

Bali Tourism Law and Philosophical-based Ecotourism Management Tri Hita Karana

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ABSTRACT

This scientific work aims to discuss Balinese tourism law and Ecotourism management based on the Tri Hita Karana Philosophy. Balinese cultural tourism is based on sad Kerthi local wisdom, which grows and develops from Hindu religious values. In ecotourism management, the role of traditional villages in Bali is significant to be given the authority to manage tourism villages and/or ecotourism, considering that traditional villages are the bastions of Balinese culture in preserving Balinese culture. Tourism and ecotourism developed in Bali need the empowerment of indigenous peoples and synergy between Balinese culture and tourism. Data was collected through a literature study of legal materials related to the research topic and observation and in-depth interviews with seven key informants who understand the research topic. The data obtained were analyzed by applying an eclectic theory, namely the Progressive Law theory of Satjipto Rahardjo, "the law of an institution that aims to lead people to live. Prosperous and make people happy. The theory of legal protection against the Balinese Hindu indigenous community as the owner of Balinese culture is based on the value of local Balinese wisdom, Tri Hita Karana, which strengthens Balinese culture. It is used as an icon to develop Balinese cultural tourism. This study found that the value of local wisdom Tri Hita Karana became a philosophical Balinese Hindu community in implementing socio-religious life and tourism activities. The concept of Balinese cultural tourism becomes an ideology and way of life in the practice of tourism in Bali. This can be applied in actual activities by tourism actors in contract law products as a practical ideology in protecting Balinese tourism law and the happiness of mankind in tourism activities.

Keywords: *Ecotourism, Legal protection, Tri Hita Karana.*

1. INTRODUCTION

Tourism in Bali finds legal tourism products based on cultural tourism. Indeed, whatever concept is developed, if the state does not come with policies that favor the people, then capitalism/liberalization tourism will grow [1]. Ethnic Balinese can be proud in the Unitary State of the Republic of Indonesia to have inhabited the island, also called Bali. In the cultural reality of the Balinese Indigenous Peoples who inhabit the island of Bali, they have their uniqueness because they also have Bali, in particular, the majority of the Hindu religion, customs, and culture that are not found in Indonesia even the world. The greatness of Balinese cultural values is not only recognized by the Republic of Indonesia; even the world recognizes it. Therefore, legal protection for Tourism Villages in Bali, especially those based on Hinduism, local traditions, customs, and Balinese culture, is important and relevant to be researched. Community-based tourism The Balinese model appears

institutionally collectively through traditional villages, not individuals, but continues to develop according to the demands of indigenous peoples [2]. The rise of the Balinese people in managing tourism in their area is mostly top-down or instructions from above [3]. In-state politics, especially in Bali, there is indeed state hegemony, especially concerning Balinese culture. When the Dutch colonial government came to power in Bali, it was hoped that Bali could contribute revenue from the cultural aspect by opening tourist trips to the island of Bali [4].

In the development of tourism in Bali, the potential of local wisdom can be developed as an alternative in maintaining sustainable cultural tourism [5]. Paying attention to the potential of Bali as a cultural tourism area, thus the potential that exists in Bali can be explored, revitalized, developed for the welfare of the local/traditional Balinese community by paying attention to the local culture, which can be an added value for the welfare and equitable development in Bali, namely the

value of local wisdom. culture) can become an economic value by raising the potential of traditional villages innovatively and creatively so that the value of Balinese local wisdom is very feasible for research [6]. Based on the legal issues mentioned above, the Legal Protection of Balinese Culture in the context of a tourist village and/or ecotourism based on local wisdom is the entry point for the welfare of the Balinese people. Based on this background, there are two issues to be studied, namely:

- (1) How is the legal protection of Indigenous Peoples in tourism activities in Bali?
- (2) How to interpret the value of local wisdom in Bali in the implementation of cultural tourism?

2. LITERATURE REVIEW

Writings about tourist villages with various scientific points of view provide enrichment to tourist villages. First, I Komang Gede's article, Local wisdom in the development and spatial planning of Tourism Villages in Bali, the result is how to use space for tourism purposes. However, there are problems with tourist villages, namely duplication and lack of differentiation, the absence of standardization of tourist villages, and tourism products are not based on their potential. This includes weak human resources in the village, lack of access, lack of government commitment. Second, the results of the research, AA Sri Agung Pradnya Pramita and AA Rai Sita Laksmi, focused on the ideology of tourism development in the Penglipuran Region, Bangli Regency, showing that the ideology of community-based tourism, with a description of the ideology applied, is by practicing Bourdieau theory, practice is a product of the relationship between habitus as a product of history and the realm which is also a product of history (Harker, Mahar, & Wilkes, 2010). The result of his research is that the people of Penglipuran Village have the potential in the form of village spatial patterns and uniform house structures, their natural environments such as bamboo forests and forests. Wood and community traditions and culture still maintain traditional values and have the ideology of Community-Based Tourism. From the perspective of Tri Hita Karana, this study is seen as an ideology of society, not a philosophy that researchers will find in this study. From these two articles, they have not studied the legal and philosophical aspects of Tri Hita Karana, hereinafter referred to as THK holistically, so that it is still sectoral that needs further study, and researchers have found a relationship between the values of Balinese Local Wisdom THK in the study of the philosophy of law, both sociologically, philosophically, and juridically.

3. METHOD

Empirical legal research method, by examining the law from two sides. According to Soetandyo Widnjosoebroto, on the first side, the law is a norm

(statements that have a mandatory substance (sollen); and the second side is the law as a nomos, or fact (statements regarding the existence or absence of a specific behavior constancy in real collective life. The norm is a rule, and if the law as a norm is obeyed, it will transform into stable behavior over a long period and be understood collectively as a norm (Wignjosoebroto, 2009:84). The focus of this study, qualitative research through a case study approach. Data collection was carried out through a literature study of legal materials related to the research topic and observations and in-depth interviews with key informants who understand the research topic. The data obtained were analyzed by applying the theory in an eclectic manner, namely the Progressive Law theory of Satjipto Rahardjo, "law is an institution that aims to deliver people to a life fair. Prosperous and make people happy. Salmond's Theory of Legal Protection that the law aims to integrate and coordinate various interests in society. As a result of a traffic interest, the protection of particular interests can be done by limiting the various interests of the other party.

Meanwhile, Satjipto Rahardjo, legal protection protects human rights that others harm, and that protection is given to the community to enjoy all the rights granted by law (Satjipto Rahardjo, 2000: 69). To elaborate on legal protection related to the value of THK local wisdom, the theory of Legal Protection by Philip M. Hadjon is used; legal protection is preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, and repressive legal protection aims to resolve disputes that arise based on legal norms and provide sanctions against perpetrators of violators/acts against the law, both non-litigation, and litigation.

4. RESULT AND DISCUSSION

4.1 Legal protection of Indigenous Peoples in tourism activities in Bali

Bali against state hegemony in community-based tourism The Balinese model appears institutionally collectively through traditional villages, not individuals, but continues to develop according to the demands of indigenous peoples [7]. The rise of the Balinese people in managing tourism in their area is mostly top-down or instructions from above [8]. In-state politics, especially in Bali, there is indeed state hegemony, especially concerning Balinese culture. When the Dutch colonial government came to power in Bali, it was hoped that Bali could contribute revenue from the cultural aspect by opening tourist trips to the island of Bali [9]. In Bali tourism, the development of tourist villages is an inseparable part of the ups and downs of tourism development. Through tourism villages, tourism proves its alignment with the community because tourism is an absorber of rural labor, tourism is a generator of regional economic growth, and tourism is a tool for alleviating poverty (pro-job, pro-growth, pro-poor). [10]. In the legal protection of tourism activities, traditional villages arise

naturally. Therefore, the process of village tourism begins naturally in the traditional village of Kuta. Sociologically, the indigenous people of Kuta manage tourism activities starting from the wishes and interests of tourists, which are managed by the traditional customs of Kuta. Furthermore, after time passes, Kuta is the center of beach tourism, then the arrangement is carried out, which must be by the zone or zoning. Furthermore, land use is then regulated (2002) Strategic Structural Plan for Kuta, described by Zones: a) Airport zone; b) Banjar hall; c) graves; d) entertainment and recreation; e) furniture marketing storefront; f) green open space; g) handicraft and cargo industries; h) housing; i) swamp/mangrove forest; j) gardens; k) public facilities; l) retention ponds; m) office services; n) services and trade; o) field and sports; p) social facilities; q) Special area; r) tourist accommodation; s) transportation and parking. Strategic Structural Plan Area for Kuta, which includes Kuta Village, Legian Village, and Seminyak Village. This arrangement is based on the Decree of the Regent of Badung Number: 1266 of 2002, concerning the Urban Management of Badung Regency. Article 3: is stated about the Vision, the realization of a just, dynamic Kuta, supporting tourism growth, and supporting the concept Tri Hita Karana which Hinduism inspires with a complete social order. Article 4, Objectives, to expand and improve the quality of Kuta until 2020, so that this area becomes the center of beach tourism in Kuta Bali, to improve the quality of the city's spatial structure as a whole, and to the international reputation of Kuta as a cosmopolis tourist spot, dense and dynamic [11].

Bali does not continue to be trapped in the tourism development trend of Mass Tourism. For this reason, Bali has the opportunity to develop 100 new tourist villages with funding support from the APBN. Of course, this is an exciting opportunity and should not be wasted. However, behind these opportunities, the development of ongoing tourist villages is still faced with several problems. First, no criteria or standardization can be used as a reference when mapping tourist villages. Currently, the development of a tourist village still tends to be duplication, which refers to a tourism village that has existed before and does not raise its local uniqueness. Second, no tourism village development model can function as a blueprint, especially in developing local institutions, namely tourism village managers. Third, the government needs to make regulations on managing traditional village-based tourism villages as models in Bali.

Legal protection for tourist villages in Bali Province is an essential issue in building and discovering the value of local wisdom based on traditional villages. The principle of traditional villages in Bali is to have genuine autonomy, have awig-awig or pararem, parhyangan/temples, krama/citizens, and a clear territory. Regional Regulation Number 4 of 2019 concerning Traditional Villages states that the development of traditional villages aims to strengthen the rights of origin, traditional rights, customs, cultural values, and the value

of local wisdom of the Balinese people (Article 47, paragraph 1 (a). Bali tourism law: first, it must be seen from the value of Hinduism (as a culture), then it is lowered into the Tri Hita Karana philosophy (Balinese Regulation, No. 2 of 2012, concerning Balinese Cultural Tourism, Article 1, numbers (14, and 15). This is also related to tourist attraction, something that has uniqueness, beauty, and value in the form of a diversity of natural, cultural, and man-made wealth targeted and visited by tourists (Article 1, number 20)—building Balinese cultural tourism as the basis of community life and sustainable Balinese culture. Based on the Law of the Republic of Indonesia Number 10 of 2009, concerning Tourism, Article 28, the government can increase community empowerment and tourism potential owned by the community. Furthermore, each city district is creative in establishing a tourist village, for example, the Badung Regency Regulation No. 47 of 2010 concerning tourist villages. There are 11 tourist villages (1. Sangeh; 2. Bongkasa Pertiwi; these have developed; then: 3. Mengwi Tourism; 4. Kiadan Plaga; 5. Carangsari; 6. Pangsari; 7. Baha; 8. Munggu; 9. Evening; 10. This ship is currently developing, and 11. Lawak tourism village, which is an undeveloped tourist village).

As of now, the island of Bali has 110 tourist villages in the last calculation during 2018, or an increase of up to 124% compared to data collection four years ago.[12] In Tabanan Regency itself, 41 tourist villages and 22 have pocketed the Decree of the Regent of Tabanan. In its development, each tourist village has different rhythms and achievements. [13] To develop tourist villages in Bali in Bali, all tourism business activities should implement the Tri Hita Karana (THK) concept. THK is a philosophy that prioritizes strengthening the balance between the relationship between humans and God Almighty, humans with humans, and humans with their environment. This concept is stated in public policy norms or legal rules, which institutionalize good values. Norms come from the word *nomos*, which means value, and then narrow its meaning to become legal norms.[14]

4.2 Interpreting the value of THK Local Wisdom in Bali in its implementation of Cultural Tourism

The meaning of local wisdom in Bali is seen from the point of view of Satjipto Rahardjo's progressive legal theory. In contrast, tourism based on liberalization/capitalism is prone to conflict interests. If the state is not present in this activity, social conflicts will arise—the development of tourism accommodation in tourist villages in Bali. The value of Tri Hita Karana's local wisdom indirectly influences the policies and behavior of tourism businesses in Bali.

The THK concept can guide tourism business activities, especially cultural tourism in Bali, an icon of Bali. With the principle of regional autonomy owned by the government in Bali, the regional government has the authority to issue laws and regulations to regulate, in this case, related to Bali tourism. In the Bali Regional

Regulation Number 5 of 2020 concerning standards for the implementation of Balinese Cultural Tourism, considering (b) that in improving the quality, sustainability, and competitiveness of Balinese cultural tourism, it is necessary to standardize the implementation of Balinese tourism based on Tri Hita Karana which is sourced from cultural values and the value of local wisdom Sad Kerthi. In Article 1, number (9) sad Kerthi is an effort to purify the soul (Atma Kerthi), preserve forests (Wana Kerthi) and lakes (Danu Kerthi) as a source of clean water, sea, and beaches (Segara Kerthi), social harmony and dynamic nature (Jagat Kerthi), and build the quality of human resources (Jana Kerthi). Article 1, number (10) Tri Hita Karana are three causes of happiness: a balanced or harmonious life attitude between filial piety and God, serving fellow human beings, and loving the natural environment based on sacred sacrifices (yadnya). In implementing the value of Balinese local wisdom, it is reaffirmed in Article 1 number (12) Balinese cultural tourism is Balinese tourism which is based on Balinese culture which is imbued with the Tri Hita Karana philosophy, which is based on cultural values and local wisdom and is based on Balinese Taksu.

Tourism Villages, also expressly conceptualized in Article 1 number (29), tourist villages are village administrative areas that have the potential and uniqueness of the DTW, namely to experience the extraordinary life and traditions of rural communities with all their potential. Article 2: standards for the implementation of Balinese cultural tourism are prepared based on the principles inspired by the Tri Hita Karana philosophy, which is sourced from the local wisdom of sad Kerthi: a) Environmentally friendly; b) sustainability; c) balance; d) side with local resources; e) independence; f) togetherness; g) participatory; h) transparency; i) accountable and; j) benefits.

Article 3, paragraph (1) Standards for the Implementation of Balinese Cultural Tourism are held in one territorial unit, one island, one pattern, and one governance. (2) Setting Standards for the Implementation of Balinese Cultural Tourism aims to preserve the natural environment and Balinese culture imbued with the Tri Hita Karana philosophy based on the values of local wisdom of Sad Kerthi and to improve the quality of the implementation of Bali Tourism. The practice of this article, is it effective in legal reality, is it running well, is it only at the level of article texts. According to Satjipto Rahardjo, the destruction of the rule of law will degenerate into a state of the procedure if it has been reduced to a state of law. The rule of law of the Republic has become a big project, a humanitarian project, and a cultural project [15]. Progressive law is not seen from the perspective of the law itself but is seen and assessed from the social goals to be achieved and the consequences arising from the operation of the law. Article 3, paragraph (1) of the Standards for implementing Balinese Cultural Tourism is held in one territorial unit, one island, one pattern, and one governance. Based on the thought of the

text of this article, it should be linked and refer to regional autonomy Law No. 9 of 2015, concerning the second amendment to Law Number 23 of 2014, concerning Regional Government, article 20, paragraph (1):

Own by the Province of Bali;

By assigning districts/cities based on the principle of co-administration; or by assigning the village;

Article 20, paragraph (2) Assignment by the Provincial Region to the Regency/Municipal Region based on the principle of co-administration as referred to in paragraph (1) letter b and the village head as referred to in paragraph (1) letter c shall be stipulated by a governor regulation by the provisions of the legislation. - invitation; paragraph 3, Concurrent government affairs are under the authority of the Regency/City Region to be carried out by the Regency/City itself or may be assigned a part of its implementation to the village; paragraph 4, the assignment by the Region/city to the village as referred to in paragraph (3) is stipulated by a Regent/mayor regulation by the provisions of the legislation.

4.3 Kuta tourism management (Kuta traditional village)

Tourism Village and/or Kuta traditional village tourism from the "Hippies" tourist village around 1971, foreigners or young "hippies" came to Kuta beach and stayed at the beach by setting up tents. The development of Kuta tourism naturally came from these "hippies" and then came to people's houses for rent, and tourists were advised to make bathrooms and toilets. At that time, the residents' house had a bathroom with a shower. Residents' houses are rented for one dollar per day. Foreign tourists to the traditional village of Kuta, the goal is to sunbathe on the Kuta beach [16].

Furthermore, the people of Kuta began to develop an adaptation process in individual or familial efforts. The businesses developed are hotels, homestays, pensions, restaurants, souvenir shops, stages, stalls, and shops. The traditional village of Kuta has developed into a "tourism city," between the "native" immigrants, tourists, and foreign tourists mingling into a society that has its style and characteristics, namely the "international" Balinese people. Kuta has become a global village inhabited by multi-ethnic and multi-cultural people [17]. *Tourism* is the leading sector that has boosted Bali's economy. Planning (legal policy), social and cultural needs to get attention from the local government of Badung Regency. Hotels, discotheques, restaurants, bars are scattered in the area in the traditional village of Kuta. This should be accompanied by a "conception of law as a policy process." The anatomical conception of law as a policy process includes several components, namely:

Community process as a policy context (community process); Values (values); and Community interaction (community interaction); and

Community expectations as a policy orientation.

The community process is the context of the policies set from that process. Policymakers must respond to events in a community through the policy process in the form of policymaking. The values held by the community are used to interact with the community as a basis for strength in policy formation. Interaction affects values, and values affect the degree of policy [18]. The Kuta Traditional Village needs a holistic policy to plan a Tourism Village that can answer cultural issues, the social reality of the Kuta Traditional Village, which grows into a tourism village. From a "Hippies" tourist village to a "Capitalist" tourist village that attracts investors to the traditional village of Kuta to "scavenge dollars," and now, "mass tourism" is a necessity for the traditional village of Kuta. In the reality of the political economy of Kuta tourism towards capitalist-oriented tourism. An essential thing in the development of tourism in Kuta (Kuta traditional village). The economic progress of THK-based ecotourism, in collaboration with capitalist tourism, is developing without the control of the traditional village of Kuta. This is confirmed by the Bendesa adat Kuta, and individuals own the existing land. The traditional village manages only a few customary lands for the art market, the night market (Interview I Wayan Wasista, 16 July 2021). The condition of the COVID-19 pandemic, 90% of Kuta's customary manners live from tourism activities, feels very hit. Even the regency and provincial governments of Bali have not seen any severe problems in the traditional village of Kuta. For example, in taking a COVID-19 free zone policy, the chosen ones are Nusa Dua, Sanur, and Ubud. This is the perception/assessment of the indigenous people of Kuta. In terms of Kuta is the "Branding" of Bali Tourism.

This pattern needs to be re-knitted by the Kuta traditional village with the facilitation of the Bali Provincial Government / Badung Regency Government, so that there is a collaboration on the ecotourism model of traditional village management and investor management, with a Build, Operate and Transfer (BOT) agreement pattern [19]. This is an offer from researchers, but it is challenging to develop by the traditional village head because it has already been too late to develop Kuta as an International Tourism Village.

The concept of ecotourism as an alternative tourism concept, which provides criticism of the old paradigm of tourism. It is said that tourism development is a massive, exploitative, fast development and does not pay attention to the interests of local communities. This is an antithesis to the conventional form of tourism development (mass tourism), which tends to be greedy for natural resources and ignores the interests of local communities. One form is what is then better known as ecotourism. The point of view of ecotourism (ecotourism) is taken as a new paradigm to accommodate tourism that is pro-local people (Pro local people). [20].

The product of ecotourism is the meeting of tourists with the local community as hosts. According to Nugroho (in Nyoman Suksma Arida, 2016), it is uniquely attached

to the environment and local culture. Ecotourism products meet the following criteria: (1). be responsible for the impact of the natural and cultural environment it causes; (2). Conducted in natural areas or managed by natural rules; (3) involving elements of education and understanding of the environment and culture of tourist destinations, (4) supporting conservation efforts and increasing local people's income [21].

5. CONCLUSION

Balinese Hinduism guides the Tri Hita Karana philosophy; tradition is a force in realizing Balinese cultural tourism. Balinese tourism is based on the value of Sad Kerthi's local wisdom in running a tourist village, based on the potential of traditional villages to become a new force in implementing Balinese cultural tourism, and traditional villages are the owners and managers of tourist villages. The goal is for the welfare of traditional Balinese manners as a supporter of Balinese culture. The findings in this study, that Hinduism, the philosophy of Tri Hita Karana, sociologically, philosophically and juridically, synergistically/dialectically in cultural tourism activities, and the duty of the state to form policies/laws that can "law have social meaning."

A tourism/ecotourism village that is developed by the community/traditional village is guided by the state and local community-based management, local community management, local cultural potential, such as the case of the Kuta traditional village That when new tourism "is published in the traditional village of Kuta" it is an ecotourism and/or tourism village. Precisely when the involvement of tourism capitalism (investors), traditional villages "stutter" is unable to "resist" the brunt of investment funds, the tourist village is transformed into a Global village inhabited by multi-ethnic and multi-cultural, with the model of a tourist village (mass tourism).) and "any product" may be offered at Global village.

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