

# The Effectiveness of Licensing on Tourism Business Activity in the Area of the Toba Lake

Alfon Octavianus Sitepu<sup>1,\*</sup>, Faisal Santiago<sup>2</sup>, Ricky Purwanto<sup>3</sup>

<sup>1,2,3</sup> *Law Doctoral Program Universitas Borobudur Jakarta*

*\*Corresponding author. Email: [advokat.alfonsitepu@gmail.com](mailto:advokat.alfonsitepu@gmail.com)*

## ABSTRACT

Establishment of Ministry of Tourism and Creative Economy at national level and the Department of Tourism in each region, the Indonesian government has focused on tourism. Through Government Regulation on Spatial Planning of the National Park, the Indonesian government announced ten tourism sites in Indonesia at Lake Toba (Rencana Tata Ruang Wilayah Nasional). It follows the outcomes of the United Nations Educational, Scientific, and Cultural Organization's (UNESCO) International Conference Global Geopark, held in Lombok from August 31 to September 2, 2019, which designated the Toba Caldera as a UNESCO Global Geopark. Under the objectives identified, the Government of Indonesia may easily promote Lake Toba as an international tourism market, attracting tourism businesses interested in diving, snorkeling, hotels, cafes, golf courses, and tourist schools. The government of Indonesia has some rules of tourism, particularly in Lake Toba, in the form of a Tourism Law, a Regulation of the President of the governing body, the manager of tourism in Lake Toba, local Regulations about the Arrangement of the Area of Lake Toba, and local Regulations about the Team Coordination of integrated tourism evolvement program. As stated in Regulation of Fundamental Agrarian Law, the entire earth, water, and air space, as a gift from God Almighty, plays a crucial role in constructing a fair and prosperous society in Indonesia. Then there is the Law on Environmental Protection and Management states that proper and healthy environment as one of every Indonesian citizen's rights, as specified by Article 28H of Indonesian Constitution in 1945. As a result, the fair and equal application of several laws revealed itself in the shape of tourism business licensing.

**Keywords:** *Licensing, Tourism.*

## 1. INTRODUCTION

Toba lake is the largest volcanic lake in the world, located in North Sumatra. The depth of Lake Toba is about 450 meters, with a length of 87 kilometers and a width of 27 kilometers. Toba lake is located in 7 districts within the Government Area of North Sumatra Province, namely: Simalungun Regency, Toba Samosir Regency, North Tapanuli Regency, Humbang Hasundutan Regency, Dairi Regency, Karo Regency, and Samosir Regency. Toba lake is one of the tourism places that are in great demand by local and foreign tourists. It is necessary to do maximum development and preservation by the central government, provinces, and district/city governments. In carrying out Lake Toba's development, development, and preservation, a well-coordinated strategy, measures are needed between the central government, provinces, and districts/cities. In supporting the development and preservation of Lake Toba as an international tourism site, comprehensive special

regulations are required so that coordination of implementation and division of licensing authority between the center, province, and district/city does not overlap. Tourist Attraction is everything that can be seen or felt (tangible) or that cannot be seen (intangible), which is a driving factor for tourists to visit. In the past, cultural tourism tended to concentrate only on something static such as museums and monuments. Both are the most visible cultural expressions and are easily accessible to tourists.

Article 1 number (3) Law Number 10 in 2009 on Tourism provides an understanding of the tourism, namely: "Tourism is a variety of tourist activities and supported by various facilities and services provided by the community, businessmen, government, and local government." Tourism in Indonesia received special attention from the government to establish the Ministry of Tourism and Creative Economy at the Central level and the Tourism Office in each region. The term tourism

was introduced to replace the foreign term tourism or local tourism. In government regulation Number 26 in 2008 regarding The National Spatial Plan, the government has declared ten tourist destinations in Indonesia, Tourism in Lake Toba through the Government Regulation on National Spatial Plan (RTRWN). This is in line with the International Conference on Global Geoparks by the United Nations of Educational, Scientific, and Cultural Organization (UNESCO) in Lombok from August 31, 2019, to September 2, 2019. Toba caldera as a UNESCO Global Geopark. For these conditions, the Government of Indonesia can easily promote Lake Toba in the middle of the International tourism market. Tourism entrepreneurs want to invest in tourism such as diving, snorkeling, hotels, cafes, golf zones, tourism schools, etcetera.

The Government of Indonesia has several rules governing tourism. Especially in Lake Toba in the form of Law such as Law Number 10 in 2009 on Tourism, and Presidential Regulation Number 49 in 2016 with regard to the governing body of Lake Toba tourism area, and Regional Regulations such as Regional Regulation of North Sumatra Province number 1 of 1990 concerning The Arrangement of Toba lake area, and the Regional Regulation of Toba Samosir Regency number 671 of 2019 concerning the Coordination Team of integrated and integrated tourism development programs of Toba Samosir Regency, which contains rules governing tourism business activities to run well and harmoniously with the surrounding community. As in Law Number 5 in 1960 on basic rules of agrarian staples, in part weighing the letter, a is stipulated that in Indonesia all the earth, water, and space as a gift of God Almighty has a significant role to build a just and prosperous society. Then in Law Number 32 in 2009 on environmental protection and management, in the section weighing letter A, it is stipulated that a good and healthy living environment is the human right of every Indonesian citizen as mandated in Article 28H of the Constitution of the Republic of Indonesia year 1945.

The state of the Republic of Indonesia divides the authority of the government into several parts consisting of central and regional powers or called the system of centralization and decentralization. In conducting tourism business for private parties, one must first obtain a permit before operating the tourist area. The private sector must obtain a government or local government permit in tourism licensing to legalize its tourism business premises. Modern tourism today is also accelerated by the globalization process of the world, causing interconnections between fields, nations, and individuals living in this world. This is intended so that private parties get legal protection for the ownership or implementation of tourism business activities. In addition to these special rules, special agencies/institutions carry out Lake Toba's development, development, and preservation at the central, provincial, and district/city

levels. The Central Government, through the President, has established a particular institution that handles the development, development, and preservation of Lake Toba, namely the Lake Toba Tourism Area Management Authority. The establishment of this body/institution was formed based on Presidential Regulation No. 49 of 2016 concerning the Lake Toba Tourism Area Management Authority (hereinafter referred to as PP BOPKPDT).

Based on Article 21, PP BOPKPDT explained that in the preparation of the plan of development, development, and maintenance of Lake Toba, the implementer must involve the relevant ministries, the Provincial Government of North Sumatra, and the Regency/City Government whose territory is related to Lake Toba by referring to the provisions of the Master Plan as stipulated in this BOPKPDT PP. In general, licensing has a coaching function in the sense that with the granting of a business license by the government, businesses can practice or operate doing business. It hints that a business license is an instrument of government policy or local government given to businesses to control economic activities carried out by businesses. The domain of tourism development between the Provincial Government and the Regency Government creates contradiction of authority, namely the occurrence of overlapping authorities.

From the description above, then the formulations of the problem that become the subject of the study/discussion in this research are 1) What is the licensing authority of Provincial Government and Regency Government in North Sumatra in the development of Lake Toba tourism? 2) How Legal Arrangements and Requirements to Obtain a Business License Tourism in Lake Toba Area?

## **2. METHOD**

Normative law research uses normative case studies in legal, behavioral products, like reviewing the Law. The point of the study is Law's conceptual as a norm that acts in society and becomes reference to everyone's action. Thus, normative legal research focuses on the inventory of positive laws, legal principles, and doctrines, the discovery of Law in cases in concreto, systematic Law, synchronization standards, comparative laws, and legal history.

Method used in this research is the approach of the invitation regulation (statue approach). Normative research must undoubtedly use the invitation-invite approach because what will be researched is the various rule of Law that becomes the focus and the central theme of a study.

The data source used to be processed in normative legal research is secondary data, i.e., the study of documents or literature by collecting and examining that can give information needed by the researchers.

### 3. RESULT AND DISCUSSION

Government organs refer to organs that carry out government affairs both of central and regional levels. From the search for various government provisions, administration can be known, ranging from the highest state administration (President) to the lowest state administration (lurah) authorized to provide permission. This means that various state administrations (including its agencies) grant permits based on their positions at both the central and regional levels. Permits are juridical instruments in the form of judgment, which the government uses in the face of concrete and individual events. Concrete events refer to events that occur at particular time, specific person, certain place, and certain legal facts. Concrete events requested permits and may be issued or required several permits, based on the process and procedure depending on the authorization of the permit, the type of permit, and the organizational structure, the organ of the government authorized to issue the permit.

Authority means the right to use the authority owned by official following the provisions of regulations and usable law. The provision is as barrier to the scope that can or should not be done by government officials or institutions. In the article 18 of Indonesian Constitution in 1945, it is stated that “the Unitary State of Indonesia is divided into provinces and provinces divided into districts and cities, each of which has local government, which is governed by law.” The legal structure here is in state institutions, both in legislative, executive, and judiciary. In the institution worked the state apparatus and government that became the backbone of the work of the legal system in Indonesia. While in the provisions of Article 2 of Law No. 23 of 2014 on Local government, it is explained that “The Unitary State of the Republic of Indonesia is classified into provincial and provincial regions divided into districts and cities.” Three government structures above synergize with each other to carry out the functions of government well. Law No. 23 of 2014 on Local Government divides the authority into three types as stipulated in Article 9: (1) Government affairs consist of whole government affairs, concurrent government affairs, and general government affairs. (2) The absolute governmental affairs as referred to in paragraph (1) 33 shall be governmental affairs fully authorized by the Central Government. (3) Concurrent government affairs as referred to in paragraph (1) shall be government affairs divided between the Central and Regional Governments of the Province and Regency/City Region and handed over to the regions as the basis to conduct regional autonomy. (4) The general government affairs shall be government affairs that become authority of the President as the head of government.

Reviewing the territorial boundaries of the authority of the Provincial Government with the District/City can be known from the provisions of Article 13 paragraph (3)

and (4) Law Number 23 in 2014 on Local Government. The authority of the Provincial Government consists of government affairs located across districts/cities, the users cross the district/city, the benefit or negatively impact across districts/cities, and the use of resources more efficiently if done by the province. The authority of the district/city consists of government affairs located in the district/city, government affairs whose users are in the district/city, government affairs whose benefits or negative impacts are only in the district/city, and government affairs that use resources more efficiently when done by the district/city. Through the Department of Culture and Tourism of North Sumatra, the government of North Sumatra plays a important role in Toba lake Tourism’s development. This can be seen from the 12 development authorities listed in the North Sumatra Regulation Number 5 in 2018 regarding the Master Plan of Tourism Development of North Sumatra Province in 2017-2025. Carrying out significant role as above, indeed not separated from the constraints in carrying out the authority of lake Toba tourism development. These constraints can occur in the internal factors of the Department of Culture and Tourism of North Sumatra Province and constraints from externals stemming from the role of the Regency or City Government in the development of Toba lake.

Utrecht provides the understanding of permission as follows: Where the rule maker does not forbid an act, but still allows it as long as it is held in prescribed manner for each factual matter, then act of the state administration that allows the act is a permit. In the modern state of Law, the task of government authority is not only to defend order and security, but also to seek the general welfare. To carry out this task to the government, it is given authority in the field of regulation, which from the function of this arrangement appears several juridical instruments to pass individual and concrete events in the form of decisions. One state of law principles is *wetmatigheid van bestuur* or based on the laws and regulations. In other words, any government legal action, whether in carrying out the regulatory functions service functions, must be based on the authority given by the applicable laws and regulations. Performing and enforcing the Law’s approving authority **need** authority because authority can give birth to juridical instruments. Nevertheless, the government needs to pay attention to the issue based on the authority obtained from the applicable laws and regulations. In general, permission applications must follow specific procedures are determined by the government as an approver. In addition to having to travel through specific procedures, the permit applicant must also meet the requirements determined unilaterally by the government or its licensors. Permission as one type of *beschikking* has the form and properties: (1) Constitutive, specific actions or behaviors (concrete acts) must be met, which may be penalized if not met. 2) Conditionally, the assessment of

an event to be issued permission may be seen and assessed after the required acts or behaviors happen.

Supervision in the Implementation of Licensing and Tourism Business is carried out by personnel of the Office of Tourism and Culture of each district around Lake Toba. Currently, the Government Republic of Indonesia wants to make the Lake Toba area a Monaco of Asia. The government is working to improve the region of Lake Toba. Any community efforts that, in this case, it falls into the type of Tourism Business, employers are obliged to registering their business premises through the Office of the Investment Agency and Integrated Licensing Samosir Regency, and later must get a letter of recommendations in advance from the Tourism Office in each district where the business is active.

The permit is a document issued by the Local Government based on Local Regulations or other regulations that are evidence of legality, declaring the shah or allowed a person or entity to conduct certain businesses or activities. Permission is not the same as justification. Suppose the prevailing laws and regulations prohibit the activity of a public member, but the authorized apparatus carries out no enforcement. In that case, the justification does not mean permitted, so it can be said that permission must be a constitutive decision of the Authorized Apparatus to issue a permit. Law No. 10 of 2009 concerning Tourism article 15 paragraphs (1) and (2) stated that "To be able to conduct tourism business as referred to in article 14, tourism entrepreneurs must first register their business to the government or local government" then in paragraph (2) it says "Further provisions on registration procedures as referred to in paragraph (1) shall be stipulated by the Ministerial Regulation." According to the Regulation of the Minister of Tourism and Culture, procedures of obtaining a tourism business license are outlined in the Regulation of Minister of Tourism of Indonesia Number 18 in 2016 concerning Registration of Tourism Business article 15-31. The first step that the entrepreneur must do to obtain a Business License is applying for a principle permit first. Before a Head of Office issues a Business License, the first step that tourism entrepreneurs must undertake is. First, they must apply for a principle permit, which is meant by a Permit Principle is a building preparation permit for entrepreneurs to prepare everything needed in their business activities later. The process of managing permits is also inseparable from the recommendations for establishing tourism businesses provided by the local Tourism, Arts and Culture Office. Requirements to obtain a tourism business license around the district in the Lake Toba region, in general, include: (1) Make a letter of application stamped 6000 addressed to the Regent of Officer. (2) Color Photo Fitting Size 4x6 (2 sheets). (3) Copy of Applicant's ID Card (valid). (4) Copy of Permit Disruption (HO) legalized. (5) Copy of IMB (legalized). (6) Copy of Company Deed (If Incorporated) and its subsidiaries (If Legal Entity). (7) Copy of SIUP/TDP

(legalized). (8) Amdal/UKL-UPL documents (for those affected). (9) Copy of NPWP. (10) Photo Location Picture. (11) Certificate of Land Status or Business Location from the Village / Village Head.

Obstacles are inevitable from every activity. There are many obstacles faced in implementing the Law Enforcement of Tourism Business License, such as the lack of public understanding of the Law and the issue of land ownership or business premises that are not owned by the government but managed under community and the Marga Foundation. According to the Head of Tourism Office so far, that has become an obstacle in carrying out the implementation of the task: internal obstacles stemming from the citizens' lack of awareness. Themselves to want to be licensed because there are no local regulations that specifically regulate tourism in Samosir and external barriers that come from entrepreneurs who do not get approval from the surrounding environment to operate their business.

Several obstacles are faced in implementing supervisory and Law enforcement duties in the tourism business: 1. Lack of personnel in the environment of Department of Culture and Tourism in Samosir 2 Regency. Lack of human resource in tourism 3. Supporting facilities of law enforcement 4. The number of tourism businesses that do not have a permit 5. The owner did not register his business because it is a family inheritance of 6. Lack of coordination between government apparatus 7. Far away from tourism business so unreachable officer 8. The lack of available budgets is mainly in the supervision of 9. Lack of public awareness in advancing tourism in the Lake Toba 10 area. Legal settlements that are still community-based or still use customary Law.

Efforts made in overcoming obstacles in the implementation of supervisory duties in the tourism business include 1. Adding personnel 2. Conducting training in the field of tourism 3. Adding inadequate facilities and infrastructure are natural resources and manufactured resources needed in their travels in tourism destinations, like roads, electricity, water, telecommunications, terminals, bridges, and so on 4. Increase budget in surveillance 5. Conducting socialization to tourism business holders. 6. In overcoming government sanctions, each district emphasizes advising tourism businesses, whether it is an appeal given directly by the respective Regents or the tourism office of each district. Every tourism business that does not meet the obligations imposed by administrative sanctions imposed by Form:

- a. Temporary closure of efforts made for time to take care of permits business following applicable regulations.

- b. Business closures are carried out to give a deterrent effect to businesses tourism in violation of applicable regulations.
- c. Revocation of business licenses is done because tourism businesses do not heed the warnings that have been given.

Any tourism business that violates the ban imposed the previous administrative sanction in revocation of business license. Imposition of sanctions administration is preceded by coaching, then written warning, where each Regent sets the sanctions.

#### 4. CONCLUSION

The government's authority in issuing permits is free, meaning that it is given the authority to consider based on its initiative. Such considerations are based on: (1) The applicant's conditions that it is possible to issue a permit. (2) How to consider the conditions. (3) Juridical consequences that may arise from the consequences of refusal or permitting are associated with statutory restrictions. (4) Procedures must be performed during and after the decision is accepted and rejected, granting permission. The principle is that regarding the implementation and licensing process. Generally, it is expected to gain clarity with the appearance of the structure of the licensing process in any field about the actual flow, but in the flow chart is not given information about the time it takes to complete each process or part of the licensing process. This is one of the fundamental weaknesses in the bureaucracy in this country, namely the lack of certainty of time and clarity in granting or issuing permits.

Tourism businesses, either individuals or non-individuals, must have a TDUP or Tourism Business Registration Certificate. TDUP is a permit issued by the Online Single Submission Institute (Integrated Online Licensing) on behalf of ministers, agency leaders, governors, or regents/mayors after Business Actors register and to run businesses or activities and operational implementation through meeting the requirements or commitments. The purpose of establishing TDUP as a commitment after the issuance of NIB for tourism businesses in the implementation of business licensing is to ensure legal certainty for businesses, in the sense of legality that protects the legal umbrella, valid and binding under the Law. It is valid evidence following the provisions of the legislation. The obstacles in law enforcement in the field of tourism business around Lake Toba can be divided into two factors, namely: A. Internal factors, among others (1) Lack of awareness and knowledge of the public about the Law, so tourism is challenging to develop following the laws and regulations. (2) The land or land that will be used as a location/object of tourism is hereditary following the Batak Toba customary family tribe, so it is challenging to

take care of the licensing because the land letter has not been broken up. (3) The location of the tourism place is too far from the center of each district's government so that not only law enforcement officers are difficult to reach the location but also challenging to complete all materials or equipment for the implementation of tourism objects so that the service to consumers of tourism objects is not maximum, so it is challenging to develop. B. External factors, among others (1) Lack of supporting facilities including equipment and personnel supervisors and law enforcement. (2) The absence of coordination between government officials, especially in supervision and law enforcement. (3) Budget costs are minimal in socialization and counseling to the local community and entrepreneurs, especially tourism business actors.

#### ACKNOWLEDGMENTS

The authors would like to express gratitude and appreciation to people who have provided moral and material support. This paper is far from perfect, but it is expected to be useful not only for the authors but also for the readers to add insight into the field of Law.

#### REFERENCES

- [1] Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik*, Jakarta: Sinar Grafika, 2015.
- [2] Eka Nam Sihombing. *Hukum Kelembagaan Negara*, Yogyakarta: Ruas Media, 2018.
- [3] Hanief, Shofwan, *Pengembangan Bisnis Pariwisata Dengan Media Sistem Informasi*, Jakarta: Andi, 2018.
- [4] Ismayanti, *Pengantar Pariwisata*, Jakarta : Grasindo, 2016.
- [5] Marwan Mas. *Hukum Konstitusi dan Kelembagaan Negara*, Depok: Rajawali Pers, 2018.
- [6] Revida, Erika, *Pengantar Pariwisata*, Medan: Yayasan Kita Menulis, 2020.
- [7] Simatupang, Violetta, *Hukum Kepariwisata Berbasis Ekspresi Budaya Tradisional*, Bandung: Alumni, 2015.
- [8] Sofian, Ahmad, *Aspek Hukum Ekonomi dan Bisnis*, Jakarta: Kencana, 2018.
- [9] Utama, I Gusti Bagus Rai, *Pengantar Industri Pariwisata*, Yogyakarta : Deepublish, 2014.
- [10] Wira Setiawan, *Pengawasan Perusahaan*, Bandung: Sinar Baru, 2013.
- [11] *Undang Undang Dasar Republik Indonesia Tahun 1945*.
- [12] *Undang Undang Nomor 10 Tahun 2009 Tentang Kepariwisata*.
- [13] *Undang Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah*.

- [ 1 4 ] Peraturan Pemerintah Nomor 38 Tahun 2007 Tentang Pembagian Urusan Pemerintahan Antar Pemerintah Pusat, Pemerintah Daerah Provinsi, Dan Pemerintah Daerah Kabupaten/Kota.
- [ 1 5 ] Peraturan Pemerintah Nomor 14 Tahun 2016 Tentang Rencana Induk Pembangunan Kepariwisata nasional Tahun 2010 – 2025.
- [ 1 6 ] Peraturan Presiden Nomor 81 Tahun 2014 Tentang Rencana Tata Ruang Kawasan Danau Toba dan Sekitarnya.
- [ 1 7 ] Peraturan Presiden Nomor 49 Tahun 2016 Tentang Badan Otorita Pengelola Kawasan Pariwisata Danau Toba.
- [ 1 8 ] Peraturan Menteri Dalam Negeri Nomor 24 Tahun 2006 Tentang Pedoman Penyelenggaraan Pelayanan Terpadu Satu Pintu.
- [19] Peraturan Menteri Kebudayaan Dan Pariwisata Nomor 85 Tahun 2010 Tentang Tata Cara Penyelenggara Jasa Usaha Pariwisata.