alcoholic beverages consumption, and other forms of actions that potentially violate the applicable laws, as well as the customs and traditions, uphold by the community.
- b. It is mandatory to use bright and permanent lighting.
- c. It is mandatory to provide an airtight room equipped with a transparent glass door that allows people to see what is inside the cubicle.
- d. Lady companion (LC) should wear a proper and polite dress.
- e. Committed not to open the services during religious occasions or holidays, especially during the holy month, Ramadan.
- f. Be responsible for the existence of lady companion provided.

Besides these regional regulations, there are no other regional regulations in Madura that specifically regulate Sharia Tourism. This indicates that of the four regions in Madura, only Pamekasan Regency is the most prepared regency to manage and carry out the development of sharia tourism destinations. It is reflected by the existence of Regional Regulation Number 3 of 2015 concerning Organizing Entertainment and Recreation and also through Regent Regulation Number 14 of 2016 concerning Karaoke Entertainment Business Operation.

## 4. CONCLUSION

### A. Conclusion

Based on the description in the discussion above, the conclusions include; Firstly, the urgency of regional legal products to develop sharia tourism is as the fulfilment of prerequisite for the law base country which does require that all state activities must be based on the rule of law. In addition, this regional legal product is a form of legal protection for the rights of citizens in carrying out activities in the field of sharia tourism; Secondly, of the four regencies in Madura, only Pamekasan Regency is the most prepared region in developing sharia economy because they have established regulations and/or regional legal products that regulate the practices, as it has been motioned in Regional Regulations (Perda) No. Region Number 3 of 2015 concerning Organizing Entertainment and Recreation.

### B. Suggestion

The drafters of laws and regulations need to read the law on the formation of laws and regulations so as not to make mistakes in formulating articles in the law.

## ACKNOWLEDGMENT

Research and membership at the International Conference on Social Science (ICSS) of 2021 can be held with financial assistance from the Faculty of Law, Universitas Trunojoyo, Indonesia.

## REFERENCES

- [1] A. Muhshi, Teologi Konstitusi; Hukum Hak Asasi Manusia Atas Kebebasan Beragama di Indonesia. Yogyakarta: LKiS, 2014.
- [2] M. Jufri, "Analisis Putusan Pengadilan Negeri Sampang No. 69/Pid.B/2012/PN.Spg Prespektif Hak Kebebasan Beragama di Indonesia," *J. Ilm. Pendidik. Pancasila dan Kewarganegaraan*, vol. Vol. 1 No., p. 102, 2016.
- [3] A. M. Fadjar, Tipe Negara Hukum. Malang: Bayu Media dan Intrans Publishing, 2004.
- [4] D. L. Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *Fiat Justicia J. Ilmu Huk.*, vol. 8, no. 1, p. 52, 2015.
- [5] Muntoha, "Demokrasi dan Negara Hukum," *J. Huk.*, vol. Volume 16, p. 391, 2009.
- [6] Pasal 1 Ayat (3) UUD NRI 1945.
- [7] M. Ramadani, "Dilema Regulasi Pariwisata Halal di Indonesia," *J. Islam. Tour. Halal Food, Islam. Travel. Creat. Econ.*, vol. Vol. 1 No., p. 101, 2021.

- [8] A. Agung Ali Fahmi, Muwaffiq Jufri, "The Implementation of Islamic Value Absorption in Regional Regulations on Districts at Madura," Al-Ihkam J. Huk. dan Pranata Sos., vol. Vol. 15 No, pp. 195–160, 2020.
- [9] A. A. Fahmi, "Bentuk Penerapan dan/atau Penyerapan Hukum Islam dalam Produk Hukum Daerah di Madura," p. 557.